

**Title 13**

**UTILITIES AND FRANCHISES**

**Chapters:**

- 13.05 Franchises Generally**
- 13.10 Solid Waste Management**
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**Chapter 13.05****FRANCHISES GENERALLY**

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**13.05.010 Definitions.**

As used in this chapter:

*City street* means the area within the right-of-way for a city street or road which is a part of the city street system or which is maintained by the city as a city street or road. It includes a way, alley, or place which exists or may exist in the city.

*Franchise property* means the property constructed, installed, operated and maintained in accordance with this chapter and Public Utilities Code sections 6001 through 6092. (1991 code § 17-1)

**13.05.020 Granting of franchise – Exclusive or nonexclusive franchise.**

The city may grant an exclusive or nonexclusive franchise for the purposes described in Public Utilities Code section 6001, for such period as it determines. The city council may grant the franchise by resolution after complying with applicable law including Public Utilities Code sections 6001 through 6092. The franchise is subject to the terms and conditions in this chapter, and the special terms and conditions stated in the resolution granting the franchise. (1991 code § 17-2.1)

**13.05.030 Granting of franchise – Scope and purpose.**

The resolution of the council shall specify the scope and purpose of the franchise. (1991 code § 17-2.2)

**13.05.040 Granting of franchise – Location.**

The grantee may exercise the franchise in, under, along and across city streets and roads in which the city has an interest which supports the grant of this franchise and which does not conflict with a franchise previously granted or the interest of another person in the property. (1991 code § 17-2.3)

**13.05.050 Granting of franchise – Additional terms and conditions.**

In addition to the terms of this chapter and the special terms and conditions established in the resolution granting the franchise, the franchise is subject to provisions and conditions prescribed by federal, state and other local laws and regulations which may affect the franchise during its terms. (1991 code § 17-2.4)

**13.05.060 Granting of franchise – Acceptance – Bond.**

A. Within 60 days after the grant of a franchise, the grantee shall file with the city a written acceptance of the terms and conditions of the grant, together with a bond. The franchise becomes effective when the grantee complies with this provision.

B. During the term of the franchise, the grantee shall maintain and keep on file with the city a bond issued by a qualified corporate surety approved by the city and in its favor in the sum of \$5,000. The condition of the bond shall be that the grantee shall faithfully perform each term and condition of the franchise and that in case of a breach of a condition, the whole amount of the bond is considered as liquidated damages and shall be paid to the city. (1991 code § 17-2.5)

**13.05.070 Fees – Annual fee.**

A. The grantee shall pay to the city an annual franchise fee in the amount of 2% of the gross annual receipts of the grantee arising from the use of the franchise or one cent per inch nominal internal diameter for each lineal foot of pipeline or other underground facility within city streets.

B. The grantee shall pay the fee on or before January 31st of each year for the preceding calendar year. A part of a year shall be prorated. (1991 code § 17-3.1)

**13.05.080 Fees – Recalculation.**

Every 10 years during the term of this agreement, the fee shall be recalculated to allow for increases corresponding to the percentage increase, if any, during the preceding 10 years in the consumer's price index for this area as published by the United States Bureau of Labor Standards. (1991 code § 17-3.2)

**13.05.090 Construction.**

The grantee shall construct, maintain and use the franchise property in a good and workmanlike manner and shall locate it so as not to interfere with the use of the city streets by the traveling public or the use of the city streets for other public purposes. The grantee shall conform to all applicable laws and ordinances. The director of public works and community development must approve the franchise property locations and construction plans before the grantee may begin construction. (1991 code § 17-4.1)

**13.05.100 Public improvement – Relocation of property.**

A. The city may improve a city street or road by widening, changing the grade, constructing or reconstructing the roadbed or constructing, reconstructing, installing, repairing, or maintaining a public improvement in the road. A public agency other than the city may, at any time during the term of the franchise, construct, maintain and use public improvements over, on, in, or under the city street in which the grantee's franchise property is located.

B. If construction, maintenance, or repair by the city or a public agency mentioned in subsection A of this section necessitates the relocation, temporary removal or adjustment of the franchise property, the grantee shall pay the cost.

C. The city or the public agency whose work necessitates the relocation or adjustment of the franchise property shall give at least 10 days' advance written notice to the grantee of the fact that it proposes to engage in work which will interfere with the franchise property. The notice shall specify the general nature and location of the work and shall direct the grantee to take all necessary steps to protect his or her franchise property. The city or the public agency may order the grantee to temporarily disconnect or remove, relocate, or readjust its franchise property to the extent and in the manner necessary to permit the performance of the construction by the city or public agency. (1991 code § 17-4.2)

**13.05.110 Indemnity and damage.**

The grantee shall indemnify and hold the city and its officers, agents and employees harmless from all liability or loss resulting from claims for damages in connection with, or arising out of, the existence of construction, maintenance and use of the franchise property. The grantee shall pay the cost and expense of repairs or damage to any city street or other public improvement which is caused by the grantee's act or failure to act. (1991 code § 17-4.3)

**13.05.120 Abandonment.**

The city may authorize the abandonment in place of the franchise property upon terms and conditions which it considers reasonable and necessary. (1991 code § 17-4.4)

**13.05.130 Transfer.**

A. The grantee may not sell, transfer, or assign this franchise or the rights arising under it without written consent of the city.

B. The franchise property may be owned partly or wholly by persons other than the grantee, but the grantee continues solely responsible for the construction, maintenance and use of the franchise property, and the grantee remains responsible to the city for the full performance and observance of the terms and conditions of the franchise. (1991 code § 17-4.5)

**13.05.140 Noncompliance with regulations.**

If the grantee fails to comply with regulations or directions of the city within 10 days after written notice to do so, the city may take whatever steps are necessary to carry out the instructions and to comply with the regulations. Costs incurred by the city in this regard shall be paid by the grantee. (1991 code § 17-4.6)

**13.05.150 Forfeiture.**

If the grantee neglects, fails, or refuses to comply with a term or condition of the franchise and this continues for more than 15 days following notice from the city to the grantee, the city may declare the franchise forfeited. Upon the forfeiture, the grantee is excluded from the further use or acts in accordance with this franchise and the grantee shall surrender all of its rights under this franchise. (1991 code § 17-4.7)

**Chapter 13.10**

**SOLID WASTE MANAGEMENT**

Sections:

Article I. Purpose – Definitions

- 13.10.010 Purpose.
- 13.10.020 Definitions.

Article II. General Regulations

- 13.10.030 Mandatory collection service – Exceptions.
- 13.10.040 Ownership of solid waste, green waste, recyclables – Disposal by owner.
- 13.10.050 Unlawful collection, scavenging, tampering, littering.
- 13.10.060 Collection containers.
- 13.10.070 Collection and disposal of solid waste, green waste, recyclables.
- 13.10.080 Special collection and disposal restrictions.

Article III. Franchise Agreement

- 13.10.090 Granting franchise agreement – Rates.
- 13.10.100 Terms and standards of service – Programs – Essential provisions.
- 13.10.110 Service rates and billing procedures.

**Article I. Purpose – Definitions**

**13.10.010 Purpose.**

The city council finds that the storage, accumulation, collection, transportation and disposal of solid waste is a matter of great public concern. Improper control of such matters creates a public nuisance, can lead to air and water pollution, fire hazards, illegal dumping, insect breeding, rodent infestation, and other problems affecting the health, safety and welfare of the residents of this and surrounding cities.

The city council also finds that recycling and green waste programs are necessary for the city to achieve the landfill diversion goals mandated by the state. (Integrated Waste Management Act of 1989, Public Resources Code section 40000 and following.) Failure to comply with this mandate exposes the city and its residents to substantial fines and additional costs. (Ord. 775 § 1, 2003; 1991 code § 12-1.1)

**13.10.020 Definitions.**

In this chapter, the following definitions apply:

AB 939. See *California Integrated Waste Management Act*.

*Bulky waste* means discarded large household appliances (white goods), e-waste (except for universal waste), furniture, tires, carpets, mattresses and similar large items which require special handling due to their size, but can be collected without special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned vehicles or household hazardous waste.

*California Integrated Waste Management Act of 1989* or *AB 939* means California Public Resources Code section 40000 and following, and subsequent amendments to it.

*City manager* means the city manager of Pleasant Hill or his or her designee.

*Collection or collect* means the collection of:

- A. Solid waste and its transportation to a transfer station or landfill;
- B. Recyclable material and its transportation to a processing or materials recovery facility; and
- C. Green waste and its transportation to a processing facility or landfill.

*Commercial* means a primarily nonresidential use, including retail sales, professional healthcare, educational services, wholesale operations, manufacturing and industrial operations, and institutional, governmental and nonprofit uses. It does not include a business conducted in a residence with a home occupation permit.

*Compost* means the product resulting from the controlled decomposition of organic wastes, including green waste, wood waste and food waste which are not hazardous wastes.

*Construction and demolition debris* means used or discarded materials resulting from construction, renovation, remodeling, repair, demolition, excavation or construction clean-up operations on any pavement or structure. (See PHMC Chapter 14.40 for regulations.)

*Container* means an approved container used for the disposal and storage until collection of solid waste, green waste or recyclable material. It includes a cart, bin, or drop box (or roll-off box, debris box).

*Diversion requirement* means the diversion of 50% or more of the solid waste and recyclables disposed of in the city, as required by AB 939.

*Environmental laws* means all federal and state statutes and Contra Costa County ordinances and regulations concerning public health, safety and the environment, including amendments to them. These include (by way of example and not limitation):

- A. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq.;
- B. The Resource Conservation and Recovery Act, 42 U.S.C. § 69012 et seq.;
- C. The federal Clean Water Act, 33 U.S.C. § 1251 et seq.;
- D. The Toxic Substances Control Act, 29 U.S.C. § 1601 et seq.;
- E. The Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.;
- F. The California Hazardous Waste Control Act, California Health and Safety Code section 25100 et seq.;
- G. The California Toxic Substances Account Act, California Health and Safety Code section 25300 et seq.;
- H. The Porter-Cologne Water Quality Control Act, California Water Code section 13000 et seq.;
- I. The Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code section 25249.5 et seq.

*E-waste* means discarded electronic equipment such as stereos, radios, speakers, televisions, computers, monitors, VCRs, printers, copiers, facsimile machines, DVDs, microwaves, telephones and similar items, including cathode ray tubes and other universal waste which require special handling.

*Franchisee* means a company that has entered into a contractual franchise arrangement with the city for the collection of solid waste, green waste and/or recyclable materials, under Article III of this chapter.

*Garbage.* See *Solid waste*.

*Green waste* means organic material from trees, shrubs, grass and other vegetation. Trees may not be more than six inches in diameter. Green waste does not include plastic bags, brick, rocks, gravel, large quantities of dirt, concrete, sod, nonorganic wastes, loose fruits and vegetables, tree trunks, stumps, palm fronds, branches more than six inches in diameter or three feet in length, or pet waste.

*Hazardous waste* means any substance defined, regulated or listed as a hazardous substance, hazardous material, toxic waste, pollutant or toxic substance or similarly identified as hazardous to human health or the environment under any California or federal law or regulation, including the environmental laws. (See also *Universal wastes*.)

*Household hazardous waste* means hazardous waste generated at residential sites in the city, including normal residential amounts of household chemicals, pesticides, motor oil, paint, products containing mercury, e-waste categorized as universal waste (such as a television tube or monitor), antifreeze, and lead-acid batteries. (See also *Universal wastes*.)

*Landfill* means a permitted disposal site which accepts solid waste.

*Materials recovery facility (MRF)* means a permitted facility where solid waste or recyclable material is sorted or separated for recycling, reuse or processing.

*Medical waste or infectious waste* means waste which may cause disease or reasonably be suspected of harboring pathogenic organisms, including waste resulting from medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, hospitals, and similar facilities processing wastes which may include human or animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves. (Reference: 17 Cal. Adm. Code 314(d); Health and Saf. Code § 117690.)

*Mixed waste or contaminated recyclables* means combined recyclable materials and nonrecyclable materials.

*Multifamily residential* means a residential structure having multiple residences. Under this chapter, it may be classified as residential (with individual billing for each residence) or commercial (with a single billing for each complex).

*Processing facility* means a facility to which green waste, food waste or recyclable material is brought to be processed (into compost, mulch, or soil amendment), separated, or recycled into other products.

*Recyclable material* means glass, paper, cardboard, wood, concrete, plastic, used motor oil, metal, aluminum, green waste and any other waste material capable of being recycled. It includes construction and demolition debris, including asphalt and concrete. (See regulations regarding management plan for construction and demolition debris, at PHMC Chapter 14.40.)

*Recycling center* means a facility established and licensed for the collection of recyclable materials, including but not limited to buy-back centers or drop-off locations, which are supplemental to the curbside recycling program operated by a franchisee.

*Refuse.* See *Solid waste*.



*Residence or dwelling unit* means an individual living unit having bathroom and kitchen facilities in a single-family or a multifamily building. (See also *Multifamily residential*.) It does not include a hotel or motel or an institutional facility.

*Rubbish*. See *Solid waste*.

*Solid waste* means all solid, semisolid and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, construction and demolition debris, green waste, vehicle parts, discarded home and industrial appliances, sewage sludge (dewatered, treated or chemically fixed), manure, vegetable or animal wastes, and other discarded wastes under Public Resources Code section 40191. It includes recyclable materials that are discarded by the generator and mixed waste.

A. *Garbage* means kitchen and table food waste, and animal or vegetable waste that results from the storage, preparation, cooking or handling of food.

B. *Refuse* means garbage and rubbish. It does not include green waste or recyclable material.

C. *Rubbish* means nonputrescible solid wastes such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, plastics, rubber byproducts or litter.

*Transfer station* means a facility used to receive solid wastes, temporarily store or process the materials in the solid wastes, or to transfer the solid wastes directly from smaller to larger vehicles for transport.

*Universal wastes* are hazardous wastes that are more common and pose a lower risk to people and the environment than other hazardous wastes. (22 California Code of Regulations, Div. 4.5, Chapter 23.) They include, for example: mercury thermostats, switches and thermometers; batteries; fluorescent and high-intensity lamps; nonempty aerosol cans; certain consumer electronic devices; and cathode ray tubes such as those found in televisions and nonflat monitors.

*Waste generator or generator* means the person who produces the solid waste, recyclable material or green waste, or whose act first causes the solid waste to become subject to regulation. (Pub. Resources Code §§ 40170, 40191.)

*White goods* means inoperative or discarded refrigerators, ranges, water heaters, freezers, washers, dryers, and other similar large household appliances. (See also *Bulky waste*.) (Ord. 775 § 1, 2003; 1991 code § 12-1.2)

## Article II. General Regulations

### 13.10.030 Mandatory collection service – Exceptions.

A. Mandatory collection service. It is mandatory that:

1. Each owner or occupant of a residence subscribe with a franchisee for collection of solid waste, recyclable materials and green waste; and
2. Each commercial use subscribe with a franchisee for collection of solid waste, recyclable materials and green waste.

The only exceptions are set forth in subsection B of this section. Subscription rates are established by city council resolution.

No person may contract with and pay anyone other than a franchisee for the collection of residential or commercial solid waste or recyclable materials, or residential green waste.

B. Exceptions. Following are the exceptions to the mandatory subscription requirement. Exceptions must be approved in writing by the city manager, based on a written request, and renewed periodically after the period

of time established in each case by the city manager. A customer is not required to subscribe for the service during the period of time for which the exception is granted. When an exception applies, the premises must be kept in a sanitary condition which does not cause a nuisance to others.

1. Single-family residential. Upon request of the owner or occupant, the city may grant an exception to the subscription requirement, rendering the owner or occupant eligible for a reduced level of service, if:
  - a. No solid waste is being generated on the premises; or
  - b. Green waste is composted on-site. Upon the request of the owner or occupant, the city may grant an exception when green waste is composted on-site. To qualify, the applicant must have proof of attendance at a composting class in the city (or another city in Contra Costa County), have the green waste container removed from the premises by a franchisee, and be subject to periodic inspection by the city. If this exception is granted, the subscription rate shall be reduced by the amount specified in a franchisee's rate schedule.
2. Multifamily residential. Upon request of the owner or occupant, the city may grant an exception for a multifamily residential building, as to green waste collection only, if green waste is removed from the premises by a gardening, landscaping or tree-trimming contractor as an incidental part of a total service offered by that contractor rather than as a transportation or disposal service. The property for which the exception is granted is subject to periodic inspection by the city.
3. Commercial. Upon request of the business owner, the city may grant an exception for a business use for one or both of the following, subject to periodic inspection by the city:
  - a. As to the mandatory recycling requirement, based on evidence of insurmountable site constraints or the absence of recyclable materials generated at the business location.
  - b. As to green waste collection if green waste is removed from the premises by a gardening, landscaping or tree trimming contractor as an incidental part of a total service offered by that contractor, rather than as a transportation or disposal service. (Ord. 775 § 1, 2003; 1991 code § 12-2.1)

#### **13.10.040 Ownership of solid waste, green waste, recyclables – Disposal by owner.**

A. Ownership. The waste generator owns the solid waste, recyclable materials and green waste until it is placed in a container for collection. Once the solid waste, recyclable materials or green waste is placed in the collection container at the curbside, it becomes the property of a franchisee. The city reserves the right to assert ownership or right to possession of solid waste, recyclable materials or green waste placed for collection, if it determines a franchisee is in breach of a franchise agreement.

B. Disposal by owner. A resident or business owner may dispose of solid waste, recyclable materials or green waste generated at their own premises with their own vehicle, in lieu of availing themselves of the services of a franchisee. (Waste Management v. Palm Springs Recycling Center, Inc., 1994, 7 Cal. 4th 478, 28 Cal. Rptr. 2d 461.) A waste generator disposing of its own solid wastes shall dispose of solid wastes at a landfill, materials recovery facility, processing facility, or recycling center. However, a resident or business owner may not employ another to dispose of solid waste, recyclable material or green waste.

A resident or business owner who disposes of his or her own solid waste, recyclable materials or green waste under this section does not receive a reduction in the subscription rate, unless a specific exception applies under PHMC § 13.10.030.B. A commercial business owner who disposes of recyclable material or green waste is encouraged to identify the city at the disposal location where material is disposed of, in order that the city receives credit toward its diversion requirement. (Ord. 775 § 1, 2003; 1991 code § 12-2.2)

#### **13.10.050 Unlawful collection, scavenging, tampering, littering.**

A. Handling of containers and unlawful collection.

1. No person other than a franchisee may place a collection container within the city, except as expressly authorized by this chapter.
2. No person shall move, remove or interfere with a container or its contents, other than the waste generator or a franchisee. No person shall get into or be inside a container.

3. No person may tamper with, modify, scavenge from or deposit solid waste, recyclable materials or green waste in a container which has not been provided by a franchisee for his or her use, without the permission of the occupant of the premises where the container is located.
4. No person may collect the recyclable materials or green waste from residential or commercial premises or posted recycling centers in the city, except as allowed under PHMC § 13.10.080.B.
5. It is unlawful for any person to hinder, threaten, impede or obstruct a franchisee in the performance of its duties under this chapter.

B. Littering and unlawful disposal.

1. No person may deposit solid waste upon any street, lot or vacant area, or other public place other than as provided in this chapter. Each subscriber is responsible for the containers located on his or her property and for any spillage from containers before collection.
2. No person shall allow the accumulation of solid waste on his or her premises, other than in a container collected at least weekly. No waste generator may allow the waste to enter into drainage systems, sewers or waters. No person may burn or bury waste except as permitted by this chapter. (Ord. 775 § 1, 2003; 1991 code § 12-2.3)

**13.10.060 Collection containers.**

A. Types of containers. Each franchisee shall provide solid waste containers (including carts, bins and debris boxes), recyclable materials containers and green waste containers. The containers shall meet the standards set forth in the franchise agreement. Each franchisee shall make available appropriate-sized containers for commercial and multifamily premises, based on the quantities generated.

B. Filling of containers. Each occupant shall place materials in the appropriate container provided by a franchisee. Materials shall be separated if required by each franchisee and the types of materials shall comply with any specifications of each franchisee. No occupant shall fill any container above the top so as to permit the contents to be blown or otherwise strewn about. Standard containers shall not exceed the weight limit established by each franchisee. No person shall knowingly dispose of a hazardous material with solid waste, recyclable materials or green waste, except household hazardous waste in de minimis quantities.

C. Placement. Residential customers shall keep their containers in a location not visible from the public right-of-way.

Residential customers shall place containers at the curb for collection only on the collection day, or after sunset on the night before. Customers shall remove containers from the curbside by 12:00 midnight of the collection day. Customers using carts for collection shall place solid waste, recyclable materials and green waste carts on the street against the curb, in front of the premises, or in an alternate location approved by a franchisee, which does not interfere with passage on the street or sidewalk. A residential customer may arrange with a franchisee for backyard or side yard service under the terms of a franchise.

Multifamily and commercial premises using bin or debris box service shall place those containers in an enclosure designed for this purpose, which conforms to the requirements of PHMC § 18.50.070.

D. Protection – Safety. Each subscriber shall maintain the containers on their premises, and the area in which they are located, in a good, usable, clean and sanitary condition. The subscriber shall ensure that the lid or cover is kept closed, that solid waste and recyclable materials are not placed outside the container, and that containers do not leak or spill.

Containers must comply with current California Fire Code requirements regarding combustible materials (Section 1.103, Combustible Materials, particularly Section 1103.2.1). (Ord. 775 § 1, 2003; 1991 code § 12-2.4)

**13.10.070 Collection and disposal of solid waste, green waste, recyclables.**

A. Weekly collection. Customers shall place solid waste, recyclable materials and green waste in containers and each franchisee shall collect them at least once a week, or less often as provided in a franchise agreement, or more often as requested for a commercial or multifamily premises. The Contra Costa County health department may require a greater number of collections per week for certain commercial premises.

B. Failure to collect. If containers placed for collection are not collected at the scheduled time, the resident or business owner shall promptly notify the appropriate franchisee. If a franchisee intentionally does not collect the contents of a container because of improper placement of the container, contamination of materials, or other reason, a franchisee's agent shall keep a record and leave a written explanation on the container, on the collection day.

C. Excess materials. Customers are responsible for separately arranging for the collection of excess or bulky waste. The resident or business owner shall pay an extra fee to have overages collected by a franchisee, in an amount established by city council resolution. (Ord. 775 § 1, 2003; 1991 code § 12-2.5)

**13.10.080 Special collection and disposal restrictions.**

A. Unlawful collection. It is unlawful for a person to collect and transport solid waste, recyclable materials or green waste within the city unless the person is a franchisee, or the solid waste, recyclable material or green waste is exempted under this section.

B. Exemptions. The exemptions are:

1. Green waste removed from premises by a gardening, landscaping, or tree-trimming contractor as an incidental part of a total service offered by that contractor (without a reduction in the subscription rate).
2. Tree trimmings and green waste generated at parks or city facilities.
3. Green waste (or food waste) used by the waste generator at the premises where the waste is generated for composting or mulching.
4. Any material which the generator sells or disposes of for compensation (net of any charges for collection).
5. Recyclable material which is donated (other than for commercial processing for reuse recycling).
6. Source-separated recyclable material delivered for recycling to a state-permitted facility by the resident or business owner in his or her own vehicle.
7. Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act (California Pub. Resources Code § 14500 et seq.).
8. Solid waste, recyclable materials (including construction and demolition debris), or green waste removed from a premises by the waste generator and transported personally by the owner or occupant to a landfill, materials recovery facility, processing facility, or recycling center.
9. Construction and demolition debris (including excavated soils) removed from a premises by a licensed contractor as an incidental part of a total service offered by that contractor (rather than as a transportation service or a clean-up and transportation service), and transported in the contractor's own vehicle. (See management plan requirements at PHMC Chapter 14.40.)
10. Excavated soil.
11. Byproducts of state-permitted (a) sewage treatment, including sludge, grit and screenings, and (b) stormwater treatment, including screenings, sediment, litter and soluble hazardous materials.
12. Hazardous waste (other than de minimis quantities of household hazardous waste, liquid and dry caustics, acids, medical waste, flammable materials, explosive materials, insecticides and similar substances).
13. Medical waste, which is regulated under the Medical Waste Management Act (California Health and Saf. Code § 117600 et seq.).
14. Waste generated by public schools.
15. Automobiles, auto parts, boats and boat parts.
16. Universal waste, as defined in PHMC § 13.10.020. (Ord. 775 § 1, 2003; 1991 code § 12-2.6)

### Article III. Franchise Agreement

#### 13.10.090 Granting franchise agreement – Rates.

The city council may enter into exclusive or nonexclusive franchise agreements for the collection of solid waste, recyclable materials and green waste in the city. Franchise agreements may be entered into without competitive bidding. (Pub. Resources Code § 40059.) In a franchise agreement, the city council shall establish the method(s) for setting the maximum amount of collection rates, which may include rate changes after holding a public hearing, automatic cost of living rate increases, and provisions for extraordinary circumstance rate changes.

It is unlawful for any person to collect or transport solid waste, recyclable materials or green waste within the city unless the person is a franchisee, or the solid waste, recyclable material or green waste is exempt under PHMC § 13.10.080. (Ord. 828 § 1, 2007; Ord. 775 § 1, 2003; 1991 code § 12-3.1)

#### 13.10.100 Terms and standards of service – Programs – Essential provisions.

Each franchise agreement shall address in detail obligations regarding all of the following:

A. Terms and standards of service, standards of performance and other requirements and conditions regarding the collection and disposal of solid waste, recycling materials and green waste. This shall include limits on operations including days and hours of operation, curbside service, use of streets/clean-up, disabled occupant service (at no cost to the customer and in compliance with the ADA), on-property service, and any other type of service standards, requirements and limitations, consistent with Public Resources Code section 40059.1.

B. Special collection events and programs, such as Christmas tree collection, periodic collection of bulky waste and white goods, leaf pick-up, educational and promotional services, food waste programs, e-waste, used motor oil, household hazardous waste, construction and demolition debris, and special events authorized by the city (such as concerts and parades).

C. Standards of operation and objective measurements to ensure that city receives the maximum feasible diversion credit.

D. Insurance and indemnification requirements, including types and amounts of coverage, and performance bonds.

E. Vehicle standards and driver standards.

F. Procedure for establishing maximum service rates, service fees, and franchise fees or other compensation, including time and frequency of payment. Service fees include all service-related fees including, but not limited to, source reduction and recycling fees, user fees, cost-based fees for city's administrative expenses and programs.

G. Billing and collection requirements.

H. Customer complaint and dispute resolution procedures (including recording of complaints, manner of handling and responding to complaints, hours of operation of local office, after-hours handling of complaints, billing disputes).

I. Record keeping requirements, including reporting, record retention and auditing procedures. These may include records of (1) the type of waste generator, (2) amount by volume or weight collected or disposed of, (3) type and classification of materials as solid waste, recyclable materials or green waste, (4) location of disposal, (5) amount and type of waste disposed of or diverted from landfills, and (6) such other reporting requirements as city may determine. These may also include the manner of keeping customer payments records.

- J. Breach of contract, remedies and penalty for breach (including procedures for termination), liquidated damages, and city's right to take over a franchise in the event of breach.
- K. Assignment of the franchise, change of ownership or control of franchisee, independent contractor status.
- L. Emergency responses at the city's request (such as earthquakes, flooding or fallen tree clean-up). (Ord. 775 § 1, 2003; 1991 code § 12-3.2)

**13.10.110 Service rates and billing procedures.**

- A. Billing and penalties. A franchisee shall bill each subscriber directly, in amounts that are at or below the maximum rates and periods established by the city council. A franchisee may add a penalty, in amounts established by the city council, for an owner or occupant who neglects, fails or refuses to pay the bill. The additional amount may include costs incurred by a franchisee. (Govt. Code § 54348.) If an occupant fails to pay the bill, the owner is responsible for payment.
- B. Payment under protest. If a customer wishes to contest the billing of a franchisee, he or she shall make payment under protest and, at the same time, shall file a written statement of protest with the city manager. Within 30 days, the city manager shall notify the customer of the findings and adjudication and adjustment in the matter. Anyone may appeal the decision of the city manager to the city council, upon submittal of an appeal fee in an amount established by the city council. The city council shall conduct a hearing on the matter at a regular council meeting. The council's decision is final. The city shall refund the appeal fee to the customer if the city council finds in favor of the protest.
- C. Failure to pay. If there is no payment of a bill after 60 days or more, each franchisee shall undertake collection of the bill (including penalties and expenses of collection) for a period of 120 days from the original invoice date. Each franchisee shall make reasonable efforts to obtain payment through issuing late-payment notices, telephone requests for payment, assistance from collection agencies (who shall make at least two attempts at collection), and bringing an action in small claims court. If a franchisee's collection efforts for a 120-day period fail, and franchisee can demonstrate to the city that it attempted on at least five occasions to solicit the monies due, then that franchisee, with the city's consent, may discontinue service. (Ord. 828 § 2, 2007; Ord. 775 § 1, 2003; 1991 code § 12-3.3)

**Chapter 13.15**

**CABLE TELEVISION**

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## Article I. General Provisions

### 13.15.010 Purpose.

The purpose of this chapter is to promote competition in the cable industry, facilitate the development of cable infrastructure, minimize aesthetic impacts and damage to public property, provide for the payment of reasonable compensation for the commercial use of public property, and establish customer service standards. (Ord. 815 § 1, 2006)

### 13.15.020 Definitions.

All of the following definitions shall be construed liberally for the purpose of maximizing the scope of this chapter:

*Affiliate* means any subsidiary of the operator, any parent of the operator, any person in which the operator has a financial interest, and any person who is directly or indirectly under common control with the operator.

*Basic cable service* means the basic tier of service offered by the operator in accordance with 47 U.S.C. § 543(b)(7).

*Cable operator* or *operator* means any person or group of persons (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system. Cable operator includes, but is not limited to, affiliates of a cable operator who perform cable services through the operation of the cable system within the franchise area.

*Cable service* means (1) the one-way transmission to subscribers of (a) video programming, or (b) other programming service, and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

*Cable system* or *system* means the facility proposed to be built, rebuilt, upgraded and/or operated by an operator, which shall consist 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 the city, but such term does not include: (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any public rights-of-way within the city; (3) a facility of a 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 interaction or 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 system.

*FCC* means the Federal Communications Commission, its designee, or any successor governmental entity thereto.

*Franchise* means a nonexclusive authorization granted pursuant to this chapter and applicable law to construct, operate, and maintain a cable system within the public rights-of-way to provide cable service within all or a specified area of the city. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the city as required by state or city laws, ordinances or regulations, or for attaching devices to poles or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along public rights-of-way, public property or private property.

*Franchise agreement* means a contract entered into pursuant to this chapter between the city and a cable operator that sets forth, subject to this chapter, the terms and conditions under which a franchise will be granted and exercised.

*Franchisee* means a person that has been granted a franchise by the city in accordance with the provisions of applicable law.

*Gross revenues* means all revenues derived directly or indirectly by the grantee or any affiliate of the grantee from the operation of the cable system to provide cable services in the city. *Gross revenues* shall include, without limitation, the following: (1) fees charged to subscribers for basic service, cable programming service, premium service, pay-per-view programming, video-on-demand programming, a la carte programming, or other cable service; (2) installation, disconnection, reconnection and change-in-service fees; (3) franchise or license fees; (4) late fees; (5) administrative fees, including FCC regulatory fees; (6) charges for the rental or sale of converters and other equipment to subscribers; (7) advertising revenues (excluding commissions paid to or retained by advertising agencies); provided, however, that revenues generated from advertising sales extending beyond the license area shall be prorated on a per subscriber basis, so that no revenues are double-counted, or attributed to more than one local governmental entity for purposes of calculating license fees; (8) leased access channel fees; (9) revenues for program guides; (10) studio and production equipment rental fees; and (11) revenues from home shopping channels. *Gross revenues* shall be calculated in accordance with generally accepted accounting principles (GAAP).

*Gross revenues* do not include: (1) actual bad debt; provided, however, that all or a part of any actual bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected; (2) the value of free cable services provided to employees of the grantee; (3) the value of advertising time on the cable system provided as consideration in barter transactions; (4) any taxes on services furnished by grantee which are imposed directly on any subscriber by the State of California, the city, or other governmental unit, and which are collected by the grantee on behalf of the governmental unit; (5) any PEG capital support collected by the grantee from the subscriber on behalf of the governmental unit; or (6) amounts received from programmers as reimbursement of marketing expenses and launch fees.

*Normal operating conditions* means those conditions that are within the control of the cable operator. Conditions that are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions that are within the control of the cable operator 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.

*Person* means an individual, partnership, association, joint stock company, limited liability company, trust, corporation, or government entity.

*PEG* means public, educational and governmental.

*Public rights-of-way* means the surface of and the space above and below each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the city limits: streets, roadways, highways, avenues, paths, lanes, alleys, sidewalks, boulevards, easements, rights-of-way, and similar public property and areas that the city shall permit to be included within this definition from time to time. No reference herein to a public right-of-way shall be deemed to be a representation or guarantee by the city that its interest or other right to control the use of such property is sufficient to permit use of the property for the purpose of installing, operating, and maintaining a cable system. A cable operator shall be deemed to gain only those rights to use the property as are properly in the city, in its sole determination, and as the city may have the undisputed right and power to give.

*Subscriber* means any person who or which lawfully elects to become a recipient of cable service in a manner consistent with the operator's applicable terms of service.

*Transfer* is any transaction in which: (1) the franchise or the rights and obligations held by the operator under the franchise are transferred or assigned to another person or group of persons; or (2) there is a change in the direct or indirect control of the system, the franchise or the operator. The term *control*, as used herein, means working control, in whatever manner exercised. By way of illustration, and not limitation, the addition, deletion or other change of any general partner of the operator, or a cable operator of the cable system, is such a change of control. (Ord. 815 § 1, 2006)

## **Article II. Franchising Procedures**

### **13.15.030 Franchise required.**

No person shall establish, construct, operate, or maintain within this city a cable system unless a franchise has been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect. (Ord. 815 § 1, 2006)

### **13.15.040 Granting.**

The city council may grant one or more nonexclusive, revocable franchises to establish, construct, operate and maintain cable systems within the city. A franchise shall be effective only upon execution of a franchise agreement between the city and a cable operator and compliance with all requirements of this code. In the event of any conflict between the express terms of this chapter and a franchise agreement, including any amendments to this chapter, the terms of such an agreement shall prevail, except with respect to matters falling within the scope of the city's police powers. (Ord. 815 § 1, 2006)

### **13.15.050 Term of franchise.**

A franchise shall be granted a term as specified in the franchise agreement, but in any event not greater than 15 years. (Ord. 815 § 1, 2006)

### **13.15.060 Franchise characteristics.**

A. A franchise authorizes use of public rights-of-way for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a cable system to provide cable service within a franchise area, but does not expressly or implicitly authorize a cable operator to provide service to, or install a cable system on, private property without the owner's consent or to use publicly or privately owned conduits or any public property other than the public rights-of-way without a separate agreement with the owners thereof.

B. A franchise shall constitute both a right and an obligation to provide the cable services regulated by the provisions of this chapter and a franchise agreement.

C. A franchise is nonexclusive and shall not: explicitly or implicitly preclude the issuance of other franchises to operate cable systems within the city; affect the city's right to authorize use of public rights-of-way or city-owned property by other persons to operate cable systems or for other purposes as the city deems appropriate; or affect the city's right to itself construct, operate, or maintain a cable system.

D. All privileges prescribed by a franchise shall be subordinate to (without limitation) the city's use and prior lawful occupancy of the public rights-of-way or public property.

E. The city reserves the right to reasonably designate, in accordance with its generally applicable procedures, where a cable operator's facilities are to be placed within the public rights-of-way or on any city-owned property the cable operator is otherwise authorized to use, and to resolve any disputes among users of the public rights-of-way or such city-owned property.

F. A franchise authorizes use of the public rights-of-way for the installation and operation of a cable system to provide cable service within a franchise area. The city reserves its rights with respect to the regulation of telecommunications services and facilities, and, to the extent allowed by applicable law, reserves the right to adopt a telecommunications ordinance. (Ord. 815 § 1, 2006)

**13.15.070 Franchise applications.**

All applicants for a new franchise shall submit a written application to the city. All applicants shall be expected to offer to subscribers a modern, efficient, cost-effective system that will facilitate high-quality maintenance, deliver a variety of programming and services, and provide the flexibility needed to adjust to changing technology and new developments in the industry. Applicants are encouraged to formulate their proposals in an innovative fashion, so as to meet the informational requirements of the city and the service needs of subscribers. Proposals shall contain sufficient material to enable the city council to make fully informed judgments concerning the adequacy of the proposal and the applicant's qualifications to construct, operate and maintain a cable system in the city. All applicants shall, at a minimum, provide the following information unless waived by the city manager:

A. The name, address and form of business of the applicant, and an identification of the ownership and control of the applicant, including: the names and addresses of the 10 largest holders of an ownership interest in the applicant and affiliates of the applicant, and all persons with 5% or more ownership interest in the applicant and its affiliates; the persons who exercise working control over the applicant and its affiliates, and the persons who control those persons, to the ultimate parent; all officers and directors of the applicant and its affiliates; and any other business affiliation and cable system ownership interest of each named person.

B. A description of the cable services that are or will be offered or provided by the applicant over its existing or proposed facilities.

C. A description of the transmission facilities that will be used by the cable operator to offer or provide such cable services.

D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the city, all in sufficient detail to identify:

1. The location and route requested for applicant's proposed cable facilities, including a description of the miles of plant to be installed, and a description of the size of equipment cabinets, shielding and electronics that will be installed along the plant route, the power sources that will be used, and a description of the noise, exhaust and pollutants, if any, that will be generated by the operation of the same.
2. The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public rights-of-way along the proposed route.
3. The location(s), if any, for interconnection with the facilities of other cable operators.
4. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

E. If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its cable facilities on existing utility poles along the proposed route.

F. If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

1. The excess capacity currently available in such ducts or conduits before installation of applicant's cable facilities.
2. The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's cable facilities.

G. A preliminary construction schedule and completion dates.

H. Financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant or other accountant satisfactory to the city, demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities. If in the normal course of its business, the applicant does not prepare a separate financial statement for the cable system, the applicant may submit a combined financial statement for the local region, which statement shall include the cable system.

I. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the facilities and services described in the application, including identification of key personnel.

J. Information to establish the applicant's legal qualifications, including evidence that it has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide cable service.

K. A detailed description of all other services that the applicant intends to provide and sufficient information to determine whether such services are subject to franchising.

L. An accurate map showing the location of any existing facilities in the city that applicant intends to use or lease.

M. A description of the services or facilities that the applicant will offer or make available to the city and other public, educational and governmental institutions.

N. A description of applicant's access and line extension policies.

O. A written description and detailed map of the exact area or areas of the city the applicant desires to serve and a schedule for build-out to the entire franchise area.

P. The number of activated, programmed channels that the applicant intends to provide together with the programming that the applicant intends to provide.

Q. All fees, deposits or charges required pursuant to PHMC § 13.15.080, Application fee.

R. Such other and further information as may be requested by the city manager.

If a franchise is granted to a person who is acting on behalf of another or presenting its qualifications for the benefit of another and such information is not disclosed in the original application, such franchise shall be deemed void and of no force and effect whatsoever. (Ord. 815 § 1, 2006)

#### **13.15.080 Application fee.**

An application fee for a new or renewal franchise or for transfer of a franchise may be required in the amount established from time to time by resolution of the city council, to the extent consistent with applicable law. (Ord. 815 § 1, 2006)

#### **13.15.090 New franchise procedure.**

Upon receipt of an application for a new franchise, the city council may, by resolution, approve or conditionally approve a franchise agreement with the applicant or deny the application. In making any determination hereunder as to any application, the city council shall give due consideration to: the quality of the service proposed; rates to subscribers; experience, character, background and financial responsibility of the applicant, its management and owners; system design; technical and performance quality of equipment; willingness and ability to meet construction requirements and to abide by franchise limitations and requirements; and other considerations deemed pertinent by the city council for safeguarding the interests of the city and the public. (Ord. 815 § 1, 2006)

**13.15.100 Franchise renewal procedure.**

- A. The procedure for franchise renewal shall be in accordance with applicable federal and state statutes.
- B. In the absence of any federal or state statute specifically governing franchise renewal procedures, the following procedure shall apply, to the extent consistent with applicable law:
1. At any time between 24 months and 12 months prior to the expiration of a franchise, a cable operator may apply for renewal of its franchise. Such application shall be made under the provisions of PHMC §§ 13.15.070, Franchise applications, and 13.15.080, Application fee.
  2. Within 12 months of receipt of a completed application for renewal, the city council shall hold a public hearing, having afforded the operator reasonable notice of such hearing. After this public hearing, the city council shall grant or deny the application, basing its decision on the following factors:
    - a. The operator's substantial compliance with the material terms of the existing franchise and applicable law;
    - b. The quality of the operator's services to its subscribers, including signal quality, response to consumer complaints and billing practices, but without regard to the mix or quality of cable services provided over the cable system, has been reasonable in light of community needs;
    - c. Present and future cable-related community needs and interests of the operator's current and potential subscribers, taking into account the cost of meeting such needs and interests;
    - d. The operator's financial, legal and technical qualifications to provide the services, facilities and equipment as set forth in the operator's proposal; and
    - e. Such additional factors as the city council considers relevant to the renewal of the franchise.
  3. In any renewal proceeding, the operator shall be afforded adequate notice and shall be afforded fair opportunity for full participation. The operator at its election and expense may have a transcript made of any such proceeding.
  4. The city council, after a public hearing, may grant or deny a renewal application based on the criteria set forth in this section. The city council shall grant or deny such application by resolution and, where the application is denied, the city council shall state the reasons therefor. (Ord. 815 § 1, 2006)

**13.15.110 Assignment and transfer.**

The city shall select persons to whom it issues a franchise based upon the unique technical skills and talents of such persons to operate a cable communications system as well as upon such person's relevant experience and financial condition. As such, a franchise is personal to the franchisee and the identity of a franchisee is a material part of the city's decision to issue a franchise. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer. (Ord. 815 § 1, 2006)

**13.15.120 Transfer of ownership.**

A. City council approval required. No transfer shall occur unless prior application is made by the operator to the city and the city council's prior written consent is obtained, pursuant to the operator's franchise agreement and this chapter. Any such transfer without the prior written consent of the city council shall be considered to impair the city's assurance of due performance, and shall be invalid. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

1. Application. An operator shall promptly notify the city manager of any proposed transfer. If any transfer should take place without prior notice to the city manager, the operator shall promptly notify the city that such a transfer has occurred. At least 120 calendar days prior to the contemplated effective date of a transfer, the operator shall submit to the city manager an application for approval of the transfer. Such an application shall provide complete information on the proposed transaction, including details of the legal, financial, technical, and other qualifications of the new controlling entity or transferee, and on the potential impact of the transfer on subscriber rates and service. At a minimum, the following information shall be included in the application; provided, that the operator is not required to duplicate information that it submits to the city manager to comply with its obligations under federal or state law:
  - a. All information and forms required under federal law;



- b. All information required by this chapter;
  - c. Any contracts or other agreements that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein; and
  - d. Any shareholder reports or filings with the Securities and Exchange Commission that discuss the transaction.
2. Supplemental information. The city shall notify an operator of any insufficiency in the information provided in the application within 30 days after receipt thereof. The failure of the city to so notify operator of such insufficiency shall result in the application being deemed complete. For the purposes of determining whether it shall consent to a transfer, the city or its agents may inquire into the qualifications of the prospective controlling entity or transferee and such other matters as the city may deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned as provided under this chapter. Notwithstanding whether the application has been deemed complete, the city may request additional information related to the proposed transaction to the extent permitted by applicable law.
- B. Determination by city. In making a determination as to whether to grant, deny, or grant subject to conditions, an application for a transfer, the city may consider, without limitation, the legal, financial, technical and other qualifications of the proposed controlling entity or transferee to operate the cable system; whether the operator is in compliance with its franchise agreement and this chapter, and, if not, the proposed controlling entity or transferee's commitment to cure such noncompliance; and whether operation by the proposed controlling entity or transferee or approval of the transfer would adversely affect the public health, safety, or welfare of subscribers or the public.
- C. Transferee's agreement. No application for a transfer of the franchise shall be granted unless the proposed controlling entity or transferee agrees in writing that it will abide by and accept all terms of its franchise agreement and this chapter and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous operator under its franchise agreement and this chapter, for all purposes, including renewal.
- D. Approval does not constitute waiver. Approval by the city council of a transfer does not constitute a waiver or release of any of the rights of the city under a franchise agreement or this chapter, whether arising before or after the date of the transfer.
- E. Exception for intra-company transfers. Notwithstanding the foregoing, a transfer to an affiliate of the franchisee shall be excepted from the requirements of this section where:
1. The affiliate is wholly owned and managed by the same ultimate parent as the transferor; and
  2. The transferee affiliate:
    - a. Notifies the city within 30 days of the transfer and, at that time, provides the agreements and warranties required by this section, describes the nature of the transfer, and submits complete information describing who will have direct and indirect ownership and control of the cable system after the transfer;
    - b. Warrants that it has read, accepts and agrees to be bound by each and every term of the franchise agreement and related amendments, regulations, ordinances and resolutions then in effect;
    - c. Agrees to assume all responsibility for all liabilities, acts and omissions, known and unknown, of its predecessor franchisee(s), for all purposes, including renewal;
    - d. Agrees that the transfer shall not permit it to take any position or exercise any right which could not have been exercised by its predecessor franchisee(s);
    - e. Warrants that the transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the franchisee (the warranty to be based on comparing the burdens upon and resources that will be available to the transferee compared to its predecessors), or otherwise adversely affect the ability of the franchisee to perform;
    - f. Warrants that the transfer will not in any way adversely affect the city or subscribers;
    - g. Notifies the city that the transfer is complete within five business days of the date the transfer is completed; and

h. Agrees that the transfer in no way affects any evaluation of its legal, financial or technical qualifications that may occur under the franchise or applicable law after the transfer, and does not directly or indirectly authorize any additional transfers.

F. The city's consent to a transfer shall be required upon foreclosure or other judicial sale of all or a substantial part of the system or upon the termination of a lease covering all or a substantial part of the system, and the cable operator shall notify the city. The notification shall be deemed notice of a change in control of the cable operator, which shall require the approval of the city council.

G. The city council shall approve, conditionally approve or deny a transfer following receipt of all required materials within the period required under federal law, if any, unless an extension is agreed to by the city and the cable operator. Conditions of approval by the city council may include, but are not limited to, the following: (1) resolution of any outstanding franchise violations or performance deficiencies; (2) payment of any outstanding franchise fees; (3) filing of any appropriate bonds, insurance endorsements, letters of credit or guarantees; and (4) written assumption of all obligations of the transferor by the transferee.

H. Within 30 days after the date of the resolution approving transfer of the franchise, or within such extended period of time as the city council in its discretion may authorize, the transferee shall file with the clerk of the city council its written acceptance of the franchise, in a form satisfactory to the city, together with all required bonds and insurance certificates, and its agreement to be bound by and to comply with and to do all things required of it by the provisions of this chapter and the franchise award resolution. Such acceptance and agreement shall be acknowledged by the transferee before a notary public and shall be in a form and content satisfactory to and approved by the city attorney.

I. Revocation following bankruptcy.

1. Notwithstanding any other provision of this chapter, a franchise will automatically terminate by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding.
2. However, the franchise may be reinstated if, within the 120-day period:
  - a. The assignment, receivership or trusteeship is vacated; or
  - b. The assignee, receiver, or trustee has fully complied with the terms and conditions of this article and the franchise and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of the franchise agreement and this code.

J. Revocation upon foreclosure.

1. Notwithstanding any other provision of this chapter, in the event of foreclosure or other judicial sale of any of franchisee's facilities, equipment, or property, the city may revoke a franchise after a public hearing before the city council, by serving notice upon the franchisee and the successful bidder at the sale.
2. The franchise will be revoked and will terminate 30 calendar days after serving such notice, unless:
  - a. The city approves the transfer of the franchise to the successful bidder; and
  - b. The successful bidder agrees with the city to assume and be bound by the terms and conditions of the franchise and applicable law.

K. Failure to comply with the requirements of this section is a material breach of this chapter, subject to the remedies provided for herein. (Ord. 815 § 1, 2006)

**13.15.130 Unauthorized operation of cable system.**

Any person occupying the public rights-of-way of the city for the purpose of operating or constructing a cable system, which person does not hold a valid franchise from the city, shall be subject to all provisions of this chapter, including, but not limited to, those provisions regarding construction, technical standards and franchise fees. The city at any time may require such person to obtain a franchise agreement within 30 days of receipt of a written notice from the city that a franchise agreement is required; require such person to remove

its property from the public rights-of-way, and, at such person's sole expense, restore the area to a condition satisfactory to the city within a reasonable time period as the city shall determine; remove the property itself and restore the area to a satisfactory condition and charge the person the costs therefor; and/or take any other action permitted by law, including, but not limited to, filing for and seeking damages for trespass. In no event shall a franchise be created unless it is issued by action of the city council and the franchise terms are set forth in a franchise agreement. If a cable operator operates a cable system without first obtaining a valid franchise from the city, the cable operator shall forfeit to the city all gross revenues from the system for so long as such unauthorized operation continues. (Ord. 815 § 1, 2006)

**13.15.140 Acts at cable operator's expense.**

Any act that a cable operator is or may be required to perform under this chapter, a franchise agreement, or applicable law shall be performed at the cable operator's expense, unless expressly provided to the contrary in this chapter, a franchise agreement, or applicable law. (Ord. 815 § 1, 2006)

**13.15.150 Eminent domain.**

Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the city's rights of eminent domain to the extent to which such rights may apply to any cable system or franchise. (Ord. 815 § 1, 2006)

**13.15.160 Annexations.**

Within 30 days after annexation of areas to the city which are served by a cable operator who does not have a franchise from the city, the cable operator shall apply for a new franchise. Pending consideration of such a franchise, the cable operator shall comply with each and every provision of this article, including but not limited to the franchise fee requirement. If a newly annexed area is not actively served by a cable operator, the cable operator(s) serving the area within the city contiguous to the newly annexed area shall provide service to that area within a reasonable time, subject to the provisions of any applicable franchise agreement; provided, that the cable operator may request relief from this requirement upon a showing that it would be economically infeasible to extend service to that area. (Ord. 815 § 1, 2006)

**13.15.170 Joint exercise of powers agreement.**

Should a joint exercise of powers agreement (Gov. Code § 6500, et seq.) or similar agreement be entered between the city and any other jurisdiction in accordance with law providing for the joint regulation of cable operators and cable services or other cooperative arrangements, involved cable operators shall be governed by and subject to that agreement, pursuant to this chapter's provisions; provided, that no such joint powers agreement shall impair any right or obligation of the cable operator under a franchise agreement. (Ord. 815 § 1, 2006)

**13.15.180 Cable operator subject to other laws, police power.**

A. A cable operator at all times shall be subject to and shall comply with all applicable federal, state, and local laws, subject to PHMC § 13.15.040, Granting. A cable operator at all times shall be subject to all lawful exercise of the police power of the city, including but not limited to all rights the city may have under 47 U.S.C. § 552. Nothing in a franchise agreement shall be deemed to waive the requirements of the various codes, ordinances, policies, rules, regulations, and practices of the city and the city council, subject to the operator's lawful rights under its franchise agreement.

B. No course of dealing between a cable operator and the city, or any delay on the part of the city in exercising any rights hereunder, or any acquiescence by the city in the actions of a cable operator that contravene any of the city's rights (except to the extent such rights are expressly waived by the city in writing), shall operate as a waiver of any such rights of the city.

C. The city shall have the maximum authority to regulate cable systems, cable operators, and franchises as may now or hereafter be lawfully permissible; unless rights are expressly waived in a franchise agreement, they are hereby reserved, whether expressly enumerated or not.

D. The city manager and the city council may, from time to time, issue such rules and regulations concerning cable systems as are consistent with, or authorized by, applicable law.

E. The city manager and the city council may do all things which are necessary and convenient in the exercise of their jurisdiction under this chapter. (Ord. 815 § 1, 2006)

**13.15.190 Interpretation of franchise terms.**

A. The provisions of this chapter and any franchise agreement shall be liberally construed in order to effectuate the purposes and objectives of this chapter and the franchise agreement and to promote the public interest.

B. Subject to federal law or regulation, a franchise agreement shall be governed by and construed in accordance with the laws of the State of California. (Ord. 815 § 1, 2006)

**Article III. City Administration of Franchise**

**13.15.200 Administration.**

The office of the city manager is designated as having primary responsibility for the administration of every cable franchise and this article. Whenever a right may be exercised under this article by the city or the city manager, such right may also be exercised by a designated employee. No such delegation shall be deemed to constitute a delegation of legislative authority. (Ord. 815 § 1, 2006)

**13.15.210 Basic service.**

The lowest-priced level of cable service shall be available to all subscribers. No subscriber shall be required to purchase any other service as a prerequisite to purchasing such level of service. Unless otherwise provided in a franchise agreement, the lowest-priced level of service shall include all public, educational and government channels at no extra charge. (Ord. 815 § 1, 2006)

**13.15.220 Performance evaluation sessions.**

The city and each cable operator shall hold scheduled performance evaluation sessions to the extent specified in the franchise agreement. (Ord. 815 § 1, 2006)

**13.15.230 Cable service to public buildings occupied by public agencies.**

A franchise agreement may include provisions regarding installation of service outlets in buildings occupied by public agencies within the franchise area, and provision of service to such facilities, subject to negotiation between the parties and applicable law. (Ord. 815 § 1, 2006)

**13.15.240 PEG channels.**

Subject to negotiation between the parties and applicable law, a franchise agreement may provide that a cable operator shall make available one or more dedicated channels on its cable system for purposes of public, educational and governmental access, as set forth in the franchise agreement. Such channels shall be available on the lowest tier of basic service, to the extent consistent with the applicable franchise agreement. Such channels shall not be used for any advertisements or commercial programming without the permission of the city. (Ord. 815 § 1, 2006)

**13.15.250 PEG facilities.**

A franchise agreement may include provisions regarding facilities, services and equipment for use in relation to public, educational and governmental access. (Ord. 815 § 1, 2006)

**13.15.260 Institutional network.**

A franchise agreement may include provisions regarding construction and use of institutional networks. (Ord. 815 § 1, 2006)

**13.15.270 Public access usage management.**

Nothing in this chapter shall prevent the city from delegating to an independent nonprofit entity such as a commission or nonprofit corporation the authority to manage all or any part of the city's PEG facilities, programming and/or funds. The commission or nonprofit corporation may be established jointly with neighboring jurisdictions at the city's sole option. (Ord. 815 § 1, 2006)

**13.15.280 Leased access.**

A cable operator shall provide leased access channels as required by federal law. (Ord. 815 § 1, 2006)

**13.15.290 Interconnection.**

A franchise agreement shall contain provisions related to the interconnection of a cable operator's cable system with other cable systems. (Ord. 815 § 1, 2006)

**13.15.300 Emergency override.**

To provide an emergency alert capability, each cable operator shall install and maintain an emergency alert system which allows the city to simultaneously override audio signals and broadcast emergency messages on all television channels, as provided by the terms of its franchise agreement. (Ord. 815 § 1, 2006)

**13.15.310 Tree trimming.**

When trimming trees, a cable operator shall comply with all city regulations applicable to utilities. (Ord. 815 § 1, 2006)

**13.15.320 Removal and abandonment of cable system.**

In the event that a franchise is terminated or expires without being renewed, or if all or a portion of a cable system is not used for a period of 90 days, the cable operator shall either remove the cable system or the abandoned portion thereof or shall obtain the permission of the director of community development to abandon the cable system in place within 90 days. The cable operator shall obtain an encroachment permit prior to removing the cable system. (Ord. 815 § 1, 2006)

**13.15.330 Acquisition of cable system.**

Notwithstanding the granting of a franchise, the city retains the right to acquire the cable system at any time by negotiated sale or eminent domain, and retains the right to resell the cable system to any third party. If the city denies the renewal of a franchise, the city may acquire the cable system at a price not to exceed fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise. If the city revokes a franchise, the city may acquire the cable system at an equitable price. (Ord. 815 § 1, 2006)

**Article IV. Customer Service****13.15.340 Continuity of service.**

A. Subscribers have the right to receive, and a cable operator has the obligation to provide, efficient service, high-quality reception, prompt repairs and service interrupted only for good cause and for the shortest possible time. It shall be the right of all subscribers to continue receiving service insofar as they have met financial and other obligations to the cable operator. In the event that the cable operator elects to overbuild, rebuild, modify, or sell the system, or the city council gives notice of intent to terminate or fails to renew this franchise, the cable operator shall act so as to ensure that all subscribers receive continuous, uninterrupted service.

B. Upon the expiration, revocation or termination of the franchise, the operator shall, upon request of the city, continue to operate the cable system for a period of time not to exceed six months from the date of such expiration, revocation or termination under the terms and conditions of this chapter and its franchise agreement, and to provide the regular subscriber service and any and all of the services that may be provided at that time, and to retain all revenues received after payment of all costs and expenses arising in the ordinary course of business prior to the expiration, revocation, or termination.

C. A cable operator shall forfeit its rights to notice and a hearing, and the city council may, by resolution, declare its franchise immediately terminated, in addition to any other relief or remedies the city may have under this chapter, a franchise agreement, or other applicable law, if:

1. The cable operator fails to provide cable service in accordance with its franchise over a substantial portion of the franchise area for 96 consecutive hours, unless the city authorizes a longer interruption of service or the failure is due to force majeure, as characterized in a franchise agreement; or
2. The cable operator, for any period, willfully and without cause refuses to provide cable service in accordance with its franchise over a substantial portion of the franchise area. (Ord. 815 § 1, 2006)

**13.15.350 Nondiscriminatory services.**

A. A cable operator shall comply at all times with all applicable laws, rules, and regulations including the terms of its franchise relating to nondiscrimination.

B. All of a cable operator's rates and charges shall be published and nondiscriminatory. Except as provided hereunder, a cable operator shall establish rates and charges for all subscribers without regard for race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; the presence of any sensory, mental or physical handicap; or geographic location within the cable operator's franchise area (except as permitted by any provision of a franchise agreement related to the length of subscriber drops or line extensions).

Nothing in this section shall be construed to prohibit the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns or discounted rates for provision of cable services to multiple-unit buildings. Notwithstanding the foregoing, the cable operator may offer service to senior citizens at discounted rates.

C. A cable operator shall not deny cable service, or otherwise discriminate against subscribers, PEG access programmers or any other persons, on the basis of type of dwelling unit, race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; the presence of any sensory, mental or physical handicap; or geographic location within the franchise area (except as permitted by any provision of a franchise agreement related to the length of subscriber drops or line extensions).

D. A cable operator shall not take any retaliatory action against a subscriber because of the subscriber's exercise of any right it may have under federal, state, or local law, nor may the cable operator require a subscriber to waive such rights as a condition of service. (Ord. 815 § 1, 2006)

**13.15.360 Local office.**

A franchise agreement may require a cable operator to maintain a local business office in a location specified in the franchise agreement which shall be open during the hours specified in the franchise agreement. (Ord. 815 § 1, 2006)

**13.15.370 Line extensions.**

A. The operator shall design, construct and maintain the cable system to pass every dwelling unit in the franchise area, subject to any limitations specified in a franchise agreement.

B. Standard line extension policy shall be 150 aerial feet, 125 feet underground. If the aerial or underground connection for service to a subscriber's location (sometimes known as a "drop") requires no more than a 150-foot aerial extension or 125-foot underground extension measured from the nearest street (unless the operator has obtained a waiver from the city), the operator shall provide the connection to its service at no charge for the initial 150 feet or 125 feet, as applicable, other than the operator's standard installation fee. This provision applies only to extensions from cable plant to a dwelling unit.

C. In areas not meeting the requirements for mandatory extension of service, a cable operator shall provide, upon the request of a potential subscriber desiring service in an unserved area, an estimate of the reasonable costs required to extend service to said subscriber, including materials, labor, overhead and private easements, if necessary. A cable operator shall make reasonable efforts to extend service within four months upon request of said potential subscriber, who shall be responsible for all reasonable costs associated with the extension. A cable operator may require advance payment or assurance of payment satisfactory to the cable operator. (Ord. 815 § 1, 2006)

**13.15.380 New service requests.**

A cable operator shall provide service to all dwelling units within the city (subject to the limitations on line extensions in PHMC § 13.15.370) pursuant to the following requirements:

A. In any case in which either no new drop is required, or a new drop is required of no more than the standard underground or above-ground length prescribed by PHMC § 13.15.370, Line extensions, as measured from the nearest active or required feeder line along a reasonably direct route, a cable operator shall make cable service available at the standard connection charge within seven days of receipt of any service request. In any case in which a new drop is required which is longer than the standard underground or above-ground drop length, as applicable, a cable operator shall make cable service available at the standard connection charge within 14 days of receipt of any service request. Notwithstanding the foregoing, if the service request requires a drop in excess of the standard underground or above-ground drop length, as applicable, a cable operator may charge the business or resident requesting service an additional amount which shall not exceed the actual time and materials cost of the drop in excess of the applicable drop length.

B. Upon receiving a request for new service, a cable operator shall make reasonable efforts to promptly acquire all easements or rights of occupancy necessary for extension of service to such resident's home and not already secured by the cable operator. (Ord. 815 § 1, 2006)

**13.15.390 System or individual outage complaints.**

A. Upon receipt of a request for service in the event of the following circumstances (each a "service request"), the cable operator shall respond as follows: (1) to a system outage within two hours; (2) to a service interruption within 24 hours; and (3) to all other reception problems by the next working day or as agreed upon by the subscriber and the cable operator. The cable operator shall have available at all times a sufficient number of technicians capable of responding to the foregoing matters within the foregoing time frames. A service inter-

ruption is the loss of picture or sound on one or more channels. A system outage is a service interruption resulting from a common cause that affects more than two subscribers.

B. When the nature of a service request described in subsection A of this section requires work at a service location, a cable operator will be deemed to have responded to such service request when a field service representative competent to fix the problem arrives at the service location (which may be some portion of the cable system and not a subscriber's residence) and begins work on the problem. In the case of a response which involves a request for service at a subscriber's residence, if the subscriber is not home when the field service representative arrives, response will be deemed to have taken place if the field service representative leaves notification of arrival and instructions for rescheduling on the subscriber's front door.

C. Where a cable operator is unable to respond to a service request within the applicable time period specified in this section, the cable operator shall make reasonable efforts, within such time period, to notify the complainant of the reason(s) and the estimated time frame for correction, and shall proceed to correct the service request at the earliest possible time.

D. A cable operator shall complete repairs and maintenance for system outages and service interruptions within 24 hours, except in extenuating circumstances or as agreed to between the cable operator and the subscriber. Work on all other requests for service, other than installation, shall be completed within three days of the initial request.

E. The time standards in PHMC § 13.15.380, New service requests, shall be met at least 95% of the time, measured on a quarterly basis. (Ord. 815 § 1, 2006)

#### **13.15.400 Scheduling appointments.**

A. All appointments for service, installation, or disconnection shall be specified by date. With the approval of the subscriber, weekday service calls shall be scheduled as morning or afternoon appointments during specified four-hour blocks of time. For service calls responding to system or individual outages, holiday and weekend scheduling shall also be available. If the appointment cannot be kept, a cable operator shall make reasonable efforts to promptly notify the subscriber in advance and reschedule the appointment. Under normal operating conditions, a cable operator may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment.

B. Subscribers who have experienced a missed appointment due to the fault of a cable operator shall receive installation free of charge if the appointment was for installation. The subscriber shall receive a credit against the basic service charge of \$20.00, or such other remediation as may be agreed to between the subscriber and the cable operator, if the missed appointment is for a service call. Alternatively, subscribers may pursue their remedies pursuant to Civil Code section 1722. (Ord. 815 § 1, 2006)

#### **13.15.410 Notification of service interruptions.**

Where service interruptions are planned, a cable operator shall notify subscribers and the city at least 48 hours before the anticipated service interruption; provided, that no notification shall be required for service interruptions that require less than two hours' interruption of service and that also occur between 1:00 a.m. and 6:00 a.m. Notification need not be repeated before each anticipated interruption as long as the initial notification advises of the possibility of repeated interruptions during a specified period not to exceed one month. To the extent feasible, the cable operator shall avoid interruptions between 5:00 p.m. and midnight. (Ord. 815 § 1, 2006)

#### **13.15.420 Notification of service or channel changes.**

The cable operator shall provide 30 days' advance written notice to subscribers and the city of any change in channel assignment or in the video programming service provided over any channel, unless this requirement



is waived by the city or by operation of federal or state law, or due to events beyond the reasonable control of the operator. (Ord. 815 § 1, 2006)

#### **13.15.430 Telephone communication services.**

A. Each cable operator shall render efficient telephone communication service, sufficiently staffed by knowledgeable, courteous personnel.

B. Customer service response. At a minimum, a cable operator shall have on duty a sufficient number of customer service representatives available to handle customer calls during normal business hours. During times not handled by customer service representatives, each system must have a capable answering service for repair requests or service complaints. Answering machines are not acceptable, except for automated response units that are used to process and route calls to on-duty personnel of the cable operator.

C. Telephone system requirements. Each cable operator shall at all times provide a telephone system meeting the following requirements:

1. Each cable operator shall maintain a phone system for purposes of promptly responding to telephone calls. Telephone numbers for customer service shall be listed in a local telephone directory. All telephone lines for customer service shall be toll free to subscribers within the franchise area.

2. Knowledgeable, qualified customer service representatives shall be available to respond to customer telephone inquiries during normal business hours.

3. Under normal operating conditions, during normal business hours, telephone answer time by a customer service representative, including wait time, and the time required to transfer the call, shall not exceed 30 seconds. Those systems which utilize automated answering and distributing equipment shall limit the number of routine rings to four or fewer. Systems not utilizing automated equipment shall make every effort to answer incoming calls as promptly as the automated systems. Under normal operating conditions, the customer shall receive a busy signal less than 3% of the total time that the telephone system is staffed by customer service representatives. These standards shall be met no less than 90% of the time measured quarterly.

4. Each cable operator shall, by means of automatic monitoring equipment, track all customer service telephone calls and prepare quarterly summaries of all calls according to the criteria listed in subsection C.3 of this section. Such report shall be delivered to the city annually and, in addition, as agreed to in the franchise agreement.

5. In cases of major system outages or major service interruption, a cable operator may provide a recorded message informing customers of the problem and a reasonable estimate under the circumstances of the correction time as long as customers are still able to reach a customer service representative.

6. In cases where a cable operator's existing telephone system cannot demonstrate compliance with the standards set forth in subsections C.3 or 4 of this section, the franchise agreement may specify comparable criteria for the cable operator's telephone system and the time frame for compliance with the standards set forth in this section. (Ord. 815 § 1, 2006)

#### **13.15.440 Complaint log.**

The cable operator shall keep a computer log or written record of (1) service calls and complaints which require the dispatch of a service vehicle to respond to the service call or complaint, and (2) calls regarding outages, regardless of whether a service vehicle was dispatched, together with the disposition of all such calls. Records kept in the ordinary course of business shall be available for public inspection by the affected subscriber at the local office of the cable operator during regular office hours such that each subscriber may examine only his or her own records. The log or record shall be available for inspection by the city, in the presence of the affected subscriber, at any time at the local office of the cable operator during regular office hours. Before making a record available for inspection under this section, the cable operator may require reasonable advance notice, which shall in no event exceed one working day. (Ord. 815 § 1, 2006)

**13.15.450 Subscriber test requests.**

Upon reasonable request or complaint by a subscriber, a cable operator shall, at its sole expense, perform such signal level tests as necessary to establish if a signal of requisite quality is being delivered to the subscriber's premises. The test shall be conducted at the subscriber's receiver and at other such locations deemed necessary by the cable operator, and a copy of the written test results shall be made available to the subscriber upon request. (Ord. 815 § 1, 2006)

**13.15.460 Conditions of service – Subscriber information.**

Each cable operator shall send or deliver to all new and reconnected subscribers, in writing, and to all subscribers at least once a year, information concerning the conditions of service, including but not limited to: rates, fees, charges, deposits, refunds of deposits, available levels of service (tiers), payment options, discounts (if any), service call policy, privacy protections and disconnection and reconnection policy. Each cable operator shall provide a copy of such information to the city concurrent with its distribution to the cable operator's subscribers. (Ord. 815 § 1, 2006)

**13.15.470 Complaints – Subscriber information.**

Upon connection or reconnection to the system and at least once a year, a cable operator shall, by appropriate means, such as a card or brochure, printed notice on billing statement, or billing insert, furnish to each subscriber information concerning the procedures for making inquiries or complaints to the cable operator or the city, including the name, address and local telephone number of the cable operator and the city. Each cable operator shall provide a copy of such information to the city concurrent with its distribution to the cable operator's subscribers. (Ord. 815 § 1, 2006)

**13.15.480 Investigation of complaints.**

A. When there have been a significant number of complaints made, or where there exists other evidence which, in the judgment of the city, indicates a problem with the reliability or quality of cable service as required under this chapter or in a franchise agreement, the city council shall have the right and authority to require a cable operator to evaluate the performance, operation or administration of the cable system including without limitation matters relating to customer service. The cable operator shall fully cooperate with the city in performing such evaluation and shall prepare results and a report, if requested, within 30 days after notice. Such report shall include the following information:

1. The nature of the complaint or problem which precipitated the evaluation;
2. What system component, operation or service was evaluated;
3. The equipment used and procedures employed;
4. The method, if any, by which such complaint or problem could be or has been resolved; and
5. Any other information pertinent to the evaluation which may be required.

B. The city may require that evaluations be supervised, or conducted, by an engineer, accountant or other consultant selected by the city and not on the permanent staff of the cable operator or the city, at the city's cost. The engineer, accountant or other consultant shall sign all records of the evaluation and forward to the city such records with a report interpreting the results of the evaluation and recommending actions to be taken. The city's rights under this section shall be limited to evaluating specific subjects and characteristics based on complaints, circumstances or other evidence which cause the city to reasonably believe that evaluation is necessary to protect the public against substandard cable service. (Ord. 815 § 1, 2006)

**13.15.490 Noncompliance with standards.**

In the event of repeated noncompliance with the customer service standards contained in this chapter, the city may, in addition to pursuing any other civil or criminal remedy, direct the cable operator to take steps to ensure compliance with such standards. (Ord. 815 § 1, 2006)

**13.15.500 Billing, late fees, disconnection of service and notification of rate changes.**

A. Bills for service shall be on a regular cycle, on a monthly basis. Nothing in this section shall prohibit voluntary prepayment of services by subscribers; provided, that a cable operator shall not be required to offer or accept any discount or other reduction in the amount paid by any subscriber for a voluntary prepayment of services. Each bill shall include a listing of the cable operator's customer service telephone number in a manner that makes such number significantly more prominent than any other telephone numbers listed on the bill. Bills shall not list the city's telephone number in a manner that causes confusion to the public.

B. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, level of service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

C. In case of a billing dispute, a cable operator must respond to a written complaint from a subscriber within 30 days.

D. Before itemizing on subscriber bills any fees, taxes, assessments or other items payable to the city, the itemization of which is not expressly authorized by state or federal statute or regulation, a cable operator shall submit a sample bill to the city for review and comment.

E. Charges on a bill shall not be deemed delinquent and a subscriber shall not be subject to a late fee, so long as payment is received from the subscriber in a manner consistent with applicable law.

F. A cable operator shall only disconnect a subscriber's service for good cause. A cable operator shall not disconnect service for nonpayment until the cable operator has provided the subscriber with notice, provided on or after the due date of the subscriber's bill and separately from that bill or any other standard monthly bill, at least 10 days in advance of the disconnection. The notice shall specify the earliest date the disconnection will occur, the total payment required to avoid disconnection and the telephone number and office hours to contact a customer service representative. In no event shall disconnection for nonpayment occur less than 14 days after the end of any billing period for which charges are delinquent. (Ord. 815 § 1, 2006)

**13.15.510 Credits for outages.**

A. Except for loss of service beyond the reasonable control of a cable operator, after notification from a subscriber of a service interruption or system outage and following reasonable notice and opportunity to cure, the cable operator shall, upon request, credit the subscriber's account on a pro rata basis one-thirtieth of the subscriber's monthly rate for each day or portion of a day that the system outage or service interruption continues. In addition, in cases where, within any seven-day period, there have been more than six system outages or service interruptions of 15 minutes or more, the cable operator shall, upon request, credit the subscriber's account for one-fourth of the subscriber's monthly rate. Should a system outage or service interruption affect a pay-per-view or other similarly priced per-event service, the subscriber shall, upon request, be credited the charges for such service.

B. Nothing in this section shall prohibit a cable operator from giving other credits. (Ord. 815 § 1, 2006)

**13.15.520 Refund of deposits.**

A cable operator shall refund all subscriber deposits within 30 days of termination of service. Any outstanding balance, including any equipment not returned by the subscriber, may be deducted from the deposit. The refund shall be mailed to the subscriber at no expense, or shall be handled as otherwise agreed to by the subscriber. (Ord. 815 § 1, 2006)

**13.15.530 Parental control lock.**

Each cable operator shall make available to subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any channels offered by the operator. (Ord. 815 § 1, 2006)

**13.15.540 Privacy.**

A cable operator shall comply with all federal laws in relation to privacy issues. (Ord. 815 § 1, 2006)

**13.15.550 Unauthorized connections and tampering.**

No person, firm or corporation shall make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable system for the purpose of taking or receiving television signals, radio signals, pictures, programs or sound. Also, no person, without the consent of the owner, shall tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound. (Ord. 815 § 1, 2006)

**Article V. Construction and Technical Standards**

**13.15.560 Construction requirements.**

All construction (including, but not limited to, the initial construction of the cable system and any major rebuild, expansion, replacement, repair or maintenance of the cable system) shall be performed in compliance with this chapter and all other provisions of this code. At least 90 days prior to initiating any major construction (other than routine maintenance or repair, installation of subscriber drops or minor line extensions), a cable operator shall submit a construction plan to the city. For purposes of this section, “major construction” means a system upgrade, system rebuild, or any work in the public rights-of-way that can be reasonably expected to affect system plant served by one or more fiber optic nodes. The construction plan shall include a description of the work, equipment specifications, existing and proposed locations of all facilities, traffic control plans, resident and business notification plans, steps to be taken to ensure compliance with local regulations, and a detailed construction schedule. The city may approve, conditionally approve or deny the construction plan. The city may require the posting of construction bonds. Additional construction requirements may be specified in a franchise agreement. (Ord. 815 § 1, 2006)

**13.15.570 Standards.**

A. Any construction, rebuild, upgrade, operation, maintenance, and repair of the system shall be in accordance in all material respects with all applicable sections of the Occupational Safety and Health Act of 1970, as amended; the National Electrical Safety Code and National Electric Code; Obstruction Marking and Lighting, AC 70/7460-1K, Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and other applicable federal, state, or local laws and regulations, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, accepted cable industry practices shall control (except insofar as such practices, if followed, would result in a cable system that could not meet express requirements of federal, state or local law, or in instances in which such practices are expressly preempted by other standards). Consistent with the foregoing, the city may ensure that work continues to be performed in an orderly and workmanlike manner, reflecting any changes that may occur over the franchise term.

B. A cable operator shall construct, install and maintain its cable system in an orderly and professional manner, using due diligence and materials of good and durable quality. All such work shall be performed in close coordination with other public and private utilities following accepted construction procedures and practices and working through existing committees and organizations. All cable and wires shall be installed, where pos-

sible, parallel with and in the same manner as electric and telephone lines on the same poles. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

C. A cable operator's cable system within the city shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601, et seq., and any other applicable technical standards.

D. Upon reasonable request by the city, based on subscriber complaints or other evidence of noncompliance with a franchise agreement or applicable law, a cable operator shall perform, at its sole cost, all tests necessary to demonstrate compliance with the requirements of a franchise agreement and other technical and performance standards established by applicable law. Unless a franchise agreement or applicable law provides otherwise, all tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of the National Cable Television Association's "Recommended Practices for Measurements on Cable Television Systems," or such other manual as may be directed under FCC regulations. A written report of any test results shall be filed with the city within seven days of this test. If a location fails to meet technical or performance specifications, the cable operator, without requirement of additional notice or request from the city, shall promptly take corrective action, and retest the locations. Any deficiencies shall be corrected within 30 days of the original test.

E. Should the cable operator fail to meet technical or performance tests, the cable operator shall bear all costs associated with the test. Should the cable operator advise the city that testing is not necessary or required to resolve the system performance issue at hand, and the city still insists on testing pursuant to this section, then the city shall bear the operator's reasonable cost of testing in the event that the cable operator passes the technical or performance test.

F. Every system, and all parts thereof, shall be subject to the right of periodic inspection and testing by the city to determine compliance with the provisions of this chapter, a franchise agreement, and other applicable law. The city shall have the right, upon request, to be notified and to be present when a system is tested by a cable operator; provided, that the cable operator need not delay or reschedule testing to accommodate such a request. Each cable operator shall respond to requests for information regarding its system and its plans for the system as the city may from time to time issue, including requests for information regarding its plans for construction, operation, and repair, and the purposes for which the plant is being constructed, operated or repaired.

G. A cable operator shall comply with all of the same standards and codes, including but not limited to the payment of inspection fees, to construct and maintain its system within private rights-of-way as are required for construction in the public rights-of-way. (Ord. 815 § 1, 2006)

### **13.15.580 Permits.**

A cable operator shall obtain all necessary permits and pay all generally applicable related fees, including but not limited to permit processing and inspection fees, from the city before commencing any construction, repair, upgrade, rebuild or extension of the system, including the opening or disturbance of any public rights-of-way, on private or public property within the city. The operator shall adhere to all state and local laws and building and zoning codes currently or hereafter applicable to construction, operation, or maintenance of the system in the city and give due consideration at all times to the aesthetics of the property.

### **13.15.590 Placement of facilities.**

A. Cable system operators shall follow city requirements for placement of facilities in public rights-of-way or city-owned property including the specific location of facilities in the public rights-of-way or city-owned property, and shall in any event install facilities in a manner that minimizes interference with the use of city-owned property and public rights-of-way by others, including others that may be installing cable systems, other communications facilities, or utilities. The city shall have the right to inspect all facilities being placed underground before they are covered. It shall be a cable operator's responsibility to arrange for inspection of underground

facilities by the appropriate city official, and the city shall have the right to require an operator to reopen a trench or other underground installation if any facilities are covered before the city has inspected them.

B. Upon order of the city manager, all work which does not comply with the permit, the approved plans or specifications for the work, or the requirements of this chapter, the franchise, or other applicable law, shall be promptly removed by the cable operator at its expense. (Ord. 815 § 1, 2006)

### **13.15.600 Marking of facilities.**

Each cable operator that places facilities underground shall be a member of USA and shall field mark the locations of its underground facilities upon request. Throughout the term of a franchise, a cable operator shall locate its facilities for the city at no charge to the city. (Ord. 815 § 1, 2006)

### **13.15.610 Existing poles and conduits.**

To the extent possible, a cable operator shall use existing poles and conduits within the public rights-of-way in installing its cable system. If such poles and conduits are unavailable, then a cable operator shall construct its own wireholding structures within the public rights-of-way, and install its facilities in those structures, provided there is sufficient room for additional structures in the public rights-of-way. Where the public rights-of-way cannot be used, a cable operator shall, to the extent possible, use existing poles and conduits located outside the public rights-of-way, after obtaining any necessary authorizations. In no case may additional poles or other structures be installed in the public rights-of-way or on any public property without the prior permission of the city. (Ord. 815 § 1, 2006)

### **13.15.620 Notice of work.**

Work by or on behalf of a cable operator concerning installation, maintenance, replacement or removal of a cable system, or any part thereof, shall be publicized by the cable operator, at its cost, in the manner and at the times the city manager periodically may direct. (Ord. 815 § 1, 2006)

### **13.15.630 Use of public and private property.**

A. Should the grades or lines of the public rights-of-way, whether on city-owned or private property, that a cable operator is authorized to use and occupy be changed at any time during the term of a franchise, the cable operator shall, if necessary, as determined by the city, relocate or change its system, at its own cost and expense, so as to conform with the new grades or lines.

B. Any alteration to any water and sewage mains or lines, to any drainage system or to any publicly owned structures in the public rights-of-way, whether on city-owned property or on private property, which alteration is required on account of the presence of a cable operator's system in the public rights-of-way or on such city-owned property or private property, shall be made at the sole cost and expense of the cable operator. During any work of constructing, operating or maintaining of a system, a cable operator shall, at its own expense, protect all existing structures belonging to the city and any other person. The city may prescribe the manner in which a cable operator shall perform any work performed within the public rights-of-way, whether on city-owned property or on private property.

C. Unless otherwise specified in a franchise, all system facilities shall be constructed, installed, and located in accordance with all applicable laws, ordinances, regulations and policies, and in accordance with the following terms and conditions:

1. Poles, underground conduits, ducts or other wireholding structures shall not be installed in the public rights-of-way or on other city property without the written permission of the city, or on private property of any third party without the written permission of the owner.

2. Whenever any existing telephone, electric utility, cable system, or other similar facilities are located underground within the public rights-of-way or on city-owned property, a person installing another cable system also shall place its cables and passive electronic facilities underground.

3. Whenever any existing telephone, electric utility, or communications facilities are located or relocated underground within the public rights-of-way or on city-owned or private property, cable operators that then occupy the same public rights-of-way, city-owned property or private property shall concurrently relocate their respective cables and passive electronic facilities underground, at their own expense, or in accordance with applicable law or current joint-use practices.

D. Any and all public rights-of-way, public property, or private property that is disturbed or damaged during the upgrade, rebuild, repair, replacement, relocation, operation, maintenance, or construction of a system shall be repaired, replaced and restored, in a good workmanlike, timely manner, to substantially the same condition as immediately prior to the disturbance (including appropriate landscape restoration). All repairs, replacements and restoration shall be undertaken within no more than 30 days after the damage is incurred, and shall be completed as soon as reasonably possible thereafter. The city may require that repairs, replacements and restoration take place in a shorter period of time in situations in which the city determines that a dangerous condition exists. The operator shall warrant such repairs, replacements and restoration for at least three years against defective materials or workmanship, with the exception of plants installed in the course of restoration. (Ord. 815 § 1, 2006)

#### **13.15.640 Interference with public projects – Relocation of facilities.**

A. Nothing in this chapter or any franchise agreement shall be in preference to, or in hindrance of, the right of the city, the city council or any board, authority, commission or public service corporation to perform or carry on any construction, public works or public improvements of any description. Subject to applicable law, should a cable operator's system in any way interfere with the construction, maintenance or repair of any public works or public improvements, the cable operator shall, at its sole cost and expense, protect or relocate its system, or part thereof, as directed by the city, the city council, the city manager or any city official, board, authority, or commission.

B. If any person that is authorized to place facilities in the public rights-of-way, or on city-owned or private property, requests a cable operator to protect, support, temporarily disconnect, remove, or relocate its facilities to accommodate the construction, operation, or repair of the facilities of such other person, the cable operator shall, after seven calendar days' advance written notice, take action to effect the necessary changes requested. If the requested action is necessary to address an emergency that, in the opinion of the city, might affect the public health, safety or welfare, then the cable operator shall take immediate action upon receipt of notice of the request to complete the requested action. Unless the matter is governed by a valid contract, a local ordinance, regulation or policy, or a state or federal law or regulation, or in other cases where the system that is being requested to move was not properly installed, the reasonable cost of the same shall be borne by the party requesting the protection, support, temporary disconnection, removal, or relocation and performed at no charge to the city.

C. A cable operator shall, at the request of any person holding a valid permit issued by a governmental authority, temporarily remove, raise or lower its wires to permit the temporary or permanent moving of buildings, structures, equipment of whatever nature, or other objects. The expense of such temporary removal or raising or lowering of wires shall be borne solely by the requesting party, unless otherwise agreed upon by the cable operator and the requesting party. A cable operator shall be given not less than 48 hours' advance notice to arrange for such temporary wire changes. (Ord. 815 § 1, 2006)

#### **13.15.650 Other permits.**

In addition to such permits as may be required by the city, a cable operator shall be required to obtain permits required by any other entity having jurisdiction. (Ord. 815 § 1, 2006)

**Article VI. Administration and Enforcement****13.15.660 Franchise fees.**

A. All cable operators shall pay a franchise fee to the city in an amount equal to 5% of the cable operator's gross revenues. The cable operator shall make franchise fee payments on the first day of each calendar quarter, or at such other times specified in the franchise agreement. Franchise fee payments shall be submitted together with documentation of the cable operator's gross revenues in such form as may be agreed to in the franchise agreement.

B. Payment of the franchise fee shall not be considered in the nature of a tax or in lieu of other taxes or fees imposed by the city.

C. The franchise fee is in addition to all other taxes, fees and payments that a cable operator may be required to pay under its franchise agreement or any federal, state, or local law, and to any other tax, fee, or assessment imposed by utilities and cable operators for use of their services, facilities, or equipment, including any applicable amusement taxes and annual license taxes, except to the extent that such fees, taxes, or assessments shall be treated as a franchise fee under Section 622 of the Cable Act, 47 U.S.C. § 542.

D. A cable operator shall not designate the franchise fee as a tax in any communication to a subscriber. (Ord. 815 § 1, 2006)

**13.15.670 Fees on noncable operator revenues.**

In consideration of the use of public property, any person other than a cable operator who provides cable service over a cable system for which charges are assessed to subscribers but which are not received by a cable operator shall pay a fee to the city in an amount equal to 5% of that person's revenues. The cable operator whose cable system is used by such person shall collect the foregoing fee from such person no later than the tenth day prior to the close of each calendar quarter and shall remit the fee to the city no later than the first day of the following calendar quarter. If the cable operator fails to collect or remit all or part of this fee, the cable operator shall be directly liable to the city for payment of the uncollected or unremitted fee. (Ord. 815 § 1, 2006)

**13.15.680 Audit.**

The city, on an annual basis, shall be furnished a statement within 90 days of the close of the calendar year, certified by an officer of the operator reflecting the total amounts of gross revenues and all payments and computations of the franchise fee for the previous calendar year. The city shall have the right to conduct an audit of the operator's books and records reasonably related to the calculation of gross revenues and franchise fees for the audit period not more frequently than once every three years, upon 60 days' prior written notice to the operator, and shall provide the city or its designee copies of such books and records, subject to the terms of a mutually satisfactory confidentiality agreement, substantially identical to the form of an agreement to be appended to the operator's franchise agreement. If such audit indicates a franchise fee underpayment of at least 5%, and such finding is not contested, the operator shall assume all reasonable costs of such an audit. If there is any underpayment, the operator shall remit to the city all applicable franchise fees. (Ord. 815 § 1, 2006)

**13.15.690 Late payments.**

In the event that the cable operator does not make any payments required by this code on or before the date due, a late payment penalty shall accrue at a rate of 1.5% per month on the unpaid amount until paid, or such other amount as may be set by applicable law. (Ord. 815 § 1, 2006)



**13.15.700 No accord or satisfaction.**

No acceptance by or payment to the city of a franchise fee, or any portion thereof, shall be construed as a release or an accord and satisfaction of any claim the city may have for further or additional sums due or for the performance of any other obligation of a cable operator, or as an acknowledgment that the amount paid is the correct amount due. (Ord. 815 § 1, 2006)

**13.15.710 Records and reports.****A. Access to books and records.**

1. The city or its designee shall have the right to review, upon reasonable and timely written notice, during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, at the operator's local office, all books, documents, and records reasonably necessary to ensure compliance with the franchise.
2. To the extent not inconsistent with applicable law, the operator shall have the right to designate confidential and proprietary any confidential, proprietary, trade secret and privileged information that may be provided to the city and the city shall thereupon treat such information as privileged from disclosure under the California Public Records Act. The city shall provide the operator with at least 10 business days' advance notice of any request by a third party for disclosure of information designated by the operator as confidential, proprietary, trade secret or privileged. To the extent that any information regarding the local cable system is maintained, either separately or cumulatively with information concerning other cable systems or operations, by the operator or an affiliate, the operator shall make copies of such records available for inspection and auditing at the local office within seven days after receipt of a written request by the city.
3. If any documents, books and records are too voluminous, or for security reasons cannot be copied and moved, then a cable operator may request that the inspection take place at some other location mutually agreed to by the city and a cable operator; provided, that the cable operator shall pay all travel and additional expenses incurred by the city (above those that would have been incurred had the documents, books and records been produced at the operator's local office) in inspecting those documents, books and records or having those documents, books and records inspected by its designee.
4. Without limiting the foregoing, a cable operator shall provide the city with the following within 10 days of receipt or (in the case of documents, books or records created by the cable operator or its affiliate) filing:
  - a. Notices of deficiency or forfeiture related to the operation of the system; and
  - b. Copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by a cable operator, or by any partnership or corporation that owns or controls the cable operator directly or indirectly.
5. Upon reasonable request and limited to matters directly affecting the cable system or the city's authority over the cable system, operator will provide copies of all petitions, applications, communications and reports submitted by the operator or on behalf of the operator to the Federal Communications Commission, Securities and Exchange Commission, or any other governmental authority having jurisdiction with respect to any matters affecting the cable system. Copies of responses from any such governmental authority to the operator shall likewise be furnished upon request to the city.

**B. Reports.** A cable operator shall within 90 days of each calendar year end, submit a written end of the year report to the city with respect to the preceding calendar year containing the information required by such operator's franchise agreement.

**C. Records required.** A cable operator shall at all times maintain:

1. Records of all complaints received, with information sufficient to allow a cable operator to prepare the reports required in this section and the operator's franchise agreement;
2. Records of outages known to a cable operator, with information sufficient to allow a cable operator to prepare the reports required in this section and the operator's franchise agreement;
3. Records of service calls for repairs and maintenance indicating the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved;

4. Records of installation/reconnection and requests for service extension, indicating the date of request, the date of acknowledgment, and the date and time service was extended; and
5. System financial records prepared in accordance with generally accepted accounting principles.

D. Additional records and reports. The city may require cable operators to maintain records and to prepare reports relevant to determining a cable operator's compliance with the terms and conditions of this chapter and a franchise.

E. Maps. The operator shall at all times maintain and upon request make available for review by the city: a full and complete set of plans, records and "as-built" maps showing the location of the cable system installed or in use in the city, exclusive of subscriber service drops and equipment provided in subscribers' homes. To the extent technically and economically feasible, the operator shall also make records and strand maps available to the city in electronic format compatible with the city's computer system.

F. Waiver of reporting requirements. The city may, at its discretion, waive in writing the requirement of any particular report specified in this section. (Ord. 815 § 1, 2006)

**13.15.720 Location of cable operator's properties.**

A. Each cable operator shall at all times make and keep on file in the office of the community development director current, full and complete plans and records to a scale and form approved by the community development director, showing the location of all cable system equipment installed or in use in streets, alleys and public places in the city.

B. Each cable operator shall file with the community development director, on or before the last day of March of each year, a current map or set of maps drawn to a scale designated by the community development director, showing all cable system equipment installed in streets, alleys and public places of the city during the previous year. (Ord. 815 § 1, 2006)

**13.15.730 Insurance.**

A cable operator shall obtain, and by its acceptance of the franchise specifically agrees that it will maintain, throughout the entire term of the franchise, at its own cost and expense, and keep in force and effect, insurance policies in accordance with the requirements of its franchise agreement. (Ord. 815 § 1, 2006)

**13.15.740 Indemnification.**

A. No franchise or other authorization to use the public rights-of-way, or any independent permission to use city-owned property granted to a cable operator, shall be valid or effective until and unless the city obtains adequate indemnity from such cable operator.

B. Neither the provisions of this section nor any damages recovered by the city shall be construed to limit the liability of a cable operator for damages to the city, its elected and appointed officers, officials, boards, commissions, employees, agents, and volunteers, and any other person or persons, under the franchise. (Ord. 815 § 1, 2006)

**13.15.750 Performance bond.**

A franchise agreement may require the cable operator to post a performance bond in an amount acceptable to the city to secure the performance of the cable operator's obligations to repair and restore the public rights-of-way in accordance with this code. A franchise agreement may also require a cable operator to post a separate performance bond in an amount specified in the franchise agreement to secure the cable operator's obligations under the franchise agreement and this chapter. (Ord. 815 § 1, 2006)

**13.15.760 Possessory interest.**

The granting of a franchise pursuant to this chapter may create an interest subject to property taxation pursuant to California Revenue and Taxation Code section 107, et seq. Each cable operator shall be solely responsible for payment of any such taxes. (Ord. 815 § 1, 2006)

**13.15.770 Violations.**

A. Civil and criminal penalties. Any person who violates any provision of this chapter may be guilty of a misdemeanor or an infraction, as otherwise provided by applicable law.

B. Civil penalties. Any person who violates any provision of this chapter, or who violates any condition of any license or permit issued hereunder, or who breaches any franchise agreement or other agreement with the city, may be liable for a civil penalty, as otherwise provided by applicable law.

C. Revocation, reduction of term, or forfeiture of franchise.

1. a. The city shall have the right to revoke the franchise for any material violation of a franchise agreement.

b. Notice of violation or default. In the event the city believes that a cable operator has not complied with a material term of the franchise, it shall notify the operator in writing with specific details regarding the exact nature of the alleged noncompliance or default. No opportunity to cure is required for fraud.

c. Operator's right to cure or respond. The operator shall have 90 days from the receipt of the city's written notice: (i) to respond to the city, contesting the assertion of noncompliance or default; or (ii) to cure such default; or (iii) in the event that, by nature of the default, such default cannot be cured within the 90-day period, to initiate reasonable steps to remedy such default and notify the city of the steps being taken and the projected date that they will be completed.

d. Public hearings. In the event the operator fails to respond to the city's notice or in the event that the alleged default is not remedied within 90 days or the date projected by the operator, the city may give the operator written notice of its intent to revoke the franchise, stating its reasons. Prior to revoking the franchise, the city shall schedule a public hearing, on at least 30 calendar days' notice, at which time the operator and the public shall be given an opportunity to be heard. Following the public hearing, the city may determine whether to revoke the franchise based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to the operator to effect any cure. If the city determines to revoke the franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the operator.

2. Notwithstanding the foregoing, the city council may declare a franchise forfeited where the cable operator (a) fails to begin to exercise its rights under the franchise within a period specified in the franchise agreement; (b) transfers the franchise in a manner inconsistent with the terms of this chapter or the franchise agreement; (c) fails to pay the fees owed hereunder; or (d) defrauds or attempts to defraud the city or its customers.

3. Upon revocation, final denial of renewal pursuant to federal law, or forfeiture of a franchise, a cable operator shall be obligated to cease using its system for the purposes authorized by the franchise. The city may (a) purchase the cable operator's facilities at a price established in accordance with 47 U.S.C. § 547; (b) effect a transfer of the cable operator's facilities to another person at such a price; or (c) require the cable operator or its surety to remove some or all of the cable operator's facilities from the public rights-of-way or city-owned property and to restore the public rights-of-way and city-owned property to their proper condition. Notwithstanding anything in this chapter to the contrary, should a cable operator fail, refuse, or neglect to remove such facility, the city may remove the facility at the expense of the cable operator. Regardless of the existence or amount of any security fund or performance bond, the obligation of a cable operator to remove shall survive the termination of the franchise. This provision does not authorize the city to purchase, effect a transfer of, or require a cable operator to remove any facilities that are used to provide another service for which the cable operator holds a valid franchise issued by the city council.

D. Cumulative remedies. The foregoing remedies shall be deemed nonexclusive, cumulative remedies and in addition to any other remedy the city may have at law or in equity. (Ord. 815 § 1, 2006)

### **Article VII. Rate Regulation**

#### **13.15.780 Authority.**

The city reserves all of its rights under applicable law regarding the regulation of the rates charged by cable operators. (Ord. 815 § 1, 2006)

#### **13.15.790 Notice of rate increases.**

No later than 30 days prior to the effective date of any proposed increase in rates, the cable operator shall notify its subscribers of its proposed rates by mailing such notice to all subscribers, either separately or in conjunction with bills or other notices sent to subscribers. (Ord. 815 § 1, 2006)

### **Article VIII. State Video Franchises**

#### **13.15.800 Purpose and authority.**

This Article VIII implements the Digital Infrastructure and Video Competition Act of 2006, set forth at Public Utilities Code section 5800 and following (the “Act”; AB 2987). The Act creates a process for the state, rather than local cities and counties, to grant video service franchises. It will be administered by the California Public Utilities Commission (CPUC).

Under the Act, some authority is retained by local cities and counties, and the purpose of this article is to implement that local authority in the city.

Parenthetical references in this article are to the California Public Utilities Code (PUC). (Ord. 829 § 1, 2008)

#### **13.15.810 Definitions.**

The terms “video service,” “video franchise” and “holder” shall have the same meaning as those terms are defined in Public Utilities Code section 5830.

“Gross revenue” has the meaning set forth in California Public Utilities Code section 5860(d).

Terms not defined here shall have the same meaning as established in (in order of priority): (1) the California Public Utilities Code; (2) commission rules implementing the California Public Utilities Code; and (3) Title 47 United States Code Title VI. (Ord. 829 § 1, 2008)

#### **13.15.820 State video franchise applications.**

A. Copy of application to city. An applicant for a state video franchise within the city must concurrently provide a complete copy to the city manager of any application or amendments to an application filed with the California Public Utilities Commission (CPUC) (PUC § 5840(n)).

B. City manager comments to CPUC. Within 30 days of receipt, the city manager will provide any appropriate comments to the CPUC regarding an application or an amendment to an application for a state video franchise. (Ord. 829 § 1, 2008)

**13.15.830 State video franchise and PEG fees.**

A. Franchise fee. Any state video franchise holder operating within the city shall pay a fee to the city equal to 5% of the gross revenues of that state video franchise holder derived from the operation of its franchise within the city (PUC § 5840(q)). A state video franchise holder shall pay the franchise fee to the city quarterly, within 45 days after the end of each calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the fee.

B. PEG fees.

1. Current fees. Any state video franchise holder operating within the city shall pay a PEG fee to the city in an amount equal to the existing unsatisfied obligations of the incumbent operator's franchise.

2. Fee to take effect upon expiration of incumbent operator's franchise. Any state video franchise holder operating within the city upon the expiration of the incumbent operator's franchise shall pay a PEG fee to the city equal to 1% of the gross revenue of that state video franchise holder derived from the operation of its franchise within the city. A state video franchise holder shall pay the PEG fee to the city quarterly, within 45 days after the end of each calendar quarter. The city will use the receipts of the PEG fee for purposes consistent with state and federal law. (PUC § 5870(n).)

C. Authority to examine records. The city manager may examine the business records of a holder of a state video franchise to ensure compliance with this section. The city may conduct such an examination not more than once each year (PUC § 5860(i)). (Ord. 829 § 1, 2008)

**13.15.840 Customer service penalties.**

A. Compliance with customer service and protection standards. The holder of a state video franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service in the city (PUC § 5900(a) and (b)).

B. City monitoring – Notice of violation – Penalties. The city manager shall monitor the compliance of state video franchise holders with respect to state and federal customer service and protection standards. The city manager will provide the state video franchise holder written notice of any material breaches of applicable customer service standards, and will allow the state video franchise holder 30 days from the receipt of the notice to remedy the specified material breach. A material breach not remedied within the 30-day time period will be subject to the following city penalties:

1. For the first occurrence of a violation, a fine of \$500.00 shall be imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation.

2. For a second violation of the same nature within 12 months, a fine of \$1,000 shall be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.

3. For a third or further violation of the same nature within 12 months, a fine of \$2,500 shall be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation (PUC § 5900(c) and (d)).

C. Appeal. A state video franchise holder may appeal a penalty assessed by the city manager to the city council as provided in PHMC § 1.10.010E, except that the period for appeal is 60 days of the initial assessment. The city council shall set the matter for hearing, and hear all evidence and relevant testimony. The council may uphold, modify or vacate the penalty. The city council's decision on the imposition of a penalty is final. (Ord. 829 § 1, 2008)

**13.15.850 Public rights-of-way.**

A. A state video franchise holder is required to obtain an encroachment permit under PHMC Chapter 11.05 before constructing, operating, maintaining or repairing its facilities within the public right-of-way.

B. The city shall either approve or deny an encroachment permit application within 60 days of receiving a completed application. An application is considered complete when the applicant has complied with all statutory requirements, including the California Environmental Quality Act (Pub. Res. Code § 21000 and following).

C. If the city denies the encroachment permit, it shall provide the applicant with a detailed explanation of the reason for the denial. A determination regarding the encroachment permit by the director of public works and community development may be appealed in accordance with PHMC Chapter 1.10. (PUC §§ 5830(o), 5840(e) and 5885(c).) (Ord. 829 § 1, 2008)

**Chapter 13.20****DIABLO VISTA WATER SYSTEM<sup>1</sup>**

## Sections:

- 13.20.010 Findings and purpose.
- 13.20.020 Property merger – Property held in trust relationship.
- 13.20.030 Duties of city.
- 13.20.040 Use of revenues – Payment of obligations.
- 13.20.050 Changes in system.
- 13.20.060 Annual audit of system affairs.
- 13.20.070 Continuance of debts and obligations.
- 13.20.080 Service charge and connection fees.
- 13.20.090 Operating personnel.

**13.20.010 Findings and purpose.**

## A. The city council finds that:

1. The city, on the date of its incorporation, November 14, 1961, included entirely within its boundaries the Diablo Vista County Water District and, as a result of this inclusion, the district merged with the city;
2. As a result of the merger of the district with the city, the district no longer had any independent existence on November 14, 1961, and the property of the district vested in the city. The city holds this property subject to the terms and conditions set forth in this chapter.

B. The council recognizes that the area comprising the former district which serves only raw water is only a portion of the area within the boundaries of the city and because the interests of each are not entirely common and mutually identical, it is necessary to make special provisions for the administration of the property and affairs of the former district.

## C. It is the purpose of this chapter to:

1. Provide for the orderly transfer of the property and affairs relating to the Diablo Vista water system to the city;
2. Fix the terms and conditions of handling the property of the district;
3. Provide for the administration of the affairs of the district having at least equivalent standards and level of service; and
4. Ensure that the merger does not impose greater benefit or burdens, or both upon one or the other, than previously would have existed if the two separate entities had not merged. (1991 code § 13-1.1)

**13.20.020 Property merger – Property held in trust relationship.**

A. Property merger. The city council declares that the Diablo Vista County Water District is merged with the city and that title to all the property of the district is vested in the city, subject to the terms and conditions of a trust relationship set forth in subsection B of this section.

B. Property held in trust relationship. The city holds title to the former district property in trust for the benefit of those persons within the area comprising the former district. The city shall hold and administer the property of the district for the benefit of the people and the area comprising the former district in the same manner and subject to the same obligations and duties and same rights and privileges as the former board of directors. (Ord. 785 § 1, 2004; 1991 code §§ 13-1.2, 13-1.3)

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1. **Editor's note:** For statutory provisions regarding water and water systems generally, see Health and Safety Code sections 4010 through 4038; for provisions regarding authority of city relative to water and water rights, see Government Code sections 38730 through 38742.

**13.20.030 Duties of city.**

The city shall maintain the same level of service which the former district was furnishing on the date of the merger. The city shall administer the affairs of the district in a manner which ensures continuity of water service. (1991 code § 13-1.4)

**13.20.040 Use of revenues – Payment of obligations.**

All sums which the city receives from the operation of the system and the proceeds of taxes, assessments and other sums derived as a result of the operation of the system shall be used solely for the purpose of administering and operating the water system. The obligations incurred as a result of the operation and administration of the water system shall be paid solely from the funds received as a result of the operation of the same. (1991 code § 13-1.5)

**13.20.050 Changes in system.**

The city may not change or modify the existing facilities which constitute the water system in a manner which will either jeopardize or affect the level of service, or the cost of the service to those being served by the water system on September 23, 1963, without the approval of the advisory water committee. If an alternate and more economical water service becomes available and the advisory water committee recommends that the existing facilities be abandoned, the council may submit to the residents of the district at an election the question of whether or not the existing system should be abandoned. (1991 code § 13-1.6)

**13.20.060 Annual audit of system affairs.**

Annually, at the same time the city has its affairs audited, the city shall have a separate audit made of the affairs of the advisory water committee. (1991 code § 13-1.7)

**13.20.070 Continuance of debts and obligations.**

The debts and obligations of the district which were outstanding on November 14, 1961, continue to be the debts and obligation of the residents of the area comprising the former district. (1991 code § 13-1.8)

**13.20.080 Service charge and connection fees.**

A. An annual service charge for users or consumers of the Diablo Vista water system shall be promulgated by resolution of the city council.

B. Service charges for discontinuance from the water system and connection and reconnection to the water system shall be promulgated by resolution of the city council.

C. Rules and regulations for the implementation of the service charge, disconnection charge and reconnection charge shall be promulgated by a resolution of the city council. Rules and regulations for discontinuance of service shall be promulgated by a resolution of the city council. (1991 code § 13-1.9)

**13.20.090 Operating personnel.**

A. Appointment – Compensation. The city council shall appoint a secretary to the advisory committee, two operating engineers, and a dispatcher. Compensation for personnel of the Diablo Vista Water System may be established by resolution.

B. Terms of appointment. The operating personnel serve at the pleasure of the city council. However, the city council shall maintain these positions until such time as it finds that full-time city personnel can perform these functions more economically. (Ord. 785 § 3, 2004; 1991 code § 13-1.10)