

# CHAPTER 21- CABLE TELEVISION ORDINANCE

## CITY OF FENNIMORE

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**21.001 (SEE ORDINANCE 133)**

**21.01 Purpose.**

The purpose of this ordinance is to carry out the authority of the City to award cable television franchises to operators of cable television systems in the City, to exercise the City's police powers concerning cable television service in the City, to impose a franchise fee for the purpose of raising general revenue, and to maintain the spirit of compromise between the cable industry and the City effected under the Cable Communications Act of 1984, 47 U.S.C. s. 521, et seq., to ensure the citizens adequate and efficient cable television service.

**21.02 Definitions.**

(1) AFFILIATE means, when used in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership control with such person.

(2) BASIC CABLE SERVICE means any service tier which includes the lawful retransmission of local television broadcast signal and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic cable service shall not be inconsistent with 47 U.S.C. sec. 543(b)(7) (1993).

(3) CABLE ACT means title 47 of the United States Code, Chapter 5, subchapter V-A, cited as 47 U.S.C. s. 521, et seq.

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(4) CABLE CHANNEL or CHANNEL means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Federal Communications Commission (hereafter the FCC) by regulation).

(5) CABLE OPERATOR or OPERATOR means a person who provides cable service over a cable system and who: (a) directly or through one or more affiliates owns a significant interest in the cable system; or (b) otherwise controls or is responsible for, through any arrangement, the management or operation of the cable system.

(6) CABLE SERVICE means (a) one-way transmission to subscribers of video programming or of other programming service; and (b) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(7) CABLE TELEVISION SYSTEM or CABLE SYSTEM means a facility which consists of a set of closed transmission paths and associated signal generation, reception and control equipment designed to provide cable service, which includes video programming or other communication service lawfully offered by a cable operator and which is provided to multiple subscribers within a community. It does not include:

(a) A facility which serves only to retransmit the television signals of one or more television broadcast stations;

(b) A facility which serves only subscribers in one or more multiunit dwellings under common ownership, control or management unless such facility uses a public right-of-way;

(c) A facility of a common carrier subject, in whole or in part, to 47 U.S.C. 201 to 222, except that the facility is a cable system to the extent that it is used in transmission of video programming directly to subscribers; or

(d) A facility of any electric utility used solely for operating its electric utility system.

(8) CITY means the City of Fennimore located in Grant County, Wisconsin, acting through its Common Council and such other officers, agents, and employees of the City as are designated by the Board.

(9) CONVERTER means an electronic device which converts signals to a frequency acceptable to a television receiver of a subscriber, and which permits a subscriber to view all cable service that the subscriber is authorized to receive.

(10) DROP means the cable that connects the ground block on the subscriber's residence to the nearest feeder cable of the system.

(11) FRANCHISE means an initial authorization or renewal thereof (however denominated) issued by the City, which authorizes the construction or operation of a cable system. No franchise granted hereunder shall be exclusive.

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(12) FRANCHISE AUTHORITY means the City acting through its Common Council, or the designee thereof of the Council.

(13) FRANCHISE FEE means the fee the City requires a cable operator to pay with respect to the operation of a cable system in the City, solely because of the cable operator's status as such.

(14) INSTALLATION means the connection of the system from feeder cable to the point of connection, including both standard and custom installations.

(15) LOCKOUT DEVICE means an optional or mechanical or electrical accessory to a subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the system.

(16) PAY TELEVISION means the delivery over the system of pay-per-channel or pay-per-program audio-visual signals to subscribers for a fee or charge, in addition to the charge for basic or cable programming services.

(17) PERSON means an individual, firm, partnership, association, joint stock company, trust, corporation, governmental entity, or other legal entity.

(18) PUBLIC, EDUCATIONAL OR GOVERNMENTAL ACCESS FACILITIES (which may be abbreviated and referred to herein as PEG facilities or PEG) means (a) a channel capacity designated for public, educational or governmental use; and (b) facilities and equipment for the use of such channel capacity.

(19) SERVICE AREA means the geographical area in which a cable operator granted a franchise hereunder provides cable service to subscribers of the operator's cable system. At a minimum, the service area includes the geographical area within the corporate limits of the City, including any area added to the City in the future by annexation or other means. To the extent allowed by law, the service area shall also include areas of surrounding towns in which cable service is offered.

(20) STANDARD INSTALLATION means any residential installation which can be completed using a drop of one hundred fifty (150) feet or less.

(21) STREET means all present or future public ways and thoroughfares including the space above and below them, and including the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel.

(22) SUBSCRIBER means any person or entity lawfully receiving any portion of the cable television service of a cable operator pursuant to this ordinance. A residential subscriber means a subscriber who receives cable television service in a single family home or in an individual dwelling unit of a multiple dwelling, where the service is not to be utilized in connection with a business, trade or profession.

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(23) VIDEO PROGRAMMING means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

### 21.03 Franchises.

(1) Applications for Franchise. Application for the grant of a franchise hereunder shall be made in such form, formally or informally, in writing as the franchising authority shall direct, and shall contain such information, or be supplemented with such information, as the franchising authority directs.

(2) Grant of Franchise. A franchise shall be granted by the Common Council by resolution.

(3) Acceptance of Franchise. Within 30 days of notification to the cable operator that a franchise application has been approved (or within such time as is provided in the resolution granting the franchise), the cable operator shall file a written acceptance of the franchise with the City Clerk. The acceptance shall be in such form as is approved by the Common Council. The cable operator shall agree in the acceptance to be bound by, and to comply with, this chapter and all other laws, rules and regulations of the City, the State, or the United States governments which govern the operation of cable television systems.

(4) Effective Date. Contemporaneously with the filing of the acceptance, the cable operator shall file with the Clerk any bond, certificate of insurance, or other proof or documentation required under this Chapter. The franchise shall be deemed effective only when the acceptance and all of the other necessary documents have been filed with the Clerk. In the event the cable operator fails to file any necessary document within a required time period, or in the event such documentation is in a form not approved by the City, or is otherwise defective, the Council may rescind the resolution granting the franchise, and in any event the franchise shall not be effective until such documentation is filed or any defect in the documentation is cured.

(5) Duration of Franchise. The duration of a franchise granted under this chapter shall be for such period as is established in the resolution granting the same, but in no event shall the duration of the franchise exceed fifteen years.

### 21.04 Authority Under Franchise.

(1) Generally. The franchise authorizes and requires the cable operator to construct, operate and maintain a cable system over public rights of way and through easements which are within the service area and which have been dedicated for compatible uses. The cable operator shall ensure:

(a) That the safety, functioning and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or operation of facilities necessary for a cable system;

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(b) That the cost of the installation, construction, operation, or removal of the facilities is borne by the cable operator, or by subscribers, or by a combination of both;

(c) That the owner of property on which facilities are installed is justly compensated for any damage caused by the installation, construction, operation or removal of the facilities by the cable operator.

(2) Pole Rent. Notwithstanding any other provision in this section, the authority granted by the franchise shall not relieve the cable operator of liability for pole rent, or other compensation, due to the owner of any electric or telephone pole, including the City's municipal electric company, upon which cable wires and other cable system equipment area attached.

(3) Permit Required. Before any pole, wire, cable or other device or equipment necessary for the operation of a cable system is installed or placed on or within any street, the cable operator shall obtain the approval of the appropriate City personnel. In the case of a renewal of a franchise of an existing cable system, no permit shall be required, except in cases where cable service is being offered in an area not previously served, or a new route for the provision of cable television service is being established. The plans and specifications for the installation of cable television facilities shall be approved by the City. No electric or telephone company or other public utility shall lease or otherwise make available to any person any pole, line or other facility or equipment for use in the construction or operation of a cable system or the provision of cable television service, unless such person holds a valid franchise granted by the City.

(4) Franchise Not Exclusive. The authority granted to a cable operator who is issued a franchise under this chapter shall not be deemed an exclusive right. The City reserves the right to grant, at any time (including during the period of an existing franchise) one or more additional nonexclusive franchises under this chapter. The grant of additional franchise rights to any person during the period of an existing franchise shall not affect the rights or obligations of the existing franchisee. All franchises granted by the City shall be subject to this ordinance, and no franchisee shall be entitled to a term, condition, consent, or right more favorable or less burdensome than are granted or required by this ordinance.

(5) Rules of Operator. The operator shall have the authority to make rules, regulations, terms and conditions concerning the conduct of its business as are reasonable and necessary to enable it to exercise its rights and perform its obligations under the franchise and to assure uninterrupted service to its subscribers. However, no such rule of the operator shall conflict with any City, state, or federal ordinance, regulation, statute, or law.

### **21.05 Franchise Fee.**

(1) Gross Revenues Defined. Gross revenue means any and all revenue and income a cable operator who has been granted a franchise under this Chapter receives from any source in connection with the operation of a cable television system in the service area, including without

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limitation by enumeration, installation fees, fees for changes in or removal of service or equipment, regular and other subscriber fees for all tiers of service, pay per view fees, leased channel revenues, payments received for broadcast of video programming or other programming services, advertising, repair fees, converter or remote control rental fees, refunds, interest, and dividends, without deduction for any expense, tax, depreciation, depletion, cost of equipment, casualty loss, or other cost or charge borne by the cable operator. Gross revenues do not include money collected by a cable operator for sales taxes paid by customers of the operator and which are remitted by the cable operator to a governmental unit, FCC taxes collected by a cable operator paid by customers of the operator and remitted to the FCC by the cable operator, or copyright fees collected by a cable operator for remittance to a governmental authority. Further, gross revenues do not include rebates which are factored into the cable operator's customer rates to lower said rates prior to the receipt of the rebate by the cable operator.

(2) Amount of Fee. Pursuant to the Cable Communications Act of 1984, 47 U.S.C. s. 542, and s.66.0419, Stats. , a cable operator granted a franchise hereunder shall pay the City an annual franchise fee equal to 3% of the cable operator's gross income. The fee shall apply to all gross revenues received. Payment shall be made on the 20th day of August of each year based on the gross revenues for the preceding 12 months, July 1 through June 30. The fee shall be in addition to any and all other taxes exacted pursuant to federal, state or local law, including, without limitation, local property taxes. The City reserves the right to raise or lower the franchise fees from time to time, provided the franchise fee as amended does not exceed any limit imposed thereon by applicable law.

(3) Late Payment of Fee. In the event the franchise fee is not paid within the time provided in this section, the cable operator shall be assessed and shall pay a late payment penalty equal to 1% of the fee due, assessed for each month or part of a month in which the fee, or part of the fee, remains unpaid, or the maximum amount permitted by law, whichever is less.

(4) Inspection, Copying and Audit of Books. For the purpose of assuring compliance with this section, a franchisee agrees, upon 30 days' notice from the City or such lesser time as the parties may agree upon, to permit the inspection and copying of any record of the cable operator which the City deems reasonable and necessary to audit and verify the amount of the franchise fee due in any franchise year. For purposes of this chapter, "record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks.

### **21.06 Limitations of Franchise.**

(1) Police Powers of the City. In addition to other limitations in this chapter, the franchise is subject to the limitation that the cable operator shall at all times be subject to the lawful exercise of the City's police power and other duly authorized regulatory state and federal bodies and shall comply with any and all ordinances which the City has adopted, or will adopt, applying to the public generally and shall be subject to all laws of the State of Wisconsin and the

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United States.

(2) Enforcement and Waivers. Time shall be of the essence as to the completion of any act required of the cable operator under this chapter. Any failure by the City to insist on or compel strict compliance with any provision of this ordinance, or other law, rule or regulation governing the cable operator, shall not be deemed a waiver thereof, nor shall it bar the City from enforcing compliance with the provision at any time in the future.

(3) Use of Streets. Any poles, cables, electronic equipment or other appurtenances of the cable system to be installed and maintained in, under, over, along, across or upon any street shall be so located so as to cause minimum interference with the public use of the streets and to cause minimum interference with the rights of other users of the streets or of property owners who adjoin the streets.

(4) Repair of Streets and Excavations. In the event the operator disturbs any street or other public or private property, the operator shall, in a timely manner, replace and restore the property to the condition existing before the work was done. The operator shall construct, maintain and operate the cable system so as to cause minimum inconvenience to the general public. All excavation shall be properly guarded and protected and shall be filled and service restored promptly after completion of the work, at the operator's cost and expense. The operator shall at all times comply with all excavation ordinances of the City, and with any directive concerning excavation given to the operator by City personnel.

(5) Alteration of Facilities. Upon at least seven business days advance notice from any person holding a building moving permit issued by the City, the operator shall temporarily alter cable system facilities to permit the moving of the building. The actual cost of the alteration shall be borne by the person requesting it and the operator shall have the right to request payment in advance.

(6) Emergency Alterations. If, in the event of fire or disaster in the City, it becomes necessary in the judgment of the Mayor, the Fire Chief, the Chief of Police or other public safety official, or their designee, to cut or move any of the wires, cable amplifiers, appliances, or other equipment of the cable system, the cutting or moving may be done forthwith and any repairs made necessary thereby shall be made by the cable operator at no expense to the City.

### **21.07 Additional City Rights.**

(1) Construction and Emergency Situations. Whenever there is any street or utility construction or excavation by the City or any public utility, including a telephone company, or whenever traffic or other emergency conditions affecting public safety occur, the operator agrees to provide such protection, support, temporary disconnection, relocation or removal of cable system facilities and equipment ("the work") as is necessary to facilitate the construction or alleviate the public safety concerns. The cable operator shall pay for the work. In the case of planned construction projects, the cable operator will be entitled to two weeks advance written notice. In traffic or other emergency situations, the cable operator will be entitled to reasonable

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notice under the circumstances. If, after having been given notice as required by this section, the cable operator fails to complete any work required under this section in a timely manner, the City may cause the work to be done and the operator shall reimburse the City for the cost of the work within 30 days after receipt of a bill from the City.

(2) City Use of System. In the event of an emergency or disaster, the City may require the cable operator to make available to City personnel, upon request, the cable operator's audio override, if any, and community channel, if any, at no cost, for use during the emergency or disaster period. Upon request of the City, the operator shall provide reasonable assistance to City personnel in such circumstances. The cable operator shall not be entitled to any fee or charge for such use or service.

(3) Inspection of Records and Facilities. Upon 30 days' advance written notice to the cable operator, the City may inspect cable system records dealing with technical service provided by the cable operator, provided such information may be disclosed pursuant to 47 U.S.C. s. 551. The City may further inspect all parts of the cable system to ensure compliance with this chapter. The City may, at its own expense, perform measurements and conduct inspections of any part of the cable system to ensure compliance with technical standards, provided the measurement or inspection does not interfere with the operation of the system.

(4) Hearings on Performance. For the purpose of providing the City, cable system customers, and other interested parties with an opportunity to comment and discuss the cable system programming and services with the cable operator, and for the purpose of reviewing the cable operator's performance under the franchise, the City may, no more than once in any year, conduct public hearings. The cable operator shall be provided with at least 30 days' written notice of any such hearing. Such hearings shall be for preliminary fact finding purposes only, and shall not be a substitute for formal hearings under secs. 21.12 or 21.17.

(5) FCC Reports. The operator shall file copies of the results of tests required to be filed by the operator with the FCC, with the City Clerk, upon receipt.

(6) Other Rights Reserved. The reservation of certain rights under this chapter shall not be deemed to be a waiver or limitation of any other right, authority or police power of the City, and the City expressly reserves any such rights it may hold.

### **21.08 Service.**

(1) Service Area. The cable operator shall offer cable service to all potential residential subscribers within the service area, who can be connected by a standard installation. Subject to the density requirements of this section, the cable operator shall offer cable service to all potential residential subscribers within any area added to the City, by annexation or otherwise, within one year of the effective date of the annexation. The cable operator shall offer cable service to all potential residential subscribers located within 150 feet of the cable operator's feeder cable where there exists a minimum density of 30 dwelling units per mile. The cable operator may elect, but has no obligation, to offer cable service to areas not meeting the above density standard. If the continued use of a street or right of way is denied to the cable operator

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for any reasonable reason related to public health or safety, the cable operator will make reasonable and commercially feasible efforts to provide residential service over alternate routes.

(2) Rates and Charges. The cable operator shall file with the City a description of all services and equipment offered to subscribers, the rates and charges for those services and equipment, and all terms and conditions of the operator's agreement to provide service and equipment to subscribers. The City expressly reserves its right to regulate rates and charges under the cable act and regulations of the Federal Communications Commission promulgated thereunder.

(3) Rights of Individuals. The cable operator shall not deny cable service to any person for a discriminatory reason prohibited by state or federal law. The cable operator shall not deny access to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

(4) Service to Government Buildings. Upon request, the cable operator shall furnish cable service to any educational institution or governmental buildings within the service area. These institutions and buildings shall be entitled to one service outlet and basic cable service free of charge.

(5) Lockout Devices. The cable operator shall have available for rent or purchase lockout devices.

### **21.09 Construction, Operational and Performance Standards.**

(1) Use of Streets. To the extent possible, the poles used for the distribution system shall be those erected and maintained either by an electric utility or telephone company.

(2) Construction Standards. The cable system shall be constructed, installed, operated and maintained in compliance with all applicable laws, ordinances and construction standards. Installation and maintenance of electronic equipment shall be of a permanent nature and installed in accordance with the National Electric Safety Code, the National Electrical Code of the National Bureau of Fire Underwriters, and all applicable state electric codes. All towers shall be painted, lighted, erected and maintained in compliance with Federal Aviation Administration regulations and applicable state and local laws and regulations. All contractors working on the cable system shall be licensed by the appropriate authorities. The City shall have the right to inspect all construction or installation work performed and, at its own expense, to make such tests as it deems necessary to ensure compliance with this ordinance and applicable state and federal laws, rules, and regulations.

(3) System Design and Channel Capacity. The cable system shall have a capacity of at least 550 MHZ bandwidth and have at least a 60-channel capacity and two-way capability within 3 years of the granting of a franchise hereunder. Where possible, the cable operator may connect its system with other cable systems in order to provide the widest possible combination of programming in the most efficient manner.

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(4) Operational Standards and Performance Monitoring. The cable system shall be operated in compliance with the technical standards established by the National Cable Television Association and by the rules and regulations of the FCC found in Title 47, Section 76.601 to 76.617, as amended and modified from time to time, which regulations are expressly incorporated herein by reference. The cable operator shall respond to service repair and service outage problems within 24 hours, except in circumstances beyond the cable operator's control, by dispatching trained service technicians to the site of the problem. The cable operator shall maintain a toll free, publicly listed telephone number at which subscribers may leave reports of service problems or complaints 24 hours a day, seven days a week. Subscribers shall be entitled to a rebate for interruptions to service as follows: for any outage exceeding 24 continuous hours, a subscriber shall be entitled to request and shall be credited an amount equal to one-thirtieth of the monthly subscriber fee for each day, or part of a day, of outage, including the threshold 24 hour period. For any service interruption which persists for more than 10 continuous days, a subscriber shall be entitled to request and shall be credited one full month of the subscriber's fee.

(5) Burying of Cable. In areas of the City where all other utilities have buried cable, the operator shall construct and install its wires, cables, and other facilities underground as well. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires it, but shall sized, designed, and located so as not to be unsafe or unsightly. In any area of the City where there are both underground and overhead utility wires and equipment, the operator may choose whether to bury its cable or, with the consent of the owner of the pole, suspend it from poles.

(6) TREE TRIMMING. The operator shall apply to the Common Council and obtain approval before it trims any tree or branch which the operator believes is interfering with the safe and efficient operation of the system.

### **21.10 Liability and Indemnification.**

A cable operator accepting a franchise from the City agrees to indemnify and hold harmless the City, its officers, agents and employees from any and all claims, demands, liabilities, judgments or executions arising or growing out of the construction, operation, or maintenance by the cable operator, (or the operator's officers, employees, servants or agents, including independent contractors) of a cable television system in the City, including any claims based on occurrences which take place outside of the City limits. Said indemnification shall apply to any claim or injury arising out of the cable operator's activities, regardless of its nature, including without limitation death, bodily injury, property damage, copyright infringement or infringement upon intellectual property rights. In the event any claim or legal action is brought or asserted against the City arising out of the cable operator's activities, the cable operator shall tender a legal defense on behalf of the City, its officers, agents or employees in any and all proceedings or litigation relative to such claims or injuries, and the cable operator shall pay all attorneys fees, costs and disbursements associated with the defense of the action, and shall satisfy and cause to be discharged any judgment which may be obtained against the City, its officers, agents or employees in connection therewith.

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In order for the City to assert its rights to be indemnified, defended, and held harmless, the City must with respect to each claim notify the cable operator in writing of any claim or legal proceeding which gives rise to the right of indemnification, afford the cable operator the opportunity to participate in and fully control an compromise, settlement or other resolution or disposition of any claim or proceeding; and fully cooperate with reasonable requests of the operator in its participation in and control, compromise, settlement or resolution or other disposition of such claims or proceedings.

### **21.11 Insurance.**

A cable operator accepting a franchise from the City shall keep in effect a comprehensive general liability policy of insurance, with the City named as an insured, insuring against loss or injury arising or growing out of the cable operator's activities in constructing, operating, and maintaining a cable system in the City, for property damage, bodily injury or death, with policy limits of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. Any deductible associated with said insurance shall be borne by the cable operator.

### **21.12 Franchise Transfers.**

(1) Notice and Approval. A transfer of control is presumed to occur if 40% or more of the ownership interest in a cable system is transferred to one or more persons or affiliates during any 12 month period. A cable operator granted a franchise by the City shall give the City at least 90 days advance written notice of the cable operator's intention to transfer ownership or control of a cable television system. The notice shall inform the City of the identity of the transferee, including all affiliates of the transferee, the percent of ownership or control being transferred, the details of the consideration for the transfer, including any noncash consideration, the date proposed to close the transfer, and whether there are any contemplated changes in programming, tiers, rates or charges as a result of the transfer. The City shall be entitled to receive additional relevant information concerning the transfer from either the cable operator, or the proposed transferee, within 10 days of requesting it. During the term of the franchise agreement, a cable operator shall not transfer ownership or control of a cable system without the approval of the City. The City shall not withhold approval of an ownership transfer or a transfer of control of a cable system without good cause.

(2) Hearing on Transfer. If the City determines there is probable cause to believe a transfer of ownership or control of a cable system may have an adverse effect on the adequacy or efficiency of cable service for the citizens, the City may schedule a hearing before the Common Council on that issue, which hearing shall take place within 45 days after the date on which the City receives the cable operator's notice under sub. (1). Notice of such a hearing shall be served on the cable operator at least 10 days before the hearing and shall be given to the public as a Class 2 notice under Chapter 985.

(3) Conduct of Hearing. In the event a hearing is held on the question of approval of transfer of ownership or transfer of control, the hearing shall be conducted so as to afford due

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process to all interested parties. The cable operator, the proposed transferee, and the City may be represented by counsel, call witnesses on their own behalf, cross-examine witnesses of the other parties, and present other relevant evidence. The Mayor, or his designee, shall preside over the hearing and shall make any rulings on the relevancy and admissibility of evidence and general rules of procedure. The proceedings shall be governed by the common law and statutory rules of evidence generally, but other relevant evidence having reasonable probative value may be admitted. Irrelevant or repetitious evidence or arguments may be excluded. The proceeding shall be transcribed by a court reporter. The decision shall be made by the Common Council by a majority vote.

(4) Standard of Review. In considering whether a transfer of ownership or a transfer of control should be approved, the City shall consider the following criteria among other things:

(a) Whether the proposed transferee has substantially complied with the material terms of any franchise granted by another franchising authority;

(b) If the proposed transferee has operated another or other cable systems, the quality of the transferee's service, including signal quality, response to consumer complaints, and billing practices;

(c) Whether the proposed transferee has the financial, legal and technical ability to provide services, facilities and equipment as required under this chapter;

(d) Whether the proposed transfer will result in substantial adverse changes in programming, tiers, or rates.

(5) Decision to be in Writing. If the City withholds approval of an ownership transfer or a transfer of control, either with or without a hearing, the City shall state its objections in writing within 60 days after the date the City received the cable operator's notice of intent to transfer.

(6) Notice of Nonpresumptive Transfer. The cable operator shall notify the City of any nonpresumptive transfer of ownership or control, (that is, a transfer of less than 40%) 60 days in advance of the date of closing of the proposed transfer. The notice shall contain the same information as is required under sub. (1).

### **21.13 Access to Cable Service.**

(1) Interference Prohibited. The owner or manager of a multiunit dwelling under common ownership, control or management or the association or board of directors of a condominium may not prevent a cable operator from providing cable service to a subscriber who is a resident of the multiunit dwelling or of the condominium or interfere with a cable operator providing cable service to a subscriber who is a resident of the multiunit dwelling or of the condominium.

(2) Installation in Multiunit Building. Before installation, a cable operator shall

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consult with the owner or manager of a multiunit dwelling or with the association or board of directors of a condominium to establish the points of attachment to the building and the methods of wiring. A cable operator shall install facilities to provide cable service in a safe and orderly manner and in a manner designed to minimize adverse effects to the aesthetics of the multiunit dwelling or condominium. Facilities installed to provide cable service may not impair public safety, damage fire protection systems or impair fire-resistive construction or components of a multiunit dwelling or condominium.

(3) Repair Responsibility. A cable operator shall be responsible for any repairs to a building required because of the construction, installation, disconnection or servicing of facilities to provide cable service.

### **21.14 Unauthorized Reception of Cable Service Prohibited.**

No person shall intercept or receive, or assist in intercepting or receiving, any communication service offered over a cable system operating under this chapter within the City, unless authorized to do so by the cable operator, or as may otherwise be specifically authorized by law. A person who violates this section shall forfeit not less than \$50 nor more than \$100, and the costs of enforcing the action.

### **21.15 Peg Facilities.**

(1) Peg Channels. The City reserves the right to require the cable operator to designate and activate up to two channels for public, educational or governmental use. The cable operator, upon notification by the City, shall cause PEG programming to be made a part of the basic tier programming offered by the cable system. The cable operator shall provide channel access and broadcast PEG programming without charge to the person producing the programming, to the subscribers of the system, or to the City. Any capital costs for support of PEG access facilities will be provided only with the mutual agreement of the cable operator and the franchising authority and, pursuant to the cable operator's rights under federal law, may be itemized and passed through to subscribers.

(2) Commercial Use Channel Capacity. Upon notification by the City, the cable operator shall designate activated channels and channel capacity for commercial use by persons unaffiliated with the cable operator. The maximum number of channels so designated shall not exceed the limit established by 47 U.S.C. 532, and amendments thereto.

### **21.16 Penalties for Violation of This Chapter.**

(1) Grounds for Revocation. The City may revoke the franchise of any cable operator in the event that the cable operator:

(a) Fails to substantially comply with or violates a material provision of this chapter or the Cable Act, or other federal law or regulation, any state law, or other rule or regulation governing the operation of a cable system;

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(b) Makes a material false statement with respect to the acquisition of the franchise or with respect to information the cable operator is required to provide the City hereunder;

(c) Acquires ownership or control of a cable system under circumstances which constitute a violation of this chapter;

(d) Becomes insolvent, files for bankruptcy protection, makes an assignment for the benefit of creditors, enters into a receivership, liquidates or otherwise ceases to do business;

(e) Fails to comply with any lawful order of the City, or any state or federal court order with respect to the operation or maintenance of the cable system;

(f) Fails to provide and maintain insurance policies as required under this chapter or violates its obligations to indemnify the City as required by this chapter;

(g) Repeatedly fails to comply with FCC technical standards or to timely respond to legitimate customer complaints as to service after having been notified by the City of such complaints, or charges any unlawful fee for service or equipment. For purposes of this paragraph, "repeatedly fails" means after notice and opportunity to cure as provided by the franchising authority pursuant to the Franchise and the complaints remain unresolved;

(2) Reservation of Right to Other Relief. The City's right to revoke a franchise hereunder shall be in addition to any other right the City may have to seek legal or equitable relief in state or federal court, or via the FCC.

(3) Hearing on Revocation. In the event the City believes there is probable cause that an act or omission has occurred which warrants revocation, it may schedule a hearing on the question. In the event of a hearing, the City shall give the cable operator 60 days' written notice of its intention to revoke the franchise, stating the time and place for the hearing and containing a short and plain statement of the violation or violations alleged. Within 20 days of receipt of the notice, the cable operator shall file a response to the City's claim for purposes of framing the issues. The hearing shall be conducted in the same manner as a hearing under s. 21.12(3). The Common Council shall make its decision in writing within 30 days of the conclusion of the hearing. The City may, at anytime prior to reaching a final decision to revoke the franchise, suspend or dismiss the proceedings if the violation or violations have been cured to the satisfaction of the City, or if the City has received adequate assurances that the operator has initiated action to correct the violation or violations.

(4) Forfeiture in Lieu of Revocation. In the event of any violation of this chapter by a cable operator, the City may, in lieu of seeking revocation of the franchise, issue the cable operator a municipal forfeiture citation. Each day of noncompliance shall be deemed to be a separate violation. The amount of the forfeiture shall be \$200.00 for each violation, and the costs of the action.

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### 21.17 Miscellaneous Provisions.

(1) Forum for Disputes. A cable operator granted a franchise under this chapter agrees that in the event any dispute arises between the cable operator and the City in which the City is or is likely to become a party and which leads to civil litigation, that the matter will be tried before the Circuit Court for Grant County, Wisconsin, or the District Court for the Western District of Wisconsin, which courts the cable operator agrees shall have and retain exclusive jurisdiction over the trial of the action. This section applies to any and all matters of dispute which may arise between the parties, including without limitation, appeals of decisions of the City with respect to transfers of ownership or transfers of control, and revocation of the franchise. Notwithstanding the foregoing, however, matters relating to regulation of rates and charges shall be resolved in accordance with the regulations, and in the forum provided for by, the Federal Communications Commission.

(2) Notice. Any notice, report, or demands required or permitted to be given to either the City or the operator under this ordinance shall be in writing, dated, and sent by certified mail to the following: (ARE THESE STILL CORRECT?)

Fennimore City Clerk  
860 Lincoln Avenue  
Fennimore, WI 53809

InterMedia Partners II, L.P.  
4062 West County Road  
Savage, MN 55378  
Attention: Joe Shanks

Copies of notices from the City shall be sent by regular mail to:

Larkin, Hoffman, Daly & Lindgren, Ltd.  
1500 Norwest Financial Center  
7900 Xerxes Avenue South  
Bloomington, MN 55431  
Attention: Jane E. Brenner

InterMedia Partners II, L.P.  
424 Church Street, Suite 1600  
Nashville, TN 37219  
Attention: Legal Department

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Copies of notices from the operator shall be sent by regular mail to:

Kramer & Brownlee  
1038 Lincoln Avenue  
Fennimore, WI 53809  
Attention: Eileen A. Brownlee

Notices to the principals shall be deemed served and received 72 hours after mailing.

*UPDATED 7/30/2015*