

tion. Section 70-255 shall govern such appeal. If no appeal is filed and if the violation is not cured within the 30-day period, the city may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.

(d) In determining which remedy is appropriate, the city shall take into consideration the nature of the violation, the person bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the city determines are appropriate to the public interest. In any proceeding before the city where there exists an issue with respect to a registrant's performance of its obligations pursuant to this article, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this article. The city may find a registrant that does not demonstrate compliance with the terms and conditions of this article in default and apply any remedy as authorized by this article or other applicable laws, ordinances, regulations or city codes. The city manager or a designee shall be responsible for administration and enforcement of this article, and is authorized to give any notice required by law. Failure of the city to enforce any requirements of this article shall not constitute a waiver of the city's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

(Ord. No. 17-49, § 2, 9-28-17)

#### **Sec. 70-255. Appeals.**

Any final decision by a city official or board other than the city commission may be appealed to the city commission by filing a written notice of appeal with the city manager or designee within 30 days of the date of the decision. Any appeal not timely filed as set forth above shall be waived. A timely filed appeal shall be heard within a reasonable time in light of the circumstances. Any final decision by the city commission is subject to review as provided by law.

(Ord. No. 17-49, § 2, 9-28-17)



## Chapter 71

### CABLE COMMUNICATIONS\*

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- Sec. 71-110. Inspection.
- Sec. 71-111. Completion.

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\***Cross references**—Administration, ch. 2; buildings and building regulations, ch. 18; businesses, ch. 22; civil emergencies, ch. 30; environment, ch. 38; streets and sidewalks, ch. 62; telecommunications, ch. 70; traffic and vehicles, ch. 74; zoning, ch. 118; construction and installation of public improvements manual, appendix A, arts. II, III; franchises, appendix B.

## WINTER GARDEN CODE

- Sec. 71-112. System expansion.
- Sec. 71-113. Removal.
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- Sec. 71-118. Communications with regulatory agencies.
- Sec. 71-119. No preemption.
- Sec. 71-120. Property rights.
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## ARTICLE I. IN GENERAL

### Sec. 71-1. Short title.

This chapter may be cited as the "Winter Garden Cable Communications Ordinance".  
(Ord. No. 02-03, Art. I(1), 2-28-02)

### Sec. 71-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Basic cable service* means any service tier which includes the retransmission of local television broadcast signals.

*Cable communications system or system, or cable television system, or cable system, or CATV system or community antenna TV system* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way; (iii) a facility of a common carrier 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 (iv) any facilities of any electric utility used solely for operating its electric utility systems.

*Cable service* means the transmission of video, audio, or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of any such programming service, regardless of whether the programming is transmitted over facilities owned or operated by the cable service provider or over the facilities owned or operated by one or more other dealers of communications services. The term includes point-to-multipoint distribution ser-

vices by which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service. The term includes basic cable, extended, premium, pay-per-view, digital, music services, and, to the extent consistent with applicable law, cable modem access to the Internet.

*Franchise* means the rights granted under this chapter by the city to a grantee by which the city authorizes such person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a cable communications system in the city. Any franchise awarded by an ordinance in accordance with this chapter shall be a nonexclusive franchise. The grant of one franchise does not establish priority for use over the other present or future permit or franchise holders or the city's own use of the streets and public rights-of-way.

*Franchise agreement* means an ordinance or resolution enacted by the city in favor of a grantee which is enforceable by the city and the grantee and which sets forth the rights and obligations between the city and the grantee arising from the franchise. Any franchise agreement entered into for the provision of cable services or the construction of a cable communications system in the city shall be deemed to incorporate by reference and shall be subject to all of the terms and conditions set forth in this Chapter.

*Grantee* means the natural person, partnership, domestic or foreign corporation, association, joint venture or organization of any kind and lawful and approved successors granted a franchise by the city under this chapter.

*Grantor or city* means the city as represented by the city commission or any delegate acting within the scope of his or its jurisdiction.

*Service tier* shall mean a category of multichannel cable service or other services provided by a grantee and for which a separate rate is charged by the grantee.

*Street* means the surface of and the space above, below and through any public street, right-of-way, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway or driveway existing as such within the city.

*Subscriber* means any person who legally receives any one or more of the cable services provided by the cable communications system.

*Video programming* shall mean programming provided by, or generally considered comparable to program provided by, a television broadcast station.

(Ord. No. 02-03, Art. I(2), 2-28-02)

### **Sec. 71-3. Intent.**

The city finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the residents of the city. Because of the complex and rapidly changing technology associated with cable television, the city further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which are vested in the city or such persons as the city shall designate. It is the intent of this chapter and amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

(Ord. No. 02-03, Art. I(3), 2-28-02)

### **Sec. 71-4. Rights reserved to city.**

The city expressly reserves the following rights to:

- (1) Exercise its governmental powers to the full extent that such powers may be vested in or granted to the city.
- (2) Adopt, in addition to the provisions contained in this chapter and in the franchise agreement and in any applicable ordinances, such additional reasonable regulations as it shall find necessary in the exercise of its police power.
- (3) Renegotiate with a grantee a franchise granted pursuant to this chapter should substantial sections of the chapter be rendered void by the Federal Communica-

tions Commission or by changes in applicable federal or state laws or court decisions.

(Ord. No. 02-03, Art. I(4), 2-28-02)

### **Sec. 71-5. Compliance.**

A cable communications franchise grantee shall not be relieved of any obligation to comply with any of the provisions of the franchise or any rule, regulation, requirement or directive promulgated thereunder because of any failure of the city or its officers, agents or employees to enforce prompt compliance.

(Ord. No. 02-03, Art. I(5), 2-28-02)

### **Sec. 71-6. Alternative remedies.**

No provision of this chapter shall be deemed to bar the right of the city to seek or obtain judicial relief from a violation of any provision of this chapter, the franchise agreement, or any rule, regulation, requirement or directive promulgated under the franchise, whether administratively, judicially or both. Neither the existence of other remedies identified in this chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the city to recover fines, penalties or monetary damages for such violation by the grantee or judicial enforcement of the grantee's obligations by means of specific performance, injunction relief or mandate or any other administrative remedy or judicial remedy at law or in equity.

(Ord. No. 02-03, Art. I(6), 2-28-02)

### **Secs. 71-7—71-30. Reserved.**

## **ARTICLE II. FRANCHISE**

### **Sec. 71-31. Required.**

Consistent with federal law, no person or entity who has not been issued a cable franchise by the city may provide cable service in the city. Notwithstanding the preceding, any person or entity who has not been issued a franchise by the city and is providing cable service as of the date hereof shall have until June 1, 2002, or such later date as may subsequently be approved by a resolution of the city commission of the city to enter into a fran-

chise agreement with the city. Prior to such date, such person or entity shall be bound by all provisions contained herein, including but not limited to regulations regarding use and occupancy of the city's streets, insurance, and other financial requirements for the operation, construction, and maintenance of a cable system.

(Ord. No. 02-03, Art. II(1), 2-28-02)

**Sec. 71-32. Authority to grant; terms and conditions of granting.**

(a) The city may grant one or more cable communications franchises.

(b) Any franchise granted hereunder shall be evidenced by a franchise agreement executed by the grantee agreeing to be bound by the terms of this chapter. In addition, so long as state and federal law permit city to negotiate the contribution of in-kind services and other matters with each applicant for a franchise individually, such franchise agreement shall contain such other provisions and obligations in addition to those matters set forth in this chapter as are permissible under state and federal law and agreed to by city and grantee, including, but not limited to those matters such as in-kind contributions to schools, monetary grants, production assistance, public access, and wiring and furnishing cable service to governmental buildings. Any franchise granted under the terms and conditions contained in this article shall be consistent with federal laws and regulations and state general laws and regulations. If a conflict occurs in the terms and conditions of the franchise and the terms and conditions on which the city can grant a franchise, the general law or statutory requirements shall, without exception, control. Any franchise granted is made subject to the general ordinance provisions in effect in the proper exercise of the city's police power. Nothing in the franchise shall be deemed to waive the requirements of the other codes and ordinances of the city regarding permits, fees to be paid or the manner of construction.

(c) Neither this chapter as a whole, nor any of its parts, portions or terms, shall be construed as granting or intending to grant to a grantee a franchise to use the city's public ways, streets, or other public places of the city or any portion of the cable

communication system for services not related to cable television, including, but not limited to, telephone or any other uses not specified herein; but nothing herein shall preclude a grantee from entering into a contract for the use of any portion of the system with any person, firm, partnership or corporation; provided that such person, firm, partnership, or corporation first obtains any required franchise, license, and permits from the city and any required certification from the State of Florida and the FCC.

(Ord. No. 02-03, Art. II(2), 2-28-02)

**Sec. 71-33. Establishment of requirements.**

The city may establish appropriate requirements for new franchises or franchise renewals and may modify these requirements from time to time to reflect changing conditions and the state of the art in the cable industry. To the extent permitted by law and required in furtherance of the city's police power, such requirements shall be retroactive to franchises then in effect and shall, in any event, become applicable when the franchise is renewed. Prior to granting any franchise, the city shall duly consider:

- (1) The economic impact upon private property within the franchise area;
- (2) The public need for such franchise, if any;
- (3) The capacity of public rights-of-way to accommodate the cable system;
- (4) The present and future use of the public rights-of-way to be used by the cable system;
- (5) The potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public;
- (6) The financial ability of the grantee to perform; and
- (7) Other societal interests as are generally considered in cable television franchising.

(Ord. No. 02-03, Art. II(3), 2-28-02)



**Sec. 71-34. Franchise nonexclusive.**

Any cable communications franchise granted shall be nonexclusive. The city specifically reserves the right to grant, at any time, such additional franchises for a cable communications system as it deems appropriate. To the extent required by Florida law, including but not limited to F.S. ch. 337, the city shall grant franchises on non-discriminatory terms and conditions; provided, however, that nothing herein shall be deemed to limit or abridge city's authority and right to negotiate and receive in exchange for granting a franchise in-kind cable services and other items to the fullest extent permitted under state and federal law.

(Ord. No. 02-03, Art. II(4), 2-28-02)

**Sec. 71-35. Applications.**

(a) Applicants for a cable communications franchise shall submit to the city written applications utilizing, if promulgated, the standardized format provided by the city, at the time and place designated by the city for accepting applications and including the application fees designated by the city.

(b) Applications for an initial franchise shall include at a minimum the following:

- (1) The full legal name and telephone number of the applicant. After the telephone number of the applicant, the applicant's Florida Sunshine State one-call registration number, a clear description of the identity of the applicant, including but not limited to the name of the applicant, the address and telephone number of the applicant, the nature of the business entity, evidence of the compliance of the business entity with all applicable law and a detailed statement of the corporate or other business entity organization of the applicant, including but not limited to the following:
  - a. The names and residence addresses of all general partners and corporate officers of the applicant.
  - b. The names and addresses of all persons and entities having, controlling

or being entitled to have or control 15 percent or more of the ownership of the applicant and the respective ownership share of each such person or entity.

- c. The name and address of any parent or subsidiary of the applicant and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the applicant.
- d. A detailed description of all previous experience of the applicant in providing cable television services or related or similar services.
- e. A detailed and complete financial statement of the applicant, prepared by an independent certified public accountant, for the fiscal year immediately preceding the date of the application or a letter or other acceptable evidence in writing from a responsible lending institution or funding source, addressed to both the applicant and the city, setting forth 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 system in the city. The city shall have the right to reject an applicant's financial statement based upon the city's finding the certified public accountant is not qualified to render the opinion.
- f. A statement identifying, by place and date, any other cable television franchise awarded to the applicant, its parent or subsidiary, the miles of cable completed, the miles of cable to be completed with the time schedule for completion, the total cost of completion of such system and the amount of the applicant's and its parent's or subsidiary's resources committed to the completion thereof.