

TITLE XII

STREETS, SIDEWALKS AND OTHER PUBLIC AREAS

CHAPTER 2

CABLE TELEVISION SYSTEM PERMITS

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12-2-1: General Provisions

- A. For the purpose of this Chapter, "Town" shall mean the Town of Olathe, Colorado, the Olathe Board of Trustees, or any other officer, employee, agent or body thereof authorized to act on behalf of the Town for purposes of the administration, enforcement or implementation of this Chapter.
- B. "Company" as used in this Chapter shall mean any person or legal entity granted a Cable Television System Permit pursuant to this Chapter.

12-2-2: Permit Required

- A. It shall be unlawful for any person to use any Town owned street, alley, right-of-way, easement or other property owned by the Town for purposes of the operation of a cable television (CATV) system or the installation or location of CATV lines, poles, cables or other facilities without a CATV System Permit granted in accordance with the provisions of this Chapter.
- B. Any CATV System Permit issued hereunder shall be non-exclusive. However, once a new CATV system permit is issued by the Town for initial construction of a CATV system, no additional permits shall be issued until either (1) the system for which the permit was issued is completed and activated, (2) the existing permit is revoked or abandoned, or (3) three years has passed, whichever occurs first.
- C. No CATV System Permit shall be granted until the Town Board determines that:
 - 1. The applicant, its proposed system and operation are financially viable.
 - 2. The applicant has the technical ability and necessary experience to successfully operate a CATV system.
 - 3. The applicant and its principals are of good moral character.
 - 4. The applicant is proposing adequate service to promote the public convenience and necessity.
 - 5. All requirements of this Chapter and other applicable requirements of law have been and will be complied with.
- D. Upon receipt of an application for a permit or renewal thereof, the Town Board may conduct such investigations and hold such hearings, as it deems necessary and proper to determine if the criteria of this Section have been met. Reasonable notice of any hearings scheduled shall be given to the applicant.
- E. No CATV System Permit may be transferred or assigned. If the permit or the CATV system is transferred by bankruptcy, receivership, assignment for the benefit of creditors or by operation of law, this permit shall terminate 120 days thereafter, unless an extension is granted by the Town Board to allow time for application for a new permit to be filed. A new permit to an assignee will not be unreasonably denied.

12-2-3: Term of Permit (Ord. 06-1996)

Any permit granted pursuant to this Chapter shall be valid for a term of 10 years, unless terminated prior to 10 years in accordance with other provisions of this Chapter.

12-2-4: Application for New CATV System Permit

- A. Applications for a new Permit shall be made on forms provided by the Town. The burden shall be on the applicant to prove that it meets the criteria for issuance of the Permit as specified in Section 12-2-2(C) above. The applicant may submit such information as it desires to meet its burden, but, as a minimum, the application form shall be fully completed and accompanied by the following:
1. An application fee as necessary to cover actual costs incurred by the Town in investigating and approving the permit, including publication costs and attorney's fees, not to exceed \$2,000. The Town shall give the applicant an initial estimate of such costs subject to adjustment for actual costs.
 2. The general description of all aspects of the proposed operation, including services to be provided, programming, office hours and location, etc.
 3. The proposed rates along with a guarantee that these rates will not be increased for a period of at least 1 year following original initiation of service.
 4. The complete plans for the construction of the proposed system and proposed system map unless the application is for a change of ownership of an existing system, in which event the existing system maps should be submitted.
 5. A list of other cable television franchises or permits held by the applicant, its parent, subsidiaries, or interlocking companies.
- B. The Town reserves the right to require any additional information necessary for its determination of whether or not the applicable criteria for granting the permit are met.
- C. Accompanying the application shall be a notarized certificate of the applicant stating that it accepts the authority of the Town to grant the permit, acknowledges the validity of all requirements of this Chapter, and certifies that the applicant will comply with all provisions of this Chapter.

12-2-5: Required Construction Schedule

Within 9 months after approval of a permit for a system which is not installed, the company shall commence significant construction of the system and shall complete system construction with due diligence. Thereafter construction shall be completed within 3 years of the issuance of the permit.

12-2-6: Renewal of Existing Permit (Ord. 06-1996)

- A. Applications for renewal of an existing CATV System Permit shall be submitted on forms provided by the Town and at a minimum be accompanied by the following:
1. An application fee as necessary to cover actual costs incurred by the Town in investigating and approving the permit, including publication costs and attorney's fees, not to exceed \$2,000. The Town shall give the applicant an initial estimate of such costs subject to adjustment for actual costs.
 2. The Company's existing rate schedule if not previously filed with the Town.
 3. Accompanying the application shall be a notarized certificate of the applicant stating that it accepts the authority of the Town to grant the permit, acknowledges the validity of all requirements of this Chapter, and certifies that the applicant will comply with all provisions of this Chapter.
 4. Current systems as-builts showing the location of all lines and system components.
- B. The Town may require any other additional information it deems necessary to determine whether or not the applicant for renewal meets the criteria set out in Section 12-2-2.

12-2-7: Revocation

- A. Any permit issued under this Chapter may be revoked by the Town Board if it determines that the company has failed to comply with any provision of this Chapter or the permit, or is in violation of any applicable provision of any federal, state or local law, and the Company fails to remedy the situation as provided in this Section.

- B. The Town shall provide the company with at least 10 days notice of the hearing on the alleged failure or violation during which time the company may remedy the situation. If the Board determines following the hearing that the grounds specified in Subsection (A) above exist, it shall set a reasonable time period in which the company may remedy the situation. If the company fails to remedy the situation in such period, the Board may revoke the permit or take such other action, as it deems appropriate.

12-2-8: Acquisition of the System by the Town or Removal

- A. 1. If the company shall cease operation or abandon its system during the term of the permit, the Town may acquire the system for the net book value thereof. If the permit is revoked by the Town Board, the Town may acquire the system at an equitable price. If the renewal of a permit is denied, the Town may acquire the system at fair market value, determined on the basis of the cable system as a going concern, but with no value allocated to the franchise itself. (Ord. 06-1996)
2. The Town shall deliver written notice to the company at its Olathe office of its intent to purchase the system. Within 10 days after delivery of the notice the company and the Town shall each appoint an arbitrator. These arbitrators shall within 15 days thereafter appoint a third arbitrator. The arbitrators shall then determine the fair market value or the net book value, as the case may be, of the property to be acquired and make a report to the Town and the company of their determination within 60 days of the date of the notice of intent to purchase.(Ord. 06-1996)
3. The Town shall have 30 days after receiving the report on the value to make a final determination whether or not to purchase the system. If the Town elects to purchase the system it shall specify the closing date, which shall be within 1 year thereafter, at which time the payment determined in accordance with this Section shall be made to the company and the system transferred to the Town. In the time prior to closing the company shall continue to operate the system and maintain it in good working order.
4. If the Town elects not to purchase the system, any permit in effect shall remain in effect.
5. The expenses of the third arbitrator and common expenses of the three arbitrators shall be shared equally by the Town and the company. The expenses of the arbitrator appointed by each shall be paid by the Town and the company respectively.

6. If the company fails or refuses to appoint an arbitrator or otherwise comply with this Section, the Town shall unilaterally determine the purchase price to be paid within the time limits provided in this Section or it may seek a court order enforcing compliance with this Section.
- B. The Town shall not be liable for severance damages on account of portions of the company's system located outside of the Town limits which will be severed because of the purchase by the Town; however, the Town will, upon request of the company, purchase such severed portions of the system located outside the Town on the same terms as it may purchase the systems within the Town.
 - C. In the event of termination of a permit without renewal, or revocation of the permit, if the Town does not elect to acquire the system in accordance with the procedures outlined in Subsection (A) above, the Town may require the Company to remove all of its cables, lines and facilities from Town streets, alleys and easements within a period of 6 months, repairing and restoring any damage caused thereby. If the company fails to remove such components within that period they shall become the property of the Town.
 - D. The provisions of this Section are alternatives to the Town's power of eminent domain which power is expressly reserved.

12-2-9: Use of Streets, Alleys and Easements

- A. Any permit issued under this Chapter gives the company the right to use Town owned streets and alleys, and those easements owned by the Town which, by their terms may be used for cable television facilities. Such use shall allow the installation and maintenance of wires, conduits, cables, poles and other appurtenant facilities used in the distribution and transmission of cable television. Such use shall be subject to the conditions of this Section. Nothing herein shall limit the Town's rights to vacate, sell or encumber any Town owned property if easements are reserved for any existing CATV lines or facilities.
- B. The location of the lines and other facilities shall be designed to minimize interference with other uses of the Town streets, alleys and easements. The company shall use the poles of the Telephone Company or power company whenever possible for its lines subject to the requirements of this Section for under grounding, unless such poles are unfit or unfeasible for use, in which event the lines shall be underground. The company shall not erect poles of its own unless power or telephone poles are unavailable and the Town determines that under grounding is technically infeasible or economically too costly.

- C. The company shall submit to the Town prior to construction, plans showing the location of all proposed lines and facilities to be installed in Town streets, alleys or easements. No such facilities or lines may be installed therein until the location has been approved by the Town. Within 24 hours of request by the Town, the company shall advise the Town of the location of any underground lines.
- D. The Town may require that any lines or other facilities be relocated or removed whenever necessary for the use, operation, maintenance, construction of Town streets, alleys and easements or other Town facilities. The cost of removal or relocation shall be borne by the company.
- E. No excavation may be made in any Town street, alley or easement without obtaining a permit from the Town in compliance with the provisions of the Town's Excavation Permit Ordinance. Provided, however, the company may claim as a credit against excavation permit fees, fees paid pursuant to Subsection 12-2-11(A), if it provides a cash deposit to be held for one year to guarantee proper restoration, in an amount determined by the Town. The company, at its expense, shall repair any damages or disturbance to any public streets, alleys or easements or pavement, sidewalks or improvements thereon caused by the company's operations. (Ord. 06-1996)
- F. The company shall furnish copies of its "as built" system map and keep an updated copy on file with the Town.
- G. All cables and lines shall be constructed underground when required by Town Subdivision Regulations or when located in areas where the power or telephone lines are underground.
- H. The company shall convert any of its overhead lines to underground lines upon the request of any person willing to pay for the cost of such conversion, or if the costs are paid in accordance with provisions of C.R.S. 29-8-101 et seq., the Colorado Underground Conversion of Utilities Act.
- I. In the event that an overhead cable route is eliminated because of inability to continue the use of the poles of the telephone or power company, the company shall underground its lines and facilities if the other utility is under grounding its lines and facilities. If such is not the case, then the company may install its own overhead pole lines if the Town determines that under grounding is technically infeasible or too expensive.

12-2-10: Rates

- A. Rates charged to customers within the Town shall be just, reasonable and nondiscriminatory. Rates shall be based solely upon operations of the company and revenues and expenses there from within the Town of Olathe. The company shall be entitled to fair and reasonable rates and charges for basic CATV service no higher than necessary to cover costs of service, assuming efficient and economical management, including a fair return on the fair value of the property devoted to such service.
- B. A current copy of the company's rates, charges, rules and regulations, including charges for connections and extensions, shall be kept on file with the Town at all times. This shall include the company's rules for termination of service for failure to pay charges due.
- C. No rate or charge may be increased unless a notice of intent to increase the rates or charges is filed at least 45 days in advance with the Town and a copy of such notice is sent with a bill to each subscriber.
- D. The Town shall have the right to regulate the rates the company charges for service to the maximum extent allowed by Federal law and may adopt additional regulations as appropriate to implement such regulation. The company shall have the burden of proving that the requested rate increase is necessary, just, reasonable and nondiscriminatory. The effective date of any rate increase may be suspended by the Town for a period of up to 90 days or until a final decision is reached by the Town, whichever occurs first. Any expense the Town incurs in investigating a requested rate increase, including reasonable legal and expert fees, shall be reimbursed to the Town by the company. Provided that such charges shall be estimated by the Town in advance and added to the allowable expenses of the company for the ensuing 12 month period in determining the projected expenses of the company for rate making purposes. (Ord. 06-1996)

12-2-11: Permit Fee

- A. In consideration of the rights and privileges granted under a permit, the company shall pay to the Town a permit fee as specified below. The fee shall not be surcharged or listed separately on any consumer's bill. The amount of the fee shall be 2% of gross revenues realized from operations from within the Town. Such gross revenue shall not include sales taxes collected on behalf of the Town or State but shall include all service revenue and standard connection charges from operations within the Town. (Ord. 06-1996)

- B. Payments shall be made quarterly to the Town and be accompanied by penetration figures for the last day of the quarter. Payments are due within 30 days after each 3 months quarter of the calendar year, with the first payment for each year due on April 30. This permit fee is in addition to any and all taxes, fees or charges imposed by the Town or other governmental entity.

12-2-12: Insurance and Liability

- A. The company shall fully indemnify, defend and hold harmless the Town and its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities, and judgment for damages, including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the Town in connection therewith, in anyway arising out of or through the acts or omissions of the company, its agents or employees, or the company's cable television operations under the CATV System Permit. This shall include any liability with regard to a claim for a violation of any law, including civil rights or anti-trust claims, and any litigation contesting the validity of this Chapter or the permit granted hereunder.
- B. The company shall maintain throughout the terms of the permit, liability insurance insuring the Town and the Company in amounts equal to or exceeding the current limits of the liability of the Town under the Colorado Governmental Immunity Act. Certificates of the insurance shall be filed with the Town for each policy containing an endorsement that it cannot be cancelled unless 30 days written notice of cancellation is provided to the Town. The company shall also maintain adequate fire and casualty insurance.(Ord. 06-1996)
- C. By acceptance of the grant of any permit pursuant to this Chapter, the company covenants and agrees that it will not at anytime or in any manner or proceeding set up against the Town any claim or proceeding challenging this Chapter or the grant of the permit pursuant to this Chapter as being invalid for any reason.

12-2-13: Service Area and Line Extensions

- A. The company shall be required to provide and extend service to all persons within the Town limits of Olathe desiring service who pay the company's standard connection charge and monthly fee.

12-2-14: Minimum Service and Operation Requirements

- A. The company shall provide customers with a toll free telephone number with which to contact the company, 24 hours a day. The company shall retain maintenance personnel, able to respond to service calls promptly, located in Western Colorado. Complaints shall be responded to promptly and courteously by the Company, and a log shall be kept, listing all complaints, service requests, dates and disposition thereof available for inspection by the Town.
- B. The company shall at all times comply with the regulations and laws of the State of Colorado and the United States and any of its agencies.
- C. Construction and the operation of the system shall comply with the Town's Building and Electrical Codes and any other applicable regulations and ordinances.
- D. The system shall be designed to provide subscribers with a uniform high quality of reception throughout the Town and shall be operated continuously. The system shall have a minimum capability of not fewer than 50 video channels. The Company shall meet the minimum technical standards for operation and signal quality prescribed pursuant to 47 U.S.C. 544(e). (Ord. 06-1996; 00-09)
- E. The company shall provide continuous service to all subscribers in return for the payment of their fee. In the event the company fails to operate the system for 5 days, the Town shall have the right to operate the system until such time as a new operator is approved and shall be reimbursed for any costs or expenses incurred as a result of the company's failure to operate the system, unless such failure is on account of technical impossibility, acts of god, disaster, war, or other such reasons beyond the company's control. Financial problems, misfeasance or malfeasance of the company or its employees shall be no excuse for failure to operate.
- F. The company shall, to the extent economically feasible, take advantage of new technical developments in the field of transmission of television or radio signals which would afford the company the opportunity to be more efficient and to provide better service, and shall as far as reasonably practical, maintain the current state of the art with regard to cable television systems.
- G. The company shall temporarily move or relocate any of its lines, cables or other facilities when necessary for construction, moving a building or otherwise, if the expense of such operation will be paid by the person requesting it.

- H. Copies of any company customer surveys and the results thereof shall be submitted to the Town within 30 days. (Ord. 06-1996)

12-2-15: Local Access

- A. The Town or other governmental entity shall be authorized to make emergency use of the company's system and the company shall install a capability for emergency messages to be transmitted on all channels simultaneously, if economically feasible to install such capability.
- B. The company shall provide at least 1 channel, which can be used nonexclusively as a public access channel.
- C. The Town shall have the right to place public service messages on the weather channel scroll, to be transmitted by company. (Ord. 06-1996)
- D. Company shall install at company expense at Town Hall the necessary equipment to program and transmit video and audio messages by computer or video cassette tapes, on the public access channel. The Town shall control use of such equipment and transmissions there from and shall require any programming provider, other than the Town itself, to execute a hold harmless agreement in favor of the Company and the Town. (Ord. 06-1996)

12-2-16: Financial Reports and Access to Records

The Town shall have access to all business records and financial records of the company upon request as necessary to audit payment of permit fees.

12-2-17: Reservation of Rights

The Town reserves the right to adopt additional regulations and ordinances governing the operation of CATV systems in accordance with the lawful exercise of its police power.

12-2-18: Notices

Any notices required, to be given to the Town shall be delivered to the Mayor at Town Hall. Notices to the company may be delivered to the local business office required, to be kept by the company.

12-2-19: Free Connections

The company shall provide, free of charge, one cable television connection outlet to each building owned by the Town, each public school located within the Town, each public library within the Town, the Olathe Fire District's fire house, and any youth center or school for the handicapped,

upon request. This shall not require the company to provide channels, which are premium, pay channels.

12-2-20: Tampering with CATV Facilities

It shall be unlawful for any person to interfere with, tamper with, damage, destroy, or operate any part of any CATV system, or to connect to such system, or utilize service from such system without lawful authorization to do so.

12-2-21: Enforcement

In addition to any other remedies, this Chapter may be enforced by an action for specific performance or injunction in a court of competent jurisdiction.