

COMPARED VERSION
NEW ORDINANCE TO CODE BOOKS

ORDINANCE NO. 220523

Amending Chapter 19, Code of Ordinances, entitled “Franchise Fee,” by repealing Section 19-82, Franchise fee, to change the rates on the gross revenues received from five percent down to two- and one-half percent over the course of five years by decreasing the rate by one half percent per year.

WHEREAS, by Ordinance No. 930358, the Council of Kansas City established 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, by Ordinance No. 930358, the Council of Kansas City set the franchise fee rate to five percent of an operator’s gross revenues received from operation of the system in the City; and

WHEREAS, the 101st General Assembly of Missouri passed Senate Bill Numbers 153 and 97, amending Section 67.2689 of the Revised Statutes of Missouri, and authorizing reduction of video franchise fees incrementally over the course of five years; and

WHEREAS, the City of Kansas City is expressly prohibited from charging a fee in excess of the state statutory limit; and

WHEREAS, the City must codify these changes for purposes of tax administration and to appropriately budget for revenues, NOW THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. Chapter 19, Article VII, Section 19-82, Code of Ordinances of the City of Kansas City, Missouri, entitled “Franchise Fees,” is hereby amended by repealing Section 19-82 and enacting a new section of like number and subject matter, 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.* Failure to submit the required documents to the commissioner of revenue by the dates stated in paragraph (e) will subject the operator to the penalties prescribed in section 1-17.

(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.

Approved as to form and legality:

Chivonne Scott
Assistant City Attorney