

**GENERAL ORDINANCE CREATING A NEW  
CHAPTER 58, OF THE REVISED GENERAL  
ORDINANCES OF THE CITY OF SYRACUSE, AS  
AMENDED, TO CREATE A  
TELECOMMUNICATIONS FRANCHISING AND  
LICENSING PROCEDURE FOR THE CITY OF  
SYRACUSE**

BE IT ORDAINED, that the Revised General Ordinances of the City of Syracuse, as amended, are hereby further amended to add a new Chapter 58 that shall create a Telecommunications Franchising and Licensing Ordinance; and

BE IT FURTHER ORDAINED, that Chapter 58 of the Revised General Ordinances of the City of Syracuse, as amended, shall read as follows:

**Chapter 58. TELECOMMUNICATIONS FRANCHISING AND LICENSING**

**Sec. 58-1. 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.

*Affiliated person* means each person who falls into one (1) or more of the following categories: (i) each person having, directly or indirectly, a controlling interest in the applicant; (ii) each person in which the applicant has, directly or indirectly, a controlling interest; (iii) each officer, director, joint venturer or joint venture partner, of the applicant; and (iv) 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.

*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, and the Telecommunications Act of 1996 and as may be further amended from time to time (the "Cable Act"). In the event that "cable services" is no longer defined in the Cable Act or the definition of 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.

*City* means the City of Syracuse, New York.

*Common Council* means the Common Council of the City and its designee or any successor thereto.

*Control* or *controlling interest* means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the applicant or the equipment 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 ten (10) percent 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 (1) person or group of persons.

*Equipment* means the poles, wires, electrical conductors, conduits, subways, manholes, fixtures, appliances and appurtenances that are used to provide telecommunications services.

*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.

*May* is permissive.

*Mayor* means the mayor of the City or his/her designee.

*Ordinance* means this chapter and all modifications and amendments thereto.

*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 or the City school district of the City of Syracuse.

*Revocable license* means an initial authorization or renewal thereof, issued by the City in accordance with the provisions of this chapter, which authorizes the limited occupation and use of specifically identified streets, provided that a revocable license shall be issued only in the limited circumstances set forth in section 58 2(b) and (g) of this chapter.

*Shall* is mandatory, not merely directive.

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

*Telecommunications* means all transmissions, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received.

*Telecommunications provider* means any person who:

- (1) Owns, constructs, operates or maintains equipment in the streets or on poles within the City right of way used to provide telecommunications services regardless of whether such telecommunications services originate or terminate in the City; or

- (2) Provides telecommunications services that originate or terminate in the City by means of: (i) specifically identifiable equipment in the streets, which equipment is owned by such person or made available to such person under a lease or any other arrangement for a period longer than one hundred twenty (120) days; or (ii) equipment in the streets if the use of such equipment is continuing and substantial, and the City has determined that it is necessary and appropriate to impose the requirements of this chapter in order to preserve the application of this chapter on a competitively neutral and nondiscriminatory basis consistent with applicable law.

*Telecommunications services* means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, or the electronic transmission of data services from one entity to another regardless of the facilities used. The term "telecommunications services" shall not include cable services.

*Telecommunications system* means the plant, equipment, real property (including interests in real property), tangible and intangible personal property, buildings, offices, furniture, customer lists, cable, wires, optical fibers, amplifier, antenna, and all other electronic devices, poles, equipment and facilities used to provide telecommunications services.

**Sec. 58-2. Granting authority.**

- (a) No person shall use or occupy the streets as a telecommunications provider, or construct, operate or maintain equipment in the streets, including on poles, used to provide telecommunications, without a franchise or revocable license granted by the City. A franchise or revocable license granted in accordance with the provisions of this chapter shall not be construed to grant any rights or authorization to provide cable services in the City, and any person seeking to provide cable services in the City shall first obtain a separate franchise in accordance with applicable law.
- (b) Any person seeking to use the streets to construct, operate or maintain equipment to provide telecommunications 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 in the City, shall first obtain a revocable license in accordance with the provisions of this chapter.
- (c) The Common Council may grant one (1) or more franchises and revocable licenses in accordance with this chapter, provided that the Common Council, subject to the approval of the Mayor, reserves the right to modify any provision of this chapter by amendment hereof.
- (d) The grant of any franchise or revocable license shall be made by adoption of a separate ordinance by the Common Council and shall be on such terms and conditions as shall be specified in said separate ordinance and/or a franchise or license agreement between the City and the franchisee or licensee.
- (e) Any franchise or revocable license granted shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises, revocable licenses or other authorizations for use of the streets by any means, as the City deems appropriate.
- (f) A franchise may be granted for all or any defined portion of the City.

(g) A revocable license is intended to be a limited grant of authority to use and occupy specifically identified streets to provide telecommunications services and shall be granted only if:

- (1) The use or occupation of such streets or poles in the streets, together with all revocable licenses previously granted to such person and affiliated persons, shall not exceed two thousand five hundred (2,500) linear feet, provided, however that the City can make an exception when it is in the public interest to do so; or
- (2) The use or occupation of such streets or poles in the streets does not involve the offering or provision of telecommunications services to any person within the City.

In the event an application for a revocable license would cause a telecommunications provider to exceed or fail to comply with the limits specified in subsection (1) or (2) above, then such telecommunications provider 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.

**Sec. 58-3. Compliance with rules; permits required.**

- (a) Subject to the provisions of this chapter, the City may adopt rules, policies and requirements to carry out the purposes and provisions of this chapter. Each applicant, franchisee and licensee shall comply with such rules, policies and requirements.
- (b) No person shall construct or install any equipment in the streets used to provide telecommunications services without first obtaining such permits or other authorizations as may be required by the City. No permits or other authorizations for such construction or installation shall be issued prior to the granting of a franchise or a revocable license pursuant to this chapter or such other authorization as may be required by applicable law.

**Sec. 58-4. Submission of application.**

- (a) Applications for franchises and revocable licenses shall be submitted to the City Engineer.
- (b) An application shall contain the following information with respect to the proposed franchise or revocable license and such other information with respect to the proposed franchise or revocable license as the City may deem necessary or appropriate, consistent with applicable law:
  - (1) The name, address and telephone number of the applicant and the person the City may contact concerning the application;
  - (2) A description of the telecommunications services proposed to be provided, including, without limitation, a description of facilities and equipment;
  - (3) A description of the proposed franchise area or in the case of a revocable license, the specifically identified streets and/or portions thereof proposed to be used;
  - (4) A proposed construction schedule and sequence;
  - (5) A map showing the proposed location of the applicant's telecommunications system;

- (6) Proposed financing plans for the construction and operation of the telecommunications system by which the proposed telecommunications services would be provided;
- (7) A description of the legal, financial, technical and other appropriate qualifications of the applicant to hold the franchise or revocable license;
- (8) Ownership of the applicant and identification of all affiliated persons.
- (9) A copy of any agreement with a private utility whose poles they intend to use.

**Sec. 58-5      Application and Right of Way Fees**

- (a) In order to ensure that the limited private use of the public right of way authorized herein does not become an additional cost to the City's General Fund, it is hereby determined by the Common Council that the following fees shall be charged to applicants and permit holders seeking to use the public right of way pursuant to this Local Law.
- (b) Small Cell Permit Application Fee: shall be \$500.00 (non-refundable) due to the City Permit Desk upon submittal of a completed application for review.
- (c) Annual Small Cell Permit Fee: (right of way occupancy)
  - (1) For placement on Existing Private Utility Poles- \$1000.00 per year
  - (2) For placement on Existing City Utility Poles-\$1,500.00 per year
  - (3) For placement of new poles in the right of way \$2000.00 per year
  - (4) Fee start date: The annual fee set forth above in Sec. 58-5 (c) shall be payable if a small cell permit application is approved between the months of January through September. The first permit fee shall be payable at the time of installation and the annual permit fee shall be payable on or before January 2 thereafter. If the application is approved in the last quarter of the year (October through December) the fee shall be payable on or before January 2 of the following year and each year thereafter. Failure to pay the annual permit fee shall result in the imposition of a 5% penalty fee, additional collection fees if necessary, and suspension or revocation of the permit.
- (d) Conduit Fees and Fines:

Private Utility owner shall pay an annual fee of One Dollar Forty Two Cents (\$1.42 this is the 2016/17 price which shall be adjusted annually every August 1 by any increases in the United States Consumer Price Index (US CPI) as published by the Bureau of Labor Statistics or its successor on or before July 31 of each year) per linear foot per 4" conduit for its Facilities placed underground in the City's Public Right-of-Way (If a different size conduit is installed, then the appropriate price shall be interpolated base on the annual price of the 4" conduit). The per linear foot per conduit charge shall be calculated based on the as built record drawings submitted to the City Engineer, to the City as adjusted

annually by any increases in the United States Consumer Price Index (US CPI) as published by the Bureau of Labor Statistics or its successor, to the City on or before July 31 of each year that this permission is in force. If payment is not received within 30 days of the date of the invoice, the Owner will be subject to a 5% penalty fee, additional collection fees if necessary and suspension or revocation of permission to have facilities in the City right of way.

**Sec. 58-6      City requirements as to aesthetics and neighborhood impact mitigation**

- (a) In order to preserve the character and integrity of City neighborhoods and business districts the Common Council finds the following requirements are essential for public safety, health and welfare:
- (1) Up to three (3) small cells will be allowed per utility pole if technically feasible and if in the determination of the Commissioner of DPW there are no safety or aesthetic concerns. Cells must be designed and placed in an aesthetically pleasing manner.
  - (2) No small cell placement shall be allowed on special street lighting (ornamental) poles as determined by the Commissioner of DPW.
  - (3) In no event shall a new pole exceed fifty (50) feet or a shorter pole may be required to be of a smaller height if the initial proposal is deemed out of character with the neighborhood as determined by the Commissioner of DPW.
  - (4) Applicants for a franchise or a revocable license will be required to allow other telecommunication providers to share their poles when technically feasible, in return for a reasonable fee, in order to mitigate the impact of new pole construction upon City neighborhoods. The Commissioner of Public Works shall have final authority over any disputes among telecommunication providers regarding pole use issues.

**Sec. 58-7.      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.

**Sec. 58-8.      Negotiation of agreement.**

- (a) If an application is complete and otherwise complies with applicable law, ordinances, resolutions, rules, regulations and other directives of the City, including the provisions of this chapter, the City shall enter into negotiations with the applicant to determine whether such applicant and the City are able to reach agreement on the terms of the proposed franchise or revocable license in accordance with sections 58-11 and 58-12 of this chapter. The City may reject any application which is incomplete or otherwise

fails to comply with applicable law, ordinances, resolutions, rules, regulations and other directives of the City and any federal, state or local authority having jurisdiction.

- (b) All final agreements shall be for an initial Term of five (5) years subject to additional five year (5) renewals subject to the approval of the Mayor and Common Council. All Agreements shall contain terms and conditions that reflect the requirements of this Local Law.

**Sec. 58-9. Factors for review of application.**

- (a) In making any determination hereunder as to any application for a franchise or revocable license, the Common Council may consider such factors as it deems appropriate and in the public interest, provided such factors are consistent with applicable law, including without limitation:
  - (1) The adequacy of the proposed compensation to be paid to the City, including the value of any facilities and telecommunications services offered by the applicant to the City;
  - (2) The legal, financial, technical and other appropriate qualifications of the applicant;
  - (3) The ability of the applicant to maintain the property of the City in good condition throughout the term of the franchise or the revocable license;
  - (4) Any services or uses of the streets that may be precluded by the grant of the franchise or revocable license; and the adverse impact of the proposed franchise or revocable license on the efficient use of the streets or utilities at present and in the future;
  - (5) The willingness and ability of the applicant to meet construction and physical requirements and to abide by all lawful conditions, limitations, requirements and policies with respect to the franchise or the revocable license;
  - (6) The adequacy of the terms and conditions of the proposed franchise or revocable license agreement to protect the public interest, consistent with applicable law; and
  - (7) Any other public interest factors or considerations that the City has a lawful right to consider and that are deemed pertinent by the City for safeguarding the interests of the City and the public.
- (b) Consistent with applicable law, the City may develop and implement policies and requirements to ensure that the streets have sufficient capacity reasonably to accommodate existing and future uses in a rational and efficient manner. In evaluating an applicant for a franchise or revocable license, the City may consider an applicant's proposals for addressing capacity needs and compliance with City policies and requirements.

**Sec. 58-10. Procedure for consideration of and action on applications.**

- (a) The Common Council may make such investigations and take or authorize the taking of such other steps as the Common Council deems necessary or appropriate to consider and act on applications for franchises and revocable licenses and to determine whether a franchise or revocable license should be granted to an applicant, and may require the applicant to furnish additional information and data for this purpose. In considering applications, the Common Council may seek advice from City officials, departments, agencies, boards, commissions or boards, from such other advisory bodies as it may establish or determine appropriate, or

from the public, and may request the preparation of one (1) or more reports to be submitted to the Common Council, which may include recommendations with respect to such applications.

- (b) Consist with applicable law, upon completion of the steps deemed appropriate by the Common Council, the Common Council may grant or deny the franchise or revocable license, and may specify the conditions under which the franchise or revocable license is granted.

**Sec. 58-11. Terms and conditions of franchise.**

- (a) The terms and conditions applicable to any franchise granted pursuant to this chapter shall be set forth in the separate ordinance granting the franchise and/or in a separate written agreement. A franchise granted pursuant to this chapter shall not become effective until said separate ordinance becomes effective and any separate agreement is executed by both parties. Such separate ordinance or written agreement, among other things, shall address the following subjects:
  - (1) The term of the franchise which will be five (5) years plus the City's option to renew for an additional five (5) years;
  - (2) The franchise area and the telecommunications services to be offered;
  - (3) The compensation to be paid to the City, which shall include the payment of fees and/or the provision of facilities or services;
  - (4) The circumstances upon which the franchise 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 franchisee's obligations under the franchise;
  - (6) The City's right to inspect the facilities and records of the franchisee;
  - (7) Insurance and indemnification requirements applicable to the franchisee;
  - (8) The obligation of the franchisee 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 franchisee will comply with all applicable City, state and federal laws, regulations, rules and policies;
  - (11) The obligation of the franchisee to supply an engineering site plan showing the proposed location of the applicant's telecommunications system, including any manholes or overhead poles, the size, type and proposed depth of any conduit or other enclosure, and the relationship of the system to all existing poles, utilities, sidewalks, pavement, telecommunications systems, and other improvements in the streets, all of which shall be subject to approval by the appropriate City departments;
  - (12) Provisions to restrict the assignment or other transfer of the franchise 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 franchisee's failure to comply with terms and conditions of the franchise;
- (14) Provisions to ensure that the franchise 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 franchisee, including the Federal Communications Commission;
- (15) Provisions to ensure that the franchisee will protect the property of the City and the delivery of public services from damage or interruption of operations resulting from the construction, operation, maintenance, repair or removal of improvements related to the franchise;
- (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; and
- (17) The plans and specifications required to construct all facilities subject to this ordinance shall be prepared by a Professional Engineer registered by the State of New York. The plans for the work shall be approved by the City Engineer, and record drawings, including AutoCad and GIS formats on magnetic media referenced to New York State plane coordinate, Central Zone shall be provided to the City Engineer subsequent to the completion of the work. The private utility owner shall endeavor to provide a certification by a Professional Engineer as to the accuracy of the as-built drawings and attest to the fact that the improvements were constructed in conformity with the plans and specifications approved by the City. As-built drawings and a certification of completion shall be submitted within 30 days after the Department of Public Works has determined that the project is complete. If this information is not received, a \$500.00 penalty fee and additional collection fees will be billed if necessary.
- (18) That the private utility owner their successors, assigns, and agents shall at all times defend and indemnify and save harmless the City of Syracuse, its officers and servants from any and all liability and from any and all claims, damages, costs and expenses of every name and nature to person or property which may accrue or grow out of the installation, operation, and maintenance of such utility lines in said streets or arising in any way out of the operations for this consent, and shall defend and indemnify and save harmless said City from all costs, damages and expenses by reason of any damages or injuries to any gas pipe, water pipe, sewers, other utilities, pipes or construction work now located in, under and along the surface of said street at the point and place or places where said work is to be performed and maintained, including damages incurred as a result of damage to the Facilities caused by the City.
- (19) The City reserves the right to place City Equipment on the applicant's poles for public purposes to the extent technically feasible.

- (20) The applicant shall be required to provide the City with at least ninety (90) days' notice if they intend to abandon a Facility, including poles and conduits, and shall remove such Facilities at their expense from the right of way.
- (21) The applicant shall be required to evaluate (at their expense) the feasibility and safety of plans to attach to any City or private utility owned property (including poles) and providing written certification to the City Engineer that such property or pole is structurally capable of supporting the proposed equipment to be installed thereon.
- (22) Such other provisions as the City determines are necessary or appropriate in furtherance of the public interest, consistent with applicable law.

**Sec. 58-12. Terms and conditions of revocable license.**

The terms and conditions applicable to any revocable license granted pursuant to this chapter shall be set forth in the separate ordinance granting the revocable license and/or in a separate written agreement. A revocable license granted pursuant to this chapter shall not become effective until the separate ordinance granting the license becomes effective and any separate written agreement is executed by both parties. Such separate ordinance and/or written agreement shall address the same subjects listed in section 4-23-10 of this chapter subject to the following limitations:

- (1) The revocable license shall be for a term not to exceed ten (10) years from the date that the ordinance granting the revocable license becomes effective;
- (2) The revocable license shall be revocable at any time by the City for cause or for the City's purposes; and
- (3) The revocable license, together with all revocable licenses previously granted to the applicant or affiliated persons, shall not authorize the occupation and use of more than two thousand five hundred (2,500) linear feet of specifically identified streets, unless the use or occupation of the streets does not involve the offering or provision of telecommunications services to any person in the City.
- (4) The plans and specifications required to construct all facilities subject to this ordinance shall be prepared by a Professional Engineer registered by the State of New York. The plans for the work shall be approved by the City Engineer, and record drawings, including AutoCAD and GIS formats on magnetic media referenced to New York State plane coordinate, Central Zone shall be provided to the City Engineer subsequent to the completion of the work. The private utility owner shall endeavor to provide a certification by a Professional Engineer as to the accuracy of the as-built drawings and attest to the fact that the improvements were constructed in conformity with the plans and specifications approved by the City. As-built drawings and a certification of completion shall be submitted within 30 days after the Department of Public Works has determined that the project is complete. If this information is not received, a \$500.00 penalty fee and additional collection fees will be billed if necessary.

- (5) The revocable license shall contain any of the terms set forth in Section 58-11 that the City deems appropriate and such other provisions as the City determines are necessary or appropriate in furtherance of the public interest, consistent with applicable law.
- (6) The applicant shall be required to provide the City with at least ninety (90) days' notice if they intend to abandon a Facility, including poles and conduits, and shall remove such Facilities at their expense from the right of way.
- (7) The applicant shall be required to evaluate (at their expense) the feasibility and safety of plans to attach to any City or private utility owned property (including poles) and providing written certification to the City Engineer that such property or pole is structurally capable of supporting the proposed equipment to be installed thereon.
- (8) The City reserves the right to place City Equipment on the applicant's poles for public purposes to the extent technically feasible.

In the event an application for a revocable license would cause a telecommunications provider to exceed or fail to comply with the limits specified in section 58-2 (g) (1) (3) of this chapter, then such telecommunications provider 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.

**Sec. 58-13. Effective Date**

The provisions of this Chapter shall be effective immediately.

; and

BE IT FURTHER ORDAINED, that all Chapters of the Revised General Ordinances of the City of Syracuse, as amended, not amended by this Ordinance shall remain in full force and effect as previously adopted.