

TITLE 4

BUSINESS LICENSES AND REGULATIONS

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- 4.04 Public Utility Franchise
- 4.08 Cable Television Franchise
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CHAPTER 4.04

PUBLIC UTILITY FRANCHISE

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4.04.01 Purpose To the extent permitted by law, the Council of the city of Ward, Arkansas, is enacting this ordinance to establish jurisdiction to determine the quality and character of each kind of, and rates for, product or service to be furnished or rendered by any public utility within the city of Ward, and all other terms and conditions, including a reasonable franchise fee, upon which the public utility may be permitted to occupy the streets, highways, or other public places within the city of Ward. (Ord. No. 0-2006-03, Sec. 1.)

4.04.02 Definition

Public utility shall mean any electric, gas, water, sewer, wastewater, cable or telephone company, and any company providing similar services. (Ord. No. 0-2006-03, Sec. 2.)

4.04.03 Non-exclusive franchise Unless specifically authorized, any franchise granted to a public utility is a non-exclusive franchise. Therefore, unless specifically authorized, the franchise is granted upon the express condition that it shall not in any manner prevent the city from granting other or further franchises for public utility services. (Ord. No. 0-2006-03, Sec. 3.)

4.04.04 Powers retained by the city Nothing contained in a franchise issued to a public utility under this ordinance shall be construed to prevent the city from purchasing or contracting for public utility services for city property from sources other than the public utility. (Ord. No. 0-2006-03, Sec. 4.)

4.04.05 Duties of the public utility The public utility shall at all times comply with all laws and obtain all necessary permits; construct company facilities per plan and specifications filed; record all company facilities, maintain and operate company facilities in a safe manner; operate as marketer of services; obtain and maintain bonds/insurance; reimburse the city for costs and expenses; file and maintain emergency response plan; and provide safe and efficient services to the city. (Ord. No. 0-2006-03, Sec. 5.)

4.04.06 Franchise fee As a condition for the use of public rights-of-way, the city may assess a municipal franchise fee against a public utility for the privilege of providing utility services to the public and for occupying the streets, highways, or other public places within the city of Ward. The franchise fee established herein shall be four percent (4%) of gross receipts derived by the public utility from the sale, supply, delivery, distribution, operation, transmission or transportation of goods, products and/or services within the city of Ward. The franchise fee shall be applicable to all residential, commercial and industrial customers. Such fee shall be exclusive and in addition to:

- A. The usual and general or special ad valorem taxes which the city is authorized to levy and impose upon real and personal property;
- B. Sales taxes on the public utility's services to the extent permitted by state law; and
- C. Assessments for public improvements.
(Ord. No. 0-2006-03, Sec. 6.)

4.04.07 Confirmation of fees For the purpose of confirming the franchise fee paid under this ordinance, the public utility shall provide to the city documentation supporting its gross receipt statements for the prior year. The city shall have the right to conduct an independent review of the books and records of the public utility relating to the calculation of the gross

receipts calculation, and shall have the right to require an audit of the public utility's books and records if the city has any questions about the gross receipts calculation performed by the public utility. (Ord. No. 0-2006-03, Sec. 7.)

4.04.08 Existing franchise agreements Nothing in this ordinance shall amend or adversely impact the terms and provisions of an existing and binding franchise agreement between the city of Ward and a public utility. (Ord. No. 0-2006-03, Sec. 8.)

4.04.09 Business license tax The public utility shall also pay the business license tax as established. (Ord. No. 0-2006-03, Sec. 9.)

4.04.10 Non-compliance Non-compliance with the provisions of any ordinance or resolution adopted pursuant to the provisions of this agreement will result in a penalty of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each day such continues to exist. Each day shall constitute a separate offense. (Ord. No. 0-2006-03, Sec. 10.)

4.04.11 Indemnification and hold harmless The public utility shall agree to protect, hold harmless, and indemnify the city (including its officers, agents, contractors, and employees) from and against all claims, losses, damages, causes of action, suits and liability of every kind, which may occur to, or be suffered by, any person or persons, corporation, or property by reason of any act or failure to act on the part of the public utility. (Ord. No. 0-2006-03, Sec. 11.)

4.04.12 General In the event the municipal boundaries of a city or town are altered or amended by annexation or otherwise, the city or town shall notify the utility's registered agent for service of process of the alteration or amendment. (Ord. No. 0-2006-03, Sec. 12.)

CHAPTER 4.08

CABLE TELEVISION FRANCHISE

Sections:

4.08.01 Authorization

4.08.01 Authorization The Agreement, in substantially the form presented at the meeting at which this Ordinance is addressed, is hereby approved, and the Mayor and City Clerk of the City of Ward, Arkansas, are authorized to execute the Agreement on behalf of the City of Ward, Arkansas, with such changes as may be approved by the Mayor consistent with the Agreement presented and the terms of this Ordinance. (Ord. No. 2013-04, Sec. 1.)

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CHAPTER 4.12**OCCUPATIONAL LICENSES****Sections:**

- 4.12.01 Annual license
- 4.12.02 Fees
- 4.12.03 Transfer
- 4.12.04 Suspension or Revocation of License; Criteria
- 4.12.05 Procedures for Revocation or Suspension
- 4.12.06 License Not Construed to Permit Prohibited Uses or Activities
- 4.12.07 Penalty
- 4.12.08 Repeal

4.12.01 Annual license A.C.A. § 26-77-102 authorizes a city council to ordinances requiring any person, firm, individual, or corporation that shall engage in, carry on, or follow any trade, business, profession, vocation, or calling, within the cooperate limits of the city or town, to pay a license fee or tax.

4.12.02 Fees For the number of employees identified below, the fees will be as follows:

Number of Employees	1	2-10	11-25	26-75	76 and Above
Annual Fees	\$25.00	\$50.00	\$150.00	\$300.00	\$500.00

Ord. No. 2019-08, Sec. 1)

4.12.03 Transfer No license issued under this Ordinance shall be transferred. (Ord. No. 2019-08, Sec. 2)

4.12.04 Suspension or Revocation of License; Criteria The Mayor or City Clerk, may suspend or revoke a business license or permit when the licensee, officer, or partner thereof, or another person with a legal interest in the license:

- (1) Knowingly cause, aids, abets, or conspires with another to cause any person to violate any of the laws of this state or the city which may affect or relate to the licensed business;
- (2) Has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;

- (3) Is convicted of, forfeits bond upon, or pleads guilty of any offenses related to the operation of the licensed business;
 - (4) Makes a misrepresentation or fails to disclose a material;
 - (5) Violates any building, safety, fire or health regulation on the premises in which the business is located after receiving warning from the city to refrain from such violations;
 - (6) Is in violation of a zoning regulation of the city; or
 - (7) Is indebted or obligated to the city for past due fees or taxes;
- (Ord. No. 2019-08, Sec. 3)

4.12.05 Procedures for Revocation or Suspension

(1) When the Mayor or City Clerk determines that there is reasonable basis for suspending or revoking a business license, the Mayor or City Clerk shall notify the licensee by certified mail of the city's intention to suspend or revoke such license. The notice shall also state the reason for the suspension or revocation and the date that the suspension or revocation will become effective unless a hearing is requested. The suspension or revocation shall become effective seven days after the date of the notice is mailed to the licensee, within such seven-day period, files a written request with the Mayor or City Clerk for a hearing. The licensee shall state why the criteria in Section 2 does not apply to the business.

(2) Hearing Procedure:

a. The Mayor or City Clerk, shall schedule and hold a hearing within 20 days following receipt of a request that meets the requirements in section (1) of this Section. The suspension or revocation will be stayed pending the decision by the Mayor or City Clerk after the hearing. At the hearing, both the licensee and the city shall be entitled to present evidence.

b. Upon completion of the hearing, the Mayor or City Clerk shall make a decision about the suspension or revocation and shall deliver a written decision to the licensee.

i. If delivery is via mail, it shall be by certified mail. If the decision to suspend or revoke the license, such action shall be effective one day after delivery of the decision, provided that the effective date shall be three days after the date of the mailing, if delivery is via mail. The decision shall be the final decision of the city.

ii. If the decision is hand-delivered, it shall be delivered by a uniformed officer. The effective date shall be three days after hand-delivery. The decision shall be the final decision of the city.

(3) Return of license upon revocation. Whenever a license is revoked, the licensee shall immediately return the license to the City Clerk. There shall be no refund of any part of the amount paid for the annual license. In order for the business to resume operations, city approval of a new application for a new license is required. (Ord. No. 2019-08, Sec. 4)

4.12.06 License Not Construed to Permit Prohibited Uses or Activities

Notwithstanding any provisions to the contrary, a license hereunder shall not be issued to any person who uses or occupies or proposes to use or occupy any real property or otherwise conducts or proposes to conduct any business in violation of the provision of any ordinance of the city or the statutes of the state. The granting of a business license shall in no way be construed as permission or acquiescence in a prohibited activity or other violation of the law.(Ord. No. 2019-08, Sec. 5)

4.12.07 Penalty It is hereby declared a violation for any person, firm or corporation carrying on a business, profession or occupation within the city to fail and/or refuse to comply with any of the provisions of this division. Upon conviction for such violation, the offender shall be fined in amount not less than \$50.00 nor more than \$500.00 for each separate violation; provided, however, in no case shall the fine be in excess of double the amount of the license fee provided. (Ord. No. 2019-08, Sec. 5)

4.12.08 Repeal Any portion or portions of the amendment adopted herein which are contrary to existing Ordinances of the City of Ward, Arkansas shall prevail and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of conflict. (Ord. No. 2019-08, Sec. 6)