Title 5

BUSINESS LICENSES AND REGULATIONS

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CHAPTER 5.04
BUSINESS LICENSE GENERALLY

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5.04.010 Definitions.

For the purpose of this chapter, the following terms, phrases, word and their derivations shall have the meaning given herein. When not inconsistent with the text, words in the present tense include the future, words in the plural number include the singular number, and vice versa. The word "shall" is always mandatory and not merely directory.

"Business" means all kinds of vocations, occupations, professions, enterprises, establishments, and all kinds of activities and matters, together with devices, machines, vehicles and appurtenances used therein, any of which are conducted for private profit, or benefit, either directly or indirectly, on any premises within the city.

"City" means the city of Aurora, Marion County, Oregon.

"City council" means the city council of Aurora, Oregon.

"Contractor" means any person who undertakes or offers to undertake, for a consideration, to furnish labor and/or material necessary or required to construct, reconstruct, alter, repair, or add to any building, bridge, ditch, flume, reservoir, well, fence, street, sidewalk, machinery and all other structures and super structures. The term "contractor" as used herein shall also include sub-contractors.

"Garage sale" means a commercial activity, open to the public, conducted at a private residence where personal property is sold or auctioned to others, provided that the number of sale days at a particular address does not exceed fourteen (14) days during the calendar year.

"Home occupation" means a lawful income-producing activity conducted in a dwelling while maintaining the residential character; having no outward appearance of a business, no non-resident employees and no Infringement on the rights of the Neighboring residents. A home occupation must comply with the provisions of the Aurora Municipal Code (AMC) Section 16.46. (Ord. 434 § 1, 2004)

"Person" means and includes individual natural persons, partnerships, joint ventures,

societies, association, clubs, trustees, trusts or corporations; or any officers, agents, employees, factors of any kind or personal representatives thereof, in any capacity, either on that person's own behalf or for any other person, under either personal appointment or pursuant to law.

"Premises" means and includes all lands, structures, places and also the equipment and appurtenances connected or used therewith in any business and also any personal property which is affixed to or is otherwise used in connection with any such business conducted on such premises within the city.

"Seasonal license" means a business license to be used for only part of the year or for not more than one hundred twenty (120) days.

"Sub-dealer" means any person renting or leasing an area, space or booth from a larger business, such as a mall, for the selling of goods or services, on a personal operation or consignment basis, for the purpose of personal profit. (Ord. 426 § 6(A), 2003; Ord. 355 § 1, 1992)

5.04.020 Purpose.

The ordinance codified in this chapter is enacted for the licensing of all types of businesses for a regulatory purpose. It shall allow investigation into the character and background of the individual requesting the license, as well as an inspection of the physical facilities of the place of business. The license requirement gives the applicant, at the discretion of the city council, the right to conduct business in the city. The levy and/or collection of a license fee and the issuance of a license shall not be construed as a permit by the city or the person to whom such license is issued to engage is any business which is unlawful, illegal or prohibited by the laws of the United States or by the laws of the state of Oregon, or by the ordinances of the city. (Ord. 355 § 2, 1992)

5.04.030 Intent of the council to impose fee exclusions and liabilities.

A. In order that business, manufacturing, pursuits, professions and trades be carried on and conducted in the city in a profitable and peaceful manner, it is necessary that the same be regulated and safeguarded and that the city provide police protection, and that businesses attracting customers and tourists to the city assist in the provision of necessary public facilities for such customers.

B. It is necessary that license fees be levied and fixed for the purpose of securing revenue to assist in such regulation and in defraying the cost of such police protection, and license surcharges he levied and fixed for the purpose of defraying the cost of acquisition, construction and maintenance of necessary public facilities, such as parking spaces and public restrooms.

C. No person whose income consists of salary or wages paid to such person by an employer or agent thereof covered and defined by this chapter and no person working as a domestic in a private home shall be deemed to be transacting or carrying on business in the city; provided, however, that if any person defined in this chapter fails to pay the license fee provide in this chapter, and such person has neither his or her residence nor place of business in the city but conducts business in the city, the agents or employees of such person engaged in business in the city shall be liable for the payment of such fee or for penalties imposed for failure to comply with this chapter. (Ord. 355 § 3, 1992)

5.04.040 Prohibited business operation.

It is unlawful for any persons, either directly or indirectly, to engage in any busi-

ness without having first paid the business license fee and issued a license as provided by this chapter. Solicitors traveling "door-to-door" are prohibited after five p.m., unless an appointment has been pre-arranged with the prospective customer. (Ord. 355 § 4, 1992)

5.04.050 One act constitutes doing business.

For the purpose of this chapter, any persons shall be deemed to be engaging in business, or engaging in nonprofit enterprise, and thus subject to the requirements of Section 5.04.020, when undertaking any one of the following acts:

A. Selling any goods or services;

B. Solicitation business or offering goods or services for sale or hire;

C. Advertising in local newspapers and/or telephone directories, offering goods or services for sale or hire;

D. Displaying signage within the city which offers goods or services for sale or hire; and/or

E. Acquiring or using any vehicle or any premises in the city for any type of business not exempted by Section 5.04.070, which results in personal profit. (Ord. 355 § 5, 1992)

5.04.060 Presumption of engaging in business.

Any person that advertises or otherwise holds himself or herself out to the public as engaged in any business, trade, profession, or calling for which a license is required shall be presumed to be so engaged and shall pay such license fee as is required by this chapter. (Ord. 355 § 6, 1992)

5.04.070 Exemptions.

The provisions of this chapter shall not apply to the following:

A. "Garage sales" as described herein;

B. Any person engaged as a landlord in leasing or renting property to others, unless such person leases or rents at any one time more than two separate rental units, spaces, or parcels, whether it be land, buildings or both, or residential, commercial or both;

C. Any person for mere delivery in the city of any property purchased or acquired in good faith from such person at the regular place of business outside the city (i.e., United Parcel Service, furniture deliveries, etc.);

D. Any person rendering home or personal care to any incapacitated person in exchange for wages;

E. Any non-profit organizations which operate within the city limits, including, but not limited to, the Old Aurora Colony Museum, the Aurora Fire Department and Auxiliary, the Aurora Colony Visitors Association, local Schools, and local Churches. (Ord. 434 § 2, 2004)

F. Home occupations as described herein, provided the home occupation does not advertise in local newspapers or telephone directories, by visible signage any place within the city, or the home occupation has no visible impact on the residential neighborhood, such as excessive traffic or parked vehicles. (Ord. 355 § 7, 1992)

G. Any non-resident person engaged in the business of performing occasional on-premises appliance and computer repair to resident persons, when the service provider is not required to be licensed by the Construction Contractors Board or other state boards. (Ord. 434 § 3, 2004)

5.04.080 License application fee.

The applicable license fee prescribed by City Council resolution shall be paid to the Aurora Police Department upon the filing of the application for a new business, or upon renewal of a previously obtained business license. (Ord. 434 §4, 2004)

5.04.090 Examination of premises.

A. The chief of police, building official, and/or their agents and subordinates are empowered to investigate and examine such places of business licensed or subject to licensing requirements within the scope and purpose of the state and local codes and ordinances. Examination may be made at any and all reasonable times for the purpose of determining whether such place of business is reasonably safe, sanitary, and suitable for the business so licensed or for which application for license is made.

B. In the event it is determined by such officers or their agents that any such place of business violates state or local codes or ordinances or is dangerous to public health, safety, welfare or is likely to become or is at that time a menace or public nuisance, and if the concerned business refuses to correct all violations within a reasonable time as determined by such officials or their agents, no business license shall be issued. If the concerned business requests, in writing, a public hearing before the city council, a report of such determination of denial and reasons therefore shall be made in writing to the city.

C. The city council, upon receipt of such determination of denial and reasons therefore, and written request by the concerned business for a public hearing, shall direct the city recorder to send by certified mail to the concerned business, notification of a public hearing to be held before the city council.

D. The purpose of the hearing shall be to determine whether the concerned business shall be permitted to receive a city business license, or if the concerned business had previously been issued a city business license, if the license should be suspended or revoked by the city council.

E. The notification to the concerned business shall set forth the time and place of the public hearing and will cite specific incidents which constitute the basis for the determination by the chief of police, chief of the fire department, building official or their subordinates, that the concerned business is in violation of state or local laws or is dangerous to either public health, safety, welfare or is likely to become or is at the present time a public menace or nuisance. (Ord. 355 § 9, 1992)

5.04.100 Public hearing.

The public hearing for the purpose of determining whether a business license should be issued, reissued, suspended, or revoked shall be conducted as a quasi-judicial proceeding before the city council. Only that testimony or evidence which is relevant to the cited incidents or offenses contained in the notification to the concerned business shall be received and considered by the city council. If the city council determines that all or a portion of the incidents or offenses set out in the notification to the concerned business are supported by substantial evidence, the city council may refuse to issue a business license to the concerned business, or if a business license has previously been issued, may suspend or revoke such license. (Ord. 355 § 10, 1992)

5.04.110 License issuance—requirement.

Upon application being made, any investigation required by this ordinance to be made having been satisfactorily completed without a determination by the City officials set out in section 5.04.90 that the business is dangerous to public health, safety, welfare, or likely to become or is now a public menace or nuisance, or if such determination is not supported by substantial evidence, and if the fee is paid as provided by City Council resolution, a Business License shall be issued by the Police Department. Ord. 434 § 5, 2004)

5.04.120 License issuance--Effect.

A. The issuance of a business license pursuant to this chapter or the collection of a fee shall not permit any person to engage in any unlawful business.

B. The fees levied and fixed by this chapter shall be in addition to the general ad valorem taxes now or hereafter levied pursuant to law.

C. All ordinances of the city in force on the effective date of the ordinance codified in this chapter pertaining to or covering any business, pursuit or occupation shall remain in full force and effect, and in the event of a conflict or duplication of a license fee, then such other ordinance shall take precedence over the provisions of this chapter to the end that there will be no duplication of license fees for the same business, occupation, profession or pursuit. Zoning ordinance fees are in addition to business license fees. (Ord. 355 § 12, 1992)

5.04.130 License suspension or revocation--Effect.

A. If a business license is suspended or revoked, the concerned business shall immediately cease conducting any and all business within the city.

B. Any business which continues to conduct business within the city subsequent to action by the city council to suspend or revoke the business license for such business shall be subject to the same fine and penalties as if such a business had never obtained a city business license, and was conducting business within the city without such a business license. (Ord. 355 § 13, 1992)

5.04.140 Suspension or revocation rehearing.

A. Any business which has been denied a city business license or has had a city license suspended or revoked by action of the city council under the provisions of this chapter, shall have the right of a rehearing before the city council for the purpose of reconsideration of such action, if in the opinion of the city council, the concerned business has presented substantial new evidence relevant to the refusal of the city to issue a business license, or to the suspension or revocation of a previously issued business license.

B. A request for a rehearing shall be presented in writing by the concerned business to the city council, and shall set out the new evidence that the concerned business seeks to bring before the city council. If the city council grants a new hearing, it will be conducted in the same manner prescribed in Section 5.04.100. (Ord. 355 § 14, 1992)

5.04.150 Agents responsible for obtaining business license receipts.

The agents or other representatives conducting business within the city shall be personally responsible for the business which they represent, the principals, and the sub-dealers or sub-contractors for compliance with the provisions of this chapter. (Ord. 355 § 15, 1992)

5.04.160 Contractors and sub-contractors--failure to pay.

It shall be the responsibility of all general contractors and sub-contractors working in the City to obtain the applicable Business License on or before the date of issuance of any building permit, as prescribed by City Council resolution. It shall further be the responsibility of all contractors working in the City to provide a list of all names and addresses of sub-contractors under their direction on or before the date of issuance of any building permit. Failure of any sub-contractor to obtain a Business License shall result in a “Stop Work” Order on any project within the City’s jurisdiction. (Ord. 434 § 6, 2004)

5.04.170 Separate fees for branch establishments.

A fee shall be paid in the manner prescribed in this ordinance for each branch establishment or location of the business engaged in, as if each branch establishment or location were a separate business; provided that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this ordinance shall, not be deemed to be separate places of business or branch establishments. At the time of the application, all general dealers shall provide to the City a list of all names and addresses of sub-dealers and shall be held responsible for making application and paying the license fees for their sub-dealer licenses, if their sub-dealers fail to do so. Sub-dealers, as defined in this ordinance, shall not be deemed to be separate places of business or branch establishments. Separately franchised operations shall be deemed separate businesses, even if operated under the same name. (Ord. 434 § 7, 2004)

5.04.180 Joint businesses.

A person engaged in two or more businesses at the same location shall be required to pay separate fees for each type of business conducted. In the case of a corporation or a mall, each distinct type of business operation, each sub-dealer, and/or each separate business name shall constitute a separate business, and shall require separate applications and separate license fees. (Ord. 355 § 18, 1992)

5.04.190 License display required.

All licenses issued in accordance with this chapter shall be conspicuously displayed in the place of business, or kept on the person or in the vehicle of the person licensed and shall be immediately produced and delivered for inspection to the chief of police, chief of the fire department, and their agents when requested by such individuals to do so. Failure to carry such license or to produce the same on request shall be deemed a violation of this chapter. (Ord. 355 § 19, 1992)

5.04.200 Transfer or assignment of license.

No transfer or assignment of any license issued under this chapter shall be valid or permitted, except that whenever any person sells or transfers in whole a business for which such license has been paid, and which business name remains the same, then the vendee thereof shall not be required to pay any additional license thereon for the balance of the license year. (Ord. 355 § 20, 1992)

5.04.210 Fee schedule--Approval.

The Business License fees required by this ordinance shall be prescribed by City Council resolution. These fees shall be reviewed annually by the City Council, and may be changed at any time. All revenue received from the Business License Fees shall be deposited into the General Fund.

Annual and seasonal licenses are subject to approval by the City Council. One day and two day licenses are subject to staff approval. In the case of a Saturday or Sunday license, the application and fees must be submitted, and the license issued no later than 4:30 PM of the Friday immediately preceding the Saturday and/or Sunday for which the license is requested. (Ord. 434 § 8, 2004)

5.04.220 Violation--Penalties.

Any person violating the provisions of this chapter shall, upon conviction thereof in the municipal court of the city, be punished by a fine not to exceed one hundred dollars ($100.00). Each day of the violation of this chapter shall constitute a separate violation. Such conviction and fine shall not relieve

the person from payment of any unpaid business license fees, including delinquent charges, for which the person is liable. If a provision of this chapter is violated by a firm or corporation, the officer(s) or person(s) responsible for the violation shall be subject to the penalties imposed by this section, which penalties are in addition to and not in lieu of any remedies available to the city. (Ord. 426 § 6(B), 2003; Ord. 355 § 22, 1992)

5.04.230 Delinquency charge.

The fees required for annual licenses shall be paid within thirty (30) days after February 1st of each year. A delinquency charge will be charged thereafter at thirty day intervals until paid. However, if the delinquency charge exceeds the business license fee in any one year, the Business License may be denied or revoked for failure to comply with this ordinance. If a license is denied or revoked, payment of all delinquency charges and a reinstatement fee will be required to re-apply for a Business License within the City. All charges and fees required by this section shall be prescribed by City Council resolution. (Ord. 434 § 9, 2004)

Chapter 5.08

CABLE COMMUNICATIONS SYSTEMS

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5.08.010 Short title.

This chapter shall be known and may be cited as the "Aurora Cable Communications Ordinance." (Ord. 273 § 1, 1983)

5.08.020 Definitions.

Whenever in this chapter the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions, unless, in the given instance, the context wherein they are used shall clearly impart a different meaning. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number.

"Applicant" means any person or corporation submitting an application for a cable communications franchise.

"Basic service" is that service regularly provided to all subscribers at a basic monthly rate, including but not limited to, the retransmission of local and distant broadcast television signals, non-premium satellite services, automated services, local origination and access services.

"Cable communications system" or "CATV system" means a system employing antennae, microwave, wire, waveguides, coaxial cables, or other conductors, equipment, or facilities designed, constructed, or used for the purpose of:

1. Collections and amplifying local and distant broadcast television or radio signals and distributing and transmitting them;
2. Transmitting original cablecast programming not received through broadcast signals;
3. Transmitting television pictures, film, and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers;
4. Transmitting and receiving all other signals, digital, voice, audio-visual, or other forms of electronic or electrical signals.

"Channel" means a six megahertz (MHz) frequency band, which is capable of carrying either one standard audio/video television signal, or a number of audio, digital, or other non-video signals.

"City" means the city of Aurora, a municipal corporation of the state of Oregon, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

"City council" or word "council" means the legislative body of the city of Aurora.

"Community access channel" or "access channels" means any channel or portion of a channel utilized for programming on a nonprofit basis.

"Educational channel" means any channel or portion of a channel on which educational institutions are the only designated programmers.

"Entertainment services" means television services provided on a one-way, non-interactive basis, including but not limited to, broadcast channels, local origination channels, pay channels, or any other channels supplied to subscribers at a basic or premium charge where the content of the transmitted signals is uniform to all subscribers or individual classes of subscribers and program selection is accomplished by operation of a tuner or converter under the sole control of the subscriber.

"Federal Communications Commission" or "FCC" is the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

"Franchise" means and includes any authorization granted hereunder in terms of a franchise, privilege, permit, or license to construct, operate, and maintain a cable television system within the city. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the city as required by other ordinances and laws of this city.

"Government channel" means any channel or portion thereof dedicated to the use of the municipal agencies.

"Grantee" or "franchisee" is a holder of a cable television franchise issued by the city.

"Grantor" means the city of Aurora, acting through its city council.

"Gross revenues" means any and all compensation in whatever form, directly or indirectly received by grantee, from the source specified, not including any taxes on services furnished by the grantee, which taxes are imposed directly on a subscriber or user by a city, county, state, or other governmental unit, and collected by the grantee for such entity.

"Institution" means a building or buildings where service may be utilized in connection with a business, trade, profession, public agency, or service, school, or nonprofit organization.

"Institutional service" means services delivered on the institutional subscriber network.

"Institutional network" means a cable communications network designed principally for the provision of nonentertainment interactive services to businesses, schools, public agencies, or other nonprofit agencies for use in connection with the ongoing operations of such institutions.

"Institutional subscriber" means a place of business, public agency, school or nonprofit corporation receiving institutional services on the institutional subscriber network.

"Interactive services" means services provided to subscribers where the subscriber either: (a) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under his or her control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (b) transmits signals to any other location for any purpose.

"Leased channel" means any channel or portion of a channel available for programming for a fee or charge by persons or entities other than the grantee.

"Local origination channel" means any channel or portion of a channel where the grantee is the only designated programmer, and which is utilized to provide television programs to subscribers.

"Nonbasic service" means any communications service in addition to regular subscriber services, including but not limited to, access channel carriage including origination programming, pay television, burglar alarm service, fire alarm service, data transmission, facsimile service, home shopping service, etc.

"Pay channel" or "premium channel" means a channel on which television signals are delivered to subscribers for a special charge fee or charge to subscribers over and above the regular charge for basic subscriber service, on a per program, per channel, or other subscription basis.

"Persons" means any corporation, partnership, proprietorship, individual, or organization authorized to do business in the state of Oregon.

"Premium service" is pay-per-program, pay-per-channel, or other subscription service, i.e., delivered to subscribers for a fee or charge over and above the regular charges for basic service.

"Public access channel" means any channel or portion of a channel where any member of the general public may be a programmer on a first-come, first-served basis, subject to appropriate rules formulated by the city and/or franchise.

"Residential services" means services delivered on the residential subscriber network.

"Residential subscriber" means a subscriber who receives residential services on the residential subscriber network.

"Residential network" means a cable communications network designed principally for the delivery of entertainment, community access, or interactive services to individual dwelling units.

"Streets," "public ways," and "right-of-ways" means the surface of and the space above and below any public street, avenue, highway, boulevard, concourse, driveway,

bridge, tunnel, park, parkway, sidewalk, waterway, dock, pier, alley, right-of-way, public utility easement, and any other public ground or water, now or hereafter, within or belonging to the city.

"Service area" means the entire area proposed to be served by the franchisee as specified in the application (Section 5.08.060(B) (3)(a)) and as thereafter specified in the franchise grant (Section 5.08.110).

"Subscriber" means any person or institution that elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connection with the cable communications system whether or not a fee is paid for such service.

"Tapping" means observing a communications signal exchange where the observer is neither of the communicating parties whether the exchange is observed by visual or electronic means, for any purpose whatsoever. (Ord. 273 § 2, 1983)

5.08.030 Franchise necessary to install and operate.

A. It is unlawful to commence or engage in the construction, operation, or maintenance of a cable communications system without a franchise issued under this chapter. The city council may, by ordinance, award a franchise to construct, operate, and maintain a cable communications system within all or any portion of the city to any person, whether operating under an existing franchise or not, who makes application for authority to furnish a cable communications system which complies with the terms and conditions of this chapter. This section shall not be deemed to require the grant of a franchise to any particular person or to prohibit the city council from restricting the number of grantees should it determine such a restriction would be in the public interest.

B. Any franchise granted pursuant to the provisions of this chapter shall authorize and permit the grantee to engage in the business of operating and providing a cable communications system in the city, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, and retain in, on, over, under, upon, across, and along any street, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, and appliances, attachments, and other system; and, in addition, so to use, operate, and provide similar facilities, or properties rented or leased from other persons, firms, or corporations, including but not limited to, any public utility franchised or permitted to do business in the city. (Ord. 273 § 3, 1983)

5.08.040 Term of franchise.

A. Any franchise granted by the city council shall be for a term of fifteen (15) years following the date such franchise is accepted by the grantee, and, upon application of the grantee and review of the performance of grantee in a public proceeding, the city council may renew the franchise for successive ten (10) year periods, with such modification of the terms as the city council may determine in each instance.

B. The city council may terminate any franchise granted pursuant to the provisions of this chapter in the event of the willful failure, refusal, or neglect by grantee to do or comply with any material requirement or limitation contained in this chapter, or any other applicable rule or regulation of the council validly adopted pursuant to this chapter.

1. The city recorder may make written demand that the grantee comply with any

such requirement, limitation, term, condition, rule, or regulation. If the failure, refusal, or neglect continues after notice for an unreasonable period of time, determined as such by the city recorder, following such written demand, the city recorder may place his or her request for termination of the franchise upon the next regular council meeting agenda. The city recorder shall cause to be served upon such grantee, at least twenty (20) days prior to the date of such council meeting, a written notice of his or her intent to request such termination, and the time and place of the meeting.

2. The council shall consider the request of the city recorder and shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal, or neglect by the grantee was with just cause.

3. If such failure, refusal, or neglect by the grantee was with just cause, the council shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

4. If the council shall determine such failure, refusal, or neglect by the grantee was without just cause or if grantee shall fail to comply within the time specified in subsection (B)(3) of this section, then the council may, by ordinance, declare that the franchise with such grantee shall be terminated and forfeited; grantee shall be required to sell all interests and title in all of its plant and system operated under the franchise, including any rights under the unexpired portion of the franchise.

C. In the event of termination, the city may purchase or require any successor grantee to purchase grantee's facilities at a cost not to exceed its then fair market value, with a reduction for uncompensated damages incurred by the city in connection with grantee's operation.

1. In order to determine the fair market value of grantee's system, as specified above, the following procedure will be followed. Grantee and the purchaser each shall select one qualified appraiser experienced in the evaluation of cable communications systems.

2. The two selected appraisers shall select a third appraiser. The three appraisers shall be employed to determine the fair market value of grantee's system. The fair evaluation shall be the average of the three evaluations of the appraisers. The appraisers shall be directed to reach their determination within thirty (30) days. Grantee and the purchaser shall each pay fifty (50) percent of the costs of employing such appraisers.

3. Upon determination of the fair market value, and upon payment of such sum by the purchaser, grantee shall transfer all rights, titles, and interests in the subject property to the purchaser within thirty (30) days.

D. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the right of the city to acquire the property of the grantee through the exercise of the right of eminent domain, nor any other of the rights of the city under the franchise or any other provision of law.

E. In the event of any holding over after expiration of other termination of any franchise granted hereunder without the prior consent of the city expressed by resolution, the grantee shall pay to the city reasonable compensation and damages, of not less than one hundred (100) percent of its gross revenue derived from all sources within the city during such period. (Ord. 273 § 4, 1983)

5.08.050 Limitation of franchise.

A. A grantee shall, at all times during the life of its franchise, be subject to the lawful exercise of the city's police power and such reasonable regulations as the city council may subsequently promulgate thereunder.

B. Nothing contained in this chapter shall be deemed to prohibit in any way the right of the city to levy nondiscriminatory occupational license taxes on any activity conducted by grantee.

C. No privilege or exemption shall be granted or conferred by any franchise granted under this chapter except those specifically prescribed herein, and/or in the ordinance granting the franchise.

D. Any privilege claimed by grantee under its franchise, in any public way, shall be subordinate to the city's use thereof, and to any other prior lawful occupancy of the public way. The city reserves the right to reasonably designate where a grantee's facilities are to be placed within the public ways.

E. Time shall be of the essence of any such franchise granted. The grantee shall not be relieved of obligations to comply promptly with any of the provisions of this chapter, or the ordinance granting the franchise, by any failure of the city to enforce prompt compliance.

F. Any such franchise granted shall not relieve the grantee of any obligations involved in obtaining pole or conduit space from any department of the city, utility company, or from others maintaining utilities in the public ways.

G. Whenever in the judgment of the grantor, it is deemed impractical to permit erection of poles or construction of underground conduit system by any other utility which may at the time have authority to construct or maintain a conduit or poles in street area, the grantor may require the grantee herein to afford to such utility the right to use such of the poles or facilities of the grantee as the grantor finds practicable in common with the grantee, both parties sharing the costs incident thereto and under such rules and regulations as they may agree upon, but in case they fail to agree within a reasonable time, then upon such terms, conditions, and regulations governing the same as the grantor may determine to be just and reasonable.

H. Any franchise granted shall be in lieu of any and all other conflicting rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by grantee or any successor to any interest of grantee, of or pertaining to the construction, operation, or maintenance of any cable communications system in the city; and the acceptance of any franchise shall operate as between grantee and the city, as an abandonment of any and all of such rights, privileges, powers, immunities, and authorities within the city to the effect that, as between grantee and the city, and all construction, operation, and maintenance by any grantee of any cable communications system in the city shall be, under, and pursuant to the franchise and not under or pursuant to any other right, privilege, power, immunity or authority whatsoever.

I. No franchise shall authorize the use of any public property other than public right-of-way and public utility easements owned by the city, unless such franchise or subsequent resolution of the council expressly authorizes such other public property.

J. No franchise granted shall ever be given any value by any court or other authority, public or private, in any proceeding of any nature or character, wherein or whereby the city shall be a party or affected therein or thereby.

K. Grantee shall be subject to all provisions of the other ordinances, rules, regulations, and specifications of the city heretofore or hereafter adopted, including, but not limited to those pertaining to works and activities in, over, under, and about public right-of-ways.

L. Any privilege claimed, under any such franchise granted, in any public right-of-way or other public property shall be subordinate to the public use and any other lawful use thereof.

M. Grantee shall be subject to the provisions of general laws of the city of Aurora, Marion County and the state of Oregon, or as hereafter amended, when applicable to the exercise of any privilege contained in any franchise granted pursuant to this chapter, including but not limited to, those pertaining to works and activities in and about state highways.

N. Grantee shall be prohibited from directly or indirectly doing any of the following:

1. Imposing a fee or charge for any service or repair to subscriber-owned receiving or transmitting device; except for the connection of its services or for the determination by grantee of the quality of signal reception and/or transmission;

2. Soliciting, referring, or causing or permitting the solicitation or referral of any subscriber to persons engaged in any business herein prohibited to be engaged in by grantee;

3. Providing information concerning the viewing patterns of identifiable individual subscribers to any person, group, or organization for any purpose.

O. If the Federal Communications Commission or the Public Utilities Commission of the state of Oregon or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of any franchise granted, then to the extent such jurisdiction shall preempt or preclude the exercise of like jurisdiction by the city, the jurisdiction of the city shall cease and no longer exist.

The preemption or preclusion of the exercise by the city of any of its police power shall not diminish, impair, or affect any other contractual benefit to the city or grantee nor any other contractual obligation of the grantee under any franchise granted.

Any and all minimum standards governing the operation of grantee and any and all maximum rates, ratios, and charges specified in any franchise granted, existing now and at any time in the future, including such time as any paramount jurisdiction shall preempt or preclude that of the city, and any and all rights, powers, privileges, and authorities of the city to determine, establish, or fix any of the same, are each and all declared by the city and by any grantee accepting any franchise, to be contractual in nature and to be for the benefit of the city.

P. The form of the grantee's contract with the subscriber shall also be subject to approval of the city.

Q. It is not necessarily the city's intention to prohibit the erection or controlled use of individual television antennas, and no one is or will be required to receive cable communications service or connect with a cable communications system.

R. Should the grantee ever fail to pay any sum of money to the city owing to the city under provisions of this chapter, or the franchise ordinance, when such sum becomes due and payable, grantee shall pay interest to the city on the delinquent sum, until it is fully paid at two interest points above the prime rate of interest charges in the Aurora area as calculated by the city.

S. A franchise to proceed with construction or operation of a cable communications system shall not be construed as any limitation upon the right of the city to grant to other persons or corporations, rights, privileges, or authority similar to or different from the rights of authority set forth herein or the franchise document itself, in the same or other street, alleys, public highways, public places, or other public right-of-ways by agreement, franchise, permit, or otherwise.

T. Nothing in this chapter shall be construed or prohibit any person from constructing or operating any private noncommercial satellite receiving station, to the extent permitted by city, county, state, and federal law.

U. "The CATV system herein franchised shall be used and operated solely and exclusively for the purpose expressly authorized by ordinance of the City of Aurora and no other purpose whatever." Inclusion of the foregoing statement in any such franchise shall not be deemed to limit the authority of the city to include any other reasonable condition, limitation, or restriction which it may deem necessary to impose in connection with franchise pursuant to the authority conferred by provisions of this chapter. (Ord. 273 § 5, 1983)

5.08.060 Franchise application procedures.

A. This chapter grants no authority to operate a cable communications system to any person(s). Such grants are only made by the adoption of a separate ordinance awarding a specific franchise to an applicant who has complied with the provisions of this chapter.

B. Each application for a franchise to construct, operate, or maintain any cable communications system(s) in this city shall be filed with the city recorder and shall contain or be accompanied by the following:

1. The name, address, and telephone number of the applicant;

2. A detailed statement of the corporate or other business entity organization of the applicant, including but not limited to, the following and to whatever extent required by the city:

a. The names, residence, and business addresses of all officers, directors, and associates of the applicant,

b. The names, residence, and business addresses of all officers, persons, and entities having, controlling, or being entitled to have or control of five percent or more of the ownership of the applicant and the respective ownership share of each person or entity,

c. The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned and controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to, cable television systems owned or controlled

by the applicant, its parent and subsidiary and the areas served thereby,

d. A detailed description of all previous experience of the applicant in providing cable television communications system service and in related or similar fields,

e. A detailed and complete financial statement of the applicant,

f. A statement identifying, by place and date, any and all cable television franchises awarded to the applicant, or its parent or subsidiary; the status of such franchises with respect to completion thereof; the total cost of completion of such systems; and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof;

3. A thorough, detailed description of the proposed cable communications system and plan of operation of the applicant which shall include, but not be limited to, the following:

a. A detailed map indicating all areas proposed to be served and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served,

b. A detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant. In no event shall the operational and performance standards be less than those adopted by the rules and regulations of the Federal Communications Commission (contained in Title 47, Subpart K, Sections 76.601 et. seq. 9), and as augmented and modified by the franchise awarded,

c. A detailed estimate of the cost of constructing the applicant's proposed system,

d. A copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber,

e. A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral or implied, existing or proposed to exist, between the applicant and any person, firm, or corporation which materially relate or pertain to or depend upon the application and the granting of the franchise,

f. A statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of the classifications, including installation charges and service charges;

4. A copy of any agreement existing between the applicant and any public utility subject to regulation by the Oregon Public Utilities Commission providing for the use of any facilities of the public utility, including but not limited to, poles, lines, or conduits within the city and/or adjacent areas;

5. Any other details, statements, information, or references pertinent to the subject matter of such application which shall be required or requested by the council, or by any provision of any other ordinance of the city;

6. An application fee in a sum to be set by the city which shall be in the form of cash, certified or cashier's check, money order, to pay the costs of studying, investigating, and otherwise processing such applications, and which shall be in consideration thereof and not returnable or refundable in whole or in part, except to the extent that such fee exceeds the actual costs incurred by the city in studying, investigating, and otherwise processing the application; provided

that any applicant who shall deliver to the city recorder a written withdrawal of or cancellation of any application following the day such application is received by the city recorder, shall be entitled to have returned and refunded the sum of fifty (50) percent of the fee less any actual costs or expenses incurred by the city by reason of such applications.

C. The council may, by advertisement or otherwise, solicit for any other applications for cable communications system franchises, and may determine and fix any date upon or after which the same shall be received by the city, or the date before which the same shall not be received and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making, and receiving of such applications.

D. Upon receipt of any application for franchise, the council shall refer the same to the city attorney, or any other person designated by the city council, who shall prepare a report and make his or her recommendations respecting such application, and cause the same to be completed and filed with the council within ninety (90) days.

E. In making any determinations hereunder as to any application the council shall give due consideration to the character and quality of the service proposed, rates to subscriber, income to the city, experience, character, background, and financial responsibility of any application, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, and to abide by policy conditions, franchise limitations and requirements, and any other consideration deemed pertinent by the council for safeguarding the interest of the city and the public. The council, in its discretion, shall determine the award of any franchise on the basis of such considerations and without competitive bidding.

F. If the council, after public hearing, shall determine to reject such application, such determination shall be final and conclusive, and the same shall be deemed rejected.

G. If the council shall determine to further consider the application, the following shall be done:

1. The council shall decide and specify the terms and conditions of any franchise to be granted hereunder and as herein provided, and shall set a date and time for a public hearing.

2. The city recorder shall give notice of the intention to consider the granting of such a franchise, stating the name of the proposed grantee, and that copies of the proposed franchise may be obtained at the office of the city recorder, fixing and setting forth a time and public place certain when and where interested parties may inspect all the bona fide applications, and setting forth a day, hour, and place certain when and where any persons having any interest therein or objection to the granting thereof, may file written protests and appear before the council and be heard. The city recorder shall publish notice of the action specified in subsection (G)(1) of this section at least once within ten (10) days thereof in a newspaper of general circulation within the city.

H. At the time set for the hearing, or at any adjournment thereof, the council shall proceed to hear all written protests. Thereafter, the council shall make one of the following determinations:

1. That such franchise be denied; or

2. That such franchise be granted upon such conditions as the council deems appropriate, which conditions may include, on a not to exceed basis, where in accordance with applicable FCC regulations and state laws:

a. Charges for installation,

b. Subscriber rates,

c. Service rates for separate classifications of service such as additional connections.

I. If the council shall determine that franchise be granted, such determination shall be expressed by ordinance granting a franchise to the applicant. The action of the council shall be final and conclusive.

J. The grantee shall pay to the city a sum of money sufficient to reimburse it for all expenses incurred by the provisions of this chapter beyond those defrayed by application fees. Such payment shall be made within thirty (30) days after the city furnishes the grantee with a written statement of such expenses. (Ord. 273 § 6, 1983)

5.08.070 Applications for franchise renewal.

A. Any franchise may be renewed for a term not to exceed ten (10) years, at any time prior to the expiration of the same. An application therefore shall be submitted to the city council containing the following information:

1. The information required pursuant to Section 5.08.060(B)(1) and (2);

2. A map of the area proposed to be included in the franchise service area;

3. A schedule of rates and charges proposed;

4. A narrative and/or pictorial description of the facilities in place, and a narrative description of proposed additions and/or replacements thereto, if any.

B. Upon receipt of such an application, the city council shall conduct a public hearing and direct notice to be given as provided in Section 5.08.060(G)(2). At the time of such hearing, or continuance thereof, the city council shall, based upon the application and relevant evidence received, determine whether the public interest, convenience and necessity require the issuance of such franchise. If it determines that the franchise should be granted, it shall do so in the manner provided in Section 5.08.060(H)(2), in the event of nonrenewal, or termination of a franchise, the city may purchase, or in any event, shall require any successor grantee to purchase, grantee's facilities at a cost not to exceed its then fair market value, with a reduction for any uncompensated damages incurred by the city in connection with the grantee's operation. If such fair market value cannot be agreed upon by the parties, it shall be determined by a three-member arbitration panel, in accordance with the arbitration process specified in Section 5.08.040(C). The parties shall divide expenses of arbitration evenly among themselves. (Ord. 273 § 7, 1983)

5.08.080 Acceptance of the franchise.

A. No franchise granted under this chapter shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the city recorder's written acceptance, which shall be in the form and substance approved by the city attorney, shall also be and operate as an acceptance of each and every term and condition and limitation contained in this chapter, and in such franchise, or otherwise specified as herein and therein provided.

B. The written acceptance shall be filed by the grantee not later than 12:01 p.m. of the fortieth day next following the effective date of the ordinance granting such franchise. In the event this day falls on a nonworking day, then the next business day will suffice.

C. In default of the filing of such written acceptance, as herein required, the grantee shall be deemed to have rejected and repudiated the franchise. Thereafter, the acceptance of the grantee shall not be received nor filed by the city recorder. The grantee shall have no rights, remedies, or redress in the premises, unless and until the council shall determine that such acceptance be received or filed, and then upon such terms and conditions as the council may impose.

D. In any case, and in any instance, all rights, remedies, and redress in these premises which may or shall be available to the city, shall at all times be available to the city, and shall be preserved and maintained and shall continuously exist in and to the city, and shall not be in any manner or means modified, abridged, altered, restricted, or impaired by reason of any of these premises, or otherwise.

E. Any franchise granted and accepted under this chapter shall be in lieu of any and all other conflicting rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by the grantee, of or pertaining to the construction, operation, or maintenance of any cable communications system(s) in the city. (Ord. 273 § 8, 1983)

5.08.090 Transfer or assignment of franchise.

A. Any such franchise shall be a privilege to be held in personal trust by the grantee. The franchise shall not be sublet or assigned, nor shall any of the rights or privileges therein granted or authorized be leased, assigned, mortgaged, sold, transferred, or disposed of, either in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation, or otherwise, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person(s), except the grantee, either by act of the grantee or by operation of law, without the consent of the city, expressed by ordinance.

B. The grantee shall promptly notify the city of any proposed change in, or transfer of, or acquisition by, any other party of control of the grantee with respect to which the consent of the grantor is required, pursuant to subsection (A) of this section. Such change of control shall make this franchise subject to revocation unless and until the city council shall have consented thereto.

C. Consent of the city council shall not be granted until it has examined the proposed assignee's legal, financial, technical, character, and other qualifications to construct, operate, and maintain a cable communications system in the city and has afforded all interested parties notice and an opportunity to be heard on the question. The grantee shall assist the city in any such examination.

D. The consent of the council may not be unreasonably refused; provided, however, the proposed assignee must show financial responsibility as determined by the council, and must agree to comply with all provisions of the franchise and of this chapter; and provided, further, that no such consent shall be required for a transfer in trust, mortgage, or other hypothecation in whole or in part, to secure an indebtedness, except

that when such hypothecation shall exceed fifty (50) percent of the market value of the property used by the grantee in the conduct of the cable communications system, prior consent of the council shall be required for such a transfer. Such consent shall not be withheld unreasonably.

E. In the event that grantee is a corporation, prior approval of the city council shall be required where there is actual change in control or where ownership of more than fifty (50) percent of the voting stock of grantee is acquired by a person or group of persons acting in concert, none of whom already own fifty (50) percent or more of the voting stock, singly or collectively. Any such acquisition occurring without prior approval of the city council shall constitute a failure to comply with a provision of this chapter within the meaning of Section 5.08.040.

F. Any such transfer or assignment shall be made only by an instrument in writing, which shall include an acceptance of all terms and conditions of the franchise by transfer of a duly executed copy of which shall be filed with the city recorder within thirty (30) days after such transfer or assignment. (Ord. 273 § 9, 1983)

5.08.100 Cable communications services.

A. Basic Service. A cable communications system, to be installed and operated pursuant to this chapter and a franchise granted hereunder shall:

1. Be operationally capable of relaying to subscriber terminals those television and radio broadcast signals for the carriage of what the grantee is now or thereafter authorized by the Federal Communications Commission;

2. Distribute color television signals which it received in color;

3. Provide channel capacity and basic equipment for program production in cable casting for educational and public access uses, and for use of the city per Section 5.08.200;

4. Have a minimum capacity of forty-one (41) downstream video channels; and

5. As a minimum, have the capability of being converted at any time to provide full reverse transmission (two-way transmission) in any portion of the system or trunk by adding appropriate reverse amplifier modules. Further, the two-way capability shall be fully activated from production facilities in those sites specified in the cable communications franchise granted pursuant to this chapter.

B. Nonbasic Services. The cable communications system permitted to be installed and operated pursuant to this chapter may also engage in the business of:

1. Transmitting original cablecast programming not received through television broadcast signals;

2. Transmitting television pictures, film, and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers or subscribers;

3. Transmitting and receiving all other signals; digital, voice, and audio-visual, etc.

C. Emergency Service. The grantee shall design and construct the system to provide for a restricted audio and video override of video channels during emergencies as per Section 5.08.210. (Ord. 273 § 10, 1983)

5.08.110 Service area.

Grantee's system design and construction shall be such that service shall be made available to all residential units within the grantee's service area, as defined in the franchise, for the normal installation fee, with the exception that in those locations where the dwelling units per strand mile of system plant are less than the dwellings per mile figure stipulated in the franchise ordinance, grantee shall provide cable service on a pro-rata sharing of the installation costs with the potential subscribers. The pro-rata sharing of those costs will be in accordance with the formulation set forth in Section 5.08.120. (Ord. 273 § 11, 1983)

5.08.120 System extension.

Grantee shall extend residential and institutional (the latter as required by city) service into every new subdivision and/or development and/or newly incorporated/annexed area. Those new areas having more dwelling units per strand mile of plant than the number stipulated in the franchise ordinance, shall receive residential service for the normal installation fee. The capacity to provide cable communications service shall be available to newly constructed structures on the date of first occupancy. Actual installation of service may be delayed up to sixty (60) days from first occupancy or until after final grading, whichever is first. In those areas, where the number of dwelling units per strand mile is less than the number stipulated in the franchise ordinance, grantee will provide residential cable service on a pro-rata sharing of the installation costs with the potential subscriber(s). Grantee will bear its pro-rata share of the then current mile of plant construction cost based on a multiple of the actual number of potential subscribers per mile divided by the number of dwellings per mile stipulated in the franchise ordinance.

The remaining construction cost will be borne on a pro-rated basis by each applicant committing to service within the extension area. Mileage will be measured from the nearest point on the nearest trunk line. Example: If it requires one mile of plant extension at $10,000 x 20 - 24, or $8,333, as its share of the extension cost, the remaining $1,667 cost would be divided equally among the twenty potential subscribers. The above formula applies to individual installation distances, as stipulated in the franchise ordinance, or less. For distances in excess of the stipulated distance, there may be an additional charge for that distance in excess. (Ord. 273 § 12, 1983)

5.08.130 Systems design, construction, and technical performance standards.

A. Standards of cable communications system(s) construction, safety, and operation will meet, but are not limited to, the following referenced specifications, unless exception is agreed upon between the city and the grantee.

1. Applicable city, county, state, and nation/federal codes and ordinances as they apply to the construction of buildings, tower, structures, and cable system installation;
2. Applicable utility joint attachment practices;
3. National Electrical Safety Code, NFPA No. 70;
4. Local utility code requirements;
5. Local right-of-way procedures.

B. The overall system(s) will be designed and constructed to meet all FCC technical performance specifications and

standards over a temperature range of plus or minus fifty (50) degrees Fahrenheit from the mean temperature of the Aurora area, and to function throughout all environmental extremes expected.

C. The forward portion of any cable communications system shall be capable of initial activation of a minimum carriage of forty-one (41) Class I television channels, the full FM broadcast band, and for Pilot Carriers or such auxiliary signals as required for system control.

D. The combined forward trunk and distribution system will deliver signals to each and every subscriber's receiver that will meet or exceed the franchise ordinance specifications at the mean system temperature plus or minus fifty (50) degrees Fahrenheit, unless otherwise indicated. This shall include the effects of drop cables, interior splits, and any terminal equipment such as descramblers and set top converters.

E. The reverse portion of the residential system shall be capable of initial activation of a minimum of five to thirty (30) MHz in bandwidth, with return signals from each subscriber and institutional (including all schools) signal source to the extreme end of any area in compliance with the specifications set forth in the franchise ordinance.

1. Where applicable, the end of the system specifications shall include the effects of any signal reprocessing equipment necessary to achieve forward transmission.

2. For Class I signals, the signal delivered to the subscriber's receiver, after being transmitted to the headend, processed, and retransmitted down a forward channel shall meet the specifications of the franchise ordinance.

F. All cable communications systems authorized to be constructed and operated pursuant to this chapter, shall, insofar as financially and technically feasible, be compatible one with another. Signal specifications compliance determination for forward, and/or institutional channels interchanged between other cable communication systems and a grantee's system are to be determined by applying the combined contribution of distortion of all pertinent components of the worst case (temperature and location) signal path. The combined contribution shall meet or exceed the specified technical specifications at the termination of the worst case signal path the channel could encounter. At the interconnect point, the party delivering a channel or channels will provide signals, transported either in the forward or reverse system to the interconnect point, that meet or exceed the franchise ordinance specifications at the mean system temperature plus or minus fifty (50) degrees Fahrenheit. The signals are to be the compliance as stated at a point which best represent the most direct signal path between the party providing the signal and the party providing the signal and the party receiving the signal. Only one such interconnect point is to be specified for all signal exchanges.

G. A comprehensive routine preventive maintenance program shall be developed, effected, and maintained for each system by the respective grantee to ensure continued top quality cable communications operating standards in consonance with FCC Part 76 and the technical specifications stipulated in the franchise ordinance.

H. Newly constructed system services shall not be offered for sale prior to proof-of-performance testing in accordance with franchise ordinance. This initial proof-of-performance testing and annual proof-of-performance testing may be conducted by

the city or its designated representative, at the city's option when for sufficient cause as deemed by the council or its designated representative. The city reserves the right to have the measurements, associated with city observed performance tests, conducted at city selected test points and to a greater number of test points than the minimum required by Sub-Part 76.601, FCC Rules. Additionally, the grantee shall reimburse the city for all expenses incurred by it in connection with the city conducting or observing the annual performance tests, when the results of those tests are deemed by the city to fall below a ninety (90) percent level of compliance with the technical standards set forth in FCC Part 76 and in the franchise ordinance.

I. Grantee's proof of performance testing procedures must be approved by the city for implementation prior to the initial proof of performance testing addressed in subsection G of this section. The results of performance tests conducted in accordance with Section 76.601 (c), FCC Rules (or such other section of the Rules as shall incorporate its substance) shall be retained for at least five years and available for inspection by the city.

J. All system antennas and amounts shall be designed, installed and constructed for extremes in temperature, wind, and ice loading. Antennas should be able to withstand one hundred (100) mph winds with a one inch radial ice load.

K. All underground cable should be flooded and be amour-clad cable and/or installed in conduit unless specifically exempted by the city director of public works, on a case by case basis.

L. Residential and institutional drop cables should be of the integral steel messenger variety where exposed to the possible accumulation of ice and a double shielded type and fitted with sealed hex crimp ring high integrity connectors.

M. Polyethylene jacketed cable should be used in any and all areas of the plant where airborne heavy chemical particles can be expected.

N. Grantee's corrective maintenance program shall render efficient corrective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions shall be preceded by notice and shall occur during a period of minimum use of the system. A written log shall be maintained of all service interruptions. The log shall reflect the date, time, duration, and reason for each service interruption. The record of the log shall be kept on file for a minimum of three years. (Ord. 273 § 13, 1983)

5.08.140 Undergrounding of cable lines.

A. In those areas and portions of the city where the transmission and/or distribution facilities of the public utility providing telephone service and those of the utility providing electric service, are underground or hereafter may be placed underground, or are to be placed underground by a builder, developer or sub divider as part of a development or subdivision, then the grantee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground.

B. In new developments or subdivisions the builder, developer or sub divider shall be responsible for the performance of all necessary trenching and backfilling of main line and service trenches, including furnishing of any imported backfill material required. Pre-

wiring of new dwellings while under construction shall be mandatory. Amplifiers in the grantee's transmission and distribution line may be in concrete boxes, pedestals or vaults on the surface of the ground. The grantee will be responsible for the conduct of the engineering and labor to put the cable conduit in the trench. The grantee will be responsible for pulling in the cable, and providing the pedestal amplifiers, electronics, stub ends and drops to individual homes, after occupancy.

C. In those areas and portions of the city heretofore designated by the city as local improvement districts and where utility service facilities are currently located underground, the grantee shall be responsible for the undergrounding of cable facilities including the performance of all necessary trenching and backfilling of main line and service trenches, and the furnishing of any imported backfill material required. Amplifiers in the grantee's transmission and distribution lines may be in concrete boxes, pedestals or vaults on the surface of the ground. (Ord. 273 § 14, 1983)

5.08.150 System maintenance.

Throughout the life of a grantee's franchise, and in addition to other service regulations adopted by the council, and excepting circumstances beyond grantee's control, such as acts of God, riots and civil disturbances, and in providing the foregoing services, a grantee shall:

A. Maintain all parts of its system in good condition and in accordance with standards generally observed by the cable television industry. The system must serve individual residents, but also serve as a broad based communications source for city government, other public facilities including hospitals, public libraries and schools, industrial and commercial business users;

B. Retain sufficient employees to provide safe, adequate and prompt service for all such residential subscribers, institutional facilities and business users;

C. Limit system failures to minimum time duration by locating and correcting malfunctioning as promptly as is reasonably possible, irrespective of holidays or other non-business hours. (Ord. 273 § 15, 1983)

5.08.160 Emergency power.

Emergency power sources shall be provided by grantee at the headend, network distribution center, satellite earth station, processing hubs, and other system locations as may be necessary to guarantee that in the event of a power failure on any part of the system, service will be maintained on the rest of the system. (Ord. 273 § 16, 1983)

5.08.170 Rules and regulations for subscriber service standards.

A. It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the grantee are honored. Neither the city nor the grantee shall, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage of any person, nor subject any person to prejudice or disadvantage.

B. Before providing cable television service to any subscriber, the grantee shall provide a written notice to the subscriber substantially as follows:

Subscriber is hereby notified that in providing cable television/communications service the Grantee is making use of public rights-of-way within the City of Aurora and

that the continued use of such rights-of-way is in no way guaranteed. In the event the continued use of such rights-of-way is denied to Grantee for any reason, Grantee will make every reasonable effort to provide service over alternate routes. By accepting cable television/communi-cations service, subscriber agrees he will make no claim nor undertake any action against the City, its officers, or its employees if the service to be provided hereunder is interrupted or discontinued.

C. There shall be no charges for service calls to subscriber's homes except as provided by the agreement.

D. Grantee may charge a subscriber for a lost or stolen converter, not to exceed grantee's direct original wholesale cost. Except that the loss or theft of a converter with the premium access feature will incur a monetary penalty as specified in the franchise ordinance to the responsible subscriber, unless a police report has been filed.

E. Converter deposits shall be fully refundable, with possible deductions for repairs due to damage other than that of normal wear, and for any unpaid service charges due.

F. Grantee shall be responsible for the protection of subscriber privacy, prohibiting the tapping and/or monitoring of cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, except grantee may conduct tests of the functioning of the system where necessary in order to ensure proper maintenance of the system and to collect performance data for agencies regulating the quality of signals. Where critical information requires private communication, electronic signal scrambling techniques must be used.

G. The grantee shall maintain constant vigilance with regard to possible abuses of the right of privacy or other human rights of any subscriber, programmer, or general citizen resulting from any device or signal associated with the cable communications system. The grantee shall not place in any private residence any equipment capable of two-way communications without the written consent of the residents, and will not utilize the two-way communications capability of the system for subscriber surveillance of any kind without the written consent of the subscriber.

H. No cable, line, wire, amplifier, converter, or other piece of equipment owned by the grantee shall be attached to any residence or other property by the grantee without first securing the written permission of the owner or responsible occupant of any property involved. If such permission is later revoked whether by the original or a subsequent owner or responsible occupant, the grantee shall remove forthwith all of its equipment and promptly restore the property to as near to its original condition as possible.

I. In the event that the grantee elects to rebuild, modify, or sell the system, or the city revokes or fails to renew the franchise, the grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances during the lifetime of the franchise. In the event of a system purchase by the city, or change of grantee, the current grantee shall cooperate with the city to operate the system for a temporary period, in maintaining continuity of service to all subscribers.

J. Upon termination of service to any subscriber, a grantee shall promptly remove

all its facilities and equipment from the premises of such subscriber upon his or her request, with the exception of underground installations if agreed upon by the subscriber at the time of subscription to the service.

K. The grantee shall not sell, or otherwise make available, lists of the names and addresses of its subscribers, or any list which identifies, by name, subscriber viewing habits, to any person, agency, entity, for any purpose whatsoever.

L. No polls or other two-way responses of subscribers shall be conducted unless the program of which the poll is a part shall contain an explicit disclosure of the nature, purpose and prospective use of the results of the poll. No commercial or other use of information of subscriber viewing habits or patterns may be made and no release of such information shall be permitted without prior consent of the council or pursuant to the rules and regulations duly adopted by the city. (Ord. 273 § 17, 1983)

5.08.180 Subscriber complaint service.

A. Subscriber complaint service will be provided in conjunction with the grantee's corrective maintenance program. Location of the grantee's office and service center to be subject to council approval. The subscriber complaint service will be as specified in the franchise ordinance.

B. A conveniently located business office and service center will be maintained within the service area. This office shall be open during all usual business hours, with its telephone listed in directories of the telephone company servicing the city, and be so operated that complaints and requests for repairs or adjustments may be received by telephone at all times when any television signals are being broadcast. Corrective maintenance for institutional services will be in accord with contract terms between the grantee and the subscriber. (Ord. 273 § 18, 1983)

5.08.190 Rates and charges.

Except when and as preempted by FCC regulations and state laws, the following procedures apply to the rates and charges associated with the providing of services under this chapter and any franchise issued hereunder.

A. The grantee shall charge its subscribers and users rates and charges approved by the council, and no change in rates and charges may be made without the prior approval of the council expressed by resolution.

B. Should the grantee desire to change its rates and charges, it shall file a petition with the council at least ninety (90) days prior to the proposed date of change. The petition shall detail the proposed changes and set forth the reason changes are desired. The petition shall include system historical financial data (balance sheets and detailed profit and loss statements) for the period since commencement of system operations or the previous five years, whichever is the lesser.

C. Council determination of proper rates and charges shall be based on factors considered important by council, which shall include but are not limited to: the quality of signal delivered to subscribers, the quality of service provided to subscribers, channel capacity, number and quality of programming sources, and underlying economics of the system (system cash flow, grantee return on investment, etc.). In this regard, the city reserves the right to inspect all of the grant-

ee's property and records in adjudging the merits of a request for a change in rates and/or charges.

D. In connection with any proposed increase in any rate or charge, the city may direct an authorized representative to conduct a hearing on the matter. If so directed, the representative shall set the day, hour, and place certain when and where any person having any interest therein may appear and be heard. This hearing should normally be conducted within sixty (60) days from date of receipt of petition. The notice of a public hearing on the matter should be published at least ten (10) days before the date of the hearing in a newspaper of general circulation within the city.

E. At the time set for such hearing, or at any adjournment thereof, the representative shall hear the matter. Following the close of such hearing, the representative shall prepare and file with the council a report of the hearing, and his or her recommendations and the reasons therefor. After receipt of the representative's report, the council shall determine whether to adopt the report or to hold a further hearing. If the council elects to adopt the recommendations of the representative, it shall do so by resolution. If it elects to conduct a hearing thereon, it shall fix and set forth a day, hour, and place certain when and where any person having any interest herein may appear before the council and be heard. The city recorder shall publish notice of the public hearing at least once within ten (10) days to the council action in a newspaper of general circulation within the city. The city recorder also shall cause notice of intent of such resolution to be mailed to the grantee at least ten (10) days prior to the date specified for hearing thereon. At the time set for such hearing, or at any adjournment thereof, the council shall hear and decide the matter.

F. No rate established shall afford any undue preference or advantage among subscribers, but separate rates may be established for separate classes of subscribers. (Ord. 273 § 19, 1983)

5.08.200 Local origination and access.

A. Grantee shall provide and maintain at least one local origination and access studio within the service area. Location of the studio shall be approved by the council or its designated representative.

B. Grantee shall provide, install and maintain a local origination and access audio/video system at their local origination and access studio. The system shall contain a complement of compatible equipment as specified in the franchise ordinance, all of which will be of broadcast or top level industrial quality.

C. The grantee shall make the portable audio/video equipment available for use by residents in accordance with a grantee developed and city approved studio and equipment operations/usage plan, provided the following:

1. Grantee may charge a fee and/or deposit for the use and safe return of the equipment;

2. The user shall be responsible to the grantee for any loss of or damage to the equipment;

3. The equipment shall be available to residents on a check-out basis, and grantee shall be given reasonable notice by a resident who wishes to use the equipment;

4. Residents may not use the equipment for a longer than a reasonable period of time, nor more frequently than is reasonable;

5. Grantee may deny use of the equipment to any resident who, in the judgment of grantee, is not competent in the care of the equipment;

6. Grantee shall hold harmless the city from any damages resulting from the use of local origination and access studio and portable equipment.

D. If the grantee provides a color production van for remote public access productions and locally originated programming, the van should be a fully equipped, multiple-camera, color production van with switches, special effects editing and audio origination capability. It should have complete videotape recording (VTR) equipment for editing and later playback of programs, and can be linked for live origination to the system head-end or network distribution center by two-way cable throughout the grantee's service area. Portable microwave equipment should be provided to link the production van to the system where cable interconnections are not available. The head-end or network distribution center should be equipped with an omni-directional microwave receiver antenna to afford reception of the production van microwave signal from virtually any line-of-sight location within a twenty (20) mile radius.

E. Grantee's production capability will be supplemented by a minimum of two portapak cameras and two one-half inch portable video recorders.

F. Grantee shall provide community access channels for use by city residents, including a channel for government access, a channel for primary and secondary school access use, a channel for access use by colleges, a channel for community access on a first-come, first-serve basis, and a channel for leased access until there is demand for full channel-time use, such may be combined on one or more channels. Additional access channels will be activated when any of the channels stipulated are in use during eighty (80) percent of the weekdays (Monday through Friday) for eighty (80) percent of the time during any consecutive three-hour period for six consecutive weeks.

G. Grantee will actively promote production assistance to facilitate use of these community access channels. Grantee shall maintain sufficient dedicated studio staff to fully support active local origination and access activities. The staff, upon reasonable notice, shall provide training and technical assistance in the use of the studio and portable equipment. This training and assistance shall, at a minimum, be available at the local origination and access studio and made available upon request at public schools.

H. Grantee shall maintain all studio equipment, including portable equipment, in a fully operational status on a continuous basis, and to technical standards requisite for quality performance. When any equipment is removed for maintenance, it will be replaced by like-type equipment of equivalent performance. (Ord. 273 § 20, 1983)

5.08.210 Emergency alert audio/video override.

The grantee shall design and construct the cable communications system to provide for a restricted audio and video simultaneous override of all video channels during emergencies, with override to be placed under city control. Video override to include a character generator capability for delivery of emergency messages to the communicatively handicapped. The audio override shall include a squeal alert tone to precede the verbal and video messages. The design of

the emergency alert system is to be submitted to the city council for approval prior to construction. (Ord. 273 § 21, 1983)

5.08.220 Safety requirements.

A grantee shall at all times:

A. Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the city building code, and in such manner that they will not interfere with any installations of the city;

B. Keep and maintain in a safe, suitable, substantial condition and in good order and repair, all its structures, lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the city wherever situated or located. (Ord. 273 § 22, 1983)

5.08.230 Permits and construction.

A. Within thirty (30) days after acceptance of franchise, the grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, encroachment permits, microwave carrier licenses, and any other permits, licenses and authorizations to be granted duly constituted regulatory agencies having jurisdiction over the operation of cable television/communications systems, or associated microwave transmission facilities. ("Due diligence" shall require that all applications have been made, all necessary information has been furnished and all fees have been paid, if unpaid.)

In connection therewith, copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission, Securities and Exchanges Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting grantee's cable communications operations, shall also be submitted simultaneously to the city recorder.

B. Within sixty (60) days after obtaining all necessary permits, licenses and authorizations, including right of access to poles and conduits, grantee shall commence construction and installation of the cable communications system.

C. Within one hundred eighty (180) days after the commencement of construction and installation of the system, grantee shall proceed to render service to subscribers, and the completion of the installation and construction shall be pursued with reasonable diligence thereafter, so that service to all areas designated and scheduled on the map and plan of construction made part of the franchise shall be provided as set forth therein.

D. Failure on the part of the grantee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein, shall be grounds for termination of such franchise. By resolution and order, the council in its discretion, may extend the time for the commencement and completion of installation and construction for additional periods in the event the grantee, acting in good faith, experiences delays by reason of circumstances beyond his or her control.

E. Grantee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public property or on privately-owned property unless and until first securing the written approval the city director of public works.

Whenever grantee shall not utilize existing poles, conduits and other facilities, or whenever existing conduits and other facilities shall be located beneath the surface of the streets or whenever the city shall undertake a program designated to cause all conduits and other facilities to be located beneath the surface of the streets in any area of the city, in the exercise of its police power or pursuant to the terms hereof, upon reasonable notice to grantee, the city may require any such conduits and other facilities to be constructed, installed, placed, or replaced beneath the surface of the streets. Any construction, installation, placement, replacement, or changes which may be so required shall be made at the expense of grantee, whose costs shall be determined as in the case of public utilities.

F. The city shall have the right, free of charge, to make additional use, for the public or municipal purpose, whether governmental or proprietary, of any poles, conduits, or other similar facilities erected, controlled, or maintained exclusively by or for grantee in any street, provided such use by city does not interfere with the use by grantee.

G. Per Section 5.08.140, in those areas of the city where the transmission of distribution facilities of the respective public utilities providing telephone, communication and electric services are underground, or hereafter are placed underground, the grantee likewise shall construct, operate and maintain all of his or her transmission and distribution facilities underground. When directed by the city, previously installed aerial cable shall be buried in concert, and on a cost-sharing basis, with the utility companies involved pursuant to the general ordinances of the city or applicable state laws.

The term "underground" shall include a partial underground system, provided that upon obtaining the written approval of the city, amplifiers in the grantee's transmission and distribution lines may be placed in appropriate housing upon the surface of the ground.

H. The grantee at his or her expense shall protect, support, temporarily disconnect, relocate, or remove any property of grantee when, in the opinion of the city recorder, public works director or chief of police the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction; change or establishment of street grade, installation of sewers, drains, water pipes, power line, signal line transportation facilities, tracks, or any other types of structures or improvements by governmental agencies whether acting in a governmental or proprietary capacity, or any other structure of public improvement, including but not limited to movement of buildings, urban renewal and redevelopment, and any general program under which the city shall undertake to cause all such properties to be located beneath the surface of the ground.

The grantee may, at the sole option of the city, have the privilege, subject to the corresponding obligations, to abandon property of grantee in place. A permit to abandon in place must first be obtained from the city director of public works. Nothing hereunder shall be deemed a taking of the property of grantee and grantee shall be entitled to no surcharge by reason of anything hereunder.

I. Upon the failure, refusal, or neglect of grantee, to cause any work or other act required by law or hereunder to be properly

completed in, on, over, or under any street within any time prescribed therefor, or upon notice given, where no time is prescribed, the city recorder may cause such work or other act to be completed in whole or in part, and upon so doing shall submit to grantee an itemized statement of the costs thereof. The grantee shall, within thirty (30) days after receipt of such statement, pay to the city the entire amount thereof.

J. In the event that:

1. The use of any part of the system of grantee is discontinued for any reason for a continuous period of thirty (30) days, without prior written notice to and approval by the city;

2. Any part of such system has been installed in any street or other area without complying with the requirements hereof and/or the franchise ordinance, or

3. Any franchise shall be terminated, cancelled or shall expire;

then the grantee shall, at the option of the city, and at the expense of grantee and at no expense to the city, and upon demand of the city, promptly remove from any streets or other area all property of grantee, and grantee shall promptly restore the street or other area from which such property has been removed to such condition as the city director of public works shall approve.

The council may, at its sole option, upon written application therefor by grantee, approve the abandonment of any of such property in place by grantee. Upon abandonment of any such property in place, grantee shall cause to be executed, acknowledged and delivered to the city such instruments as the city attorney shall prescribe and approve, transferring and conveying the ownership of such property to the city. (Ord. 273 § 23, 1983)

5.08.240 Indemnifications.

A. Within thirty (30) days after the effective date of any franchise, unless otherwise authorized by council, the grantee shall deposit into a bank account, established by the city Recorder and maintain on deposit through the term of the franchise a security fund of not less than two thousand five hundred dollars ($2,500.00) as security of faithful performance by it of all provisions of the franchise, and compliance with all orders, permits and directions of any agency of the city having jurisdiction over its acts or defaults under the contract, and payment by the grantee of any claims, liens and taxes due to the city which arise by reason of the construction, operation or maintenance of the system. The grantee shall be entitled to all interest earned on such account.

1. Within thirty (30) days after notice to it that any amount has been withdrawn by the city from the security fund pursuant to subsection (A)(2) of this section, the grantee shall deposit a sum of money sufficient to restore such security fund to the original amount of two thousand five hundred dollars ($2,500.00).

2. If the grantee fails, after ten (10) days' notice to pay to the city any taxes due and unpaid; or, fails to repay the city within such ten (10) days, any damages, costs or expenses which the city shall be compelled to pay by reason of any act or default of the grantee in connection with the franchise; or, fails, after thirty (30) days' notice of such failure by the city to comply with any provision of the franchise which the city reasonably determines can be remedied by an expenditure of the security, the city recorder may immediately withdraw the amount thereof, with interest and any penalties, from

the security fund. Upon such withdrawal, the city recorder shall notify the grantee of the amount and date thereof.

3. The security fund deposited pursuant to this section shall become the property of the city in the event that the franchise is cancelled by reason of default of the grantee or revoked for cause. The grantee, however, shall be entitled to the return of such security fund, or portion thereof, as of the franchise, or upon termination of the franchise at an earlier date, provided that there is then no outstanding default on the part of the grantee.

B. By accepting a franchise, each grantee shall be deemed to have agreed to indemnify and hold harmless the city, its officers, boards, commissions, agents, consultants, and/or employees against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including but not limited to damages to city property and damages arising out of copy right infringements, and damages arising out of any failure by grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by grantee's cable communications system), costs or liabilities (including costs of the city with respect to its employees), of every kind and nature whatsoever, including but not limited to damages for injury or death or damage to person or property, and regardless of the merit of any of the same, and against all liability to others, and against any loss, cost, and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to the exercise or the enjoyment of any franchise hereunder by grantee, or the granting thereof by the city.

C. The grantee shall at the sole risk and expense of grantee, upon demand of the city, made by and through the city attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise brought or instituted or had by third persons or duly constituted authorities, against or affecting the city, its officers, commissions, agents, consultants, or employees, and arising out of or pertaining to the exercise or the enjoyment of such franchise, or the granting thereof by the city.

1. Alternatively, in the discretion of the city council, the city may, on behalf of itself, and/or any of its officers, agents, consultants or employees, elect to employ, at grantee's expense, attorneys to appear and defend such actions.

2. The grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made or issued against grantee, the city, its officers, boards, commissions, agents, consultants, or employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of the bond, policy or insurance, security deposit, undertaking or other assurance required hereunder, or otherwise; provided, that neither grantee nor city shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit or other proceedings, without first obtaining the written consent of the other.

D. Upon being granted a franchise, and upon the filing of the acceptance required under Section 5.08.080, the grantee shall file with the city recorder and shall thereafter,

during the entire term of such franchise, maintain in full force and effect, each of the following policies of insurance:

1. Combined bodily injury and property damage policy limits of five hundred thousand dollars ($500,000.00). The city shall be named as an additional insured on all such insurance policies and such policies shall provide they cannot be cancelled unless at least thirty (30) days' prior written notice of intent to terminate has been given to the city.

a. The city shall be named as an additional insured in any of the insurance policies.

b. Where such insurance is provided by a policy which also covers grantee or any other entity or person, it shall contain the standard cross liability endorsement.

2. Workers compensation insurance coverage in at least the minimum amounts required by law. If a grantee fails to obtain or maintain such required insurance coverage, the city may, without notice to grantee, obtain at grantee's sole expense, such coverage, or forthwith terminate, without prior notice, the franchise as granted.

E. Any of the indemnifications specified in this section may be reduced, in part or whole, in term or amount by council after three years from the date of award of franchise if the purpose of the above required bond, security fund or insurance is deemed by council to have been served and no longer required. Once reduced, in part or whole, the full requirements, in term and amount, may be reimposed as indicated above at council's sole discretion and at grantee's sole expense. (Ord. 277 § 1, 1983: Ord. 273 § 24, 1983)

5.08.250 Franchise fee.

A. In consideration of the granting and exercise of a franchise to construct and operate a cable communications system in the city, the grantee shall pay to the city during the life of the franchise, a franchise fee equivalent to a percentage, as stipulated in the franchise ordinance, of the grantee's gross revenues including, but not limited to, basic service revenues, non-basic revenues, advertising revenues, lease revenues, and date transfer revenues, for the purpose of defraying administrative expenses associated with the conduct and performance of the city's authority, responsibilities, and police power in the promotion of safety, convenience, comfort, prosperity, and general welfare of the citizens of the city, and in consideration of the city's granting and grantee's exercising a franchise to use the streets, as defined in Section 5.08.020.

B. The percentage payments shall be made in the manner, amounts and at times directed in the franchise ordinance.

C. At the discretion of the council, a percentage or portion of the fee payments may be earmarked to assist in the funding of certain non-basic service, e.g., public and educational access, etc.

D. A grantee shall file with the city recorder, within ninety (90) days after the expiration of any calendar year or portion thereof during which its franchise is in force, a financial statement certified by a responsible officer of the grantee, showing in detail the gross revenues, and defined herein, of the grantee during the preceding calendar year or portion thereof. Additionally, grantee shall submit to the city copies of all FCC Form 325 and 326 reports (and any future revisions or replacements thereof) within ten (10) days after submission to the FCC.

E. The city or its representative shall have the right to inspect the grantee's records to determine if proper payments have been made to the city. The cost of such audits shall be borne by grantee if the same results in increasing by more than two percent the grantee's annual payment to the city.

F. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable under this chapter or the franchise ordinance or associated resolution or ordinance for the performance of any other obligation thereunder. (Ord. 273 § 25, 1983)

5.08.260 Conditions on right-of-way occupancy.

A. Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a grantee shall be done under permits issued for the work by the proper officials of the city, and under their supervision and direction, and shall be done in such manner as to give the least inconvenience to the inhabitants of the city. A grantee shall, at its own cost and expense, and in a manner approved by the proper city officials, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also make and keep full and complete plats, maps and records showing the exact locations of its facilities located within the public streets, right-of-ways, and easements of the city. These maps shall be available for inspection at any time during business hours by city officials.

B. A grantee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove, any of its property when required by the city by reason of traffic conditions, public safety, road construction, change of street grade, installation of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal improvements; provided, however, that the grantee may, at the sole option of the city, have the privilege of abandoning property in place.

C. A grantee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

D. A grantee shall have authority to trim the trees upon and overhanging the public streets so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee under the same rules and regulations applied to public utilities within the city, except that, at the option of the council, such trimming may be done by it or under its supervision and direction at the expense of the grantee.

E. In all sections of the city where the cable, wires, or other similar facilities of public utilities are placed underground, the grantee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits the grantee to do so.

F. In all sections of the city where wires, cables and other system appurtenances are mounted above ground, every reasonable

effort shall be made to minimize obstruction of the view of residents, and every reasonable effort shall be made to preclude an unsightly system installation. (Ord. 273 § 26, 1983)

5.08.270 Rights reserved to the city.

A. Nothing herein and/or in the franchise shall be deemed or construed to impair or affect, in any way, to any extent, the right of the city to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted thereby, and nothing herein contained shall be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the city's right of eminent domain.

B. There shall be reserved to the city every right and power which is required to be reserved or provided by law, and the grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or agreements of the city in its exercise of such rights of power, theretofore or thereafter enacted or established.

C. Neither the granting of the franchise nor any provision thereof shall constitute a waiver or bar to the exercise of any governmental right or power of the city.

D. The city reserves to itself the right to intervene in any suit, action, or proceeding involving any provision of this chapter and/or grantee's franchise. The council may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and/or grantee's franchise, and may determine any question of fact which may arise during the existence of any franchise granted. The city recorder with the approval of the city attorney as to matters of law, is authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations of any grantee under the franchise, either on behalf of the city, the grantee or any subscriber, in the best interest of the public.

E. The city, at its option, when for sufficient cause as deemed by the city recorder, may require that the annual proof-of-performance test, addressed in Section 5.08.130, be conducted or observed by a qualified member of the city's staff or its designated representative. The city reserves the right to have the measurements, associated with city observed performance tests, conducted at city selected test points and to a greater number of test points than the minimum required by Section 76.601, FCC Rules.

F. Any delegable right, power or duty of the council, the city or any officials of the city may be transferred or delegated to an appropriate officer, employee, or department of the city.

G. The city reserves the right to promulgate other reasonable technical and operational performance standards for system franchises granted pursuant to this chapter.

H. The city reserves the right to enact reasonable regulations pertaining to franchises granted pursuant to this chapter which may include, but are not limited to:

1. Construction and use of poles;
2. Use of poles and conduits by city;
3. Common user;
4. Filing of pole user agreement;
5. Restoration of streets;
6. Movement of facilities; and
7. Trimming of trees.

I. The city reserves the right to further regulate the conduct of the grantee in regard to the privacy and property rights of private

citizens. Such regulations may include, but are not limited to, the security of all records maintained by the grantee containing privacy sensitive information, personnel practices relating to such records and any other matters related to privacy and individual rights.

J. Should the state of Oregon, or any agency of the federal government or agency thereof subsequently require the grantee to act in a manner which is inconsistent with any provisions of this chapter, franchise ordinance or associated resolutions and orders, the grantee shall so notify the city. Upon receipt of such notification, the city shall determine if a material provision of the franchise is affected. Upon such determination, the city shall have the right to modify or amend any of the sections of the franchise to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter or the franchise ordinance. The city may terminate the franchise in the event the city determines the substantial and material compliance with the original proposed terms of the franchise has been frustrated by such state or federal requirement.

K. No grantee nor any major stockholder of a grantee shall directly or indirectly with the city use the position as cable grantee to gain a competitive advantage in the business of selling, leasing, renting, servicing or repairing radio or television sets or other receivers or parts thereof, or data access and transfer equipment which make use of entertainment and information signals, provided that nothing therein shall prevent grantee from making modifications to the tuner input circuit of the subscribers' communications transmitters and/or receivers, and the fine tuning of the customers' operating controls only, to ensure proper operation under conditions of cable connection at the time of installation or in repairing receivers and other equipment belonging to other cable system operators for use in the conduct of their businesses.

L. The grantee shall permit the city to fasten signs, wires, and cables and stretch such wires and cables on any and all poles of the grantee provided that the grantee shall not be responsible for any damage without his or her fault resulting to the signs, wires, cables or property of the city resulting from such use of its poles by the city.

M. The grantee shall manage all of its operations in accordance with a policy of totally open books and records. The city shall have the right to inspect at any time during normal business hours, at the local and parent corporation offices of the grantee, all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the grantee which relate to the operation of the grantee. Access to the aforementioned records shall not be denied by the grantee on the basis that the records contain proprietary information.

N. Communications with Regulatory Agencies. Copies of all petitions, applications, communications, and reports submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to the franchise, shall also be submitted simultaneously to the grantor. Copies of responses or any other communications from the regulatory agencies to the grantee shall likewise be furnished simultaneously to the grantor.

O. Any intra-state interconnection of interactive services between the system operated by grantee and any other system shall be subject to the regulatory authority of the city.

P. The reservation of any particular right shall not be construed to limit the promulgation of other reasonable rules and regulations. (Ord. 273 § 27, 1983)

5.08.280 Equal opportunity employment and affirmative action plan.

A. In the carrying out of the construction, maintenance and operation of the cable television system, the grantee shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin.

B. The grantee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other form of compensation, and selection for training, including apprenticeship.

C. The grantee shall post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscriminating clause.

D. The grantee shall, in all solicitations or advertisements for employees placed by or on behalf of the grantee, state that all qualified applicants will receive compensation for employment without regard to race, creed, color, sex, or national origin.

E. The grantee shall incorporate the foregoing requirements in all of its contracts for work relative to construction, maintenance and operation of the cable television system, other than contracts for standard commercial supplies or raw materials, and shall require all of its contractors for such work to incorporate such requirements in all subcontracts for such work. (Ord. 273 § 28, 1983)

5.08.290 Adoption of rules and regulations.

A. At any time, the council may adopt reasonable rules, regulations and standards governing the operation of cable communications systems in the city, consistent with the provisions of this chapter, and the franchise ordinance. Such rules, regulations and standards shall apply to and shall govern the operations of the grantee of any cable communications franchise, and are expressly declared to be a part of any such franchise.

B. Prior to adopting any such rule, regulation, or standard, the council shall conduct a duly noticed hearing thereon. At the time set for such hearing, or at any adjournment thereof, the council shall proceed to hear any relevant evidence relating to the matter. Thereafter, the council, by resolution, may adopt, amend or modify such rules and regulations.

C. The standards adopted may govern the engineering, construction, installation, service, and maintenance of all cable communications systems in the city, including but not limited to standards governing carrier levels, signal-to-noise ratios, hum modulation, distortion levels, channel interactions and interactions, and composite beat levels. (Ord. 273 § 29, 1983)

5.08.300 Amendments.

The council shall amend this chapter and any franchise issued thereunder, upon its own motion or the application of a grantee whenever amendment is necessary to enable a grantee to utilize new developments in television or radio signal transmission which would improve and update cable communications service in the city, or to comply with any modifications in the Rules of the FCC. Amendments to Section 76.31 of the FCC Rules will be incorporated into this chapter within one year of their adoption or at the time of franchise renewal, whichever comes first. No amendment shall be adopted except after full, open public hearing affording due process, and no amendment substantially amending the existing rights and obligations of the grantee shall be adopted without grantee's comment. (Ord. 273 § 30, 1983)

5.08.310 Miscellaneous provisions.

A. A franchise granted to provide service within the city shall authorize, and permit the grantee to solicit, sell, distribute, and make a charge to subscribers within the city for connection to the cable communication system of grantee, and of the city in order to provide service outside the city.

B. A franchise, easement, license or other permit to anyone other than a grantee to traverse any portion of the city in order to provide service outside the city shall not authorize nor permit the person to solicit, sell, distribute, or make any charge to subscribers with the city, nor to render any service or connect any subscriber within the city to the cable communication service system of grantee.

C. When not otherwise prescribed herein, all matters herein required to be filed with the city shall be filed with the city recorder. (Ord. 273 § 31, 1983)

5.08.320 Violations--Penalties.

A. It is unlawful for any person to construct, install, or maintain within any public right-of-way in the city, or within any other public property of the city, or within any privately owned area within the city which has not yet become a public right-of-way but is designated or delineated as a proposed public right-of-way on any tentative subdivision map approved by the city, and equipment or facilities for distributing any television signals or radio signals through a cable communications system, unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this chapter and unless such franchise is in all force and effect.

B. It is unlawful for any person, firm or corporation to make or use any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise with any part of any cable communications system within this city for the purpose of enabling himself or herself or others to receive or use any television signal, radio signal, picture, program, sound, information, or other system service without payment to the owner of the system.

C. It is unlawful for any person, without the consent of the grantee, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs, sound, information, data, or other system service, except for those actions by the city deemed necessary to fulfill their responsibilities. (Ord. 273 § 32, 1983)

Chapter 5.12

MOTOR VEHICLE WRECKING AND DISMANTLING BUSINESSES

Sections:

5.12.010 License required.
5.12.020 Records to be kept.
5.12.030 Screening required.
5.12.040 Preexisting businesses.
5.12.050 Violations--Penalties.

5.12.010 License required.

No person shall carry on or conduct within the city the business of wrecking, dismantling, permanently disassembling or substantially altering the form of any motor vehicle unless he or she has a license from the state authorizing him or her to carry on or conduct such business. (Ord. 268 § 1, 1982)

5.12.020 Records to be kept.

Every person licensed by the state as a wrecker shall keep a book or record containing such information as is required by the state. (Ord. 268 § 2, 1982)

5.12.030 Screening required.

A. All persons conducting the business of wrecking, dismantling, permanently disassembling or substantially altering the form of motor vehicles, shall confine such business within a building or within an enclosure surrounded by a seventy-five (75) percent opaque, site-obscuring fence, wall or hedge no less than six feet in height in such a manner as not to be exposed to view from without the property and the fence, wall or hedge shall be maintained in a good condition and in good repair at all times.

B. All persons conducting a wrecking yard, which is defined as premises used for the storage, dismantling or sale of either used motor vehicles, recreational vehicles, mobile homes, machinery and/or building materials or parts thereof or a salvage yard or secondhand goods business, shall conduct such business and operations in a building or in an enclosure surrounded by a seventy-five (75) percent opaque, site-obscuring fence, wall or hedge not less than six feet in height in such a manner as not to be exposed to view from without the property and the fence, wall or hedge shall be maintained in a good condition and in good repair at all times. (Ord. 268 § 3, 1982)

5.12.040 Preexisting businesses.

Any preexisting business will have six months from the effective date of the ordinance codified in this chapter to comply. (Ord. 268 § 4, 1982)

5.12.050 Violations--Penalties.

Any person or persons violating the provisions of this chapter, shall, upon conviction, be punished by a fine of not more than five hundred dollars ($500.00) for each offense. (Ord. 268 § 5, 1982)

Chapter 5.16

TELECOMMUNICATIONS FRANCHISES AND FACILITIES

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Article 1.
General Provisions

5.16.010 Purpose.

The purpose and intent of this chapter is to:

A. Comply with the provisions of the 1996 Telecommunications Act as they apply to local governments, telecommunications carriers and the services those carriers offer;

B. Promote competition on a competitively neutral basis in the provision of telecommunications services;

C. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to businesses, institutions and residents of the city;

D. Permit and manage reasonable access to the public rights-of-way of the city for telecommunications purposes on a competitively neutral basis and conserve the limited physical capacity of those public rights-of-way held in trust by the city;

E. Assure that the city's current and ongoing costs of granting and regulating private access to and the use of the public rights-of-way are fully compensated by the persons seeking such access and causing such costs;

F. Secure fair and reasonable compensation to the city and its residents for permitting private use of the public right-of-way;

G. Assure that all telecommunications carriers providing facilities and/or services within the city, or passing through the city, register and comply with the ordinances, rules and regulations of the city, including city development code requirements for citing new telecommunications facilities;

H. Assure that the city can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;

I. Enable the city to discharge its public trust consistent with the rapidly evolving

federal and state regulatory policies, industry competition and technological development. (Ord. 408 § 1, 2000)

5.16.020 Definitions.

For the purpose of this chapter the following terms, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, as amended, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

Aboveground Facilities. See "Overhead facilities."

"Affiliated interest" shall have the same meaning as ORS 759.010.

"Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. Section 521, et seq., as now and hereafter amended.

"Cable service" is to be defined consistent with federal laws and means the one-way transmission to subscribers of video programming, or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"City" means the city of Aurora, an Oregon municipal corporation, and individuals authorized to act on the city's behalf.

"City council" means the elected governing body of the city of Aurora, Oregon.

"Control" or "controlling interest" means actual working control in whatever manner exercised.

"City property" means and includes all real property owned by the city, other than public rights-of-way and utility easements as those are defined herein, and all property held in a proprietary capacity by the city, which are not subject to right-of-way franchising as provided in this chapter.

"Conduit" means any structure, or portion thereof, containing one or more ducts, conduits, manholes, hand holes, bolts, or other facilities used for any telegraph, telephone, cable television, electrical, or communications conductors, or cable right-of-way, owned or controlled, in whole or in part, by one or more public utilities.

"Construction" means any activity in the public rights-of-way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.

"Days" means calendar days unless otherwise specified.

"Duct" means a single enclosed raceway for conductors or cable.

"Emergency" has the meaning provided for in ORS 401.025.

"Federal Communications Commission" or "FCC" means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

"Franchise" means an agreement between the city and a grantee which grants a privilege to use public right-of-way and utility

easements within the city for a dedicated purpose and for specific compensation.

"Grantee" means the person to which a franchise is granted by the city.

"Oregon Public Utilities Commission" or "OPUC" means the statutorily created state agency in the state of Oregon responsible for licensing, regulation and administration of certain telecommunications carriers as set forth in Oregon Law, or its lawful successor.

"Overhead or aboveground facilities" means utility poles, utility facilities and telecommunications facilities above the surface of the ground, including the underground supports and foundations for such facilities.

"Person" means an individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company.

"Private telecommunications network" means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service, which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. "Private telecommunications network" includes services provided by the state of Oregon pursuant to ORS 190.240 and 283.140.

"Public rights-of-way" include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including the subsurface under and air space over these areas. This definition applies only to the extent of the city's right, title, interest or authority to grant a franchise to occupy and use such areas for telecommunications facilities. "Public rights-of-way" shall also include utility easements as defined below.

"State" means the state of Oregon.

"Telecommunications" means the transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Act" means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C. Section 151 et seq.) and as hereafter amended.

"Telecommunications carrier" means any provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the city.

"Telecommunications facilities" means the plant and equipment, other than customer premises equipment, used by a telecommunications carrier.

"Telecommunications service" means two-way switched access and transport of voice communications but does not include: (a) services provided by radio common carrier; (b) one-way transmission of television signals; (c) surveying; (d) private telecommunications networks; or (e) communications of the customer which take place on the customer side of on-premises equipment.

Telecommunications System. See "Telecommunications facilities" above.

"Telecommunications utility" has the same meaning as ORS 759.005(1).

"Underground facilities" means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

"Usable space" means all the space on a pole, except the portion below ground level, the twenty (20) feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground level.

"Utility easement" means any easement granted to or owned by the city and acquired, established, dedicated or devoted for public utility purposes.

"Utility facilities" means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located under, on, or above the surface of the ground within the public right-of-way of the city and used or to be used for the purpose of providing utility or telecommunications services. (Ord. 408 § 4, 2000)

5.16.030 Jurisdiction and management of the public rights-of-way.

A. The city has jurisdiction and exercises regulatory management over all public rights-of-way within the city under authority of the City Charter and state law.

B. Public rights-of-way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and air space over these areas.

C. The city has jurisdiction and exercises regulatory management over each public right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way. The city has jurisdiction and regulatory management of each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

D. No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises and permits.

E. The exercise of jurisdiction and regulatory management of a public right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way.

F. The city retains the right and privilege to cut or move any telecommunications facilities located within the public rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency. (Ord. 408 § 2, 2000)

5.16.040 Regulatory fees and compensation not a tax.

A. The fees and costs provided for in this chapter, and any compensation charged and paid for use of the public rights-of-way provided for in this chapter, are separate from, and in addition to, any and all federal, state, local, and city charges as may be levied, imposed, or due from a telecommunications carrier, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of telecommunications services.

B. The city has determined that any fee provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners, and these fees are not new or increased fees.

C. The fees and costs provided for in this chapter are subject to applicable federal and state laws. (Ord. 408 § 3, 2000)

5.16.050 Governing law.

Any franchise granted under this chapter is subject to the provisions of the Constitution and laws of the United States, and the state of Oregon and the ordinances and Charter of the city. (Ord. 408 § 58, 2000)

5.16.060 Written agreement required for franchise.

No franchise shall be granted hereunder unless the agreement is in writing. (Ord. 408 § 59, 2000)

5.16.070 Nonexclusive grant.

No franchise granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights-of-way of the city for delivery of telecommunications services or any other purposes. (Ord. 408 § 60, 2000)

5.16.080 Compliance with laws.

Any grantee under this chapter shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the city heretofore or hereafter adopted or established during the entire term of any franchise granted under this chapter, which are relevant and relate to the construction, maintenance and operation of a telecommunications system. (Ord. 408 § 65, 2000)

5.16.090 Consent not to be unreasonably withheld.

Wherever the consent of either the city or of the grantee is specifically required by this chapter or in a franchise granted, such consent will not be unreasonably withheld. (Ord. 408 § 66, 2000)

5.16.100 Application to existing provisions and agreements.

To the extent that this chapter is not in conflict with and can be implemented with existing ordinance and franchise agreements, this chapter shall apply to all existing ordinance and franchise agreements for use of the public right-of-way for telecommunications. (Ord. 408 § 67, 2000)

5.16.110 Confidentiality.

The city agrees to use its best efforts to preserve the confidentiality of information as requested by. a grantee, to the extent permitted by the Oregon Public Records Law. (Ord. 408 § 68, 2000)

Article 2.
Registration of Telecommunications Carriers

5.16.120 Purpose.

The purpose of registration is:

A. To assure that all telecommunications carriers who have facilities and/or provide services within the city comply with the ordinances, rules and regulations of the city, and are providing a quality of service to the community and its citizenry that is acceptable to the city;

B. To provide the city with accurate and current information concerning the telecommunications carriers who offer to provide telecommunications services within the

city, or that own or operate telecommunications facilities within the city;

C. To assist the city in the enforcement of this chapter and the collection of any city franchise fees or charges that may be due the city;

D. To assist the city in monitoring compliance with local, state and federal laws as they apply to grantees under this chapter. (Ord. 408 § 5, 2000)

5.16.130 Registration required.

Except as provided in Section 5.16.150 hereof, all telecommunications carriers having telecommunications facilities within the corporate limits of the city, and all telecommunications carriers that offer or provide telecommunications service to customer premises within the city, shall register. The appropriate application and license from: (a) the Oregon Public Utility Commission (PUC); or (b) the Federal Communications Commission (FCC) qualify as necessary registration information. Applicants also have the option of providing the following information:

A. The identity and legal status of the registrant, including the name, address, and telephone number of the duly authorized officer, agent, or employee responsible for the accuracy of the registration information;

B. The name, address, and telephone number for the duly authorized officer, agent, or employee to be contacted in case of an emergency;

C. A description of the registrant's existing or proposed telecommunications facilities within the city, a description of the telecommunications facilities that the registrant intends to construct, and a description of the telecommunications service that the registrant intends to offer or provide to persons, firms, businesses, or institutions within the city;

D. Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided, or to be provided, by the registrant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or the license number must be provided;

E. Such other information as the city may reasonably require. (Ord. 408 § 6, 2000)

5.16.140 Registration fee.

Each application for registration as a telecommunications carrier shall be accompanied by a nonrefundable registration fee in an amount equal to the current business license application fee for similar businesses established by resolution of the city council. (Ord. 408 § 7, 2000)

5.16.150 Exceptions to registration.

The following telecommunications carriers are accepted from registration:

A. Telecommunications facilities that are owned and operated exclusively for its own use by the state or a political subdivision of this state;

B. A private telecommunications network, provided that such network does not occupy any public rights-of-way of the city. (Ord. 408 § 8, 2000)

Article 3.
Construction Standards

5.16.160 General compliance.

No person shall commence or continue with the construction, installation or operation of telecommunications facilities within a public right-of-way except as provided in Sections 5.16.190 through 5.16.350, and with all applicable codes, rules, and regulations. (Ord. 408 § 9, 2000)

5.16.170 Construction codes.

Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code. (Ord. 408 § 10, 2000)

5.16.180 Construction permits.

No person shall construct or install any telecommunications facilities within a public right-of-way without first obtaining a construction permit, and paying the construction permit fee established in Section 5.16.220. No permit shall be issued for the construction or installation of telecommunications facilities within a public right-of-way:

A. Unless the telecommunications carrier has first filed a registration statement with the city pursuant to Sections 5.16.120 through 5.16.150; and if applicable,

B. Unless the telecommunications carrier has first applied for and received a franchise pursuant to Sections 5.16.360 through 5.16.530. (Ord. 408 § 11, 2000)

5.16.190 Permit applications.

Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the city and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

A. That the facilities will be constructed in accordance with all applicable codes, rules and regulations;

B. That the facilities will be constructed in accordance with the franchise agreement;

C. The location and route of all facilities to be installed aboveground or on existing utility poles;

D. The location and route of all new facilities on or in the public rights-of-way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights-of-way. Applicant's existing facilities shall be differentiated on the plans from new construction;

E. The location of all of applicant's existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public rights-of-way along the underground route proposed by the applicant. A cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right-of-way;

F. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public rights-of-way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate;

G. The location, dimension and types of all trees within or adjacent to the public rights-of-way along the route proposed by the applicant, together with a landscape plan

for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction. (Ord. 408 § 12, 2000)

5.16.200 Applicant's verification.

All permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. (Ord. 408 § 13, 2000)

5.16.210 Construction schedule and traffic control plan.

All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction, and by a traffic control plan that demonstrates the protective measures and devices that will be employed, consistent with Uniform Manual of Traffic Control Devices and all applicable city ordinance and development code sections, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. The construction schedule and traffic control plan are subject to approval by the city public works superintendent and city engineer. (Ord. 408 § 14, 2000)

5.16.220 Construction permit fee.

Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit, the applicant shall pay a construction permit fee in an amount equal to the current city technical review and inspection fee for public improvements (established by resolution of the city council), or six tenths of one percent of the estimated cost of constructing the telecommunication facilities, whichever is greater. Such fees have been designed to defray the costs of city administration of the requirements of this chapter. (Ord. 408 § 15, 2000)

5.16.230 Issuance of permit.

If satisfied that the applications, plans and documents submitted comply with all requirements of this chapter and the franchise agreement, the city public works superintendent and city engineer shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate. (Ord. 408 § 16, 2000)

5.16.240 Notice of construction.

Except in the case of an emergency, the permittee shall notify the city public works superintendent and city engineer not less than two working days in advance of any excavation or construction in the public rights-of-way. (Ord. 408 § 17, 2000)

5.16.250 Compliance with permit.

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The city public works superintendent and city engineer and their representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements. (Ord. 408 § 18, 2000)

5.16.260 Non-complying work.

Subject to the notice requirements in Section 5.16.340, all work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this chapter, shall be removed at the sole expense of the permittee. The city is authorized to stop work in order to assure compliance with the provision of this chapter. (Ord. 408 § 19, 2000)

5.16.270 Completion of construction.

The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights-of-way and other public and private property. All construction work within city rights-of-way, including restoration, must be completed within one hundred and twenty (120) days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the appropriate city official as contemplated by Section 5.16.210. (Ord. 408 § 20, 2000)

5.16.280 As-built drawings.

If requested by the city for a necessary public purpose, as determined by the city, the permittee shall furnish the city with up to two complete sets of plans drawn to scale and certified to the city as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit. These plans shall be submitted to the city engineer or designee within sixty (60) days after completion of construction, in a format mutually acceptable to the permittee and the city. (Ord. 408 § 21, 2000)

5.16.290 Restoration of public rights-of-way and city property and landscape restoration.

A. When a permittee, or any person acting on its behalf, does any work in or affecting any public rights-of-way or city property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to good order and condition unless otherwise directed by the city and as determined by the city engineer or designee.

B. If weather or other conditions do not permit the complete restoration required by this section, the permittee shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the city.

C. If the permittee fails to restore rights-of-way or property to good order and condition, the city shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding thirty (30) days to restore the rights-of-way or property. If, after such notice, the permittee fails to restore the rights-of-way or property to as good a condition as existed before the work was undertaken, the city shall cause such restoration to be made at the expense of the permittee.

D. A permittee or other person acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to pre-

vent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way or property.

E. Landscape Restoration.

1. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of telecommunication facilities, whether such work is done pursuant to a franchise or permit shall be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.

2. All restoration work within the public ways shall be done in accordance with landscape plans approved by the city.

3. Any tree, shrub or other landscaping that shows substantial damage within eighteen (18) months of completion of construction, attributable to construction, must be replaced at the sole expense of the grantee. (Ord. 408 § 22, 2000)

5.16.300 Performance and completion bond.

Unless otherwise provided in a franchise agreement, a performance bond or other form of surety acceptable to the city equal to at least one hundred (100) percent of the estimated cost of constructing permittee's telecommunications facilities within the public rights-of-way of the city, shall be provided before construction is commenced.

A. The surety shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the city, including restoration of public rights-of-way and other property affected by the construction.

B. The surety shall guarantee, to the satisfaction of the city:

1. Timely completion of construction;

2. Construction in compliance with applicable plans, permits, technical codes and standards;

3. Proper location of the facilities as specified by the city;

4. Restoration of the public rights-of-way and other property affected by the construction;

5. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work; and

6. The submission of as-built drawings after completion of the work as required by this chapter. (Ord. 408 § 23, 2000)

Article 4.
Location of Telecommunications Facilities

5.16.310 Location of facilities.

All facilities located within the public right-of-way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

A. Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right-of-way of the city, a grantee with permission to occupy the same public right-of-way must also locate its telecommunications facilities underground.

B. Whenever all new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public right-of-way of the city, a grantee that currently occupies the same public right-of-way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right-of-way, absent ex-

traordinary circumstances or undue hardship as determined by the city and consistent with applicable state and federal law. (Ord. 408 § 24, 2000)

5.16.320 Interference with the public rights-of-way.

No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All use of public rights-of-way shall be consistent with city codes, ordinances and regulations. (Ord. 408 § 25, 2000)

5.16.330 Relocation or removal of facilities.

Except in the case of an emergency, within ninety (90) days following written notice from the city, a grantee shall, at no expense to grantor, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public rights-of-way whenever the city shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

A. The construction, repair, maintenance or installation of any city or other public improvement in or upon the public rights-of-way;

B. The operations of the city or other governmental entity in or upon the public rights-of-way;

C. The public interest.

(Ord. 408 § 26, 2000)

5.16.340 Removal of unauthorized facilities.

Within thirty (30) days following written notice from the city, any grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility, or related appurtenances within the public rights-of-way of the city shall, at its own expense, remove such facilities and/or appurtenances from the public rights-of-way of the city. Both parties are required to participate in good faith negotiations on such issues. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

A. One year after the expiration or termination of the grantee's telecommunications franchise;

B. Upon abandonment of a facility within the public rights-of-way of the city. A facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and authorized purpose for a period of ninety (90) days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced. The city shall make a reasonable attempt to contact the telecommunications carrier before concluding that a facility is abandoned. A facility may be abandoned in place and not removed if there is no apparent risk to the public safety, health, or welfare;

C. If the system or facility was constructed or installed without the appropriate prior authority at the time of installation;

D. If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications franchise or other legally sufficient permit;

E. If the system interferes with or adversely affects existing telecommunication facilities.

The thirty (30) day limit may be waived by consent of the parties. Waivers shall not be unreasonably withheld.

If all the facilities and appurtenances are not removed within one year after the termination or expiration of the franchise or such further time as may be granted by the city, they shall be forfeited to the city. The city may notify the grantee, carrier or other person described above that it waives forfeiture and may compel removal from the public right-of-way and restoration of the right-of-way and may maintain court suit to require such removal and restoration by the grantee, carrier or other person or to require the payment of the cost thereof by the grantee, carrier or other person. (Ord. 408 § 27, 2000)

5.16.350 Coordination of construction activities.

All grantees are required to make a good faith effort to cooperate with the city.

A. By January 1st of each year, grantees shall provide the city with a schedule of their known proposed construction activities in, around or that may affect the public rights-of-way.

B. If requested by the city, each grantee shall meet with the city annually or as determined by the city, to schedule and coordinate construction in the public rights-of-way. At that time, city will provide available information on plans for local, state, and/or federal construction projects.

C. All construction locations, activities and schedules shall be coordinated, as ordered by the city engineer or designee, to minimize public inconvenience, disruption or damages. (Ord. 408 § 28, 2000)

Article 5.
Telecommunications Franchise

5.16.360 Telecommunications franchise.

A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public rights-of-way of the city. (Ord. 408 § 29, 2000)

5.16.370 Application required--Contents.

Any person that desires a telecommunications franchise must register as a telecommunications carrier and shall file an application with the city recorder or other city council designee which includes the following information:

A. The identity of the applicant;

B. A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities;

C. Engineering plans, specifications, and a network map in a form customarily used by the
applicant of the facilities located or to be located within the public rights-of-way in the city, including the location and route requested for applicant's proposed telecommunications facilities. The city public works superintendent and city engineer may require such plans, specifications and maps be provided in a specific computerized format;

D. The area or areas of the city the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area;

E. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed;

F. An accurate map showing the location of any existing telecommunications facilities in the city that applicant intends to use or lease. (Ord. 408 § 30, 2000)

5.16.380 Application and review fee.

A. Subject to applicable state law, applicant shall reimburse the city for such reasonable costs as the city incurs in entering into the franchise agreement.

B. An application and review fee of two thousand dollars ($2,000.00) shall be deposited with the city as part of the application filed pursuant to Section 5.16.370. Expenses exceeding the deposit will be billed to the applicant and must be paid in full prior to final city approval of the application, or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise. (Ord. 408 § 31, 2000)

5.16.390 Determination by the city.

The city shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial. (Ord. 408 § 32, 2000)

5.16.400 Rights granted.

No franchise granted pursuant to this chapter shall convey any right, title or interest in the public rights-of-way, but shall be deemed a grant to use and occupy the public rights-of-way for the limited purposes and term, and upon the conditions stated in the franchise agreement. (Ord. 408 § 33, 2000)

5.16.410 Term of grant.

Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be in effect for a term of five years. (Ord. 408 § 34, 2000)

5.16.420 Franchise territory.

Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be limited to a specific geographic area of the city to be served by the franchise grantee, and the public rights-of-way necessary to serve such areas, and may include the entire city. (Ord. 408 § 35, 2000)

5.16.430 Franchise fee.

Each franchise granted by the city is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the privileges granted; provided, nothing in this chapter shall prohibit the city and a grantee from agreeing to the compensation to be paid. The compensation shall be subject to the specific payment terms and conditions contained in the franchise agreement and applicable state and federal laws. (Ord. 408 § 36, 2000)

5.16.440 Amendment of grant.

Conditions for amending a franchise:

A. A new application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public rights-of-way of the city which are not included in a franchise previously granted under this chapter.

B. If ordered by the city to locate or relocate its telecommunications facilities in public rights-of-way not included in a previ-

ously granted franchise, the city shall grant an amendment without further application.

C. A new application and grant shall be required of any telecommunications carrier that desires to provide a service which was not included in a franchise previously granted under this chapter. (Ord. 408 § 37, 2000)

5.16.450 Renewal applications.

A grantee that desires to renew its franchise under this chapter shall, not less than one hundred eighty (180) days before expiration of the current agreement, file an application with the city for renewal of its franchise which shall include the following information:

A. The information required pursuant to Section 5.16.370;

B. Any information required pursuant to the franchise agreement between the city and the grantee. (Ord. 408 § 38, 2000)

5.16.460 Renewal determinations.

Within ninety (90) days after receiving a complete application under Section 5.16.450, the city shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal, which may include but are not limited to the following:

A. The financial and technical ability of the applicant;

B. The legal ability of the applicant;

C. The continuing capacity of the public rights-of-way to accommodate the applicant's existing and proposed facilities;

D. The applicant's compliance with the requirements of this chapter and the franchise agreement;

E. Applicable federal, state and local telecommunications laws, rules and policies;

F. Such other factors as may demonstrate that the continued grant to use the public rights-of-way will serve the community interest, including but not limited to reasonable, verified and unresolved customer complaints that come to the attention of the city regarding the grantee's quality of telecommunication service. (Ord. 408 § 39, 2000)

5.16.470 Obligation to cure as condition of renewal.

No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the city. (Ord. 408 § 40, 2000)

5.16.480 Assignments or transfers of system or franchise.

Ownership or control of a majority interest in a telecommunications system or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the city, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.

A. Grantee and the proposed assignee or transferee of the franchise or system shall

agree, in writing, to assume and abide by all of the provisions of the franchise.

B. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this chapter.

C. Unless otherwise provided in a franchise agreement, the grantee shall reimburse the city for all direct and indirect fees, costs, and expenses reasonably incurred by the city in considering a request to transfer or assign a telecommunications franchise.

D. Any transfer or assignment of a telecommunications franchise, system or integral part of a system without prior approval of the city under this section or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise. (Ord. 408 § 41, 2000)

5.16.490 Revocation or termination of franchise.

A franchise to use or occupy public rights-of-way of the city may be revoked for the following reasons:

A. Construction or operation in the city or in the public rights-of-way of the city without a construction permit;

B. Construction or operation at an unauthorized location;

C. Failure to comply with Section 5.16.480 herein with respect to sale, transfer or assignment of a telecommunications system or franchise;

D. Misrepresentation or lack of candor by or on behalf of a grantee in any application to the city;

E. Abandonment of telecommunications facilities in the public rights-of-way. The term "abandonment" applies to facilities remaining in the right-of-way following the expiration of the franchise, or not otherwise used to provide services, for a period of one year;

F. Failure to relocate or remove facilities as required in this chapter;

G. Failure to pay taxes, compensation, fees or costs when and as due the city under this chapter;

H. Insolvency or bankruptcy of the grantee;

I. Violation of material provisions of this chapter;

J. Violation of the material terms of a franchise agreement;

K. Failure of the grantee to provide a reasonable level of quality of service to its customers. (Ord. 408 § 42, 2000)

5.16.500 Notice and duty to cure.

In the event that the city believes that grounds exist for revocation of a franchise, the city shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time, not exceeding thirty (30) days, to furnish evidence that:

A. Corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

B. Rebuts the alleged violation or noncompliance; and/or

C. It would be in the public interest to impose some penalty or sanction less than revocation. (Ord. 408 § 43, 2000)

5.16.510 Public hearing.

In the event that a grantee fails to provide evidence reasonably satisfactory to the city as provided in Section 5.16.500, the city manager may refer the apparent violation or non-compliance to the city council. The city council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter. (Ord. 408 § 44, 2000)

5.16.520 Standards for revocation or lesser sanctions.

If persuaded that the grantee has violated or failed to comply with material provisions of this chapter, or of a franchise agreement, the city council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors. Whether:

A. The misconduct was egregious;

B. Substantial harm resulted;

C. The violation was intentional;

D. There is a history of prior violations of the same or other requirements;

E. There is a history of overall compliance;

F. The violation was voluntarily disclosed, admitted or cured. (Ord. 408 § 45, 2000)

5.16.530 Other city costs.

All grantees shall, within thirty (30) days after written demand therefor, reimburse the city for all reasonable direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement consistent with applicable state and federal laws. (Ord. 408 § 46, 2000)

Article 6.
General Franchise Terms

5.16.540 Facilities.

Upon request, each grantee shall provide the city with an accurate map or maps certifying the as-built location of all telecommunications facilities within the public rights-of-way. Each grantee shall also provide the city with all updated maps as they become available. (Ord. 408 § 47, 2000)

5.16.550 Damage to grantee's facilities.

Unless directly and proximately caused by negligent, careless, wrongful, willful, intentional or malicious acts by the city, and consistent with Oregon law, the city shall not be liable for any damage to or loss of any telecommunications facility within the public rights-of-way of the city as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public rights-of-way by or on behalf of the city, or for any consequential losses resulting directly or indirectly therefrom. (Ord. 408 § 48, 2000)

5.16.560 Duty to provide information.

Except in emergencies, within sixty (60) days of a written request from the city, each grantee shall furnish the city with the following:

A. Information sufficient to demonstrate that grantee has complied with all requirements of this chapter;

B. All books, records, maps, and other documents, maintained by the grantee with respect to its facilities within the public rights-of-way shall be made available for inspection by the city at reasonable times and intervals. (Ord. 408 § 49, 2000)

5.16.570 Nondiscrimination.

A grantee shall make its telecommunication services available to customer within its franchise are who shall request such service, without discrimination as to the terms, conditions, rates or charges for grantee's services; provided, however, that nothing in this chapter shall prohibit a grantee from making any reasonable classifications among differently situated customers. (Ord. 408 § 50, 2000)

5.16.580 Service to the city.

If the city contracts for the use of telecommunication facilities, telecommunication services, installation, or maintenance from the grantee, the grantee shall charge the city the grantee's most favorable rate offered at the time of the request charged to similar users within Oregon for a similar volume of service, subject to any of grantee's tariffs or price lists on file with the OPUC. With the city's permission, the grantee may deduct the applicable charges from fee payments. Other terms and conditions of such services may be specified in a separate agreement between the city and grantee. (Ord. 408 § 51, 2000)

5.16.590 Compensation for city property.

If any right is granted, by lease, franchise or other manner, to use and occupy city property for the installation of telecommunications facilities, the compensation to be paid for such right and use shall be fixed by the city. (Ord. 408 § 52, 2000)

5.16.600 Cable franchise.

Telecommunication carriers providing cable service shall be subject to the cable franchise requirements contained in all applicable city ordinance or development code sections. (Ord. 408 § 53, 2000)

5.16.610 Leased capacity.

A grantee shall have the right, with prior city approval, to offer or provide capacity or bandwidth to its customers; provided that the grantee shall notify the city that such lease or agreement has been granted to a customer or lessee. (Ord. 408 § 54, 2000)

5.16.620 Grantee insurance.

Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the city, and its elected and appointed officers, officials, agents and employees as coinsured:

1. Comprehensive general liability insurance with limits not less than:

a. Three million dollars ($3,000,000.00) for bodily injury or death to each person,

b. Three million dollars ($3,000,000.00) for property damage resulting from any one accident, and

c. Three million dollars ($3,000,000.00) for all other types of liability;

2. Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars ($1,000,000.00) for each person and three million dollars ($3,000,000.00) for each accident;

3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars ($1,000,000.00);

4. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars ($3,000,000.00).

B. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the City Recorder, City Hall, City of Aurora, 21420 Main Street NE, Aurora, Oregon 97140, of such intent to cancel or not to renew.

C. Within sixty (60) days after receipt by the city of such notice, and in no event later than thirty (30) days prior to the cancellation, the grantee shall obtain and furnish to the city evidence that the grantee meets requirements the of this section.

D. As an alternative to the insurance requirements contained herein, a grantee may provide , evidence of self-insurance subject to review and acceptance by the city. (Ord. 408 § 55, 2000)

5.16.630 General indemnification.

Each franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a franchise agreement made or entered into pursuant to this chapter. (Ord. 408 § 56, 2000)

5.16.640 Performance surety.

Before a franchise granted pursuant to this chapter is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the city, as security for the full and complete performance of a franchise granted under this chapter, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or

permits of the city. This obligation is in addition to the performance surety required by Section 5.16.300 for construction of facilities. (Ord. 408 § 57, 2000)

Article 7.
Violations and Penalties

5.16.650 Penalties.

Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. (Ord. 408 § 62, 2000)

5.16.660 Other remedies.

Nothing in this chapter shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this chapter. (Ord. 408 § 63, 2000)