

CHAPTER 14-7
CABLE TELEVISION FRANCHISE

14-7-1

ORDINANCE

This Chapter shall be known as the City of Brandon television Franchise ordinance.

Legislative History:

Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:

SDCL 9-35

14-7-2

DEFINITIONS

When used in this ordinance, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural):

ACCESS: The availability of the Cable System (i.e., channel capacity) for use by various agencies, institutions, organizations, groups and individuals to acquire, create, edit and distribute Video Programming. Grantee does not have editorial control of the content of Access programming.

APPLICABLE LAWS: Any local, State or federal law, statute, ordinance, rule or regulation including the City of Brandon Municipal Code.

AFFILIATE: Any entity controlling, controlled by, or under common control with the entity in question.

APPLICANT: Shall mean and refer to a potential Grantee seeking an initial grant of a Franchise and does not include a Grantee seeking renewal of an existing Franchise.

BASIC CABLE SERVICE: Any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic cable service as defined herein shall not be inconsistent with 47 USC § 543(b)(7).

CABLE OPERATOR: Any person who provides cable service over a cable system.

CABLE PROGRAMMING SERVICE: Any video programming provided over a cable system, regardless of service tier, other than:

1. Video programming carried on the basic service tier;
2. Video programming offered on a pay per channel or pay per program basis; or
3. A combination of multiple channels of pay per channel or pay per program video programming offered on a multiplexed or time shifted basis so long as the

combined service consists of commonly identified video programming and is not bundled with any regulated tier of service.

4. Cable programming service as defined herein shall not be inconsistent with the definition as set forth in 47 USC § 543(l)(2) and 47 CFR § 76.901(b) (1993).

CABLE SERVICE: The one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

CABLE SYSTEM OR SYSTEM: Shall have the meaning ascribed to it under 47 USC § 522(7) and to the extent not otherwise preempted by the definition set forth in SDCL § 9-35-25(3).

CATV: A cable television system.

CITY: The City of Brandon.

CITY COUNCIL OR COUNCIL: The Brandon, South Dakota City Council.

COMMERCIAL SUBSCRIBER: A subscriber primarily utilizing cable services or a Grantee's cable system in connection with carrying on a business, whether for profit or nonprofit.

CONVERTER: An electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.

DROP: The cable or wire that connects the distribution portion of a cable system solely to a subscriber's premises; which shall typically be from a subscriber's residence to the adjacent public way or easement usable for cable purposes.

EDUCATIONAL ACCESS: Schools, colleges, and universities are the primary or designated programmers or users.

FCC: Federal Communications Commission and any legally appointed, designated or elected agent or successor.

FRANCHISE: An initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system or other MVPD facility.

FRANCHISE AREA: The area within the legal boundaries of the City as they now or in the future exist.

FRANCHISING AUTHORITY: The City of Brandon, South Dakota;

FRANCHISE FEE: Any tax, fee or assessment of any kind imposed by the City or any other Governmental Authority on a Grantee or cable Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include:

1. Any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers);
2. Capital costs which are required by the Franchise to be incurred by the Grantee for PEG Access facilities;
3. Requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
4. Any fee imposed under Title 17 of the United States Code.

GOVERNMENTAL ACCESS: Governmental institutions, departments, agencies or their designees are the primary or designated programmers or users.

GOVERNMENTAL AUTHORITY: Any court or other federal, state, county, municipal or other governmental department, commission, board, agency or instrumentality.

GRANTEE: The business, its lawful successors, transferees and assigns, who is the Grantee of rights under this ordinance.

GRANTOR: The City of Brandon, South Dakota.

GROSS REVENUES: Shall refer to any and all revenue in whatever form from any source received by a grantee or an affiliate of grantee that would otherwise be subject to the payment of franchise fees pursuant to the provisions of 47 U.S.C. § 542 derived from the operation of the cable system to provide cable service within the city. Gross Revenues shall include, but are not limited to, all revenue received from basic and expanded basic, pay cable, digital services, high definition services, digital video recorder, video on-demand, revenue for lease of system to others, converter rentals and fees for cable Internet service (if the service is deemed to be a cable service). Gross Revenue also includes new services that are classified as cable services under a Franchise and federal law and are expressly included as Gross Revenue without further amendment to this Ordinance or any Franchise.

The Gross Revenue does not include any taxes or fees on cable services furnished by a grantee and imposed directly upon any subscriber, nonsubscriber or user by federal, state or local law and collected by grantee on behalf of the governmental unit, or amounts collected from subscribers for public, educational and/or governmental access. It does not include any revenue which cannot be collected by a grantee and are identified as bad debt, provided, that if revenue previously representing bad debt is collected, this revenue shall be included in gross revenues for the collection period. Gross Revenues also does not include revenue received from advertising, home shopping service commissions,

leased access and service charges, including, but not limited to, installation, disconnection, repair or other similar service charges.

INSTALLATION: The connection of the System from the feeder cable to the point of connectivity.

LOW DENSITY AREA: Any area in the Franchise area with less than five (5) potential or actual subscribers per one-fourth ($\frac{1}{4}$) mile.

MULTICHANNEL VIDEO PROGRAM DISTRIBUTOR (OR MVPD): A person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider, or a television receive only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

NORMAL BUSINESS HOURS: Those hours during which most similar businesses in the City are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours at least one (1) night per week and/or some weekend hours.

NORMAL OPERATING CONDITIONS: Those service conditions which are within the control of the Grantee, including but not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System. Those conditions which are ordinarily not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.

OPEN VIDEO SERVICES OR OVS: Any video programming services provided to any person by a Grantee certified by the FCC to operate an open video system pursuant to § 47 USC 573, as may be amended, regardless of the facilities used.

OTHER PROGRAMING SERVICE: information that a cable operator makes available to all subscribers generally.

PAY TELEVISION: 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 cable service or cable programming services.

PEG: Public, educational and governmental. Reference to "access channels" shall mean "PEG Access Channels."

PEG ACCESS: Public access, educational access, and governmental access, collectively.

PERSON: Any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

PROPERTY OF GRANTEE: All property owned, installed or used by the Grantee in the conduct of a CATV business in the City.

PUBLIC ACCESS: Organizations, non-profit groups or individual members of the general public, on a non-discriminatory, first-come, first-served basis, are the primary or designate programmers or users.

RESIDENTIAL SUBSCRIBER: A subscriber utilizing cable services or a Grantee's cable system for personal or household use; not in connection with carrying on a business.

SERVICE AREA: The entire geographic area within the City as it is now constituted or may in the future be constituted.

SERVICE INTERRUPTION: Loss of picture or sound on one (1) or more cable channels.

STANDARD INSTALLATION: Any residential installation which can be completed using a drop of one hundred fifty feet (150') or less.

STREET: The surface of and the space above and below any public street, way, place, right-of-way, road, highway, freeway, bridge, tunnel, lane, path, bike-path, alley, court, sidewalk, parkway, drive, communications or utility easement, by whatever name called, now or hereafter existing as such within the Franchise area.

SUBSCRIBER: Any person who lawfully receives cable service. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.

VIDEO PROGRAMMING: Programming provided by, or generally considered comparable to programming provided by a television broadcast station.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-3

FRANCHISE REQUIRED

It shall be unlawful for any person to construct, operate, or maintain a cable system or MVPD facility or to provide cable service, video programming, or other MVPD services, including OVS, in the City, without a Franchise with the City authorizing the same, unless applicable federal or state law prohibits the Grantor's enforcement of such a requirement. A Franchise that is granted in the City shall be subject to the terms and conditions contained in each individual Franchise.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-4

NON-EXCLUSIVE GRANT OF FRANCHISE

1. A Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above and under the streets, public ways and public places

now laid out or dedicated and all extensions thereof, and additions thereto in Franchise area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the Franchise area of a cable system.

2. A Franchise shall be nonexclusive, and Grantor reserves the right to grant a similar use of said streets to other persons at any time, provided, however, that all Franchises shall contain substantially similar terms and conditions as the Franchise. In order that one person is not granted a competitive advantage over another, in the event a person commences provision of cable services without a Franchise or is granted a Franchise to provide cable services by the Grantor, the terms and conditions of which differ with a Franchise in effect with a different person, Grantee shall have the right either:
 - a. To opt into the competitor's Franchise by providing ten (10) days' prior written notice to the Grantor; or
 - b. To petition the Grantor for modifications to its Franchise, in which case the Grantor shall work in good faith with the affected Grantee(s) to review and adopt modifications which the Grantee(s) deem necessary, review and approval by Grantor shall not be unreasonably denied.
3. Every Franchise shall apply to the entire Franchise area of the Grantor, as it exists now or may later be configured.
4. Neither the City nor Grantee(s) may unilaterally alter the material rights and obligations set forth in the Franchise. In the event of a conflict between any other ordinance and the Franchise, the Franchise shall control.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-5

TERM OF FRANCHISE

Unless renewed, revoked, or terminated sooner as herein provided, a Franchise shall be in effect for a period of up to five (5) years from the effective date of an individual Franchise, with an automatic renewal term of up to an additional five (5) years unless notice of nonrenewal is provided by the City six (6) months in advance of expiration.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-6

TERRITORIAL AREA INVOLVED:

1. Grantee shall provide cable services to any and all persons requesting same at a location within the Franchise area as such area boundaries may exist from time to time. No line extension charge or comparable charge shall be imposed on any current or potential subscriber when located within the Franchise area except as further provided by this section.

2. Grantee shall not be required to extend its lines or provide cable service any sooner than electric utility service is available to the subscriber's location. Grantee shall provide service to a requesting subscriber within a reasonable amount of time which in no event shall exceed three (3) months. Notwithstanding the foregoing, it shall not be considered to be a breach of this Ordinance if Grantee is unable to provide service to a requesting subscriber's location within three (3) months due to inclement weather conditions making underground construction impractical or infeasible.
3. Grantee may choose either alternative 3(a) or 3(b), relating to line extensions in low density areas, which such choice shall be effective for the entire Franchise term, and the alternative shall be inserted into the individual Franchise.
 - a. Prior to providing service in Low Density Areas to Residential Subscribers, a Grantee may require a Residential Subscriber to commit to an initial service agreement of up to three (3) years, subject to the following restrictions:
 - i. A Grantee shall not require a Residential Subscriber to pay a line extension charge or comparable charge as a condition precedent to the provision of service.
 - ii. An agreement shall not require a Residential Subscriber to maintain services in excess of the stand-alone rate of Basic Cable Service. However, a Residential Subscriber and Grantee are not restricted from agreeing on the provision of additional services so long as Subscriber may cancel such additional services.
 - iii. An agreement shall be terminable by a Residential Subscriber at any time upon reasonable notice. However, said agreement may contain a provision requiring payment of a line extension charge that shall only be applicable if, prior to the end of the three (3) year term, the Residential Subscriber terminates service entirely or the Residential Subscriber reduces Subscriber's services to a monthly rate less than the stand-alone rate of Basic Cable Service.
 - iv. Any such line extension charge shall be reasonable and shall be pro-rated and reduced by the number of months the Residential Subscriber maintained service and must take into consideration any subsequent development in the area.
 - v. At the option of Subscriber, Subscriber may, as an alternative to signing an initial service agreement, agree to pay a line extension charge.
 - vi. The provisions of this subsection shall not apply to any existing or potential Commercial Subscriber and, with a Commercial Subscriber, Grantee is not prohibited from reaching agreements or charging a line extension charge that would otherwise be prohibited with a Residential Subscriber.
 - b. Grantee shall not require a Subscriber to pay a line extension charge or comparable charge in Low Density Areas.

- c. Notwithstanding subsection 1 of this section, a Grantee may charge a uniform standard installation fee. Grantee may also charge a drop fee for drops exceeding the standard installation length of one hundred fifty feet (150') but shall only charge for the incremental cost beyond one hundred fifty feet (150'), which amount shall be reasonable.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-7

WRITTEN APPLICATION REQUIREMENTS

An application for an initial Franchise to provide video programming shall be in writing on a form provided by the City which shall contain where applicable:

1. Applicant name and business address of applicant.
2. A statement as to the proposed Franchise area, and whether applicant holds an existing authorization to access the rights of way in the City and a map of the areas where such authorization exists if for an area other than the entire City.
3. Resume of prior history of applicant, including the legal, technical, and financial expertise of applicant in the cable service field, as well as a list of any other municipalities or areas where applicant has provided cable service or is so providing at the time of application.
4. List of officers, directors, and managing employees of applicant and resumes of each.
5. A proposed construction schedule to provide cable service or video programming to subscribers.
6. A certificate of insurance consistent with the requirements of this Chapter.
7. A description of the cable system the applicant intends to build, including its capacity, the types of equipment proposed for use and the cable services or video programming which shall be offered.
8. An AutoCAD DWG file or a GIS shape file for the proposed locations for lines and structures, including the proposed depths, size and locations for all infrastructure.
9. A description of the financial qualifications of the applicant to construct and operate the system including a balance sheet, income statement, sources and uses of funds statement, and pro forma projections for at least three (3) years of operation subsequent to system completion.
10. A proposed plan for public, educational, and government access channels, including funding, facilities, and equipment and capacity on the system to be dedicated for educational and governmental use.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-8**REVIEW OF NEW APPLICATION**

The initial Franchise application may be evaluated according to the following criteria and approved within one hundred eighty (180) days after City deems the application is complete. In the event applicant is already authorized to occupy the rights of way, the time for review and approval shall be ninety (90) days.

1. The evidence of legal, technical, and financial ability required in the applicant's proposal shall be such as to assure the ability to complete the entire system within a reasonable time from the date the Franchise is granted. The City will also consider the applicant's ability to operate the system and provide the necessary cable services or video programming in compliance with the terms of this Chapter.
2. The City administrator or designee shall prepare a report and make his or her recommendations respecting such application to the City Council.
3. A public hearing shall be set prior to any grant of a Franchise, at a time and date approved by the City Council. Within thirty (30) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted subject to what conditions.
4. The City may consider any additional information that it deems applicable.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-9**FRANCHISE RENEWAL**

Any renewal of a Franchise shall be done in accordance with applicable law including:

1. Any proceedings undertaken by the City that relate to the renewal of a Grantee's Franchise shall be governed by and comply with the provisions of § 626 of the Cable Act, as amended;
2. In addition to the procedures set forth in § 626(a) of the Cable Act, the City agrees to notify a Grantee of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of a Grantee under the then-current franchise term. The City further agrees that the assessments shall be provided to a Grantee promptly so that a Grantee has adequate time to submit a proposal under § 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term;
3. Notwithstanding anything to the contrary set forth in this Chapter, a Grantee and the City understand that at any time during the term of the then-current franchise, while affording the public appropriate notice and opportunity to comment, the City and a Grantee may agree to undertake and finalize informal negotiations

regarding renewal of the then-current franchise and the City may grant a renewal thereof; and

4. A Grantee shall promptly reimburse the city for actual out-of-pocket expenses incurred to publish the franchise if the publication is required by applicable law.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-10

WRITTEN NOTICE

As to any written notice required related to a Franchise, the City's Finance Officer is designated to be its designated agent; Grantee shall designate an agent upon whom process against it may be served on behalf of the City. All notices, reports or demands required or permitted to be given under the Franchise shall be in writing and shall be deemed to be given when delivered personally to the designated person, or when two (2) days have elapsed after it has been deposited in the United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or nationally recognized overnight air courier addressed to the party to which notice, report or demand is being given. Each Grantee shall also provide in the Franchise an address for which service may be effectuated upon it.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-11

FRANCHISE PUBLICATION AND ACCEPTANCE

1. Any Franchise shall be published in accordance with applicable South Dakota law.
2. Grantee shall accept an individual Franchise by executing the same. Such acceptance by the Grantee shall be deemed the grant of an individual Franchise for all purposes. With its acceptance, Grantee shall also deliver any insurance certificates required herein that have not been previously delivered. Upon acceptance of an individual Franchise, Grantee shall be bound by all the terms and conditions contained in this Chapter and in the Franchise and warrant that it is an equal opportunity/affirmative action employer.
3. Upon issuance of a Franchise, the Grantee is hereby authorized and specifically required to extend the system throughout the entire Franchise area of the City and to offer its Basic CATV Service to all residents of the Franchise area solely for the usual connection and service fees for all subscribers within 15 month after Grantee first receives all required licenses and permits for construction of the CATV system.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-12

CONSTRUCTION, OPERATIONS STANDARDS AND CONDITIONS ON STREET USE

1. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.
2. At all times the Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex or age. Grantee shall comply at all times with all other applicable federal, state, and City laws, and all executive and administrative orders relating to nondiscrimination. Grantee shall also comply with terms of 47 U.S.C. § 551 relating to the protection of Subscriber privacy. Grantee shall also not arbitrarily deny services to a Subscriber.
3. Before commencing any construction upgrade or extension of the system, a Grantee shall obtain all required permits from Grantor, shall provide notice to the residents adjacent to any right-of-way affected, and shall before distribution to residents provide to the City copies of the notice for the City's advance review.
4. A Grantee shall at all times construct and operate its system in accordance with applicable FCC technical specifications, applicable governmental construction and electrical codes.
5. A Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.
6. The Grantee shall not be subject to permit fees except for any fees or costs associated with repairs of streets or other infrastructure necessitated by Grantee's operations.
7. Unless the Grantee receives express written authorization from the City, the Grantee may not put its cables, wires, lines, towers, guides or any other conductors, converters, equipment or facilities above ground level in any area of the Franchise area (rather they must be buried), nor may Grantee retain its cables, wires, lines, towers, guides or any other conductors, converters, equipment or facilities above ground in any area of the Franchise area where both telephone and electrical utility distribution cables, wires, lines, towers, guides or any other conductors, converters, equipment or facilities are later hereto placed below ground level.
8. All transmission and distribution structures, poles, lines, and equipment installed or erected by the Grantee within the Franchise area shall be so located as to cause minimum interference with the proper use of streets and with the rights and reasonable convenience of property owners who adjoin any of said streets. Any structure placed above the ground in or by a residence shall be green in color, be the minimum size suitable for the purpose, and be properly maintained by the Grantee (including but not limited to being free of rust, decay, corrosion).
9. No poles or other wire holding structures shall be erected by the Grantee without prior approval of the designated representative of the City Council with regard to locations, height, type, or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council or its

designated representative determines that the public convenience would be enhanced thereby.

10. Where poles or other wire holding structures already existing in use in serving the City are available for use by Grantee, the City Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
11. Where the City or a public utility serving the City desires to make use of poles or other wire holding structures of the Grantee but agreement therefor with the Grantee cannot be reached, the City Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the council determines the use would enhance the public convenience and would not unduly burden Grantee or interfere with the Grantee's operations.
12. If, at any time during the period of the Franchise, Grantor shall elect to alter, or change the grade or location of any street, alley, or other public way, a Grantee shall, at its own expense, upon ten (10) days' advance notice by Grantor to Grantee, remove and relocate its poles, wires, cables, conduits, manholes, and other fixtures of the system.
13. A Grantee shall, on request of any person holding a moving permit issued by Grantor, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and a Grantee shall be given not less than ten (10) days' advance notice to arrange for such temporary changes.
14. A Grantee shall have the authority to trim vegetation or any trees upon and overhanging the streets, alleys, sidewalks, or public easements of Grantor so as to prevent such vegetation or trees from coming in contact with the wires and cables of the Grantee. Grantee shall first provide advanced notice of any trimming activity notice to the City and the residents adjacent to the streets, alleys, sidewalks and/or public easements.
15. In case of disturbance of any street, paved area, sidewalk or grass area in any public or private property, the Grantee shall, at its expense and in a manner approved by the City, replace and restore such area(s) in as good condition as theretofore, done to the satisfaction of the City, and Grantee shall guarantee the street, paved area and sidewalk work for three years, and such other work for a year after such replacement or restoration. In addition, Grantee shall be liable to the City for any costs the City incurs by reason of Grantee's failure to comply with these requirements.
16. Nothing contained in this Chapter shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's system or facilities; nor shall Grantee be so relieved of liability arising out of its failure to exercise reasonable care to avoid injury to any person's property.
17. In the event that the use of any part of the system is discontinued for any reason, except for nonuse arising from discontinued service by a subscriber, for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this

Chapter, or the rights granted hereunder have been terminated, canceled or have expired, Grantee shall, subject to the rights of the City to acquire the abandoned portions of the system as specified in subsection J of this section, promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City and is liable to the City for any costs the City incurs by reason of Grantee's failure to do so.

18. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.
19. All cable and passive equipment for reception of cable services installed by Grantee at a subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove said cable and equipment. Upon termination of cable service to any subscriber, the Grantee shall promptly remove all its aboveground facilities and equipment from the premises of such subscriber upon the subscriber's request.
20. Grantee shall at all times maintain on file with the City finance office a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.
21. During the term hereof, the City reserves the right to regulate rates pursuant to federal law and FCC regulations and any such rate regulation shall not conflict with the provisions of FCC regulations and federal law.
22. Subject to any applicable state or federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street, provided: (1) such use by the City does not interfere with the use by the Grantee; and (2) the City holds the Grantee harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-13

PUBLIC SERVICES AND PEG PROVISIONS

1. Drops to Public Buildings.
 - a. Throughout the term of a Franchise Grantee shall provide, free of charge, one (1) service Drop, one (1) Converter, if necessary and requested, and Basic Cable Service which shall consist of at least sixty-five (65) channels ("Complimentary Service"), to up to 5 sites to be designated by the City in the Franchise.

- b. The City or the building occupant shall have the right to extend Cable Service throughout the building to additional outlets for the provision of Complimentary Service to such additional outlets.
 - c. Notwithstanding anything to the contrary set forth in this section, Grantee shall not be required to provide Complimentary Service to such buildings if it is not technically feasible.
 - d. Grantee shall, in any public building hereinafter built, provide all materials, design specifications and technical advice to provide Complimentary Service to such building. If the Installation to such building exceeds two hundred (200) feet, Grantee will accommodate the Installation up to two hundred (200) feet provided that the City or other agency pays the incremental cost of such Installation in excess of two hundred (200) feet. For purposes of this paragraph, "incremental cost" means Grantee's actual cost to provide the Installation beyond two hundred (200) feet, with no mark-up for profit. The recipient of the service will secure any necessary right of entry.
2. Dedicated Return Lines for PEG. Grantee shall provide and maintain, free of charge, throughout the life of the Franchise all existing fiber return lines as designated by the City in the Franchise and other return lines and associated equipment that are in place as of the effective date of the Franchise to enable the distribution of PEG Access programming to Grantee's Subscribers. Upon the installation of the return lines by Grantee, PEG Access programming provider shall not deny PEG Access programming to Grantee.
3. Emergency Alert System. At all times during the term of the Franchise, the Grantee shall provide and maintain an Emergency Alert System ("EAS") consistent with Applicable Laws including 47 C.F.R., Part 11.
4. Capital Grant. The City may require in a Franchise Agreement every Grantee shall provide to the City a one-time capital grant in an amount up to five thousand dollars (\$5,000.00) for access related expenditures (the "capital grant") within thirty (30) days of the effective date of its Franchise. The City understands that pursuant to federal law, a Grantee may collect the capital grant from subscribers as a separate line item on subscriber bills, in addition to the price for cable service. Any payments by Grantee to City in support of PEG Access shall not be deemed "Franchise Fees" within the meaning of § 622 of the Cable Act (47 U.S.C. § 542).
5. Public, Educational, and Governmental ("PEG") Access Channels.
 - a. Unless otherwise directed in writing by the City subject to the requirements set forth herein, the City is hereby designated to operate, administer, promote, and manage Access public, educational, and governmental programming (hereinafter "PEG Access") to the Cable System established as set forth herein.
 - b. Grantee shall dedicate two (2) Channels for PEG Access use on the System. Grantee shall maintain the existing PEG Access Channels on Channel 18 and 21 (if either channel is unavailable then the Grantee shall locate this PEG Access Channel in reasonable proximity to Channel 18 and/or 21 or near other channels providing

local content); the PEG Access Channels shall be located in the same neighborhood to other channels of a similar nature such as PBS or CSPAN. The Grantee shall provide City and all Subscribers with at least ninety (90) days prior written notice of any proposed relocation of any PEG Access Channel to a different Channel number. The City shall consider the evolving interactive guides and navigation features available on a Subscriber's set-top unit that may make channel number assignments and placement less important in the future, as viewers may find PEG Access programming through a search function, and the Grantee may not to encrypt the PEG Access Channels any differently than other commercial channels available on the Cable System.

6. Access Rules. The City shall implement rules for use of any specially designated PEG Access Channels. The initial Access rules and any amendments thereto shall be maintained on file with the City and available for public inspection during Normal Business Hours.
7. PEG Channel Capacity on the Cable System.
 - a. PEG Access Channels on Basic Cable Service. The PEG Access Channels shall be provided as part of the Basic Cable Service and shall be fully available to every Basic Cable Service tier Subscriber.
 - b. Digital Channels. Grantee shall carry all components of the PEG Access Channel signals provided by the City including, but not limited to, closed captioning, stereo audio and other elements associated with the programming. The City shall be responsible for providing the PEG Access Channels to the demarcation point at the designated point of origination for the PEG Access Channels. Grantee shall transport and distribute the PEG Access Channels on its Cable System and shall not discriminate against PEG Access Channels with respect to the functionality, signal quality, and features from those of the local broadcast Channels carried on the Cable System in a similar format. With respect to signal quality, Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel signal delivered to Grantee, but Grantee shall distribute the PEG Access Channel signal without degradation. Any and all costs associated with any modification of the PEG Access Channels or signals after the PEG Access Channel signals leave the City's designated playback facilities, or any designated playback center authorized by the City, shall be provided free of charge to the City and its designees and shall be borne entirely by Grantee, provided, however, nothing herein shall require Grantee to violate Applicable Laws.
 - c. PEG Access Channels carried in High Definition. The City shall have the option, upon ninety (90) days written notice to Grantee, to require that the Grantee to provide one (1) of the two (2) PEG Access Channels in High Definition. The Grantees system shall be capable of providing either a Standard Definition signal or a High Definition signal to the subscriber.
 - d. HD Equipment. The City acknowledges that receipt of HD format PEG Access Channels may require Subscribers to buy or lease special equipment required by

the Cable System to view any HD Channels, or pay additional HD charges applicable to all HD services.

8. Navigation to PEG Access Channels. A Grantee shall agree that if it utilizes a visual interface under its control on its Cable System for all Channels, the PEG Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to PEG Access Channels. The Grantee shall make available to City the ability to place PEG Access Channel programming information on the interactive channel guide via the electronic programming guide (“EPG”) vendor (“EPG provider”) that Grantee utilizes to provide the guide service. Grantee shall be responsible for providing the designations and instructions necessary for the PEG Access Channels to appear on the EPG. All costs and operational requirements of the EPG provider shall be the responsibility of the City.
9. Noncommercial Use of PEG. Permitted noncommercial uses of the PEG Access Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG Access programming by the City or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited, non-profit, educational institutions which may, for example, offer telecourses over a PEG Access Channel without charge. In the event the City elects to identify financial supporters of the PEG Access Channels, the City shall identify Grantee as a financial supporter in consideration of the labor, equipment, materials, and funds of Grantee utilized in connection with the PEG Access Channels. In the event the City elects to identify financial supporters of the PEG Access Channels, the City shall identify Grantee as a financial supporter in consideration of the labor, equipment, materials, and funds of Grantee utilized in connection with the PEG Access Channels.
10. PEG Technical Quality.
 - a. Grantee shall maintain its Cable System in accordance with FCC technical standards so that PEG Access Channels and return lines are at the same level of technical quality and reliability as other commercial signals carried by Grantee, so long as the PEG Access signal comes to Grantee at that level of quality. There shall be no significant deterioration in signal from the point of origination upstream to the point of reception downstream on the Cable System. All processing equipment used by Grantee for processing PEG Access signals shall be of similar quality to the processing equipment used for other commercial Channels.
 - b. As soon as commercially reasonable and no later than the next business day following written request from the City to the Grantee identifying a technical problem with a PEG Access Channel and requesting assistance, the Grantee shall provide technical assistance or diagnostic services to determine whether or not a problem with a PEG Access signal is the result of matters for which Grantee is responsible and if so, the Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from the Grantee and the City to determine the course of action to remedy the problem.

11. The City shall have sole responsibility for managing and controlling the PEG channel. The City shall establish rules for the programming, operation or administration of the PEG channel, which shall be subject to Grantee's review and approval. Grantee shall have no responsibility whatsoever for the programming, operation or administration of the PEG channel.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-14

RATES

The City may regulate and fix reasonable rents or rates or installation charges for such system as allowed by federal or state law. The Grantee shall at all times maintain on file with the City Finance Officer a schedule setting forth all rates and charges to be made to subscriber for basic cable services, including installation charges.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-15

LOCAL OFFICE: COMPLAINTS

The Grantee shall maintain a local business office or agent which subscribers may telephone during regular business hours without incurring added message or toll charges, so that complaints regarding cable television operations may be promptly reported to the Grantee. Local means within sixty (60) miles of the City of Brandon.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-16

FRANCHISE FEE

1. A Grantee shall pay the City a monthly Franchise Fee in the amount of zero percent (0%) to five percent (5%) of Grantee's gross revenues. The amount shall be established by the City Council by resolution every two years. In the event the Franchise Fee is increased, the City shall give the Grantee a 90-day notice to implement the new fee. In accordance with the Cable Act, the 12-month period applicable under the franchise for the computation of the franchise fee shall be a calendar year.
2. The Franchise Fee amount, if any, shall be payable monthly, together with a brief report showing the basis for the computation, such report to be held confidential and exempt from public records disclosure requirements pursuant to SDCL § 1-27-1.5(3) as containing trade secrets and other proprietary or commercial information which if released would infringe intellectual property rights or give advantage to business competitors.

3. Grantee shall acknowledge and agree that the Franchise Fees payable by Grantee to the City shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by the Grantee pursuant to the Franchise and that the Franchise Fees shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which the Grantee shall be required to pay to the City and/or to any other Governmental Authority, all of which shall be separate and distinct obligations of Grantee.
4. A Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to City pursuant to the Franchise and shall be deducted from or credited or offset against any taxes, fees or assessments of general applicability levied or imposed by the City or any other Governmental Authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services.
5. A Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City or any other Governmental Authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made pursuant by Grantee to City to the Franchise, each of which shall be deemed to be separate and distinct obligations of the Grantee.
6. Upon thirty (30) days prior written notice, City shall have the right to conduct an audit or review of Grantee's records for purposes of determining whether Grantee has accurately collected and paid Franchise Fees. If such audit or review indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all reasonable out-of-pocket costs of such an audit/review and shall remit to the City all applicable Franchise Fees due and payable together with interest thereon at twelve percent (12%) per annum.
7. Except as otherwise provided by law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee under the Franchise or for the performance of any other obligation of the Grantee
8. The City shall be limited to a period of limitation for recovery of any Franchise Fee payable pursuant to a Franchise of three (3) years. However, a Grantee shall be liable for interest, at the judicial rate, on any late payments from the date of the payment missed. Such limitation shall not apply in cases of fraud. The City may request a review of records relating to the Franchise Fee and Grantee shall accommodate all reasonable requests to review such records.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-17

RECORDS AND REPORTS REQUIRED FROM GRANTEE

1. A Grantee shall at all times maintain and shall provide to the City after the completion of construction as well as every six months thereafter, and upon ten (10)

business days after a written request from the City, a full and complete set (in both electronic and paper copy) of “record drawings in either AUTOCAD DWG file or a GIS shape file, showing the location, depth and size of the Cable System installed or in use in the City, exclusive of Subscriber service Drops and equipment provided in Subscribers’ homes.

2. Upon written request by the City, a Grantee shall provide a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the City within thirty (30) days following its request in a form reasonably acceptable to the City and Grantee.
3. Upon request of the City and in no event later than thirty (30) days from the date of receipt of such request, Grantee shall prepare and furnish to City, at Grantee’s sole cost, such reports and information maintained in the ordinary course of its business regarding operations, affairs, transactions or property, as they relate to the Grantee’s compliance with the Franchise. Neither City nor Grantee shall unreasonably demand or withhold information requested.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-18

INDEMNIFICATION OF GRANTOR

The Grantee shall at all times protect, indemnify and hold harmless the City and its officers, boards, Council, committees, elected officials, employees and agents from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, reasonable attorney's fees, and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted pursuant to this title as well as by reason of any license, copyright, property right or patent of any article or system used in the construction of use of said system, except claims covered by workers' compensation insurance or any claims arising from or related to the City's negligent or willful conduct of the City or its officers, boards, Council, committees, elected officials, and employees. Nothing in this Chapter relieves a person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's system or facilities while performing work connected with grading, regrading, or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system, and provided the City gives the Grantee prompt notice of any such claims, actions and suits, without limitation, in writing.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-19

INSURANCE

A Grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of

Grantor in its capacity as such. The policies of insurance shall be in the sum of not less than three hundred thousand dollars (\$300,000.00) for personal injury or death of any one person, and one million dollars (\$1,000,000.00) for personal injury or death of two (2) or more persons in any one occurrence, three hundred thousand dollars (\$300,000.00) for property damage to any one person and one million dollars (\$1,000,000.00) for property damage resulting from any one act or occurrence, which amounts may be modified by City from time to time in its sole discretion to be exercised in good faith.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-20

GRANTOR'S RIGHT TO REVOKE

Grantor reserves the right to revoke, terminate, or cancel a Franchise, if after strictly following the procedures required below, it is determined that a Grantee has violated any material provision of its Franchise or this Chapter and has failed to substantially cure said violation. Such revocation procedures include:

1. Grantor shall provide a Grantee with written notice of a cause for revocation, including facts establishing the basis of revocation, and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance.
2. Grantee shall be provided the right to a public hearing affording due process before the City Council prior to revocation, which public hearing shall follow the thirty (30) day notice period to cure the violation. Grantor shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
3. After the public hearing and upon written determination by Grantor to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.
4. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.
5. Upon satisfactory correction by Grantee of the violation upon which said notice was given, the initial notice shall become void. If violations reoccur for substantially similar reasons, the notice period may be reduced by the number of days previously spent in violation for any substantially similar prior violations.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-21

SALE OR TRANSFER OF FRANCHISE

The Grantee shall not sell or transfer its plant or system to another, nor transfer any rights under the Franchise to another without City Council approval. No sale or transfer of the

Grantee's assets used in the performance of the Franchise shall be effective until the vendee, assignee or lessee has filed in the office of the City Finance Officer an instrument duly executed reciting the fact of such sale, assignment or lease, accepting the terms of the Franchise and agreeing to perform all the conditions thereof. Such Council approval shall not be unreasonably withheld and neither this Section nor other Sections of the Franchise shall preclude the mortgaging, hypothecating, or assigning of rights in the system.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-22

FRANCHISE TERM EXPIRATION

Upon expiration of the Franchise, if the Grantee shall not have acquired an extension renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets or other property of the City, for the purposes of removing therefrom any or all of its property or otherwise. In so removing said property, the Grantee shall refill, at its expense, any excavation that it shall make and shall leave said City streets and property in as good condition as that prevailing prior to the Grantee's removal of its property, done to the satisfaction of the City, and Grantee shall guarantee the street, paved area and sidewalk work for three years, and such other work for a year after such replacement or restoration. In addition, Grantee shall be liable to the City for any costs the City incurs by reason of Grantee's failure to comply with these requirements.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-23

MARKETING

A Grantee shall have the right to conduct direct selling in the Franchise area, including door to door sales, subject to the City's peddler or solicitor ordinances.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-24

AMENDMENT OF FRANCHISE

The City and Grantee may agree, from time to time, to amend a Franchise. Such written amendments may be made at any time, subject to applicable law.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-25

RULES OF GRANTEE

A Grantee 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 said Grantee to exercise its rights and perform its obligation under the Franchise.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-26

COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Grantee shall at all times during the life of the Franchise be subject to all lawful exercise of the powers by the City. The City reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be necessary to the exercise its power. Such regulation shall be reasonable and not in derogation of the rights in this Chapter or a Franchise, nor in conflict with the laws of the State or other local or Federal laws or regulations.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-27

GENERAL VIOLATIONS

1. From and after the effective date of this ordinance, it shall be unlawful for any person to construct, install or maintain within any public street in the City, or within any other public property of the City, or within any privately-owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City Council, any equipment or facilities for distributing any television signals or radio signals through a CATV system unless a Franchise authorizing such use of such street or property or area has first been obtained, and unless such Franchise is in full force and effect.
2. It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the franchised CATV system within this City for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound, or other transmission, without payment to the owner.
3. It shall be unlawful for any person, without the consent of the owner, willfully to tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.
4. Any person violating or failing to comply with any of the provisions of this Chapter shall be guilty of a misdemeanor and for each day of violation or failure to comply may be punished by a fine not to exceed One Hundred Dollars (\$100).

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-28

VIOLATIONS-GRANTEE

1. Without waiving any right to revoke a Franchise, as against a Grantee for any violation of a Franchise, the City in its sole discretion may assess against Grantee the following liquidated damages:
 - a. Unless the City has approved delays, for failure to timely complete line extensions as provided in the Franchise or a failure to meet the customer service standards and requirements as set forth in the Franchise, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) daily fine per day for each day, or part thereof, such failure occurs or continues.
 - b. For failure to comply with the terms and conditions of the Franchise with the exception of those terms as outlined in Paragraph 1(a)(i) above, the penalty shall be One Hundred and No/100 Dollars (\$100) daily fine per day for each day, or part thereof, such failure occurs or continues.
2. As to the procedure for assessing liquidated damages, the City shall follow the procedures outlined below:
 - a. If City finds that Grantee has violated one (1) or more terms, conditions or provisions of the Franchise, a written notice shall be given to Grantee, specifying with particularity the alleged violation. At any time after thirty (30) days (or such additional reasonable time which is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one (1) or more terms, conditions or provisions of the Franchise, City may impose all penalties and other monies due from the date of the local receipt of notice and Grantee shall have no more than five (5) business days to remit such penalties and other monies due the City.
 - b. Whenever notice of an alleged violation has been received by Grantee, Grantee may, within thirty (30) days of local receipt of notice, notify the issuer of the notice that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall toll the running of the time frames for cure and the accrual of any penalties herein and shall specify with particularity the matters disputed by Grantee. City shall hear Grantee's dispute at its next regularly scheduled meeting or as soon thereafter as possible. Grantee shall be afforded a reasonable notice of the meeting and afforded a reasonable opportunity to participate in and be heard at the meeting. City shall supplement its decision with a written order sustaining or overruling the decision, and shall specify with particularity the basis for its decision.
 - c. Upon determination that no violation has taken place, City shall withdraw the notice alleging a violation. Upon determination that a violation has occurred, Grantee shall have the balance of its initial thirty (30) day cure period, measured from the date the Grantee disputed the notice of violation to cure said violation before penalties shall accrue.
 - d. Grantee shall have the right to challenge the findings that Grantee has violated one (1) or more terms, conditions or provisions of the Franchise or has failed to substantially cure such violation in a court of competent jurisdiction.

- e. If Grantee should fail to remit such penalties and other monies due the City as mandated by Paragraph 1(b)(i) above, the Grantee agrees to pay City's reasonable costs and attorneys' fees incurred by the City to obtain all required payments from Grantee.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-29

RIGHTS RESERVED TO CITY

1. In addition to any rights specifically reserved to the City by the Franchise, the City reserves to itself every right and power which is required to be reserved by a provision of the Franchise.
2. The City shall have the right to waive any provision of the Franchise, except those required by Applicable Laws, if the City, in its sole opinion, determines (1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the Grantee or the Subscribers in all cases subject to Section XI, Paragraph 5 herein. Waiver of any provision in one (1) instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the Franchise unless the statement so recites.

Legislative History:
Ordinance #610, 07/15/20

Authority:
SDCL 9-35

14-7-30

SEVERABILITY

If any part of this ordinance is for any reason held invalid by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Legislative History:
Ordinance #100, 08/18/80
Ordinance #292, 09/05/00
Ordinance #610, 07/15/20

Authority:
SDCL 9-35