

Upon motion by Brian P. McGrath, seconded by Richard P. Figaski, the following Ordinance was duly enacted, 2 voting in favor of enactment, 0 voting against enactment.

ORDINANCE NO. 2015-9

An Ordinance establishing the authority by which the Township of Millcreek may award cable franchises; setting forth the process by which the Township grants cable franchises to both new and incumbent cable operators; outlining the terms which must be contemplated in a cable franchise agreement; establishing penalties for violation and remedies in the event of violation; and including severability and repealor clauses.

WHEREAS, the Township of Millcreek on August 27, 1991 enacted Ordinance 91-31, a general telecommunications and cable ordinance, to regulate cable franchises within its geographic boundaries; and

WHEREAS, both cable technology and the laws and regulations governing the cable industry have changed considerably since the enactment of Ordinance 91-31, and

WHEREAS, the Township has negotiated a cable franchise renewal agreement with Time Warner Cable which includes terms and provisions which are inconsistent with some of the provisions contained in Ordinance 91-31; and

WHEREAS, the Board of Supervisors has determined that it is in the best interests of Millcreek Township that regulations governing cable franchises and matters relating to them be amended, so as to better establish the Township's authority in awarding cable franchises, create a uniform process for application by cable operators, maintain the integrity of the Township rights-of-way, reflects and addresses current industry and legal standards and is consistent with the franchise renewal agreement with Time Warner Cable.

NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of Millcreek Township, Erie County, Pennsylvania, as follows:

1.01 **Title.** This ordinance will hereafter be known as the Millcreek Township Cable Franchise Ordinance ("Ordinance").

1.02 **Purpose.** The purpose of this Ordinance is (1) to authorize the Township of Millcreek to set forth the process for the franchising and regulation of any Cable System within its geographical boundaries; (2) to create a uniform process by which all Cable Operators seeking to provide Cable Service to the Township shall follow in making application for a cable franchise; (3) to protect the health, safety, and welfare or the Township's citizens, and (4) to maintain the integrity of Township property.

1.03 Interpretation; Definitions.

1.03.1 Where not defined in this or in another Millcreek Township ordinance or applicable Pennsylvania or Federal statute, terms shall be given their ordinary, customary and common meaning.

1.03.2 Terms Defined. The following words, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates otherwise.

- (1) Franchisee – A person, firm, or corporation that is awarded a Franchise by the Township Board of Supervisors to construct, operate, and maintain a Cable System in all, or part of, the Township.
- (2) Cable Act – The Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as hereafter amended (47 U.S.C. §§ 521 *et seq.*, as hereafter amended).
- (3) Cable Operator – Any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such cable system.
- (4) Cable Service – The one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection of use of such video programming or other programming service.
- (5) Cable System – A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which includes video programming and which is provided to multiple subscribers within the Township, but such term does not include: (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621 of the Cable Act) to the extent that facility is used in the transmission of video programming directly to subscribers, unless the extent of that use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility systems.
- (6) FCC – the Federal Communications Commission.

- (7) Franchise – The right granted by the Township to construct, operate and maintain a Cable System within the corporate limits of the Township as further embodied in the terms and conditions of a cable franchise agreement.
- (8) Franchising Authority – Any governmental entity empowered by Federal, State, or local law to grant a franchise.

1.04 Franchise Authority. As set forth in Section 621(a)(1) of the Cable Act, (47 U.S.C. § 541), the Township has the legal authority to award one or more cable Franchises within its jurisdiction; except that it may not grant an exclusive Franchise and may not unreasonably refuse to award an additional competitive franchise.

1.05 Police Powers. The Township, by granting any Franchise or taking any other action pursuant to this Ordinance, does not waive, reduce, lessen or impair the lawful police powers vested in the Township under applicable federal, state, and local laws and regulations.

1.06 Franchise Required. No Cable Operator shall install, maintain, or operate within the Township or any of its public streets or other public areas any equipment or facilities for the operation of a Cable System without first obtaining a Franchise from the Township authorizing the use of public streets or areas which has first been obtained pursuant to the provisions of this Ordinance and unless said Franchise is in full force and effect. Such Franchise shall contain all of the terms and conditions as set forth in a cable franchise agreement as required by Ordinance.

1.07 Application for New Franchise; Application Fee.

1.07.1 Any Cable Operator desiring to construct, operate, and maintain a new Cable System within the Township must first file an application with the Township Board of Supervisors, which shall contain such information as the Township may require.

1.07.2 The application must be accompanied by a \$1000 filing fee to defray the cost of expenses or incurred by the Township in acting upon such applications. The Board of Supervisors is authorized, by resolution, to amend or adjust the amount of the application fee from time to time.

1.07.3 Any Franchise granted by the Township shall be in accordance with Section 621 of the Cable Act, *General Franchise Requirements* (47 U.S.C. § 541), and a franchise agreement which must be executed by both the Franchisee and Township.

1.08 Application for Renewal of Franchise. A Franchisee seeking renewal of a Franchise may, on such Franchisee's initiative, or upon the initiative of the Township, submit a request to the Township in writing for a cable franchise renewal agreement. Such request for renewal, as well as the entire franchise renewal process, shall comply with the terms and provisions of Section 626 of the Cable Act, *Renewal*, (47 U.S.C. § 546).

1.09 Public Hearing. Before authorizing the issuance of any cable Franchise, including initial franchises or renewals, the Township shall conduct a public hearing to obtain citizen comments. The Township shall also review the applicant's financial and technical qualifications, and adequacy and feasibility of its qualifications to operate a Cable System. In the case of renewals, the Township shall also identify the future cable-related community needs and interests, and review the past performance of the Cable Operator during the then current Franchise term. Such public hearing shall be scheduled after affording the public adequate notice and opportunity for comment.

1.10 Cable Franchise Agreement Provisions. Any cable franchise agreement entered into between the Township and a Franchisee shall contain, but is not limited to, the following provisions: length of franchise term; franchise fee provisions; construction, operation, and maintenance standards; customer service standards; right-of-way protections; reporting requirements; insurance requirements; indemnification provisions; PEG access channel provisions (should the Township wish to operate one or more access channels); performance bond or other form of security; penalties for breach of franchise agreement; provisions for transfer and assignment of franchise; and any other terms which are deemed by the Township Board to be in the best interests of the Township's residents.

1.11 Educational and Governmental Programming Channels. At the time of the enactment of this Ordinance, the Township operates educational and governmental (EG) access programming channels. Pursuant to this Ordinance, the decision to operate EG access channels, or to cease operating an EG access channel, shall be vested fully within the control of the Township Board of Supervisors. Should the Township continue to operate one or more EG channels, all decisions regarding the administration of the channels shall be vested fully within the control of the Township's Board of Supervisors.

1.12 Transfer, Assignment or Change in Control. A Cable Operator shall not transfer, assign or otherwise encumber, through its own actions or by operation of law, its right, title or interest in any Franchise awarded pursuant to this Ordinance without the prior written consent of the Township's Board of Supervisors and according to the applicable provisions set forth in the corresponding cable franchise agreement.

1.13 Cable Advisory Committee. The Township Board of Supervisors, in its sole discretion, may create a cable advisory committee should it deem that such a committee would benefit the cable franchise process. The Township Board has the authority to appoint members to such a committee and shall determine how many members should serve and the length of each member's term. Should a cable advisory committee be created, its role would be purely advisory and the Board of Supervisors would not be bound by its recommendations.

1.14 Violations; Penalties for Violation; Remedies.

1.14.1 Notice of Violation or Default. In the event a determination is made that a Cable Operator has violated any provision of this Ordinance, the Township shall provide such Cable Operator written notice of the determination and the reasons thereof. Except in the case of emergency, the Cable Operator shall have thirty (30) days to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the Township may, in its reasonable judgment, extend the time period to cure provided the Cable Operator has commenced to cure and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, Cable Operator shall be subject to the penalties set forth in Section 1.14.3, below.

1.14.2 Enforcement Action. In the event a violation has not been cured within the period allowed under Section 1.14.1, the Township shall commence a civil proceeding for enforcement of the Ordinance under the Ordinance Enforcement Ordinance.

1.14.3 Penalties for Violation. Any Cable Operator found by the Magisterial District Judge or other Court having jurisdiction to have violated any provision of this Ordinance shall be subject, upon conviction, to a fine not exceeding Six Hundred Dollars (\$600.00) for each and every offense, together with attorneys' fees and costs. Each day a violation continues shall constitute and be deemed a separate violation.

1.14.4 Additional Remedies. In addition to an action to enforce any penalty imposed by this Section of the Ordinance, the Township may exercise any and all legal and equitable remedies available to it to secure enforcement of and compliance with this Ordinance and a Franchise agreement, including but not limited to injunctive relief.

1.15 Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person, property or circumstances is for any reason held invalid or unconstitutional by any court, such holding shall not be construed to affect the validity of any of the remaining provisions of this Ordinance or its application, for such portion shall be deemed as a separate, distinct and independent provision from the remaining provisions which shall be and remain in full force and effect. It is hereby declared the legislative intent that this Ordinance would have been adopted had such valid or unconstitutional provision of its application not been included herein.

1.16 Repealor. All Ordinances or parts of any Ordinances inconsistent herewith are hereby repealed. Ordinance No. 91-31 is expressly repealed.

BE IT ENACTED this 12th day of May, 2015.


Richard P. Figaski, Secretary