

CITY OF WRENS
CODE OF ORDINANCES
TITLE 7
CHAPTER 9

CHAPTER 9

Telecommunications

- § 7-9-1 Definitions.
- § 7-9-2 Granting authority and franchising procedure.
- § 7-9-3 General provisions.

Sec. 7-9-1 Definitions.

For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number and words used in the singular number include the plural number.

- a. Affiliated Person means each Person who falls into one or more of the following categories: (1) each Person having, directly or indirectly, a Controlling Interest in the applicant; (2) each Person in which the applicant has, directly or indirectly, a Controlling Interest; (3) each officer, director, joint venturer or joint venture partner, of the applicant; and (4) each Person, directly or indirectly, controlling, controlled by, or under common Control with, the applicant; provided that "Affiliated Person" shall in no event mean the City or any creditor of the applicant solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management or common Control with, the applicant.
- b. Cable Services means "cable services" as defined in the communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and as may be further amended from time to time (the "Cable Act"), but does not include Telecommunications Services or Private Telecommunications Services. In the event that "cable services" is no longer defined in the Cable Act or the definition in the Cable Act otherwise becomes inapplicable, "Cable Services" shall mean "cable services" as defined in the Cable Act immediately prior to such term no longer being defined in the Cable Act or such definition otherwise becoming inapplicable.
- c. Cable System means any "Cable System" as defined in the Cable Act.
- d. City means the City of Wrens.
- e. City Council means the City Council of the City and its designee or any successor thereto.
- f. Control or Controlling Interest means actual working control in whatever manner exercised, including, without limitation, working control through

**CITY OF WRENS
CODE OF ORDINANCES
TITLE 7
CHAPTER 9**

ownership, management, debt instruments or negative control, as the case may be, of the applicant or the Telecommunications System in the Streets. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than five percent (5%) of any Person (which Person or group of Persons is hereinafter referred to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

- g. Franchise means an initial authorization, or renewal thereof, issued by the City in accordance with the provisions of this chapter, which authorizes the occupation and use of the Streets to provide Telecommunications Services.
- h. Grantee means the legal entity to which is granted the right, authority and responsibility to construct, install, operate and maintain a system of equipment as necessary to: (a) furnish, supply and distribute Telecommunications Services to any locations or Persons in the franchise or license area; (b) provide Private Telecommunications Services along licensed routes pursuant to a license; or (c) transport Telecommunications Services across the City along licensed routes pursuant to a license without terminating or originating any Telecommunications Services at or from any Person or location in the City.
- i. May is permissive.
- j. Ordinance means this Ordinance and all modifications and amendments thereto.
- k. Person means any individual or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for profit or not for profit, but shall not mean the City.
- l. Private Telecommunications Services means the transmission of Telecommunications by a Person, regardless of the facilities used, for or in connection with the internal operations of such Person's business, residence or employment and not for or in connection with the provision or offering of Telecommunications Services for sale or resale to any Person, and shall not mean Cable Services.
- m. Revocable License means an initial authorization or renewal thereof, issued by the City in accordance with the provisions of this chapter, which authorizes the occupation and use of specifically identified Streets, provided that a Revocable License shall be issued only in the limited circumstances set forth in Section 7-9-2(a)(2) of this chapter.
- n. Shall is mandatory, not merely directive.
- o. Streets means the surface of, as well as the spaces above and below, any and all streets, alleyways, avenues, highways, boulevards, driveways, bridges, tunnels, parks, parkways, public grounds or waters, and other public

**CITY OF WRENS
CODE OF ORDINANCES
TITLE 7
CHAPTER 9**

rights-of-way within or belonging to the City.

- p. Telecommunications means “telecommunications” as defined by 47 U.S.C. § 153(43) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, but shall not include Cable Services.
- q. Telecommunications Service means “telecommunications service” as defined by 47 U.S.C. § 153(46) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, but shall not include Cable Services. In the event that "telecommunications service" is no longer defined in the Communications Act or the definition in the Communications Act otherwise becomes inapplicable, "Telecommunications Service" shall mean "telecommunications service" as defined in the Communications Act immediately prior to such term no longer being defined in the Communications Act or such definition otherwise becoming inapplicable.
- r. Telecommunications System means the system in the franchise or license area over which Telecommunications Service or Private Telecommunications Service is provided, and to be constructed, operated and maintained by a Grantee pursuant to a franchise or license ordinance or agreement.

Sec. 7-9-2 Granting authority and franchising procedure.

a. Granting Authority

- 1. No Person shall use or occupy the Streets to provide any Telecommunications Services or Private Telecommunications Services or operate a Telecommunications System without a Franchise or Revocable License granted in accordance with the provisions of this chapter. The City intends to exercise its authority to franchise or license Persons pursuant to this chapter to the maximum extent permitted by applicable law, including the 1996 Act.
- 2. A Person shall not use or occupy the Streets to provide any Telecommunications Services or operate a Telecommunications System without a Franchise, except that such Person may use or occupy specific Streets without a Franchise if the Person obtains a Revocable License in accordance with the terms of this chapter. A Revocable License is intended to be a limited grant of authority to use and occupy specifically identified Streets and: (a) may be granted only if the use or occupation of such Streets is for the sole purpose of providing Private Telecommunications Services; or (b) shall be granted to provide Telecommunications Services only if the use or occupation of such Streets, together with the use or occupation of any Streets pursuant to Revocable Licenses previously granted to such Person and Affiliated Persons, shall not exceed five hundred (500) linear feet; or (c) shall be granted only if the use or occupation of such Streets is by a Telecommunications System that is not used by the Grantee or any other Person to sell, resell or otherwise provide Telecommunications Services to any Person in the City. In the event an application for a Revocable License would cause a Person to exceed or fail to comply with the limits specified in this Section 7-9-2(a)(2) then such Person

**CITY OF WRENS
CODE OF ORDINANCES
TITLE 7
CHAPTER 9**

must apply for a Franchise in accordance with the provisions of this chapter, and the use of specifically identified Streets pursuant to all previously granted Revocable Licenses shall thereafter be pursuant to and in accordance with any such Franchise that may be granted.

3. The City Council may grant one or more Franchises or Revocable Licenses in accordance with this chapter, provided that the City Council reserves the right to modify any provision of this chapter by amendment hereof.
4. The grant of any Franchise or Revocable License shall be made by adoption of a separate ordinance by the City Council and shall be on such terms and conditions as may be specified in said separate ordinance and/or a franchise or license agreement between the City and the Grantee.
5. Any Franchise or Revocable License granted shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional Franchises or Revocable Licenses as it deems appropriate, and/or itself engage in the provision of Telecommunications Services or Private Telecommunications Services.
6. A Franchise may be granted for all or any defined portion of the City. A Revocable License may only be granted for use of specifically identified Streets.
7. The grant of Franchises and Revocable Licenses to Persons providing Telecommunications Services by the City shall be subject to the provisions of applicable law, such as the provisions in the 1996 Act, as amended, governing telecommunications franchises and renewals thereof.

b. Franchise Applications

1. Applications for Franchises and Revocable Licenses shall be submitted in such form and be issued on such terms and conditions as the City Council may determine, subject to applicable law.
2. Any Application for a Franchise or Revocable License shall contain and/or require the following information with respect to the proposed Franchise or Revocable License and such other information as the City Council shall deem necessary or appropriate:
 - A. Applicant's name, address, telephone number, and federal employer identification number or social security number; copy of applicant's corporate charter or partnership agreement as applicable; and any trade names (and registrations) used by applicant;
 - B. 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:

**CITY OF WRENS
CODE OF ORDINANCES
TITLE 7
CHAPTER 9**

1. The names and the residence and business addresses of all officers and directors of the applicant;
 2. The names, residence, and business addresses of all persons and entities having any share of the ownership of the applicant and the respective ownership share of each person or entity;
 3. The names and address 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;
 4. For purposes of determining whether an applicant has the financial ability to construct and maintain the Telecommunications System in a safe manner and in accordance with the City's management policies, rules and regulations with respect to the Streets and to the extent not prohibited by law, a detailed and complete financial statement of the applicant, certified by an independent certified public accountant, for the fiscal year immediately preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the Council, setting forth the basis for any conclusions by such lending institution or funding source regarding the applicant's financial ability to construct and maintain the proposed Telecommunications System, 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 maintain the proposed Telecommunications 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 maintain the proposed Telecommunications System in the City; and
 5. For purposes of determining whether the applicant will construct, maintain, operate, and repair the Telecommunications System in compliance with the policies, rules and regulations with respect to the Streets and in a manner protective of the public health, safety and welfare, the names and addresses for telecommunications systems owned or controlled by the applicant, its parent, and subsidiaries, and the areas served by such systems.
- C. In order to permit the City to manage its Streets, a detailed description of the proposed plan of construction and maintenance of the applicant which shall include, but not be limited to, the following:
1. A detailed map indicating all areas proposed to be served, and a

**CITY OF WRENS
CODE OF ORDINANCES
TITLE 7
CHAPTER 9**

proposed time schedule for the installation of all equipment throughout the entire area to be serviced;

2. A detailed, informative, and referenced statement describing the proposed and actual location of facilities and equipment to be used in the Streets by the applicant; and
 3. For purposes of assisting the City in determining whether the Telecommunications System will be constructed in accordance with the City's management policies, rules and regulations with respect to the Streets, a detailed statement setting forth the provisions in 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 such Person, firm, or corporation constructing, or assisting the applicant with the construction of, the Telecommunications System in the Streets; and
- D. To the extent not prohibited by law, any other details, statements, supplementary information, or references pertinent to the subject matter of such application which shall be required or requested by the Council, or by any other provision of law.
3. Non-refundable Application Fees for New Franchises and Revocable Licenses

No application for a new Franchise or Revocable License shall be considered without payment by the applicant of application fees as provided in this Section. If a Franchise or Revocable License is granted, application fees will not be deemed a credit towards any other fees or sums due by the Grantee. If an application is denied, the application fee will not be refunded, except if required by law.

- A. *Purpose of Application Fees.* The application fees provided by this section will serve to cover the direct and indirect costs incurred by the City in processing the application, evaluating the applicant, and granting a franchise, and shall include, but not be limited to, administrative, engineering, publication, legal, and consultant's expenses.
- B. *Application Fee.* The applicant will be expected to pay the reasonable costs of the City in evaluating the application. Notwithstanding any other requirement of this chapter, each applicant for a **Franchise** must furnish with its proposal a nonrefundable application fee in the amount of Two Thousand Dollars (\$2,000.00) by certified check or cashier's check made payable to the City of Wrens, and each applicant for a **Revocable License** must furnish with its proposal a nonrefundable application fee in the amount of Two Thousand Dollars (\$2,000.00) by certified check or cashier's check made payable to the City of Wrens. In the event the City's reasonable costs exceed such amount, the applicant may be required by the City to pay any additional amount to

**CITY OF WRENS
CODE OF ORDINANCES
TITLE 7
CHAPTER 9**

cover such costs. In the event the City's reasonable costs are less than the application amount, the City may reimburse to the applicant the amount in excess of the City's actual cost if required by applicable law.

c. Responsibilities of Applicants

It shall be the responsibility of each applicant for a Franchise or Revocable License to comply with all applicable laws, ordinances, resolutions, rules, regulations and other directives of the City and any federal, state or local governmental authority having jurisdiction.

d. Public Availability of Applications

To the extent determined by the City Council, applications for Franchises or Revocable Licenses, including any additions, modifications or amendments thereto, shall be available for public inspection at a designated City office during normal business hours.

e. Evaluation Criteria

An applicant shall be granted a Franchise or Revocable License to provide Telecommunications Services, provided the City Council reasonably determines that the applicant has agreed to or meets the following factors and such terms, conditions and other factors as the City Council deems appropriate and not prohibited by applicable law:

1. the adequacy of the proposed compensation to be paid to the City, including the value of any in-kind facilities and Telecommunications Services offered by the applicant to the City;
2. the financial and technical ability of the applicant to construct and maintain a Telecommunications System in the Streets, and a certificate of public convenience or other authorization from the State or Federal Communications Commission permitting the applicant to provide Telecommunications Services in the City;
3. the ability of the applicant to maintain the property of the City in good condition throughout the term of the Franchise;
4. the willingness and ability of the applicant to meet construction and physical requirements and to abide by all purpose and policy conditions, limitations and requirements with respect to the Franchise, the public health, safety and welfare, and the City's management of Streets; and
5. to the extent not prohibited by law, any other factors or considerations deemed pertinent by the City for safeguarding the interests of the City and the public.

In making any determination hereunder as to any application for a Revocable License to provide Private Telecommunications Services and in accordance with applicable law, the City Council may consider such factors as it deems appropriate and in the

**CITY OF WRENS
CODE OF ORDINANCES
TITLE 7
CHAPTER 9**

public interest, including, without limitation, the foregoing factors to the extent applicable.

f. Procedure for Consideration of and Action on Applications

1. The City may make such investigations and take or authorize the taking of such other steps as the City Council deems necessary or appropriate to consider and act on applications for Franchises or Revocable Licenses, and may require the applicant to furnish additional information and data for this purpose. In considering applications, the City Council may seek advice from other City officials or bodies, from such other advisory bodies as it may establish or determine appropriate, or from the public, and may request the preparation of one or more reports to be submitted to the City Council, which may include recommendations with respect to such applications.
2. After considering such information as it determines to be appropriate, the City Council shall set one or more public hearings for consideration of the application(s), fixing and setting forth a day, hour and place certain when and where any Persons having any interest therein or objections thereto may file written comments and appear before the City Council and be heard, and providing notice of such public hearing(s) in accordance with applicable law.
3. The City Council may authorize negotiations between City officials and applicants on the terms of the proposed Franchise or Revocable License.
4. Upon completion of the steps deemed appropriate by the City Council, the City Council shall consider the application for a Franchise or Revocable License to provide Telecommunications Services in accordance with this chapter and applicable law, including 47 U.S.C. § 253, and shall grant the Franchise or Revocable License, provided that the applicant has agreed to the terms on which the Franchise or Revocable License is to be granted and meets the evaluation criteria set forth in Section 7-9-2(e) of this chapter. The City also reserves the right to waive any or all requirements when it determines that the best interests of the City may be served thereby or that such waiver is required by applicable law.
5. Upon completion of the steps deemed appropriate by the City Council, the City Council may grant the Revocable License to provide Private Telecommunications Services, and may specify the conditions under which the Revocable License is granted. Alternatively, the City may reject any and all applications for a Revocable License to provide Private Telecommunications Services. The City also reserves the right to waive any or all

**CITY OF WRENS
CODE OF ORDINANCES
TITLE 7
CHAPTER 9**

requirements when it determines that the best interests of the City may be served thereby.

g. Terms and Conditions of Franchise and Revocable License

The terms and conditions applicable to any Franchise or Revocable License granted pursuant to this chapter shall be set forth in the separate ordinance granting the Franchise or Revocable License or in a separate written agreement. Such separate ordinance or written agreement, among other things, may address the following subjects, to the extent not prohibited by law:

1. the term of the Franchise or Revocable License, provided, however, that the initial term of the Revocable License shall not exceed five years and shall not be renewed for terms exceeding five years;
2. the Franchise area under the Franchise, or the Streets that may be used pursuant to the Revocable License;
3. the compensation to be paid to the City, which may include the payment of fees or the provision of facilities or services, or both;
4. the circumstances upon which the Franchise or Revocable License may be terminated or cancelled;
5. the mechanisms, such as performance bonds, security funds or letters of credit, to be put in place to ensure the performance of the Grantee's obligations under the Franchise or Revocable License;
6. the City's right to inspect the facilities and records of the Grantee;
7. insurance and indemnification requirements applicable to the Grantee;
8. the obligation of the Grantee to maintain complete and accurate books of account and records, and the City's inspection rights with respect thereto;
9. provisions to ensure quality workmanship and construction methods;
10. provisions to ensure that the Grantee will comply with all applicable City, state and federal laws, regulations, rules and policies;
11. provisions to ensure adequate oversight of the Grantee by the City;
12. provisions to restrict the assignment or other transfer of the Franchise or Revocable License without the prior written consent of the City;
13. remedies available to the City to protect the City's interest in the event of the Grantee's failure to comply with terms and conditions of the Franchise or Revocable License;

**CITY OF WRENS
CODE OF ORDINANCES
TITLE 7
CHAPTER 9**

14. provisions to ensure that the Grantee will obtain all necessary licenses and permits from, and comply with, all laws, regulations, rules and policies of any governmental body having jurisdiction over the Grantee, including, but not limited to, the Federal Communications Commission;
15. provisions to ensure that the Grantee will protect the property of the City from damage or interruption of operations resulting from the construction, operation, maintenance, repair or removal of improvements related to the Franchise or Revocable License;
16. provisions designed to minimize the extent to which the public use of the Streets of the City are disrupted in connection with the construction of improvements relating to the Franchise or Revocable License; and
17. such other provisions as the City determines are necessary or appropriate, to the extent not prohibited by law.

h. Revocation of Revocable License

The Revocable License shall be revocable at any time by the City for cause or, if the Revocable License is for the provision of Private Telecommunications Services, for the City's convenience. The Revocable License, together with all Revocable Licenses granted to the applicant or Affiliated Persons, shall not authorize the occupation and use of more than five hundred (500) linear feet of specifically identified Streets, unless the use or occupation of the Streets does not involve the offering or provision of Telecommunications Services by the Grantee, any Affiliated Persons or any other Persons to or from any Person or location in the City.

Sec. 7-9-3 GENERAL PROVISIONS.

- a. If any section, subsection, sentence, clause, phrase or other portion of this chapter is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.
- b. Consistent with applicable law, the City Council shall have the right to delegate and redelegate, and to revoke any such delegation or redelegation, from time to time, any of its rights or obligations under this chapter to any body, organization or official. Any such delegation, redelegation or revocation, no matter how often made, shall not be deemed an amendment to this chapter or to require the consent of any applicant for a Franchise or Revocable License or Grantee. The City Council may also establish and appoint one or more advisory boards, with such duration and such number of members as the City Council shall determine, to advise it on such matters which are the subject of this chapter.
- c. This chapter shall not be retroactively applied to franchises for the operation of Telecommunications Systems or to provide Telecommunications Services

**CITY OF WRENS
CODE OF ORDINANCES
TITLE 7
CHAPTER 9**

existing on the effective date of this chapter, but shall apply to any renewal or extension of such franchises.