

CHAPTER 21

VIDEO SERVICE / CABLE COMMUNICATIONS

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21.001 SHORT TITLE. This chapter shall be known as the "City of West Bend Video Service / Cable Communications Ordinance.

21.002 PURPOSES. The purposes of this chapter are to:

- (1) Protect the public health, safety and welfare;
- (2) Provide for the regulation by the City of the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of Cable Systems in, upon, along, across, above, over and under or in any manner connected with the streets or other public ways within the City, as it now or in the future may exist;
- (3) Provide for the payment of fees and other valuable considerations to the City for the use of City streets and other public ways by Providers as well as to compensate the City for costs associated with such use;
- (4) Provide for the development of Cable Systems as a means to improve communications between and among, and to otherwise serve the present and future needs of, the citizens, government and private and public institutions, organizations and enterprises of the City and surrounding communities; and
- (5) Provide remedies and prescribe penalties for violations of this chapter.

21.003 DEFINITIONS.

(1) When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number.

(2) For the purposes of this chapter, the following terms, phrases and words and their derivations have the meanings given herein, unless it is clearly stated that another meaning is intended.

(a) Cable Act. The Cable Communications Policy Act of 1984 (47 U.S.C. 521, et. seq.), as amended from time to time.

(b) Cable System. Shall be defined as set forth in 47 U.S.C. 522(7) and shall include video service as defined in sec. 66.0420(2) (y), Wis. Stats.

(c) City. The City of West Bend, County of Washington, State of Wisconsin, in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.

(d) Council. The governing body of the City.

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(e) Franchise. A non-exclusive authorization granted by the State of Wisconsin pursuant to the Wisconsin Video Service Law to construct, operate and maintain a Cable System within the City.

(f) PEG Channels. Public, educational and governmental access channels.

(g) Provider. Any entity including a corporation, joint venture, association, partnership or individual to whom or to which a Franchise is granted or lawfully transferred.

(h) Street or Public Way. The surface of and space above and below any public street, roadway, highway, bridge, freeway, land path, alley, court, sidewalk, easement, right of way, or similar public way now or hereafter existing as such within the City.

(i) Subscriber. Any person or entity lawfully receiving for any purpose the Cable System services of a Provider.

(j) Wisconsin Video Service Law. Section 66.0420 of the Wisconsin Statutes, as amended from time to time.

(3) Any word, phrase or term defined in the Cable Act, but not defined in this section, shall have the meaning set forth in Section 522 of the Cable Act.

(4) Any word, phrase or term defined in the Wisconsin Video Service Law, but not defined in this section, shall have the meaning set forth in Section 66.0420(2), Wis. Stats.

21.004 CONFLICTING PROVISIONS. This chapter is adopted pursuant to the authority of the City under the Constitutions and Statutes of the State of Wisconsin and the United States of America, including but not limited to the Cable Act and the Wisconsin Video Service Law. Where any provision of this chapter conflicts with any provision of state or federal law, this chapter shall control to the full extent permitted by law.

21.005 DESCRIPTION OF A SYSTEM. Any Cable System operated and maintained within the City shall be designed, constructed, and operated in accordance with the technical standards adopted by the Federal Communications Commission for Cable Systems contained in Part 76 of the Federal Communications Commission's rules and regulations, as amended from time to time.

21.006 CONDITIONS ON STREET OCCUPANCY.

(1) All transmission and distribution structures, lines and equipment erected by a Provider within the City shall be so located as not to cause interference with the proper use of streets and other public ways and places, and not to cause interference with the rights or reasonable convenience of property owners who adjoin any of the streets or other public

ways and places.

(2) The Provider shall obtain permission from the City before commencing disturbance of pavement, sidewalk, driveway or other surfacing of a street or public way, and shall, at its own cost and expense and in a manner approved by the City, replace and restore all pavement, sidewalk, driveway or other surface of any street or public way disturbed in as good condition as before such work commenced. The Provider shall comply with all City ordinances and specifications relating to street openings and utility facility placement and operation.

(3) If, at any time during a Franchise, the City shall elect to alter or change the location or grade of any street or public way, the Provider, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense, pursuant to state law. If any construction by the Provider is in violation of the provisions of this section or any other city ordinance, the Provider shall likewise, upon reasonable notice by the City, remove, relay and relocate its property in such a manner as to remedy such violation at its own expense.

(4) The Provider shall not place poles or other fixtures where the same will interfere with any gas, electric, telephone or other fixture, water hydrant or main. All such poles or other fixtures placed in any street shall be placed between the outer edge of sidewalk and the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on such alley in such a manner as not to interfere with the usual travel on the streets and public ways. Nothing in this chapter shall prohibit the use by the Provider of existing public utility poles where practical, providing mutually satisfactory agreements can be entered into.

(5) A Provider shall, at the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The reasonable expenses of such temporary raising or lowering of the wires shall be paid by the person requesting the same, and the Provider may require such payment in advance. The Provider shall be given at least two weeks advance notice to arrange for such temporary wire changes.

(6) The Provider, after obtaining permission from the City in each instance, may at its own expense trim trees that overhang streets, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Provider.

(7) In those areas of the City where existing telephone and electric services and facilities are located underground, a Provider installing or replacing cable facilities and equipment shall also place its facilities and equipment underground. In those areas of the City where existing telephone and electric services and facilities are located above ground, a Provider may also install or replace its cable facilities and equipment above ground, but shall relocate the cable facilities and equipment underground at such time as the telephone and electric services and facilities are required to relocate underground. Any reimbursement by the City for the costs of such relocation shall be upon the same terms and conditions as any reimbursement for the telephone and electric utilities.

21.007 FEE.

(1) In accordance with sec. 66.0420(7), Wis. Stats., a Provider shall pay to the City a video service provider fee of 5% of the Provider's gross receipts.

(2) No acceptance of any payment by the Provider to the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a video service provider fee or for the performance of any other obligation of the Provider.

21.008 SUBSCRIBER RIGHTS. A Provider shall fully comply with the privacy rights of Subscribers as contained in the Cable Act.

21.009 CONSUMER SERVICE STANDARDS. A Provider shall comply with all customer service standards as described in sec. 100.209, Wis. Stats., and any customer service standards promulgated by rule by the Wisconsin Department of Agriculture, Trade and Consumer Protection, as that statute and rules are amended from time to time.

21.010 PUBLIC, EDUCATIONAL AND GOVERNMENTAL CHANNELS

(1) In accordance with sec. 66.0420(5), Wis. Stats., each Provider shall provide channel capacity in the City for three full-time PEG channels.

(2) The City shall have sole authority and responsibility for the administration of the PEG channels, unless it delegates such authority and responsibility. The City shall prescribe:

(a) rules and procedures under which the Provider is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and

(b) rules and procedures under which such permitted use shall cease.

21.011 NON-ENFORCEMENT BY THE CITY. The Provider shall not be relieved of any obligation by reason of any failure of the City to enforce prompt compliance with any provision of this chapter, the Wisconsin Statutes or the Cable Act.

21.012 WAIVER OR EXEMPTION. The City reserves the right to waive provisions of this chapter, or exempt a Provider from meeting provisions of this chapter, if the City determines such waiver or exemption is in the public interest.

21.013 WEST BEND COMMUNITY TV COMMITTEE.

(1) The function of the West Bend Community TV Committee is to supervise the enforcement of the provisions of this chapter. Said Committee shall consist of 5 members, 4 of whom shall be citizens of the City and one of whom shall be a member of the Council. The Mayor shall appoint citizen members to 3 year terms and the Alderperson member to a one year term. The City Clerk shall serve as secretary to the Committee and shall keep all the records, but shall not be a member of the Committee. The Committee shall meet at least quarterly and at such other times as they may deem appropriate. The Alderperson appointed to the Committee shall serve as the Chairperson of the Committee.

(2) The Community TV Committee shall be charged with the responsibility of the general coordination and direction of the activities of the City's PEG channels as they relate to this chapter as well as such other duties the Council shall direct.

(3) The Community TV Committee shall also recommend to the Council expenditures of the revenues received under this chapter.

(4) The Community TV Committee shall have the authority to establish fees for the reproduction of tapes and other access center services on an annual basis which reflect the cost of use of equipment, materials and labor.

21.014 SEVERABILITY. Should any word, phrase, clause, sentence, paragraph or portion of this chapter be declared to be invalid by a Court of competent jurisdiction, such adjudication shall not affect the validity of this chapter as a whole, but shall only affect the portion thereof declared to be invalid; and the Council hereby expressly states and declares that it would nonetheless have passed this chapter had it known that any such word, phrase, clause, sentence, paragraph or portion of said chapter were invalid.

21.015 PENALTY. Except as otherwise provided herein, any person or Provider who violates any provision of this chapter shall be subject to a penalty as provided in sec. 25.04 of this Code.