

ORDINANCE #79

AN ORDINANCE FOR THE PURPOSE OF ESTABLISHING CERTAIN GUIDELINES AND PROCEDURES FOR THE GRANTING OF NONEXCLUSIVE CABLE TELEVISION FRANCHISES WITHIN THE VILLAGE OF SPRINGPORT, MICHIGAN.

THE VILLAGE OF SPRINGPORT ORDAINS:

Section 1. **DEFINITIONS.**

The following words, terms, phrases, and their derivations shall have the meanings as given herein. Words not defined herein shall be given their normal and common meanings:

- a) “System” shall mean a system of antennae, cables, wires, lines, towers, or other conductors, converters, equipment or facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio video and other forms of electronic or electrical signal via cable or other conductor to subscribers for a specified fee. Such term shall not include any facility that serves or will serve only subscribers in any multiple-unit dwelling under common ownership, control or management which does not use Village rights of way.
- b) “Subscriber” means a person, firm or corporation authorized to receive the services of the system.

Section 2. **NECESSITY OF FRANCHISE.**

No person, firm or corporation shall construct or operate a system within the boundaries of the Village except by franchise granted hereunder by the Village.

Section 3. **INTERFERENCE.**

Neither the owner of any multiple unit, residential dwelling, nor the owner’s agent or representative shall interfere with the rights of any tenant or lawful occupant thereof to receive system installation, services or maintenance from a cable communication company franchised under the authority of this ordinance.

Section 4. **FRANCHISE CONDITIONS.**

1. Nonexclusiveness. Each franchise or renewal thereof granted under the authority of this ordinance shall be non-exclusive.
2. Revocation of franchise/standards. Any franchise granted under the authority of this ordinance shall be revocable at any time after a hearing before the Village council. The Following are factors, evidence of which may be considered by the Village Council as a basis for a finding that, based upon a preponderance of evidence presented, there is reason for revocation of a franchise granted hereunder. Those standards are as follows:
 - a) The demonstrated material and repeated violation of this ordinance by a franchisee.
 - b) The demonstrated material and repeated violation of a franchise agreement granted under the authority of this ordinance by a franchisee.
 - c) The demonstrated failure to make franchise fee payments in a timely manner by a franchisee.
 - d) The bankruptcy of a franchisee.
 - e) Assignment, sale or transfer of a franchise without the written consent of the Village; and
 - f) Any other factor which has rendered a franchisee unable to continue the competent operation of a franchise granted hereunder.
3. Terms of franchise: The terms of a franchise granted hereunder shall be determined by the requirements of this ordinance and by the provisions of a franchise agreement signed pursuant hereto.

Section 5. **THEFT OF SERVICE/VANDALISM.**

1. No person, firm or corporation, whether a subscriber to the system or not, shall willfully, maliciously or otherwise, damage or cause to be damaged any wire, cable, conduit, apparatus or equipment of the system or commit any act with intent to cause such damage, or to tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, apparatus, appurtenance or equipment of any such system with the intent to obtain a signal or impulse from the system without authorization of the franchisee.
2. It shall be unlawful for any person to tap, monitor, or arrange for the tapping or monitoring of any cable lines, signal, input device, or other

subscriber outlet, or receive it for any purpose whatsoever without the specific written authorization of the subscriber or pursuant to a court order.

3. Whoever shall violate any provision of this section shall be guilty of a misdemeanor and shall be liable to a penalty not to exceed \$500 or ninety days in jail or both per day, for each and every day or part thereof that the violation occurs.

Section 6. **EMINENT DOMAIN.**

Nothing in any franchise granted hereunder shall limit any rights of the Village which it may have to acquire by eminent domain or otherwise any property of the franchise; provided, however, that any such acquisition shall be for a price that values the franchisee's property at fair market value.

Section 7. **ASSIGNMENT, SALE OR TRANSFER OF FRANCHISE.**

Any franchise granted under the authority of this ordinance shall not be transferred, sold or assigned by the franchisee without express written consent of the Village.

Section 8. **POLICE POWER.**

The rights of a franchisee are subject to the powers of the Village to adopt and enforce general ordinances necessary for the protection of the health, safety and welfare of the people of the Village.

Section 9. **FRANCHISE FEES.**

1. For the reason that the streets to be used by any franchisee are valuable public properties acquired and maintained by the Village at great expense to its taxpayers, any franchisee shall pay to the Village an annual franchise fee in accordance with the terms of its franchise agreement.
2. Payment of the franchise fee shall not be considered a tax, but shall be in addition to any and all taxes required by the Village, County of Jackson, State of Michigan, or the United States. Nonpayment of any franchise fee by a franchisee shall be considered a material violation of this ordinance.

Section 10. **SUBSCRIBER RIGHTS.**

1. Non-discrimination. No franchisee shall deny system service or access to subscribers upon the basis of their race, color, creed, ancestry, sex, age, disability, income level or marital status.
2. Subscriber antenna. No franchisee may require the removal or provide any inducements for the removal of any potential or existing subscriber's antennas as a condition of provision of service.
3. Subscriber privacy.
 - a. No signals shall be transmitted from a subscriber's terminal, dwelling or place of business for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber; provided, however, that any franchisee shall be entitled to conduct, without such written authorization, system-wide or individually addressed sweeps for the purpose of verifying system integrity, controlling the return path transmission, or billing for services rendered hereunder.
 - b. No poll or other upstream response of a subscriber or user shall be conducted or obtained unless the program of which the upstream response is a part shall contain an explicit disclosure of the nature, purpose, and prospective use of the results of the poll or upstream response shall release the results of upstream responses only in the aggregate and without individual reference.

Section 11. **RATES.**

Rates to be fair and reasonable. All charges made to subscribers for installation, maintenance and use of the system under a franchise granted under the authority of this ordinance shall be fair and reasonable.

Section 12. **INVALIDITY.**

If any section, sentence clause or phrase of this ordinance is held invalid, unconstitutional or void by any court, such section, sentence, clause or phrase shall be deemed a separate and independent provision thereof of this ordinance, and such holding shall not affect the validity of the remainder of the ordinance.

Section 13.

That this ordinance shall take effect thirty (30) days from the date of final adoption. This ordinance was adopted by Resolution of the Springport Village Council on the _____ day of _____, 1988.

