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CHAPTER 6

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ARTICLE I.
CABLE COMMUNICATIONS SYSTEMS*

Sec. 6-1. Operation requirements; nonexclusivity of franchise.

No person shall own or operate a cable television system in the City except by virtue of a franchise granted by the City. No exclusive franchise shall ever be granted.

(Code 1972, § A124-1)

Charter reference—No exclusive franchise shall be granted, Art. XI, § 1.

Sec. 6-2. Franchise term.

No franchise shall be granted for a period in excess of fifteen (15) years nor shall any franchise be renewed before one (1) year prior to its expiration.

(Code 1972, § A124-2)

Charter reference—Term of franchise, Art. XI, § 5.

Sec. 6-3. Public hearing required; publication of notice.

The City Council shall award a franchise only after a public hearing on the application or proposal, notice of which hearing shall be published in a local newspaper of general circulation at least twenty (20) days before the date of the hearing.

(Code 1972, § A124-3)

Charter reference—Public hearing required, Art. XI, § 1.

Sec. 6-4. Time limit for service.

Any franchise granted by the City shall require service to be made available to all occupied dwelling units of the City within five (5) years of the date of the granting of the franchise.

(Code 1972, § A124-4)

Sec. 6-5. Franchise agreement and certificate of compliance.

An applicant awarded a franchise by the City Council shall execute a franchise agreement with the City. In addition, the franchisee shall, within sixty (60) days of the date of the execution of the franchise agreement, submit to the City a copy of the franchisee's application for a certificate of compliance which has been filed with the Federal Communications Commission. The failure of the applicant to file an application for a certificate of compliance within the time limits specified shall be grounds for immediate revocation of any rights the applicant may have had in the franchise.

(Code 1972, § A124-5)

Sec. 6-6. Revocation of franchise.

Any franchise granted hereunder shall be subject to the right of the City by resolution of the City Council to revoke the franchise for cause shown.

(Code 1972, § A124-6)

Sec. 6-7. Time limit for construction.

Within six (6) months of the granting of a franchise pursuant to this Chapter, the franchisee shall commence construction of its main office and head-end facilities. Barring delays caused by factors beyond the control of the franchisee, the facilities shall be completed and in operation within one (1) year of the granting of the franchise.

(Code 1972, § A124-7)

* **Editor's note**—Section 2 of Ord. No. 21, 1989, adopted Mar. 21, 1989, designated §§ 6-1—6-16, with reserved §§ 6-17—6-25, as Art. I.

Sec. 6-8. Periodic examination of performance.

Each franchisee shall upgrade its facilities, equipment and service so that its system is, within reason, as advanced as a current state of economically feasible production technology will allow. In furtherance of this goal, on the fifth, tenth and fifteenth anniversaries of the granting of any franchise pursuant to this Chapter, the City Council shall conduct a public hearing to examine the performance of the franchisee and to consider recommendations for changes in its facilities, equipment and services.

(Code 1972, § A124-8)

Sec. 6-9. Local access for broadcasting.

Any cable system shall have public access, educational access, local government access and leased access available on one (1) or more channels. Until such time as there is a full-time demand for each channel for its designated use, public, educational, governmental and leased access channels' programming may be combined on one (1) or more cable channels. To the extent that time is available therefor, access channels may also be used for other broadcast and nonbroadcast services.

(Code 1972, § A124-9)

Sec. 6-10. Right of City to purchase system.

Upon expiration of the term of a franchise, or upon other termination thereof, the City may, upon the payment of its fair valuation, purchase and take over the property and plant of the franchisee in whole or in part.

(Code 1972, § A124-10)

Charter reference—Option to purchase franchise after referendum, Art. XI, § 6.

Sec. 6-11. Liability and indemnification of City.

The franchisee shall indemnify and hold harmless the City at all times during the term of the franchise and specifically agree that it will pay all damages and penalties which the City may legally be required to pay as a result of the granting of the franchise.

(Code 1972, § A124-11(A))

Sec. 6-12. Performance bond.

Concurrent with its acceptance of a franchise, a franchisee shall file with the City Clerk and at all times thereafter maintain, in full force and effect, a corporate surety bond in the amount of fifty thousand dollars (\$50,000.) renewable annually and conditioned upon the faithful performance of the terms and conditions of the franchise agreement. The City Council may, in its sole discretion, waive said bond or reduce the required amount thereof after five (5) years of operation of a system under the franchise.

(Code 1972, § A124-11(B))

Sec. 6-13. Insurance.

The franchisee shall be required to maintain insurance in such forms and in such companies as shall be approved by the City, such approval not to be unreasonably withheld, to protect the City and the franchisee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by construction, erection, operation or maintenance of any aspect of the cable system.

(Code 1972, § A124-11(C))

Sec. 6-14. Complaint resolution procedure required.

Any franchise granted pursuant to this Chapter shall contain a specified complaint resolution procedure which shall have been determined by the City Council to be satisfactory in every respect.

(Code 1972, § A124-12)

Sec. 6-15. Fees.

During the term of any franchise granted pursuant to this Chapter, the franchisee shall pay to the City for the use of its streets, public places and other facilities, as well as the maintenance, improvements and supervision thereof, an annual franchise fee in the amount to be determined by the City Council. This payment shall be in addition to any other tax or payment owed to the City by the franchisee. In lieu of a franchise fee for the first year, and as good-faith evidence of the franchisee's intention to proceed, the franchisee shall be required to pay to the City the sum of ten thousand dollars (\$10,000.) in cash within thirty (30) days of the granting of the franchise.

(Code 1972, § A124-13)

Charter reference—Compensation, Art. XI, § 5.

Sec. 6-16. Violations.

(a) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the franchisee's cable television system for the purpose of enabling that person or others to receive any television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over a franchisee's cable system without payment to the franchisee.

(b) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cable, wires or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over a franchisee's cable system.

(Code 1972, § A124-14(A), (B))

Cross-reference—General penalty, § 1-15.

Secs. 6-17—6-25. Reserved.

**ARTICLE II.
GAS COMPANY FACILITIES REGULATIONS**

Sec. 6-26. Legislative intent.

(a) Certain entities, herein referred to as *gas companies*, are involved in the transportation, distribution and sale of natural gas within the municipal limits of the City through pipelines, mains and other fixed facilities, using streets, alleys, public property, easements and rights-of-way granted by the City.

(b) The nature of the companies transporting, distributing and selling gas, including without limitation their use of public and private easements, streets and rights-of-way, and the potential and actual hazards from the operations of such companies, have a substantial effect upon the health, safety and welfare of the citizens of the City.

(c) The transportation and distribution of natural gas involves a pervasive and permanent use of City streets, rights-of-way and public places; and such use is necessary in order for these gas companies to conduct their business.

(d) The City operates electric, stormwater, water and wastewater utilities using City streets, rights-of-way and public places, including those which are or may be used by gas companies to conduct their business.

(e) For the purpose of protecting public health, safety and welfare and in order to serve the convenience of the citizens of the City, it is necessary to coordinate activities relating to the use of the City streets, rights-of-way and public places, including but not limited to the placement of and relocation of facilities, excavations, construction and maintenance by gas companies.

(f) The regulations imposed herein are a matter of local concern relating to the use of public property by gas companies and are imposed upon all gas companies doing business within the City.

(g) The City has authority under the Colorado Constitution, the statutes of the State of Colorado and the City's Charter and ordinances to regulate businesses operating within its territorial boundaries and the use of streets, alleys, rights-of-way and other public property to ensure the safety, welfare, health and convenience of its citizens.

(h) In order to provide for public health, safety, welfare and convenience, the City enacts this Article, which governs the location and relocation of gas company facilities as well as any excavation, opening or other use of public streets, rights-of-way and public places for the purposes of gas transportation, distribution and sale. (Ord. No. 21, 1989, § 3, 3-21-89; Ord. No. 130, 2002, § 15, 9-17-02)

Sec. 6-27. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them:

Facilities shall mean any and all facilities reasonably necessary to provide or use in the provision of natural gas directly or indirectly into, within and through the City for transportation, distribution and sale and includes, *inter alia*, plants, works, systems, distribution structures, lines, equipment, pipes, mains, conduits and gas compressors.

Gas or *natural gas* shall mean such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured or any mixture thereof.

Gas company shall mean any entity that sells, provides, delivers or distributes gas within the corporate limits of the City through pipelines, mains and other related facilities and appurtenances located in whole or in part on easements and rights-of-way granted by the City.

(Ord. No. 21, 1989, § 3, 3-21-89)

Sec. 6-28. Permit procedure.

(a) When a gas company seeks to make, causes or permits to be made any excavation or opening in or under the surface or pavement of any street, alley, sidewalk, right-of-way or public property, it must apply for and receive a permit from the City.

(b) The procedures for obtaining a permit and the exercise of the rights thereunder are set forth in Chapter 23, Article II of the Code.

(c) In addition to the permit requirements set forth in Chapter 23, Article II of the Code, all gas companies operating within the City must comply with the applicable provisions of this Article.

(Ord. No. 21, 1989, § 3, 3-21-89)

Sec. 6-29. Review of construction and design.

(a) Except in emergency circumstances, prior to construction of any gas facilities above or below ground within and/or affecting public rights-of-way, easements or other public property (except that part of the public right-of-way between the property line and the sidewalk of any public street), each gas company shall furnish to the City the plans for such facilities and a report on the impact of its proposed construction on public property.

(b) The plans and report required by Subsection (a) above shall be submitted in completed form to the City Engineer or his or her designee at the time the permit application is made under § 23-17.

(c) The plans and reports required by Subsection (a) may be reviewed by the City to ensure, *inter alia*:

- (1) That all applicable laws including building and zoning codes and air and water pollution regulations are complied with;
- (2) That aesthetic and good planning principles are duly incorporated; and
- (3) That adverse impact on public property has been minimized.

(d) In the construction of any facilities or any plant, building or similar structure within the City, gas companies shall comply with all regulatory requirements of the City and shall incorporate all other reasonable changes required by the City. Such regulations shall include but not be limited to the following matters: location of facilities in streets, alleys and dedicated easements and driveways; interference with the City's water mains, sewer mains, drainage and

electric facilities or any other municipal use of the City streets and rights-of-way; the minimization of interference with trees and other natural features and vegetation; and interference with traffic and transportation within the City. (Ord. No. 21, 1989, § 3, 3-21-89; Ord. No. 222, 1998, § 3, 12-15-98)

Sec. 6-30. Excavation and construction.

(a) All construction, excavation, maintenance and repair work done by any gas company in or affecting public streets, alleys, rights-of-way and public places shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. Gas companies shall be liable for any damage to the City caused by their failing to act in a timely manner.

(b) All public and private property whose use conforms to restrictions in dedicated easements disturbed by gas company construction or excavation activities shall be restored by the gas company at its expense to a condition at least equal to its former condition subject to inspection by the City Engineer or his or her designee and compliance by the gas company with reasonable remedial action required by said official pursuant to inspection.

(c) Each gas company shall comply with the City's requirements for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the gas company is performing or has performed excavation or construction work.

(Ord. No. 21, 1989, § 3, 3-21-89; Ord. No. 222, 1998, § 3, 12-15-98)

Sec. 6-31. Installation and maintenance of company facilities.

(a) The installation, maintenance, renovation and replacement of any facilities by the company shall be subject to permits (fees related thereto), inspection and approval of location by the City Engineer or his or her designee.

(b) All company facilities shall be installed in dedicated easements and/or rights-of-way so as to cause a minimal amount of interference with such property.

(c) Each gas company shall erect and maintain its facilities in such a way so as to minimize interference with trees and other natural features and vegetation.

(d) Each gas company shall keep in good working order all facilities constructed, erected or used within the City.

(e) Each gas company and all subcontractors shall comply with all local regulations and ordinances.

(f) Each gas company shall perpetually maintain (unless otherwise agreed upon in writing) those portions of streets, sidewalks, rights-of-way and other public property where excavations have been made by such gas company for the installation, repair or relocation of gas company facilities at the expense of the gas company.

(Ord. No. 21, 1989, § 3, 3-21-89; Ord. No. 222, 1998, § 3, 12-15-98)

Sec. 6-32. Obligations regarding company facilities.

Each gas company shall install, repair, renovate and replace facilities with due diligence in a good and workmanlike manner, and all such facilities shall be of sufficient quality and durability to protect the health, safety and welfare of the public.

(Ord. No. 21, 1989, § 3, 3-21-89)

Sec. 6-33. Compliance with City requirements.

Each gas company shall comply with all City requirements regarding curb and pavement cuts, excavating, digging and related construction activities. At least thirty (30) days prior to completion of the same, the gas company shall submit a draft copy of its report of annual and long-term planning for capital improvement projects which will or may, directly or indirectly, affect public rights-of-way, easements or other public property, with descriptions of required street cuts, excavations, digging and related construction activities and shall submit a final copy within thirty (30) days after being finalized. Except for emergencies, the City may require that all installations be

coordinated with the City's street improvement programs. The City Engineer or his or her designee shall be the City's agent for inspection and for compliance with City ordinances and regulations on any such projects.
(Ord. No. 21, 1989, § 3, 3-21-89; Ord. No. 222, 1998, § 3, 12-15-98)

Sec. 6-34. Noninterference with public works.

Gas company facilities shall not interfere in any way with the City's electric system and facilities, water mains and facilities, sewer mains and facilities, storm drainage systems and facilities or other municipal use of streets and rights-of-way.
(Ord. No. 21, 1989, § 3, 3-21-89)

Sec. 6-35. Relocation of facilities.

(a) If at any time the City requests in writing that a gas company relocate any facility installed or maintained in or under the public streets, rights-of-way or public places in order to permit the City to make any use of the public streets, rights-of-way or public places for any police power exercised to protect the public health, safety or convenience of the citizens of the City, such relocation shall be made at the expense of the gas company and shall be completed within a reasonable time not to exceed sixty (60) days from the date when the City makes its request.

(b) The gas company may be granted an extension of time for completion equivalent to any delay caused by conditions not under its control, provided that such gas company proceed with due diligence at all times.

(c) Following relocation of gas company facilities, all property shall be restored to a condition at least equal to its former condition at the expense of the gas company.

(d) Nothing herein contained shall be construed to impose any obligation upon the City to make any payment for any relocation of facilities.
(Ord. No. 21, 1989, § 3, 3-21-89)

Sec. 6-36. Emergencies.

Any provision of this Article to the contrary notwithstanding, a gas company may take such immediate unilateral actions as in its determination are necessary to protect the public health, safety, property and welfare in the event of an emergency. *Emergency* shall mean a leak, line break, explosion or fire. Such gas company shall, within twenty-four (24) hours of the commencement of such emergency action, notify the City of the emergency and of the general nature of the action taken and shall, within forty-eight (48) hours of the commencement of such emergency action, apply for a permit as required pursuant to § 6-28 of this Article and shall thereafter comply with all other provisions of this Article. It shall be the duty of such gas company to fully repair and restore any and all public rights-of-way, easements or other public property to a condition at least equal to its former condition in accordance with § 6-30 of this Article promptly upon resolution of such emergency. It shall also be the duty of such gas company to otherwise restore the City to its former position by promptly reimbursing the City for any other loss suffered by the City as a result of such emergency, whether such loss be direct, indirect, consequential or incidental.
(Ord. No. 21, 1989, § 3, 3-21-89)

Sec. 6-37. Indemnification.

Each gas company shall indemnify and hold harmless the City for any accident or occurrence caused by the negligence of the gas company.
(Ord. No. 21, 1989, § 3, 3-21-89)

Sec. 6-38. Conflicting provisions.

Where conflicts exist between this Article and Chapter 23, Article II of the Code, the provisions of this Article shall govern.
(Ord. No. 21, 1989, § 3, 3-21-89)

Sec. 6-39. Savings clause.

If any portion of this Article is held unconstitutional or otherwise unlawful, the remaining sections of this Article shall remain effective.

(Ord. No. 21, 1989, § 3, 3-21-89)