

CHAPTER 20 CABLE TELEVISION CODE

20-1: PURPOSE:

The purposes of this chapter are to comply with the requirements of Arizona Revised Statutes Title 9, Chapter 13 and to set forth regulations for the application by video service providers for uniform video services licenses for the provision of video service and other authorized services in the City, to provide for issuance of uniform video services licenses in accordance with law, to provide for imposition of non-discriminatory license fees, and to otherwise carry out the mandates of Arizona Revised Statutes Title 9, Chapter 13.

20-2: DEFINITIONS:

The definitions set forth in A.R.S. Section 9-1401 shall apply to this chapter.

20-3: UNLAWFUL ACTS; VIOLATION:

- A. It is unlawful for any video service provider to construct, operate or maintain a video service network within the boundaries of the City without a local license issued in compliance with this chapter and such license is in full force and effect.
- B. It is unlawful for any person to make any unauthorized connections, whether physically, electrically, acoustically, inductively or otherwise, with any part of a licensed video service network within the City for the purpose of enabling himself or herself or others to receive any video service without the permission of the video service provider to whom a local license has been issued.
- C. It shall be unlawful for any person, without the consent of a licensee, to willfully tamper with, remove or injure any equipment associated with a video service network of a video service provider.
- D. Any video service provider or other person violating any part of this chapter shall be guilty of a Class 1 misdemeanor.

20-4: Application and Issuance

- A. Prior to the commencement of any construction or expansion of a video service network or the provision of any video service, a video service provider shall file with the City Clerk an application and an affidavit in a form provided by the City Clerk. The application shall include the following:
 - 1. The name of the video service provider, its type of entity and its jurisdiction of formation.

2. The address and telephone number of the video service provider's principal place of business.
3. The name and address of the video service provider's principal executive officers or general partners and any persons authorized to represent the video service provider before the local government.
4. If the video service provider is not an incumbent cable operator, the date on which the provider expects to provide video services in the area identified under Paragraph 5 of this section.
5. An exact description of the service area to be served, as identified by a geographic information system digital boundary that meets or exceeds national map accuracy standards.
6. A requirement that the video service provider pay the license fees required under this chapter and all other lawful fees and charges imposed by the City.
7. A requirement that the video service provider file in a timely manner with the Federal Communications Commission all forms required by that agency before offering video service in the service area, including the forms required by 47 Code of Federal Regulations Section 76.1801.
8. A requirement that the video service provider agrees to comply with and be subject to all valid and enforceable federal and state laws.
9. A requirement that the video service provider agrees to comply with all generally applicable, nondiscriminatory City laws, including highway use, mapping, insurance, performance bonds, security fund, indemnification or similar requirements that apply to the use and occupation of any highway and that conform to Arizona Revised Statutes, Title 9, Chapter 13.
10. A requirement that the video service provider comply with the public, education and government programming requirements of Arizona Revised Statutes, Title 9, Chapter 13.
11. A requirement that the video service provider comply with all customer service rules of the Federal Communications Commission under 47 Code of Federal Regulations section 76.309(c) applicable to cable operators.
12. A requirement that the video service provider comply with the consumer privacy requirements of 47 United States Code Section 551 applicable to cable operators.
13. A grant of authority by the City to provide video service in the service area as described under Paragraph 5 of this section.

14. A grant of authority by City to use and occupy the highways in the delivery of the video service, subject to the laws of this state and the police powers of the City.
 15. The term of the uniform video service license.
 16. A requirement that the parties to the agreement are subject to and must comply with Arizona Revised Statutes, Title 9, Chapter 13.
- C. The application shall be accompanied by an affidavit signed by one of the principal executive officers or general partners of the applicant that the information set forth in the application are true and accurate.
- D. The application and affidavit shall be submitted to the City Clerk, who shall forward the application and affidavit to the City Engineer for review.
- E. If the City Engineer determines that the application and affidavit are incomplete or otherwise deficient, written notice shall be given to the applicant not later than fifteen days after the date of filing of the application and affidavit. The written notice shall:
1. Explain the incompleteness or deficiency in detail.
 2. Specify the information or other items that are necessary for property completion of the application and affidavit.
- F. The uniform video services licenses shall be issued within thirty days from the date a complete application was filed with the City Clerk. The term of a uniform video services license shall not exceed ten years.
- G. If written notice of an incomplete or deficient application and affidavit is not given within fifteen days after the date of filing, or if the uniform video services license is not issued within thirty days from the date a complete application has been submitted, application and affidavit shall be deemed complete and issued to the applicant.
- H. No fees shall be charged for filing or processing an application, affidavit, notice or other document related to the related to the issuance of the uniform video services licenses.
- I. Amendments to a uniform video services license to add service areas shall be processed in the same manner as the original uniform video services licenses.
- J. The term of a uniform video services license may be extended by the holder of a video service provider filing with the City Clerk a notice to extend the term for a specified period not to exceed ten years. The notice shall be filed at least one month before the end of the term of the uniform video services license.

K. A uniform video service license does not authorize the use of or attachment by a video service provider to a utility or other pole owned by the City or other person. Any such use or attachment must first be approved in a separate contract with the City.

20-5: Authority Granted

A. A uniform video services license granted by the City shall authorize the video service provider to

1. Provide video service in the City in the service area designated in the application and affidavit during the term of the uniform video services license.
2. Construct and operate a video service network in the highways in each service area, in compliance with the uniform video services license and City laws.
3. Operate and maintain facilities installed in the highways in the service area pursuant to A.R.S. § 9-506, subsection I and J, A.R.S. Section 9-584, and Arizona Revised Statutes Title 9, Chapter 5, Article 8.

20-6: Undergrounding of Facilities

A. A video service provider's new cable, wires and other equipment shall be placed underground, and a video service provider shall not erect new poles for overhead facilities. If, at a future date, City requires any utility services on existing overhead poles be placed underground, then such requirements shall also apply to video service providers. The City shall not be responsible for any costs incurred by the video service provider in placing the video service provider's facilities underground.

B. In all new developments, all transmission and distribution facilities shall be installed underground. Where a developer provides a trench for undergrounding in a new development, the developer must allow the video service provider to utilize this trench and provide backfill under the same conditions as are extended to other trench users. Cable television shall utilize common or joint trench with telephone and/or utilities for undergrounding where a developer provides a trench for undergrounding by negotiating a joint trench agreement with those entities.

C. Developers and video service providers shall place all cable and appurtenances underground. Existing technology may preclude the placing of some appurtenances underground; any such appurtenances placed above ground shall be located so as to be as unobtrusive as possible, consistent with City Standards. As new technology and economic feasibility allow, appurtenances associated with future lines shall be placed underground.

20-7: Limitations of License

A. A uniform video services license granted under this chapter shall be nonexclusive.

B. Any privilege claimed under a uniform video services license by the video service provider in any highway shall be subordinate to any lawful occupancy or use thereof by the City and shall

be subordinate to any prior easements, prior licenses to use the highways, and any other private property rights that may be superior to the uniform video services license issued.

C. A video service provider shall be subject to all existing requirements of the City's rules, regulations and specifications or hereafter enacted or established pursuant to the City's police powers and taxing authority, and shall comply with all applicable existing state and federal laws and regulations or hereafter enacted or established.

E. The granting of uniform video services license shall not relieve the video service provider of any obligation involved in obtaining pole space from any department of the city, utility company, or from others lawfully maintaining poles in highway.

F. The granting of a uniform video services license does not relieve licensee of compliance with provisions of City code, ordinances, or policies governing construction, work, or use of the highways. There is hereby reserved to the City the power to amend any section of the City Code related to construction in highways pursuant to its police powers.

20-8: Obligations Upon Expiration

A video service provider may terminate a uniform video service license by filing a written notice of termination with the City Clerk. Such notice shall be filed at least ninety days before termination of service. The notice shall also be sent to all subscribers within the affected service area at least ninety days prior to termination of service.

20-9: Construction in the Highways

A. Video service providers and their subcontractors shall comply with (i) the requirements of this chapter and other applicable chapters of the Maricopa City Code; (ii) construction standards of the Federal Communications Commission (FCC) Rules and Regulations, Part 76 Subpart K (Technical Standards), as amended from time to time; and (iii) detailed standards and plans submitted by the video service provider as part of any application or permit submitted to the City.

B. Video service providers shall, at their expense, protect, support, disconnect, relocate, or remove any of its property when required by the City by reason of traffic conditions, public safety or welfare; street or alley vacation; freeway or street construction or repair; change or establishment of street grade; installation of sewers, drains, water pipes, power lines, signal lines, transportation facilities tracks, or any other type of structure or improvements by public agencies. The City may disconnect, remove or relocate any of video service provider's facilities, which have not been disconnected, removed or relocated within a reasonable period of time after a request from the City and video service provider shall reimburse the City for its actual cost in disconnecting, removing, or relocating video service provider's facilities. Except where otherwise prohibited by State or Federal law, the entire cost of the installation, construction, operation, or removal of such facilities shall be borne by the video service provider.

20-10 System Construction and Maintenance:

- A. A video service provider proceeding with reconstruction of an existing video service network shall establish and file with the City Engineer a construction plan, including maps showing construction locations, and a timetable for buildout and activation of cable lines.
- B. All cable, equipment, and connections in, over, under, and upon the streets and public ways in the City, wherever situated or located, shall at all times be maintained in a safe and suitable condition and in good order and repair.
- C. Any and all streets and public ways which are disturbed or damaged during the construction, operation, maintenance, or reconstruction shall be promptly repaired by the video service provider at its expense and to the satisfaction of the City Engineer.
- D. In the event a video service provider neglects or fails to cause any work or other act required by law or hereunder to be properly completed in, on, over, or under any street or other public place within any time prescribed therefor or upon notice given when no time is prescribed, the City Engineer may cause such work or other activity to be completed in whole or in part to his or her satisfaction, and upon so doing, shall submit to video service provider an itemized statement of the cost thereof. The video service provider shall, upon thirty (30) days after receipt of such statement, pay to the City the entire amount thereof.
- E. A video service provider shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of the public or private property by any person. In the event of such interference, the City Engineer may require the removal of video service provider's lines, cables, and appurtenances.
- F. A video service provider or its designated contractors or subcontractors, when constructing or installing cable equipment of any kind in public right-of-way and/or easements on private property, shall fully and completely restore any and all such property to its original condition.
- G. A Video service provider shall construct, install, and maintain its video service network in an orderly and workmanlike manner. The safety of the general public, the video service provider's employees, the employees of utilities, and all other property affected by the such construction shall be the primary objective whenever or wherever a video service provider operates or locates equipment.

20-11: Revocation for Non-Use of Uniform Video Service License

A video service provider shall provide video service to at least one subscriber within each service area authorized by a uniform video service license within twenty-four months after the date the uniform video service license is issued. If the video service provider fails to comply with this section, the City may revoke the uniform video service license.

20-12: Reports

A video service provider shall file all reports required by and in compliance with A.R.S. § 9-1432. The reports shall be filed with the City Clerk. All such reports shall be confidential unless the video service provider has consented in writing to the disclosure.

20-13: License Fee on Gross Revenue; Transaction Privilege Taxes

A. A video service provider shall pay to the City a license fee as a percentage of gross revenues for the use of the highways to provide video service within its service area. The license fee shall be paid quarterly on or before the twentieth day of the month following the quarter end, and becomes delinquent on the last business day of that month. If such payment is not made by the next to the last business day of the following month, the City will impose interest at a rate of one and one-half percent per month commencing from the date payment should have been made, unless the payment is subject to a bona fide dispute, and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest. Any offset of fees and costs against the license fee and transactional privilege taxes permitted under State or Federal law shall be itemized with each quarterly payment.

B. The total of the rates of the license fee and the transaction privilege taxes imposed shall be five percent of gross revenues, and such license fee shall be imposed equally and uniformly on all video service providers and holdover cable operators.

C. Except as otherwise provided by federal law, if a video service provider offers video service bundled with other services that are not video service for a single discounted price, all of the following apply:

1. The method that the video service provider uses to determine gross revenue subject to license fees by allocating the single discounted price among the bundle of video service and nonvideo services shall be reasonable and supported by the video service provider's books and records.

2. For the purpose of meeting the video service provider's burden of proof, the video service provider shall use an objective and verifiable method of calculating the license fee, using the books and records that the video service provider kept in the regular course of business for other purposes, including nontax purposes.

3. A video service provider may not use bundled offerings as a means to evade paying license fees.

20-14: Public, Educational, and Governmental Access Programming

A. If permissible under state and federal law, all video service providers shall provide at no initial or recurring charge the basic service tier of video service to one outlet and one receiving device at each building occupied by the City that is not more than two hundred feet from the nearest technically and commercially feasible point of connection on the video service network. The City shall designate the building in writing to the video service provider.

B. A video service provider shall provide channel capacity to transmit programming over which the video service provider exercises no editorial control except as authorized by 47 United States Code section 531I. At the City's election, the channel capacity shall be limited to one of the following:

1. Not more than two channels of public, educational or governmental access programming in the basic service tier of the video service network and not more than two channels of noncommercial governmental programming, at least one of which may be programmed by the federal government, in the digital programming tier of the video service network; or

2. Not more than two lines of access programming with each line of programming carried on up to two standard definition channels and two switched digital high-definition channels.

C. Unless specifically preempted by state or federal law, none of the annual fair market value of any channel capacity provided pursuant to Paragraph B above may be offset against the license fee set forth in Section 20-12.

D. A video service provider shall regularly display an unobtrusive logo or other suitable identifier of the video service provider on public, educational or governmental access channels.

E. A video service provider shall pay all costs and expenses to provide, maintain and operate facilities and equipment of the video service network, including facilities and equipment for signal carriage, processing, reformatting and interconnection for all of the following: (i) to connect the video service network or cable system, as it may be relocated from time to time, to transmit programming to and from existing locations of public, educational or governmental access facilities and to allow monitoring of access programming at the facilities, and (ii) to transmit public, educational and governmental access channels to subscribers with the same prevailing quality, functionality and identification as other channels.

20-15: Indemnification

A. Disclaimer of Liability: City shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of a video service provider's construction, reconstruction, maintenance, repair, use, operation, condition or dismantling of its video service network or delivery of service.

B. Except where City and any of its associated, affiliated, allied and subsidiary entities, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees") are solely and grossly negligent, a video service provider shall, at its sole cost and expense, indemnify, defend and hold harmless from and against:

1. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses

of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of: Any act or omission of the video service provider, its personnel, employees, agents, contractors or subcontractors, resulting in economic harm, personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise in whole or in part out of or be in any way connected with the video service provider's construction, reconstruction, installation, operation, maintenance or condition of the video service network and any other facilities authorized by or permitted under a video service license (including those arising in whole or in part from any matter contained in or resulting from the transmission of programming over the video service network, but excluding any programming provided by Indemnitees which is transmitted over the video service network); the provision of video services or other services authorized by or permitted due to the issuance of a video service license; the release of Hazardous Substances, or; the failure to comply with any Federal, state or local statute, ordinance or regulation.

2. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising in whole or in part out of work, labor, materials or supplies provided or supplied to a video service provider, its contractors or subcontractors, for the installation, construction, reconstruction, operation or maintenance of a video services network (and any other facilities authorized by or permitted due to the issuance of a video services license) or the provision of video services (or other services authorized by or permitted due to the issuance of a video service license).

3. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any financing or securities offering by a video service provider or its affiliates for violations of the common law or any laws, statutes, or regulations of the State of Arizona or the United States, including those of the Federal Securities and Exchange Commission.

C. Assumption of Risk: A video service providers shall undertake and assume for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any City-owned or controlled property or the public highways, and a video service provider shall indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitees' sole and gross negligence) arising in whole or in part out of a video service provider's installation, operation, maintenance or condition of a video services network or other facilities or a video service provider's failure to comply with any Federal, state or local statute, ordinance or regulation.

D. Defense of Indemnites: In the event any action or proceeding shall be brought against the Indemnites by reason of any matter for which the a video service provider must indemnify the Indemnites pursuant to this Section, a video service provider shall, upon notice from any of the Indemnites, at the video service provider's sole cost and expense, resist and defend the same with legal counsel selected by the video service provider and consented to by City, such consent not to be unreasonably withheld; provided, however, that a video service provider shall not admit liability in any such matter on behalf of the Indemnites without their written consent and provided further that Indemnites shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of the video service provider.

E. Notice, Cooperation and Expenses: The Indemnites shall give a video service provider prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 20-14. Nothing herein shall be deemed to prevent the Indemnites at their own expense from cooperating with a video service provider and participating in the defense of any litigation by its own counsel.

20-16: Insurance

A. During the term of any video services license, the video service provider shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

1. Worker's compensation insurance meeting Arizona statutory requirements and employer's liability insurance with minimum limits of Two Million Dollars (\$2,000,000) for each accident.
2. Comprehensive commercial general liability insurance with minimum limits of Ten Million Dollars (\$10,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall include coverage for: products and completed operations liability; contractor's liability; and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.
3. Pollution legal liability insurance (which provides coverage for sudden and accidental environmental contamination) with minimum limits of Five Million Dollars (\$5,000,000) and providing coverage for claims discovered within three (3) years after the term of the policy.
4. Broadcasters liability coverage for loss or damage arising out of publications or utterances in the course of or related to advertising, broadcasting, telecasting or other communication activities conducted by or on behalf of the video service provider with minimum limits of Ten Million Dollars (\$10,000,000) as the combined single limit for each occurrence.

5. Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by the video service provider, its employees and agents, with personal protection insurance and properly protection insurance to comply with the provisions of the Arizona No-Fault Insurance Law, with minimum limits of Two Million Dollars (\$2,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

B. All insurance policies other than those for worker's compensation and pollution legal liability insurance shall be written on an occurrence, and not on a claims made basis. The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. All policies of insurance shall contain a waiver of subrogation clause.

C. All policies, except for worker's compensation policies, shall name "The City of Maricopa, a municipal corporation of the State of Arizona and all associated, affiliated, allied and subsidiary entities of Maricopa, now existing or hereafter created, and their respective officers, boards, commissions, councils, employees, agents and contractors, as their respective interests may appear" as additional insureds (herein referred to as the "Additional Insureds") and shall include cross liability coverage. Additionally, all insurance policies shall be written with a zero-dollar deductible (no deductible).

D. Certificates of insurance for each insurance policy required to be obtained by a video service provider in compliance with this Section, along with written evidence of payment of required premiums, shall be filed and maintained with the City annually during the term a video services license. A video service provider shall immediately advise the City of any claim or litigation that may result in liability to the City.

E. All insurance shall be affected under valid and enforceable policies, insured by insurers licensed to do business by the State of Arizona or surplus line carriers on the State of Arizona Insurance Director's approved list of companies qualified to do business in the State of Arizona. All insurance carriers and surplus line carriers shall be rated A- or better by A.M. Best Company. Should the rating of an insurance carrier or surplus carrier fall below that set forth in the preceding sentence then a video services provider shall either immediately obtain policies from carriers complying with the preceding rating or the City may obtain at the video service provider's expense policies from carriers meeting the preceding rating requirement.

F. A video service provider shall either require that each and every one of its contractors and their subcontractors carry, in full force and effect, workers' compensation, comprehensive general liability and automobile liability insurance which complies with this section, or the video service provider may provide such coverages for any or all of its contractors or subcontractors (such as by adding them to its own policies).

G. As between City and/or Additional Insureds on the one hand, and a video service provider on the other hand, if more than one policy of insurance does or may apply to a given claim or matter, then the policy maintained by the video service provider pursuant to the applicable video services license shall be deemed the primary policy, and that policy shall contain a provision that states that it is the primary policy as opposed to any other policy of

insurance that may apply to Maricopa and/or Additional Insureds on any given claim or matter. The term “policy of insurance” as applied to Maricopa/Additional Insureds shall include any self-insurance program, self-insured retention or deductible or risk pooling program, or an indemnification, defense or other similar program purchased or maintained by Maricopa/Additional Insureds.

20-17: Miscellaneous

- A. The City shall notify in a timely manner each video service provider with a uniform video services license in the City of changes to the boundaries of the City.
- B. Subscribers may submit complaints about video service to the Arizona Attorney General, the Federal Communications Commission, or any other authority provided by law.
- C. Audits, including audits of bundled services, of a video services provider’s books and records shall be conducted in compliance with A.R.S. § 9-1445.
- D. Except as otherwise provided by law or federal regulation, a uniform video service license is fully transferable to any person whether the transfer arises through merger, sale, assignment, restructuring, change of control or other type of transaction. A transfer does not include an assignment of a uniform video service license for the purpose of securing indebtedness. A transfer may include less than all service areas associated with a uniform video service license. The video service provider shall file with the City Clerk written notice of the transfer of the uniform video service license. On the filing of notice under this subsection the transferee becomes the holder of the uniform video service license.
- E. A uniform video services license is subject to and shall be governed by all applicable provisions of federal, state and local law. Notwithstanding any other provisions of the uniform video services license to the contrary, the uniform video services license shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulations shall require the licensee to perform any service, or shall permit the licensee to perform any service, or shall prohibit the licensee from performing any service, in conflict with the terms of the license or this chapter, then as soon as possible following knowledge thereof, the licensee shall notify the city attorney of the point of conflict believed to exist between such regulation or law and this chapter or the license.
- F. Enforcement of this chapter shall be in compliance with A.R.S. § 9-1451.