

signed and sealed copy of this ordinance within 10 days of its final passage. The Company shall, within thirty (30) days after the City Council approval of this ordinance, file in the office of the clerk of the City, its acceptance in writing of all the terms and provisions of this ordinance. Following City Council approval, this ordinance shall be published in accordance with the *Code of Iowa*. The effective date of this ordinance shall be the date of publication. In the event Company does not file its written acceptance of this ordinance within 30 days after its approval by the City Council this ordinance shall be void and of no effect.

**111.20 ENTIRE AGREEMENT.** This ordinance sets forth and constitutes the entire agreement between the Company and the City with respect to the rights contained herein, and may not be supplemented, superseded, modified or otherwise amended without the written approval and acceptance of the Company. Notwithstanding the foregoing, in no event shall the City enact or maintain any Ordinance or place any limitations, either operationally or through the assessment of fees other than those approved and accepted by the Company within this Ordinance, that create additional burdens upon the Company, or which delay utility operations.

*(Ch. 111 – Ord. 17-01 – Apr. 17 Supp.)*

## CHAPTER 112

# CABLE TELEVISION FRANCHISE AND REGULATIONS

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**112.01 DEFINITIONS.** For the purpose of this chapter the following terms and their derivations shall have the meanings given herein.

1. “Company” or “Grantee” means E. M. Parsen or Parsen Electric Co., the receiver of rights granted by this chapter.
2. “System” or “plant” means the entire complex of wires, cables and associated equipment making up the cable television system.

**112.02 GRANT OF AUTHORITY.** The Mayor and Council, after due consideration in public hearing, in which interested persons were offered opportunity to participate, being satisfied as to the Company’s legal, technical, character, financial and other qualifications and adequacy of the Company’s construction program, do hereby grant to the Company, its successors and assigns, a nonexclusive franchise, right and privilege, for rights-of-way and use of space over and/or under roads, streets, bridges, avenues, parks, drives and driveways, walks and parking lots, all manner of easements and other public areas of the City now existing or as may hereafter be revised or extended, for construction, operation and maintenance of a community antenna television system, consisting of antennas, wires, cables and associated electric/electronic equipment and other necessary supplies and furnishings for the collection and distribution of electronic impulses and energy and for other legal purposes within the capability of the system, with the period of the franchise to be for a term of fifteen (15) years<sup>†</sup> from the date cable television service is offered to subscribers to the Company’s service in the City, with renewal for successive

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<sup>†</sup> **EDITOR’S NOTE:** Ordinance No. 557, adopting a cable television franchise for the City, was passed and adopted on March 13, 1979. Pursuant to Resolution No. 13-00, adopted May 10, 2000, the Cable TV Franchise and system were transferred to Mediacom Communications Corporation. The franchise is currently in full force and effect and will expire on June 30, 2010.

15-year periods consistent with rules of the Federal Communications Commission.

**112.03 LIABILITY AND INDEMNIFICATION.** From start of construction, the Grantee shall maintain Worker's Compensation, public liability and property damage insurance with a company approved by the Commissioner of Insurance of the State of Iowa. Limits of liability shall not be less than the following:

1. \$100,000.00 property damage to one person with total of \$200,000.00 any one accident.
2. \$250,000.00 personal injury to one person with total of \$500,000.00 any one accident.

Public liability and property damage insurance shall cover the Grantee, in consideration or defense of claims or suits for alleged injuries or damages due to construction, operation or maintenance of the system. A certificate of insurance shall be filed with the City Administrator.

**112.04 OPERATION AND MAINTENANCE.** The City hereby authorizes the Company to enter into a long-term contract with Spirit Lake Cable TV, Inc., Spirit Lake, Iowa, for administration, maintenance and electronic/electric signal service from the Spirit Lake, Iowa, cable television system. Said contract will include a provision that cable television service to the Arnolds Park system will compare in quality to the service delivered by the Spirit Lake cable television system to its subscribers and that, should the Spirit Lake cable television system be transferred to new owners or operators, the successors to Spirit Lake Cable TV, Inc. will honor the contract and continue to provide service to the Arnolds Park cable system per the terms of the contract.

**112.05 CONDITIONS OF OCCUPANCY.** The Company may contract with other franchise holders for use of poles and other facilities and equipment to whatever extent such agreements may be of advantage to the Company in providing services offered under this franchise to its subscribers. Should such poles and equipment or contracts not be available or of advantage to the Company, then the Company may own and maintain its own poles and equipment at locations approved by the City's engineer or other designated official except in locations where both telephone and power lines are underground, the Company may be required to place its lines underground. Company system, cables, wires and equipment shall be of latest design, incorporating latest engineering techniques and technology available when installed. System shall not be located as to offer an inconvenience to the public or limit free use of streets, alleys and public areas or limit free access to private property. During construction or system modifications or maintenance, surface

disturbance of streets or public ways shall be restored to a condition comparable with that existing before such disturbance. Trees and tree branches overhanging or lying on Company lines and cables may be trimmed in a workman-like manner to forestall service interruptions to subscribers. Grantee, on request of any person holding a valid building moving permit issued by the City, shall temporarily raise or lower its lines to allow such moving. The expense of such modifications to Company lines and cables shall be paid in advance by the holder of the permit. Not less than five (5) days' advance notice may be required by the Company for such temporary modifications and restoration.

**112.06 ASSIGNMENT AND/OR TRANSFER.** Rights granted under this chapter may be freely assigned with approval of the City. The City shall not arbitrarily withhold approval of transfer except it may require the proposed assignee to show financial and technical responsibility and file an instrument of acceptance of the terms and conditions of this chapter with the City Administrator.

**112.07 FEES.** Within sixty (60) days after the close of the Grantee's first year of operation or close of its fiscal year, the Grantee agrees to pay to the City, in lieu of an annual fee or other charge including pole rent, an annual stipend not to exceed three percent (3%) of the gross receipts for the first year or fraction thereof and three percent (3%) of the gross receipts for each year of operation thereafter. "Gross receipts," as defined for the purpose of this payment, are limited to monthly or annual charges collected for service rendered within the City, and do not include sales taxes or other direct taxes or income from connections, reconnections, or other sources including but not limited to rents, advertising and special services such as special programming or movie channels. The Grantee shall keep records of gross receipts available on request for a period of one year after close of each Company fiscal year, for inspection or audit by a duly authorized agent of the City during reasonable business hours. The Company is not required to extend service to isolated structures, building or new construction unless said structures are as a group of four (4) or more within one thousand (1000) feet of trunk or feeder lines, and a majority of the occupants agree to accept the service when available.

**112.08 PUBLIC ACCESS.** The Company agrees that in contracting with Spirit Lake Cable TV, Inc., as provided under Section 112.04 of this chapter, that the public access channel of the Spirit Lake cable television system will be the public access channel provided the Arnolds Park system under the same terms and conditions. Conditions are as follows: The channel may be used by the City, school or other public bodies as a public service, educational or informational channel on a first come, first serve basis. The City, school or

other public bodies shall furnish any special equipment and personnel necessary to feed public service, informational or educational programs into the Company's system. The Company shall not be responsible for the content of said public service, informational or educational programs and reserves the right to use this channel at any time or during any period for which no program or use of such channel is scheduled by the City, school or other public bodies.

**112.09 PERMITS.** Grantee shall, on passage of this chapter, pursue with diligence any permits to construct and operate the system as may be required by the Federal Communications Commission or other regulatory agencies. Grantee shall keep licenses and permits current and operate the system in accordance with rules and regulations in said agencies and applicable City ordinances.

**112.10 SERVICE EXTENSIONS.** The Grantee may locate a portion of the system or extend service outside the corporate limits of the City without conflict or restriction by any part of this chapter.

**112.11 CONSTRUCTION AND DEVELOPMENT.** Upon approval and certification by the Federal Communications Commission and other agencies having regulatory authority, the Company shall proceed with engineering and construction of the system.

**112.12 MODIFICATIONS OF REGULATIONS.** Any modifications of requirements of the Federal Communications Commission or other regulatory agencies having jurisdiction shall be incorporated into this chapter within one (1) year of adoption of modifications or at the time of franchise renewal, whichever comes first.

**112.13 ANTI-DISCRIMINATION.** Grantee shall not make or grant special privileges or discriminate against any person, subscriber or legal entity or subject anyone to a prejudice or disadvantage.

**112.14 INDIVIDUAL ANTENNAS.** Nothing in this chapter shall limit or deny service as presently provided by direct reception or limit the right of individuals to erect and maintain their own antennas.

**112.15 UNAUTHORIZED CONNECTIONS.** It is unlawful for any person to secure cable services from Company lines or facilities, or any user or lessee of Company lines and/or facilities, by tapping, rearranging, reinstalling, tampering with or readjusting any of said lines and/or facilities or in any other manner unless the same is done with the prior knowledge and consent of the Company, user or lessee of said lines and facilities. Any persons securing said service as outlined above or tampering with said lines and equipment in any

manner shall be deemed guilty of a misdemeanor and shall be subject to penalties as provided by law. Should any person secure service from said lines illegally or connect equipment illegally thereto, the Company or its users or lessees shall not be liable for alleged damages, interference with or operation of any equipment or facilities so illegally connected.

**112.16 LIMITATION OF ACTIVITIES.** The Company shall not engage in the sale or servicing of residential television receivers or parts and supplies or recommend any manufacturer or service personnel over any other.

**112.17 CORRIDOR.** The Grantee, without restriction, taxation, fee or license may use the rights-of-way as outlined in this chapter as a corridor to place one or more cables through the City to communities outside the corporate limits of the City.

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