

Chapter 61
TELEVISION, CABLE

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[HISTORY: Adopted 1-7-80. Subsection designations revised 3-6-95. Amendment history noted where applicable.]

§ 61-1. Franchise required; penalty.

(a) It shall be unlawful for any person to own, operate or solicit subscribers for any cable television system without first having obtained a franchise from the franchise authority.

(b) Violation of this section shall be a misdemeanor and punishable by a fine not to exceed five hundred dollars (\$500) or imprisonment not to exceed ninety (90) days, or both.

§ 61-2. Definitions.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings herein unless the context clearly indicates that another meaning is intended. When not consistent with the context, words used in the present tense include the future. Words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"Agency" -- The Town Council or the person, department or agency designated by the Council, by resolution, to act for it in administrative matters relating to cable television.

"Auxiliary services" -- Any communication service in addition to regular subscriber services, including but not limited to pay television, burglar alarm service, data transmission, facsimile service, home shopping service, etc.

"Cable television system" or "CATV system" -- Any facility that, in whole or part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one (1) or more television or radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service.

"Channel" -- A band of frequencies six (6) megahertz wide in the electromagnetic spectrum capable of carrying either one (1) audio-visual signal or a few non-video signals or a large number of non-video signals.

"Federal Communications Commission" or "FCC" -- The present federal agency of that name as constituted by the Communications Act of 1934 or any successor agency created by the United States Congress.

"Franchise" -- An authorization granted by the town which permits construction, operation and maintenance of a cable television system within the franchise area under terms not inconsistent with this chapter.

"Franchise area" -- That portion of the franchise entity for which a franchise is granted under the authority of this chapter. The "franchise area" may or may not be coterminous with the franchise entity.

"Franchise authority" -- The governing body of the franchise entity.

"Franchise entity" -- The Town of Riverdale Park, Maryland, as presently constituted and including any area henceforth added thereto during the terms of any franchise granted hereunder.

"Grantee" -- Any entity, its successors, heirs or assigns who shall be awarded a franchise in accordance with the provisions of this chapter.

"Gross revenues" -- Revenues derived directly or indirectly by a grantee from both regular subscriber service and auxiliary services.

"Gross subscriber revenues" -- Those revenues derived directly or indirectly by a grantee from the supplying of regular subscriber service, that is, the installation fees, disconnect and reconnect fees and fees for regular cable benefits, including the transmission of broadcast signals and access and origination channels if utilized. It does not include revenues derived from auxiliary services or from any taxes, whether or not passed on to users, per-program or per-channel charges, leased channel revenues, advertising revenues or any other income derived from the system.

"Major stockholder" -- A beneficial owner, directly or indirectly, of ten percent (10%) or more of the issued and outstanding voting stock of any corporation.

"Persons" -- Any people, firms, corporations, associations or other legally recognized entities.

"Public way" -- The surface of and the space above and below any public street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, alley, right-of-way, public utility easement and any other public ground or water subject to the jurisdiction and control of the franchise entity.

"Regular subscriber service" -- That service regularly provided to all subscribers. It includes all broadcast signal carriage and Federal Communications Commission-required access channel carriage, including origination programming. It does not include specialized programming for which a pre-channel charge is made.

"Subscriber" -- Any person receiving regular subscriber service.

§ 61-3. Limitations of franchise.

(a) The franchise granted under this chapter shall be nonexclusive, and nothing herein shall be construed to prevent the franchise authority from granting identical or similar franchises to more than one (1) person within all or any portion of the franchise entity.

(b) Any grantee shall, at all times during the life of this franchise, be subject to the lawful exercise of the franchise entity's police power and such reasonable regulations as the franchise authority may subsequently promulgate thereunder. Nothing contained in this ordinance shall be deemed to prohibit in any way the right of the Council to levy nondiscriminatory occupational license taxes on any activity conducted by the grantee.

(c) All privileges prescribed by this chapter shall be subordinate to any prior lawful occupancy of the public streets, and the franchise authority reserves the right to reasonably designate where a grantee's facilities are to be placed within the public ways.

(d) The franchise shall be a privilege which is personal to the original grantee. It shall not be sold, transferred, leased, assigned or disposed of, in whole or in part, either by sale, merger, consolidation or otherwise, without prior consent of the franchise authority expressed by resolution, and then only under such conditions as may therein be prescribed. Any such proposed transfer or assignment shall be made only by an instrument in writing, which shall include an acceptance of all terms and conditions of the franchise by the transferee, a duly executed copy of which shall be filed with the agency within thirty (30) days after any such transfer or assignment.

(e) The granting of any franchise shall be based upon the franchise authority's judgement as to whether it will serve the public's interest, the applicant's construction, technical and financial plans and arrangements and the benefits to the welfare and safety of the town and its citizens. Such judgement shall be discretionary, and no provision of this chapter shall require the granting of a franchise.

(f) Nothing herein shall be deemed to in any way impair or affect the right of the town to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a price reflective of its fair market value as an ongoing concern, and nothing herein shall be construed to constitute a waiver or bar to the exercise of any governmental right or power of the town.

§ 61-4. Liability and indemnification.

(a) The grantee shall pay, and by its acceptance of a franchise specially agrees to pay, any and all damages or penalties which the town may be legally required to pay as a result of the grantee's installation, operation or maintenance of a franchise cable television system under this chapter, whether or not the acts or omissions complained of are authorized, allowed or prohibited by the town.

(b) The grantee shall also pay all expenses incurred by the town in defending itself with regard to any and all damages and penalties mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, including reasonable attorney's fees and the reasonable value of services rendered by any employee of the town.

(c) The grantee shall maintain, throughout the term of the franchise, liability insurance insuring the town and the grantee with regard to all damages mentioned in subsection (a) above, set forth in the franchise.

§ 61-5. Technical requirements and channel capacity.

Any CATV system to be constructed by a grantee shall be installed, maintained and operated at all times in full compliance with the technical and channel capacity standards of the Federal Communications Commission. The results of annual performance tests conducted in accordance with section 76.601 (c), Federal Communications Commission Rules (or such other section of the rules as shall incorporate its substance), shall be retained for at least five (5) years and be available for inspection by the town.

§ 61-6. Safety requirements.

The grantee shall at all times:

(a) Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the town and county building, electrical, fire, health and plumbing codes and in such manner that they will not interfere with any installations of the town.

(b) Keep and maintain in a safe, suitable and substantial condition and in good order and repair, all structures, lines, equipment and public ways or places of the town, wherever situated or located.

§ 61-7. Service standards; business office; complaints; inspections.

Throughout the life of its franchise, a grantee shall:

(a) Maintain all parts of its system in good condition and in accordance with standards generally observed by the cable television industry. Sufficient employees shall be retained to provide safe, adequate and prompt service for all of its facilities.

(b) Maintain a conveniently located business office and service center to which subscribers may telephone without incurring added message units or toll charges. This office shall be open during all usual business hours and be so operated that complaints and requests for repairs or adjustments may be received by telephone at any time when any television signals are being broadcast.

(c) Dispatch personnel to investigate all service complaints and equipment malfunctions within twenty-four (24) hours and strive to resolve such complaints as promptly as possible. Planned interruption of service shall be only for good cause. Insofar as possible, planned service interruptions shall be preceded by notice, be of brief duration and occur during minimum viewing hours.

(d) Maintain a complete list of all complaints received, and the measures taken to resolve them, in a form to be approved by agency. This list shall be available to the agency upon request.

(e) Permit the agency to inspect and test the system's technical equipment and facilities upon reasonable [twelve (12) to twenty-four (24) hours'] notice.

§ 61-8. Conditions for use of public ways.

(a) Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a grantee shall be done under the supervision and direction of the agency under permits issued for work by the proper officials of the town and shall be done in such manner as to give the least inconvenience to the inhabitants of the town. The grantee shall, at its own cost and expense and in a manner approved by the agency, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done and shall also make and keep full and complete plats, maps and records showing the exact locations of its facilities located within the public streets, ways and easements of the franchise entity. These maps shall be available for inspection at any time during business hours by the agency.

(b) The grantee shall, at its expense, protect, support, temporarily disconnect, relocate or remove any of its property when required by the town by reason of traffic conditions, public safety, road construction, change of street grade or installation of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of municipal improvement.

(c) The grantee shall, on the request of any person holding a building moving permit issued by the town, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given no less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

(d) The grantee shall have authority to trim the trees upon and overhanging the public street so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, except that, at the option of the town, such trimming may be done by it or under its supervision and direction at the expense of the grantee.

(e) In all sections of the franchise area where the cable, wires or other similar facilities of public utilities are placed underground, the grantee shall place its cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits.

§ 61-9. Indemnity bond.

Concurrently with the acceptance of its franchise, a grantee shall file with the town a bond with an acceptance surety in an amount designated by the town to indemnify the town against any losses it may suffer in the event that the grantee fails to comply with one (1) or more of the provisions of its franchise. Said bond shall be obtained at the sole expense of the grantee and remain in effect for the full term of the franchise or any renewal thereof, plus an additional six (6) months thereafter.

§ 61-10. Franchise fee.

The town shall be entitled to collect a franchise fee in such amount as may be from time to time established by the Council for each franchise granted.

§ 61-11. Acts beneficial to subscribers.

The town shall be empowered to include as part of any franchise such terms and conditions as it deems beneficial to the subscribers in the franchise area, including the regulation of rates charged to such subscribers.

§ 61-12. Public service requirements.

A grantee shall:

(a) Provide at least one (1) service outlet to all municipal facilities, libraries and schools within its franchise area at no cost to the town, library or schools involved.

(b) Make its facilities immediately available to the town upon request during the course of any emergency or disaster.

§ 61-13. Duration of franchise. [Amended 8-1-94.]

The council shall establish the duration of each franchise granted under this ordinance and the terms and conditions for any renewal thereof. Upon the written request of a franchisee and the furnishing of information in support of such request as being in the best interest of subscribers, the Council shall have the power to extend an existing franchise for a period of time less than that of the franchise as originally granted.

§ 61-14. Tampering and unauthorized connections.

It shall be unlawful for any person to make or use any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable television system within the town for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program or sound without authorization of the grantee or owner of said system.

§ 61-15. Individual antennas and reception protected.

This ordinance shall not prohibit the erection or continued use of individual television antennas nor require any person to receive cable television service or connect with a cable television system.

§ 61-16. Delegation of powers.

The Council shall have the right to delegate any right, benefit, duty, obligation or power under this chapter to the agency or any employee, officer or department of the town.

§ 61-17. Promulgation of rules and regulations.

The Council shall have the authority to promulgate such rules and regulations as are necessary to implement, administer and enforce this chapter and any franchise granted hereunder.

§ 61-18. Forfeiture of franchise.

In addition to the rights and powers pertaining to the town contained in any franchise, the town shall have the right to terminate and cancel a franchise if the grantee refuses to obey any duly promulgated rule, order or promulgation of the Council or agency made pursuant to a franchise, becomes insolvent, unable or unwilling to pay its debts or is adjudged a bankrupt or attempts to evade any of the provisions of a franchise or practices any fraud or deceit upon the town; provided, however, that before any franchise may be terminated or canceled under this section, the grantee shall be entitled to a hearing before the Council.

§61-19. Filing Fees. [Amended 11-6-06]

A. To be acceptable for filing, any application of the type listed below submitted after the effective date of this chapter shall be accompanied by a non-refundable filing fee of five thousand dollars (5,000), payable to the Town of Riverdale Park to cover costs incidental to the awarded or enforcement of the franchise, as appropriate:

- 1) Application for an initial franchise or for issuance of an RFP.
- 2) Application for renewal of a franchise.
- 3) Application for modification or franchise agreement.
- 4) Application for approval of a transfer.

B. To the extent consistent with applicable law:

- 1) The city may require the franchisee or, where applicable, a transferor or transferee to reimburse the town for its reasonable out-of-pocket expenses in considering the application, including consultants' fees.
- 2) No payments made hereunder shall be considered a franchise fee, but fall within one or more of the exceptions in 47 U.S.C. §542(g) (2).