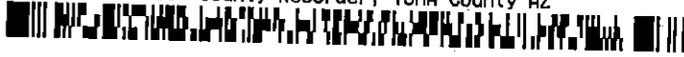


Richard Colwell County Recorder, YUMA County AZ



**WHEN RECORDED, MAIL TO:**

**CITY OF SAN LUIS  
ATTN: CITY CLERK  
P.O. BOX 1170  
SAN LUIS, ARIZONA 85349**

The above area is to be reserved for recording information

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**CAPTION HEADING:**

**ORDINANCE**

Ordinance No. 428 – Adopting the “San Luis Video Services Regulations” by adding Chapter 5.25 Titled “Video Services” to the San Luis City Code and declaring the document titled “San Luis Video Services Regulations” a public record.



# Ordinance

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

No. 428

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, AMENDING THE SAN LUIS CITY CODE; DECLARING THE DOCUMENT TITLED "SAN LUIS VIDEO SERVICES REGULATIONS" A PUBLIC RECORD; ADOPTING THE "SAN LUIS VIDEO SERVICES REGULATIONS" BY ADDING CHAPTER 5.25 TITLED "VIDEO SERVICES" RELATING TO REGULATING, LICENSING, IMPOSING FEES, IMPOSING A PENALTY FOR VIOLATION, AND ESTABLISHING AN EFFECTIVE DATE; REPEALING ANY CONFLICTING PROVISIONS AND ORDINANCES; AND PROVIDING FOR SEVERABILITY.**

**WHEREAS**, A.R.S. § 9-1402(A) declares the licensing of video service providers and the regulation and use of video service are matters of statewide concern; and

**WHEREAS**, A.R.S. Title 9 Cities and Towns, Chapter 13 Video Service, details the powers of Arizona cities and towns to regulate video services and video services providers; and

**WHEREAS**, Chapter 13 preempts the city concerning the regulation of video services and video service providers, prescribes the process for issuing and renewing licenses for video services, and other regulations of video services and video service providers in the city.

**WHEREAS**, the Federal Communications Commission has further preempted local jurisdictions from regulating video services and video service providers (Available at 34 FCC Rcd. 6844 (Released August 2, 2019) Docket Numbers MB Docket No. 05-311 and FCC 19-80); and

**WHEREAS**, the city adopts this ordinance to comply with the requirements of state and federal law;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and City Council of the City of San Luis, Arizona:

**Section 1: In general-Amending City Code:**

The City Code of the City of San Luis, Title 5, is amended by adding Section Chapter 5.25.

**Section 2: Declaration of Public Record:**

The certain document titled "San Luis Video Services Regulations," three (3) paper copies or one (1) paper copy and one (1) electronic copy are on file in the Office of the City Clerk and are kept available for public use and inspection (in compliance with A.R.S. § 9-802). Said document titled "San Luis Video Services Regulations" is hereby declared to be a public record, and said copies are hereby ordered to remain on file with the City Clerk.

**Section 3: Incorporation by Reference:**

The San Luis City Code is hereby amended by adding to Title 5, Chapter 5.25 titled "Video Services" as set forth in that document titled "San Luis Video Services Regulations," which document is hereby adopted and incorporated into this ordinance by reference.

**Section 4: Providing for Repeal of Conflicting Ordinances:**

In the event of a conflict between the provisions of this ordinance and any other ordinance, resolution, order, regulation, or policy of the City of San Luis, the conflicting provisions are repealed, superseded, and replaced, and the provisions of this ordinance shall govern.

**Section 5: Providing for Severability:**

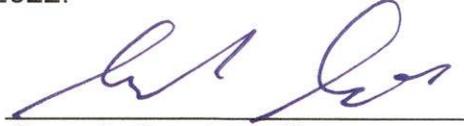
If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

**Section 6: Enforcement:**

The requirements of this chapter shall be enforced through the procedures in Arizona Revised Statutes Title 9, Chapter 13, Section 9-1401 et seq. as it may be amended.

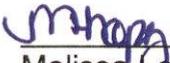
[Intentionally left blank, signature page follows.]

**PASSED, ADOPTED, and APPROVED** by the Mayor and City Council of the City of San Luis, Yuma County, Arizona, this 24<sup>th</sup> day of August 2022.



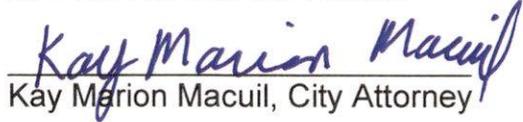
Gerardo Sanchez, Mayor

**ATTEST:**



Melissa Lopez, Deputy City Clerk

**APPROVED AS TO FORM:**



Kay Marion Macuil, City Attorney

**San Luis**  
**Video Services**  
**Regulations**

## **CHAPTER 5.25: VIDEO SERVICES**

### **Sections:**

#### **Article I. General Provisions**

- 5.25 .01 Purpose and intent**
- 5.25 .02 Definitions**
- 5.25 .03 Unlawful acts; violation**
- 5.25 .04 Enforcement**

#### **Article II. Uniform Video Service Licenses**

- 5.25 .15 Application and issuance**
- 5.25 .16 Authority granted**
- 5.25 .17 Undergrounding of facilities**
- 5.25 .18 Limitations of license**
- 5.25 .19 Obligations upon expiration**
- 5.25 .20 Notification; transferability**

#### **Article III. Duties of Video Service Providers**

- 5.25 .35 Construction in the highways**
- 5.25 .36 Revocation for non-use of uniform video service license**
- 5.25 .37 Reports**
- 5.25 .38 Bundling of services**
- 5.25 .39 Notice of change of information**

#### **Article IV. Fees and Charges; In-Kind Goods or Services**

- 5.25 .50 License fee on gross revenue; transaction privilege taxes**
- 5.25 .51 Public, educational, or governmental access programming**

#### **Article I. GENERAL PROVISIONS**

##### **§ 5.25 .01 PURPOSE AND INTENT.**

(A) The purposes of this chapter are to comply with the requirements of A.R.S. Title 9, Ch. 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 City, 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 A.R.S. Title 9, Ch. 13, and federal law.

(B) It is the intent of this chapter that all rights and obligations set forth in A.R.S. Title 9, Ch. 13, are preserved and shall apply, regardless of whether specifically set forth in this chapter.

#### § 5.25 .02 DEFINITIONS.

The definitions set forth in A.R.S. § 9-1401 (as may be amended from time to time) shall apply to this chapter.

The definitions set forth in San Luis City Code § 1.05.030 shall apply to this chapter unless (1) in conflict with A.R.S. § 9-1401 in which case A.R.S. § 9-1401 applies or

(2) the context of this chapter clearly has another meaning.

#### § 5.25 .03 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 City 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 City without first having been issued and continuing to hold a local license issued by the City 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 City 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.

#### § 5.25 .04 ENFORCEMENT.

The requirements of this chapter shall be enforced through the procedures set forth in A.R.S. Title 9, Chapter 13.

## Article II. UNIFORM VIDEO SERVICE LICENSES

### § 5.25 .15 APPLICATION AND ISSUANCE.

(A) This subchapter 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 City. The requirements of this section shall apply to video services licenses granted on or after the effective date of City Ordinance No. 428.

(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 City Clerk an application and an affidavit in a form provided by the City 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 A.R.S. § 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 City Clerk, who shall forward the application and affidavit to the City's Planning and Zoning Department for review.

(E) If the Planning and Zoning Department determines that the application and affidavit are incomplete or otherwise deficient under A.R.S. § 9-1414, written notice shall be given to the applicant not later than 15 days after the date of filing of the application and affidavit. The written notice shall:

(1) Explain the incompleteness or deficiency in detail; and

(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 30 days from the date a complete application was filed with the City 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 15 days after the date of filing, or if the uniform video services license is not issued within 30 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 City 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 City must first be approved in a separate contract with the City, at the sole discretion of the Council. If, pursuant to such contract, the City requires the video service provider to locate facilities in ducts or conduits or on poles owned by the City, the City 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 City 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 City may require that all of the allowed Wi-Fi radio equipment at a single location fit within a 15-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 division (L) does none of the following:

(1) Prohibit the City 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 City to manage its highways or to exercise its police powers, including review and approval of an application before issuing a permit; or

(4) Affect the City'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 City by a video service provider.

#### § 5.25 .16 AUTHORITY GRANTED.

A uniform video services license granted by the City shall authorize the video service provider to:

(A) Provide video service in the City in the service area designated in the application and affidavit during the term of the uniform video services license;

(B) Construct and operate a video service network in the highways in each service area, in compliance with the uniform video services license and City laws; and

(C) Operate and maintain facilities installed in the highways in the service area pursuant to A.R.S. § 9-1442(H), (I) and (J) (Wi-Fi radio equipment on cable systems), A.R.S. § 9-584 (microcell equipment) and A.R.S. Title 9, Ch. 5, Art. 8 (small wireless facilities).

#### § 5.25 .17 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.

#### § 5.25 .18 LIMITATIONS OF LICENSE.

(A) Any uniform video services license granted under this chapter shall be non-exclusive.

(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 City 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 City's rules, regulations and specifications or hereafter enacted or established pursuant to the City's police powers and taxing authority and shall comply with all applicable existing state and federal laws and regulations or hereafter enacted or established.

(D) 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 City, utility company or from others lawfully maintaining poles in highway.

(E) A video service provider shall agree to comply with all generally applicable non-discriminatory 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 City the power to amend any section of the San Luis City Code related to construction in highways pursuant to its police powers.

#### § 5.25 .19 OBLIGATIONS UPON EXPIRATION.

A video service provider may terminate a uniform video service license by filing a written notice of termination with the City Clerk. Such notice shall be filed at least 90 days before termination of service. The notice shall also be sent to all subscribers within the affected service area at least 90 days prior to termination of service.

**§ 5.25 .20 NOTIFICATION; TRANSFERABILITY.**

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

(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. § 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 City Clerk written notice of the transfer of the uniform video service license. On the filing of notice under this division (C), the transferee becomes the holder of the uniform video service license.

(D) Enforcement of this chapter shall be in compliance with A.R.S. § 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 City Attorney of the point of conflict believed to exist between such regulation or law and this chapter or the license.

**Article III. DUTIES OF VIDEO SERVICE PROVIDERS**

**§ 5.25 .35 CONSTRUCTION IN THE HIGHWAYS.**

Video service providers and their subcontractors shall comply with:

(A) The requirements of this chapter and Title 15 and Chapter 7.15 of the San Luis City Code;

(B) Construction standards of the Federal Communications Commission (FCC) rules and regulations, part 76 subpart K (Technical Standards), as amended from-time to time; and

(C) Detailed standards submitted by the video service provider as part of any application submitted to the City.

**§ 5.25 .36 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 24 months after the date the uniform video service license is issued. If the video service provider fails to comply with this section, the City may revoke the uniform video service license.

**§ 5.25 .37 REPORTS.**

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

**§ 5.25 .38 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:

(A) 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 non-video services shall be reasonable and supported by the video service provider's books and record;

(B) For the purpose of meeting the video service provider's burden of proof, the City 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 non-tax purposes; and

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

**§ 5.25 .39 NOTICE OF CHANGE OF INFORMATION.**

If any information required by § 5.25 .15(B) of this chapter changes, the video service provider shall notify the City in writing within 30 days of such change.

**Article IV. FEES AND CHARGES; IN-KIND GOODS OR SERVICES**

**§ 5.25 .50 LICENSE FEE ON GROSS REVENUE; TRANSACTION PRIVILEGE TAXES.**

(A) A video service provider shall pay to the City 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 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 City will impose a rate of interest for both underpayments and overpayments in the amount of the federal short-term rate determined pursuant to 26 U.S.C. § 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 (unless agreed to in a separate agreement) shall not exceed a rate of 5%.

(C) The payment of the license fee by the licensee to the City shall be made by delivery of the same to the attention of the Finance Department by Personal or Courier Service to San Luis City Hall or by United States Postal Service to Post Office Box 7740, San Luis, Arizona 85349 on or before the twentieth day of the month following the quarter end and becomes delinquent on the last business day of that month.

**§ 5.25 .51 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 U.S.C. § 531. 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 non-commercial 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 division (A) above may be offset against the license fee set forth in § 5.25 .50 of this chapter.

(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 City requires channel capacity pursuant to this section.

(D) (1) A video service provider shall pay all capital costs and related to the facilities and equipment of the video service network, including facilities and equipment for signal carriage, processing, reformatting and interconnection for all of the following:

(a) 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

(b) To transmit public, educational, and governmental access channels to subscribers with the same prevailing quality, functionality, and identification as other channels.

(2) Costs other than capital costs incurred by the video service provider are subject to Federal Communications Commission Rule 34 FCC Rcd. 6844 (Released August 2, 2019), Docket Numbers MB Docket No. 05-311 and FCC 19-80.

(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 City that is not more than 200 feet from the nearest technically and commercially feasible point of connection on the video service network. The City 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 Federal Communications Commission Rule 34 FCC Rcd. 6844 (Released August 2, 2019), Docket Numbers MB Docket No. 05-311 and FCC 19-80.