

COMPARED VERSION
NEW ORDINANCE TO CODE BOOKS

ORDINANCE NO. 230548

Amending Chapter 19, Code of Ordinances entitled “Franchise Fee” by repealing Section 19-82 entitled “Franchise fee” and enacting in lieu thereof a new section of like number and subject matter; and amending Earnings and Profits Tax Regulations by repealing Section 1.387(d)(1)(B) and enacting in lieu thereof a new section of like number and subject matter.

WHEREAS, by Ordinance Nos. 930358 and 220523, the Council of Kansas City established and amended a franchise fee, an annual fee paid by cable and video service operators to the City for the operator’s use of the streets and other right of way; and

WHEREAS, the Finance Department previously enacted department policy which instructs taxpayers of the franchise fee to file returns electronically; and

WHEREAS, the City desires to enforce departmental electronic filing requirements to improve tax administration and efficiency, and to create uniformity with other tax penalty codes; and

WHEREAS, by Ordinance No. 230158, the City amended the earnings tax refund policy to allow for refunds upon submission of a proper claim in a manner prescribed by the commissioner of revenue; and

WHEREAS, the City desires to amend its Earnings and Profits Tax Regulations to further clarify that refund claims submitted via an amended return shall be accepted as timely if the original return was timely filed; NOW THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 19, Code of Ordinances, is hereby amended by repealing Section 19-82(j) and enacting a new section of like number and subject matter, and adding a new Section 19-82(m) to read as follows:

Sec. 19-82. Franchise fee.

(a) Use of streets/cost of regulation. In consideration of the rights, powers, privileges, permission and authority granted to an operator for use of the city's streets and other public property, an operator shall pay to the city an amount equal to five percent of its gross revenues received from the operation of the system in the city. This amount represents compensation for that cost of reasonable regulation permitted or mandated by federal law, and for the use of the streets and other public property by an operator:

- (1) Beginning August 28, 2023, an operator shall pay to the city an amount equal to four and one-half percent of its gross revenues received from the operation of the system in the city.
- (2) Beginning August 28, 2024, an operator shall pay to the city an amount equal to four percent of its gross revenues received from the operation of the system in the city.
- (3) Beginning August 28, 2025, an operator shall pay to the city an amount equal to three and one-half percent of its gross revenues received from the operation of the system in the city.
- (4) Beginning August 28, 2026, an operator shall pay to the city an amount equal to three percent of its gross revenues received from the operation of the system in the city.
- (5) Beginning August 28, 2027, and continuing thereafter, an operator shall pay to the city an amount equal to two and one-half percent of its gross revenues received from the operation of the system in the city.

(b) *Payment of fee.* Payment of annual franchise fees shall be in lieu of all subsequent occupational, pole attachment or other license fees or charges imposed by the city, insofar as this chapter does not require additional payment.

(c) *Revenue not from operation of system.* This franchise does not excuse the payment of any occupational license fee, charge or tax relating to any business endeavor for which an operator is not obligated to pay a franchise fee.

(d) *Taxes of general applicability.* Imposition of a franchise fee does not prohibit the city from imposing on operators, as part of a group of businesses or activities, any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against cable operators or subscribers).

(e) *Payment time and method.* Franchise fee payments shall be made quarterly as follows: for the quarter ending December 31, the payment shall be made by the following January 31; for the quarter ending March 31, the payment shall be made by the following April 30; for the quarter ending June 30, the payment shall be made by the following July 31; and for the quarter ending September 30, the payment shall be made by the following October 31. Each payment shall be accompanied by a statement of gross revenues received for the quarter in connection with the operation of the system in the city, and a report showing the computation of the fees in a form prescribed by the commissioner of revenue. For operators providing cable service in the city on the date this chapter becomes effective, the report for the quarter in which this chapter becomes effective shall be in two parts. The first part shall set forth the gross revenues for the period of the quarter for which any lower franchise fee is assessed, and the

second part shall set forth the gross revenues for the period of the quarter for which a five percent franchise fee is assessed.

(f) *Acceptance of payment not accord or release.* No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the city may have for further or additional sums payable under the provisions of this chapter or a separate franchise agreement. All amounts paid by an operator shall be subject to audit by the city.

(g) *Late payment.* In the event that any payment is not made on or before the applicable date fixed in this section, an operator shall pay, as additional compensation, an interest charge, computed from such date, at the annual rate equal to the commercial prime interest rate in effect upon the due date plus two percentage points. The prime rate will be determined by the Bank of New York, or its successor, on the effective date on which interest becomes due.

(h) *Early termination of franchise.* In the event a franchise is terminated for any reason before its normal termination date, an operator shall immediately submit to the city a financial statement prepared within the terms of this section showing the operator's gross revenues for the time elapsed since the last period for which the operator has paid to the city the required percentage of gross revenues. An operator shall pay to the city not later than 30 days following termination of a franchise the required percentage of gross revenues.

(i) *Amendment of the Act.*

(1) *Specific federal limit.* Should the Act be amended by changing the authorized maximum amount for a franchise fee which may be imposed by the city to a different specific percentage or amount, the city may, by ordinance, modify this section to reflect the amendment of the Act.

(2) *Removal of federal limit.* Should the Act be amended by removing any cap on the authorized maximum amount for a franchise fee which may be imposed by the city, the city may increase the franchise fee to that amount assessed against a telephone company. However, should the amount assessed against a telephone company be less than the amount assessed against an operator at the time the cap is removed, the amount assessed against an operator shall not fall below that amount assessed at the time the cap is removed.

(j) *Penalty.* In case of failure to file any return required under this chapter on or before the date as prescribed in paragraph (e), and in case of failure to file any return in a form and manner prescribed by the commissioner, a penalty shall be added to the amount required to be shown as tax on the return in the amount of five percent (5%) of the amount of such tax if the failure is not for more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent (25%) in the aggregate.

(k) *Approval of franchise fee pass-through.* If the city's approval is required under applicable law for an operator to pass through any portion of a franchise fee to its subscribers in the city, an operator shall not be required to pay that portion of any franchise fee to the city until such approval has been granted and has become effective.

(l) *Support of a government channel.* Should the city provide a government channel to subscribers, no less than ten percent of the annual franchise fee shall be devoted to funding operation of the channel.

(m) *Waiver of penalties.* The commissioner has authority to waive a penalty assessed under this section where the taxpayer shows the failure was due to reasonable cause. The commissioner may also waive penalties that would otherwise be assessable under this section by entering into voluntary disclosure agreements with taxpayers under criteria established by the commissioner.

Section 2. That Earnings and Profits Tax Regulations are hereby amended by repealing Section 1.387(d)(1)(B), and adopting and approving new Earnings and Profits Tax Regulations Section 1.387(d)(1)(B) with such regulations to read as set forth in Exhibit A, which is attached hereto and incorporated herein.

Approved as to form:

Samuel E. Miller
Assistant City Attorney