

ORDINANCE NO. 653 N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES AMENDING SECTION 5.08.040 OF THE MUNICIPAL CODE TO DELETE THE REQUIREMENT THAT CARD TABLES OPERATE WITHIN THE SAME PREMISES AS A BUSINESS WHICH IS LICENSED AND OPERATING UNDER AN ON-SALE GENERAL LICENSE FOR THE SALE OF BEER, WINE AND DISTILLED SPIRITS AND TO CLARIFY THE PROVISIONS OF THIS SECTION PERTAINING TO TRANSFER OF LICENSES AND COMPLIANCE WITH ZONING AND BUILDING ORDINANCES AND REGULATIONS (CODE AMENDMENT 93001)

WHEREAS, Subsection (d) of Section 5.08.040 of the Municipal Code requires that card tables must operate within the same premises as a business which is licensed and operating under an on-sale general license for the sale of beer, wine, and distilled spirits; and

WHEREAS, there does not appear to be any clear basis for the provisions of Subsection (d) of Section 5.08.040; and

WHEREAS, it would not be detrimental to the health, safety and welfare of the City if the requirement of Subsection (d) of Section 5.08.040 was deleted; and

WHEREAS, the text of Subsection (e) of Section 5.08.040 of the Municipal Code is unclear in its present construction; and

WHEREAS, it appears that the intent of Subsection (e) of Section 5.08.040 is to require that the City Council approve any transfers of licenses for card tables to other locations or to other permittees and that all locations in which card tables operate be in compliance with applicable zoning and building ordinances and regulations of the city;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of El Paso de Robles, California, that Section 5.08.040 of the Municipal Code be amended to read as follows:

5.08.040 Number of establishments and tables limited - Standards for issuance of licenses.

1. Number of Establishments and Tables Limited. No license shall be granted to any applicant to conduct card games if three such places are then licensed or being operated and no license shall be granted for more than three pool, snooker, eight-ball or similar tables in a place of business where liquor is sold for consumption on the premises pursuant to an on-sale general alcoholic beverage license.

2. Standards for Issuance.

(a) No more than a total of five card tables shall be licensed to operate within the city under the provisions of this chapter.

(b) No one permittee shall be authorized to operate more than a total of two card tables within the city.

(c) No more than two card tables shall be operated and maintained within any single business premises within the city.

(d) No card table license shall be issued unless the location for the card table(s) is in compliance with all applicable zoning and building regulations of the city.

(e) No card table license shall be transferable to another location or permittee without the approval of the city council.

(f) No card table license shall be issued to any person who has been convicted of any felony, nor to any association, partnership, or corporation of which any owner thereof has been convicted of a felony.

the public rights-of-way by the Grantee in connection with any of the work herein provided for, and the Grantee shall maintain such barriers, signs and warning signals during any such work performed on or about the public rights-of-way or adjacent thereto as may be necessary to reasonably avoid injury or damage to life and property.

(5) If at any time during the period of this franchise the Grantor shall lawfully elect to alter or change the grade or location of any street, alley or other public rights-of-way, the Grantee shall, upon reasonable notice by the Grantor, remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense, and in each instance comply with the requirements of the Grantor; provided, that Grantee shall have no such obligation if other public utilities occupying the same public rights-of-way are not also required to remove, relay or relocate their poles, wires, cables, underground conduits, manholes and other fixtures at their own expense.

(6) The Grantee shall not place poles, conduits or other fixtures above or below ground where the same will interfere with any gas, electric, telephone fixtures, water hydrants or other utility, and all such poles, conduits or other fixtures placed in any street shall be so placed as to comply with all ordinances of the Grantor.

(7) The Grantee may be required by the Grantor to permit joint use of its utility poles and appurtenances located in the streets, alleys or other public rights-of-way, by utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefore; provided that in the absence of agreement regarding such joint use, the City Council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefrom, which award shall be final.

(8) The Grantee shall, on request of any person holding a moving permit issued by the Grantor, temporarily move its wires or fixtures to permit the moving of buildings, the expense of such temporary removal to be paid by the person requesting the same, and the Grantee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary changes.

(9) The Grantee shall have the authority, except when in conflict with existing Grantor ordinances, to trim any trees upon and overhanging the streets, alleys, sidewalks and public places so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the Grantor, such trimming may be done by it, or under its supervision and direction, at the expense of the Grantee.

E. In the event of multiple franchisees desiring to serve new residential developments in which the electric power and telephone utilities are underground, the following procedure shall apply with respect to access to and utilization of underground easements.

(1) The developer shall be responsible for contacting and surveying all franchised cable operators to ascertain which operators desire to provide cable television service to that development. The developer may establish a reasonable deadline to receive cable operator responses. The final development map shall indicate the cable operators that have agreed to serve the development.

(2) If one (1) or two (2) cable operators wish to provide service,

they shall be accommodated in the joint utilities trench on a nondiscriminatory shared cost basis. If fewer than two (2) operators indicate interest, the developer shall provide conduit to accommodate two (2) sets of cable television cables and dedicate to the City any initially unoccupied conduit. The developer shall be entitled to recover the costs of such initially unoccupied conduit in the event that Grantor subsequently leases or sells occupancy or use rights to any Grantee.

(3) The developer shall provide at least ten (10) working days' notice of the date that utility trenches will be open to the cable operators that have agreed to serve the development. When the trenches are open, cable operators shall have two (2) working days to begin the installation of their cables, and five (5) working days after beginning installation to complete installation.

(4) The final development map shall not be approved until the developer submits evidence that:

(a) It has notified each Grantee that underground utility trenches are to be open as of an estimated date, and that each Grantee will be allowed access to such trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and

(b) It has received a written notification from each Grantee that the Grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and the Grantee, or has received no reply from a Grantee within ten (10) days after its notification to such Grantee, in which case the Grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.

(5) Sharing the joint utilities trench shall be subject to compliance with State regulatory agency and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire cost shared among the participating operators. With the concurrence of the developer, the affected utilities and the cable operators, alternative installation procedures, such as the use of deeper trenches, may be utilized, subject to applicable law.

(6) Any cable operator wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs.

(7) In the event that more than one (1) franchise is awarded, the City reserves the right to limit the number of drop cables per residence, or to require that the drop cable(s) be utilized only by the cable operator selected by the resident to provide service.

(8) The City reserves the right to grant an encroachment permit to a cable franchisee applicant to install conduit and/or cable in anticipation of the granting of a franchise. Such installations shall be at the applicant's risk, with no recourse against the City in the event the pending franchise application is not granted. The City may require an applicant to provide a separate trench for its conduit and/or cable, at the applicant's cost. The construction of such separate trench, if provided, shall be coordinated with, and subject to, the developer's overall construction schedule.

Section 1.21 Technical Standards

A. The Grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and any detailed standards set forth in its franchise agreement. In addition, the Grantee shall provide to the Grantor, upon request, a written report of the results of the Grantee's periodic proof of performance tests conducted pursuant to FCC and franchise standards and guidelines.

B. Repeated and verified failure to maintain specified technical standards shall constitute a material breach of the franchise.

Section 1.22 Hold Harmless

Grantee shall indemnify, defend and hold Grantor, its officers, agents and employees harmless from any liability, claims, damages, costs or expenses, to the extent provided in the Franchise Agreement.

Section 1.23 Insurance

A. On or before commencement of franchise operations, the Grantee shall obtain policies of liability, Workers' Compensation and property insurance from appropriately qualified insurance companies.

B. The policy of liability insurance shall:

(1) Be issued to Grantee and name Grantor, its officers, agents and employees as additional insureds;

(2) Indemnify for all liability for personal and bodily injury, death and damage to property arising from activities conducted and premises used pursuant to this Chapter by providing coverage therefor, including but not limited to:

- Negligent acts or omissions of Grantee, and its agents, servants and employees, committed in the conduct of franchise operations, and/or
- Use of motor vehicles;

(3) Provide a combined single limit for comprehensive general liability and comprehensive automobile liability insurance in the amount provided for in the franchise agreement. Such insurance policy shall be subject to review by Grantor's legal counsel; and

(4) Be noncancellable without thirty (30) days' prior written notice thereof directed to Grantor.

C. The policy of Workers' Compensation Insurance shall comply with the laws of the State of California.

D. The policy of property insurance shall provide fire insurance with extended coverage on the franchise property used by Grantee in the conduct of

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franchise operations in an amount adequate to enable Grantee to resume franchise operations following the occurrence of any risk covered by this insurance.

E. Grantee shall file with Grantor, by the deadline provided in the franchise agreement, a certificate of insurance for each of the required policies executed by the company issuing the policy or by a broker authorized to issue such a certificate, certifying that the policy is in force and providing the following information with respect to said policy:

- (1) The policy number;
- (2) The date upon which the policy will become effective and the date upon which it will expire;
- (3) The names of the named insureds and any additional insured required by the Franchise Agreement;
- (4) The subject of the insurance;
- (5) The type of coverage provided by the insurance; and
- (6) The amount or limit of coverage provided by the insurance.

If the certificate of insurance does not provide all of the above information, Grantor reserves the right to inspect the relevant insurance policies.

F. In the event Grantee fails to maintain any of the above-described policies in full force and effect, Grantor shall, upon forty-eight (48) hours' notice to Grantee, have the right to procure the required insurance and recover the cost thereof from Grantee. Grantor shall also have the right to suspend the franchise during any period that Grantee fails to maintain said policies in full force and effect.

Section 1.24 Records Required and Grantor's Right to Inspect

A. Grantee shall at all times maintain:

- (1) A record of all service calls and interruptions or degradation of service experienced for the preceding two (2) years, provided that such complaints result in or require a service call, subject to the subscriber's right of privacy.
- (2) A full and complete set of plans, records and "as-built" maps showing the locations of the cable television system installed or in use in the City, exclusive of subscriber service drops and equipment provided in subscriber's homes.
- (3) If requested by Grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the Grantor within thirty (30) days following any Grantor request, in a form reasonably acceptable to the Grantor.

B. The Grantor may impose reasonable requests for additional information, records and documents from time to time, provided they reasonably relate to the

scope of the City's rights under this Chapter or the Grantee's franchise agreement.

C. Upon reasonable notice, and during normal business hours, Grantee shall permit examination by any duly authorized representative of the Grantor of all franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within or without the City, and all records relating to the franchise, provided they are necessary to enable the Grantor to carry out its regulatory responsibilities under this Chapter or the franchise agreement. Grantee shall have the right to be present at any such examination.

Section 1.25 Annual Reports

Within ninety (90) days after the end of the calendar year, if requested by Grantor, Grantee shall submit a written annual report to Grantor with respect to the preceding calendar year in a form approved by Grantor, including, but not limited to, the following information:

A. A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including but not limited to, services begun or discontinued during the reporting year;

B. A list of Grantee's officers, members of its board of directors, and other principals of Grantee;

C. A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in Grantee;

D. An indication of any residences in Grantee's service area where service is not available, and a schedule for providing service;

E. Information as to the number of homes passed, subscribers, additional television outlets, and the number of basic and pay subscribers.

F. Information as to the degree of compliance with the provisions contained in Section 1.43 herein and all steps required by this Chapter and applicable law have been taken to assure that the privacy rights of individuals have been protected; and

G. Any other information relevant to franchise regulation which the Grantor shall reasonably request, and which is relevant to its regulatory responsibilities.

Section 1.26 Copies of Federal and State Communications

Upon request, Grantee shall submit to Grantor copies of all pleadings, applications and reports submitted by Grantee to, as well as copies of all decisions, correspondence and actions by, any Federal, State or local court, regulatory agency, or other governmental body which are non-routine in nature and which will materially affect its cable television operations within the franchise area.

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Section 1.27 Public Reports

If Grantee is publicly held, a copy of each Grantee's annual and other periodic reports and those of its parent, shall be submitted to Grantor within forty-five (45) days of its issuance.

Section 1.28 Opinion Survey

Upon request of the Grantor, but not more than once annually, the Grantee shall conduct a subscriber satisfaction survey pertaining to quality of service, which may be in a postcard format that can be transmitted to subscribers in Grantee's invoice for cable services. The results of such survey shall be provided to the Grantor on a timely basis. The cost of such survey shall be borne by the Grantee.

Section 1.29 Reports - General

A. All reports required under this Chapter, except those required to be kept confidential, as provided in Subsection E. below, shall be available for public inspection in the Grantor's offices during normal business hours.

B. All reports and records required under this Chapter shall be furnished at the sole expense of Grantee, except as otherwise provided in this Chapter or the franchise agreement.

C. The willful refusal, failure, or neglect of Grantee to file any of the reports required as and when due under this Chapter, may be deemed a material breach of the franchise agreement if such reports are not provided to Grantor within thirty (30) days after written request therefor, and may subject the Grantee to all remedies, legal or equitable, which are available to Grantor under the franchise or otherwise.

D. Any materially false or misleading statement or representation made knowingly and willfully by the Grantee in any report required under this Chapter or under the franchise agreement may be deemed a material breach of the franchise and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under the franchise or otherwise.

E. Notwithstanding the provisions of Sections 1.24, 1.25 and 1.26, Grantee shall have no obligation to provide copies of documents or information to Grantor which contain trade secrets of Grantee or which are otherwise of a confidential or proprietary nature to Grantee unless it receives satisfactory assurances from Grantor that such documents or information can and will be held in strictest confidence by the Grantor and not made available for public inspection. To the extent possible, Grantee will provide Grantor with summaries of any required documents or information or copies thereof with trade secrets and proprietary matters deleted therefrom. The burden of proof shall be on Grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of the Grantor.

Section 1.30 Annual Review of System Performance

Each year throughout the term of the franchise, if requested by the City

Council, Grantor and Grantee shall meet publicly to review system performance and quality of service.

The various reports required pursuant to this Chapter, results of technical performance tests, the record of subscriber complaints and Grantee's response to complaints, and the information acquired in any subscriber surveys, shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. Within thirty (30) days after the conclusion of a system performance review meeting, Grantor may issue findings with respect to the cable system's franchise compliance and quality of service.

If Grantor determines that Grantee is not in compliance with the requirements of this Chapter or the Grantee's franchise, Grantor may direct Grantee to correct the areas of noncompliance within a reasonable period of time. Failure of Grantee, after due notice, to correct the areas of noncompliance within the period specified therefor or to commence compliance within such period and diligently achieve compliance thereafter, shall be considered a material breach of the franchise, and Grantor may exercise any remedy within the scope of this Chapter and the franchise agreement considered appropriate.

Section 1.31 Special Review of System Performance

When there have been complaints made or where there exists other evidence which, in the judgment of the Grantor, casts reasonable doubt on the reliability or quality of cable service to the effect that the Grantee is not in compliance with the requirements of this Chapter or its franchise, the Grantor shall have the right to compel the Grantee to test, analyze and report on the performance of the system in order to determine whether the Grantee is in compliance with the terms of this Chapter and the franchise agreement. Grantor may not compel Grantee to provide such tests or reports unless and until Grantor has provided Grantee with at least thirty (30) days' notice of its intention to exercise its rights under this Section and has provided Grantee with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report shall be delivered to the Grantor no later than thirty (30) days after the Grantor notifies the Grantee that it is exercising such right, and shall be made at Grantee's sole cost. Such report shall include the following information: The perceived problem areas that initiated the special review, the tests performed, what system components were tested, the equipment used and procedures employed in said testing and the results of such tests. Any other information pertinent to the special tests shall be recorded.

Section 1.32 Special State-of-the-Art and Services Evaluation Sessions

The Grantor may hold special state-of-the-art and services evaluation sessions at any time during the term of a franchise, provided such sessions are held no more often than once every four (4) years. The intent of this review shall be to review the quantity of services offered to the public, compared to the services available in comparable communities. The Grantee shall be notified of the place, time and date thereof and the topics to be discussed. Such sessions may be open to the public and advertised in a newspaper of general circulation at least thirty (30) days before each session. The sessions may include an evaluation of any items considered relevant to the stated intent of this evaluation. Either the Grantor or the Grantee may propose items for discussion or evaluation. By

agreement between the Grantor and the Grantee, this evaluation may be combined with the performance review provided in Section 1.30.

Section 1.33 Remedies for Franchise Violations

If Grantee fails to perform in a timely manner any material obligation required by this Chapter or a franchise granted hereunder, following notice from the Grantor, an opportunity for Grantee to be heard, and an opportunity to cure such nonperformance in accordance with the provisions of Section 1.34 of this Chapter and the franchise, Grantor, by resolution of the City Council, may at its option and in its sole discretion:

A. Cure the violation and recover the actual cost thereof from the security fund established herein if such violation is not cured within thirty (30) days after written notice to the Grantee of Grantor's intention to cure and draw upon the security fund;

B. Assess against Grantee liquidated damages in an amount set forth in the Franchise Agreement for any such violations(s) if such violation is not cured, or if Grantee has not commenced a cure, on a schedule acceptable to Grantor, within thirty (30) days after written notice to the Grantee of Grantor's intention to assess liquidated damages. Such assessment may be withdrawn from the security fund, and shall not constitute a waiver by Grantor of any other right or remedy it may have under the franchise or applicable law, including without limitation, its right to recover from Grantee such additional damages, losses, costs and expenses, including actual attorney's fees, as may have been suffered or incurred by Grantor by reason of or arising out of such breach of the franchise; and

C. Exercise its right to revoke the franchise as provided in Section 1.35 of this Chapter.

Section 1.34 Procedure for Remedying Franchise Violations

Prior to imposing any remedy or other sanction against Grantee specified in this Chapter, Grantor shall give Grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:

A. Grantor shall first notify Grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than five (5) days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Chapter or the Grantee's franchise and thirty (30) days in all other cases. If Grantee fails to correct the violation within the time prescribed or if Grantee fails to commence correction of the violation within the time prescribed and diligently remedy such violation thereafter, the Grantor shall then give written notice of not less than twenty (20) days of a public hearing to be held before the Council. Said notice shall specify the violations alleged to have occurred.

B. At the public hearing, the Council shall hear and consider all relevant evidence, and thereafter render findings and its decision.

C. In the event the Council finds that the Grantee has corrected the violation or has diligently commenced correction of such violation after notice

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thereof from Grantor and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

D. In the event the Council finds that the material violations alleged in the notice to Grantee exist and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation after notice thereof from Grantor and is not diligently proceeding to fully remedy such violation, the Council may impose one (1) or more of the remedies provided in this ordinance and the Franchise Agreement as it, in its discretion, deems appropriate under the circumstances.

Section 1.35 Grantor's Power to Revoke

Subject to limitations imposed by applicable Federal or State law, Grantor reserves the right to revoke any franchise granted pursuant to this Chapter and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by Grantee and a material breach under the franchise grant:

A. If Grantee shall default in the performance of its material obligations under this Chapter or the franchise agreement and shall continue such default after receipt of due notice and reasonable opportunity to cure the default;

B. If Grantee shall fail to provide or maintain in full force and effect the insurance coverage or security fund as required in the Franchise Agreement;

C. If Grantee shall violate any order or ruling of any regulatory body having jurisdiction over the Grantee relative to the Grantee's franchise, unless such order or ruling is being contested by Grantee by appropriate proceedings conducted in good faith;

D. If Grantee practices any material fraud or deceit upon Grantor;

E. Except as provided in Section 1.40 herein, if Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt.

The termination and forfeiture of the Grantee's franchise shall in no way affect any right of Grantor to pursue any remedy under the franchise or any provision of law.

Section 1.36 Force Majeure; Grantee's Inability to Perform

In the event Grantee's performance of any of the terms, conditions or obligations required by this Chapter or a franchise granted hereunder is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Section, causes or events not within the control of Grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, weather conditions, restraints imposed by order of a governmental agency or court, explosions, safety incidents involving nuclear facilities, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires, but shall not include financial inability of the Grantee to perform or failure of the Grantee to obtain any necessary permits or

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licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Grantee, or the failure of the Grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable communications system where the Grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

Section 1.37 Abandonment or Removal of Franchise Property

A. In the event that the use of any property of Grantee within the public rights-of-way is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that franchise property. Any part of the cable system that is intended for use only when needed because it is parallel or redundant to other parts of the system, or otherwise, shall not be deemed to have been abandoned because of its lack of use.

B. Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this Chapter, the Grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from Grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. Grantor shall have the right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Chapter and the security fund as provided herein shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section.

C. Upon abandonment of any franchise property in place, the Grantee, if required by the Grantor, shall submit to the Grantor an instrument, satisfactory in form to the Grantor, transferring to the Grantor the ownership of the franchise property abandoned.

D. At the expiration of the term for which the franchise is granted, or upon its revocation or earlier expiration, as provided herein, in any such case without renewal, extension or transfer, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

E. Notwithstanding anything to the contrary set forth in this Chapter, the Grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable Grantee.

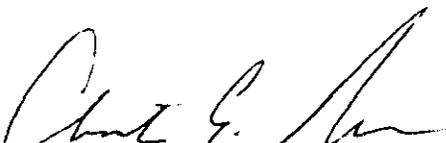
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PASSED AND ADOPTED, This 6th day of April, 1993, by the following roll call vote:

AYES: Heggarty, Macklin, Martin, Picanco, and Iversen

NOES: None

ABSENT: None


MAYOR CHRISTIAN E. IVERSEN

ATTEST: 
RICHARD J. RAMIREZ, CITY CLERK

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Section 1.38 Restoration by Grantor: Reimbursement of Costs

In the event of a failure by Grantee to complete any restoration work required herein or by any other law or ordinance, and if such work is not completed within thirty (30) days after receipt of written notice thereof from Grantor or, if more than thirty (30) days are reasonably required therefor, if Grantee does not commence such work within such thirty (30) days period and diligently complete the work thereafter (except in cases of emergency constituting a threat to public health, safety or welfare), Grantor may cause such work to be done and Grantee shall reimburse Grantor the costs thereof within thirty (30) days after receipt of an itemized list of such costs, or Grantor may recover such costs through the security fund provided by Grantee.

Section 1.39 Extended Operation and Continuity of Services.

Upon expiration or revocation of the franchise, the Grantor shall have the discretion to permit Grantee to continue to operate the cable television system for an extended period of time. Grantee shall continue to operate the system for a reasonable period of time under the terms and conditions of this Chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. It shall be the right of all subscribers to continue to receive all available services provided that financial and other obligations to Grantee are honored. The Grantee shall use reasonable efforts to provide continuous, uninterrupted service to its subscribers, including operation of the system during transition periods for a reasonable period of time following franchise expiration or termination.

Section 1.40 Receivership and Foreclosure

A. A franchise granted hereunder shall, at the option of Grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Chapter and the franchise granted pursuant hereto, and the receivership or trustees within said one hundred twenty (120) days shall have remedied all defaults under the franchise or provided a plan for the remedy of such defaults which is satisfactory to the Grantor; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise granted.

B. Except as provided in Section 1.8 E. herein, in the case of a foreclosure or other judicial sale of the franchise property, or any material part thereof, Grantor may serve notice of termination upon Grantee and the successful bidder at such sale, in which event the franchise granted and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless: (1) Grantor shall have approved the transfer of the franchise, as and in the manner that this Chapter provides; and (2) such successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all

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terms and conditions of the franchise.

Section 1.41 Rights Reserved to Grantor

A. In addition to any rights specifically reserved to the Grantor by this Chapter, the Grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise.

B. The Grantor shall have the right to waive any provision of the franchise, except those required by Federal or State regulation, if the Grantor determines (1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the Grantee or the subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the Grantor. Waiver of any provision in one (1) instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the franchise unless the statement so recites.

Section 1.42 Rights of Individuals

A. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable Federal, State and local laws and regulations relating to nondiscrimination.

B. Grantee shall adhere to the applicable equal employment opportunity requirements of Federal, State and local regulations, as now written or as amended from time to time.

C. Neither Grantee, nor any person, agency, or entity shall, without the subscriber's consent, tap, or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participation, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

D. In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, Grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. Grantee shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen for any purpose unrelated to the operation of the cable system.

E. No cable line, wire amplifier, converter, or other piece of equipment owned by Grantee shall be installed by Grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed.

F. The Grantee, or any of its agents or employees, shall not sell, or

Section 1.9 Geographical Coverage

A. Grantee shall design, construct and maintain the cable television system to have the capability to pass every dwelling unit in the City, subject to any service area line extension requirements of the franchise agreement.

B. After service has been established by activating trunk and/or distribution cables for any service area, Grantee shall provide service to any requesting subscriber within that service area within thirty (30) days from the date of request, provided that the Grantee is able to secure any additional rights-of-way necessary to extend service to such subscriber within such thirty (30) day period on reasonable terms and conditions.

Section 1.10 Nonexclusive Franchise

Any franchise granted shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional franchises for a cable television system or any component thereof, as it deems appropriate, subject to applicable State and Federal law, provided that no such additional franchise shall be granted on terms materially more favorable or less burdensome than any other franchise granted hereunder.

Section 1.11 Multiple Franchises

A. Grantor may grant any number of franchises subject to applicable State or Federal law. Grantor may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local consideration, such as:

(1) The capacity of the public rights-of-way to accommodate multiple cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewerage.

(2) The benefits that may accrue to cable subscribers as a result of cable system competition, such as lower rates and improved service.

(3) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.

B. Each Grantee awarded a franchise to serve the entire City shall offer service to all residences in the City, in accordance with construction and service schedules mutually agreed upon between Grantor and Grantee, and consistent with applicable law.

C. Developers of new residential housing with underground utilities shall provide conduit to accommodate cables for at least two (2) cable systems in accordance with the provisions of Section 1.20.E.

D. Grantor may require that any new Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.

Section 1.12 Franchise Applications

Any person desiring an initial franchise for a cable television system shall file an application with the City. A reasonable nonrefundable application fee established by the City shall accompany the application to cover all costs associated with processing and reviewing the application, including without limitation costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, the selected applicant(s) shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs.

Section 1.13 Applications - Contents

An application for an initial franchise for a cable television system shall contain, where applicable:

- A. A statement as to the proposed franchise and service area;
- B. Resume of prior history of applicant, including the expertise of applicant in the cable television field;
- C. List of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a corporation which is not publicly traded;
- D. List of officers, directors and managing employees of applicant, together with a description of the background of each such person;
- E. The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant;
- F. A current financial statement of applicant verified by a Certified Public Accountant audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the City;
- G. Proposed construction and service schedule; and
- H. Any additional information that the City deems reasonably necessary.

Section 1.14 Consideration of Initial Applications

A. Upon receipt of any application for an initial franchise, the City Manager shall prepare a report and make recommendations respecting such application to the City Council.

B. A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and, if granted, subject to what conditions. The Council may grant one (1) or

more franchises, or may decline to grant any franchise.

Section 1.15 Franchise Renewal

Franchise renewals shall be in accordance with applicable law. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. Upon mutual execution of a franchise renewal agreement, Grantee shall reimburse Grantor for costs incidental to the franchise renewal award, not to exceed any maximum specified in the franchise agreement. Any such reimbursement shall not be charged against any franchise fee due to the Grantor during the term of the franchise.

Section 1.16 Minimum Consumer Protection and Service Standards

A. Except as otherwise provided in the Franchise Agreement, Grantee shall maintain a local office or offices to provide the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal conditions of operation:

(1) Sufficient toll-free telephone line capacity during normal business hours, and excepting unusual events such as system outages, to assure that a minimum of ninety-five percent (95%) of all calls will be answered before the fourth (4th) ring and ninety percent (90%) of all callers for service will not be required to wait more than thirty (30) seconds, after the call pickup and the conclusion of any automated telephone response procedures before being connected to a service representative.

(2) Emergency telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays.

(3) A local business and service office open during normal business hours and at least some period weekly on evenings and/or weekends, and adequately staffed to accept subscriber payments and respond to service requests and complaints.

(4) An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunction on a twenty-four (24) hour per day basis.

(5) An installation staff, capable of installing service to any subscriber within seven (7) working days after receipt of a request, in all areas where trunk and feeder cable have been activated.

(6) At the subscriber's request, Grantee shall schedule, within a specified four (4) hour time period, all appointments with subscribers for installation of service.

B. Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the cable system, preferably between midnight and six A.M. (6:00 A.M.).

C. The Grantee shall maintain a repair force of technicians normally

capable of responding to subscriber requests for service within the following time frames:

(1) For a system outage: Within two (2) hours, including weekends, of receiving subscriber calls or requests for service which by number identify a system outage of sound or picture of one (1) or more channels, affecting at least ten percent (10%) of the subscribers of the system.

(2) For an isolated outage: Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one (1) or more channels that affects three (3) or more subscribers. On weekends, an outage affecting fewer than three (3) subscribers shall result in a service call no later than the following Monday morning.

(3) For inferior signal quality: Within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this Section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, the technician shall leave written notification of arrival. Three (3) successive subscriber failures to be present at an appointed time shall excuse Grantee of the duty to respond.

Grantee shall not charge for the repair or replacement of defective equipment provided by Grantee to subscribers, except when the damage resulted from the subscriber's willful or deliberate act.

D. Unless excused, Grantee shall determine the nature of the problem within forty-eight (48) hours of beginning work and resolve all cable system related problems within five (5) business days unless technically infeasible.

E. Upon request, Grantee shall provide appropriate credits to subscribers whose service has been materially interrupted due to cable system problems.

F. Upon five (5) days notice, Grantee shall establish its compliance, on an average monthly basis, with any or all of the standards required above. Grantee shall provide sufficient documentation to permit Grantor to verify the compliance.

G. A repeated and verifiable pattern of non-compliance with the consumer protection standards of A-E above, after Grantee's receipt of due notice and an opportunity to cure, may be deemed a material breach of the franchise agreement.

H. Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the Grantor. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction. Grantee shall file a copy of these procedures with Grantor.

I. Following prior written notice to Grantee, Grantor shall have the right to review Grantee's response to subscriber complaints in order to determine Grantee's compliance with the franchise requirements, subject to the subscriber's

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right to privacy.

J. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the system, or the Grantor gives notice of intent to terminate or not to renew the franchise, the Grantee shall act so as to ensure that all subscribers receive service so long as the franchise remains in force.

In the event of a change of control of Grantee, or in the event a new operator acquires the system, the original Grantee shall cooperate in all reasonable respects with the Grantor, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system.

K. In the event Grantee fails to operate the system for seven (7) consecutive days without prior approval or subsequent excuse of the Grantor, the Grantor may, at its sole option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or a permanent operator is selected. If the Grantor should fulfill this obligation for the Grantee, then during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from the system, and the Grantee shall indemnify the Grantor against any damages Grantor may suffer as a result of such failure.

L. All officers, agents or employees of Grantee who, in the normal course of work require entry onto subscribers' premises shall carry a photo-identification card in a form approved by Grantor. Grantee shall account for all identification cards at all times. Every vehicle of the Grantee utilized for field maintenance shall be clearly identified.

Section 1.17 Additional Service Standards

Additional service standards and standards governing consumer protection and response by Grantee to subscriber complaints not otherwise provided for in this Chapter may be established in the franchise agreement, and Grantee shall comply with such standards in the operations of the cable television system. A verified and continuing pattern of noncompliance may be deemed a material breach of the franchise, provided that Grantee shall receive due process, including written notification, an opportunity to be heard and an opportunity to cure, prior to any sanction being imposed.

Section 1.18 Franchise Fee

A. Following the issuance and acceptance of the franchise, the Grantee shall pay to the Grantor a franchise fee in the amount set forth in the franchise agreement.

B. The Grantor, on an annual basis, shall be furnished a statement within sixty (60) days of the close of the calendar year, either audited and certified by an independent Certified Public Accountant or certified by an officer of the Grantee, reflecting the total amounts of gross receipts and all franchise fee payments, deductions and computations for the period covered by the payment. Upon thirty (30) days prior written notice, Grantor shall have the right to conduct

an independent audit of Grantee's records for the preceding three (3) calendar years, in accordance with Generally Accepted Auditing Standards, and if such audit indicates a franchise fee underpayment of two percent (2%) or more, the Grantee shall assume all reasonable costs of such an audit and the audit may be extended to include the preceding five (5) year period.

C. Except as otherwise provided by law, no acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a franchise fee under this ordinance or for the performance of any other obligation of the Grantee.

D. In the event that any franchise payment or recomputed amount is not made on or before the dates specified in the franchise agreement, Grantee shall pay as additional compensation:

(1) An interest charge, computed from such due date, at an annual rate equal to the prime lending rate published in the Wall Street Journal on the due date plus one percent (1%) during the period for which payment was due; and

(2) If the payment is late by forty-five (45) days or more, a sum of money equal to five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the Grantor by reason of delinquent payment.

E. Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

Section 1.19 Security Fund

A. Grantor may require Grantee to provide a security fund, in an amount and form established in the Franchise Agreement. The amount of the security fund shall be established based on the extent of the Grantee's obligations under the terms of the franchise.

B. The security fund shall be available to Grantor as provided in Section 1.34 to satisfy all claims, liens and/or taxes due Grantor from Grantee which arise by reason of construction, operation, or maintenance of the system, and to satisfy any actual or liquidated damages arising out of a franchise breach, subject to the procedures and amounts designated in the Franchise Agreement.

C. If the security fund is drawn upon by Grantor in accordance with the procedures established in this ordinance and the Franchise Agreement, Grantee shall cause the security fund to be replenished to the original amount no later than thirty (30) days after each withdrawal by Grantor. Failure to replenish the security fund shall be deemed a material breach of the franchise.

Section 1.20 Design and Construction Requirements

A. Grantee shall not construct any cable system facilities until Grantee has secured the necessary permits from Grantor, or other cognizant public agencies.

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B. In those areas of the City where transmission lines or distribution facilities of the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

C. In those areas of the City where the Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground at full cost to such public utilities, then the Grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground enclosures, unless otherwise provided in the Franchise Agreement.

D. Any changes in or extensions of any poles, anchors, wires, cables, conduits, vaults, laterals or other fixtures and equipment (herein referred to as "structures"), or the construction of any additional structures, in, upon, along, across, under or over the streets, alleys and public ways shall be made under the direction of Grantor's City Engineer or a designee, who shall, if the proposed change, extension or construction conforms to the provisions hereof, issue written permits therefor. The height above public thoroughfares of all aerial wires shall conform to the requirements of the California Public Utilities Commission or other regulatory body having jurisdiction thereof.

(1) All transmission and distribution structures, lines and equipment erected by the Grantee shall be located so as not to interfere with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and not to interfere with existing public utility installations.

(2) In the event that any property or improvement of the Grantor in the public rights-of-way is disturbed or damaged by the Grantee or any of its contractors, agents or employees in connection with undertaking any and all work pursuant to the right granted to the Grantee pursuant to this Chapter, the Grantee shall promptly, at the Grantee's sole cost and expense, restore as nearly as practicable to their former condition said property or improvement which was so disturbed or damaged, and in the event that any such property or improvement shall at any later time become uneven, unsettled or otherwise require restoration, repair or replacement because of such disturbance or damage by the Grantee, then the Grantee, as soon as reasonably possible, shall, promptly upon receipt of notice from the Grantor and at the Grantee's sole cost and expense, restore as nearly as practicable to their former condition said property or improvement which was disturbed or damaged. Any such restoration by the Grantee shall be made in accordance with such materials and specifications as may, from time to time, be then provided for by Grantor ordinance.

(3) Prior to commencing any work in the public rights-of-way, the Grantee shall obtain any and all permits lawfully required by such Grantor codes and ordinances of general application for such work. In the event that emergency work may be required by the Grantee, however, the Grantee shall obtain any and all such permits within three (3) working days after the beginning of such emergency work.

(4) There shall be no unreasonable or unnecessary obstruction of

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