

## Chapter 10

### COMMUNITY ANTENNA TELEVISION<sup>1</sup>

Art. I.	Definitions, § 10-1—10-4
Art. II.	Procedures for Granting, Renewing Transferring, Acquiring Cable Television License, §§ 10-5—10-19
Art. III.	License Requirements, §§ 10-20—10-34
Art. IV.	Construction Requirements, §§ 10-35—10-44
Art. V.	Regulations For City Streets, Rights of Way, §§ 10-45—10-54
Art. VI.	Customer Service Provisions, §§ 10-55—10-69
Art. VII.	Administration and Enforcement, §§ 10-70—10-86

#### ARTICLE I. DEFINITIONS

##### Sec. 10-1. Definitions.

For the purposes of this chapter, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless they are defined differently in a license, in which case for that license the definition set forth therein shall apply. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. All references to days shall mean calendar days, unless otherwise specified.

(1) *Access channel* shall mean a channel dedicated in whole or in part for local noncommercial programming which is not originated by a cable company; provided that such local programming shall not include (i) the retransmission of local television broadcast signals or (ii) programming produced by persons unaffiliated with the cable company under the provisions of Section 612 of the Cable Act.

(2) *Basic service* shall mean any service tier which includes the retransmission of local television broadcast signals. Each such tier shall include all access channels, as defined in Section 611 of the Cable Act.

(3) *Cable act* shall mean the Cable Communications Policy Act of 1984, as amended, including the Telecommunications Act of 1996 ("1996 Act").

(4) *Cable services* shall be defined as the one-way transmission to subscribers of video programming and other programming services, together with subscriber interaction, if any, which is required for the selection or use of such programming and programming services that the licensee makes available to all subscribers generally.

---

<sup>1</sup>**Editor's note**—Ord. No. 91.33, now contained in this Chapter 10, repealed prior code sections 10-1 through 10-54, Ord. No. 90.50 extended the previous grant of franchise to American Cable Television (granted by Ord. 455.6), which would have expired November 18, 1990 to February 18, 1991.

**Editor's note**—Ord. No. 97.31 added certain provisions as indicated herein (updated to the Telecommunications Act of 1996).

**State law reference**—Municipal regulation of cable television, A.R.S. § 9-505 et seq.

## TEMPE CODE

(5) *Cable system* shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable services which includes video programming and which is provided to multiple subscribers within the city (as hereinafter defined), but such term does not include:

- a. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- b. A facility that serves subscribers without using any public right of way;
- c. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
- d. Any facility of an electric utility used solely for operating its electric utility systems.

(6) *Change of service* shall mean all requests by existing subscribers for modifications to their cable service, including without limitation additions or deletions of premium services, additional outlets, remote controls and FM service. Such term shall not include, initial installation of basic cable service, total disconnection of basic cable service or service calls.

(7) *City* shall mean the City of Tempe, a municipal corporation of the State of Arizona, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(8) *City council* shall mean the present governing body of the city or any future council constituting the legislative body of the city.

(9) *Completion of construction* or *complete system construction* shall mean "satisfactorily complete" and "fully activate." In each instance, these terms shall mean that strand has been put up and all necessary cable (including trunk and feeder cable) has been lashed—or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplifier housings and modules have been installed; that power supplies have been installed; that construction of the headends or hubs has been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the cable system to be ready to deliver cable service to subscribers has been completed. Final balancing shall have been conducted on each otherwise completed segment of the cable system before direct marketing of that segment begins. It is expected that segments of less than the entire cable system will be activated and final balanced when completed. Construction of any segment or of the entire cable system will not be considered complete until final balance has been conducted on such segment (or in the case of the entire cable system, until final balancing and proof of performance tests have been conducted on all segments of the cable system) and any problems found during testing have been corrected. The term "completion of construction" does not include marketing and installation of subscriber service.

## COMMUNITY ANTENNA TELEVISION

(10) *Gross revenues* shall be defined as in A.R.S. § 9-505(6), unless otherwise defined in a license granted by the city.

(11) *Initial activation of cable service* or *initially providing cable service* shall mean with respect to a particular segment (as defined in any license issued hereunder), or with respect to a group of segments or the entire cable system, as the case may be, that, all proposed cable services and cable system capabilities as stated in the license are available or in place, construction has been completed (see above definition of construction) and the completed segment or segments in question or the entire cable system, as the case may be, have been activated.

(12) *Initial license* shall mean a license sought by, or granted to, a person who does not hold a license.

(13) *License* shall mean any authorization granted under this chapter in terms of a privilege, permit, license or otherwise to construct, operate and maintain a cable system in the city, including initial licenses and renewal licenses (as hereinafter defined). Any such authorization, in whatever term granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the city in accordance with Article II of Chapter 16.

(14) *Licensee* shall mean the person, firm or corporation to whom or which a license is granted by the city council under this chapter, and the lawful successor, transferee or assignee of said person, firm or corporation.

(15) *Local origination programming* shall mean video programming locally produced by a licensee.

(16) *Normal business hours* means those hours during which most similar business in the city are open to serve subscribers. In all cases, "normal business hours" must include some evening hours at least one night per week and some weekend hours.

(17) *Normal operating conditions* means those service conditions which are within the control of the licensee. Those conditions which are not within the control of the licensee include, but are not limited to, natural disasters, civil disturbances, utility company power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the licensee include, but are not limited to, special promotions, pay-per-view events, rate increase, regular peak or seasonable demand periods, and maintenance or upgrade of the cable system.

(18) *Outage* shall exist whenever licensee's cable system experiences three (3) subscriber complaints within any sixty (60) minute period of "no picture" within the same quarter section.

(19) *Person* shall mean an individual, partnership, corporation, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

(20) *Property of licensee* shall mean all property owned, installed or used by a licensee in the conduct of a cable system business in the city under the authority of a license granted pursuant to this chapter.

## TEMPE CODE

(21) *Proposal or application* shall refer to a response by a qualified cable company in accordance with city specifications to provide cable services to residents, businesses, industries and institutions within the city.

(22) *Renewal license* shall mean a license sought by, or granted to, a cable company already providing cable services in the city.

(23) *Service call* shall result when service problems occur relating to: (i) any "no picture" complaint, (ii) a degraded signal or picture on one or more channels, (iii) property damage by licensee's employees or authorized contractors, or (iv) in-house cable equipment problems.

(24) *Standard drop* shall mean a cable connection which requires no more than a one hundred fifty (150) foot drop measured from the nearest point of a subscriber's home or place of business to the nearest active tap on the cable system, involves only one outlet and standard materials, and does not involve a wall fish. In addition, a "standard drop" shall exclude custom installation work, including specific subscriber requested work that requires non-standard inventory or cable routing requiring construction methods exceeding reasonable underground or aerial work.

(25) *Street or public street* shall mean only a street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway or drive which is owned by a public entity in fee or as to which a public easement has been dedicated for street purposes, and with respect to which, and to the extent that, city has a right to grant the use of the surface of, and space above and below in connection with a license for a cable system, or other compatible uses.

(26) *Subscriber* shall mean any person or entity receiving for any purpose the cable television service of a licensee's cable system.

(27) *Two-way communication* shall mean the transmission of telecommunication signals from subscriber locations or other points throughout the cable system back to the cable system's control center as well as transmission of signals from the control center to subscriber locations.

(28) *User* shall mean a party utilizing a cable system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt in a subscriber capacity.

(29) The terms "will be available," "will be equipped," "will use," "will be designed," "will perform," "will be utilized," "will permit," "will allow," "will be activated," "will be initially connected," "will be capable," "will provide," "will include," "will employ," "will be established," "will be able," "will be implemented," "will be delivered," "will utilize," and other similar uses of terms of a licensee's proposal denoting the activation of cable service, shall be interpreted to mean delivery or accomplishment at a date no later than the initial activation of cable service (as defined in this section) unless otherwise expressly and clearly stated or qualified in the licensee's proposal to mean a more specific or different time.  
(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. 2007.39, 6-28-07)

**Secs. 10-2—10-4. Reserved.**

**ARTICLE II. PROCEDURES FOR GRANTING, RENEWING,  
TRANSFERRING AND ACQUIRING CABLE TELEVISION LICENSES**

**Sec. 10-5. Require a license to operate.**

A non-exclusive license to construct, operate and maintain a cable system within all or any portion of the city is required of anyone desiring to provide cable television service in the city. A license may be granted by the city council to any person, whether operating under an existing license or not, who offers to furnish and provide such cable system under and pursuant to the terms and provisions of this chapter.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-6. Violations for not having a license.**

(a) From and after the effective date of this chapter, it shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons, in this city any television signals or radio signals by means of a cable system unless a license therefore has first been obtained pursuant to the provisions of this chapter, and unless such license is in full force and effect.

(b) From and after the effective date of this chapter, 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, any equipment or facilities for distributing any television signals or radio signals through a cable system, unless a license authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this chapter, and unless such license is in full force and effect.

(c) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a licensed cable system within this city for the purpose of enabling him or herself or others to receive any television signal, radio signal, picture, program or sound, without the permission of the licensee.

(d) It shall be unlawful for any person, without the consent of the licensee, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

(e) Any person violating any part of this section shall be guilty of a class one misdemeanor.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-7. Authorization to engage in business.**

(a) Any license granted pursuant to the provisions of this chapter shall authorize and permit the licensee to engage in the business of operating and providing a cable system in the city, and for that purpose to erect, install, solicit, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public street, such poles, wires, cable,

conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the cable system. Licensee may also so use, operate and provide similar facilities or properties rented, licensed or leased from other persons, firms or corporations, including but not limited to any public utility or other licensee licensed or permitted to do business in the city; provided, however, that neither the licensee nor the third party shall be relieved of any regulation or obligation as to its use of such facilities in the streets.

(b) Nothing in this chapter shall be deemed to prevent a licensee from engaging in the provision of any telecommunications service (as defined in the 1996 Act) authorized or permitted by applicable federal or state law or regulation or to impose any requirement that has the purpose or effect of prohibiting, limiting, restricting or conditioning the provision of telecommunications service by a licensee or its affiliates (as defined in the 1996 Act). Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, the license shall grant the right and privilege to the licensee to provide non-cable communications services. The city council shall retain all authority to regulate non-cable communication services to the extent necessary to protect the public interest and to ensure compliance with all provisions of this chapter.

(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97)

**Sec. 10-8. Limitations of license.**

(a) Any license granted under this chapter shall be nonexclusive.

(b) Any privilege claimed under any license by the licensee in any public street or other public property shall be subordinate to any prior or subsequent lawful occupancy or use thereof by the city or any other governmental entity, shall be subordinate to any prior lawful occupancy or use thereof by any other person, and shall be subordinate to any prior easements therein; provided, however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of any license issued pursuant to this chapter.

(c) Any right or power in, or duty imposed upon, any officer, employee, department or board of the city shall be subject to transfer by the city to any other officer, employee, department or board of the city.

(d) A licensee shall be subject to all requirements of city's rules, regulations and specifications heretofore or hereafter enacted or established, and shall comply with all applicable state and federal laws and regulations heretofore or hereafter enacted or established. There is hereby reserved to the city the power to amend any section of this chapter so as to require additional or greater standards of construction, operation, maintenance or otherwise pursuant to the city's lawful police powers or as provided in the license.

(1) If any state or federal law or regulation shall require the licensee to perform any service, or shall permit the licensee to perform any service, or shall prohibit the licensee from performing any service, in conflict with the terms of its license or any law or regulation of the city, then as soon as possible following knowledge of such conflict, the licensee or the city shall notify the other party of the conflict believed to exist between such state or federal law or regulation and the laws or regulations of the city.

## COMMUNITY ANTENNA TELEVISION

- (2) If the city council determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the city council shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purposes of this chapter consistent with state or federal law.

(f) Any license granted shall not relieve the licensee of any obligation involved in obtaining pole space from any department of the city, utility company or from others maintaining poles in streets.

(Ord. No. 91.33, 10-17-91)

### **Sec. 10-9. Acquisition by city.**

(a) In accordance with Section 627 of the Cable Act, if a renewal of a license held by a licensee is denied and the city acquires ownership of the cable system or effects a transfer of ownership of a cable system to another person, any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the license itself.

(b) If a license held by a licensee is revoked for cause and the city acquires ownership of the cable system or effects a transfer of ownership of the cable system to another person, any such acquisition or transfer shall be at an equitable price. Under the term "equitable price," such matters as the harm to the community resulting from the licensee's breach of the license may be considered in determining the appropriate price. No payment shall be made by the city to the licensee that would include a value attributed to the license itself.

(c) The value of a cable system (fair market value or equitable price) shall be determined by an appraisal committee consisting of three (3) disinterested appraisers. The appraisal process shall be conducted in accordance with the following procedures:

- (1) Each party shall appoint an appraiser within thirty (30) days after the city sends notice initiating appraisal proceedings. The two (2) appraisers shall select a third appraiser within thirty (30) days after selection of the second appraiser. If the two (2) appraisers are unable to agree on the appointment of a third appraiser within such thirty (30) day period, either the city or the licensee may petition the judge of the Maricopa County Superior Court, acting in his or her individual capacity, for the selection of a third appraiser;
- (2) Each party shall bear the cost of its own appraiser and one-half (1/2) of the cost of appointing the third appraiser and of paying the third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either the city or the licensee; and
- (3) Within thirty (30) days after selection of the third appraiser, the appraisers shall meet and set the value of the cable system consistent with the requirements of this section.

(d) Upon the termination of a license and the rights granted thereunder, whether by expiration or forfeiture, the city council may direct and require the licensee as provided in § 10-47 to remove its wires, cables, fixtures and accessories and appurtenances from the streets. To this accomplishment, if directed, the city shall make a claim on the letter of credit as prescribed in § 10-73.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-10. Rights reserved to the city.**

(a) Nothing herein shall be deemed or construed to impair or affect, in any way, to any extent, the right of the city to acquire the property of the licensee, by purchase, at fair market value, which shall not include any amount for the license itself or for any of the rights or privileges granted, and nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the city's right of eminent domain at fair market value.

(b) There is hereby reserved to the city every right and power which is required to be herein reserved or provided by any provision of the city code, and a licensee shall comply with any action or requirements of the city in its exercise of such rights or power heretofore or hereafter enacted or established.

(c) Neither the granting of any license hereunder nor any of the provisions contained herein shall be construed to prevent the city from granting any identical, or similar, license to any other person, firm or corporation, within the city.

(d) Neither the granting of any license nor the enactment of any provision in this chapter shall constitute a waiver or bar to the exercise of any governmental right or power of the city, now existing or hereafter granted.

(e) The city council may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and may, through the city manager (or the city manager's designee) or through its own action, adjust, settle, compromise or otherwise resolve, pursuant to §§ 10-76 and 10-77, any controversy or charge arising from the operations of any licensee under this chapter.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-11. Applications for initial license, content.**

Each application for an initial license to construct, operate or maintain any cable system in the city shall be filed with the office of the city clerk and shall be on forms prescribed by the city. Said forms shall require, but shall not be limited to, the following information:

- (1) The name, address and telephone number of the applicant;
- (2) A detailed statement of the corporation or business entity organization of the applicant, including but not limited to, the following and to whatever extent required by the city:

## COMMUNITY ANTENNA TELEVISION

- a. The names, residence and business addresses of all officers, directors and associates of the applicant;
  - b. The names, residence and business addresses of all officers, persons and entities having a one percent (1%) or larger share of the ownership of the applicant and the respective ownership share of each such person or entity;
  - c. The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby;
  - d. A detailed and complete financial statement of the applicant, certified by an independent certified public accountant, for the fiscal year next preceding the date of the application hereunder, and a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the city council, setting forth the basis for a study performed by such lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed cable system in the city, or a statement from an independent certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed cable system in this city;
  - e. A detailed financial plan (pro forma) describing for each year of the initial license, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements and sources and uses of funds statement. All information is to be presented in the format required by the city; and
  - f. A statement identifying, by place and date, any other cable system license(s) awarded to the applicant, its parent or subsidiary; the status of said license(s) with respect to completion thereof; the total cost of completion of such licensed cable system(s); and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof;
- (3) A detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:
- a. A detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be serviced;
  - b. A statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of said classifications, including installation charges and cable service charges;

## TEMPE CODE

- c. A detailed, informative and referenced statement describing the actual equipment and operational standards proposed by the applicant;
  - d. A copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber; and
  - e. A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral or implied, existing or proposed to exist between the applicant and any person, firm or corporation which materially relate or pertain to or depend upon the application and the granting of the license;
- (4) A copy of any agreement covering the license area, if existing between the applicant and the local telephone or electric utilities providing for the use of any facilities of the utility including but not limited to poles, lines or conduits; and
  - (5) Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the city council, or by any other provision of law.

(Ord. No. 91.33, 10-17-91)

### **Sec. 10-12. Fees for initial license.**

Upon demand of the city, any licensee under an initial license, upon execution of such initial license, shall reimburse all expenses, including, but not limited to, any and all administrative, engineering, publication or legal costs and consultants' expenses incurred in connection with the processing, evaluation and preparation of documents relating to the initial license. The city shall document all such expenses by invoice.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

### **Sec. 10-13. Selection of licensee under an initial license.**

(a) *Solicitation of proposals.* The city may, by advertisement or any other means, solicit and call for applications for cable system licenses, and may determine and fix any date upon or after which the same shall be received by the city, or the date before which the same must be received, or the date after which the same shall not be received, and may make any other determinations and specify any other times, terms, conditions or limitations respecting the soliciting, calling for, making and receiving of such applications. The terms and conditions for application shall be described in a document called "request for proposals".

(b) *Unsolicited proposals.* The city upon receipt of an unsolicited application for an initial license may by advertising or other means solicit and call for competing applications pursuant to subsection (a), or may, in its sole discretion, reject such application as untimely.

(c) *Compliance with city requirements.* Any person, firm or corporation submitting a proposal for an initial license to operate a cable system in response to the city's request for proposals shall provide all information required by this chapter and all other information requested by city's request for proposals or otherwise required by the city. Each proposal shall be responsive to the questions soliciting the information, and shall completely, accurately and

## COMMUNITY ANTENNA TELEVISION

materially supply all of the information so solicited. Any misrepresentation, failure, neglect or refusal to provide any of such information may, at the option of the city, render a proposal invalid. The requested information must be complete and verified as true by the applicant.

(d) *Property of city.* All proposals received by the city from an applicant shall become the sole property of the city.

(e) *Applicant responsibility.* Before submitting a proposal, each applicant shall be solely responsible for and must:

- (1) Examine all regulatory chapters and the request for proposals documents thoroughly;
- (2) Be familiar with local conditions which may in any manner affect performance under the license, including, but in no event limited to, community and institutional telecommunication needs, relevant demographics, topographies, pole attachment policies of appropriate utility authorities, undergrounding and subscriber desires;
- (3) Be familiar with all applicable federal, state and local laws, chapters, rules and regulations affecting performance under the license; and
- (4) Carefully correlate all observations with the requirements of this chapter and the request for proposals documents.

(f) *Referral to city manager.* Upon receipt of any application for an initial license, the city council shall refer the same to the city manager, who shall prepare or cause to be prepared a report, including recommendations respecting such application, and cause the same to be completed and filed with the city council. The city will evaluate all proposals that are submitted. All applicants that have met the city's qualifications in the request for proposals and have submitted proposals on the required forms will be offered the opportunity to make a formal presentation to the city council in support of their applications.

(g) *Investigations.* The city may make such investigations as it deems necessary to determine the ability of the applicant to perform under the license, and the applicant shall furnish to the city all such information and data for this purpose as the city may request.

(h) *Rejection.* The city may reject any and all applications from whatever source and whenever received and the city also reserves the right to waive all formalities where the best interest of the city may be served, and may, if it so desires, request new or additional proposals.

(i) *Public comment.* If, upon receiving the city manager's report, the city council shall determine to further consider the applications, it shall pass a resolution setting a public hearing for the consideration of applications; fixing and setting forth a day, hour and place certain when and where any persons having any interest therein or who wish to file objections may file written comments and appear before the city council and be heard, and directing the city clerk to publish said resolution at least once within ten (10) days of the passage thereof in a newspaper of general circulation within the city.

(j) *Consideration.* In making any determination hereunder as to any application for an initial license, the city may consider any and all factors relevant to significant interests of the community in cable television including, but not limited to the quality of the cable services proposed, areas to be served, rates to subscriber, income to the city, experience, character, background and financial responsibility of any applicant, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, to meet all requirements set forth in this chapter, and to abide by all policy conditions, license limitations and requirements, and all other matters deemed pertinent by the city for safeguarding the interests of the city and the public.

(k) *Determination.* At the time set for the hearing on applications for initial licenses, or at any adjournment thereof, the city council shall proceed to hear all comments. Thereafter, the city council shall make one of the following determinations:

- (1) That such application be denied, which determination shall be final and conclusive; or
- (2) That such license be granted and the terms and conditions thereof.

No provision of this chapter shall be deemed or construed so as to require the granting of an initial license.

(l) *Additional information.* The city council may at any time demand and applicant(s) shall provide such supplementary, additional or other information as the city may deem reasonably necessary to determine whether the requested license should be granted.

(m) *Awards based on public record.* It is the intention of the city to award any initial license solely on the basis of the public record. To this end, communication with the city council by those wishing to submit proposals for an initial license should be limited to public sessions. Requests for information should be directed to the office of the city manager.

(n) *City council decisions shall be final.* Any decision of the city council concerning award of an initial license pursuant to this chapter shall be final.  
(Ord. No. 91.33, 10-17-91)

#### **Sec. 10-14. Duration of license and renewal.**

(a) The duration of the rights, privileges and authorizations granted in a license shall not exceed twenty-five (25) years from the date a license is awarded. A license may be renewed by the city upon application of the licensee pursuant to the procedure established in subsection (b) of this section and in accordance with the then applicable law.

(b) *Renewal.*

- (1) During the six (6) month period which begins with the thirty-sixth month before the license expiration, the city may on its own initiative, and shall at the request of the licensee, commence proceedings which afford the public appropriate notice and participation for the purpose of:

## COMMUNITY ANTENNA TELEVISION

- a. Identifying the future cable-related community needs and interests; and
  - b. Reviewing the performance of the licensee under the license during the then current license term.
- (2)
- a. Upon completion of a proceeding under subsection (b)(1) of this section, the licensee seeking renewal of a license may, on its own initiative or at the request of the city, submit a proposal for renewal.
  - b. Subject to Section 624 of the Cable Act, such proposal shall contain such material as the city may require, including proposals for an upgrade of the cable system.
  - c. The city may establish a date by which such proposal shall be submitted.
- (3)
- a. Upon submittal by the licensee of a proposal to the city for the renewal of the license, the city may provide prompt public notice of such proposal and, during the four (4) month period which begins on the completion of any proceedings under subsection (b)(1), renew the license or, issue a preliminary assessment that the license should not be renewed and, at the request of the licensee or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (3)(b) to consider whether:
    - i. The licensee has substantially complied with the material terms of the existing license and with applicable law;
    - ii. The quality of the licensee's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix, quality or level of cable services or other services provided over the cable system, has been reasonable in light of community needs;
    - iii. The licensee has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the licensee's proposal; and
    - iv. The licensee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
  - b. In any proceeding under paragraph (3)(a), the licensee shall be afforded adequate notice and the licensee and the city or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (b)(1), to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.

- c. At the completion of a proceeding under this subsection, the city shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the Licensee. Such decision shall state the reasons therefor.
- (4) Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (i) through (iv) of paragraph (3)(a), pursuant to the record of the proceeding under paragraph (3). The city may not base a denial of renewal on a failure to substantially comply with the material terms of the license under paragraph (3)(a)(i) or on events considered under paragraph (3)(a)(ii) unless the city has provided the licensee with notice and the opportunity to cure, or in any case in which it is documented that the city has waived its right to object, or has effectively acquiesced.
- (5) Any licensee whose proposal for renewal has been denied by a final decision of the city made pursuant to this section, or has been adversely affected by a failure of the city to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of Sections 626 and 635 of the Cable Act.
- (6) Notwithstanding the provisions of paragraphs (1) through (5) of subsection (b) of this section, the licensee may submit a proposal for the renewal of the license pursuant to this subsection at any time, and the city may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of paragraphs (1) through (5) of subsection (b) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with paragraphs (1) through (5) of subsection (b) of this section.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

**Sec. 10-15. Transfers and assignments.**

(a) A license shall not be sold, assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person, except an affiliate or subsidiary of licensee, without prior written consent of the city, which consent shall not be unreasonably withheld. Such consent shall not be required for a transfer in trust, mortgage, or other hypothecation in whole or in part to secure an indebtedness. The proposed assignee must show the transfer will not cause any increased risks of nonperformance of the license or any loss to the city of its bargained for consideration in the license. The assignee's showings must at a minimum detail facts sufficient to show the assignee's technical ability, financial capability, legal qualifications and general character qualifications and such other qualifications as determined by the city and the assignee must agree to comply with all provisions of the license.

## COMMUNITY ANTENNA TELEVISION

(b) Except for a transfer to an affiliate or subsidiary of licensee, no change, transfer or acquisition of control of the licensee shall occur without prior written consent of the city, which consent shall not be unreasonably withheld. The licensee shall promptly notify the city of any actual or proposed change in, or transfer to, or acquisition by any other party, of control of the licensee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised.

(c) A non-rebuttable presumption that transfer of control has occurred shall arise upon the acquisition or accumulation by any person, or group of persons, of more than fifty percent (50%) of the voting interest of the licensee or of the person exercising management authority over the licensee.

(d) Except in the case of an assignment of the license to an affiliate or subsidiary of licensee, upon written notification by the licensee to the city of a proposed assignment of the license, or transfer of control of ownership of the licensee company, the council shall direct the city manager to issue, and the city manager shall issue, his written notice fixing and setting forth the day, hour and place certain when and where any persons having any interest therein may appear and be heard. The city clerk shall cause such notice to be published in a newspaper of general circulation within the city. The city clerk also shall cause a copy of such notice to be mailed to the licensee at least ten (10) days prior to the date specified for the hearing. At the time set for such hearing, or at any adjournment thereof, the city manager shall proceed to hear the matter. Following the close of such hearing, the city manager shall prepare and file with the council his report of the hearing, his findings and an opinion containing his recommendations and the reasons therefor. If after the expiration of ten (10) days following receipt of the city manager's report and opinion, the council shall find that the assignment of the license or transfer of control or ownership of the licensee company will not be detrimental or injurious to the best interests and welfare of the subscribers and users, and of the city, then the council by resolution, or by ordinance if the licensee is a corporation, shall consent to the assignment of the license or transfer of control or ownership of the licensee company. Such resolution or ordinance shall thereupon become and shall be a part of any license granted under this chapter and affected thereby.

(e) The consent or approval of the city council to any transfer of a license shall not constitute a waiver or release of the rights of the city in and to the streets, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of the license.

(f) In the absence of extraordinary circumstances, the city council will not approve any transfer or assignment of a license within three (3) years of and in no event prior to substantial completion of construction of a proposed cable system.

(g) The city may reserve in the license a right of first refusal to purchase a licensee's cable system.

(h) In no event shall a transfer of ownership or control be approved without the successor-in-interest becoming a signatory to the license.

(Ord. No. 91.33, 10-17-91)

**Secs. 10-16—10-19. Reserved.**

**ARTICLE III. LICENSE REQUIREMENTS**

**Sec. 10-20. Incorporation of proposal by reference.**

(a) Upon award of a license pursuant to this chapter, a licensee shall agree to be bound by all the terms and conditions contained herein.

(b) A licensee under an initial license also agrees to provide all of the cable services specifically set forth in its proposal, to provide cable services within the confines of the city and by its execution of the initial license, the licensee specifically agrees that its proposal is thereby incorporated by reference and made a part of the initial license. In the event of a conflict between such proposal and the provisions of this chapter and the applicable initial license, that provision which provides the greatest benefit to the city, in the opinion of the city council, shall prevail provided that, the city, having chosen or accepted one of the conflicting provisions, may not thereafter elect to require compliance with a different alternative of the conflicting provisions. Failure to provide services as promised in licensee's application or agreed to in its license may be deemed a breach of this chapter to which the provisions of §§ 10-74 and 10-75 of this chapter shall apply.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

**Sec. 10-21. Payment of license fee.**

(a) For the reason that the streets and other public rights-of-way which are used by the licensee in the operation of its cable system within the boundaries of the city are valuable public properties acquired and maintained by the city at great expense to its taxpayers, and that the grant to the licensee to the use of said streets is a valuable property right without which the licensee would be required to invest substantial capital in right-of-way costs and acquisitions, and because the city will incur costs in regulating and administering the license, the licensee shall pay to the city an amount no less than five percent (5%) of licensee's gross revenues ("the license fee").

(b) Should federal regulations be amended in the future to allow the city to receive a greater fee than the fee set forth in subsection (a), then, in that event, the city shall have the right to increase the fee as specified in the license.

(c) The payment of the license fee by the licensee to the city shall be made quarterly by delivery of the same to the finance and technology director of the city on or before the 20th day of the following month, with a ten (10) day grace period. If such payment is not made by the next to the last business day of the following month, the city may impose interest at a rate of one and one-half percent (1-1/2%) per month commencing from the date payment should have been made and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest. In addition to interest which may be assessed under this subsection, if licensee fails to pay any license fee, before the end of such grace period, licensee shall be subject to the following civil penalties:

- (1) A licensee who fails to pay the license fee or any portion thereof within the time prescribed shall pay a penalty of ten percent (10%) of the unpaid fee each month, unless the licensee shows that the failure is due to reasonable cause and not due to willful neglect;

## COMMUNITY ANTENNA TELEVISION

- (2) A licensee who fails or refuses to pay a license fee or any portion thereof after notice and demand by the city shall pay a penalty of twenty-five percent (25%) of the unpaid fee, unless licensee shows that the failure is due to reasonable cause and not due to willful neglect; or
- (3) If the cause of failure to pay the license fee or any portion thereof is determined by the city to be due to civil fraud or evasion of the license fee, the licensee shall pay a penalty of fifty percent (50%) of the amount of deficiency.

(d) The city shall have the right to inspect the licensee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of the licensee's fiscal years. Any additional amount due to the city as a result of the audit shall be paid within thirty (30) days following written notice to the Licensee by the city, said notice shall include a copy of the audit report.

(Ord. No. 91.33, 10-17-91; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

### **Sec. 10-22. Use of telephone facilities.**

When and in the event that the licensee of any license granted hereunder uses a telephone company's cable system distribution channels furnished to the licensee pursuant to tariff or contract on file with a regulatory body having jurisdiction and said licensee makes no use of the streets independent of such telephone company furnished facilities, said licensee remains fully bound by the terms of its license and this chapter.

(Ord. No. 91.33, 10-17-91)

### **Sec. 10-23. Required services and facilities.**

(a) A license shall include a description of proposed cable system design and a description of the initial programming and cable services to be offered, a description of facilities proposed for local programming, and facilities to be offered to various community institutions.

(b) A licensee shall maintain the mix, level and quality of programming within the broad categories of video programming or other services set forth in its license. Where there has been a substantial failure to maintain the mix, level or quality of services within the broad categories of video programming or other services as set forth in the licensee's license, the council may, following due notice and public hearing, direct the licensee to comply with its obligations in this regard. Written notice of such hearing shall be provided to the licensee and to the public at least thirty (30) days prior to such hearing.

(Ord. No. 91.33, 10-17-91)

### **Sec. 10-24. Subscriber service rates.**

(a) *Initial rates.* A licensee under an initial license shall establish initial rates for its cable services in accordance with the rates contained in such licensee's application for an initial license.

(b) *Authority to regulate rates.* To the extent permitted by federal and state law, the city may regulate the rates for cable services in accordance with the following procedures.

TEMPE CODE

(c) *Rates subject to regulation.* To the extent permitted in subsection (b) of this section:

- (1) The city shall have the authority to regulate the following rates, fees and charges:
  - a. Rates for the provision of cable services to subscribers;
  - b. Rates for the initial installation of the rental of one set of the minimum equipment which is necessary for the subscriber's receipt of cable services; and
  - c. Any other rates for cable services that may become subject to local regulation.
- (2) The licensee may petition the city council for a change in rates subject to regulation by filing a proposed rate schedule with the city clerk, which petition shall include the justification(s) for the proposed schedule. Said petition shall be filed at least ninety (90) days prior to the requested implementation date of the rate change. One copy of the petition shall remain on file with the city clerk and be open for public inspection.
- (3) In connection with any proposed increase of any rates or charges for cable services of the licensee to subscribers initiated by the licensee, at any time after the granting of a license, the council shall direct the city manager to conduct a preliminary hearing into the matter. When so directed by the council, the city manager shall issue his written notice fixing and setting forth the day, hour and place certain when and where any persons having any interest therein may appear and be heard.
  - a. The city clerk shall cause such notice to be published in a newspaper of general circulation within the city. The city clerk also shall cause a copy of such notice to be mailed to any licensee at least ten (10) days prior to the date specified for the hearing. At the time set for such hearing or at any adjournment thereof, the city manager shall proceed to hear the matter. Following the close of such hearing, the city manager shall prepare and file with the city council his report of the hearing, his findings and an opinion containing his recommendations and the reasons therefor. After the expiration of ten (10) days following receipt of the city manager's report and opinion, and if no objection has been filed thereto, the council shall determine whether to adopt the opinion or to hold a further hearing, and shall pass its resolution of intention to do so, describing and stating any rates or charges to be increased, the reasons of the council therefor, fixing and setting forth a day, hour and place certain when and where any persons having any interest therein may appear before the council and be heard. Such resolution shall direct the city clerk to publish the same resolution at least once within ten (10) days prior to the date specified for hearing thereon.

COMMUNITY ANTENNA TELEVISION

## TEMPE CODE

- b. If upon receipt of report and opinion, and the expiration of such ten (10) days without objection, or following the holding of a further hearing, if the council determines to do so, the council shall find that the increasing of any rates or charges of the licensee to subscribers will be fair and just, then the council, by resolution, shall authorize the increase of rates or charges of the licensee to subscribers and users as determined giving its reasons therefor. Such resolution shall thereupon become and shall be a part of any license granted under this chapter and affected thereby.
- (4) The city council shall consider, inter alia, the following factors in approving or disapproving the petition:
    - a. The ability of the licensee to render cable services and to derive a reasonable profit therefrom under the existing rate schedule and under the proposed rate schedule;
    - b. The revenues, expenses and profits derived from all cable system services;
    - c. The efficiency of the licensee;
    - d. The quality of the cable service offered by the licensee; and
    - e. The capital costs of the cable system less depreciation.
  - (5) In addition to the factors listed in paragraph (4) of subsection (c) above, in approving or disapproving the petition, the city council shall consider a fair rate of return with respect to investments having similar risks to that of cable television.
  - (6) If no final decision on the licensee's petition has been rendered by the city council within ninety (90) days after filing of licensee's petition, the licensee's petition will be deemed approved, unless the ninety (90) day period is extended by mutual agreement between the licensee and the city.
  - (7) The licensee's petition for a rate increase shall include, but not be limited to, the following financial reports, which shall reflect the operations in the city:
    - a. Balance sheet;
    - b. Income statement
    - c. Cash flow statement;
    - d. Statement of sources and applications of funds;
    - e. Detailed supporting schedules of expenses, income, assets and other items as may be required; and
    - f. Statement of current and projected subscribers and penetration.

## COMMUNITY ANTENNA TELEVISION

- (8) The licensee's accounting records applicable to the cable system shall be available for inspection by the city at all reasonable times. The city shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to this particular cable system. The documents listed above shall include sufficient detail or footnotes as may be necessary to provide the city with the information needed to make accurate determinations as to the financial condition of the cable system. All financial information shall be certified as accurate by a corporate officer of licensee.

(Ord. No. 91.33, 10-17-91)

### **Sec. 10-25. Access and community programming channels.**

Unless otherwise provided in a license, each cable system licensed by the city shall provide at least one governmental access channel dedicated to the city; one education access channel dedicated to all schools (public and private nonprofit) within the city; one channel for community programming; and if provided in the license, one public access channel to be utilized by the public. A licensee shall have the right to exercise editorial control over any community programming channel, which shall be dedicated to providing programming on governmental and educational and other local matters licensee identifies to be of public interest to subscribers in the city.

(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. 2007.39, 6-28-07)

### **Sec. 10-26. Areawide interconnection of cable systems.**

(a) *Interconnection required.* Except as provided in the license, licensee shall interconnect access channels of the cable system with any or all other cable systems in adjacent areas, upon the directive of the city. Interconnection of cable systems may be done by direct cable connection, microwave link, satellite or other appropriate method.

(b) *Interconnection procedure.* Upon receiving the directive of the city to interconnect, a licensee shall immediately initiate negotiations with the other affected cable system or systems in order that all costs may be shared fairly among cable systems for both construction and operation of the interconnection link, as more particularly set forth in the license.

(c) *Relief.* A licensee may be granted reasonable extensions of time to interconnect or the city may rescind its order to interconnect upon petition by the licensee to the city. The city shall grant said request, if it finds that a licensee negotiated in good faith and failed to obtain an approval from another cable system(s) of the proposed interconnection.

(Ord. No. 91.33, 10-17-91)

### **Sec. 10-27. New developments.**

(a) The licensee shall make a good faith effort to keep the cable system technically current and updated.

(b) The city and licensee shall meet at periods not exceeding three (3) years or upon the request of either to discuss changes in cable television laws, regulations, technology, competing services, the needs of the community and other factors affecting cable television. As a result of

these discussions, the license agreement may be modified by mutual agreement of the city and the licensee to respond to the change in laws, regulations, technology, competing services, the needs of the community or other factors impacting cable television.

(c) If any of the following conditions occur, and upon written request of either licensee or city, the city manager and licensee agree to meet and discuss in good faith the terms of a mutually agreeable license amendment:

- (1) Cable service similar to cable television service offered by licensee is provided by any entity using the streets, which is not subject to similar licensing requirements of the city;
- (2) The cable act is amended in a manner which licensee or city believe may impact the current terms and conditions of the license; or
- (3) Any other significant event occurs, including but not limited to, a final non-appealable order or judgment by a court of competent jurisdiction, which either licensee or city believes may impact the current terms and conditions of the license.

(d) The purpose of the meeting and discussion is to use best efforts to reach mutually acceptable agreement for recommendation to the council for proposed council action within ninety (90) days of such written request, on how to amend the license to relieve city or the licensee from any commercial impracticability which arises from the condition in question. This provision shall not require that the license be amended, however, it is intended to facilitate a process whereby the parties may reach a mutually acceptable agreement.

(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97)

**Sec. 10-28. Time is of the essence.**

For any license or contract entered into pursuant to this chapter time shall be deemed of the essence and any failure of the licensee to perform within the time allotted, or within a reasonable time if a period is not specified, shall be sufficient grounds for the city to invoke liquidated damages or revocation of a license in accordance with §§ 10-75 and 10-78.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-29. Acceptance and effective date of license.**

The date specified in the license shall be the effective date of the license, but if no such date is specified, the date on which the last of the parties sign the license shall be the effective date.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

**Secs. 10-30—10-34. Reserved.**

**ARTICLE IV. CONSTRUCTION REQUIREMENTS**

**Sec. 10-35. Permits, installation and service.**

Within sixty (60) days after execution of any license, the licensee shall proceed with due diligence to apply for necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable systems, or their associated microwave transmission facilities.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

**Sec. 10-36. Cable system construction map and schedule.**

(a) Unless otherwise provided in a license, within one hundred twenty (120) days after execution of any license, licensee shall submit a construction plan or reconstruction plan, which shall be incorporated by reference and made a part of the license. The plan shall include an overall map of any construction or reconstruction effort, time schedule of said work and technical performance criteria.

(b) Within ninety (90) days after obtaining necessary permits, licenses and authorizations, the licensee shall commence construction and installation of the cable system.

- (1) Licensee shall comply with the time schedule for construction required in § 10-36(a);
- (2) Installation and operation of distribution cable by licensee shall proceed on a nondiscriminatory basis, without regard for subscriber affluence or other discriminatory factors; and
- (3) Immediately following commencement of construction and installation of the system, licensee shall diligently proceed to deliver cable services, as described in the license.

(c) Failure on the part of the licensee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein, shall be grounds for liquidated damages or termination of such license pursuant to §§ 10-75 and 10-78; provided, however, that the council in its discretion may extend the time for the commencement and completion of construction and installation for additional periods if the licensee acting in good faith experiences delays by reason of circumstances beyond its control.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

**Sec. 10-37. Line extension.**

(a) *Residential service.* Licensee shall make cable services available to all dwelling units within the city and shall extend its cable communications system as contemplated under this section as follows except that licensee shall not be required to make service available to residents of multiple dwelling units where the owner of the property has not granted licensee reasonable access to the property:

## TEMPE CODE

- (1) When requested by a resident or developer of the city, licensee shall, at licensee's sole expense, extend cable services to any single family residence or dwelling within the city, provided that such extension involves existing density of forty (40) homes per mile as measured in linear trench or aerial strand footage from the nearest technically feasible point on the system. Such extension(s) shall include cutting in one or more taps and extending feeder cable and, when necessary, trunk cable;
- (2) When a resident or developer of the city requests an extension of service to an area that does not meet the minimum forty (40) homes per mile density as described above in paragraph (1), licensee shall be required to comply with such request only if the resident or developer agrees to pay to the licensee an amount equal to all incremental costs incurred beyond those for an extension otherwise involving forty (40) homes per mile, as described in paragraph (1);
- (3) Regardless of whether licensee is requested to extend service, licensee shall install conduit in open trenches used by electric power and telephone companies in new single family subdivisions, as described in paragraph (1) above; and
- (4) Absent a showing by licensee to the city manager of circumstances beyond licensee's reasonable control, an extension of service pursuant to paragraphs (1), (2) or (3) of this subsection shall be accomplished within one hundred fifty (150) days of the developer or resident's request.

(b) *Commercial service.* Licensee shall make cable services available to commercial establishments as follows except that licensee shall not be required to make service available to commercial establishments where the owner of the property has not granted licensee reasonable access to the property:

- (1) When requested by the owner of a commercial establishment within the city, licensee shall extend cable services to any such owner's commercial establishment, provided that no plant extension and nothing more than a standard drop is required to make such cable services available;
- (2) When the owner of a commercial establishment within the city requests an extension of service that does not meet the criteria described in paragraph (1) of this subsection, licensee shall be required to comply with such request only if such owner pays to licensee an amount equal to the reasonable actual labor and material costs incurred by licensee over and above the cost of a standard drop in making cable services available to such owner's commercial establishment; and
- (3) Absent a showing by licensee to the city manager of unusual circumstances, including without limitation street crossings, an extension of service pursuant to paragraph (2) shall be accomplished within one hundred fifty (150) days of the owner's request.

## COMMUNITY ANTENNA TELEVISION

(c) *Extension requirements.* The requirements in subsections (a) and (b) above shall apply to all licenses, unless otherwise provided in a license.

(d) *Service drops.*

- (1) Licensee shall make service available to any single family residence or any commercial establishment within the city at the standard connection charge if the connection requires a standard drop;
- (2) If making service available requires more than a standard drop, licensee shall not be required to make such service available unless the person or entity requesting such service pays to licensee (i) the standard connection charge and (ii) an amount equal to the reasonable actual labor and material costs incurred by licensee for the additional facilities and work;
- (3) Licensee may offer bulk billing service, but shall not require a bulk billing agreement as a condition of providing service, if the person or entity requesting service pays to licensee the applicable amount(s) set forth in paragraphs (1) or (2) of this subsection;
- (4) Under normal operating conditions, standard drops to a single-family residence or dwelling (including reconnects) will be installed within seven (7) days after an order has been placed, no less than ninety-five percent (95%) of the time, measured on a quarterly basis. Absent a showing by licensee to the city manager of unusual circumstances, including without limitation street crossings, any drop that is not a standard drop shall be accomplished within twenty (20) days of such request; and
- (5) Absent a showing by licensee to the city manager of unusual circumstances, including without limitation street crossings (i) any standard drop to a commercial establishment shall be accomplished within twenty (20) days after the owner of such commercial establishment executes any necessary easement documents and capital contribution agreements, and (ii) any commercial drop that is not a standard drop shall be accomplished within thirty (30) days of the owner's execution of such documents and agreements.

(e) *Discrimination prohibited.* No person, firm or corporation in the existing cable service area of the licensee shall be arbitrarily refused cable services; provided, however, that the licensee shall not be required to provide cable services to any subscriber who does not pay the applicable line extension connection fee or cable service charge(s).

(f) *Annexed territory.* Newly annexed territory shall be subject to the terms of this chapter and specifically this section.  
(Ord. No. 91.22, 10-17-91; Ord. No. 97.31, 5-29-97; Ord. No. 2007.39, 6-28-07)

**Sec. 10-38. Placement of transmission facilities.**

Except as provided in the license, facilities shall be placed in accordance with chapter 25 of the Tempe City Code.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-39. Construction and technical standards.**

(a) *Compliance with construction and technical standards.*

- (1) As provided in the license, licensee shall construct, install, operate and maintain its system in a manner such that it operates at all times consistent with all laws, this chapter, construction standards of the city, the Federal Communications Commission (FCC) rules and regulations, part 76 sub-part K (technical standards), as amended from time to time, and detailed standards submitted by licensee as part of its application, which standards are to be incorporated by reference in the license. In addition, licensee shall provide the city, upon request, the opportunity to observe the conduct of and a written report of the results of licensee's annual proof of performance tests. In addition, the city may at any time conduct independent measurements of the system. In the event that inaccurate proof of performance reports are shown to have been the result of licensee's willful neglect, licensee shall pay the costs reasonably incurred by the city in obtaining independent verification of technical compliance with all standards.
- (2) When there have been multiple, similar complaints by subscribers, or when there exists other evidence which suggests that licensee is not in substantial compliance with the technical standards, the city manager shall have the right and authority to compel licensee to test, analyze and report on the performance of the cable system under the supervision of the city engineer. Such report shall be delivered to the city manager no later than thirty (30) days after the city manager requests such test(s) in writing and shall include the following information: the nature of the complaints that precipitated the test(s), which cable system component(s) was/were tested, the equipment used and procedure(s) employed in such testing, the result(s) of such test(s) and the manner in which such complaints were resolved. If such report indicates licensee is in substantial compliance with the technical standards, but there exists evidence suggesting that licensee is nonetheless not in substantial compliance, the city manager may require that the test(s) be repeated within thirty (30) days of the delivery of such report, under the supervision of a professional engineer, not on the permanent staff of licensee. Such engineer shall sign all records of such repeated test(s) and shall forward to the city manager (i) such records, (ii) a report interpreting the results, and (iii) recommended corrective actions, if any. The fees of such engineer shall be paid by (i) licensee, if the repeated test(s) show(s) licensee is not in substantial compliance, with the technical standards of this chapter, or (ii) the city, if the repeated test(s) show(s) licensee is in substantial compliance with said standards.

## COMMUNITY ANTENNA TELEVISION

(b) *Additional specification.* Construction, installation and maintenance of a cable system shall be performed in an orderly and professional manner. All cables and wires shall be installed, where possible, parallel with and in a manner similar to the installation of electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. Underground installations shall be in conformance with all applicable codes.

Each cable television system shall include equipment capable of providing standby power as specified in the license. The equipment shall be so constructed as to automatically revert to the standby mode when the electrical utility power returns. The system shall incorporate safeguards necessary to prevent injury to linemen resulting from licensee's standby power sources. Licensee shall at all times comply with applicable sections of:

- (1) National Electrical Safety Code (ANSI) C2-1990;
- (2) National Electrical Code (National Bureau of Fire Underwriters);
- (3) The city building code;
- (4) City subdivision regulations, all as from time to time amended and revised, and all other applicable rules and regulations now in effect or hereinafter adopted by the city; and
- (5) The Maricopa Association of Governments Uniform Standard Specifications for Public Works Construction including the latest City of Tempe supplement thereto.

In any event, the cable system shall not endanger or interfere with the safety of persons or property in the license area or other areas where the licensee may have equipment located.  
(Ord. No. 91.33, 10-17-91)

### **Sec. 10-40. Utility locating system.**

A licensee shall be required to be a participant in the region one call utility locating system (Blue Stake).  
(Ord. No. 91.33, 10-17-91)

### **Sec. 10-41. Resident notification of construction activity required.**

The licensee shall provide reasonable advance notice to all affected residents prior to system construction or upgrade crews entering their property; provided that the licensee shall not be required to provide such notice in emergencies or for normal system repair and maintenance work.  
(Ord. No. 91.33, 10-17-91)

### **Secs. 10-42—10-44. Reserved.**

**ARTICLE V. REGULATIONS PERTAINING TO USE OF CITY STREETS  
AND PUBLIC RIGHTS-OF-WAY**

**Sec. 10-45. Location of property of licensee.**

(a) Any poles, wires, cable lines, conduits or other properties of a licensee to be constructed or installed in streets shall be so constructed or installed only at such locations and in such manner as shall be approved by the city engineer acting in the exercise of his or her reasonable discretion.

(b) A licensee shall not install or erect any facility or apparatus in or on 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 approved by the city, except as provided by the city.

(c) Unless otherwise provided in a license, all facilities of a licensee in any public street or in any public or private easement, and cable service lines to subscribers off the main lines, shall be located underground as per chapter 25 of the city code and at such depths and locations as shall be approved by the city engineer.

(d) Unless otherwise provided in a license, upon the undergrounding of other utility lines or shared overhead facilities, licensee shall concurrently (or earlier) place its facilities underground, at its own expense, at depths and locations approved by the city engineer.

(e) All new underground wires or cable of licensee placed after the effective date of this chapter shall be placed in conduits except for service drop lines.

(f) As required by the city engineer or other appropriate departments, the licensee or its authorized contractors will obtain permits, prior to any physical work being performed in the city's rights-of-way, or on city-owned property. All work will be done in accordance with the city's technical and permitting specifications. A licensee shall cause maps of the applicable portion of the cable system showing materials of construction, amplifier and power supply locations to be filed in the office of the city engineer prior to the issuance of a permit for construction.

(g) Where permitted by the property owner and of no cost to licensee, a licensee shall install its underground conduit simultaneously with telephone and electric facilities whenever the same are installed within the licensee's area.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

**Sec. 10-46. Emergency work.**

The city reserves the right to move any portion of the licensee's equipment and facilities as may be required in any emergency as determined by the city without liability for interruption of cable service. However, prior to taking any actions pursuant to this section, the city shall provide, if feasible, reasonable notice to licensee of the emergency to allow licensee the opportunity to protect or repair licensee's facilities involved in the emergency.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-47. Removal and abandonment of property of licensee.**

(a) In the event that the use of a substantial part of the cable system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such cable system or property has been installed in any street or public place without complying with the requirements of the licensee's license or this chapter, or the license has been terminated, canceled or has expired without renewal, the licensee shall promptly, upon being given ten (10) days notice from the city engineer, remove from the streets or public places all such property and poles of such cable system other than any underground cable or any other underground property which the city engineer may permit to be abandoned in place. In the event of such removal, the licensee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the city engineer.

(b) Any property of the licensee remaining in place one hundred eighty (180) days after the termination or expiration of the license shall be at the option of the city council considered permanently abandoned. The city council may extend such time.

(c) Any property of the licensee permitted to be abandoned in place shall be abandoned in such a manner as the city engineer shall prescribe. Upon permanent abandonment of the property of the licensee in place, the property shall become that of the city, and the licensee shall submit to the city an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-48. Temporary removal of wire for building improvements.**

The licensee, on the request of any person, firm or corporation holding a building moving permit issued by the city, shall temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid to the licensee by the person, firm or corporation requesting the same, and the licensee shall have the authority to require such payment in advance. The licensee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-49. Changes required by public improvements.**

The licensee shall from time to time protect, support, temporarily dislocate, temporarily or permanently as may be required, remove or relocate, without expense to the city, any facilities installed, used or maintained under the license, if and when made necessary by any lawful change of grade, alignment or width of any public street, by the city or any other governmental entity, or made necessary by any other public improvement or alteration in, under, on, upon or about any public street or other public property, whether such public improvement or alteration is at the instance of the city or another governmental entity, and whether such improvement or alteration is for a governmental or proprietary function, or made necessary by traffic conditions, public safety, street vacation or any other public project or purpose of city or any other governmental entity.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-50. Methods and materials of street construction.**

The city shall have the right to specify the methods and materials of street construction, together with the horizontal and vertical location of any underground facility proposed by licensee within any public property or right-of-way. The city shall also have the right to limit the work of the licensee to assure a minimum of inconvenience to the traveling public.  
(Ord. No. 91.33, 10-17-91)

**Sec. 10-51. Failure to perform street work.**

(a) In the event that a licensee during construction, installation or repair of its facilities causes damage to pavement, sidewalks, driveways, landscaping or other property, the licensee or the authorized agent shall, at its own expense and in a manner approved by the city, replace and restore such places to the same condition which existed before said work was commenced. The licensee shall further maintain all such restoration in the condition approved by the city for a minimum period of one year following such restoration.

(b) Upon failure of the licensee to complete any work required by law, or by the provisions of this chapter, or by its license agreement, to be done in any street or other public place, within ten (10) days following due notice and to the satisfaction of the city engineer, the city may, at its option, cause such work to be done and the licensee shall pay to the city the cost thereof in the itemized amounts reported by the city engineer to the licensee within ten (10) days after receipt of such itemized report. Or, at city's option, city may demand of licensee the estimated cost of such work as estimated by the city engineer, and such shall be paid by licensee to city within ten (10) days of such demand. Upon award of any contract or contracts therefor, licensee shall pay to city, within ten (10) days of demand, any additional amount necessary to provide for cost of such work. Upon completion of such work, licensee shall pay to city or city shall refund to licensee such sums so that the total received and retained by city shall equal the cost of such work. "Cost" as used herein shall include fifteen percent (15%) of other costs for city's overhead.  
(Ord. No. 91.33, 10-17-91)

**Secs. 10-52—10-54. Reserved.**

**ARTICLE VI. CUSTOMER SERVICE PROVISIONS**

**Sec. 10-55. Local business office requirements.**

(a) The licensee shall maintain a business office for the purpose of receiving inquiries regarding new service, handling converters, paying bills and receiving complaints.

(b) Said office shall be conveniently located in the city and shall be open during all normal business hours.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-56. Efficient telephone communications services.**

A licensee shall render efficient telephone communication service and, at a minimum, meet the standards set forth below:

- (1) Licensee shall have a publicly listed, local or toll-free telephone number, in accordance with this section, and receive complaints, requests for repairs, service calls, billing inquiries and other subscriber information on a twenty-four (24) hour-per-day, seven (7) day-a-week basis. Trained licensee representatives will be available to respond to subscriber inquiries during normal business hours;
- (2) Licensee shall add additional telephone lines and customer service representatives or take other remedial actions when existing telephone lines are "substantially utilized" or when a pattern of subscriber complaints reflects a need for additional telephone lines and customer service representatives or other remedial actions. For purposes of this section, "substantially utilized" shall occur when licensee demonstrates an inability to answer, with a customer service representative, and not electronically, its incoming service calls, measured on a quarterly basis, during normal business hours and under normal operating conditions including, but not limited to, those dealing with repairs, sales, installation, billing and inquiries, on average, within the median time of thirty (30) seconds, including wait time, after the connection is made. No caller should be left on hold for more than sixty (60) seconds. Under normal operating conditions, the subscribers will receive a busy signal less than three percent (3%) of the time. Licensee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards unless a historical record on compliance indicates a clear failure to comply; and
- (3) Licensee shall establish a telephone answering capability outside normal business hours to answer questions about service calls, service outages and provide proper referral regarding billing and other subscriber information. Inquiries received after normal business hours must be responded to by a licensee representative on the next business day.

(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97)

**Sec. 10-57. Service standards.**

(a) A licensee shall put, keep and maintain all parts of its cable system in good condition throughout the entire license period.

(b) Upon termination of cable services to any subscriber, a licensee shall promptly remove its converter equipment from the premises of such subscriber upon subscriber's request.

(c) Licensee shall render efficient cable services, make repairs promptly, and interrupt cable services only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall occur during periods of minimum cable system use.

(d) Licensee shall not knowingly allow its cable or other operations to interfere with television reception of persons not serviced by licensee, nor shall the cable system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the city.

(e) A licensee shall continue, through the term of the license, to maintain the technical, operational and maintenance standards and quality of cable service set forth in this chapter and as specified in the license. If the licensee fails to maintain these standards and quality of cable service, the city may direct the improvements to be made.

(f) In the event any licensee should violate any provision of this section, the city shall promptly give such licensee written notice of the violation. The licensee shall, within thirty (30) days of receipt of such written notice from the city:

- (1) Respond to the city in writing, contesting the city's assertion of a violation and providing such information or documentation as may be necessary to support the licensee's position; or
- (2) Cure such violation (and provide written notice of the same to the city); or, in the event that the nature of the violation is such that it cannot be cured within thirty (30) days, take reasonable steps to cure such violation and diligently continue such efforts until such violation is cured.

(g) In the event that a licensee contests the city's assertion of violation, fails to respond to the city's notice of violation, or fails to take reasonable steps to cure a violation which cannot be cured within thirty (30) days, the city may proceed with hearings in accordance with § 10-75 or § 10-76 of this chapter.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-58. Response to subscriber complaints about service.**

(a) Licensee shall ensure that there are standby technicians on call at all times after normal business hours.

(b) Whenever an outage has been reported, licensee shall respond immediately. It shall be deemed a violation if licensee exceeds a four (4) hour average response time to outages during any consecutive three (3) month period. Absent showing by licensee to the city manager of unusual circumstances, it shall be deemed a violation if licensee fails to respond within twelve (12) hours to a report of outage.

(c) Under normal operating conditions, no less than ninety-five percent (95%) of the time measured on a quarterly basis, the licensee will begin working on service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The licensee must begin actions to correct its service problems the next business day after notification of the service problem.

(d) In arranging appointment for installation visits and service calls, licensee shall specify to the subscriber in advance when said installation visit will occur, either as a specific time or, at a maximum, a four (4) hour time block; said standard shall be met ninety-five percent (95%) of the time, measured on a quarterly basis. (The licensee may schedule installations and service calls outside of normal business hours for the express convenience of the subscriber). If a licensee representative is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the licensee will attempt to contact the subscriber. Failure to install cable as scheduled shall require licensee to automatically offer a priority cable installation visit to the affected subscriber at a time mutually agreeable to licensee and said subscriber, no later than seven (7) days following the initial installation.

(e) Absent a showing by licensee to the city manager of unusual circumstances, any change of service shall be accomplished within ten (10) days of the request or it shall be deemed a violation.

(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97)

**Sec. 10-59. Subscriber's right upon failure of service.**

(a) Any subscriber shall be entitled, upon request, to a refund equal to one day's service for each loss of service (1) for a continuous twenty-four (24) hour period or (2) for a period of two (2) or more hours on each of any four (4) days within a monthly billing period. Each such service loss shall commence upon licensee's oral or written receipt of notice of such loss of service.

(b) Licensee shall maintain service call records on the time of call, nature of service call and any corrective action taken. These service call records shall be made available to the city manager, or a designee, upon request. A summary of service calls shall be prepared by the licensee and submitted in a form approved by the city and the licensee to the city manager, or a designee, upon request.

(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97)

**Sec. 10-60. Subscriber solicitation procedures.**

(a) All personnel, agents and representatives of the licensee including subcontractors, shall wear a cable uniform or clearly display a photo-identification badge when acting on behalf of the licensee in the city.

(b) The licensee shall provide written information in easy-to-understand language on each of the following areas prior to or at the time of installation of service, at least annually to all subscribers and the city, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services and procedures for ordering changes in or termination of services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Information on a parental control feature that will permit a subscriber to lock out any objectionable programming from the cable services entering his or her home;
- (6) Channel positions of programming carried on the system; and
- (7) Billing, collection and complaint procedures, including the address and telephone number of the city's designated office for handling cable television matters, and refund and credit policies.

(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97)

**Sec. 10-61. Billing practices, information and procedures.**

(a) The licensee shall afford each subscriber of the cable system with a three (3) day right of rescission for ordering the service of the cable system provided that such right of rescission shall end upon initiation of physical installation of cable system equipment on such subscriber's premises.

(b) Billing procedures shall be as follows:

- (1) Licensee shall bill all subscribers to its cable system in a uniform, nondiscriminatory manner, regardless of subscriber's level of service. In no case shall any subscriber be required to pay for services in excess of thirty (30) days prior to receipt of such service. Payment shall be due no sooner than the fifteenth day of each billing period, and the due date shall be listed on each bill. Bills shall be mailed no later than the tenth day of the billing period;

## COMMUNITY ANTENNA TELEVISION

- (2) Licensee shall provide all subscribers with an itemized monthly bill that contains, at a minimum, the following information:
  - a. A list of each service or package received for that billing period;
  - b. The rate or charge for each service or package received;
  - c. The period of time over which said services are billed;
  - d. The total charges due for the monthly period, separate from any previous balance due;
  - e. A specific date by which payment is required before a late charge is imposed, as specified in the license; and
  - f. Any surcharge for underground conversion of cable plant costs;
- (3) Late charges, if applied, shall in no case exceed amounts allowed by applicable law, and shall in no case be imposed until the thirty (30) day billing period has elapsed;
- (4) In case of a subscriber dispute, the licensee must respond to a written complaint from a subscriber within thirty (30) days. The licensee shall follow a written internal appeal procedure for resolution of subscriber disputes;
- (5) Refund checks will be issued promptly, but no later than either:
  - a. The subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or
  - b. The return of the equipment supplied by the licensee if service is terminated; and
- (6) Credits for service will be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.

(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97)

### **Sec. 10-62. Disconnection and termination of cable services.**

Licensee shall only disconnect or terminate a subscriber's cable service for good and just cause. In no event shall licensee disconnect said cable service for nonpayment without the prior written notification to the affected subscriber at least seven (7) days prior to such disconnection or termination. In no event shall such disconnection or termination for nonpayment occur in less than thirty (30) days after a subscriber's failure to pay a bill due. Where the licensee has improperly discontinued cable system service to any such subscriber, it shall provide free reconnection to the cable system to such subscriber.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-63. A/B switch.**

Consistent with current federal law, the licensee may make available to subscribers the optional installation of a cable/antenna ("A/B") switch.  
(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

**Sec. 10-64. City and subscriber notification required.**

Subscribers and the city will be notified of any changes in rates, programming, services or channel positions as soon as possible in writing. Notice must be given to the city and subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Licensee, unless the city concurs that notice is not necessary. In addition, the licensee shall notify the city and subscribers thirty (30) days in advance of any significant changes in the other information required by this section.  
(Ord. No. 91.33, 10-17-91; Ord. No. 97.31, 5-29-97)

**Sec. 10-65. Rights of individuals.**

(a) A licensee shall not deny cable service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, sex, age or disability. A licensee shall comply at all times with all other applicable federal, state and local laws and regulations, and as amended from time to time, relating to nondiscrimination.

(b) A licensee shall strictly adhere to applicable equal employment opportunity requirements of federal, state and local regulations, and as amended from time to time.  
(Ord. No. 91.33, 10-17-91)

**Sec. 10-66. Protection of subscriber privacy.**

(a) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a licensee shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of:

- (1) The nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;
- (2) The nature, frequency and purpose of any disclosure which may be made of such information, including any identification of the types of persons to whom the disclosure may be made;
- (3) The period during which such information will be maintained by the licensee;
- (4) The times and place at which the subscriber may have access to such information in accordance with subsection (b); and
- (5) The limitations provided by this section with respect to the collection and disclosure of information by a licensee and the right of the subscriber under subsections (f) and (h) to enforce such limitations.

## COMMUNITY ANTENNA TELEVISION

For purposes of this section, the term "personally identifiable information" does not include any record aggregate data which does not identify particular persons.

(b) Except as provided in this subsection, a licensee shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned. A licensee may use the cable system to collect such information in order to:

- (1) Obtain information necessary to render a cable service or other service provided by the licensee to the subscriber; or
- (2) Detect unauthorized reception of cable communications.

(c) Except as provided in this subsection, a licensee shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned. A licensee may disclose such information if the disclosure is:

- (1) Necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the licensee to the subscriber;
- (2) Subject to subsection (h), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed; or
- (3) A disclosure of the names and addresses of subscribers to any cable service or other service, if:
  - a. The licensee has provided the subscriber the opportunity to prohibit or limit such disclosure; and
  - b. The disclosure does not reveal, directly or indirectly, the:
    - i. Extent of any viewing or other use by the subscriber of a cable service or other service provided by the licensee; or
    - ii. The nature of any transaction made by the subscriber over the cable system of the licensee.

(d) A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a licensee. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such licensee. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

(e) A licensee shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) or pursuant to a court order.

TEMPE CODE

(f) Any person aggrieved by any act of a licensee in violation of this section may bring a civil action in a court of general jurisdiction, as provided in Section 631 of the Cable Act.

(g) Nothing in this chapter shall be construed to prohibit the city from enacting or enforcing additional laws consistent with this section for the protection of subscriber privacy.

(h) A governmental entity may obtain personally identifiable information only if, in the court proceeding relevant to such court order:

(1) Such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in a criminal activity and that the information sought would be material evidence in the case; and

(2) The subject of the information is afforded the opportunity to appear and contest such entity's claim.

(Ord. No. 91.33, 10-17-91)

**Secs. 10-67—10-69. Reserved.**

**ARTICLE VII. ADMINISTRATION AND ENFORCEMENT**

**Sec. 10-70. Reports.**

(a) Each year the licensee shall brief the offices of the city manager, no later than one hundred twenty (120) days after the end of the licensee's fiscal year. The briefing shall include a description of all major activities applicable to its operation during the preceding twelve (12) month period. At the briefing, licensee shall submit a written report that includes the following information, specific to the city: number of homes passed, number of cable plant miles, number of subscribers for each type of cable service offered and the gross revenues from each source attributable to the operations of licensee from within the city. This report shall be certified as being correct by an officer of the company. There shall be submitted along with this report such other information reasonably related to license compliance as the city shall reasonably request.

(b) Upon request, there shall be provided to the city, copies of any communications and reports submitted by licensee to the Federal Communications Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a cable system in the city.

(c) Licensee shall provide the city with regular reports, as needed, to establish licensee's compliance with the various standards and other provisions of this chapter.  
(Ord. No. 91.33, 10-17-91)

**Sec. 10-71. Inspection of property and records.**

(a) At all reasonable times, the licensee shall permit any duly authorized representative of the city to examine all property of the licensee, together with any appurtenant property of the licensee situated within or without the city, and to examine and transcribe any and all maps and other records kept or maintained by the licensee or under its control which relate to license compliance and deal with the operations, affairs, transactions or property of the licensee.

(b) The licensee shall at all times make and keep in the city full and complete plans and records showing the exact location of all cable system equipment installed or in use in streets, public rights-of-way and other places in the city.

(c) The licensee shall file with the city engineer, upon request, current maps or sets of maps drawn to scale, showing all cable system equipment installed and in place in streets, public rights-of-way and other public places of the city.

(d) The licensee shall keep on file with the city clerk a current annual report as specified in the license.  
(Ord. No. 91.33, 10-17-91)

**Sec. 10-72. Protection of city against liability.**

(a) *Indemnification.*

- (1) Licensee shall fully indemnify, defend and hold harmless the city, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees against any and all costs, damages, expenses, claims, suits, actions, liabilities and judgments for damages, including but not limited to, expenses for legal fees, whether suit be brought or not, and disbursements and liabilities incurred or assumed by city in connection with:
  - a. Damage to persons or property, in any way arising out of or through the acts or omissions of licensee, its servants, officials, agents, attorneys, representatives or employees;
  - b. Requests for relief arising out of any licensee action or inaction which results in a claim for invasion of the right of privacy; for defamation of any person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or of any other right of any person, firm or corporation;
  - c. Any and all claims arising out of licensee's failure to comply with the provisions of this chapter or a license or any federal, state or local law, or regulation applicable to licensee or the cable system; or
  - d. Any and all disputes arising out of a claim by any party other than city or licensee wherein damages or other relief is sought (i) as a result of the city's cable system licensing of licensee or (ii) as a result of the renewal or non-renewal of licensee's cable system license.
- (2) If a lawsuit covered by the provisions of paragraph (1) of this subsection be brought against city, either independently or jointly with licensee, or with any other person or municipality, licensee, upon notice given by city, shall defend city at the cost of licensee. If final judgment is obtained against city, either independently or jointly with licensee or any other defendants, licensee shall indemnify city and pay such judgment with all costs and satisfy and discharge the same.
- (3) City shall cooperate with the licensee and reserves the right to participate in the defense of any litigation.
- (4) The city is in no manner or means waiving any governmental immunity it may enjoy or any immunity for its agents, officials, servants, attorneys, representatives or employees.

## COMMUNITY ANTENNA TELEVISION

- (5) A licensee shall make no settlement in any matter identified above without the city's written consent, which shall not be unreasonably withheld. Failure to inform the city of settlement shall constitute a breach of the license and the city may seek any redress available to it against the licensee whether set forth in this chapter or under any other municipal, state or federal laws.
  - (6) All rights of city, pursuant to indemnification, insurance, letter of credit or performance bond(s), as provided for by this chapter, are in addition to all other rights the city may have under this chapter or any other chapter, rule, regulation or law.
  - (7) The city's exercise of or failure to exercise all rights pursuant to any section of this chapter shall not affect in any way the right of city subsequently to exercise any such rights or any other right of city under this chapter or any other chapter, rule, regulation or law.
  - (8) It is the purpose of this subsection to provide maximum indemnification to the city under the terms and conditions expressed and, in the event of a dispute, this section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the city by the licensee.
  - (9) The provisions of this subsection shall not be dependent or conditioned upon the validity of this chapter or the validity of any of the procedures or agreements involved in the award or renewal of a license, but shall be and remain a binding right and obligation of the city and licensee even if part or all of this chapter, or the grant or renewal of a license, is declared null and void in a legal or administrative proceeding. It shall be expressly stated in a license, that it is the intent of the licensee and city, upon the effective date of the license, that the provisions of this subsection survive any such declaration and shall be a binding obligation of and inure to the benefit of the licensee and city and their respective successors and assigns, if any.
- (b) *Comprehensive liability insurance.*
- (1) Prior to or upon execution of the license, the licensee shall file with the city clerk and shall thereafter during the entire term of such license maintain in full force and effect, at its own expense, a general comprehensive liability insurance policy or policies which shall insure licensee and provide primary coverage for the city, its officers, boards, commissions, agents and employees, against liability for loss or liability for personal injury, death, property damage (both automobile and nonautomobile caused) or other damages. Such policy or policies shall include insurance against damages from unfair competition, copyright infringement (common law or statutory) and a failure of licensee to secure consents, occasioned by any activity or operation of licensee under such license, and regardless of any claimed or actual activities of city, its officers, boards, commissions, agents and employees. The city council, in any license granted, may waive the requirement for insurance from one or more perils mentioned in the last preceding sentence upon a finding that such insurance cannot, be procured or cannot be procured at a reasonable cost, and in

connection therewith may reduce the otherwise required limits on coverage hereafter set forth. Such policy or policies shall be issued by a company approved by the city manager and shall be in a form approved by the city attorney, with minimum combined single limits of liability coverage in the amount of five million dollars (\$5,000,000). The policy or policies shall name the city, its officers, boards, commissions, agents and employees as additional insured and contain a provision that a written notice of any cancellation, modification or reduction in coverage of said policy shall be delivered to the city clerk thirty (30) days in advance of the effective date thereof. No license granted under this chapter shall be effective unless and until each of the foregoing policies of insurance as required in this subsection has been delivered to the city clerk. Any substitute policy or policies shall be subject to the same approvals and shall comply with all of the provisions of this subsection.

- (2) The city council may require increases in the amount or types of coverage no more frequently than every three (3) years, based on increases in the CPI, so as to ensure full protection of the city and the public. The licensee shall have six (6) months from the date of notification from the city manager to comply with any increase.
- (3) A licensee may self-insure the above-described policy coverages if such licensee or its parent is of sufficient financial standing to reasonably provide such insurance. A licensee that elects to self-insure shall file with the city a certificate of insurance as specified by the city.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

**Sec. 10-73. Letter of credit.**

(a) Prior to or upon execution of the license, a licensee shall deposit with the city an irrevocable letter of credit in an amount not to exceed ten thousand dollars (\$10,000) issued by a federally insured commercial lending institution. The form and substance of said letter of credit shall be used to assure the faithful performance by a licensee of all provisions of this and resulting license; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the city having jurisdiction over its acts of defaults under a license and the payment by the licensee of any penalties, liquidated damages, claims, liens and taxes due to the city which arise by reason of the construction, operation or maintenance of the cable system, including cost of removal or abandonment of any property of the licensee.

(b) The letter of credit may be drawn upon by the city by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the city manager certifying that the licensee has been found, pursuant to §§ 10-76(c) or 10-77, to have failed to comply with this [chapter], its license or license agreement, stating the nature of the noncompliance, and stating the amount being drawn. Examples of the nature of the noncompliance for drawing upon the letter of credit include, but are not limited to, the following:

- (1) Failure of the licensee to pay to the city any license fees or taxes after ten (10) days written notice of delinquency;

## COMMUNITY ANTENNA TELEVISION

- (2) Failure of the licensee to pay to the city, after ten (10) days written notice, after all judicial remedies have been exhausted, any amounts due and owing the city by reason of the indemnity provisions of § 10-72; or
- (3) Failure of the licensee to pay to the city any liquidated damages due and owing to the city pursuant to the license;

(c) The letter of credit shall be structured in such a manner so that if the city at any time draws upon the letter of credit, upon notice to the licensee by the issuing lending institution, licensee shall increase immediately the amount of available credit to the extent necessary to replenish that portion of the available credit exhausted by the honoring of the city's draft. The lending institution shall notify the city of the replenishment by licensee. The intent of this subsection is to make available to the city at all times a letter of credit in the amount of ten thousand dollars (\$10,000).

(d) The rights reserved to the city with respect to the letter of credit are in addition to all other rights of the city, whether reserved by a license or authorized by law, and no action proceeding against a letter of credit shall affect any other right the city may have. (Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

### **Sec. 10-74. Construction bond.**

(a) Prior to or upon execution of the license, a licensee shall obtain and maintain throughout the period of system construction, at its cost and expense, and file with the city clerk, a corporate surety bond issued by a company authorized to do business in the State of Arizona, and found acceptable by the city attorney, in an amount established in a license agreement solely for the purpose of guaranteeing the timely construction or reconstruction of the cable system and the safeguarding of private property during construction or reconstruction. The bond shall provide, but not be limited to, the following condition: There shall be recoverable by the city, jointly and severally from the principal and surety, any and all damages, losses or costs suffered by the city resulting from the failure of a licensee to satisfactorily complete construction or reconstruction of its cable system throughout the license area pursuant to the terms and conditions of this chapter and such licensee's license.

(b) Any extension of the prescribed construction or reconstruction time limit must be authorized by the city council. The construction bond shall be available throughout any such extension period.

(c) The construction bond shall be terminated only after the city manager or designee finds that a licensee has satisfactorily completed initial construction and activation or reconstruction of its cable system pursuant to the terms and conditions of this chapter and such licensee's license.

(d) The rights reserved to the city with respect to the construction bond are in addition to all other rights of the city, whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such construction bond shall affect any other rights the city may have.

(e) The construction bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the city, by registered mail, of written notice of such intent to cancel or not to renew.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

**Sec. 10-75. Liquidated damages.**

(a) Each license granted by the city shall state that a licensee understands and shall agree that failure to comply with any time and performance requirements as stipulated in this chapter and the license will result in damage to the city, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; the license shall include provisions for liquidated damages to be paid by the licensee, in amounts set forth in the license and chargeable to the letter of credit for the following concerns:

- (1) Failure to complete system construction or reconstruction in accordance with this chapter or the license, unless the city council specifically approves the delay by motion or resolution;
- (2) Failure to provide a cable connection within the time(s) set forth in § 10-37;
- (3) Failure to properly restore the public right-of-way or to correct related violations of specifications, code or standards after having been notified by the city to correct such defects.
- (4) Failure to comply with customer service standards of this chapter.
- (5) Failure to test, analyze and report on the performance of the cable system following a written request pursuant to § 10-39(a).
- (6) Failure to provide in a continuing manner the type of services proposed in the accepted application, renewal proposal or license, unless the city council specifically approves modification, of licensee's obligation;
- (7) Failure to cure any violation of § 10-57, following notice and an opportunity to cure pursuant to the provisions of that section; and
- (8) Any other action or non-action by the licensee, as agreed upon between the city and licensee, and set forth in the license.

(b) If the city manager or designee concludes that a licensee is in fact liable for liquidated damages pursuant to this section, he/she shall issue to licensee by certified mail a notice of intention to assess liquidated damages. The notice shall set forth the nature of the violation and the amount of the proposed assessment. The licensee shall, within thirty (30) days of receipt of such notice:

- (1) Respond to the city in writing, contesting the city's assertion of violation and providing such information or documentation as may be necessary to support licensee's position; or

## COMMUNITY ANTENNA TELEVISION

- (2) Cure any such violation (and provide written evidence of the same) or, in the event that, by the nature of the violation, such violation cannot be cured within such thirty (30) day period, take reasonable steps to cure said violation and diligently continue such efforts until said violation is cured. Licensee shall report to the city, in writing, at thirty (30) day intervals as to licensee's efforts, indicating the steps taken by licensee to cure said violation and reporting licensee's progress until such violation is cured.

(c) In the event that licensee contests the city's assertion of violation or fails to respond to the city's notice of intent to assess liquidated damages, within fifteen (15) days the city shall schedule a hearing in accordance with the procedures set forth in § 10-76.  
(Ord. No. 91.33, 10-17-91)

### **Sec. 10-76. Administrative hearing.**

(a) Within fifteen (15) days of (i) receipt of notice of contest pursuant to § 10-57(f)(1) or (ii) expiration of the response time referred to in § 10-57(g) or 10-75(c), an administrative hearing shall be scheduled by the city manager or designee. This shall be a public hearing, and licensee shall be afforded full due process, including, without limitation, an opportunity to be heard, to present evidence and to cross examine witnesses. Within fifteen (15) days after the conclusion of such hearing, the city manager or designee shall issue a determination. In that determination the city manager or designee may:

- (1) Find that licensee is not in violation of the terms of the license;
- (2) Find that the licensee is in violation, but that such violation was with just cause and waive any liquidated damages that might otherwise be imposed;
- (3) Find that licensee is in violation of the terms of the license, take corrective action and foreclose on all or any appropriate part of the letter of credit provided pursuant to § 10-73;
- (4) Find that licensee is in violation of the terms of the license and impose liquidated damages; or
- (5) In the case of a material violation recommend that the city council terminate the license, provided that the city council may take action on any such recommendation only after a public hearing as set forth in § 10-77.

(b) If the city manager or designee determines that licensee has committed a violation, the determination shall be accompanied by a detailed statement of reasons for the determination, including findings of fact.

(c) The decision of the city manager or designee shall become final unless licensee requests a public hearing before the city council within fifteen (15) days of its receipt of the statement of reasons and findings of fact by the city manager or designee.  
(Ord. No. 91.33, 10-17-91)

**Sec. 10-77. Hearing by city council.**

If a public hearing before the city council is requested by licensee or is held pursuant to § 10-76(a)(5) or § 10-76(c), it shall be de novo and it shall convene within thirty (30) days of the request therefor. All witnesses shall be sworn and shall be subject to cross-examination; however, formal rules of evidence shall not apply. The city council's decision, which shall include findings of fact, shall be made not later than forty-five (45) calendar days after the conclusion of the hearing. In that decision, the city council may:

- (1) Find that licensee is not in violation of the terms of the license;
- (2) Find that licensee is in violation but that such violation was with just cause and waive any liquidated damages or penalty that may otherwise be imposed;
- (3) Find that licensee is in violation of the terms of the license, take corrective action and foreclose on all or any appropriate part of the letter of credit provided pursuant to § 10-73 to pay the cost thereof;
- (4) Find that licensee is in violation of the terms of the license and impose liquidated damages; or
- (5) In the case of a material violation of the license within the meaning of § 10-78, declare the licensee in violation and revoke the license.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-78. Revocation.**

(a) In addition to all other rights and powers retained by the city council under this chapter or otherwise, the council shall have the right to revoke the license and all rights and privileges of the licensee thereunder in the event of a recurring or protracted substantial breach of the license terms and conditions, or this chapter, which substantially affects the provision or quality of cable services, the ability of the city to effectively regulate the licensee, or Tempe's collection of all fees and charges. The power of revocation shall not be used if the breach is a result of force majeure. The breaches appearing on the list set forth below in this section shall be considered substantial breaches. The list is not exhaustive:

- (1) Willful or grossly negligent repeated violations of this chapter, the license or the representations made in the application process, or any rule, order or regulation of the city made pursuant to this chapter;
- (2) An attempt to dispose of any of the facilities or property of the system authorized by the license to prevent Tempe from acquiring it, as provided for herein;
- (3) Attempt to evade any material provision of the license or practice any fraud or deceit upon the city or its subscribers or customers;
- (4) Failure to begin or complete cable system construction, reconstruction or cable system extension as provided under the license;

## COMMUNITY ANTENNA TELEVISION

- (5) Failure to provide the types of categories of programming and cable services promised;
- (6) Recurrent failures to restore service on the entire or a substantial portion of the cable system after ninety-six (96) consecutive hours of interrupted service except upon approval of such interruption by the city council, for good cause shown;
- (7) Recurrent service outages of the entire cable system or a substantial portion thereof which, in the aggregate, exceed ten (10) days in any thirty (30) day period;
- (8) Insolvency of the licensee or inability or unwillingness of the licensee to pay its just debts when they accrue, or application of the licensee for adjudication as a bankrupt;
- (9) Recurrent failures after notice by the city manager, or a designee, to provide service to any part of the licensee service area; or
- (10) Unlawful acts or omissions by licensee or its servants, officials, agents, representatives or employees, which result in the city's refusal to award a license to any other person, partnership, corporation or other legal entity.

(b) *Notice.* Before proceeding with a revocation hearing, the city manager or a designee, shall make a written demand that the licensee comply. If a violation by the licensee continues for a period beyond that set forth in the written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the city council may revoke the license as provided in § 10-78.

(Ord. No. 91.33, 10-17-91)

### **Sec. 10-79. Performance evaluation sessions.**

(a) The city and a licensee may hold scheduled performance evaluation sessions every three (3) years from the anniversary date of a licensee's award of the license and as may be required by federal and state law.

(b) These evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice.

(c) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; license fee; liquidated damages; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this chapter; judicial and FCC rulings; line extension policies; and licensee or city rules.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

**Sec. 10-80. Continuity of service mandatory.**

(a) It shall be the right of all subscribers to continue receiving cable service insofar as their financial and other obligations to a licensee are honored.

(b) In the event of the termination of the license, the licensee shall cooperate with the city, to ensure continuity of cable service to all subscribers for a period not to exceed ninety (90) days. Said period may be extended by mutual agreement between the city and licensee. During such period, licensee shall be entitled to the revenues for any period during which it operates the cable system.

(c) In the event licensee fails to operate the cable system for ninety-six (96) consecutive hours without prior approval of the city or without just cause, the city may, at its option, operate the cable system or designate an operator until such time as licensee restores cable services under conditions acceptable to the city or a new permanent operator is selected. If the city is required to fulfill this obligation for a licensee, the licensee shall reimburse the city for all reasonable costs or damages that are the result of the licensee's failure to perform.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-81. Failure of city to enforce a license; no waiver of the terms thereof.**

A licensee shall not be excused from complying with any of the terms and conditions of a license or this chapter by any failure of the city upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-82. Waivers.**

(a) Any provision of this chapter may be waived, at the sole discretion of the city, by resolution of the city council.

(b) Licensee may submit a request for waiver to the city council at any time during the license term. Such request for waiver may, at the sole discretion of the city council, be set for public hearing and a decision shall be made within one hundred twenty (120) days following its submission.

(c) The city council may authorize the economic, technical or legal evaluation of such licensee's waiver request and the licensee shall be required to reimburse the city for all expenditures incurred by city in connection with such evaluation.

(d) This section is enacted solely for the convenience and benefit of the city and shall not be construed in such a manner as to create any right or entitlement for the licensee.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-83. Validity of license.**

Licensee shall acknowledge as a condition of execution of a license, that licensee was represented throughout the negotiations of any license award or renewal by its own attorneys and had opportunity to consult with its own attorneys about its rights and obligations regarding the license.

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)

**Sec. 10-84. Miscellaneous provisions.**

(a) When not otherwise prescribed herein, all matters herein required to be filed with the city shall be filed with the office of the city clerk.

(b) Neither licensee or any of its officers or employees shall receive referral fees or gratuities from any television or radio sales or repair business.

(c) All notices which city may give to a licensee or which a licensee may give to city shall be given in writing and may be given by first class mail, postage prepaid addressed to licensee's most recent address on file with the city, and addressed to city at its city hall. Such notices, when sent by mail, shall be deemed given one day after deposit in the U.S. mail.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-85. Force majeure.**

With respect to any provision of this chapter or any license granted pursuant thereto, the violation or noncompliance with which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon a licensee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or similar events, the occurrence of which was not reasonably foreseeable by licensee and is beyond its reasonable control.

(Ord. No. 91.33, 10-17-91)

**Sec. 10-86. Repealed.**

(Ord. No. 91.33, 10-17-91; Ord. No. 2007.39, 6-28-07)