

ORDINANCE NO. 052, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE I OF CHAPTER 6 OF THE CODE OF THE CITY
OF FORT COLLINS REGARDING CABLE COMMUNICATIONS SYSTEMS

WHEREAS, in 1978 the City Council approved Ordinance No.073, 1978, adding new provisions to the City Code (now in Article I of Chapter 6) regarding cable communications systems; and

WHEREAS, in March 1987 the voters approved Ordinance No. 204, 1986, amending the City Charter to permit the City Council to grant franchises for use of the City's streets and other property without a vote of the electorate as was previously required; and

WHEREAS, in 1992 the United States Congress passed the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act"); and

WHEREAS, Article I of Chapter 6 of the City Code regarding cable communications systems and cable franchise agreements has not been amended to update or otherwise modify it since 1978; and

WHEREAS, the City Attorney's Office and outside counsel for the City recently reviewed Article I and concluded that it should be amended to update it and make it consistent with the current language of the City Charter and the Cable Act; and

WHEREAS, the proposed amendments include the following:

- Allowing an exception to the franchise requirement if the City Charter otherwise permits it;
- Changing the notice requirements for the public hearing to match the language of the Charter;
- Eliminating the five-year build out requirement, allowing the time period for build-out to be negotiated in the franchise agreement;
- In recognition of the fact that new cable franchisees may only be serving small portions of the City, eliminating the requirement for franchisees to locate their main office and head-end facilities in the City;
- Limiting the City's right to purchase a franchisee's cable system upon expiration of a franchise term, as under the Cable Act franchisees are entitled to renew their franchise;
- Providing options for how franchisees may provide security to the City for their performance, and more flexibility to negotiate the appropriate amount of such security;
- Deleting the provision on criminal violations for unauthorized connections to or tampering with a franchisee's cable system, as (i) the City's cable provider has always handled such violations civilly without law enforcement involvement, and (ii) this Article is not the best location for this type of provision, if it were considered necessary, because the Article is about how the City will manage a cable franchise, not about third party criminal activities related to cable systems; and

WHEREAS, the City Council has determined that the proposed amendments are in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Article I of Chapter 6 of the City Code is hereby amended to read as follows:

Sec. 6-1. - Operation requirements; nonexclusivity of franchise.

Except as otherwise provided in the Charter of the City of Fort Collins, no person shall own or operate a cable television system in the City except by virtue of a franchise granted by the City. No exclusive franchise shall ever be granted.

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Sec. 6-3. Public hearing required; publication of notice.

The City Council shall award a franchise only after a public hearing on the application or proposal, notice of which hearing shall be published in a local newspaper of general circulation once a week for three (3) successive weeks immediately before the date of the hearing.

Sec. 6-4. Time limit for service.

Any franchise granted by the City shall specify the deadline by which service shall be made available to occupied dwelling units of the City or other defined service area.

Sec. 6-5. Franchise agreement and registration.

An applicant awarded a franchise by the City Council shall execute a franchise agreement with the City. In addition, the franchisee shall, within sixty (60) days of the date of the execution of the franchise agreement, submit to the City a copy of the franchisee's registration as a cable operator within the City that has been filed with the Federal Communications Commission. The failure of the applicant to file such registration within the time limits specified shall be grounds for immediate revocation of any rights the applicant may have had in the franchise.

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Sec. 6-7. Time limit for construction.

Within six (6) months of the granting of a franchise pursuant to this Chapter, the franchisee shall commence construction of any main office or head-end facilities it intends to locate in the City.

Barring delays caused by factors beyond the control of the franchisee, the facilities shall be completed and in operation within one (1) year of the granting of the franchise.

Sec. 6-8. Periodic examination of performance.

Each franchisee shall upgrade its facilities, equipment and service so that its system is, within reason, as advanced as a current state of economically feasible production technology will allow. In furtherance of this goal, on the fifth, tenth and fifteenth anniversaries of the granting of any franchise pursuant to this Chapter, the City Council may conduct a public hearing to examine the performance of the franchisee and to consider recommendations for changes in its facilities, equipment and services.

Sec. 6-9. Local access for broadcasting.

Any cable system shall provide channels for public access, educational access, and government access to meet the future cable-related needs of the community as negotiated in the cable franchise.

Sec. 6-10. Right of City to purchase system.

Upon expiration of the term of a franchise without renewal, or upon other termination thereof, the City may, upon the payment of its fair valuation, purchase and take over the property and plant of the franchisee in whole or in part.

Sec. 6-11. Liability and indemnification of City.

The franchisee shall indemnify and hold harmless the City at all times during the term of the franchise and specifically agree that it will pay all damages and penalties which the City may legally be required to pay as a result of the granting of the franchise and the franchisee's operation of the cable system.

Sec. 6-12. Performance bond or letter of credit.

Concurrent with its acceptance of a franchise, a franchisee shall file with the City Clerk and at all times thereafter maintain, in full force and effect, a corporate surety bond or letter of credit in the amount of up to one hundred thousand dollars (\$100,000.) renewable annually and conditioned upon the faithful performance of the terms and conditions of the franchise agreement. The City Council may, in its sole discretion, waive said bond or letter of credit or reduce the required amount thereof after five (5) years of operation of a system under the franchise.

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Sec. 6-15. Fees.

During the term of any franchise granted pursuant to this Chapter, the franchisee shall pay to the City for the use of its streets, public places and other facilities, as well as the maintenance, improvements and supervision thereof, an annual franchise fee in the amount to be determined by the City Council in accordance with applicable law. This payment shall be in addition to any other tax or payment owed to the City by the franchisee.

Introduced, considered favorably on first reading, and ordered published this 19th day of March, A.D. 2019, and to be presented for final passage on the 16th day of April, A.D. 2019.

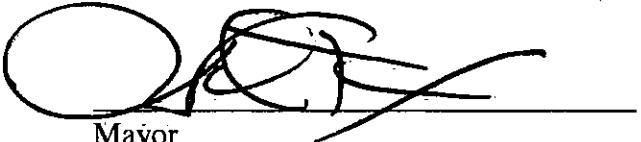

Mayor

ATTEST:



City Clerk



Passed and adopted on final reading on the 16th day of April, A.D. 2019.


Mayor

ATTEST:


City Clerk

