

# FRANCHISE AUTHORITY, FEES, PROCESS AND PROCEDURES

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## SOLID WASTE COLLECTION

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Cities have the authority to maintain and operate solid waste collection systems by any of the following means:

- City employees using city facilities, equipment and supplies;
- Contracts with private persons/companies or another unit of government for all, or a portion, of the city geographic area;
- Franchises with private persons/companies for all, or a portion, of the city geographic area;
- Any combination of the above.

I.C. 50-344

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## Solid Waste Collection continued

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Neither the contract nor the franchise need to be competitively bid if the mayor or city manager make a finding that it is necessary for the public health and welfare and property that the competitive bid laws not apply to solid waste.

The city may require security for the performance of the contract or franchise.

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## Solid Waste Collection continued

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### Contract vs Franchise

#### Contract-

City provides for garbage collection to its citizens through the use of a private person or another governmental unit.

City pays the contracted price for services, regardless of whether the customer pays the City.

City bills and collects for the service from the customer. If the customer doesn't pay, the City bears the loss.

## Solid Waste Collection continued

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Franchise –

City authorizes a private person to use the City streets to operate their garbage collection service.

Franchise may be exclusive or non-exclusive. However, must consider property rights of other service providers. (*CDA Garbage Service vs. City of Coeur d'Alene*, 759 P.2d 879 1988)

City establishes the terms of the franchise/use of the streets.

Franchisee bills and collects for the service from the customer. If the customer doesn't pay, the Franchisee bears the loss.

Franchisee pays the City a franchise fee.



## CABLE COMMUNICATIONS

Cable Service franchises are regulated by both federal and Idaho law.

Federal law – Title 47 Chapter 5 United States Code

Cable Service is defined as **one way** transmission to subscribers of video programming or other programming services, and subscriber interaction required for the selection or use of such video programming or other programming services.

Internet services by the cable provider is not considered cable service.

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## Federal law continued


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Franchise can include, but is not limited to, the following items:

- Prohibit providing certain cable channels that are obscene.
- Allow subscribers to request obscene and indecent channels and require the operator to provide a device to do so.
- Franchise fee of 5% of operator's gross revenues for cable service during a 12 month period. (The fee can be itemized on the customer's bill along with the name of the city imposing the fee.)

## Federal law continued

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- Location and type of equipment to be used. Except that the franchise may not prohibit, condition or restrict a cable system's use of any type of subscriber equipment or transmission technology.
  - Length of term
  - Where and when services will be provided to new development.
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## Federal law continued

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### Rate Regulations –

A franchise authority (City) may regulate only basic service rates and only after meeting the following requirements

- FCC makes a finding that there is no effective competition.
- City files a certificate with the FCC stating that the City:
  - 1) will adopt and administer rate regulations consistent with the FCC regulations
  - 2) has legal authority to adopt those regulations;
  - 3) has personnel to administer the regulations; and
  - 4) regulations adopted are reasonable and provide for consideration of views of interested parties.
- FCC review and approval

## Federal law continued

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### Franchise Renewal (Formal) Process -

Renewal process can be initiated during the 6 month period that begins the 36th month before the franchise expires (42-36 months prior to expiration).

- During 4 month period after receipt of proposal, give public opportunity to be heard on the following (hearing):
  - 1) future cable-related community needs and interests; and
  - 2) Review performance of cable operator under the current franchise.

## Federal law continued

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City grants renewal; or

City issues a preliminary assessment that the franchise should not be renewed.


- At request of operator or by City initiation, commence administrative proceeding, which includes testimony, examination of witnesses and a written transcript
- Proceedings to consider:
  - 1) has cable operator complied with material terms of existing franchise
  - 2) quality of services, including signal and response to customer complaints
  - 3) operator's financial, legal and technical ability to provide services
  - 4) if operator's proposal is reasonable to meet future cable-related community needs and interests.

## Federal law continued

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Denial must be based on the 4 listed factors.

Alternative (Informal) Renewal Process –

- Operator submits a proposal
  - City provides public notice and opportunity to comment (hearing)
  - Following hearing, grant or deny the renewal
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## State law

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Cable service provider must meet one of the three following requirements to operate in Idaho:

**Incumbent cable provider** who has an existing franchise with City that was on effect July 1, 2012;

**Nonincumbent cable provider** who:

- 1) elects to negotiate a franchise with the City pursuant to federal law; or
- 2) elects to adopt terms of an existing franchise issued by the City to another operator within the same franchise area.

**Holder of a certificate of franchise authority** issued by the Idaho Secretary of State.

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## State law continued

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An incumbent provider may hold both a franchise issued by a the city and a certificate of franchise authority issued by the Idaho Secretary of State, so long as they do not cover the same service area.

Exception: An incumbent provider may apply to the Secretary of state for a certificate of franchise authority for the same service area, and if granted the City franchise becomes void.


**The decision whether to operate under a City franchise or a certificate of franchise authority is at the provider's sole discretion.**

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## State law continued

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Use of public right-of-way by holder of State issued certificate of franchise authorization.

- City shall allow certificate holder to use the City public right-of-way to install, construct and maintain facilities.
  - City shall provide certificate holder to open, comparable, nondiscriminatory and competitively neutral access to the right-of-way.
  - City can adopt regulations relating to the installation of the physical facilities in the right-of-way.
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## State law continued

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- City may not impose requirements that discriminate against the provider, including authorization or placement of facilities in right-of-way for necessary video services, including;

  - Access to public buildings; or

  - Terms and conditions for access to utility poles within the City's control.


- City may impose a permit or license fee related to opening, closing, inspection or repair of public rights-of-way, but only to extend those same fees are imposed on other video service providers. (The fee can't exceed the actual costs)



## State law continued


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Video Service Provider Fee - State certificate holder operating within the city limits shall pay the City a video service provider fee, if required by the City.

- Fee obligation commences with the provision of video services to subscribers.
  - Fee is to be paid quarterly, 45 days after the close of each calendar quarter.
  - Fee shall be on gross revenues as defined by I.C. 50-3007(4)(a)
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## State law continued

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- Fee shall be equal to the percentage of gross revenues charged a city incumbent franchise holder, not to exceed 5%.
  - If these isn't a city incumbent, the city may establish the fee, but not to exceed 5% of gross revenues.
  - Certificate holder may identify the fee as a separate line item on the subscriber's bill.
  - City shall notify certificate holder in writing of any annexations, including description of territory annexed.
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## PUBLIC SERVICE PROVIDERS FRANCHISE

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Cities are authorized to grant franchises to electric, natural gas, water public utilities (as defined by the “The Public Utilities Law”) and cooperative electric associations.

Collectively, they are referred to as “public service providers” and do not include municipal or quasi-municipal service providers.

The franchise may include a franchise fee assessed on the provider’s gross revenues (money billed for sale/transmission and/or distribution of the service, less uncollectables).

## Public Service Providers continued

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Franchise Fee that may be assessed –

- 1% of gross revenues without the consent of the public service provider or city voters
- Over 1%, but no to exceed 3% with approval of the public service provider, or a majority of city voters on the question at a city election.

Exception: If the City already has an existing franchise with a higher rate, that higher rate may remain in effect and the franchise be renewed at that higher rate, without consent of the public service provider or vote of the city voters.

## Public Service Providers continued

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- Fee to be collected on customers within the city and shall be separately itemized on their bill.
- Fee to be paid to City quarterly, within 30 days of end of each calendar quarter.
- Fee shall be in lieu of and as payment for any tax or fee imposed by the City on public services providers (i.e. encroachment permit fees)

Franchise Term – shall not be less than 10, nor more than 50, years for public service providers

User Fee – The City may collect a user fee from customers within the city that get their electricity, natural gas and water commodities and service from a party other than the public service providers.


## Telephone Service Franchise

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The City MAY NOT require a franchise of a telephone or telegraph service provider.

Article XI Section 13 of the Idaho Constitution grants telegraph and telephone companies the right to construct and maintain lines within the state.

Idaho Code 62-701 grants telephone and telegraph companies the right to construct or install telephone lines along, beneath the surface or upon any public road or highway; across any water of lands of the state; to erect poles posts and abutments for supporting the insulators, of the highway, or interrupt navigation of waters.



# FRANCHISE ADOPTION PROCEDURES

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**A franchise, although a contract by its terms, is required to be adopted as an ordinance.**

Steps for passage of franchise ordinance:

- 1) Franchise ordinance is introduced to the city council. (No action can be taken by the council at that time or for at least 30 days, except to set it for public hearing)
- 2) During the 30 day waiting period, the ordinance is published **in full** in one issue of the city's official newspaper (**at the expense of the franchisees, not the City**).  
( No amendments may be made to the ordinance after publication that are less favorable to the City. Amendments more favorable to the City may be made.)
- 3) Hold public hearing to allow the public to provide input.

## Franchise Adoption Procedures continued

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- 4) Pass ordinance by a super majority (1/2 plus one of the full council)
- 5) Publish the ordinance by summary or in full (**at the expense of the franchisee and not the city**)

Amendments to a franchise must be accomplished in the same manner as the initial ordinance passage.



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Publication cost discussion/questions.

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