

ORDINANCE NO. 1202

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF WICKENBURG, ARIZONA, DECLARING THE DOCUMENT ENTITLED "TOWN OF WICKENBURG VIDEO SERVICES REGULATORY ORDINANCE DATED NOVEMBER 4, 2019" AS A PUBLIC RECORD; AMENDING THE CODE OF THE TOWN OF WICKENBURG, ARIZONA, CHAPTER 19 CABLE TELEVISION, BY AMENDING ARTICLE 19-1 APPLICABILITY; AND BY ADOPTING BY REFERENCE A NEW CHAPTER 19B VIDEO SERVICES RELATING TO THE REGULATION OF VIDEO SERVICE BY THE TOWN AND THE LICENSING OF VIDEO SERVICE PROVIDERS IN THE TOWN; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROVIDING FOR LICENSE REQUIREMENTS; IMPOSING FEES; SETTING FORTH VIOLATIONS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in 2018 the Arizona State Legislature adopted Chapter 331 and in 2019 the Arizona State Legislature adopted Chapters 76, 163 and 319 (collectively the "Act"), declaring that the regulation of video services and video service providers is a matter of state-wide concern and setting forth the powers of Arizona cities and towns with respect to the regulation of video services and video services providers; and

WHEREAS, the Act preempts the town with respect to the regulation of video services and video service providers, prescribes the process for issuing and renewing licenses for video services, and other regulation of video services and video service providers in the town; and

WHEREAS, the Federal Communications Commission adopted FCC 19-80 on August 1, 2019, which further preempts local jurisdictions in the regulation of video services and video service providers; and

WHEREAS, the town adopts this ordinance in order to comply with the requirements of the Act and federal law.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Wickenburg, Arizona, as follows:

Section I. In General

The Code of the Town of Wickenburg is hereby amended by amending Chapter 19 Cable Television is hereby amended by amending Article 19-1 Applicability to read as follows:

ARTICLE 19-1 PURPOSE AND APPLICABILITY

- A. The purpose of this Chapter is to regulate the operation of cable television systems operating within the Town to protect the public health, safety, general welfare, and to provide for the payment of fees and other valuable in-kind services to the Town for the privilege of using the public rights-of-way and other public places.
- B. THIS CHAPTER SHALL APPLY TO A CABLE TELEVISION LICENSE GRANTED ON OR BEFORE DECEMBER 31, 2019, UNLESS THE LICENSEE HAS ELECTED TO TERMINATE ITS LICENSE DURING THE PERIOD COMMENCING JANUARY 1, 2020 AND ENDING JUNE 30, 2020, PURSUANT TO ARIZONA REVISED STATUTES SECTION 9-1412.

Section II. In General.

A. That certain document entitled "Town of Wickenburg Video Services Regulatory Ordinance dated November 4, 2019," three paper copies or one paper copy and one electronic copy of which are on file in the office of the Town Clerk, is hereby declared to be a public record and said copies are hereby ordered to remain on file with the Town Clerk.

B. The Wickenburg Town Code is hereby amended by adding new Chapter 19B Video Services as set forth in that document entitled "Town of Wickenburg Video Services Regulatory Ordinance dated November 4, 2019", which document is hereby adopted and incorporated into this ordinance by reference.

Section III. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section IV. Providing for Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the Code adopted herein by reference is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section V. Enforcement

The requirements of this chapter shall be enforced through the procedures set forth in Arizona Revised Statutes Section 9-1451.

Section VI. Establishing an Effective Date.

This ordinance and all documents adopted by reference shall be effective from and after January 1, 2020.

PASSED AND ADOPTED by the Common Council of the Town of Wickenburg, Arizona, this 4th day of November, 2019, by the following vote:

AYES: 6
NAYES: 0
ABSENT: 1
EXCUSED: 0
ABSTAINED: 0

APPROVED this 4th day of November, 2019.



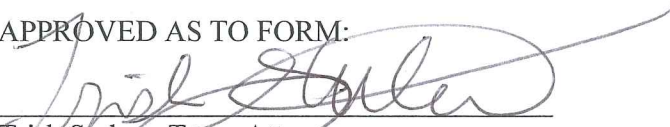
Rui Pereira, Mayor

ATTEST:



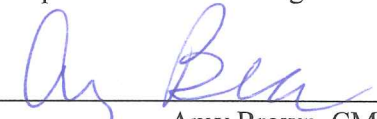
Amy Brown, Town Clerk

APPROVED AS TO FORM:



Trish Stuhan, Town Attorney
Gust Rosenfeld, P.L.C.

I, Amy Brown, Town Clerk, HEREBY CERTIFY that a true and correct copy of the Ordinance No. 1202 was duly passed and adopted by the Common Council of the Town of Wickenburg, Arizona, on the 4th day of November, 2019, and that a quorum was present at the meeting.



Amy Brown, CMC
Town Clerk

**TOWN OF WICKENBURG VIDEO SERVICES REGULATORY ORDINANCE DATED
NOVEMBER 4, 2019**

CHAPTER 19B VIDEO SERVICES

**Article 19B-1
General Provisions**

Section 19B-1-1 Purpose and Intent

The purposes of this chapter are to comply with the requirements of Arizona Revised Statutes Title 9, Chapter 13 and federal law and to set forth regulations for the application by video service providers for uniform video services licenses for the provision of video services and other authorized services in the town, to provide for issuance of uniform video services licenses in accordance with law, to provide for imposition of non-discriminatory license fees, and to otherwise carry out the mandates of Arizona Revised Statutes Title 9, Chapter 13 and federal law. It is the intent of this chapter that all rights and obligations set forth in Arizona Revised Statutes Title 9, Chapter 13 are preserved and shall apply, irrespective of whether specifically set forth in this chapter.

Section 19B-1-2 Definitions

The definitions set forth in A.R.S. Section 9-1401 shall apply to this chapter.

Section 19B-1-3 Unlawful Acts; Violation

- A. It is unlawful for a video service provider to establish, operate or to carry on the business of video service in the town without first having been issued and continuing to hold a local license issued pursuant to this chapter.
- B. It is unlawful for any video service provider to construct, operate or maintain a video service network within the boundaries of the town without first having been issued and continuing to hold a local license issued by the town pursuant to this chapter.
- C. It is unlawful for any person to make any unauthorized connections, whether physically, electrically, acoustically, inductively or otherwise, with any part of a licensed video service network within the town for the purpose of enabling himself or herself or others to receive any video service without the permission of the video service provider to whom a local license has been issued.
- D. It shall be unlawful for any person, without the consent of a licensee, to willfully tamper with, remove or injure any equipment associated with a video service network of a video service provider.

Article 19B-2
Uniform Video Service Licenses

Section 19B-2-1 Application and Issuance

A. This section shall not apply to incumbent cable operators who have elected to continue to operate within a service area as defined in its existing local license with the town. The requirements of this section shall apply to video services licenses granted on or after January 1, 2020.

B. Prior to the commencement of any construction or expansion of a video service network or the provision of any video service, a video service provider shall file with the town clerk an application and an affidavit in a form provided by the town clerk. The application shall be in the form of application approved by the council and shall include all information and not more than the information required by the application form and Arizona Revised Statutes Section 9-1414.

C. The application shall be accompanied by an affidavit in the form approved by the council signed by one of the principal executive officers or general partners of the applicant that the information set forth in the application are true and accurate.

D. The application and affidavit shall be submitted to the town clerk, who shall forward the application and affidavit to the town Community Development and Neighborhood Services Department for review.

E. If the Community Development and Neighborhood Services Department determines that the application and affidavit are incomplete or otherwise deficient under Arizona Revised Statute Section 9-1414, written notice shall be given to the applicant not later than fifteen days after the date of filing of the application and affidavit. The written notice shall:

1. Explain the incompleteness or deficiency in detail.
2. Specify the information or other items that are necessary for proper completion of the application and affidavit.

F. A uniform video services license shall be issued within thirty days from the date a complete application was filed with the town clerk. The term of a uniform video services license shall not exceed ten years.

G. If written notice of an incomplete or deficient application and affidavit is not given within fifteen days after the date of filing, or if the uniform video services license is not issued within thirty days from the date a complete application has been submitted, the agreement shall be deemed complete and issued to the applicant in the form submitted.

H. No fees shall be charged for filing or processing an application, affidavit, notice or other document related to the issuance of the uniform video services licenses.

I. Amendments to a uniform video services license to add service areas shall be processed in the same manner as the original uniform video services license.

J. The term of a uniform video services license may be extended by the holder of a video service provider filing with the town clerk a notice to extend the term for a specified period not to exceed ten years. The notice shall be filed at least one month before the end of the term of the uniform video services license.

K. Any use of or attachment by a video service provider to a utility or other pole owned by the town must first be approved in a separate contract with the town, at the sole discretion of the town council. If, pursuant to such contract, the town requires the video service provider to locate facilities in ducts or conduits or on poles owned by the town, the town shall not require the video service provider to pay for the installation in the ducts or conduits or on the poles.

L. If a video services provider submits an application, the town shall issue to a video service provider or its affiliate a permit to attach allowed Wi-Fi radio equipment to the video service network in the highways. The permit shall allow installation, operation and maintenance of allowed Wi-Fi radio equipment. The town may require that all of the allowed Wi-Fi radio equipment at a single location fit within a fifteen-inch cube and be contained entirely within a ground-mounted pedestal or be connected directly to and mounted at the same height as one of the video service provider's aerial horizontal conductors. This subsection does not do any of the following:

1. Prohibit the town from requiring a video service provider to place underground aerial facilities to which allowed Wi-Fi equipment is attached.
2. Prohibit the imposition of a tax, rent, fee or charge on revenue from services provided through allowed Wi-Fi radio equipment.
3. Affect the authority of the town to manage its highways or to exercise its police powers, including review and approval of an application before issuing a permit.
4. Affect the town's authority to deny, limit, restrict or determine the terms and conditions for the use of or attachment to the utility poles or attachments to other poles of the town by a video service provider.

Section 19B-2-2 Authority Granted

A. A uniform video services license granted by the town shall authorize the video service provider to

1. Provide video service in the town in the service area designated in the application and affidavit during the term of the uniform video services license
2. Construct and operate a video service network in the highways in each service area, in compliance with the uniform video services license and town laws.
3. Operate and maintain facilities installed in the highways in the service area pursuant to A.R.S. Section 9-1442(H) and (J), subsection I and J [Wi-Fi radio equipment on cable systems], A.R.S. Section 9-584 [microcell equipment] and A.R.S., Chapter 5, Article 8 [small wireless facilities]

Section 19B-2-3 Undergrounding of Facilities

All wires, cable, conductors, ducts, conduits and similar facilities shall be placed underground unless such facilities are attached to existing utility or telephone poles and the poles are used primarily for utility or telephone purpose.

Section 19B-2-4 Limitations of License

- A. Any uniform video services license granted under this chapter shall be nonexclusive.
- B. Any privilege claimed under any uniform video services license by the video service provider in any highway shall be subordinate to any lawful occupancy or use thereof by the town and shall be subordinate to any prior easements, prior licenses to use the highways, and any other private property rights that may be superior to the uniform video services license issued.
- C. A video service provider shall be subject to all existing requirements of the town's rules, regulations and specifications or hereafter enacted or established pursuant to the town's police powers and taxing authority, and shall comply with all applicable existing state and federal laws and regulations or hereafter enacted or established.
- E. Any uniform video services license granted shall not relieve the video service provider of any obligation involved in obtaining pole space from any department of the town, utility company, or from others lawfully maintaining poles in highway.
- F. A video service provider shall agree to comply with all generally applicable nondiscriminatory ordinances, including but not limited to street or highway use, mapping, insurance, performance bonds, security fund, indemnification or similar requirements that apply to the use and occupation of any highway. There is hereby preserved to the town the power to amend any section of the town Code related to construction in highways pursuant to its police powers.

Section 19B-2-5 Obligations Upon Expiration

A video service provider may terminate a uniform video service license by filing a written notice of termination with the town clerk. Such notice shall be filed at least ninety days before termination of service. The notice shall also be sent to all subscribers within the affected service area at least ninety days prior to termination of service.

Article 19B-3 Duties of Video Service Providers

Section 19B-3-1 Construction in the Highways

Video service providers and their subcontractors shall comply with (i) the requirements of this chapter and Chapter 14, 19-10 and 8-3, (ii) construction standards of the Federal Communications Commission (FCC) Rules and Regulations, Part 76 Subpart K (Technical Standards), as amended from time to time, and (iii) detailed standards submitted by the video service provider as part of any application submitted to the town.

Section 19B-3-2 Revocation for Non-Use of Uniform Video Service License

A video service provider shall provide video service to at least one subscriber within each service area authorized by a uniform video service license within twenty-four months after the date the uniform video service license is issued. If the video service provider fails to comply with this section, the town may revoke the uniform video service license.

Section 19B-3-3 Reports

A video service provider shall file all reports required by and in compliance with A.R.S. Section 9-1432. The reports shall be filed with the town clerk. All such reports shall be confidential unless the video service provider has consented in writing to the disclosure.

Section 19B-3-4 Bundling of Services

Except as otherwise provided by federal law, if a video service provider offers video service bundled with other services that are not video service for a single discounted price, all of the following apply:

1. The method that the video service provider uses to determine gross revenue subject to license fees by allocating the single discounted price among the bundle of video service and nonvideo services shall be reasonable and supported by the video service provider's books and records.
2. For the purpose of meeting the video service provider's burden of proof, the town shall accept as reasonable, for purposes of meeting the video service provider's burden of proof, an allocation based on an objective and verifiable

method using the books and records that the video service provider kept in the regular course of business for other purposes, including nontax purposes.

3. A video service provider may not use bundled offerings as a means to evade paying license fees.

Section 19B-3-5 Notice of Change of Information

If any information required by Section 19B-2-1, paragraph B changes, the video service provider shall notify the town in writing within thirty days of such change.

Article 19B-4 Fees and Charges; In-Kind Goods or Services

Section 19B-4-1 License Fee on Gross Revenue; Transaction Privilege Taxes

A. A video service provider shall pay to the town a license fee as a percentage of gross revenues for the use of the highways to provide video service within its service area. The license fee shall be established by resolution of the town council and shall be imposed equally and uniformly on video service providers and holdover cable operators.

1. The license fee shall be paid quarterly on or before the twentieth day of the month following the quarter end, and becomes delinquent on the last business day of that month. If such payment is not made by the next to the last business day of the following month, the town will impose a rate of interest for both underpayments and overpayments in the amount of the federal short-term rate determined pursuant to 26 United States Code section 6621(b), plus three percentage points per month commencing from the date payment should have been made, unless the payment is subject to a bona fide dispute, and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest.

2. The license fee shall be imposed equally and uniformly on all video service providers and holdover cable operators.

B. The total of the rates of the license fee, the transaction privilege taxes imposed and in-kind contributions described in FCC Rule 19-80, Section 76-42 (unless agreed to in a separate agreement) shall not exceed a rate of five percent.

C. The payment of the license fee by the licensee to the town shall be made by delivery of the same to the town Finance Department on or before the twentieth day of the month following the quarter end, and becomes delinquent on the last business day of that month.

D. Delinquent accounts shall accrue interest at the rate of the federal short-term rate determined pursuant to 26 United States Code Section 6621(b), plus three percentage points

Section 19B-4-2 Public, Educational or Governmental Access Programming

A. Video service providers shall provide channel capacity to transmit programming over which the video service provider exercises no editorial control except as authorized by 47 United States Code § 531I. The channel capacity shall be limited to one of the following:

1. Not more than two channels of public, educational or governmental access programming in the basic service tier of the video service network and not more than two channels of noncommercial governmental programming, at least one of which may be programmed by the federal government, in the digital programming tier of the video service network.
2. Not more than two lines of access programming with each line of programming carried on up to two standard definition channels and two switched digital high-definition channels.

B. None of the annual fair market value of any channel capacity provided pursuant to Paragraph A above may be offset against the license fee set forth in Section 19B-4-1.

C. A video service provider may require that channels regularly display an unobtrusive logo or other suitable identifier of the video service provider, if the town requires channel capacity pursuant to this section.

D. A video service provider shall pay all costs and expenses to provide, maintain and operate facilities and equipment of the video service network, including facilities and equipment for signal carriage, processing, reformatting and interconnection for all of the following: (i) to connect the video service network or cable system, as it may be relocated from time to time, to transmit programming to and from existing locations of public, educational or governmental access facilities and to allow monitoring of access programming at the facilities, and (ii) to transmit public, educational and governmental access channels to subscribers with the same prevailing quality, functionality and identification as other channels. Costs other than capital costs incurred by the video service provider are subject to FCC Rule 19-80, Section 76-42.

E. All video service providers and incumbent cable operators shall provide at no initial or recurring charge the basic service tier of video service to one outlet and one receiving device at each building occupied by the town that is not more than two hundred feet from the nearest technically and commercially feasible point of connection on the video service network. The town shall designate the building in writing to the video service provider. Costs incurred by the video service provider or incumbent cable operator are subject to FCC Rule 19-80, Section 76-42.

Article 19B-5
Miscellaneous

A. The town shall notify in a timely manner each video service provider with a uniform video services license in the town of changes to the boundaries of the town.

B. Audits, including audits of bundled services, of a video services provider's books and records shall be conducted in compliance with A.R.S. Section 9-1445.

C. Except as otherwise provided by law or federal regulation, a uniform video service license is fully transferable to any person whether the transfer arises through merger, sale, assignment, restructuring, change of control or other type of transaction. A transfer does not include an assignment of a uniform video service license for the purpose of securing indebtedness. A transfer may include less than all service areas associated with a uniform video service license. The video service provider shall file with the town clerk written notice of the transfer of the uniform video service license. On the filing of notice under this subsection the transferee becomes the holder of the uniform video service license.

D. Enforcement of this chapter shall be in compliance with A.R.S. Section 9-1451

E. A uniform video services license is subject to and shall be governed by all applicable provisions of federal, state and local law. Notwithstanding any other provisions of the uniform video services license to the contrary, the uniform video services license shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulations shall require the licensee to perform any service, or shall permit the licensee to perform any service, or shall prohibit the licensee from performing any service, in conflict with the terms of the license or this chapter, then as soon as possible following knowledge thereof, the licensee shall notify the town attorney of the point of conflict believed to exist between such regulation or law and this chapter or the license.

Article 19B-6
Enforcement

The requirements of this chapter shall be enforced through the procedures set forth in Arizona Revised Statutes Section 9-1451.