

CHAPTER 1048

Cable Television

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CROSS REFERENCES

Franchises - see CHTR. Ch. XI

Notice of public meetings - see MCLA Sec. 15.264

Construction and maintenance of facilities - see MCLA Secs 247.183 et seq.

Cables improperly located; insurance - see MCLA Sec. 500.3123

Telecommunication services - see S.U. & P.S. 1046.02 & 1050

1048.01 SHORT TITLE.

This Chapter 1048 shall be known as the “Cable Television Ordinance” or “Ordinance.” (Ord. 675. Passed 04-18-05.)

1048.02 DEFINITIONS.

For the purposes of this Ordinance, the following terms, phrases, words, 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 singular number include the plural number, and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

- (a) “Act” means the Michigan Uniform Video Services Franchise Act, MCL 484.3301 et seq.
- (b) “Applicable Law” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.
- (c) “Basic Cable Service” means any Service tier which includes the retransmission of local television broadcast signals. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b) (7), as it may be amended from time to time.
- (d) “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction,

- if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(6), as it may be amended from time to time.
- (e) “Cable System” or “System” means 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 a community, but such term does not include:
 - i. a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - ii. a facility that serves Subscribers without using any public Right-of-Way;
 - iii. a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on demand services;
 - iv. an open video system that complies with 47 U.S.C. § 653; or
 - v. any facilities of any electric utility used solely for operating its electric utility systems.
 - (f) “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.
 - (g) “City” means City of Traverse City, a municipal corporation, in the State of Michigan, acting by and through its City Commission, or its lawfully appointed designee.
 - (h) “City Commission” means the governing body of the City of Traverse City, Michigan.
 - (i) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
 - (j) “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is discriminatory against Grantees or Cable Subscribers); capital costs which are required by the franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code.
 - (k) “Grantee” means a person who, in accordance with the provisions of this chapter and section 13 of the Act, executes a voluntary franchise agreement with the City for the nonexclusive privilege to erect, construct, operate, maintain, or dismantle a Cable System in the City.
 - (l) “Gross Revenue” shall be defined consistent with section 6 of the Act.
 - (m) “Installation” means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber converter or other terminal equipment.
 - (n) “Internet” means the international computer network of both federal and non-federal

interoperable packet switched data networks, known as the Internet. Consistent with 47 U.S.C. § 230(e)(1), as may from time to time be amended.

- (o) “Local Franchise” means a voluntary franchise agreement consistent with the terms of section 13 of the Act.
 - (p) “Member Municipalities” means those municipalities that are parties to a then valid and existing Intergovernmental Agreement for Coordinated Regulation of Cable Television which include Acme Township, Bingham Township, Blair Township, East Bay Township, Elmwood Township, Garfield Township, Green Lake Township, Village of Kingsley, Long Lake Township, Paradise Township, Peninsula Township, and Traverse City, Michigan.
 - (q) “Other Programming Service” means information that a Grantee makes available to all Subscribers generally.
 - (r) “PEG” means public, educational and governmental.
 - (s) “Right-of-way” or “Rights-of-Way” means the area on, below or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.
 - (t) “Service Area” or “Franchise Area” means the geographic boundaries of the City and shall include any additions and/or deletions thereto by annexation or other legal means.
 - (u) “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.
 - (v) “Standard Installation” means any residential or commercial Installation which can be completed using a drop of one hundred twenty-five (125) feet or less.
 - (w) “Subscriber” means any person who lawfully receives Cable Service via the System.
 - (x) “Uniform Franchise” means a Uniform Video Service Local Franchise Agreement prepared by the Michigan Public Service Commission as contemplated by the Act.
 - (y) “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.
- (Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.03 NONEXCLUSIVE LOCAL FRANCHISES.

The City, may grant a nonexclusive Local Franchise for the occupation and use of streets, roads, and Rights-of-Way in the City for the construction, operation and maintenance of a Cable System to the extent permitted by the Act.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.04 LOCAL FRANCHISE BINDING.

All provisions of this Ordinance and any Local Franchise shall be binding upon the Grantee, its successors, lessees of the System, or assignees. In the event of a conflict between this Ordinance and any Local Franchise, the terms of the Local Franchise shall govern.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.05 LOCAL FRANCHISE REQUIRED.

No Cable System shall occupy or use the streets, roads, alleys, or Rights-of-Way of the City and no cable operator shall operate a Cable System in the City without an executed Local Franchise granted pursuant to this Ordinance or a Uniform Franchise granted pursuant to the Act.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.06 LOCAL FRANCHISE DURATION.

A Local Franchise granted by the City may be granted for a maximum of ten (10) years. A Local Franchise may be renewed pursuant to the provisions of this Ordinance and Applicable Laws.

(Ord.675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.07 FRANCHISE FEE.

(a) During the term of a Local Franchise, Grantee shall pay quarterly to the City or its delegates a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.08 LOCAL FRANCHISE TRANSFER.

- (a) To the extent permitted under the Act, no sale or transfer of a Local Franchise, or sale, transfer, or fundamental corporate change of or in Grantee shall take place without the prior written consent of City which consent shall not be unreasonably withheld.
- (b) No such consent shall be required, however, for a transfer in trust, by mortgage, or by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Local Franchise or Cable System to secure indebtedness. Grantee shall not be required to obtain approval from the City if such sale, transfer or assignment is to an entity controlling, controlled by, or under common control with the Grantee. However, Grantee shall provide written notice to City explaining such internal reorganization.
- (c) The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Laws, either FCC Form 394 or all contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof. City shall have such time as is permitted by Applicable Law to review a transfer request.
- (d) In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to this section be approved without any new Grantee becoming a signatory to the Local Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments required by the City.
- (e) The approval of any sale, transfer or assignment pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to the Local Franchise even if such issues predate the approval, whether known or unknown to City.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.09 AUTHORIZATION FOR USE OF RIGHT-OF-WAYS.

A Local Franchise granted pursuant to this Ordinance shall confer upon the holder named therein the nonexclusive right to erect, install, construct, reconstruct, replace, remove, repair, maintain

and operate in, upon, under, above, across and from the streets, easements and Right-of-Ways, all necessary towers, poles, wires, cables, coaxial cables, transformers, amplifiers, underground conduits, manholes and other television or radio conductors and fixtures for the Installation, construction, maintenance and operation of a Cable System or for the furnishing of a Cable Service.

(Ord. 675. Passed 04-18-05. Ord 796. Passed 06-02-08.)

1048.10 CONSTRUCTION; PERMIT REQUIRED.

A Grantee shall at all times comply with the permitting requirements of the City before undertaking any work in the right-of-way.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.11 UNDERGROUND FACILITIES.

In areas or portions of the City where all transmission or distribution facilities of both public utilities providing telephone service and electric service are underground, or are required to be underground, any Grantee shall likewise install, construct, maintain and operate its transmission and distribution facilities in like manner underground.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.12 CONSTRUCTION STANDARDS; SAFETY.

All construction, Installation, maintenance and operation of any Cable System or of any facilities employed in connection therewith shall be in compliance with the National Electric Safety Code as well as all other applicable standards issued by the FCC, or other local, state or federal regulatory agencies in relation thereto. Each System installed, constructed, maintained or operated shall be so designed, constructed, installed, maintained and operated as not to endanger or interfere with the safety of persons or property.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.13 STREET OPENINGS; BARRICADES AND WARNING LIGHTS.

Any opening or obstruction in, disturbance of or damage to a road, street, alley, public Right-of-Way or public place by any person in the exercise of any right granted pursuant to a Local Franchise shall be properly guarded by barriers, lights, signals and warnings so as to prevent danger to any person or vehicle using such road, street, alley, public Right-of-Way or public place and shall be promptly repaired, at the Grantee's expense, all in a manner specified and approved by the government having jurisdiction. Such approval shall not be unreasonably withheld.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.14 RELOCATION OF FACILITIES.

A Grantee or a person acting under a Grantee shall, at its expense, and without reimbursement from the City, upon request of the City relocate, remove, temporarily disconnect, protect or support facilities in the roads, streets, alleys, easements, public Right-of-Ways or public places. A Grantee shall also, at the request of a private party holding an appropriate permit issued by a governmental entity, temporarily raise or lower its transmission or distribution wires or cables to permit the moving of any building or other structure, provided that the actual expense of such temporary raising or lowering shall be paid in full by the party requesting the same. Such

requests shall be made not less than thirty (30) days in advance of the activity requested, unless an emergency situation exists.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.15 COSTS FOR WORK BY GOVERNMENTAL ENTITY.

If, after reasonable notice and opportunity to correct, a Grantee or any person acting under a Grantee fails to commence, pursue or complete any work required by law or this Ordinance to be done in any road, street, alley, public Right-of-Way, easement or public place, the appropriate governmental entity may cause such work to be done, and such Grantee shall pay to the governmental entity the cost thereof within thirty (30) days of receipt of an itemized statement of such cost.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.16 REGULATION OF SERVICE RATES.

Subject to any prohibition contained in the Act, the City reserves the right to regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System in accordance with applicable federal law, in particular 47 C.F.R. Part 76 subpart N. In the event the City chooses to regulate rates it shall, in accordance with 47 C.F.R. § 76.910, obtain certification from the FCC, if applicable. The City shall follow all applicable FCC rate regulations and shall ensure that appropriate personnel are in place to administer such regulations. City reserves the right to regulate rates for any future Services to the extent permitted by law.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.17 CUSTOMER SERVICE STANDARDS.

A Grantee shall comply with the customer service obligations required under the Act and, to the maximum extent permissible, those set forth by the FCC. The Grantee shall comply with the standards and requirements for customer service set forth in 47 C.F.R. § 76.309 and §§ 76.1601-1604, and shall comply with all applicable regulations relating to customer service obligations, including any amendments to FCC regulations should FCC regulations change during the term of a Local Franchise.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.18 SUBSCRIBER CONTRACTS.

A Grantee shall file with City any standard form residential Subscriber contract utilized by Grantee. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.19 REFUND POLICY.

- (a) If a Grantee's Cable Service is interrupted or discontinued for twenty-four (24) or more consecutive hours, Subscribers will be credited pro rata for such interruption, upon request. Credits must be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. For this purpose, every month will be assumed to have thirty (30) days.
- (b) In the event a Subscriber establishes or terminates Service and receives less than one (1)

full month of Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. (Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)

1048.20 LOCAL FRANCHISE ENFORCEMENT.

- (a) If the City believes that the Grantee has not complied with the terms of the Local Franchise, the City shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the City shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").
- i. The Grantee shall have thirty (30) days, or such longer period of time as Grantee can reasonably demonstrate is necessary, from receipt of the Violation Notice to (i) respond to the City, contesting the assertion of noncompliance, or (ii) to cure such default.
 - ii. If the Grantee fails to respond to the Violation Notice received from the City, or if the default is not remedied within the cure period set forth above, the City shall schedule a public hearing if it intends to continue its enforcement procedure. The City shall provide the Grantee at least ten (10) to fourteen (14) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the City in accordance with Applicable Law. The Grantee shall have the right to present evidence and to challenge the validity of the alleged noncompliance. The City shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination.
 - iii. In the event the City, after the hearing set forth in subparagraph (ii) above, determines that the Grantee is in default of any provision of the Local Franchise, the City may:
 1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages or determine damages of up to Five Hundred and No/100 Dollars (\$500.00) per day for each day of violation. Such damages may be determined by City on Grantee or drawn by City from any bond or other security posted by Grantee under any Local Franchise granted hereunder; or
 2. In the case of a substantial default of a material provision of the Local Franchise, seek to revoke the Local Franchise following the procedure in paragraph (b) below.
 - iv. If a violation is found, the Grantee shall have the right to appeal such decision to any court of competent jurisdiction.
- (b) Procedures for Revocation.
- i. City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee an additional thirty (30) days subsequent to receipt of the revocation notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Local Franchise. In the revocation notice City shall provide Grantee with the basis of the revocation.
 - ii. Grantee shall be provided the right to a public hearing, in addition to the public hearing required under Section 1048.25(a)(ii) above, affording due process before the City Commission prior to the effective date of revocation, which public

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hearing shall follow the thirty (30) day notice provided in subparagraph (a)(i) above. Following conduct of the public hearing City shall provide Grantee with written notice of its decision together with written findings of fact.

- iii. Only after the public hearing and upon written notice of the determination by City to revoke the Local Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.
- iv. During the appeal period, the Local Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Local Franchise would endanger the health, safety and welfare of any person or the public.

(Ord. 675. Passed 04-18-05. Ord. 796. Passed 06-02-08.)