

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FOSTER CITY AMENDING CHAPTER 14.01, GOVERNING THE PROVISION OF CABLE SERVICES IN THE CITY, OF TITLE 14, PUBLIC UTILITIES, OF THE FOSTER CITY MUNICIPAL CODE

CITY OF FOSTER CITY

THE CITY COUNCIL OF THE CITY OF FOSTER CITY DOES FIND AND ORDAIN as follows:

Section 1. The City Council of the City of Foster City, California, hereby find and determines:

WHEREAS, the City's municipal code currently includes Chapter 14.01, Governing a Franchise for the Installation, Construction, Operation and Regulation of a Cable Television System, of Title 14, Public Utilities; and,

WHEREAS, this ordinance was enacted in 2005; and,

WHEREAS, significant changes in state law governing telecommunications, cable and video services have been enacted that have rendered several provisions of the Foster City municipal code Chapter 14.01 outdated; and,

WHEREAS, it is in the best interest of the City to update its cable and video franchising ordinance to better reflect current law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FOSTER CITY, CALIFORNIA, ORDAINS THAT:

Section 2. Chapter 14.01 to Title 14 of the Foster City Municipal Code shall be amended as follows:

**Title 14 PUBLIC UTILITIES**

**Chapter 14.01 GOVERNING THE PROVISION OF CABLE AND VIDEO SERVICES IN THE CITY**

**14.01.010 Short title.**

This chapter shall be known and may be cited as the City of Foster City, California Video Services Ordinance. (Ord. 382 § 1 (part), 1991)

#### **14.01.020 Definitions.**

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined herein shall be given the meaning set forth in the Cable Communications Policy Act of 1984 ("Cable Act"), 47 U.S.C. Section 521 et seq., and as may be amended, and, if not defined their common and ordinary meaning.

A. "Access channel" means any channel set aside for public, educational and/or local governmental use without a charge by the franchisee for channel usage.

B. "Applicable laws" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

C. "Applicant" means any person submitting an application within the meaning of this chapter.

D. "Application" means any proposal, submission or request to (1) obtain a local franchise from the City for the provision of Video service; (2) transfer a local franchise or control thereof; (3) renew a local franchise; (4) modify a local franchise; or (5) seek any other relief from the city pursuant to this chapter or a local franchise agreement. An application includes an applicant's initial proposal, submission or request, as well as any and all subsequent amendments or supplements to the proposal and relevant correspondence.

E. "Basic cable service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by a local franchise to be carried on the basic tier. Basic cable service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).

F. "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. Sections 521 et seq., and as hereinafter may be amended.

G. "Cable service" or "Service" means (A) the one-way transmission to subscribers of (i) video programming or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).

H. "Cable system" or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

- (1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (2) a facility that serves subscribers without using any public right-of-way;
- (3) a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (4) an open video system that complies with 47 U.S.C. § 573; or
- (5) any facilities of any electric utility used solely for operating its electric utility systems.

I. "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the FCC.

J. "City" means the City of Foster City, a municipal corporation of the state of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

K. "Control of a franchisee or applicant" means the legal or practical ability to exert control over the affairs of a franchisee, franchisee, or applicant, either directly or indirectly, whether by contractual agreement, majority ownership interest, or in any other manner.

L. "Converter" means an electronic device which converts signals to a frequency acceptable to a television receiver of a subscriber and, by an appropriate selector, permits a subscriber to view all subscriber signals included in the service.

M. "Council" means the present governing body of the City of Foster City or any future board constituting the legislative body of the city.

N. "Drop" means the cable that connects the ground block on the subscriber's residence or institution to the nearest feeder cable of the system.

O. "FCC" means the Federal Communications Commission.

P. "Local Franchise" means the right granted by the city to a franchisee to provide Video services and/or construct, maintain and operate a cable system under, on, and over streets, roads and all other public ways, easements and streets within all or specified areas of the city. The term does not include a state franchise or any license or permit that may be required by this chapter or other laws, ordinances or regulations of the city for the privilege of transacting and carrying on a business within the city or for disturbing the surface of any street.

Q. "Franchise agreement" means a contract entered into in accordance with the provisions of this chapter between the city and a franchisee that sets forth the terms and conditions under which the local franchise will be exercised.

R. "Franchisee" means any person granted a local franchise pursuant to this chapter who has entered into a franchise agreement with the city.

S. "Gross revenues" shall have the same definition as set forth in Section 5860 (d) and (e) of the California Public Utilities Code

T. "Installation" means the connection of the cable system from feeder cable to the point of demarcation including standard installations and custom installations with the subscriber converter or other terminal equipment.

U. "Leased access channel" means a channel designated in accordance with Section 612 of the Cable Act, 47 U.S.C. § 532, for commercial use by persons unaffiliated with the franchisee.

V. "Lockout device" means a parental control or lockout device, traps or filters to enable a subscriber to control access to both the audio and video portions of any or all channels. Franchisee shall inform its subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at the rate, if any, in compliance with applicable laws.

W. "Nondiscriminatory" means 1) the absence of unfavorable or unfair treatment of a franchisee or person in comparison to others on the basis of race, sex, color, religion, national origin, age, physical/mental handicap, harassment, sexual orientation or reprisal for opposition to discriminatory practices, or 2) terms and conditions neither more burdensome nor less favorable than those imposed upon other users of the public rights-of-way.

X. "Normal business hours" means those hours during which most similar businesses in city are open to serve customers. In all cases, "normal business hours" must include some evening hours, at least one (1) night per week and/or some weekend hours.

Y. "Normal Operating Conditions" means those service conditions which are within the control of franchisee. Those conditions which are not within the control of franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

Z. "Other Programming Service" means information that a Video Service Provider makes available to all subscribers generally.

AA. "Overbuild" means a cable system constructed to serve subscribers served by an existing cable system.

BB. "OVS Operator" means any person or group of persons that either provides cable service over an open-video system directly, or through one or more affiliates, owns a significant interest in an open-video system, or that otherwise controls or is responsible for, through any arrangement, the management of an open-video system.

CC. "Pay Television" means the delivery over the system of pay-per-channel or pay-per-program audio-visual signals to subscribers for a fee or

charge, in addition to the charge for basic cable service or cable programming services.

DD. “Person” means any individual, corporation, partnership, association, joint venture or organization of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof.

EE. “Public, educational or government access facilities” or “PEG access facilities” means the total of the following:

1. channels designated for noncommercial public, educational, or government use; and
2. facilities and equipment for the use of such channel capacity.

FF. “Right-of-way” or “Rights-of-way” means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public alley, public sidewalk, public boulevard, public parkway, public drive or any public easement now or hereafter held by the city.

GG. “Service area” or “Franchise area” means the entire geographic area within the city as it is now constituted or may in the future be constituted.

HH. “Service interruption” means the loss of picture or sound on one (1) or more cable channels.

II. “Standard Installation” means an aerial connection extending no more than one hundred twenty-five feet from the potential residential subscriber’s demarcation point to the point on the cable system from which video service can be provided to that Subscriber.

JJ. “State Franchise” means a franchise issued by the California Public Utilities Commission pursuant to Section 5840 of the California Public Utilities Code.

KK. “Subscriber” means any person who lawfully receives Video service via the system consistent with material and lawful terms and conditions of franchisee then in force. In the case of multiple office buildings or multiple dwelling units, the “subscriber” means the lessee, tenant or occupant not the building owner.

LL. “Video programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

MM. “Video service” means video programming services, cable service, or OVS service provided through facilities located at least in part in public rights-of-way without regard to delivery technology, including Internet protocol or other technology. This definition does not include (1) any video programming provided by a commercial mobile service provider defined in Section 322(d) of Title 47 of the United States Code, or (2) video programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

NN. “Video service provider” means an entity providing video service.

**14.01.030 Intent and purposes.**

A. It is the intent of the city and the purpose of this chapter to promote the public health, safety, and general welfare by providing for the grant of one or more local franchises for the provision of video service; to provide for the regulation, to the extent provided for by law, of each video service provider in the public interest; to provide for the payment of fees and other valuable consideration by a franchisee to the city for the privilege of using public streets for the provision of video service; to promote the widespread availability of quality video service to city residents and city businesses; to encourage the development of technology and systems as a means of communication between and among the members of the public institutions; to support competitive rates for video service; and to encourage the provision of diverse information to city residents, businesses and the community via the provision of video service.

B. Recognizing the continuing development of communications technology and uses, it is the policy of the city to encourage experimentation and innovation in the development of cable system uses, services, programming and techniques that will be of general benefit to the community to the extent all such experiments and innovations are consistent with applicable laws. (Ord. 382 § 1 (part), 1991)

**14.01.040 Grant of authority-- Franchise required.**

A. No person may construct or operate a cable system or provide video service in the city without a) having been awarded a local franchise— by the city—and entering into a franchise agreement with the city pursuant to this chapter; or 2) having been issued a state franchise in accordance with the California Public Utilities Code, Division 2.5 (commencing with Section 5800) – The Digital Infrastructure and Video Competition Act of 2006, and as it may be amended. (Ord. 382 § 1 (part), 1991)

B. The city may grant one or more local franchises in accordance with this chapter.

C. Any Person that has been issued a state franchise comply with all applicable provisions of this Chapter unless such provisions are specifically preempted by State law..

**14.01.050 Local franchise characteristics.**

A. A local franchise authorizes use of city streets for installing cables, wires, lines, underground conduit, and other facilities to operate a cable system within a specified area of the city, but does not expressly or implicitly authorize the franchisee to provide service to, or install cables, wires, lines, underground conduit, or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Cable Act, 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

B. A local franchise is nonexclusive, and will not expressly or implicitly preclude the issuance of other local or state franchises to operate cable systems within the city or provide video services in the city or affect the

city's right to authorize use of city streets to other persons as it determines appropriate.

C. Once a franchise agreement has been accepted and executed by the city and a franchisee, such franchise agreement shall constitute a contract between the franchisee and the city, and the terms, conditions and provisions of such franchise agreement, together with all duly enacted and applicable laws, shall define the rights and obligations of the franchisee and the city relating to the franchise.

D. A franchise agreement shall contain provisions setting forth when a transfer of a local franchise will be deemed to have taken place, taking into account the ownership structure of the particular franchisee. (Ord. 382 § 1 (part), 1991)

**14.01.060 Local franchise, franchisee subject to other laws, police power.**

A. A franchisee shall at all times be subject to and shall comply with all generally applicable laws. A franchisee shall at all times be subject to all exercise of the police power of the city.

B. Except as may be specifically provided in this chapter or under the terms of a franchise agreement, the failure of the city, upon one or more occasions, to exercise a right or to require compliance or performance under the chapter or a franchise agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance. (Ord. 382 § 1 (part), 1991)

**14.01.070 Interpretation of local franchise terms.**

A. The provisions of this chapter will apply to a franchise agreement as if fully set forth in the franchise agreement. However, the express terms of a local franchise will prevail over conflicting provisions of this chapter. The terms of a state franchise will prevail over conflicting provisions of this chapter.

B. The provisions of a franchise agreement will be liberally construed in favor of the city in order to effectuate the purposes and objectives of this chapter and the franchise agreement and to promote the public interest.

C. Except as to matters which are governed solely by federal law or regulation, a franchise agreement will be governed by and construed in accordance with the laws of the state of California. (Ord. 382 § 1 (part), 1991)

**14.01.080 Applications for grant, renewal, modification or transfer of local franchises.**

A. A written application shall be filed with the city for (1) grant of a new local franchise; (2) renewal of local franchise under either the formal or informal procedures in accordance with Section 626 of the Cable Act, 47 U.S.C. § 546; (3) modification of a franchise agreement; (4) a transfer of a local franchise; or (5) any other relief from the city pursuant to this chapter or a franchise agreement. An applicant has the burden to demonstrate in its application compliance with all requirements of this chapter and of all applicable laws.

B. To be acceptable for filing, a signed original of the application shall be submitted together with ten copies, be accompanied by the required

application filing fee as set forth in subsection I of this section, conform to any applicable request for proposals, and contain all required information. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

C. All applications accepted for filing shall be made available by the city for public inspection.

D. An application for the grant of a new local franchise may be filed pursuant to a request for proposals issued by the city or on an unsolicited basis. The city, upon receipt of an unsolicited application, may issue a request for proposals. If the city elects to issue a request for proposals upon receipt of an unsolicited application, the applicant may submit an amended application in response to the request for proposals, or may inform the city that its unsolicited application should be considered in response to the request for proposals, or may withdraw its unsolicited application. An application which does not conform to the requirements of a request for proposals may be considered non-responsive and denied on that basis.

E. In addition to any information required to be submitted under applicable federal law and FCC regulations, an application for the grant of a local franchise shall contain, at minimum, the following information:

1. Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of the ten largest holders of an ownership interest in the applicant, and all persons with five percent or more ownership interest; the persons who control the applicant; all officers and directors of the applicant; and any other business affiliation and cable system ownership interest of each named person;
2. An indication of whether the applicant, or any person controlling the applicant, or any officer or major stockholder of the applicant, has been adjudged bankrupt, had a cable franchise or license revoked, or been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances;
3. A demonstration of the applicant's technical, legal and financial ability to construct and/or operate the proposed cable system, including identification of key personnel;
4. A description of the applicant's prior experience in cable system ownership, construction and operation, and identification of communities in which the applicant or any of its principals have, or have had, a cable franchise or license or any interest therein;
5. Identification of the area of the city to be served by the cable system, including a description of the service area's boundaries;
6. A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities;
7. Where applicable, a description of the construction of the proposed system, including an estimate of below-ground mileage and



its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information of the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;

8. A description of the services to be provided initially, including all broadcast and nonbroadcast signals to be carried and all nontelevision services to be delivered over the cable system, and if services will be offered by tiers, identification of the signals and/or services to be included on each tier;

9. For informational purposes, the proposed rate structure, including charges for each service tier, installation, converters, and other equipment or services, and the applicant's ownership interest in any proposed program services to be delivered over the cable system;

10. A demonstration of how the proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the city;

11. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the proposal meets all federal and state requirements;

12. If an applicant proposes to provide video service to an area already served by an existing cable franchisee, the identification of the area where the overbuild would occur, the potential subscriber density in the area which would encompass the overbuild, and other information as necessary for the city to make its determination pursuant to 14.01.090(C); and

13. Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this chapter and information that the city may request of the applicant that is relevant to the city's consideration of the application.

F. An application for modification of a franchise agreement shall include, at minimum, the following information:

1. The specific modification requested;

2. The justification for the requested modification, including the impact of the request modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved;

3. A statement whether the modification is sought pursuant to Section 625 of the Cable Act, 47 U.S.C. Section 545, and if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. Section 545; and

4. Any other information necessary for the city to make a determination.

- G. An application for renewal of a local franchise shall comply with applicable laws.
- H. An application for approval of a transfer of a local franchise shall comply with the requirements of Section 14.01.220 hereof.
- I. To be acceptable for filing, an application shall be accompanied by a filing fee to be established by resolution of the city council. (Ord. 382 § 1 (part), 1991)

**14.01.090 Grant of local franchises.**

- A. The city may grant a local franchise for a period not to exceed fifteen years to serve all or a specified area of the city.
- B. The city may make the grant of a local franchise conditioned upon the completion of construction within a prescribed time or upon the performance of other specific obligations which are to be set forth in the franchise agreement, specifying that failure to comply with the condition will cause the local franchise to become null and void without further action by the city.
- C. In evaluating an application for a local franchise, the city may consider, among other things, the following factors: the applicant's technical, financial, and legal qualifications to construct and operate the proposed system; the nature of the proposed facilities, equipment, and services; the applicant's record in other communities, if any; the ability of city streets to accommodate the proposed system; the potential disruption to users of city streets and any resultant inconvenience to the public; and whether the proposal will meet reasonably anticipated community needs and serve the public interest. Where an applicant proposes an overbuild of an existing cable system, the city may also consider the economic feasibility of multiple cable operators, the impact on the existing franchisee, and whether any adverse consequences to the public interest will result if the application is granted, and shall consider any other criteria as required by applicable law.
- D. The city council may hold a public hearing to consider an application. Based upon the application, the testimony presented at the public hearing, any recommendations of the city manager or staff, and any other information relevant to the application, the city council shall decide whether to grant or deny a local franchise application and the terms and conditions of a local franchise.
- E. If the city grants a local franchise application, the city manager and the franchisee shall agree on the terms of a franchise agreement within one hundred twenty calendar days from the date of the resolution making the grant unless a shorter timeframe is mandated under applicable law, including FCC regulations. If permissible under applicable laws, this period may be extended for good cause by the city.
- F. Following at least seventy-two hours' prior notice to the franchisee and the public, the city council may hold a public hearing at which it will receive comment on the proposed franchise agreement.
- G. After complying with the above requirements, the city council shall approve or disapprove the proposed franchise agreement by resolution, or may direct that it be subject to further negotiation.

H. The grant of an initial local franchise, a renewed local franchise, an application to modify a franchise agreement, or an application to transfer a local franchise may be subject to a processing fee in an amount not to exceed the city's out-of-pocket costs, including all costs and fees incurred by the city for consultants, analysts and counsel, in considering the application, less the amount of the filing fee. Within thirty calendar days of the date of the resolution approving the franchise agreement or modification thereof by the city council, the city shall notify the franchisee of the amount of any processing fee and its method of calculation. If the processing fee is not paid to the city within sixty calendar days of the date of the city council- resolution approving the franchise agreement or a modification thereof, the grant will be null and void. (Ord. 382 § 1 (part), 1991)

L. The City will comply with any state or federal mandatory deadlines for processing an Application.

#### **14.01.100 Insurance--Surety--Indemnification.**

A. A franchisee shall maintain, and by its acceptance of the local franchise specifically agrees that it will maintain, throughout the entire length of the local franchise period, the following liability insurance coverage insuring the city and the franchisee: worker's compensation insurance to meet all state requirements and general comprehensive liability insurance with respect to the construction, operation and maintenance of the cable system, including the operation of motor vehicles, in the minimum amounts of:

1. General Liability: Two Million and No/100 Dollars per occurrence for bodily personal injury and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to a local franchise or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Two Million and No/100 Dollars per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of California, and Employer's Liability Insurance.

B. All insurance policies shall be with sureties qualified to do business in the state of California, and in a form approved by the city attorney. The city may require coverage and amounts in excess of the above minimums where necessary in view of the franchisee's greater exposure to liability.

C. A franchisee shall indemnify, defend and hold harmless the city, its officers, employees, elected and appointed officials, volunteers and agents from and against any liability, claims, actions, judgments, settlements or losses that in any way arise out of franchisee's construction, operation, maintenance or removal of the cable system or franchisee's provision of video service, including, but not limited to, reasonable attorneys' fees and costs.

D. The indemnification of city by franchisee shall apply to all damages and claims for damages of any kind suffered by reason of any of franchisee's operations referred to in a franchise, regardless of whether or not insurance

policies have been determined to be applicable to any such damages or claims for damages.

E. City does not, and shall not, waive any rights against franchisee which it may have by reason of the indemnification provided for in a local franchise, because of the acceptance by city, or the deposit with city by franchisee, of any of the insurance policies described in a local franchise.

F. In order for city to assert its rights to be indemnified, defended, and held harmless, city must, with respect to each claim:

1. promptly notify franchisee in writing of any claim or legal proceeding which gives rise to such right;
2. afford franchisee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
3. fully cooperate with reasonable requests of franchisee, at franchisee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph (2) above.

#### **14.01.110 Security fund.**

A. A security fund shall be established for the benefit of the City in any local franchise granted hereunder.

B. The rights reserved to the city with respect to the security fund are in addition to all other rights of the city, whether reserved by this chapter or authorized by other law, or the franchise agreement, and no action, proceeding or exercise of a right with respect to such security fund will affect any other right the city may have. (Ord. 382 § 1 (part), 1991)

#### **14.01.120 Minimum facilities and services.**

A. The following minimum requirements for facilities and services apply to all franchises. The city may require in a franchise agreement that a franchisee exceed these minimum requirements where it determines, under circumstances existing at the time of the application, that the additional requirements are necessary to meet public needs.

1. Any cable system constructed, upgraded, or reconstructed after the effective date of the ordinance codified in this chapter shall have (1) a minimum of 750 MHz capacity or its functional equivalent; and (2) two-way capability.
2. The city may require that a local franchise provide access channels for public, educational and governmental use.
3. A cable system shall provide leased access channels as required by federal law.
4. A franchisee may be required to provide video service without charge to all facilities within the city passed by the cable system that are owned or occupied by a governmental entity for predominantly educational or governmental use. Such video service shall be provided by means of a single drop extending to each building selected by the governmental entity. One such drop, designated by

the city manager, shall provide all services available over the cable system, with the exception of optionally charged premium services. The franchisee shall not be required to extend such single drop to a governmental entity more than two hundred feet from the cable distribution line, unless the governmental entity being served agrees to bear the expense of any additional extension beyond that point. Such single drop may be internally extended by the governmental entity without cost to, or responsibility of the franchisee, subject to the condition that all such internal extensions shall be inspected for signal leakage by the franchisee, at no cost to the governmental entity, to ensure they meet all FCC requirements relative to signal leakage. The cost of repairing any signal leakage on such internal extensions will be the responsibility of the governmental entity.

5. A franchisee shall design its system to allow the city to interrupt video service in an emergency to deliver necessary information to subscribers.

6. A franchisee shall make available to its subscribers equipment capable of decoding closed circuit captioning information for the hearing impaired. A franchisee may impose a reasonable charge for such equipment.

7. Standard installation shall consist of a drop, not exceeding one hundred twenty-five feet to the customer's residence or place of commercial business. Residential or commercial business drops in excess of one hundred twenty-five feet may be charged according to the franchisee's rate schedule.

B. Unless a franchise agreement provides otherwise, a franchisee shall make video service available to every dwelling within the franchisee's service area. (Ord. 382 § 1 (part), 1991)

#### **14.01.130 Franchise fee.**

A. During the term of a local franchise, franchisee shall pay city a quarterly franchise fee in an amount equal to five percent (5%) of its quarterly gross revenues, or such other amounts as are subsequently permitted by applicable law.

B. Any payments due under this provision shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each quarter together with a report showing the basis for the computation. In the event that a franchise fee payment or other sum due is not received by the city on or before the date due, or is underpaid, franchisee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to one and one-half percent (1.5%) per month or as otherwise allowed by applicable laws. Failure to remit the undisputed franchise fee to the city shall be considered a material breach of a franchise agreement and subject franchisee to all available enforcement provisions under the franchise agreement, this chapter and applicable laws.

C. All amounts paid shall be subject to audit and recomputation by city and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the city should conduct a review of franchisee's books and records and such review

indicates a franchise fee underpayment of five percent (5%) or more, the franchisee shall assume all reasonable documented costs of such audit, and pay same upon demand by the city.

D. The city shall have the right to inspect, upon reasonable written notice and during normal business hours, or require franchisee to provide within a reasonable time a reasonable number of copies of any non-confidential records maintained by franchisee which relate to system operations including specifically franchisee's accounting and financial records. City acknowledges that some of the records which may be provided by franchisee may be classified as confidential and therefore may subject franchisee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by franchisee which are not required to be made public pursuant to applicable laws. City shall notify franchisee whenever confidential, proprietary documents are sought prior to the intended release, so that franchisee may seek protection in accordance with state law. Franchisee shall produce such books and records for city's inspection at franchisee's local office within the service area or at such other mutually agreed upon location within the San Francisco Bay Area Market. To the extent it is necessary for city to send a representative to a location outside of the city to inspect franchisee's books and records, franchisee shall be responsible for reasonable travel costs, including, but not limited to airfare, hotel, meals, car rental, etc. For purposes of this section, "reasonable travel costs" shall mean those costs incurred in a manner consistent with the city's internal guidelines for travel expense reimbursement.

#### **14.01.140 Reports and records.**

A. Franchisee shall at all times maintain:

1. A written or computer-stored record of all service calls and interruptions or degradation of service experienced for the preceding two years, provided that such complaints result in or require a service call, subject to the subscriber's right of privacy.
2. If requested by city, a summary of service calls, identifying the number, general nature and disposition of such calls, on a quarterly basis. A summary of such service calls shall be submitted to the city within thirty days following any written request by city, in a form reasonably acceptable to the city.
3. If requested by city, a complaint record which shall contain a semi-annual (January 1 through June 30 and July 1 through December 31) breakdown indicating the total number of escalated complaints received for the preceding reporting period, and shall indicate the classifications of complaints as follows: construction, billing, customer relations/service and miscellaneous. Escalated complaints shall mean those complaints that are received by the city, or received in writing by franchisee's area management.
4. A full and complete record of rates for programming services, equipment, Installations and other subscriber charges. This information shall include, but not be limited to, rates for the basic

service tier, tiers of service beyond the basic tier, premium service, pay-per-view services, late fees, additional outlets, converters, remote controls and any charges for installation or service at the subscriber premises.

5. Upon reasonable written notice to franchisee, and subject to federal Subscriber privacy requirements, the city may review franchisee's books and records regarding the operation of the cable system and the provision of video service in the service area which are reasonably necessary to monitor franchisee's compliance with the provisions of a local franchise at the franchisee's business office, during normal business hours, and without reasonably interfering with franchisee's business operations.

6. Franchisee shall make available to the city for inspection all maps and charts of cable locations prepared by or for the franchisee during the duration of a local franchise.

7. The city shall have the right to inspect all construction and Installation work performed by a franchisee subject to a local franchise as it shall find necessary to insure compliance with governing ordinances and a franchise, and shall have the right to inspect a franchisee's cable system.

8. Personally identifiable Subscriber information that is confidential under Section 631 of the Cable Act and so designated by franchisee shall not be subject to review by the city. Subject to the foregoing, access to franchisee's records shall not be denied to the city on the basis that the records contain proprietary information. Subject to applicable law, including the California Public Records Act, California Government Code Section 6250 et seq., the city shall keep any information which is marked "proprietary" or "confidential" (and under applicable law, deemed "proprietary" or "confidential") submitted by franchisee as required under a franchise agreement ("Information") in confidence. The city shall not disclose the Information or any part thereof to any third party, government agency or regulatory body seeking to inspect or obtain the Information without first informing franchisee of such request and affording franchisee the opportunity to resist such disclosure at its sole cost and expense. The city shall not be liable to franchisee for any submission or disclosure of such Information to a third party as required by applicable law or to a government agency or regulatory body seeking the Information and claiming jurisdiction in any of these events. Nothing in this section shall limit the right of franchisee to contest disclosure or submission to a third party as required by applicable law or to a government agency or regulatory body asserting jurisdiction over it or such subject matter before such disclosure shall be effected.

B. A franchisee shall maintain a complete set of books and records available for inspection and audit by the city for purposes of ascertaining compliance with requirements of this chapter and the franchise agreement.

Such inspection and audit shall be upon reasonable notice and during normal business hours.

C. Upon written request of the franchisee and to the extent allowed by applicable law, information of a proprietary nature submitted to the city pursuant to this chapter or a franchise agreement will not be made available for public inspection if the city attorney finds that such information should not be made public. (Ord. 382 § 1 (part), 1991)

#### **14.01.150 Customer service requirements.**

A. Local franchises. Customer service requirements for local franchises shall include, at a minimum, the following:

1. Cable system office hours and telephone availability:
  - i. Franchisee will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers twenty-four hours a day, seven days a week.
    - a. Trained franchisee representatives will be available to respond to customer telephone inquiries.
    - b. Franchisee's representatives at the local office shall, at a minimum, be able to provide immediate billing information, provide for equipment pick-up and drop-off, and customer service information.
  - ii. Under normal operating conditions, telephone answer time by a customer service representative, including wait time, shall not exceed thirty seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty seconds. These standards shall be met no less than ninety percent of the time under normal operating conditions, measured on a quarterly basis.
  - iii. Under normal operating conditions, the customer will receive a busy signal less than three percent of the time.
  - iv. Franchisee shall maintain at a minimum the current level of equipment sufficient to measure compliance with the telephone answering standards above.
  - v. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.
2. Installations, Outages and Service Calls. Under normal operating conditions, each of the following standards will be met no less than ninety-five percent of the time measured on a quarterly basis:
  - i. Standard installations will be performed within seven business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five feet from the existing distribution system.



ii. Excluding conditions beyond the control of franchisee, franchisee will begin working on “Service interruptions” promptly and in no event later than twenty-four hours after the interruption becomes known. Franchisee must begin actions to correct other service problems the next business day after notification of the service problem. Franchisee shall use its best efforts to resolve all Service interruptions within forty-eight hours under normal operating conditions.

iii. The “appointment window” alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four hour time block during normal business hours. Franchisee shall schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

iv. Franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

v. If franchisee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

3. Service Standards:

i. Franchisee shall render efficient service, make repairs promptly, and interrupt Service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the Cable System, preferably between midnight and six a.m. local time.

ii. A franchisee shall maintain a repair force of technicians capable of responding to subscriber requests for service within the following time frames:

a. For a system outage: within two hours, including weekends, of receiving subscriber calls or requests for service which by number identify a system outage of sound or picture of one or more channels, affecting at least ten percent of the subscribers of the system.

b. For an isolated outage: within twenty-four hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one or more channels that affects five or more Subscribers. On weekends, an outage affecting fewer than five subscribers shall result in a service call no later than the next business day.

- c. For inferior signal quality: Within two business days of receiving a request for service identifying a problem concerning picture or sound quality.
    - iii. Franchisee shall not charge for the repair or replacement of defective or malfunctioning equipment provided by franchisee to subscribers, unless the malfunction was caused by the subscriber or the equipment is owned by the Subscriber.
- 4. Communications between franchisee and subscribers:
  - i. Notifications to subscribers:
    - a. Franchisee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:
    - b. Products and services offered;
    - c. Prices and options for programming services and conditions of subscription to programming and other services;
    - d. Installation and service maintenance policies;
    - e. Instructions on how to use the video service;
    - f. Channel positions of the programming carried on the System; and
    - g. Billing and complaint procedures, including the address and telephone number of the city.
  - ii. Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty days in advance of such changes if the changes are within the control of the franchisee. In addition, the franchisee shall notify subscribers thirty days in advance of any significant changes in the other information required herein. A franchisee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, franchise fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or city on the transaction between the operator and the subscriber.
  - iii. All programming decisions remain the discretion of franchisee in accordance with a franchise agreement, provided that franchisee notifies city and subscribers in writing thirty days prior to any channel additions, deletions, or realignments directed to each subscriber individually through mailed notice or as an insert or addendum to the subscriber's monthly bill, and further subject to franchisee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to city's rights pursuant to 47 U.S.C. § 545.

Location and relocation of the PEG Channels shall be governed by provisions specified in a local franchise.

5. Billing and information standards:

i. Subscriber bills shall be clear, concise and understandable. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

ii. In case of a billing dispute, a franchisee shall respond to a written complaint from a subscriber within thirty days.

iii. Franchisee shall, upon request, provide credits or refunds to such subscribers whose service has been interrupted for twenty four consecutive hours or more, and upon request to Subscribers whose service has been interrupted for two or more hours, not necessarily consecutive, within any twenty-four day.

Credits or refunds shall, upon request, be provided by franchisee on a pro rata basis to any subscriber(s) affected by interruption(s) of Service for more than two hours due to actions or outages under the control of the franchisee, exclusive of scheduled repairs, maintenance or franchisee-required construction that a franchisee has provided advance written notice of to subscribers. In cases where advance written notice is provided to subscribers, the time period detailed in said notice shall not exceed four hours in any twenty-four hour period. In cases where said notice has been given to subscribers and the service interruption exceeds the period detailed in said notice, the provisions of this section shall apply.

In the event franchisee has improperly or inadvertently disconnected video services to a subscriber, franchisee shall provide for restoration without charge to subscriber as soon as possible, but no later than within two days of discovery of disconnection. A franchisee shall credit or provide refunds to any subscriber improperly or inadvertently disconnected from receiving video services for the period of time without video service.

All credits or refunds for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted. For subscribers terminating service, refunds shall be issued promptly, but no later than thirty days after the return of any franchisee-supplied equipment.

6. Verification of compliance with standards

i. A franchisee shall, upon request, provide city, within thirty days of the end of each quarter with a report, in a form acceptable to the city and specific to the cable system serving the city, regarding franchisee's compliance with each of the standards required herein or in a local franchise.

ii. A repeated or verifiable pattern of noncompliance with the consumer protection standards above, after franchisee's receipt of due notice and a reasonable opportunity to cure, shall be deemed a material breach of the franchise.

iii. Franchisee shall take necessary steps to ensure that adequate telephone lines and/or staffing are available to permit franchisee to satisfy its obligations under a local franchise. Consideration shall be given for periods of promotional activities or outages. The monthly billing period shall be considered as a normal, daily activity for purposes of determining the availability of adequate telephone lines and/or staffing.

7. Subscriber complaints and disputes

i. Franchisee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the city. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction. Franchisee shall provide a copy of these procedures to city upon city's request. The written procedures shall include a requirement that franchisee respond to any written complaint from a subscriber within thirty days of receipt.

ii. Upon prior written request, city shall have the right to review franchisee's response to any subscriber generated complaints referenced to the city in order to determine franchisee's compliance with the local franchise requirements, subject to the subscriber's right to privacy.

iii. Subject to applicable law, it shall be the right of all subscribers to continue receiving video service insofar as their financial and other obligations to the franchisee are honored. In the event that the franchisee elects to rebuild, modify, or sell the system, or the city gives notice of intent to terminate or not to renew a local franchise, franchisee shall act so as to ensure that all subscribers receive video service so long as a local franchise remains in force.

iv. In the event of a change of control of franchisee, or in the event a new operator acquires the system, the original

franchisee shall cooperate with the city, new franchisee or operator in maintaining continuity of service to all subscribers.

v. Should a franchisee supervisor not be available when requested by a subscriber, franchisee shall make its best effort to ensure that a supervisor shall respond to the subscriber's complaint at the earliest possible time, and in no event later than the end of the next business day.

vi. For complaints received by city and provided by city to franchisee, franchisee shall immediately undertake all reasonable steps to address said complaints and shall, within seven business days, notify city of franchisee's progress in responding to and resolving said complaints.

8. Other requirements

i. In the event franchisee fails to fully operate the System for five consecutive days other than for reasons beyond the control of franchisee, without prior approval or subsequent excuse to the city, the city may, at its sole option, operate the system or designate an operator until such time as franchisee restores service under conditions acceptable to the city or another operator is selected. If the city should fulfill this obligation for the franchisee, the franchisee shall reimburse the city for all reasonable costs or damages that are the result of franchisee's failure to perform.

ii. All officers, agents or employees of franchisee or its contractors or subcontractors who, in the normal course of work come into contact with members of the public or who require entry onto subscribers' premises shall carry a photo-identification card. Franchisee shall account for all identification cards at all times. Every vehicle of the franchisee or its major subcontractors shall be clearly identified as working for franchisee.

B. State franchise. Persons holding a state franchise shall comply with the following:

1. A holder of a state franchise shall be subject to the City's right to enforce compliance with all customer service and protection standards of Section 5900 of the California Public Utilities Code with respect to complaints received from residents within the City.
2. A holder of a state franchise shall comply with the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2 (with the exception of Subsections (q), (r) and (s) of 53088.2) of the California Government Code and any other customer service standards pertaining to the provisions of video service established by federal or state laws or regulations.
3. The City shall have the right to resolve any disputes concerning a state franchise holder's compliance with the provisions of Section 53088.2 (a - p) of the California Government Code.
4. The holder of a State Franchise shall be subject to the following penalties and enforcement procedures for any material breach of the provisions cited in subparagraph 14.01.150 (B) (2) above:
  - i. The City shall provide a state franchise holder with written notice of any alleged material breach and shall allow thirty (30) days from the date of receipt of said notice for a video service provider to remedy the specified material breach. A "material breach" shall mean any substantial and repeated failure of a video service provider to comply with service quality and other specified standards referenced in subparagraph 14.01.150 (B) (2) above. A video service provider shall not be subject to penalties or held in breach when the alleged material breach was caused by an act of god or events beyond the reasonable control of the video service provider.
  - ii. If the specified material breach is not remedied with thirty (30) days, the City shall have the right to impose a monetary penalty of five hundred dollars (\$500) per day for each material breach not to exceed one thousand five hundred dollars (\$1500) for each occurrence of a material breach
  - iii. If a material breach has occurred, and the city has provided notice and a fine or penalty has been assessed, and if a subsequent material breach of the same nature occurs within 12 months, the penalty shall be one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach. If a third or further material breach of the same nature occurs within those same 12 months, and the city has provided notice and a

fine or penalty has been assessed, the penalty shall be increased to a maximum of two thousand five hundred dollars (\$2,500) for each day of each material breach, not to exceed seven thousand five hundred dollars (\$7,500) for each occurrence of the material breach.

iv. A material breach for the purposes of assessing penalties shall be deemed to have occurred for each day, following the expiration of the thirty (30) day notice period, that any material breach has not been remedied by the video service provider, irrespective of the number of customers affected.

v. Any interested person may seek judicial review of a decision of the city pursuant to section 14.01.150 (B) (4) in a court of appropriate jurisdiction. For this purpose, a court of law shall conduct a de novo review of any issues presented.

vi. Any penalty paid to the city shall be allocated consistent with applicable law, particularly, section 5900 (g) of the Public Utilities Code of California.

#### **14.01.160 Discrimination prohibited.**

A. No franchisee may in its rates or charges, or in the availability of the services or facilities of its system, or in any other respect, make or grant undue preferences or advantages to any subscriber or potential subscriber to the system, or to any user or potential user of the system, nor subject any such persons to any undue prejudice or any disadvantage; provided, however, a franchisee may offer discounts in order to attract or maintain subscribers provided that such discounts are offered on a nondiscriminatory basis. A franchisee shall not deny, delay, or otherwise burden service or discriminate against subscribers or users on the basis of age, race, creed, religion, color, sex, handicap, national origin, marital status, or political affiliation, except for discounts for the elderly or handicapped that are applied in a uniform and consistent manner.

B. A franchisee shall not deny video service to any potential subscribers because of the income of the residents of the area in which the subscribers reside.

C. A franchisee shall not refuse to employ, nor discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, religion, color, sex, handicap, national origin, marital status, or political affiliation. (Ord. 382 § 1 (part), 1991)

#### **14.01.170 Use of streets.**

A. A franchisee shall utilize, with the owner's permission, existing conduits, or other facilities whenever feasible. Copies of agreements for use of conduits or other facilities shall be filed with the city as required by the franchise agreement or upon city request.

B. All transmission lines, equipment and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners. The city may issue such rules and regulations concerning the installation and maintenance of cable system installed in, on, or over public streets, as may be consistent with this chapter and the franchise agreement.

C. All safety practices required by law shall be used during construction, maintenance and repair of a cable system.

D. As required by the city following reasonable notice, a franchisee shall remove, replace or modify at its own expense the installation of any of its facilities within any public street to allow the city to change, maintain, repair or improve any such street.

E. Cable system facilities shall be installed underground at no expense to the city or subscribers, except as provided in Section 14.01.120A4 and Section 14.01.120A7.

F. A franchisee shall obtain any required permits before causing any damage or disturbance to private property or public streets as a result of its construction or operations. A franchisee shall restore such property to their former condition in a manner approved by the city. If such restoration is not performed in a reasonable and satisfactory manner within seven days, the city, or the private property owner may, after prior written notice to the franchisee, cause the repairs to be made at the expense of the franchisee.

G. A franchisee may trim vegetation within public streets at its own expense as necessary to protect its cable system equipment subject to any direction that may be provided by the city. Vegetation on private property may be trimmed with the consent of the property owner.

H. At the request of any person holding a valid building moving permit and upon not less than forty-eight hours advance written notice, the franchisee shall temporarily raise, lower or remove its cable system equipment as necessary to permit the moving of a building. The expense of such temporary changes, including standby time, shall be paid by the permit holder, and the franchisee may require payment in advance.

I. A franchisee shall not place facilities, equipment or fixtures where they will interfere with any gas, electric, telephone, water or sewer facilities or obstruct or hinder in any manner the various utilities serving the residents of the city. All such facilities, equipment or fixtures placed in any public street shall be placed close to the line of the lot abutting on the public street, in a manner as not to interfere with use of the public street. (Ord. 382 § 1 (part), 1991)

#### **14.01.180 Subscriber privacy.**

A. A franchisee shall protect the privacy of all subscribers pursuant to the provisions of Section 631 of the Cable Act, 47 U.S.C. Section 551. A franchisee shall not condition subscriber service on the subscriber's grant of permission to disclose information which, pursuant to federal or state law, cannot be disclosed without the subscriber's explicit consent.

B. The franchisee, its agents and employees shall not, without the specific written authorization of the subscriber involved, sell, or otherwise



make available any lists of the names, addresses or telephone numbers of such subscribers, or any list which identifies the individual viewing habits of subscribers. (Ord. 382 § 1 (part), 1991)

#### **14.01.190 Technical standards.**

A. Any cable system within the city shall meet or exceed the technical standards set forth in this chapter, the franchise agreement, and FCC or other applicable federal or state technical standards. The system shall be capable of delivering all National Television Systems Committee (NTSC) color and monochrome standards signals and designed to provide picture quality of TASO grade 2 or better and superior reliability. All television signals transmitted on a cable system shall include any closed circuit captioning information for the hearing impaired. Antennas, supporting structures, and outside plant used in the system shall be designed to comply with the recommendations of the Electronics Industry Association on tower structures and outside plant, and with all city and/or district ordinances, rules and regulations.

B. All construction, installation and maintenance shall comply with the National Electrical Safety Code, the National Electric Code, and all laws and accepted industry practices.

C. At the stages of construction specified in the franchise agreement, the franchisee shall perform at its expense proof of performance tests designed to demonstrate compliance with the requirements of this chapter, the franchise agreement, and then existing FCC requirements. The franchisee shall provide the proof of performance test results promptly to the city. The city shall have the right to inspect the cable system facilities during and after their construction to ensure compliance with the requirements of the franchise agreement, this chapter, and FCC standards.

D. A franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the electrical system located in any building, the cable system of another franchisee, or individual or master antennas used for receiving television or other broadcast signals. (Ord. 382 § 1 (part), 1991)

#### **14.01.200 Enforcement remedies.**

A. In addition to any other remedies available at law or equity, the city has the right to apply any one or combination of the following remedies in the event a franchisee violates this chapter, its franchise agreement or applicable state or federal law:

1. Impose liquidated damages in such amount, whether on a per-diem, per-incident, or other measure of violation, as provided in the franchise agreement. Payment of liquidated damages by the franchisee will not relieve the franchisee of its obligation to comply with the franchise agreement and chapter requirements;
2. Revoke the franchise pursuant to the procedures specified in the franchise.
3. In the event of termination or forfeiture of a local franchise or abandonment of the system, city shall have the right to require

franchisee to remove all or any portion of the system from all rights-of-way and public property within city.

4. If franchisee has failed to commence removal of system, or such part thereof as was designated by city, within thirty (30) days after written notice of city's demand for removal is given, or if franchisee has failed to complete such removal within twelve months after written notice of city's demand for removal is given, city shall have the right to apply funds secured by the performance bond toward removal and/or declare all right, title, and interest to the system to be in city with all rights of ownership including, but not limited to, the right to operate the system or transfer the system to another for operation by it.

B. In determining which remedy or remedies are appropriate, the city shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the city determines are appropriate.

C. In addition to or instead of any other remedy, the city may seek legal or equitable relief from any court of competent jurisdiction.

D. Failure of the city to enforce any requirements of a franchise agreement or this chapter shall not constitute a waiver of the city's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies. (Ord. 382 § 1 (part), 1991)

#### **14.01.210 Renewal of local franchise.**

A. Renewal shall be conducted in a manner consistent with applicable laws.

#### **14.01.220 Transfers.**

A. Neither the franchisee nor any other person may, sell, transfer or assign the cable system or the local franchise without the prior written consent of the city, which consent shall not be unreasonably withheld. No change in control of the franchisee shall take place without the prior written consent of the city, which consent shall not be unreasonably withheld. The term "change of control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the franchisee in the franchise or in the cable system in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by franchisee.

B. In the event franchisee chooses not to file FCC Form 394 when seeking approval of a sale, transfer, assignment or change of control, franchisee shall file all necessary contracts, agreements, and documentation required to understand the nature and purpose of the transaction as well as appropriate evidence and information regarding the legal, technical and financial qualifications of the proposed transferee.

C. In no event shall a sale, transfer, assignment or change of control be approved without the transferee becoming a signatory to a local franchise and assuming all rights and obligations under the local franchise, and assuming all other rights and obligations of the transferor to the city including, but not limited to, any adequate guarantees or other security instruments required by the city.

D. No local franchise may be transferred if city determines franchisee is in noncompliance with a local franchise unless an acceptable compliance program has been approved by city. The approval of any transfer, sale, assignment or change of control pursuant to this section shall not be deemed to waive any of city's rights to subsequently enforce noncompliance issues relating to a local franchise even if such issues predated the approval, whether known or unknown to the city.

**14.01.230 Revocation or termination of local franchise.**

A. The procedure for revocation and/or termination of a local franchise shall be set forth in any franchise agreement granted hereunder.

**14.01.240 Continuity of service mandatory.**

A. It is the right of all subscribers to receive all available services from the franchisee as long as their financial and other obligations to the franchisee are satisfied.

B. In the event of a termination or transfer of the local franchise for whatever reason, the franchisee shall ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. The franchisee shall cooperate with the city to operate the system for a temporary period following termination or transfer as necessary to maintain continuity of service to all subscribers. The temporary period will not exceed six months without the franchisee's written consent. During such period the cable system shall be operated under such terms and conditions as the city and the franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to subscribers and that will provide reasonable compensation to the cable operator.

C. In the event a franchisee fails to operate the system for five consecutive days without prior approval of the city or without just cause, the city may, at its option, operate the system or designate an operator until such time as the franchisee restores service under conditions acceptable to the city or until a permanent operator is selected. If the city is required to fulfill this obligation for the franchisee, the franchisee shall reimburse the city for all costs or damages resulting from the franchisee's failure to perform that are in excess of the revenues from the system received by the city. Additionally, the franchisee will cooperate with the city to allow city employees and/or city agents free access to the franchisees' facilities and premises for purposes of continuing system operation. (Ord. 382 § 1 (part), 1991)

**14.01.250 Rates.**

A. Rates and charges may be changed by the franchisee following a minimum thirty calendar days prior written notice to the city and the subscribers. At such time as federal law permits rate regulation, the city

reserves all rights to implement and impose such regulation, and may do so by amendment to this chapter by separate ordinance, and by amendment to a franchise agreement.

B. Nothing in this chapter shall prohibit the city from regulating rates for basic cable service to the extent permitted by law. (Ord. 382 § 1 (part), 1991)

#### **14.01.260 Disconnection.**

A. A franchisee shall not charge for disconnection of any installation or outlet. All cable equipment shall be removed within a reasonable time from a subscriber's property at the subscriber's request, such time not to exceed thirty days from the date of the request.

B. If a subscriber fails to pay a monthly subscriber or other fee or charge, the franchisee may disconnect the subscriber's service outlet; however, such disconnection shall not be effected until thirty days after the due date of the monthly subscriber fee or other charge, and after ten days advance written notice of intent to disconnect to the subscriber in question. If the subscriber pays within thirty days of the due date and after notice of disconnection has been given, the franchisee shall not disconnect. After disconnection, upon payment in full of all proper fees or charges, including the payment of the reconnection charge, if any, the franchisee shall promptly reinstate service. (Ord. 382 § 1 (part), 1991)

#### **14.01.270 Access channels and facilities.**

A. Applications for an initial or renewed local franchise shall include proposals for the provision of access channels and equipment and facilities relating to such channels sufficient to meet community needs, and shall, at minimum, include:

1. One government access channel for the exclusive use of the city, including facilities, equipment and cabling necessary to permit cablecast of all city council meetings, city planning commission meetings, and other public meetings held in the city council chambers, as well as a state-of-the-art character generator to permit transmission of public service messages;

2. One educational access channel for use by the public schools within the city and the ability of the city's educational access channel to interconnect with the educational access channel(s) of surrounding communities served by the school districts which serve Foster City; and

3. One public access channel, which access may be shared with other communities served by the franchisee.

B. With respect to the local government channel, the franchisee shall provide, at the request of the city manager or his designee, and upon city reimbursement of franchisee's actual cost, use of franchisee's studio equipment and technical services for production of live and video-taped municipal programs, subject to availability and scheduling requirements of the franchisee.

C. Applications for an initial or renewed local franchise may include proposals for the provision of an institutional network connecting

governmental and other public facilities, and shall include such proposals if requested by the city. (Ord. 382 § 1 (part), 1991)

**14.01.280 Performance evaluation.**

The city may conduct periodic performance evaluations as specified in a local franchise.

**14.01.290 Administration.**

A. The city manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of the ordinance codified in this chapter and franchise agreements. The city manager shall be empowered to take all administrative actions on behalf of the city, except for those actions specified in this chapter that are reserved to the city council. The city manager may recommend that the council take certain actions with respect to local franchises. The city manager shall keep the council apprised of developments in cable and telecommunications and provide the council with assistance, advice and recommendations as appropriate.

B. The city council shall have the sole authority to grant local franchises, enter into franchise agreements, modify franchise agreements, renew local franchises, revoke local franchises, and authorize the transfer of local franchises; provided, however, the city manager may act on pro forma transfer applications. (Ord. 382 § 1 (part), 1991)

**14.01.300 Applicability.**

A. This chapter shall be applicable to all local franchises issued by the city, whether or not such franchises were issued prior to the effective date of this chapter, to the full extent permitted by state and federal law. This chapter shall apply to state franchises unless such provisions are specifically preempted by State law.

B. Any franchisee whose franchise agreement predates the effective date of the ordinance codified in this chapter, shall notify the city in writing within ninety calendar days of the passage of the ordinance codified in this chapter, or any subsequent amendment thereof, of:

1. Any provision which it believes should not be applicable to it by reason of the pre-existing franchise agreement or the continuing applicability of the prior ordinance; and
2. The reason for each such claim of nonapplicability.

C. Failure to notify the city as provided in subsection (B) of this section shall constitute a waiver of any right to object. (Ord. 382 § 1 (part), 1991)

**14.01.310 Municipal cable system ownership authorized.**

A. To the full extent permitted by law, the city may construct, own, and/or operate a cable system.

B. Nothing in this chapter shall be construed to limit in any way the ability or authority of the city to construct, own, and/or operate a cable system to the full extent permitted by law. (Ord. 382 § 1 (part), 1991)

**14.01.320 Reservation of rights.**

- A. The city serves the right to amend this chapter as it shall find necessary in the lawful exercise of its police powers.
- B. Any additional regulations adopted by the city shall be incorporated into this chapter and complied with by the franchisee within thirty days of the date of adoption of such additional regulations.
- C. The city reserves the right to exercise the power of eminent domain to acquire the property of the franchisee's cable system. (Ord. 382 § 1 (part), 1991)

Section 3. Severability. If any section, subsection, sentence, clause of phrase of the Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 4. Taking Effect. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption.

Section 5. Posting. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

This Ordinance was introduced and read on the \_\_\_\_ day of \_\_\_\_\_ 2007, and passed and adopted on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the following vote.

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
RON COX, MAYOR

ATTEST:

\_\_\_\_\_  
THERESE CALIC, CITY CLERK