

Chapter 16 CABLE AND TELECOMMUNICATIONS

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ARTICLE I. CABLE ORDINANCE

Sec. 16-1. Franchise agreement required.

All multichannel video providers shall obtain a franchise agreement from the township prior to providing service to any resident, business or person within the township, and shall have a franchise agreement in full force in effect at all times while such service is being provided.

(Ord. No. 9806, 6-22-98)

Sec. 16-2. Multichannel video provider.

Multichannel video provider means a person or entity who meets one or more of the following tests:

- (a) The provider is a cable operator, as such term is defined in the Federal Cable Act, being Title VI of the Federal Communications Act of 1934, 47 U.S.C. Sections 521 and following, or is otherwise required to obtain a "franchise," as such term is defined in such Act.
- (b) The provider is an operator of an open video system, as such term is defined in Title VI of the Federal Communications Act of 1934 and implementing regulations.

- (c) Any person or entity who provides multichannel video service to a resident, business within the township, where such service is transmitted in whole or in part via wires or lines that are in or cross any public rights-of-way within the township. The preceding sentence shall apply whether the provider owns, leases or otherwise obtains the right to use such wires or lines, including wires or lines of a telecommunications provider used pursuant to tariff or otherwise for such purpose. Multivideo service means multiple channels of video programming where the individual video channels are generally considered comparable to programming provided by a television broadcast station or by a direct to home satellite service.
- (d) A person or entity providing multichannel video service who is otherwise required to obtain a franchise or consent agreement under applicable law.

(Ord. No. 9806, 6-22-98)

Sec. 16-3. Penalty for violation of this article.

A person or entity who violates this article shall be responsible for a municipal civil infraction shall be punished by a fine as set forth in the Schedule of Civil Fines [Appendix C] and court costs. Equitable relief may also be awarded as permitted by Michigan law.

(Ord. No. 9806, 6-22-98; Ord. No. 2000-03, 8-28-2000)

Secs. 16-4--16-10. Reserved.

ARTICLE II. TELECOMMUNICATIONS PROVIDERS ORDINANCE*

***Editor's note:** Ord. No. 2002-09, adopted Nov. 12, 2002, amended art. II in its entirety to read as herein set out. Former art. II, §§ 16-11--16-33, pertained to similar subject matter, and derived from Ord. No. 9802, adopted Feb. 23, 1998.

Sec. 16-11. Purpose.

The purpose of this ordinance are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and to exercise reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) and other applicable law, and to ensure that the Township qualifies for distributions under the act by modifying the fees charged to providers and complying with the act.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-12. Conflict.

Nothing in this article shall be constructed in such a manner as to conflict with the act or

other applicable law.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-13. Terms defined.

The terms used in this ordinance shall have the following meanings:

Act means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.

Township means Georgetown Charter Township.

Township board means the Township Board of Georgetown Charter Township or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the township board.

Township supervisor means the township supervisor or his or her designee.

Permit means a nonexclusive permit issued pursuant to the act and this ordinance to a telecommunications provider to use the public rights-of-way in the township for its telecommunications facilities.

All other terms used in this article shall have the same meaning as defined or as provided in the act, including without limitation, the following:

Authority means the metropolitan extension telecommunications rights-of-way oversight authority created pursuant to the act.

MPSC means the Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term "commission" in the act.

Person means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

Public right-of-way means the area on, below, or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

Telecommunication facilities or *facilities* means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I or Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 USC 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

Telecommunications provider, provider and telecommunications services mean those terms as defined in Section 102 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile service as defined in Section 32(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 USC 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by

any wireless, two-way communication device. For the purpose of the act and this ordinance only a provider also includes all of the following:

- (1) A cable television operator that provides a telecommunications service.
- (2) Except as otherwise provided by the act, a person who owns telecommunication facilities located within a public right-of-way.
- (3) A person providing broadband internet transport access service.

Township superintendent means the person appointed by the township board who is responsible to supervise and manage the operation of the township as per state law and as delegated by the township board.

(Ord. No. 2002-09, 11-12-02; Ord. No. 2009-03, 4-13-09)

Sec. 16-14. Permit required.

- (1) *Permit required.* Except as otherwise provided in the act, a telecommunications provider using or seeking to use public rights-of-way in the township for its telecommunications facilities shall apply for and obtain a permit pursuant to this article.
- (2) *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with the act. A telecommunications provider shall file one (1) copy of the application with the township clerk, one (1) copy with the township superintendent, and one (1) copy with the township attorney. Applications shall be complete and include all information required by the act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with the act.
- (3) *Confidential information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from Michigan's Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended, pursuant to Section 6(5) of the act, the telecommunications provider shall prominently so indicate on the face of each map.
- (4) *Application fee.* Except as otherwise provided by the act, an application shall be accompanied by a one-time nonrefundable application fee in the amount of \$500.00.
- (5) *Additional information.* The township superintendent may request an applicant to submit such additional information which the township superintendent deems reasonable necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the township superintendent. If the township and the applicant cannot agree on the requirement of additional information requested by the township, the township or the applicant shall notify the MPSC as provided in Section 6(2) of the act.
- (6) *Previously issued permits.* Pursuant to Section 5(1) of the act, authorizations or permits previously issued by the township under Section 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this ordinance. With the exception of fee provisions, which are now covered by 2002 P.A. 48, all provisions, of Article II, of Chapter 16, Ordinance No. 9802, 2-23-98, of the Georgetown Charter Township Compilation of Ordinances, (old Chapter 16), shall

remain in full force and effect with regard to telecommunications providers that obtained permits or consent agreements prior to November 1, 2002.

- (7) *Existing providers.* Pursuant to Section 5(3) of the act, within 180 days from November 1, 2002, the effective date of the act, a telecommunications provider with facilities located in a public right-of-way in the township as of such date, that has not previously obtained authorization or a permit under Section 251 of the Michigan Telecommunications Act, Act No. 179 of the Public Acts of 1991, as amended, shall submit to the township an application for a permit in accordance with the requirements of this ordinance. Pursuant to Section 5(3) of the act, a telecommunications provider submitting an application under this subsection (4) above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application of allowed by the authority for good cause, as provided in Section 5(4) of the act.

(Ord. No. 2002-09, 11-12-02; Ord. No. 2009-03, 4-13-09)

Sec. 16-15. Issuance of permit.

- (1) *Approval or denial.* The authority to approve or deny an application for a permit is delegated to the township superintendent. Pursuant to Section 15(3) of the Act, the township superintendent shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit in accordance with subsection 16-14(2) for access to a public right-of-way within the township. The township superintendent shall notify the MPSC when the township superintendent has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The township superintendent shall not unreasonably deny an application for a permit.
- (2) *Form of permit.* If an application for permit is approved, the township superintendent shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the Act.
- (3) *Conditions.* Pursuant to Section 15(4) of the Act, the township superintendent may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and use of the public right-of-way.
- (4) *Bond requirement.* Pursuant to Section 15(3) of the Act, and without limitation on subsection (3) above, the township superintendent may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

(Ord. No. 2002-09, 11-12-02; Ord. No. 2009-03, 4-13-09)

Sec. 16-16. Construction/engineering permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the township without first obtaining a construction or

engineering permit if required by law for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-17. Conduit or utility poles.

In accordance with the act, obtaining a permit or paying the fees required under the act or under this article does not give a telecommunications provider a right to use conduit or utility poles.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-18. Route maps.

Pursuant to Section (6)7 of [the] act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new location of the telecommunications facilities to both the MPSC and to the township. The route maps should be in both electronic and paper format unless and until the MPSC determines otherwise, in accordance with Section (6)8 of the act.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-19. Repair of damage.

A telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way in the township, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-20. Establishment and payment of maintenance fee.

In addition to the nonrefundable application fee paid to the township set forth in subsection 16-14(4) above, a telecommunications provider with telecommunications facilities in the township's public rights-of-way shall pay an annual maintenance fee to the authority pursuant to Section 8 of the act.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-21. Modification of existing fees.

In compliance with the requirements of Section 13(1) of the act, the township hereby modifies, to the extent necessary, fees charged to telecommunications providers after November 1, 2002, the effective date of the act, relating to access and use of the public rights-of-way, to an amount not exceeding the amount of fees and charges required under the act, which shall be paid to the authority. In compliance with the requirements of Section 13(4) of the act, the township also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the township's boundaries, so that

those providers pay only those fees required under Section 8 of the act. The township shall provide each telecommunications provider affected by the fee a copy of this article, in compliance with the requirement of Section 13(4) of the act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the act, or which are otherwise inconsistent with the act, such imposition is hereby declared to be contrary to the township's policy and intent, and upon application by a provider or discovery by the township, shall be promptly refunded as having been charged in error. In all other respects, the provisions of Article II, of Chapter 16, Ordinance No. 9802, February 23, 1998, of the Georgetown Charter Township Compilation of Ordinances (old Chapter 16), shall remain in full force and effect with regard to telecommunications providers that obtained permits or consent agreements prior to November 1, 2002.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-22. Savings clause.

Pursuant to Section 13(5) of the act, if Section 8 of the act is found to be invalid or unconstitutional, the modification of fees under section 16-21 above shall be void from the date the modification was made.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-23. Use of funds.

Pursuant to Section 10(4) of the act, all amounts received by the township from the authority shall be used by the township solely for rights-of-way related purposes.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-24. Annual report.

Pursuant to Section 10(5) of the Act, the township superintendent shall file an annual report with the authority on the use and disposition of funds annually distributed by the authority.

(Ord. No. 2002-09, 11-12-02; Ord. No. 2009-03, 4-13-09)

Sec. 16-25. Cable television operators.

Pursuant to Section 13(6) of the act, the township shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-26. Existing rights.

Pursuant to Section 4(2) of the act, except as expressly provided herein with respect to fees, this article shall not affect any existing rights that a telecommunications provider or the township may have under a permit issued by the township or under a contract between the

township and a telecommunications provider related to the use of the public rights-of-way.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-27. Compliance.

The township declares that its policy and intent in adopting this article is to fully comply with the requirements of the act, and the provisions of this article should be construed in such a manner as to achieve that purpose. The township shall comply in all respects with the requirements of the act, including but not limited to the following:

- (1) Exempting certain route maps from disclosure consistent with the act and state law as provided in subsection 16-14(3) of this article;
- (2) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with subsection 16-14(6) of this article;
- (3) Approving or denying an application for a permit within 45 days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the township, in accordance with subsection 16-15(1) of this article;
- (4) Notifying the MPSC when the township has granted or denied a permit, in accordance with subsection 16-15(1) of this article;
- (5) Processing an application for a permit, in accordance with subsection 16-15(1) of this article;
- (6) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in subsection 16-15(2) of this article;
- (7) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and use of the public right-of-way, in accordance with subsection 16-15(3) of this article;
- (8) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with subsection 16-15(4) of this article;
- (9) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with section 16-16 of this article.
- (10) Providing each telecommunications provider affected by the township's right-of-way fees with a copy of this article, in accordance with section 16-21 of this article;
- (11) Submitting an annual report the authority, in accordance with section 16-24 of this article; and
- (12) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with section 16-25 of this article.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-28. Reservation of police powers.

Pursuant to Section 15(2) of the act, this article shall not limit the township's right to review and approve a telecommunication provider's access to ongoing use of a public right-of-way or limit the township's authority to ensure and protect the health, safety, and welfare of the public.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-29. Severability.

The various parts, sentences, paragraphs, sections, and clauses of this article are hereby declared to be severable. If any part, sentence, paragraph, section, or clause of this article is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any remaining provisions of this article.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-30. Authorized township officials.

The township superintendent or his or her designee is hereby designated as the authorized township official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction notices (directing alleged violators to appear at the municipal chapter violations bureau) for violations under this section as provided by the township code.

(Ord. No. 2002-09, 11-12-02; Ord. No. 2009-03, 4-13-09)

Sec. 16-31. Municipal civil infraction.

A person who violates any provision of this article or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be fined in an amount of not less than \$500.00 for each violation as well as the costs of prosecution as authorized by law. Nothing in this section 16-31 shall be constructed to limit the remedies available to the township in the event of a violation by a person of this article or a permit.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-32. Repealer.

- (1) All ordinances and portions of ordinances inconsistent with this article are hereby repealed.
- (2) Article II of chapter 16, Ordinance No. 9802, February 23, 1998, of the Georgetown Township ordinance is hereby repealed in its entirety; provided, however, that article II of chapter 16, Ordinance No. 9802, February 23, 1998, (old chapter 16), shall remain in full force and effect, with the exception of fee provisions, relative to those telecommunications providers that obtained permits or consent agreements prior to November 1, 2002, until the time that such permits or consent agreements expire.

(Ord. No. 2002-09, 11-12-02)

Sec. 16-33. Effective date.

This article was approved and adopted by the township board of Georgetown Charter Township, Ottawa County, Michigan, on November 12, 2002. The ordinance was introduced and read for the first time on October 14, 2002, published for the first time on November 5, 2002, read for the second time and adopted on November 12, 2002 and advertised for the second time on November 19, 2002. This article shall be effective thirty days after the second publication, to be effective on December 19, 2002.

(Ord. No. 2002-09, 11-12-02)