

CHAPTER THIRTEEN

FRANCHISE

ARTICLE 1 - GRANT OF FRANCHISES

13.0101 Power to Grant

The City Council may grant to any person, firm, partnership, association, corporation, limited liability company, company, or organization of any kind, a franchise or special right or privilege to operate or do business in the City, but such franchise shall be subject to the provisions of this article.

For the purposes of this chapter, the term "company" shall mean any grantee of rights under the terms of this chapter.

Source: Section 40-05-01 (57) NDCC

13.0102 Compliance with Applicable Laws and Ordinances

The grantee of any franchise during the life of the franchise shall be subject to all lawful exercise of the police power of the City, and to such reasonable regulations as the City shall, by resolution or ordinance, provide.

Source: Section 40-05-01 (57) NDCC

13.0103 Indemnification

The grantee of any franchise shall indemnify and save the City, its agents and employees, harmless from all and any claims for personal injury or property damages, and any other claims, costs, including legal fees, expenses of investigation and litigation of claims and suits thereon, which may arise from the activities of the grantee of the franchise in this City.

Source: Section 40-05-01 (57) NDCC

13.0104 Liability Insurance

Any grantee of a franchise by the City shall carry and keep in force a public liability

policy of insurance, insuring the grantee of the franchise and the City against any and all liability in an amount which shall be established by the City Council for property damage and for any one person, personal injury, or death as a result of the negligence of the franchisee, their agents, employees or the City, its agents or employees as a result of the franchisee's activities.. The City may demand proof of such insurance coverage with an insurance company licensed to do business in the State of North Dakota. Such policy or policies of insurance or certificates thereof by a company licensed to do business in the State of North Dakota shall be filed with the City prior to final approval of any franchise drafted hereunder.

Any company, upon receipt of notice in writing from the City, shall defend, at its own expense, any action or proceeding against the City in which it is claimed that an injury or damages arose from the company's activities in the operation of its franchise. The City shall notify the company's representatives in the City within thirty (30) days after presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence or actions on the part of the company.

Source: Section 40-05-01 (57) NDCC

13.0105 Term and Regulations

Except where given to a railroad company, the franchise term shall not exceed twenty (20) years and the City Council shall regulate use of the same; specifically, franchises granted pursuant to this chapter, are not to be exclusive or irrevocable but subject to the regulatory powers of the City Council.

Source: Section 40-05-01 (57) NDCC

13.0106 Standards

The company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are or may be set forth by the City Council and as provided by the applicable state law or state agency.

Source: Sections 40-05-01 (17, 24, 27, 28, and 57), 40-34-10, and Chapter 51-19 NDCC

13.0107 Grant of Authority - Exclusiveness

The right to use and occupy such streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive and the City reserves the right to grant similar use of such streets, alleys, public ways and places to any other person or persons during the period of any franchise granted pursuant to this chapter.

Source: Section 40-05-01 (57) NDCC

13.0108 Conditions Upon Street Occupancy

For usage of any streets, alleys, public ways, and public places by a franchise business granted by the City Council, the following restrictions apply:

1. Use, generally. All structures, lines and equipment erected or constructed by the company within the City shall be so located as to cause minimum interference with any proper use of the streets, alleys, public ways and public places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any such streets, alleys, or other public ways and places, and must comply with all City Zoning Ordinances.
2. Restoration. In case of any disturbance of pavement, sidewalk, driveway, or other surfacing, the company shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore all paving, sidewalk, driveway or surface of any street, alley, public place or public way so disturbed in as good condition as before the work was commenced and shall maintain the restoration in an approved condition for a period of at least one year thereafter.
3. Relocation. In the event that at any time during the period of a franchise the City shall lawfully elect to alter or change the grade of any street, alley or other public way, the company, upon reasonable notice by the City, shall remove, re-lay, and relocate its poles, wires, cables, underground conduits, manholes, and other telephone and television fixtures at its own expense.
4. Placement of Fixtures. The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main; and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line; and those placed in alleys shall be placed close to the line of the lot abutting on such alley and then in such a manner as not to interfere with the usual travel on such streets, alleys, and public ways; provided, however, that the company will place all wires, cables, fixtures, and other equipment underground when other telephone, telegraph or other electrical utilities services are so located in such area unless the company is specifically, by action of the City Council, permitted to do otherwise where extreme hardship would result or where an underground installation is not workable. It is the intention of this section to require that any company granted a franchise hereunder use a portion of other utility poles already erected for the development of the company's above-

ground distribution system, and no company shall be permitted to erect its own poles, except where existing utility poles are inadequate to handle the additional load and where the placing of such additional poles is specifically authorized by the City Council or its duly authorized representatives.

5. Temporary Removal of Wire for Building Moving. The company shall, on 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 expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting such removal, etc., and the company shall have the authority to require such payment in advance. The company shall be given at least forty-eight hours advance notice to arrange for such temporary wire changes.
6. Tree Trimming. The company shall have authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the wires, cables, fixtures, and equipment of the company; all such trimming shall be done under the supervision and direction of the City and at the expense of the company.

Source: Section 40-05-01 (57) NDCC

13.0109 Warranting by City of Authority to Use Streets

It is understood that there may be, within the City, various streets, alleys, and other public ways which the City does not have the unqualified right to authorize any company to use because of reservations in favor of the dedicators or because of other legal impediments. Therefore, in granting any franchise pursuant to this chapter, the City does not warrant or represent as to any particular street or portion thereof that it has the right to authorize any company to install or maintain portions of its systems therein, and in each case the burden and responsibility for making such determination in advance of the installation shall be upon the company.

Source: Section 40-05-01 (57) NDCC

13.0110 Approval of Transfer of System

The company shall not sell or transfer its plant or system or any portion thereof to any person nor transfer any right under any franchise except by operation of law to any person without prior approval of the City Council. No sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the City Auditor an instrument duly

executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise by the transferee and agreeing to perform all the conditions thereof.

Source: Section 40-05-01 (57) NDCC

13.0111 Access to Plans, etc.; Filing of Rules and Regulations; Inspection of Records

The City shall have access at all reasonable hours to all of the company's plans, engineering drawings, and statistical customer records relating to the property and operation of the company and to all other records required to be kept pertaining to the City's business with the company.

Along with the other matters required to be filed by this chapter, a complete copy of the company's rules and regulations, adopted by the company for the conduct of its business, shall be filed with the City Auditor and in the local office of the company.

The City shall be entitled to inspection of any records bearing on the number of subscribers for service with the company and to require reasonable documentation of such information by the company when the annual payment, provided in Section 14.0117 is tendered.

Source: Section 40-05-01 (57) NDCC

13.0112 Promulgation of Rules and Regulations by Company

The company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under its franchise and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this chapter or the laws of the state.

Source: Section 40-05-01 (57) NDCC

13.0113 Penalty

Any violation by any company, its lessee or successor under any franchise granted pursuant hereto, or the failure to promptly perform any of the provisions of such franchise, shall be cause for the forfeiture of such franchise and all rights thereunder to the City after reasonable written notice to such company and continuation thereafter of such violation, failure or default.

Source: Section 40-05-01 (57) NDCC

13.0114 Application Generally; Final Approval of Application

1. Any person wishing to apply for a franchise under this chapter shall fill out its application and file the same in the office of the City Auditor for consideration by the City Council. Such application need not be in any particular form but shall include the following information:
 - a. The complete name and address of the applicant.
 - b. Type in full name if a corporation or limited liability company, the amount of authorized and issued stock, the names and addresses of all stockholders owning more than five per cent of the stock of such corporation or limited liability company and the interest held by each.
 - c. If a corporation or limited liability company, the names and addresses of all officers and managing agents thereof insofar as the same are concerned in any respect with the business of such corporation or limited liability company.
 - d. A complete financial statement of the assets and liabilities of the applicant as prepared by a certified public accountant insofar as such are concerned with the completion of the project or business.
 - e. Any other information which may from time to time be requested by the City Auditor or the City Council.
 - f. Any other information the applicant may wish to submit bearing on its qualifications.
 - g. A complete schedule of all rates and charges to be effective following issuance of the franchise.
2. All applications received shall be considered by the City Council, which shall be authorized to accept any number it deems advisable. Such acceptance shall be considered a preliminary approval and thereafter such successful applicant shall secure and submit, as required elsewhere in this chapter, all insurance policies, surety bonds, its extension policy and everything else required for the issuance of a franchise. The City Council shall then reconsider all information available to it, including the original application, and all other matters submitted

pursuant to this chapter and shall then, in its own discretion, determine whether or not to grant final approval to any application. The final approval shall be indicated by the passage of a special ordinance granting the franchise to the successful applicant, subject to all of the terms and conditions of this chapter.

Source: Section 40-05-01 (57) NDCC

13.0115 Application Fee

Every applicant for a franchise shall be required to pay a franchise fee of Five Hundred and no/100 Dollars (\$500.00), which shall be submitted at the time of the initial application.

Source: Section 40-05-01 (57) NDCC

13.0116 Bonds and Commitments

1. Before any franchise shall be finally approved by the City Council, the company shall submit and file with the City Auditor the following commitment to be approved by the City Council at the time of or prior to the issuance of a franchise:

A written commitment signed by the company guaranteeing the City that all wires, cables, fixtures, and facilities of the company shall be removed at the termination of the franchise or at such earlier date as the franchise may be terminated by revocation or otherwise. Such commitment shall be in the minimum amount of Fifty Thousand and no/100 Dollars (\$50,000.00) and shall be made in favor of the City. The amount of such commitment shall be adjusted semi-annually during the term of the franchise and such adjustments shall be subject to approval by the City Council. Such commitment must guarantee that the company has assets over and above all debts and liabilities equal to at least twice the amount of the commitment herein required from time to time.

2. Any bond or commitment required under this section is subject to approval by the City Council, which approval may be revoked at any time for cause. Such bond, etc., shall at all times be filed in the office of the City Auditor. Any franchise granted hereunder shall be immediately revoked upon the non-compliance of any franchisee with any requirements of this section.

Source: Section 40-05-01 (57) NDCC

13.0117 Submission of Extension Policy; Extensions Made Under Franchise

At the time that any application is submitted under the terms of this chapter, the applicant shall submit therewith its extension policy which shall be considered in connection with such application by the City Council. Such extension policy shall specify in detail the area of the City that will be served following the initial installation of the company's system and shall further indicate the plans of the company to extend services to other areas of the City, indicating the times and conditions precedent for such extensions. No precise form of an extension policy is specified herein but any applicant shall agree to furnish any information that may be requested from time to time by the City Council in clarification of the company's extension policy. Once a company is granted a franchise under this chapter, following approval of its extension policy as submitted and filed, it shall not make or refuse to make any extension thereunder except as provided by such extension policy or as may otherwise be permitted by this chapter or subsequent enactments of the City Council. The extension policy, and any amendments thereto, which in turn must be first approved by the City Council before becoming effective, shall at all times be on file at the office of the City Auditor and be available for inspection by the public.

Source: Section 40-05-01 (57) NDCC

13.0118 Payment to City for Privilege; Method of Computation of Payment to City

The company shall pay to the City, for the privilege of operating a system pursuant to any franchise granted under this chapter, a sum to be determined by the City Council, for each subscriber doing business with the company. Such payment shall be made annually at the end of the fiscal year of the company and shall be computed on the total number of subscribers doing business with the company at any time during the fiscal year just concluded. The failure to pay such amount within thirty days following the conclusion of the fiscal year shall be justification for the revocation of any franchise granted hereunder.

Source: Section 40-05-01 (57) NDCC

13.0119 Term

Any franchise and rights granted thereunder shall take effect and be in full force from and after final approval thereof by the City Council, as specifically provided in Section 14.0113, and upon filing of a written acceptance of such franchise by the company with the

City Auditor, and such franchise shall continue in full force and effect for a term as determined by the City Council, not to exceed 20 years; provided, that if a written acceptance is not filed within sixty days after such final approval of the franchise by the City Council or if the system authorized thereunder is not completely constructed within six months after the time of such acceptance, unless such construction is prevented by strike, insurrection, an act of God or other cause beyond the control of the applicant, the provisions of such franchise shall then become automatically null and void, unless such delay in construction is reasonably explained to the City Council and the City Council, in its sole discretion, elects to grant an extension of time in which to complete such construction work. In the event any system contemplated hereunder requires approval by the Federal Communications Commission or any other state or federal board or agency prior to the commencement of construction, the six month period allowed herein for construction to be completed shall not begin until after such federal or state approval is obtained, although application therefor must be made no later than sixty days after the final approval of the franchise by the City Council.

Source: Section 40-05-01 (57) NDCC

13.0120 Rights of City in Franchise

1. Adoption of rules. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power and in the exercise of its power over any franchise that is granted; provided that such regulations, by ordinance or otherwise, shall be reasonable and shall not be in conflict with the laws of the state.

2. Use of system. The City shall have the right during the life of any franchise, free of charge where aerial construction exists, of maintaining upon the poles of the company within the City wire and pole fixtures necessary for a police and fire alarm system; such wires and fixtures shall be constructed and maintained to the satisfaction of the company and in accordance with its specifications. The City in its use and maintenance of such wires and fixtures shall at all times comply with the rules and regulations of the company so that there may be a minimum danger of contact or conflict between the wires and fixtures of the company and the wires and fixtures used by the City. The City shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of such wires and fixtures authorized by this section and shall save the company harmless from all claims and demands whatsoever arising out of the attachment, maintenance, change or removal of such wires and fixtures to the poles of the company. in case of rearrangement of the company plant or removal of poles or fixtures, the City shall save the company harmless from any damage to persons or property arising out of the

removal or construction of the wires or other fixtures belonging to the City.

3. Supervision and inspection. The City shall have the right to supervise all construction or installation work performed subject to the provisions of this chapter and to make such inspections as it shall find necessary to insure compliance with governing laws, ordinances and resolutions.
4. Procedure after termination, etc., of franchise. Upon the revocation or termination of any franchise granted hereunder, the City shall have the right to determine whether the company may continue to operate and maintain its distributing system pending the decision of the City as to future maintenance and operation of such system.
5. Revocation of franchise. Should any company fail or refuse to reasonably comply with all of the provisions of this chapter or any other rules, regulations, ordinances or resolutions enacted by the City or with any state law or rules or regulations promulgated pursuant to state law or laws, rules or regulations issued pursuant to the laws of the United States or any of its duly authorized agencies or boards, the City Council shall have the power and authority, upon reasonable notice to such company and upon its failure thereafter to comply, to revoke or suspend, in the sole discretion of the City Council, any franchise granted hereunder.

Source: Section 40-05-01 (57) NDCC

13.0121 Standards Generally

Any company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are or may be set forth by the City Council, in this chapter or otherwise, by the Public Service Commission of the state, the Federal Communications Commission, or any other duly authorized public commission or authority.

Source: Section 40-05-01 (57) NDCC

13.0122 Notice of Interruption for Repairs

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the company shall do so at such times as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, the company shall give reasonable notice thereof to its customers.

Source: Section 40-05-01 (57) NDCC

13.0123 Preferential or Discriminatory Practices

The company shall not, as to rates, charges, services, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage; provided that nothing in this section shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

Source: Section 40-05-01 (57) NDCC

13.0124 Rates Generally

Rates charged by any company for service shall be fair and reasonable and designed to meet all necessary costs of this service, including a fair rate of return on the net valuation of the properties devoted thereto under efficient and economical management. The company agrees that its shall be subject to all authority now or hereafter possessed by the City, or any other regulatory body having competent jurisdiction to fix just, reasonable, and compensatory rates.

Source: Section 40-05-01 (57) NDCC