

# **Chapter 10 COMMUNITY ANTENNA TELEVISION SYSTEMS**

*Last updated October 2007*

## **Articles:**

**10.04 In General**

**10.08 Franchise**

**10.12 Service**

## **Article 10.04 In General**

### **Sections:**

<b>10.04.010</b>	<b>Definitions</b>
<b>10.04.020</b>	<b>Grant of authority--General</b>
<b>10.04.030</b>	<b>Same--Exclusiveness</b>
<b>10.04.040</b>	<b>Subjection of franchised company to police power of city</b>
<b>10.04.050</b>	<b>Liability insurance required</b>
<b>10.04.060</b>	<b>Conditions upon street occupancy</b>
<b>10.04.070</b>	<b>Warranting by city of authority to use streets</b>
<b>10.04.080</b>	<b>Approval of transfer of system</b>
<b>10.04.090</b>	<b>Access to plans, etc; filing of rules and regulations; inspection of records</b>
<b>10.04.100</b>	<b>Promulgation of rules and regulations by company</b>
<b>10.04.110</b>	<b>Penalty</b>

### **Section 10.04.010 Definitions**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Commission. The city commission.

Company. Any grantee of rights under the terms of this chapter. (Ord. No. 406, § 2.)

### **Section 10.04.020 Grant of authority--General**

Authority is hereby made available by the city to any person, who qualifies under all of the provisions of this chapter, to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the city poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the city of a system for the transmission of television, FM radio and electrical impulses and signals for all public and private uses. (Ord. No. 406, § 3.)

### **Section 10.04.030 Same--Exclusiveness**

The right to use and occupy such streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive and the city reserves the right to grant a similar use of such streets, alleys, public ways and places to any other person or persons at any time during the period of any franchise granted pursuant to this chapter. (Ord. No. 406, § 4.)

### **Section 10.04.040 Subjection of franchised company to police power of city**

Any company shall at all times during the life of its franchise be subject to all lawful exercise of the police power by the city and to such reasonable regulations as the city shall hereafter by resolution or ordinance provide. (Ord. No. 406, § 5.)

### **Section 10.04.050 Liability insurance required**

Any company obtaining a franchise under the provisions of this chapter shall indemnify and save the city and its agents and employees harmless from any and all claims for personal injuries or property damages and any other claims, costs including attorneys' fees, expense of investigation and litigation of claims and suits thereon which may arise from the installation, operation or maintenance of its system within the city. For this purpose each company shall carry and at all times maintain on file with the city auditor and at all times keep in force a public liability policy of insurance insuring the company and the city against any and all such liability for not less than fifty thousand dollars property damage, one hundred thousand dollars for any one person for personal injury or death, and three hundred thousand dollars for any one accident resulting in personal injury or death. Such policy or policies of insurance or certificates thereof, by a company licensed to do business in the state, shall be filed with the city prior to the final approval of any franchise granted hereunder. Any company, upon receipt of due notice in writing from the city, shall defend at its own expense any action or proceeding against the city in which it is claimed that injury or damages arose from the company's activities in the operation of its community antenna system. The city shall notify the company's representatives within the city within thirty days after the presentation of any claim or demand, either by suit or otherwise, made against the city on account of any negligence as aforesaid on the part of the company. (Ord. No. 406, § 6.)

### **Section 10.04.060 Conditions upon street occupancy**

- (a) Use Generally. All transmission and distribution structures, lines and equipment erected or constructed by the company within the city shall be so located as to cause minimum interference with any other proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of such streets, alleys or other public ways and places.
- (b) Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the company shall, at its own cost and expense and in a manner approved by the city engineer, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed in as good condition as before the work was commenced and shall maintain the restoration in an approved condition for a period of at least one year thereafter.
- (c) Relocation. In the event that at any time during the period of a franchise the city shall lawfully elect to alter or change the grade of any street, alley or other public way, the company, upon reasonable notice by the city, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other telephone and television fixtures at its own expense.
- (d) Placement of Fixtures. The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main; and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line; and those placed in alleys shall be placed close to the line of the lot abutting on such alley and then in such a manner as not to interfere with the usual travel on such streets, alleys and public ways; provided, however, that the company will place all wires, cables, fixtures and other equipment underground when other telephone, telegraph or other electrical utilities services are so located in such area

unless the company is specifically, by action of the commission, permitted to do otherwise where extreme hardship would result or where an underground installation is not workable. It is the intention of this section to require that any company granted a franchise hereunder use a portion of other utility poles already erected for the development of the company's aboveground distribution system, and no company shall be permitted to erect its own poles, except where existing utility poles are inadequate to handle the additional load and where the placing of such additional poles is specifically authorized by the commission or its duly authorized representatives.

- (e) Temporary Removal of Wire for Building Moving. The company shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting such removal, etc., and the company shall have the authority to require such payment in advance. The company shall be given at least forty-eight hours advance notice to arrange for such temporary wire changes.
- (f) Tree Trimming. The company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the city so as to prevent the branches of such trees from coming in contact with the wires, cables, fixtures and equipment of the company; all such trimming shall be done under the supervision and direction of the city and at the expense of the company. (Ord. No. 406, § 10.)

*For state law as to authority of city to regulate the use, etc., of streets, see NDCC, § 40-05-01 (8).*

*As to streets and sidewalks generally, see Ch. 30 of this Code.*

### **Section 10.04.070 Warranting by city of authority to use streets**

It is understood that there may be within the city various streets, alleys and other public ways which the city does not have the unqualified right to authorize any company to use because of reservations in favor of the dedicators or because of other legal impediments. Therefore, in granting any franchise pursuant to this chapter, the city does not warrant or represent as to any particular street or portion thereof that it has the right to authorize any company to install or maintain portions of its systems therein, and in each case the burden and responsibility for making such determination in advance of the installation shall be upon the company. (Ord. No. 406, § 22.)

### **Section 10.04.080 Approval of transfer of system**

The company shall not sell or transfer its plant or system or any portion thereof to any person nor transfer any right under any franchise except by operation of law to any person without prior approval of the commission. No sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the city auditor an instrument duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise by the transferee and agreeing to perform all the conditions thereof. (Ord. No. 406, § 13.)

### **Section 10.04.090 Access to plans, etc; filing of rules and regulations; inspection of records**

The city shall have access at all reasonable hours to all of the company's plans, engineering drawings and statistical customer records relating to the property and operation of the company and to all other records required to be kept hereunder insofar as the same are concerned with the community antenna television system of the company.

Along with the other matters required to be filed by this chapter, a complete copy of the company's rules and regulations, adopted by the company for the conduct of its business, shall be filed with the city auditor and in the local office of the company.

The city shall be entitled to inspection of any records bearing on the number of subscribers for service with the company and to require reasonable documentation of such information by the company when the annual payment, provided in section 8-16, is tendered. (Ord. No. 406, § 17.)

### **Section 10.04.100 Promulgation of rules and regulations by company**

The company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under its franchise and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this chapter or the laws of the state and shall be subject to approval by the commission and any other duly authorized public agency or board. (Ord. No. 406, § 9.)

### **Section 10.04.110 Penalty**

Any violation by any company, its lessee or successor under any franchise granted pursuant hereto or the failure to promptly perform any of the provisions of such franchise shall be cause for the forfeiture of such franchise and all rights thereunder to the city after reasonable written notice to such company and continuation thereafter of such violation, failure or default. (Ord. No. 406, § 24.)

## **Article 10.08 Franchise**

### **Sections:**

- 10.08.00E** Editor's note to Article 10.08
- 10.08.010** Application generally; final approval of application
- 10.08.020** Application fee
- 10.08.030** Bonds and commitments
- 10.08.040** Submission of extension policy; extensions made under franchise
- 10.08.050** Payment to city for privilege; method of computation of payment to city
- 10.08.060** Term
- 10.08.070** Rights of city in franchise

### **Section 10.08.00E Editor's note to Article 10.08**

For state law as to authority of city to grant franchises, see NDCC, § 40-05-01 (57).

### **Section 10.08.010 Application generally; final approval of application**

- (a) Any person wishing to apply for a franchise under this chapter shall fill out its application and file the same in the office of the city auditor for consideration by the commission. Such application need not be in any particular form but shall include the following information:
  - (1) The complete name and address of the applicant.
  - (2) If a corporation, the amount of authorized and issued stock, the names and the addresses of all stockholders owning more than five percent of the stock of such corporation and the interest held by each.
  - (3) If a corporation, the names and addresses of all officers and managing agents thereof insofar as the same are concerned in any respect with the community antenna television system of such corporation.
  - (4) A complete financial statement of the assets and liabilities of the applicant as prepared by a certified public accountant insofar as such are concerned with the completion of the community antenna television project.
  - (5) A statement of the number of channels of television service to be offered by the company and an explanation of the source and method of transmission of such signals. Each applicant shall be required to guarantee to offer no less than five separate channels of viewing throughout the period of the franchise with a minimum of duplication of programs.
  - (6) Any other information which may from time to time be requested by the city auditor or by the commission.
  - (7) Any other information that the applicant may wish to submit bearing on its qualifications.
  - (8) A complete schedule of all rates and charges to be effective following the issuance of the franchise.
- (b) All applications received shall be considered by the commission, which shall be authorized to accept any number that it deems advisable. Such acceptance shall be considered a preliminary approval and thereafter such successful applicant shall secure

and submit, as required elsewhere in this chapter, all insurance policies, surety bonds, its extension policy and everything else required for the issuance of a franchise. The commission shall then reconsider all information available to it including the original application and all other matters submitted pursuant to this chapter and shall then, in its own discretion, determine whether or not to grant final approval to any application. The final approval shall be indicated by the passage of a special ordinance granting the franchise to the successful applicant, subject to all of the terms and conditions of this chapter. (Ord. No. 406, § 20.)

### **Section 10.08.020 Application fee**

Every applicant for a franchise shall be required to pay a franchise fee of five hundred dollars, which shall be submitted at the time of the initial application. In the event that the franchise is refused by the commission, the fee shall be refunded in full. (Ord. No. 406, § 21.)

### **Section 10.08.030 Bonds and commitments**

- (a) Before any franchise shall be finally approved by the commission, the company shall submit and file with the city auditor the following bonds and commitments to be approved by the commission at the time of or prior to the issuance of a franchise:
  - (1) A written commitment signed by the company guaranteeing the city that all wires, cables, fixtures and facilities of the company shall be removed at the termination of the franchise or at such earlier date as the franchise may be terminated by revocation or otherwise. Such commitment shall be in the minimum amount of ten thousand dollars and shall be made in favor of the city. The amount of such commitment shall be adjusted semiannually during the term of the franchise and such adjustments shall be subject to approval by the city commission so as to provide a total commitment of the applicant corporation equal to at least one thousand dollars for each mile of cable constructed by the company within the city. Such commitment must guarantee that the company has assets over and above all debts and liabilities equal to at least twice the amount of the commitment herein required from time to time.
  - (2) A surety bond in the amount of twenty thousand dollars in favor of the city guaranteeing that if any resident of the city pays any fees to the company and does not obtain community antenna television service within six months thereafter, that the full amount paid shall be refunded to the individual involved. Such bond may be obtained for an annual period but must be renewed from year to year throughout the period of any franchise granted hereunder and must allow for the payment of bona fide claims presented within one year after the termination of the bonding period; provided, that the claimant makes payment to the company during the bonding period. Any valid claim held by any resident of the city under the provisions of this paragraph may be satisfied against such bond and may be presented by filing such claim with the office of the city auditor.
- (b) Any bond or commitment required under this section is subject to approval by the city commission which approval may be revoked at any time for cause. Such bond, etc., shall at all times be filed in the office of the city auditor. Any franchise granted hereunder shall

be immediately revoked upon the noncompliance of any franchisee with any requirements of this section. (Ord. No. 406, § 19; Ord. No. 415, § 1.)

### **Section 10.08.040 Submission of extension policy; extensions made under franchise**

At the time that any application is submitted under the terms of this chapter, the applicant shall submit therewith its extension policy which shall be considered in connection with such application by the city commission. Such extension policy shall specify in detail the area of the city that will be served following the initial installation of the company's system and shall further indicate the plans of the company to extend services to other areas of the city, indicating the times and the conditions precedent for such extensions. No precise form of an extension policy is specified herein but any applicant shall agree to furnish any information that may be requested from time to time by the city commission in clarification of the company's extension policy. Once a company is granted a franchise under this chapter, following approval of its extension policy as submitted and filed, it shall not make or refuse to make any extension thereunder except as provided by such extension policy or as may otherwise be permitted by this chapter or subsequent enactments of the commission. The extension policy, and any amendments thereto, which in turn must be first approved by the commission before becoming effective, shall at all times be on file at the office of the city auditor and be available to inspection by the public. (Ord. No. 406, § 12.)

### **Section 10.08.050 Payment to city for privilege; method of computation of payment to city**

The company shall pay to the city for the privilege of operating a system pursuant to any franchise granted under this chapter a sum equivalent to one dollar per year for each subscriber doing business with the company. Such payment shall be made annually at the end of the fiscal year of the company and shall be computed on the total number of subscribers doing business with the company at any time during the fiscal year just concluded. The failure to pay such amount within thirty days following the conclusion of the fiscal year shall be justification for the revocation of any franchise granted hereunder. (Ord. No. 406, § 15.)

### **Section 10.08.060 Term**

Any franchise and rights granted thereunder shall take effect and be in full force from and after final approval thereof by the commission, as specifically provided in section 10.08.010, and upon filing of a written acceptance of such franchise by the company with the city auditor, and such franchise shall continue in full force and effect for a term of fifteen years after such date; provided, that if a written acceptance is not filed within sixty days after such final approval of the franchise by the commission or if the system authorized thereunder is not completely constructed within six months after the time of such acceptance, unless such construction is prevented by strike, insurrection, an act of God or other cause beyond the control of the applicant, the provisions of such franchise shall then become automatically null and void, unless such delay in construction is reasonably explained to the city commission and the commission, in its sole discretion, elects to grant an extension of time in which to complete such construction work. In the event that any system contemplated hereunder requires approval by the Federal

Communications Commission or any other state or federal board or agency prior to the commencement of construction, the six month period allowed herein for construction to be completed shall not begin until after such federal or state approval is obtained, although application therefor must be made no later than sixty days after the final approval of the franchise by the city commission. (Ord. No. 406, § 18; Ord. No. 896, § 1.)

### **Section 10.08.070 Rights of city in franchise**

- (a) Adoption of Rules. The right is hereby reserved to the city to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power and in the exercise of its power over any franchise that is granted; provided, that such regulations, by ordinance or otherwise, shall be reasonable and shall not be in conflict with the laws of the state.
- (b) Use of System. The city shall have the right during the life of any franchise, free of charge where aerial construction exists, of maintaining upon the poles of the company within the city wire and pole fixtures necessary for a police and fire alarm system; such wires and fixtures shall be constructed and maintained to the satisfaction of the company and in accordance with its specifications. The city in its use and maintenance of such wires and fixtures shall at all times comply with the rules and regulations of the company so that there may be a minimum danger of contact or conflict between the wires and fixtures of the company and the wires and fixtures used by the city. The city shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of such wires and fixtures authorized by this section and shall save the company harmless from all claims and demands whatsoever arising out of the attachment, maintenance, change or removal of such wires and fixtures to the poles of the company. In case of rearrangement of the company plant or removal of poles or fixtures, the city shall save the company harmless from any damage to persons or property arising out of the removal or construction of the wires or other fixtures belonging to the city.
- (c) Supervision and Inspection. The city shall have the right to supervise all construction or installation work performed subject to the provisions of this chapter and to make such inspections as it shall find necessary to insure compliance with governing laws, ordinances and resolutions.
- (d) Procedure after Termination, etc., of franchise. Upon the revocation or termination of any franchise granted hereunder, the city shall have the right to determine whether the company may continue to operate and maintain its distributing system pending the decision of the city as to the future maintenance and operation of such system.
- (e) Revocation of Franchise. Should any company fail or refuse to reasonably comply with all of the provisions of this chapter or any other rules, regulations, ordinances or resolutions enacted by the city or with any state law or rules or regulations promulgated pursuant to state law or laws, rules or regulations issued pursuant to the laws of the United States or any of its duly authorized agencies or boards, the commission shall have the power and authority, upon reasonable notice to such company and upon its failure thereafter to comply, to revoke or suspend, in the sole discretion of the commission, any franchise granted hereunder. (Ord. No. 406, § 14.)

## **Article 10.12 Service**

### **Sections:**

- 10.12.010 Standards generally**
- 10.12.020 Notice of interruption for repairs**
- 10.12.030 Interference with reception of nonusers; attachment of coin collection boxes**
- 10.12.040 Preferential or discriminatory practices**
- 10.12.050 Rates generally**

### **Section 10.12.010 Standards generally**

Any company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are or may be set forth by the commission, in this chapter or otherwise, by the public service commission of the state, the Federal Communications Commission or any other duly authorized public commission or authority. (Ord. No. 406, § 7.)

### **Section 10.12.020 Notice of interruption for repairs**

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the company shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, the company shall give reasonable notice thereof to its customers. (Ord. No. 406, § 8.)

### **Section 10.12.030 Interference with reception of nonusers; attachment of coin collection boxes**

It shall be unlawful for any company to interfere in any way with normal television reception by individuals not utilizing cable television. It shall further be unlawful for any company to install any box or other fixture on or near the sets connected to the company system for the purpose of the deposit of coins therein or to in any other way limit the use of a television set connected to the company's system; except, that it shall be permissible for any company to discontinue service upon nonpayment of appropriate fees. (Ord. No. 406, § 23.)

*For state law as to authority of city to prevent interference with radio reception, see NDCC, § 40-05-01 (64).*

### **Section 10.12.040 Preferential or discriminatory practices**

The company shall not, as to rates, charges, services, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage; provided, that nothing in this section shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled. (Ord. No. 406, § 11.)

### **Section 10.12.050 Rates generally**

Rates charged by any company for service shall be fair and reasonable and designed to meet all necessary costs of this service, including a fair rate of return on the net valuation of the

properties devoted thereto under efficient and economical management. The company agrees that it shall be subject to all authority now or hereafter possessed by the city, or any other regulatory body having competent jurisdiction to fix just, reasonable and compensatory rates. (Ord. No. 406, § 16.)