

## TITLE XI: BUSINESS REGULATIONS

### Chapter

#### 110. PEDDLERS, ITINERANT MERCHANTS, AND SOLICITORS

#### 111. CABLE FRANCHISES

#### 112. INSURANCE COMPANIES

### CHAPTER 110: PEDDLERS, ITINERANT MERCHANTS, AND SOLICITORS

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#### § 110.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BUSINESS.** The business carried on by any person who is an itinerant merchant, peddler, or solicitor, as defined in this section.

**GOODS.** Merchandise of any description whatsoever, and includes, but is not restricted to, wares and foodstuffs.

**ITINERANT MERCHANT.** Any person, whether as owner, agent, or consignee, who engages in a temporary business of selling goods within the city and who, in the furtherance of the business, uses any building, structure, vehicle, or any place within the city.

**PEDDLER.**

- (1) Any person who travels from place to place by any means carrying goods for sale or making sales or making deliveries;
- (2) Any person who, without traveling from place to place, sells or offers goods for sale from any public place within the city; and
- (3) A person who is a **PEDDLER** is not an itinerant merchant.

**SOLICITOR.** Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future. A person who is a **SOLICITOR** is not a peddler.

(Ord. 1-04, passed 2-12-2004)

## **§ 110.02 PROHIBITION.**

It shall be prohibited and unlawful for any person to:

(A) Engage in the business of door-to-door sales of any merchandise and services of any type; and

(B) Solicit in furtherance of a business or enterprise within the city without first applying for and obtaining a permit to do so from the city.

(Ord. 1-04, passed 2-12-2004) Penalty, see § 110.99

## **§ 110.03 PERMIT REQUIREMENT.**

(A) Any person who is an itinerant merchant, peddler, or solicitor shall obtain a permit before engaging in the temporary business of selling goods, peddling, and soliciting business within the city.

(B) An application for a permit shall be made by the itinerant merchant, peddler, or solicitor, at a minimum, 30 days prior to the effective date of the permit.

(C) The fee for the permit required by this chapter shall be \$100 as set from time to time by the Commission or the appropriate legislative body of the city.

(D) No permit issued under this chapter shall be transferable.

(E) All permits issued under this chapter shall expire 35 days after the date of issuance thereof.

(Ord. 1-04, passed 2-12-2004)

## **§ 110.04 APPLICATION PROCEDURE.**

(A) (1) All applicants for permits required by this chapter shall file an application with the City Clerk. This application shall be signed by the applicant, if an individual; or by all partners, if a partnership; or by the president, if a corporation.

(2) The applicant may be requested to provide information concerning the following items:

(a) The name and address of the applicant;

(b) 1. The name of the individual having management authority or supervision of the applicant's business during the time the door-to-door sales, peddling, or soliciting is proposed to be carried on in the city;

2. The local address of the individual;

3. The permanent address of the individual; and

4. The capacity in which the individual will act.

(c) The name and address of the person, if any, for whose purpose the business, door-to-door sales, peddling, or soliciting will be carried on, and if a corporation, the state of incorporation;

(d) The time period or periods during which it is proposed to carry on the applicant's business of door-to-door sales, peddling, or soliciting;

(e) 1. The nature, character, and quality of the goods or services to be offered for sale, peddled, solicited, or delivered;

2. If goods, their invoice value, and whether they are to be sold by sample as well as from stock; and

3. If goods, where and by whom the goods are manufactured or grown, and where the goods are at the time of application;

(f) The nature of the advertising proposed to be done for and in furtherance of the business, door-to-door sales, peddling, or soliciting; and

(g) Whether or not the applicant, or the individual identified in division (A)(2)(b)1. above, or the person identified in division (A)(2)(c) above has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense.

(B) Applicants for permits may be required to provide information concerning the following items, in addition to those requested under division (A) above:

(1) A description of the applicant; and

(2) A description of any vehicle proposed to be used in the business, door-to-door sales, peddling, or soliciting, including its registration number, if any.

(C) All applicants for permits required by this chapter shall attach to their applications the following:

(1) If required by the city, copies of all printed advertising proposed to be used in connection with the applicant's business; and

(2) If required by the city, credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as the representative.

(D) If the applicant is a corporation, there shall be stated on the application form the date of incorporation, the state of incorporation, and, if the applicant is a corporation formed in a state other than the commonwealth, the date on which such corporation is qualified to transact business as a foreign corporation in this state;

(E) A statement showing the kind of business proposed to be conducted, the length of time for which the applicant desires to transact such business, and the location of the proposed place of business;

(F) An inventory of the aggregate value of any goods, wares, or merchandise to be offered for sale during the permit period;

(G) A statement that the applicant has acquired all other required city, county, and state permits;

(H) The applicant's sales and use tax permit number or temporary vendor's registration number;

(I) The name and permanent address of the applicant's registered agent or office;

(J) The absence of any of the above information, if required by the city, shall result in the denial of such permit by the City Clerk; and

(K) Applicants who propose to handle foodstuffs shall also attach to their application, in addition to any attachments required under division (C) above, a statement from a licensed physician, dated not more than ten days prior to the date of application, certifying the applicant to be free of contagious or communicable disease.

(Ord. 1-04, passed 2-12-2004; Ord. 7, Series 2015, passed 2-12-2015) Penalty, see § 110.99

### **§ 110.05 DUTY OF CITY CLERK.**

The City Clerk shall inform the Commission of any and all requests under this chapter for permits at the Commission meetings. The City Clerk shall forward a copy of each approved permit application to the office of the Commission and to the office of the Chief of Police within 24 hours of approval.

(Ord. 1-04, passed 2-12-2004)

### **§ 110.06 STANDARDS FOR ISSUANCE.**

(A) Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.

(B) (1) The application shall be approved unless the investigation discloses tangible evidence that the conduct of the applicant's business of door-to-door sales, peddling, or soliciting within the city would pose a substantial threat to the public health, safety, morals,

or general welfare.

(2) In particular, tangible evidence that the applicant has done or possesses any of the following will constitute valid reasons for denial of an application for permit under this chapter:

- (a) Has been convicted of a crime of moral turpitude;
- (b) Has made willful misstatements in the application;
- (c) Has committed prior violations of city ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like;
- (d) Has committed prior fraudulent acts;
- (e) Has a record of continual breaches of solicited contracts; or
- (f) Has an unsatisfactory moral character.

(Ord. 1-04, passed 2-12-2004)

### **§ 110.07 REVOCATION PROCEDURE.**

Any permit granted under this chapter may be revoked by the City Clerk after notice and hearing, pursuant to the standards set forth in § 110.08. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint, and the time and place of the hearing. The notice shall be mailed to the permittee at his or her last known address, at least ten days prior to the date set for the hearing.

(Ord. 1-04, passed 2-12-2004)

### **§ 110.08 STANDARDS FOR REVOCATION.**

A permit granted under this chapter may be revoked for any of the following reasons:

- (A) Any fraud or misrepresentation contained in the permit application;
- (B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the permit;
- (C) Any violation of this chapter;
- (D) Conviction of the permittee of any felony, or conviction of the permittee of any misdemeanor involving moral turpitude; or
- (E) Conducting the permitted business of door-to-door sales, peddling, or soliciting in an unlawful manner or in a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

(Ord. 1-04, passed 2-12-2004) Penalty, see § 110.99

### **§ 110.09 APPEAL PROCEDURE.**

(A) Any person aggrieved by a decision under §§ 110.06, 110.07, or 110.08 shall have the right to appeal to the appropriate legislative body of the city. The appeal shall be taken by filing with the appropriate legislative body of the city, within 14 days after notice of the decision has been mailed to the aggrieved person's last known address, a written statement setting forth the grounds for appeal. The appropriate legislative body of the city shall set the time and place for a hearing, and notice for the hearing shall be given to the person in the same manner as provided in § 110.07.

(B) The order of the legislative body after the hearing shall be final.

(Ord. 1-04, passed 2-12-2004)

### **§ 110.10 EXHIBITION OF IDENTIFICATION.**

(A) Any permit issued to an itinerant merchant under this chapter shall be posted conspicuously in or at the place named therein. In the event more than one place within the city shall be used to conduct the business permitted, separate permits shall be issued for each place.

(B) The City Clerk shall issue a permit to each peddler and solicitor who has applied for and received a permit under this chapter. The permit shall contain the words "permitted peddler" or "permitted solicitor". The permit shall clearly state the expiration date of the permit and the number of the permit. The permit shall be kept with the permittee during the time as he or she is engaged in the business permitted.

(Ord. 1-04, passed 2-12-2004) Penalty, see § 110.99

### **§ 110.11 ENFORCEMENT.**

(A) Any violation of this chapter shall subject the offender to fines, penalties, and forfeitures that may be imposed by law. The city may secure injunctions and abatement orders, when appropriate, to ensure compliance with this chapter or ordinances as authorized by the Kentucky Revised Statutes.

(B) This chapter may be enforced by any one or in combination of the remedies authorized by this chapter and as authorized by the Kentucky Revised Statutes.

(Ord. 1-04, passed 2-12-2004)

### **§ 110.99 PENALTY.**

(A) *Criminal.*

(1) Any person who shall violate any provision of this chapter shall be fined \$100.

(2) Where Kentucky Revised Statutes mandates a fine higher than that stipulated herein, the fine contained in the Kentucky Revised Statutes shall apply.

(3) Any continuing violation of this chapter shall be considered a separate and distinct offense for each day on which a violation occurs or continues, and a separate penalty may be imposed therefor.

(B) *Civil.*

(1) Any person who shall violate any provision of this chapter shall subject the offender to a civil penalty in an amount equal to two times the minimum fine prescribed in division (A) above, with a minimum civil penalty of \$100 for each violation.

(2) The civil penalty provided herein may be recovered by the city in a civil action in the name of a debt if the offender does not pay the penalty within 20 days after the offender has been cited for the ordinance violation. As used herein, **CITED** shall mean notified of the violation and the penalty in writing by an elected or appointed official of the city or the official attorney for the city. The civil penalty may be used as an alternative or in conjunction with the criminal penalties authorized herein.

(Ord. 1-04, passed 2-12-2004)

## **CHAPTER 111: CABLE FRANCHISES**

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## **GENERAL PROVISIONS**

### **§ 111.001 DECLARATION OF FINDINGS.**

The city hereby declares as a legislative finding that the rights-of-way within the city:

- (A) Are a unique and physically-limited resource;
- (B) Are critical to the travel and transport of persons and property in the city;

(C) Are intended for public uses and must be managed and controlled consistent with that intent;

(D) Can be partially occupied by the facilities of utilities and public service entities, to the enhancement of the health, welfare, and general economic well being of the city and its citizens; and

(E) Require adoption of the specific additional regulations established by this chapter to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum number of providers of communications and other services in the public interest.

(Ord. 1, Series 2003, passed 2-13-2003)

## **§ 111.002 TITLE.**

This chapter may be referred to and cited as the "Communications Services Franchise Ordinance".

(Ord. 1, Series 2003, passed 2-13-2003)

## **§ 111.003 APPLICABILITY.**

(A) The requirements of this chapter shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted.

(B) No provisions of this chapter shall be disregarded pursuant to this section, except on express application to and determination by the city to such effect based on the specific factual circumstances demonstrated. The provisions of this chapter shall be deemed incorporated in each communications franchise granted.

(Ord. 1, Series 2003, passed 2-13-2003)

## **§ 111.004 DEFINITIONS.**

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AFFILIATE.** As to any person, each person, directly or indirectly, controlling, controlled by, or under common control with such person.

**ANTENNA.** Any device that transmits or receives signals. Such signals include, but are not limited to, radio and infrared waves for voice, data, or video communications purposes.

**CABLE ACT.** The Cable Communications Policy Act of 1984, Pub. Law No. 98-549, (codified at 47 U.S.C. §§ 521 through 611 (1982 and Supp. V. 1987), as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. Law No. 102-385, and the Telecommunications Act of 1996, Pub. Law No. 104-104 (1996) as it may, from time to time, be amended.

**CABLE FRANCHISE.** The rights and obligations extended by the city to a person to own, lease, construct, maintain, or operate a cable system in the rights-of-way within the franchise area for the purpose of providing cable services. Any such authorization, in whatever form granted, shall not mean or include:

(a) Any other permit or authorization required for the privilege of transacting and carrying on a business within the city required by the ordinances and laws of the city, including the provision of communications services; or

(b) Any permit, agreement, or authorization required in connection with operations in the rights-of-way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along the rights-of-way.

**CABLE FRANCHISE FEE.** Shall have the same meaning as is ascribed to the term franchise fee at 47 U.S.C. § 542(g).

**CABLE INTERNET SERVICE.** The provision by a person of access to the internet or any intranet to customers over a cable system and shall include the provision of incidental services that are required by law to be treated under the same regulation as such



direct access service. The city shall treat **CABLE INTERNET SERVICES** as a cable service unless it is definitively determined under applicable law that **CABLE INTERNET SERVICE** is not a cable service, in which case, any person providing or wishing to provide **CABLE INTERNET SERVICES** shall obtain a separate communications franchise from the city. All prior payments to the city attributable to **CABLE INTERNET SERVICE** under a cable franchise shall be irrefutably deemed to be lawful compensation, irrespective of any rates or terms required for any future use under any new communications franchise.

**CABLE SERVICE.** Shall have the same meaning as is ascribed to the term "cable service" at 47 U.S.C. § 522(6).

**CABLE SYSTEM.** Shall have the same meaning as is ascribed to the term "cable system" at 47 U.S.C. § 522(7).

**CITY.** The City of Bancroft, Kentucky.

**COLLOCATION.** The shared use of facilities, including, but not limited to, the placement of a conduit owned by more than one rights-of-way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit. **COLLOCATION** does not include interconnection of facilities or the sale or purchase of capacity (whether bundled or unbundled).

**COMMUNICATIONS.** The transmission via the facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice, and the like), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

**COMMUNICATIONS FRANCHISE.** A franchise for the use of the rights-of-way for communications services as authorized herein and executed by the city and the franchisee.

**COMMUNICATIONS FRANCHISE FEE.** The fee imposed by the city on the franchisee for use of the rights-of-way pursuant to a communications franchise pursuant to § 111.035.

**COMMUNICATIONS SERVICE.** The transmission via facilities, in whole or in part, of any writings, signs, signals, pictures, sounds, or other forms of intelligence through wire, wireless, or other means, including, but not limited to, any "telecommunications service", "enhanced service", "information service", or "internet service", as such terms are now, or may in the future be, defined under federal law, and including all instrumentality, facilities, conduit, apparatus ("communications facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include cable service or open video system service, but cable services and open video system service shall be subject to separate franchising requirements and applications. This term does not include over-the-air, radio, or television broadcasts to the public at large licensed by the FCC or any successor thereto.

**FACILITIES.** Any portion of a system located in, along, over, upon, under, or through the rights-of-way.

**FCC.** The U.S. Federal Communications Commission or any successor thereto.

**FRANCHISE.** A communications franchise as defined herein or any other franchise granted by the city pursuant to §§ 163 and 164 of the Constitution of the commonwealth or by the Kentucky General Assembly prior to the adoption of §§ 163 and 164 of the Constitution of the commonwealth which permits the use of the rights-of-way for communications services. Use of this definition in this chapter is not intended to include any license or permit for the privilege of transacting and carrying on a business within the city, as may be required by any other ordinance or laws of the city or the state.

**FRANCHISE AREA.** Unless otherwise specified in the applicable franchise, means the entire unincorporated area of the city as it is now constituted or may in the future be constituted.

**FRANCHISEE.** The party subject to a communications franchise, or its successors, assigns, or transferees.

### **GROSS RECEIPTS.**

(a) All revenues and the fair market value of all in-kind services or other consideration received directly or indirectly by a franchisee or its affiliates for communications services originating, terminating, or originating and terminating within the corporate limits of the city or otherwise derived from the use of the communications services facilities. Except to the extent as may be prohibited by law, such **GROSS RECEIPTS** shall specifically include, but shall not be limited to, all revenue or other consideration derived from the following:

1. Recurring local exchange service for businesses and residences which includes basic telephone exchange service, touch tone, custom calling services, and measured local calls;

2. Recurring local exchange service for public, semi-public, and private pay phones;
3. Local directory assistance (411);
4. Line status verification/busy interrupt;
5. Local operator assistance;
6. Information delivery service;
7. Cellular and other wireless communications services; provided, that the same derive from a system having an antennae or other parts of the mobile system physically located within the rights-of-way;
8. Nonrecurring local exchange service which shall include customer service for installation of lines, reconnection of service, and charge for duplicate telephone bills;
9. Interconnection with other providers of communications services pursuant to §§ 251 and 252 of the Telecommunications Act, including without limitation, all revenue or other consideration derived from the provisions of "unbundled access" and "resale" as contemplated by § 251 of the Telecommunications Act;
10. Internet access services, including all high-speed and traditional subscriber line services (and including cable internet service), unless such service revenues or other consideration are validly included and collected as gross revenues in a cable franchise between the franchisee and the city;
11. Rent, physical use, collocation, or sale of the facilities, network elements, or a portion thereof for any purpose;
12. Late charges or interest received on gross receipts; and/or
13. Any portion of the communications franchise fees collected by the franchisee from any other person.

(b) **GROSS RECEIPTS** shall not include uncollectible debt or any federal, state, or local taxes separately stated on a customer's bill. In the event a franchisee receives revenues or other consideration for communications services or other activities within and without the city of which the specific portion attributed to operations in the city cannot be directly determined ("unallocated revenues"), **GROSS RECEIPTS** with respect to such revenues and other consideration shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the **GROSS RECEIPTS** from the city and the denominator of which is the total revenues and other consideration of the franchisee attributable from the area generating such unallocated revenues. All revenue and other consideration from or relating to or connected with communications services derived from any billing address within the city shall be presumed to be **GROSS RECEIPTS** of the franchisee, unless demonstrated in writing to the contrary as to each such revenue and other consideration.

**GROSS REVENUES.** Any revenue or other consideration actually received by a person from the operation of a cable system to provide cable services.

**LESSEE.** A person who provides communications services within the city solely by leasing facilities and who has no control over what, where, or how any facilities are erected, installed, maintained, operated, repaired, removed, restored, or otherwise used.

**MAY.** The act referred to is permissive.

**OPEN VIDEO SYSTEM (OVS) SERVICE.** Shall have the same meaning as is ascribed to the term at 47 U.S.C. § 573.

**PERSON.** Any corporation, partnership, limited liability company, proprietorship, individual, organization, governmental entity, or any natural person.

**PRIVATE COMMUNICATION SYSTEM.** A system used by a person solely in connection with such person's business; provided, that such person does not use, or permit the use of, such system to provide communications services to any other person.

**PRIVATE COMMUNICATIONS SYSTEM OWNER.** A person who owns or leases a private communications system.

**RENEWAL.** A new communications franchise granted to an existing franchisee.

**RESELLER SERVICE PROVIDER.** A person who provides communications services within the city solely by reselling communications services and who has no control over what, where, or how any facilities are erected, installed, maintained, operated, repaired, removed, restored, or otherwise used.

**RIGHTS-OF-WAY.** The surface and space on, above, and below every street, alley, road, highway, lane, or other public right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. **RIGHTS-OF-WAY** shall not include public property owned or leased by the city and not intended for rights-of-way use, including, but not limited to, parks or public works facilities.

**SHALL AND WILL.** The act referred to is mandatory. Words not defined shall be given their common and ordinary meaning.

**STATE.** The Commonwealth of Kentucky.

**SYSTEM.** Any and all equipment, structures, materials, or tangible components located in the rights-of-way and used to provide communications services, including, without limitation, all plant (whether inside or outside), cabinets, surface location markers, fiber strands, electronic equipment, amplification equipment, optic equipment, transmission, and distribution structures, antennae, lines, pipes, mains, conduit, ducts, regenerators, repeaters, vaults, pedestals, manholes, handholds, pull boxes, splice closures, wires, cables, towers, wave guides, and anything else designed and constructed for the purpose of producing, receiving, amplifying, or distributing communications services.

**TELECOMMUNICATIONS ACT.** The Telecommunications Act of 1996, codified at Title 47 of the United States Code.

(B) *Tense; singular and plural.* Words used in the present tense include the future tense, words in the singular number include the plural number, and words in the plural number include the singular.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.005 PRESERVATION OF AUTHORITY.**

(A) Any rights granted pursuant to this chapter and pursuant to any franchise authorized hereunder are subject to the authority of the city to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. The franchisees and other holders of franchises shall be subject to and comply with all applicable laws enacted by the city pursuant to its home rule or statutory powers, to the extent not in conflict with laws of the commonwealth or federal law.

(B) Nothing in this chapter shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.006 PUBLIC INSPECTION OF RECORDS.**

Certain information required to be filed with the city pursuant to this chapter is subject to inspection and copying by the public pursuant to the provisions of the Commonwealth Open Records Act, KRS 61.870 et seq.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.007 INDEMNIFICATION.**

(A) As a condition of use of the rights-of-way, each franchisee at its sole cost and expense, shall indemnify, protect, defend (with counsel acceptable to the city), and hold harmless the city, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of or in relation to the city's award of the franchise, the rights granted to the franchisee, or the activities performed, or failed to be performed, by such franchisee under the franchise or use of the rights-of-way, except to the extent such acts or use arise from or are caused by the gross negligence or willful misconduct of the city, its elected officials, officers, or employees.

(B) This indemnification shall survive the expiration or termination of any franchise or use of the rights-of-way.

(Ord. 1, Series 2003, passed 2-13-2003)

## **§ 111.008 COMPLIANCE WITH LAWS.**

In performing activities and exercising its rights and obligations under any franchise, each franchisee and other holder of a franchise shall comply with all applicable federal, state, and local laws, ordinances, regulations, and policies, including, but not limited to, all laws, ordinances, regulations, and policies relating to construction and use of public property.

(Ord. 1, Series 2003, passed 2-13-2003)

## **§ 111.009 ENFORCEMENT; ATTORNEY'S FEES.**

The city shall be entitled to enforce this chapter and any franchise through all remedies lawfully available, and each franchisee shall pay the city its costs of enforcement, including, but not limited to, reasonable attorney's fees, in the event that the franchisee is determined judicially to have violated the terms of this chapter or any franchise.

(Ord. 1, Series 2003, passed 2-13-2003)

## **§ 111.010 RELATIONSHIP WITH PARTIES.**

Under no circumstances shall any franchise authorized by this chapter be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

(Ord. 1, Series 2003, passed 2-13-2003)

## **§ 111.011 EFFECTIVE DATE.**

This chapter shall become effective upon its passage and approval by the Commission.

(Ord. 1, Series 2003, passed 2-13-2003)

## **COMMUNICATION SERVICES**

### **§ 111.025 UNLAWFUL TO OPERATE WITHOUT A FRANCHISE.**

It shall be unlawful for any person to erect, install, maintain, operate, repair, replace, remove, or restore communications facilities or to provide communications services by use of facilities in the rights-of-way in the city without a valid, unexpired franchise from the city, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by city ordinance. Unless otherwise provided hereinafter by city ordinance, reseller service providers and lessees shall not be required to obtain a franchise. Private communication systems shall not require a franchise, but shall be licensed pursuant to §§ 111.110 through 111.112.

(Ord. 1, Series 2003, passed 2-13-2003) Penalty, see § 111.999

### **§ 111.026 FRANCHISES NONEXCLUSIVE.**

The authority granted by the city in any franchise shall be for the nonexclusive use of the rights-of-way. The city specifically reserves the right to grant, at any time, such additional franchises or other rights to use the rights-of-way for any purpose to any other person, including itself, as it deems appropriate, subject to all applicable laws.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.027 NATURE OF RIGHTS.**

Franchises shall not convey title, equitable or legal, in the rights-of-way, and shall give only the right to occupy rights-of-way, for the

purposes and for the period stated in this chapter and as may be further limited by the franchise. No franchise may excuse the franchisee from obtaining appropriate access or attachment agreements before locating its facilities on another person's facilities. All franchises shall be deemed to incorporate and be limited by the provisions of this chapter and shall create rights inuring solely to the benefit of the franchisee.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.028 APPLICATION; APPLICATION FEE REQUIRED.**

(A) Applications for an original communications franchise granted hereunder shall be filed with the City Clerk with ten additional copies. All applications received by the city from the applicants will become the sole property of the city. Applicants shall submit all requested information as provided by the terms of this chapter.

(B) The following information must be complete and verified as true by the applicant:

(1) *Filing fee.* Applications shall be accompanied by a non-refundable application fee of \$1,000 payable to the city. Said application fee shall compensate the city and defray in whole or part the city's costs to process any application filed under this chapter and negotiate, award, and administer any franchise. Said application fee shall not be considered communications franchise fee payments;

(2) *Name and address of applicant.* The applicant's name, address, e-mail address, and telephone and facsimile numbers; date of application and signature of applicant or appropriate corporate officer(s); the name, address, and e-mail address, and telephone and facsimile numbers of a local representative who shall be available at all times; and information regarding how to contact the local representative in an emergency;

(3) *Description of proposed system.* A description of the applicant's proposed system design;

(4) *Services.* A statement setting forth a description of all the types of services proposed;

(5) *Applicant organization.*

(a) If the applicant is an individual, partnership, or unincorporated association, it shall state the names and addresses of all persons (including corporations) having a proprietary or equitable interest in and to the applicant's business operation, and in and to the prospective communications franchise if granted. The term **EQUITABLE INTEREST** shall include all assignments of value, as well as all contingent assignments of any right or privilege under the prospective communications franchise, and shall also include any benefit, payment, or emolument whatsoever resulting from the grant of a communications franchise under this chapter;

(b) If the applicant is a non-public corporation, the application shall state, additionally, the names and addresses of the officers, directors, and shareholders of the corporation, together with the number of shares held by each shareholder;

(c) If the applicant is a publicly-held corporation, as defined by the rules and regulations of the Securities and Exchange Commission, the application shall contain the states in which the applicant is incorporated and/or qualified to do business, the names and addresses of the officers, directors, and shareholders owning 20% or more of applicant's outstanding stock, together with the number of shares held by each shareholder;

(d) If the applicant is a corporation, the application shall provide written evidence that it is authorized to do business in the commonwealth, as certified by the Secretary of State; and

(e) The applicant must fully disclose the ownership of the facilities to be used in rendering the service.

(6) *Intra-company relationships.* An organizational chart depicting the applicant's intra-company relationships, including parent, subsidiary, or affiliate companies;

(7) *Technical description.*

(a) A technical description of the type of system proposed by the applicant and applicant's five-year plan for the installation of the system.

(b) The following information shall be included in the application:

1. If the applicant is proposing an underground installation in existing ducts or conduits within the rights-of-way, information in sufficient detail to identify:

- a. The excess capacity currently available in such ducts or conduits before installation of applicant's system; and
  - b. The excess capacity, if any that will exist in such ducts or conduits after installation of applicant's system.
2. If the franchisee is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way:
- a. The location, depth, size, and quantity of proposed new ducts or conduits; and
  - b. The excess capacity that will exist in such ducts or conduits after installation of applicant's system.
3. A preliminary installation schedule and completion date.

(8) *Existing franchises.* Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the locations of all other franchises and the dates of award for each location;

(9) *Engineering statement.* A statement from the applicants senior technical staff member, or consultant, advising that the applicant's planned system and operations thereof would meet all the requirements set forth herein;

(10) *Litigation and violations.*

(a) A statement as to whether the applicant or any of its officers or directors or holders of 20% or more of its voting stock has in the last ten years been involved in litigation which in any way is related to the operation and performance of a communications system, or in any way relates to the applicant's ability to perform its obligations under this chapter; or

(b) A statement as to whether the applicant or any of its officers, directors, or holders of 20% or more of its voting stock has in the last ten years been served with notice of a franchise violation by a municipality.

(11) *Additional requirements.*

(a) Supplementary, additional, or other information that the applicant deems reasonable for consideration may be submitted at the same time as its application, but must be separately bound and submitted with the above number of copies. The city may, at its discretion, consider such additional information as part of the application;

(b) Applications may be modified at any time prior to the opening of the applications; provided, that any modifications must be duly executed in the manner that the applicant's application must be executed;

(c) Conditional applications will not be accepted;

(d) A copy of the applicant's certificate of authority from the Public Service Commission ("PSC") where the applicant is lawfully required to have such certificate from the PSC;

(e) A copy of the applicant's certificate of authority from the FCC where the applicant is lawfully required to have such certificate from the FCC;

(f) A copy of all insurance policies and certificates required under this chapter;

(g) A statement signed by the applicant that the applicant agrees to be bound by all provisions of this chapter and agrees to obtain all applicable permits and authorizations prior to constructing, installing, or operating a system in the rights-of-way;

(h) The applicant shall keep all of the information required in this section current at all times by providing to the city information of changes within 60 days following the date on which the applicant has knowledge of any change; and

(i) The information provided by the applicant shall be certified as true and correct and the applicant shall be responsible to certify to the city any material changes to the information provided in the completed application during the term of any franchise.

(12) *Supplementation to applications.* The Commission reserves the right to require such supplementary, additional, or other information that it deems reasonably necessary for its determinations;

(13) *City's rights reserved.* The city reserves the right to waive all formalities and/or technicalities where the best interest of the city may be served; and

(14) *Reasonable costs.* The franchisee shall be responsible for payment of any reasonable costs incurred by the city in processing these applications and in negotiating, awarding, and administering the franchise to the extent such costs exceed the application fees paid including, without limitation, reasonable attorney's and other consultant's fees.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.029 STANDARDS FOR PROCEDURES FOR APPROVAL OR RENEWAL OF FRANCHISES.**

(A) The franchises shall be granted in accordance with §§ 163 and 164 of the Constitution of the commonwealth. The city shall authorize franchises or renewals to any eligible franchisee for the right and privilege to construct, own, operate, repair, replace, and maintain facilities in, through, and along the city's rights-of-way for the purposes of providing communications services on a nonexclusive basis within the city, subject, however, to the standards, terms, and conditions herein set forth within this chapter, which shall be deemed incorporated therein, and any special conditions as may be provided for in the franchise.

(B) All franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration, or any other authorization required by any appropriate governmental entity, including, but not limited to, the city, the FCC, and the Commonwealth Public Service Commission. The city may establish standard franchises setting forth the minimum requirements for all franchisees.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.030 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE.**

(A) Any franchise granted hereunder, together with the rights, privileges, and authority granted thereby, shall take effect and be in force from and after the effective date of a resolution granting a franchise hereunder; provided, that on or before said date the franchisee shall:

- (1) File with the city an unconditional acceptance of the franchise grant and enter into and execute such contracts and documents as required by the city that are consistent with the terms and provisions of this chapter;
- (2) File certificates of insurance as set forth in this chapter;
- (3) File such bond or bonds as required in this chapter; and
- (4) Advise the City Clerk in writing of the franchisee's address for mail and official notifications from the city.

(B) The franchisee, by acceptance of any franchise granted hereunder, acknowledges that it has relied upon its own investigation and understanding of the power and authority of the city to grant such a franchise.

(C) The franchisee, by acceptance of any franchise granted hereunder, acknowledges that it has thoroughly examined and is familiar with the terms and conditions of this chapter, the resolution granting the franchise, and such other contracts and documents entered into by the franchisee relative to the franchise.

(D) The franchisee, by acceptance of any franchise granted hereunder, acknowledges and agrees that the matters contained in the franchisee's application for the franchise or supplements thereto, shall be incorporated into the resolution granting the franchise as though set out verbatim and shall thereafter be considered an integral part of such ordinance in all communications, correspondence, filings, or applications with all appropriate regulatory agencies, including, but not limited to, the FCC or the Public Service Commission.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.031 CABLE SERVICE AND OPEN VIDEO SYSTEMS (OVS); SEPARATE FRANCHISE REQUIRED.**

(A) A communications franchise shall not permit a franchisee to provide cable services as a "cable operator" (as defined by 47 U.S.C. § 522(5)) within the city. Upon the franchisee's request for a franchise to provide cable services as a "cable operator" (as defined by 47 U.S.C. § 522(5)) within the city, the city shall timely negotiate such cable franchise in good faith with the franchisee.

(B) A communications franchise shall also not permit the franchisee to operate an open video system. A person may operate an open video system only if that person obtains a separate franchise permitting the same, and such person remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B), and where such person otherwise complies with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

(C) Absent such applicable separate franchise from the city, the franchisee shall be prohibited from offering OVS service and any

such service shall be considered a breach of its franchise.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.032 USE OF RIGHTS-OF-WAY; POLICE POWERS; FRANCHISEE'S USE SUBORDINATE.**

(A) A franchisee shall construct and maintain its facilities in accordance with all applicable federal, state, and local laws, including all permit requirements, fee payments, and all other city codes and ordinances in effect as of the date of the award of its franchise or thereafter adopted to the extent not in contravention of state or federal law.

(B) The grant of a franchise does not in any way affect the continuing authority of the city through the proper exercise of its home rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety, and welfare of the public. The city makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of the rights-of-way.

(C) The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the franchisee. The use of the rights-of-way authorized by any franchise shall in all matters be subordinate to the city's use and rights therein.

(D) Without limiting the generality of the foregoing:

(1) All rights and privileges granted herein are subject to the police powers of the city and its rights under applicable laws and regulations to regulate the construction, operation, and maintenance of the franchisee's system, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the city shall find necessary in the exercise of its police powers; the right to adopt and enforce applicable zoning, building, permitting, and safety ordinances and regulations; the right to adopt and enforce regulations relating to equal employment opportunities; and the right to adopt and enforce ordinances and regulations containing rights-of-way, communications, and utility standards;

(2) The city reserves the right to exercise its police powers, notwithstanding anything in this chapter and in any franchise to the contrary. Any conflict between the provisions of this chapter or a franchise and any other present or future lawful exercise of the city's police powers shall be resolved in favor of the latter;

(3) The franchisee shall not be excused from complying with any of the requirements of this chapter or any subsequently adopted amendments to this chapter, by any failure of the city on any one or more occasions to seek, or insist upon, compliance with such requirements or provisions;

(4) If federal or state law alters the required services, fees, costs, conditions, or standards upon which the communications system is to operate, the city shall have the right to amend this chapter to make it consistent with the modified federal or state laws; and/or

(5) Any franchise granted pursuant to this chapter shall be subject to any present and future legislation or resolution, which may be enacted by the city.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.033 EMERGENCIES.**

(A) The franchisee shall assign a management level person to coordinate with, and assist the city's emergency management agency, in the development of emergency plans.

(B) If at any time, in case of fire or disaster in the city, it shall become necessary in the reasonable judgment of the city, to cut or move any facilities, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the franchisee at its sole expense.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.034 TERM.**



A franchise shall be effective for a term of ten years from its effective date.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.035 COMMUNICATIONS FRANCHISE FEES.**

The franchisee shall pay to the city as annual compensation for the use of the rights-of-way a communications franchise fee equal to 1% of gross receipts, but in no event shall the communications franchise fee be less than the sum of the following:

(A) One hundred dollars per antenna in the rights-of-way; and

(B) A fee equal to the lesser of either \$50,000 or the sum of the following:

(1) For each single cable, wire, fiber, conduit, or other linear facility, or bundle of the same up to two inches in diameter placed above-ground, \$1 per foot of rights-of-way on which it is placed or over which it is suspended;

(2) For each bundle of cable, wire, fiber, conduit, or other linear facility greater than two inches in diameter placed above-ground, \$2 per foot of rights-of-way on which it is placed or over which it is suspended; and

(3) For each single cable, wire, fiber, conduit, or other linear facility, or aggregate of the same placed below-ground contemporaneously, \$1 per foot of rights-of-way used to accommodate the same.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.036 USE OF COMMUNICATIONS FRANCHISE FEES.**

The city shall dedicate and use all communications franchise fees received under this chapter for maintenance and improvement of city roads, bridges, and rights-of-way.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.037 HOLDERS OF MULTIPLE FRANCHISES.**

Persons holding a communications franchise and also a cable franchise shall fairly and accurately apportion and attribute revenues received to the various services offered.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.038 TIMING OF PAYMENT OF COMMUNICATIONS FRANCHISE FEES.**

Unless otherwise agreed to in writing, all communications franchise fees shall be due and payable on a quarterly basis and payment shall be made on or before the date which is 30 calendar days after the last day of the calendar quarter for which the payment applies (the "due date"); provided, however, that in the event that a franchisee ceases to provide service for any reason (including as a result of a transfer), such franchisee shall make a final payment of any amounts owed to the city on or before the date which is 30 calendar days after the date on which its operations in the city cease (which shall be deemed a due date for purposes of § 111.039.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.039 INTEREST ON LATE PAYMENTS AND UNDER PAYMENTS.**

If any communications franchise fee, or any portion thereof, is not received by the city on or before the due date, interest thereon shall accrue from the due date until received, at the rate of 1.5% per month, unless such other maximum rate is established by applicable law.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.040 FEE STATEMENT.**

(A) Each communications franchise fee payment shall be accompanied by a statement (a "fee statement") showing the manner in which the communications franchise fee was calculated. If any fee statement is determined to understate the communications franchise fee owed, then the franchisee shall provide the city with a corrected statement and shall pay such additional amount owed together with interest on such amount, calculated pursuant to § 111.039.

(B) Within 90 calendar days following the end of the calendar year, each franchisee shall submit a statement, certified as true, setting forth its gross receipts and gross revenues, if any, the amount of linear foot and antennae within the facilities, and describing what revenues or receipts (including each type of services) were included and excluded in the fee calculations for the calendar year, and describing any adjustments made in determining the communications franchise fee; provided, however, that in the event that a franchisee ceases to provide service for any reason (including as a result of a transfer), such franchisee shall provide such a statement within 30 calendar days after the date on which its operations in the city cease.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.041 NO ACCORD AND SATISFACTION.**

No acceptance by the city of any communications franchise fee or any other payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any communications franchise fee or any other payment be construed as a release of any claim of the city.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.042 MAINTAIN RECORDS.**

(A) A franchisee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the franchise with respect to the system in a manner that allows the city to determine whether the franchisee has properly calculated its communications franchise fee in compliance with this chapter.

(B) Should the city reasonably determine that the records are not being maintained in such a manner, the franchisee shall correct the manner in which the books and/or records are maintained so that the franchisee comes into compliance with this section.

(C) All financial books and records that are maintained in accordance with FCC regulations, the regulations of the Commonwealth Public Service Commission, and any other governmental entity that regulates utilities in the commonwealth, and generally accepted accounting principles, shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years.

(D) The failure to provide information or maintain records as required herein shall be grounds for forfeiture or revocation of a franchise.

(Ord. 1, Series 2003, passed 2-13-2003) Penalty, see § 111.999

#### **§ 111.043 RIGHT OF INSPECTION AND AUDIT.**

(A) The city or its designated representatives shall have the right to inspect, examine, or audit, during normal business hours and upon reasonable notice, all documents, records, or other information that pertain to the system and/or a franchisee's communications franchise fee obligations under its franchise.

(B) In addition to access to the records of the franchisee for audits, upon request, a franchisee shall provide reasonable access to records necessary to verify compliance with the terms of the franchise.

(C) A franchisee shall pay all reasonable audit costs incurred by the city to a maximum of one audit per year.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.044 DESCRIPTION OF SERVICE.**

A franchisee shall, on an annual basis, provide the city with a description of the communications services offered within the city during the prior year. Any individual service or item for which the franchisee has a separate charge shall be considered a separate service.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.045 COMMUNICATIONS FRANCHISE FEE NOT A TAX; PAYMENT OF TAXES.**

The communications franchise fee is compensation for use of the rights-of-way and shall in no way be deemed a tax of any kind. The communications franchise fees required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees, and impositions otherwise applicable that are or may be imposed by the city. A franchisee shall be fully responsible for the payment of all applicable taxes.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.046 DUTY TO NOTIFY CITY OF RESELLER SERVICE PROVIDERS AND LESSEES.**

Each franchisee shall notify the city of the name and address of each reseller service provider and lessee with which it enters into an agreement related to the resale of the franchisee's communications services and/or the lease of facilities, provide to the city a copy of all such agreements between the franchisee and such reseller service providers and/or lessees, and describe the compensation to be provided to the franchisee relating to such reseller service providers and/or lessees.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.047 SALE OR LEASE OF FACILITIES.**

Except as otherwise may be provided by law or franchise, a franchisee shall not sell, or otherwise transfer possession or control of any facilities, or any portion thereof, for any purpose to any person that has not obtained a duly-issued franchise which includes the authority to erect, install, maintain, operate, repair, replace, remove, or restore such facilities. The franchisee shall provide the city at least 30 days' prior notice of any intended sale, lease, or transfer of possession or control.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.048 ASSIGNMENT OF FRANCHISE.**

(A) (1) A franchise does not run with the land.

(2) A franchisee shall not sell, assign, sublet, dispose of, or otherwise transfer a franchise (or any of the rights or privileges granted by such franchise) to another person, including, without limitation, by operation of law, without the prior written consent of the city; provided, that such transfer may occur without the consent of the city to an affiliate upon 30 days' prior notice to the city; and provided, further, that entry into an agreement with a reseller service provider related to the resale of the franchisee's communications services or entry into an agreement with a lessee related to the lease of the facilities shall not, by itself, be deemed such a transfer.

(3) The city's consent to such a transfer shall not be unreasonably withheld.

(B) In seeking the city's consent to a transfer, the franchisee and its proposed transferee shall provide to the city in writing:

(1) Such information with respect to the proposed transferee as is currently required of applicants for a renewal of a franchise; and

(2) An agreement, in form and substance acceptable to the city, that the transferee will assume and be bound by all of the provisions, terms, and conditions of this chapter and the franchise and shall be primarily liable and obligated under such documents without, however, relieving the transferring franchisee from its obligations to the city under such documents, including, without limitation, its obligations under § 111.046.

(C) The franchisee shall be liable to the city for any and all costs incurred by the city, including, without limitation, reasonable attorney's and other consultants' fees, resulting from any such attempt to transfer the franchise.

(D) Nothing in any approval by the city of any transfer pursuant to this section shall be construed to waive, release, or delegate any rights or powers of the city.

(Ord. 1, Series 2003, passed 2-13-2003) Penalty, see § 111.999

#### **§ 111.049 FORFEITURE OF FRANCHISE AND PRIVILEGE.**

(A) In case of failure on the part of a franchisee, its successors, and assigns, to comply with any of the provisions of this chapter or its franchise, or if the franchisee, its successors, and assigns, should do or cause to be done any act or thing prohibited by or in violation of this chapter or the terms of its franchise, the franchisee, its successors, and assigns, shall forfeit all rights and privileges permitted by this chapter and its franchise, and all rights hereunder shall cease, terminate, and become null and void; provided, that said forfeiture shall not take effect until the city shall carry out the following proceedings in division (B) below.

(B) Before the city declares the forfeiture or revocation of a franchise, it shall first serve a written notice upon the franchisee, setting forth in detail the neglect or failure complained of, and the company shall have 30 days thereafter, or such other reasonable period established by the Commission, in which to cure the default by complying with the conditions of its franchise and fully remedying any default or violation. If at the end of such 30-day or other reasonable period, the city determines that the conditions have not been complied with, the city shall take action by an affirmative vote of a majority of the Commission present at the meeting and voting, to terminate the franchise, setting out the grounds upon which the franchise is to be forfeited or revoked. Nothing herein shall prevent the city from invoking any other remedy available at law or in equity.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.050 SECURITY FOR PAYMENT OF FEES.**

(A) Every franchisee shall provide to the city an irrevocable letter of credit in the amount of \$25,000 to secure the payment of the communications franchise fee and any other amount required to be paid to the city under its franchise.

(B) The letter of credit shall be in a form and with an institution acceptable to the City Attorney. Should the city draw upon the letter of credit, it shall promptly notify the franchisee, and the franchisee shall promptly restore the letter of credit to the full required amount. The letter of credit may be waived or reduced by the city for a franchisee where the city determines in its sole discretion that the particular franchisee's operations will be sufficiently limited that a letter of credit is not necessary to secure the required performance.

(C) The city may from time to time change the amount of the required letter of credit to reflect changed risks to the city and to the public, including, without limitation, as a result of delinquencies in payments to the city by a franchisee.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.051 SPECIAL RULES FOR GOVERNMENTAL ENTITIES.**

Nothing herein requires the city to apply the provisions of this chapter to a governmental entity if the city determines that it is not in the public interest to do so, and nothing in this chapter shall be read to require a governmental entity to comply with this chapter where the city cannot enforce this chapter against such entity as a matter of law. The city is authorized to enter into agreements with other governmental agencies to facilitate the city's use and management of the rights-of-way, and such agreements shall be enforceable according to their respective terms and notwithstanding any provision of this chapter.

(Ord. 1, Series 2003, passed 2-13-2003)

### **RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS**

#### **§ 111.065 ENCROACHMENT PERMIT.**

A franchisee shall be subject to and comply with the additional or supplementary terms and conditions of the city's encroachment on rights-of-way permit, as may be amended from time to time, which is incorporated herein by reference and such provisions and the provisions of said encroachment permit shall be deemed a condition of any franchise.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.066 ADDITIONAL FACILITIES REQUIREMENTS; PLANNED INFRASTRUCTURE.**

When a franchisee installs any new underground facilities, the franchisee shall, unless waived by the city, simultaneously install conduits provided by the city ("city conduit"). The city conduit shall be installed in accordance with city specifications. No communications franchise fee shall apply to any city conduit.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.067 REMOVAL OF FACILITIES.**

(A) Upon expiration of a franchise, whether by lapse of time, by agreement between the franchisee and the city, or by forfeiture thereof, the franchisee shall remove, at its sole cost, from the rights-of-way any and all of its facilities that are the subject of such a franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of the franchisee immediately upon such removal to restore the rights-of-way from which the facilities are removed to as good a condition as the same were before the removal was effected and as required by the city.

(B) Notwithstanding the foregoing, the city may allow facilities to be left in place when the city determines in its sole discretion that it is not practical or desirable to require removal.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.068 RELOCATION OF FACILITIES.**

(A) Whenever the city shall, in its exercise of the public interest, request of the franchisee the relocation or reinstallation of any of its facilities, the franchisee shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the facilities shall be the exclusive obligation of such franchisee.

(B) A franchisee shall, upon request of any other person requesting relocation of facilities and holding a validly-issued building or moving permit of the city, temporarily raise, lower, or relocate its wires or other facilities as may be required for the person to exercise the rights under the permit within 48 hours prior to the date upon which said person intends to exercise its rights under said permit; provided, however, that the franchisee may require such permit holder to make payment in advance for any expenses incurred by said franchisee pursuant to such person's request.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.069 FRANCHISE RESPONSIBLE FOR COSTS.**

A franchisee shall be responsible for all reasonable costs incurred by the city that are directly associated with the franchisee's erecting, installing, maintaining, operating, repairing, replacing, removing, or restoring its facilities in the rights-of-way. A franchisee shall be responsible for its own costs incurred in removing or relocating its facilities when required by the city due to city requirements relating to maintenance and use of the rights-of-way for city purposes.

(Ord. 1, Series 2003, passed 2-13-2003)

#### **§ 111.070 INSURANCE AND BONDS.**

During the term of any franchise, a franchisee shall obtain and maintain at its sole expense, all insurance and bonds required by this chapter, and nothing contained in this chapter shall limit a franchisee's liability to the city to the limits of insurance certified or carried.

(A) (1) All persons submitting an application for a franchise in accordance herewith shall file with their applications performance bonds with a surety company or trust company or companies as surety or sureties solely for the protection of the city in an amount determined by the Commission to be reasonable for the proposed scope of the system to be effective.

(2) The determination of the amount of the performance bond required shall be made in a nondiscriminatory manner. Said performance bond shall provide for the faithful performance of any and all provisions of this chapter and the franchisee's franchise, including, but not limited to, construction and installation, maintenance, relocation, communications franchise fee payment, and/or removal of any abandoned facilities.

(3) Upon demonstration of the completion of the construction of the system by the franchisee to the city, the city shall reduce the amount of the performance bond by 75%.

(B) Said performance bond shall indemnify the city in its own right and as trustee, from any damages or losses arising out of the failure of the franchisee to faithfully perform and satisfactorily complete construction of the system in accordance with this chapter and any agreement and ordinance in connection herewith, including, but not limited to, the cost of removal of any construction.

(C) The failure of the franchisee to comply with its obligations under this chapter or the franchise as determined by the city shall entitle the city to draw against said performance bond.

(D) The rights reserved to the city with respect to the performance bonds required hereunder are in addition to all other rights of the city, whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such performance bond shall affect any other rights the city may have.

(E) The performance bonds required hereunder shall not expire or be materially altered without 30 days' written notice and without securing and delivering to the city a substitute, renewal, and replacement bond in conformance with this chapter. In the event the city does draw monies against the performance bonds required hereunder, within ten the days thereafter, the franchisee shall pay such funds to the bonding company as necessary to bring said performance bonds back to the applicable principal, where it shall continue to be maintained. The performance bonds required hereunder shall contain the following endorsements.

"It is hereby understood and agreed that this performance bond may not be reduced, altered, or canceled by the franchisee or the bonding company without 30 days' written notice, by certified mail, to the City Clerk".

(F) Immediately upon the effective date of the resolution granting a franchise under this chapter, the franchisee shall file with the City Clerk the following liability insurance policies issued by a company authorized to do business in the commonwealth and acceptable to the Commission:

(1) *General liability.* One million dollars for each occurrence, \$5,000,000 aggregate, against bodily injury, death, or property damage;

(2) *Automobile insurance.* One million dollars for each occurrence, and aggregate against bodily injury, death, or property damage for any of the franchisee's owned or leased motor vehicles used in the construction or installation of any lines, facilities, or equipment authorized by the franchise; and

(3) *Workers' compensation.* The amount required by Kentucky Revised Statutes.

(G) The franchisee shall maintain on file with the City Clerk a certified copy of the insurance policy(s) specifically endorsed to include all liability assumed by the franchisee hereunder and a certificate of insurance certifying the coverage required under this chapter, which certificate shall be subject to the approval of the city as to the adequacy of the certificate and of the insurance certified under the requirements of this chapter. Such policy(s) and certificate shall be identified on their face by the name of the franchisee, and shall be submitted to the City Clerk, in accordance with the terms and conditions of this chapter. Failure to maintain adequate insurance as required under this chapter shall be deemed a breach of the franchise.

(H) The franchisee shall maintain public liability, property damage, and other insurance required by this chapter that protects the franchisee and the city, its officers, agents, employees, and appointed and elected officials from any and all claims for damages or personal injury including death, demands, actions, and suits brought against any of them arising from operations under the franchise or in connection therewith. This insurance coverage constitutes a minimum requirement and shall in no way be deemed to lessen, limit, or define the liability of the franchisee, related entities, its successors, or assigns, under the terms of the franchise.

(I) The Commission reserves the right to make increases in the amount of insurance coverage referred to in this section at any time.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.071 PERMITS.**

(A) Prior to performing any construction or installation work in the public rights-of-way, the franchisee shall apply to the city for a permit, and shall include descriptive information about the specific location of any lines, facilities, boxes, or related equipment.

(B) All terms and conditions of the permit application shall apply and be adhered to.

(1) The franchisee shall furnish detailed plans of the work to be done within the public rights-of-way and provide other such information as required by the city.

(2) The franchisee shall coordinate any construction work within the public rights-of-way with the city and shall begin construction work only after approval of the city.

(3) All permits issued by the city shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by city personnel.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.072 NOTIFICATION.**

The franchisee shall notify the Mayor, in writing, at least 15 days prior to construction. Such written notification shall contain the location of the construction, the starting date, and the estimated completion date.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.073 UNDERGROUND CONSTRUCTION.**

Except as provided in § 111.074, all of the franchisee's facilities shall be installed underground and all street crossings installation shall be made by trenchless technology.

(A) The franchisee shall register any and all underground line locations with the local "before you dig" or "BUD" office for tracking specific underground line locations.

(B) All backfilling and replacement of pavement shall be done by the franchisee:

(1) In accordance with city requirements and all restoration work shall be completed to the same or better condition than found; and

(2) To the satisfaction of the city, and, if not acceptable, may be completed by the city at the franchisee's expense.

(C) At any time the franchisee disturbs the yard, residence, or other real or personal property in the city, the franchisee shall ensure that the yard, residence, or other personal property is returned, replaced, and/or restored to a condition that is sufficiently comparable to the condition that existed prior to the commencement of the work.

(D) The costs associated with both the disturbance and the return, replacement, and/or restoration shall be borne by the franchisee.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.074 AERIAL CONSTRUCTION.**

(A) Aerial construction of facilities must be specifically authorized by the city prior to construction and located to minimize interference with the other uses of the rights-of-way and other public properties, and interference with the rights and reasonable convenience of property owners whose property adjoins any of the rights-of-way and other public properties.

(B) The decision to authorize above ground construction shall be applied in a nondiscriminatory manner. If other franchisees have facilities above ground and there is capacity available, above ground installations shall be permitted until such time as all franchisees are required to relocate underground. Aerial facilities shall be moved underground at the franchisee's own cost upon request from the city or when other users of the same rights-of-way convert to underground facilities.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.075 STANDARDS.**

Any work required or performed pursuant to this chapter shall be done in accordance with federal, state, local law, and the National Electric Code.

(A) In the event that the franchisee leases space on the poles or in the conduits of an electric or other utility, the franchisee shall abide by the construction and other requirements of said utility, and the granting of a communications franchise by the city shall not be construed or interpreted in any way to alleviate the franchisee's responsibilities and obligations to the pole or conduit owner.

(B) The franchisee, its contractors, subcontractors, and anyone directly or indirectly employed by the franchisee, shall conduct such operations so as to promote and preserve the public safety and general welfare of the citizens of the city.

(C) All construction, installation, or maintenance by the franchisee shall be completed with diligence and with respect to all property, contracts, persons, rights, and the interests and rights of the public.

(D) During any phase of construction, installation, maintenance, and repair of the system, the franchisee shall use materials of good and durable quality and all such work shall be performed in a safe, thorough, and reliable manner.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.076 TRAFFIC.**

The franchisee's work in the rights-of-way shall be accomplished with a minimum of disruption and interference to the free flow of vehicular and pedestrian traffic on the public rights-of-way or public land.

(A) The franchisee shall maintain lanes of vehicular traffic in each direction at all times during construction, installation, or maintenance activity.

(B) Traffic-control devices to protect and control pedestrian and vehicular traffic in any construction, maintenance, or installation areas may be prescribed by the city in accordance with the Manual on Uniform Traffic Control Devices.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.077 DELAY.**

The city's required improvements to city rights-of-way shall not be delayed by work authorized by this chapter.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.078 SPECIAL EXCEPTIONS.**

The city may grant a special exception to the requirements of this chapter if a franchisee, upon application, demonstrates with written evidence that:

(A) The exception will not create any threat to the public health, safety, or welfare;

(B) The franchisee demonstrates that the increased economic burden and the potential adverse impact on the franchisee's construction schedule resulting from the strict enforcement of the requirement actually or effectively prohibits the ability of the franchisee to provide communications services in the city;



(C) The franchisee demonstrates that the requirement unreasonably discriminates against the franchisee in favor of another person; and

(D) Any special exceptions shall be granted in a nondiscriminatory manner.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.079 INSPECTIONS.**

All construction, installation, and operation of the franchisee's system in the rights-of-way are subject to inspection by the city.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.080 REPAIR OF SUNKEN PAYMENT OVER EXCAVATION.**

(A) In case the pavement or the surface of the rights-of-way over any excavation should become depressed or broken at any time within five years after the excavation has been completed and before resurfacing of the rights-of-way, natural wear of the surface excepted, the franchisee shall, upon written notice from the city, immediately proceed to inspect the depressed or broken area over the excavation to ascertain the cause of the failure.

(B) The franchisee shall make repairs to the installation or backfill and have the pavement restored as specified by the city, within such time period as may be specified by the city.

(C) If the pavement is not restored as specified by the city within the time period specified by the city, and unless delayed by a strike or conditions beyond the franchisee's control, the city may cause the work to be done after giving the franchisee 24 hours' final notice. The cost thereof, including, but not limited to, any inspection costs and administrative overhead incurred by the city, shall be assessed against the franchisee.

(Ord. 1, Series 2003, passed 2-13-2003)

## **ADMINISTRATION OF FRANCHISE**

### **§ 111.095 CITY'S RESPONSIBILITY.**

The city shall be responsible for the continued administration of this chapter and any franchises granted hereunder.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.096 NO CAUSE OF ACTION AGAINST THE CITY.**

The franchisee shall have no remedy or recourse whatsoever against the city for any loss, cost, expense, or damage arising from any of the provisions or requirements of a franchise, or because of the enforcement thereof by the city, or for the failure of the city to have the authority to grant, all, or any part, of the rights therein granted; provided, however, that each franchisee acknowledges by its acceptance of the franchise that it has accepted the rights therein granted in reliance upon its independent and personal investigation and understanding of the power of authority of the city to enter into the franchise authorized herein with the franchisee; provided further, that each franchisee acknowledges by its acceptance of the franchise that it has not been induced to enter into the franchise upon any understanding or promise, whether given verbally or in writing by or on behalf of the city, or by any other person concerning any term or condition of the franchise not expressed therein; provided further, that the franchisee acknowledges by the acceptance of any franchise that it has carefully read the provisions, terms, and conditions hereof and thereof and is willing to, and does accept, all of the risk attendant to such provisions, terms, and conditions.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.097 NON-ENFORCEMENT BY THE CITY.**

A franchisee shall not be relieved of its obligation to comply with any of the provisions of this chapter or its applicable franchise by reason of any failure of the city to enforce prompt compliance.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.098 PUBLICATION OF NOTICES.**

A franchisee shall be responsible for all costs of publication that may be required with respect to its franchise or any amendments or renewals thereto.

(Ord. 1, Series 2003, passed 2-13-2003)

## **PRIVATE COMMUNICATIONS FACILITIES**

### **§ 111.110 APPLICATION FOR LICENSE.**

A person wishing to erect, install, maintain, operate, repair, replace, remove, or restore a private communications system in the rights-of-way must obtain a license therefore from the city. Such license shall only authorize placement of the private communications system in a specific portion of the rights-of-way for a limited period of time and for a specific purpose in connection with the person's business, and shall not permit the provision of communications service to any other person. Such person shall submit an application to the city on such form as may be developed by the city, accompanied by such application fee as may be determined by the city.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.111 CONDITIONS OF LICENSE.**

Any license shall be subject to such conditions as the city may from time to time establish, shall be expressly subordinate to the use of the rights-of-way by the city and the franchisees, and shall otherwise conform to the requirements of this chapter.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.112 COMPENSATION.**

A private communications system owner shall pay a fee established by the city from time to time to reflect the fair market value of the property used.

(Ord. 1, Series 2003, passed 2-13-2003)

### **§ 111.999 PENALTY.**

Except as expressly stated in this chapter, the express or implied repeal or amendment by this chapter of any other ordinance or part thereof shall not affect any liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this chapter. Those liabilities and penalties are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this chapter had not been adopted.

(Ord. 1, Series 2003, passed 2-13-2003)

## **CHAPTER 112: INSURANCE COMPANIES**

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- 112.01 Annual license fee imposed
- 112.02 Business of selling life insurance
- 112.03 Business of selling all other types of insurance
- 112.04 When payment due
- 112.05 Written breakdown of all collections in preceding year
- 112.06 KRS 91A.080 adopted by reference
- 112.07 Effective date

#### **§ 112.01 ANNUAL LICENSE FEE IMPOSED.**

There is hereby imposed on each insurance company a license fee for the privilege of engaging in the business of insurance within the corporate limits of the city for the calendar year 2001 and thereafter on a calendar-year basis.

(Ord. 1 Series 2001, passed 1-11-2001)

#### **§ 112.02 BUSINESS OF SELLING LIFE INSURANCE.**

The license fee imposed upon each insurance company which issues life insurance policies on the lives of persons residing within the corporate limits of the city shall be 5% of the first year's premiums actually collected within each calendar quarter by reason of the issuance of such policies.

(Ord. 1 Series 2001, passed 1-11-2001)

#### **§ 112.03 BUSINESS OF SELLING ALL OTHER TYPES OF INSURANCE.**

(A) The license fee imposed upon each insurance company which issues any insurance policy which is not a life insurance policy shall be 5% of the premiums actually collected within each calendar quarter by reason of the issuance of such policies on risks located within the corporate limits of the city on whose classes of business which such company is authorized to transact, less all premiums returned to policy holders.

(B) Any license fee or tax imposed upon premium receipts shall not include premiums received for insuring employers against liability for personal injuries to their employees, or death caused thereby, under the provisions of KRS Chapter 324, the Worker's Compensation Act and shall not include premiums received on policies of group health insurance provided for state employees under KRS Chapter 18.

(Ord. 1 Series 2001, passed 1-11-2001; Ord. 8, Series 2015, passed 2-12-2015)

#### **§ 112.04 WHEN PAYMENT DUE.**

All license fees imposed by this section shall be due no later than 30 days after the end of each calendar quarter. License fees which are not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6).

(Ord. 1 Series 2001, passed 1-11-2001)

#### **§ 112.05 WRITTEN BREAKDOWN OF ALL COLLECTIONS IN PRECEDING YEAR.**

Every insurance company subject to the license fees imposed by this section shall annually, by March 31, furnish the city with a written breakdown of all collections in the preceding calendar year for the following categories of insurance:

- (A) Casualty;

- (B) Automobile;
- (C) Inland marine;
- (D) Fire and allied perils;
- (E) Health;
- (F) Life; and
- (G) Other.

(Ord. 1 Series 2001, passed 1-11-2001)

**§ 112.06 KRS 91A.080 ADOPTED BY REFERENCE.**

The provisions of KRS 91A.080 are hereby adopted by reference and incorporated as part of this code of ordinances as fully as if set out at length herein; that statute provides for regulation by the Department of Insurance and includes penalties for violation of this section.

(Ord. 1 Series 2001, passed 1-11-2001)

**§ 112.07 EFFECTIVE DATE.**

The effective date of this chapter shall be July 1, 2001.

(Ord. 1 Series 2001, passed 1-11-2001)