

ORDINANCE 19-06

AN ORDINANCE AMENDING TITLE 16, "REVENUE AND FINANCES" OF THE REVISED ORDINANCES OF SANDY CITY BY AMENDING CHAPTER 27, "CABLE COMMUNICATIONS"; ALSO PROVIDING A SAVING CLAUSE FOR THE ORDINANCE AND AN EFFECTIVE DATE.

WHEREAS, it is necessary to amend Title 16, "Revenue and Finances" of the Revised Ordinances of Sandy City by amending Chapter 27, "Cable Communications"; and

WHEREAS, Section 10-8-84, Utah Code Annotated, authorizes such amendment in order to protect the public health, safety and welfare of the City;

NOW, THEREFORE, BE IT ORDAINED by the City Council of Sandy City as follows:

Section 1. of the Revised Ordinances of Sandy City is hereby amended as set forth in **Exhibit A** which is attached to and incorporated in this ordinance.

Section 2. All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance or of the Code hereby adopted are hereby repealed.

Section 3. The provisions of this ordinance shall be severable; and if any provision thereof, or the application of such provision under any circumstances is held invalid, it shall not affect any other provision of this ordinance, or the application in a different circumstance.

Section 4. This ordinance shall become effective upon publication of a summary thereof and the City Recorder is hereby directed to publish such summary as soon as practically possible.

PASSED AND APPROVED by the Sandy City Council this ____ day of _____, 2019.

Kristin Coleman-Nicholl
Sandy City Council

PRESENTED to the Mayor this ____ day of _____, 2019.

APPROVED by the Mayor this ____ day of _____, 2019.

Kurt Bradburn, Mayor

ATTEST:

City Recorder

RECORDED this ____ day of _____, 2019.

SUMMARY PUBLISHED this ____ day of _____, 2019.

EXHIBIT A
(to Ordinance 19-06)

Chapter 27 CABLE COMMUNICATIONS

16-27-1. Definitions.

For the purpose of this chapter, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely discretionary.

- A. "Act" shall mean the Communications Act of 1934, including 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.
- B. "Cable Service" shall have the meaning provided under Federal law and regulations.
- C. "Cable System" shall have the meaning provided under Federal law and regulations, unless otherwise defined by Franchise Agreement.
- D. "City" shall mean Sandy City, Utah, and all territories within its present municipal boundaries and any additions thereto by annexation or other legal means.
- E. "City Code" shall mean the ordinances, rules and regulations adopted by the City, from time-to-time.
- F. "Grantee" shall mean any person granted a franchise by the City to provide Cable Service and the lawful successor, transferee, or assignee of such person.
- G. "Gross Revenue" shall mean any and all revenue of any kind or nature received directly or indirectly by a Grantee, its affiliates, parent and any person, firm or corporation in which the Grantee has a financial interest or which has a financial interest in the Grantee, arising from or attributable to the Grantee's operation of its Cable System to provide Cable Services that requires the use of the City's Public Right-of-Way, including, but not limited to:
- (i) Revenue from all charges for Cable Service provided to Subscribers;
 - (ii) Revenue directly derived and attributable to the sale of commercial advertising upon the Cable System;
 - (iii) Revenue from all charges for the leased use of studios;
 - (iv) Revenue from all charges for the use of or lease of leased access channels;
 - (v) Monthly recurring revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a Subscriber to receive Cable Services; and

(vi) Revenue from the sale, exchange, use or cablecast of any programming developed for community use or institutional Subscribers.

“Gross Revenues” shall not include taxes or fees (except the Franchise Fee) collected by Grantee on behalf of any governmental authority; any increase in the value of stock, security or asset; any surcharges for underground conversion of cable plant costs; any increase in the value of any stock, security or asset; the value of complimentary service provided to the Grantee’s employees; and dividends or other distributions made in respect of any stock or securities; value received by the Grantee or any of its affiliates through cooperative advertising; or revenues which cannot be collected by Provider and are identified as bad debt (provided, however, that if revenue previously representing bad debt is collected, that revenue shall be included in Gross Revenue for the collection period).

H. *“Living Unit”* means a distinct address as tracked in the Grantee’s network inventory, used by the Grantee to identify existing or potential Subscribers. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

I. *“Multiple Dwelling Unit”* or *“MDU”* means any adjacent building(s) such as apartments under common ownership containing more than four dwelling units used as living quarters.

J. *“Person”* shall mean any person, firm, partnership, association, corporation, company or organization of any kind other than the City.

~~K.~~ *“Public Way” shall mean the surface of and the space above and below any public street, road, highway, freeway, alley or public utility easement now or hereafter dedicated to the public for the purpose of public use and regulated by the city.*

~~KL.~~ *“Qualified Living Unit” means any Living Unit that is identified in the Grantee’s network inventory as capable of receiving Cable Service.*

~~LM.~~ *“Reasonable Notice” shall mean the following: Unless otherwise defined herein or by agreement, reasonable notice means the delivery of written notice to the other party at least thirty (30) days prior to the action proposed for the alleged defect, situation or default. In the event of any emergency that poses an immediate risk of harm to the health safety, welfare or property of the residents of the City, reasonable notice shall be construed to mean written or verbal notice of the action, condition or defect or situation as soon as practicable under the circumstances.*

~~MN.~~ *“Street” and “Public Right-of-Way” shall have the meaning set forth in applicable City Code or rules as defined below mean Public Way as defined in this section.*

~~NO.~~ *“Subscriber” shall mean an authorized recipient lawfully receiving Cable Service provided by the Grantee by means of or in connection with the Cable System, whether or not a fee is paid for such service. (Ord 16-19, Amended 5-5-2016)*

16-27-2. Public policy.

The City finds and determines that the establishment of Cable Service in the City and the regulation and control thereof is necessary for the protection of the health, welfare and safety of the inhabitants of the City and that the use of the public rights-of-way for the provision of Cable Service is a matter of local and municipal concern. (Ord 16-19, Amended 5-5-2016)

16-27-3. City authority.

The City shall have the power to approve any franchise agreement at any time in accordance with applicable law and by ordinance, which shall then become valid and enforceable. Any such franchise granted shall constitute both authority and an obligation to provide cable service in accordance with this chapter. Nothing in any franchise shall be deemed to waive the requirements of other sections of the City Code regarding permits to be paid or manner of construction, except as expressly set forth therein. (Ord 16-19, Amended 5-5-2016)

16-27-4. Application.

Every person desiring to install a Cable System in the City or obtain approval of a franchise transfer shall file an application to be accompanied by a nonrefundable cashier's check in the amount established by the City Council to cover administrative, legal, consulting and other processing costs of the City incurred in processing the application. Every such application shall contain but not be limited to the following:

- (1) The business form of the person making the application.
- (2) If the applicant is a partnership or limited partnership, the names and addresses of all such partners and their respective interests; if a corporation, the names and addresses of the officers and directors of the corporation and the names of any persons holding more than ten percent of the stock of the company, together with their proportionate interests indicated.
- (3) A proposed plan for the installation, operation and maintenance of the Cable System indicating methods of construction, including specifications for design, installation, technical capacity and maintenance and arrangements with any other company or person for use of conduit cables, poles or other facilities of such other company or person.
- (4) The most current financial statement of the applicant.
- (5) The applicant's experience in the field of cable systems.
- (6) Total channel capability and minimum initial channel service.
- (7) The applicant's plan to provide complimentary service to schools and municipal government.
- (8) The applicant's plan to provide local community channels to be operated under the administration of the city.
- (9) The applicant's agreement to pay an annual franchise fee in the maximum amount permitted by the regulations of the Federal Communications Commission (FCC) or legislation enacted by Congress based on a percentage of gross revenue.
- (10) The applicant's agreement to comply with all applicable provisions of the City Code.

(Ord 16-19, Amended 5-5-2016)

16-27-5. Council action.

In determining whether to grant an initial franchise or a franchise renewal, the City shall act within its discretion, in accordance with applicable federal and state law, and the City Code. The City may, if deemed necessary, conduct hearings to determine whether a franchise should be issued. Written notice shall be given to all existing holders of franchises of the filing of the new application, and they shall have 30 days after the mailing of the notice in which to file written objections with the council to the granting of a new franchise. (Ord 16-19, Amended 5-5-2016)

16-27-6. Franchise content.

Every franchise shall contain, but not be limited to, provisions regulating the following:

- (1) Grant of nonexclusive revocable authority.
 - (2) Territorial area involved; effect of annexation.
 - (3) Liability and indemnification of the City.
 - (4) Subscriber privacy.
 - (5) Signal quality requirements and carriage of signals in accordance with applicable FCC standards.
 - (6) Operation and maintenance of system.
 - (7) Access channels.
 - (8) Service to schools and municipal government facilities.
 - ~~(9) Cable system interconnections.~~
 - (10) Emergency use of facilities.
 - (11) Safety requirements.
 - (12) Conditions of right-of-way occupancy.
 - (13) Rights of city on termination.
 - (14) Limitations on transfer of franchise.
 - (15) Change in control or ownership of franchise.
 - (16) Technical capacity and minimum cable services offered.
 - ~~(17) Flow through refunds and subscriber refunds.~~
 - (18) Scheduled payments to city: franchise fee; sales or use tax.
 - (19) Force Majeure.
- (Ord 16-19, Amended 5-5-2016)

16-27-7. Rules and regulations.

In addition to the inherent powers of the City to regulate and control cable franchises based on use of the Public Right of Way, and those powers expressly reserved by the City or agreed to and provided for in this article, the right and power is reserved by the city council to promulgate such additional regulations as it shall find necessary in the exercise of its lawful police powers and in the furtherance of the terms and conditions of this chapter. (Ord 16-19, Amended 5-5-2016)

16-27-8. Telecommunications providers.

Any telecommunications provider offering or proposing to offer video programming or cable services within the City shall comply with the terms of this chapter prior to construction and commencement of operation and shall maintain compliance thereafter, whether or not such provider is otherwise authorized to use the public rights-of-way except where specifically prohibited by the City for telecommunications or any other services. However, so long as the telecommunications provider does not provide Cable Service to Subscribers in the City, it will not be subject to the terms and conditions contained in this article or the franchise agreement.

(Ord 16-19, Amended 5-5-2016)

16-27-9. Customer service standards.

Grantees shall comply at all times with the customer service provisions set forth in 47 Code of Federal Regulation Parts 76.309, 76.1602 and 76.1603. (Ord 16-19, Amended 5-5-2016)

16-27-10. Franchise required.

No Cable System shall be allowed to occupy or use the streets within the City without a franchise issued in accordance with this chapter. (Ord 16-19, Amended 5-5-2016)

16-27-11. Use of public rights-of-way.

(a) For the purpose of operating and maintaining a Cable System in the franchise area, the Grantee shall comply with all applicable city construction codes and procedures to the extent it constructs in the rights-of-way.

(b) Nothing in any franchise agreement shall abrogate the right of the City to perform any public work or public improvement of any description, including without limitation all work authorized by applicable law. If the system interferes with the construction, operation, maintenance, or repair of any such public work or improvement, the Grantee, shall, at its own cost and expense, promptly protect, alter, or relocate the system or any part thereof as directed by the City.

(c) If the Grantee refuses or neglects to so protect, alter, or relocate all or any part of the system, the City shall have the right in connection with the performance of such public work or public improvement to break through, remove, alter or relocate all or any part of the system without any liability to the Grantee, except for the City's willful misconduct, and the Grantee shall promptly pay to the City the costs incurred by such breaking through, removal, alteration or relocation.

(Ord 16-19, Amended 5-5-2016)

16-27-12. Franchises nonexclusive.

Any franchise granted within the City shall be nonexclusive. The City reserves the right to grant, at any time, such additional franchises, upon such terms as it deems appropriate. (Ord 16-19, Amended 5-5-2016)

16-27-13. Transfer of ownership or control.

(a) Any franchise granted under this chapter cannot be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale or by voluntary sale, merger, consolidation or

otherwise without the prior consent of the City, and then only under such reasonable conditions as may be prescribed by the City, in accordance with applicable law. If the Grantee is a corporation, such prior approval of the council shall be required where there is an actual change in control. The term "control," as used in this subsection, is not limited to major stockholders but includes actual working control in whatever manner exercised. Such consent is not needed if it is from the Grantee to a company controlling, controlled by or under common control of franchisee.

(b) The Grantee shall promptly notify the City of any proposed change in or transfer of or acquisition by any transfer or acquisition of control of the Grantee and shall make the franchise subject to cancellation unless and until the City shall have consented thereto.

(c) In seeking the City's consent to any change in ownership or control, the Grantee shall, at a minimum, be required to show to the satisfaction of the City that the proposed transferee is legally, technically, and financially qualified to maintain and operate the cable system for the remaining term of the franchise under the existing franchise terms. Any pending franchise violations must be cured to the City's satisfaction prior to transfer approval. In addition, the transferee shall indicate in writing its willingness to be bound by all terms of any existing franchise agreement and this chapter. (Ord 16-19, Amended 5-5-2016)

16-27-14. Reimbursement of expenses.

In addition to any application fees or any other charge or fee required under any other section of this chapter, for either the initial grant of a franchise, a franchise renewal or a franchise transfer, the Grantee shall reimburse the City for reasonable out-of-pocket processing costs in excess of the application fee that are incidental to the award of the grant or transfer, including but not limited to the costs of hiring a consultant, administration, and special legal costs upon receipt from the City of an itemization of such costs. (Ord 16-19, Amended 5-5-2016)

16-27-15. Police powers and preemption.

(a) All rights conferred under this chapter, whether through a separate franchise agreement or otherwise, are subject to the police power of the City to adopt and enforce general ordinances necessary to the health, safety and welfare of the public, and all franchisees, by accepting a franchise under this article, agree to comply with all applicable general laws and ordinances enacted by the City pursuant to such power.

(b) If any area of regulatory authority is preempted from local regulation by federal or state law and such preemption later ceases, the City shall retain the option to resume local regulation to the extent permitted, provided that such regulation shall not conflict with the express terms and conditions of any existing franchise agreement. (Ord 16-19, Amended 5-5-2016)