

## TITLE 6: FRANCHISES

<u>Chapter</u>	<u>Section</u>	<u>Subject</u>	<u>Page</u>
<b>6.05</b>		<b>General Provisions</b>	
	6.05.005	Hearing Requirement .....	01
	6.05.010	Bonds and Insurance .....	01
<b>6.10</b>		<b>Cable, Video and Telecommunications</b>	
	6.10.005	Purpose (Ord 1521 - 2004).....	03
	6.10.010	Definitions .....	04
	6.10.015	Cable Television Franchise - General Provisions ....	08
	6.10.020	Cable Television Franchise - Applications and Renewal.....	11
	6.10.025	Cable Television Franchise - Agreement Contents .....	13
	6.10.030	Cable Television Franchise - Consumer Protection and Service Standards (Ord 1533 - 2004).....	14
	6.10.035	Open Video System - Applicability .....	24
	6.10.040	Open Video System - Application Requirement .....	24
	6.10.045	Open Video System - Application Review.....	26
	6.10.050	Open Video System - Agreement Requirement .....	26
	6.10.055	Miscellaneous Multi-channel Video Programming Distributors .....	30
	6.10.060	Video Providers - Registration; Customer Service Standards .....	31
	6.10.065	Telecommunications Service Provided by Telephone Corporations.....	32
	6.10.070	Use of Public Rights-of-Way (Ord 1521 - 2004) .....	35
	6.10.075	Violations (Ord 1521 - 2004) .....	37
	6.10.080	Existing Cable Television Franchisee .....	37
	6.10.085	Special Provision Applicable to Holders of State Video Franchises (Ord 1563 - 2007) .....	38
<b>6.15</b>		<b>Pipelines</b>	
	6.15.005	Definitions .....	43
	6.15.010	General Conditions .....	44
	6.15.015	Above-Ground Facilities.....	44
	6.15.020	Franchise Acceptance.....	44
	6.15.025	Nonexclusive Franchise .....	44
	6.15.030	Change in Status .....	44
	6.15.035	Maps .....	45

<u>Chapter</u>	<u>Section</u>	<u>Subject</u>	<u>Page</u>
	6.15.040	Insurance .....	45
	6.15.045	Faithful Performance Bond .....	46
	6.15.050	Length .....	46
	6.15.055	Forfeiture.....	46
	6.15.060	State Highways .....	46
	6.15.065	Processing Costs .....	46
	6.15.070	Franchise Assignment.....	47
	6.15.075	Indemnification.....	47
	6.15.080	Conflicting Improvements.....	47
	6.15.085	Relocation .....	47
	6.15.090	Defective Facilities .....	47
	6.15.095	Hazardous Substances .....	48
	6.15.100	Franchise Fees .....	48
	6.15.105	Emergency Equipment.....	50
	6.15.110	Franchise Expiration .....	50
	6.15.115	Oil Pipelines .....	51
	6.15.120	Public Utilities.....	51
	6.15.125	Gas Pipelines.....	52

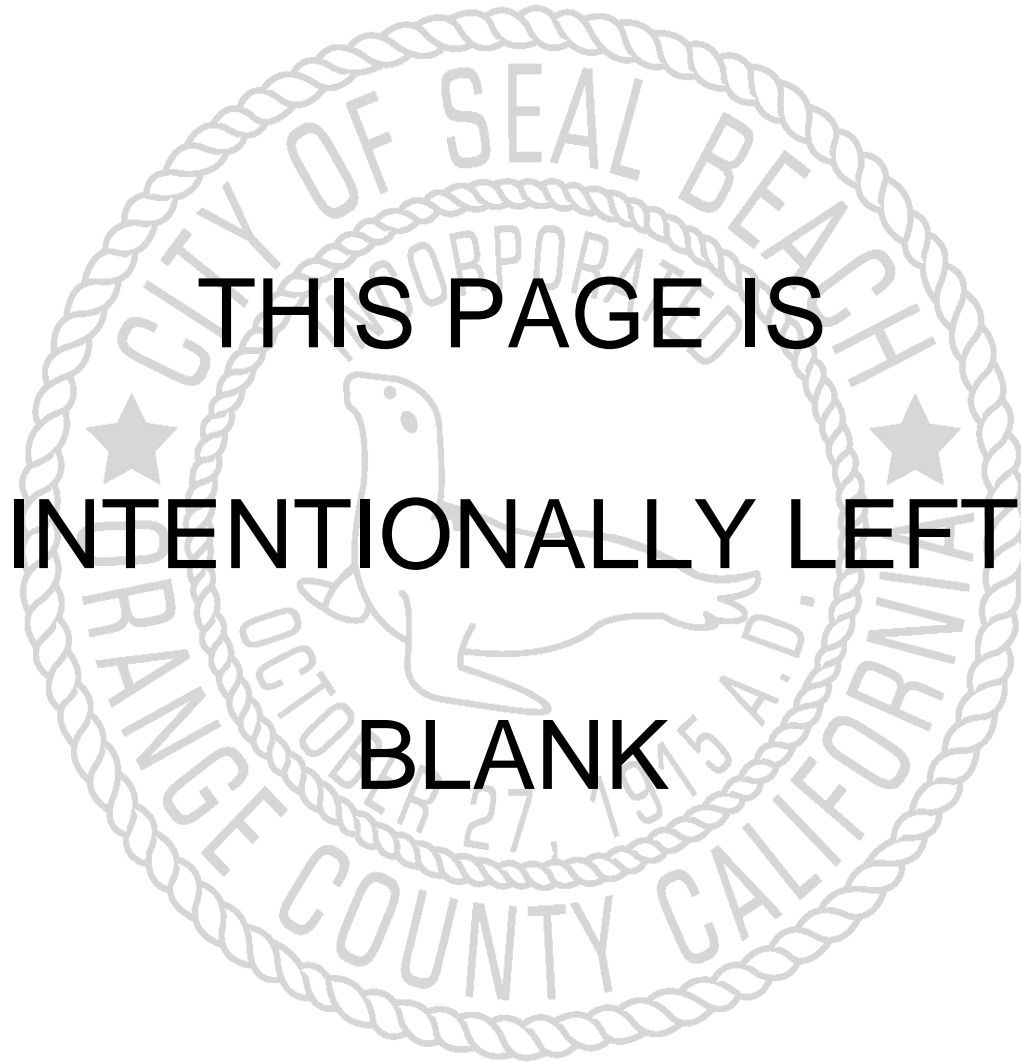
**6.20**

**Solid Waste and Recyclables**

	6.20.005	Purpose.....	53
	6.20.010	Definitions .....	53
	6.20.015	Collection Agreement Requirement .....	56
	6.20.020	Collection Permit.....	57
	6.20.025	Collector Fee.....	57
	6.20.030	Conflict Resolution .....	57
	6.20.035	Permits and Licenses.....	57
	6.20.040	Transfer of Collection Agreement or Collection Permit .....	57
	6.20.045	Urgency Disciplinary Action .....	57
	6.20.050	Non-Urgency Disciplinary Action.....	57
	6.20.055	Appeals .....	58
	6.20.060	Fee Limits .....	58
	6.20.065	Billing and Collection of Fees.....	58
	6.20.070	Collection Vehicles - License and Fee Requirements.....	59
	6.20.075	Collection Vehicles - Standards .....	59
	6.20.080	Operation of Equipment .....	60
	6.20.085	Gardener's Exclusion .....	60
	6.20.090	Commercial/Industrial Exclusion .....	60
	6.20.095	Contractor Exclusion .....	61
	6.20.100	Document Destruction Service Exclusion .....	61
	6.20.105	Self-Haul Exclusion.....	61

<u>Chapter</u>	<u>Section</u>	<u>Subject</u>	<u>Page</u>
	6.20.110	Effect of Exclusion on Fee Obligations.....	61
	6.20.115	Mandatory Service .....	62
	6.20.120	Litter .....	62
	6.20.125	Transfer of Loads on Public Streets .....	62
	6.20.130	Unauthorized Removal from Containers .....	62
	6.20.135	Collection Hours.....	62
	6.20.140	Ownership.....	63
	6.20.145	Disposal .....	63
	6.20.150	Trespass .....	63
	6.20.155	Reports. ....	63
	6.20.160	Insurance .....	64
	6.20.165	Indemnification.....	65
	6.20.170	Construction and Demolition Sites (Ord 1578 - 2008) .....	65
	6.20.175	Accumulation of Solid Waste Declared Nuisance ....	65
	6.20.180	Unauthorized Containers (Ord 1578 - 2008) .....	65
	6.20.185	Interference with Collection.....	66
	6.20.190	Residential Collection - Frequency .....	66
	6.20.195	Residential Collection - Provision of Containers .....	66
	6.20.200	Residential Collection - Placement and Removal of Containers.....	66
	6.20.205	Residential Collection - Care of Containers .....	66
	6.20.210	Residential Collection - Special Collection Services .....	66
	6.20.215	Residential Collection - Encroachment Permit .....	67
	6.20.220	Commercial/Industrial Collection - Frequency.....	67
	6.20.225	Commercial/Industrial Collection - Provision of Containers .....	67
	6.20.230	Commercial/Industrial Collection - Maintenance and Placement of Containers .....	67
	6.20.235	Commercial/Industrial Collection - Special Circumstances.....	68
	6.20.240	New Commercial/Industrial Buildings.....	68

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## **Chapter 6.05 General Provisions**

### **§ 6.05.005 Hearing Requirement.**

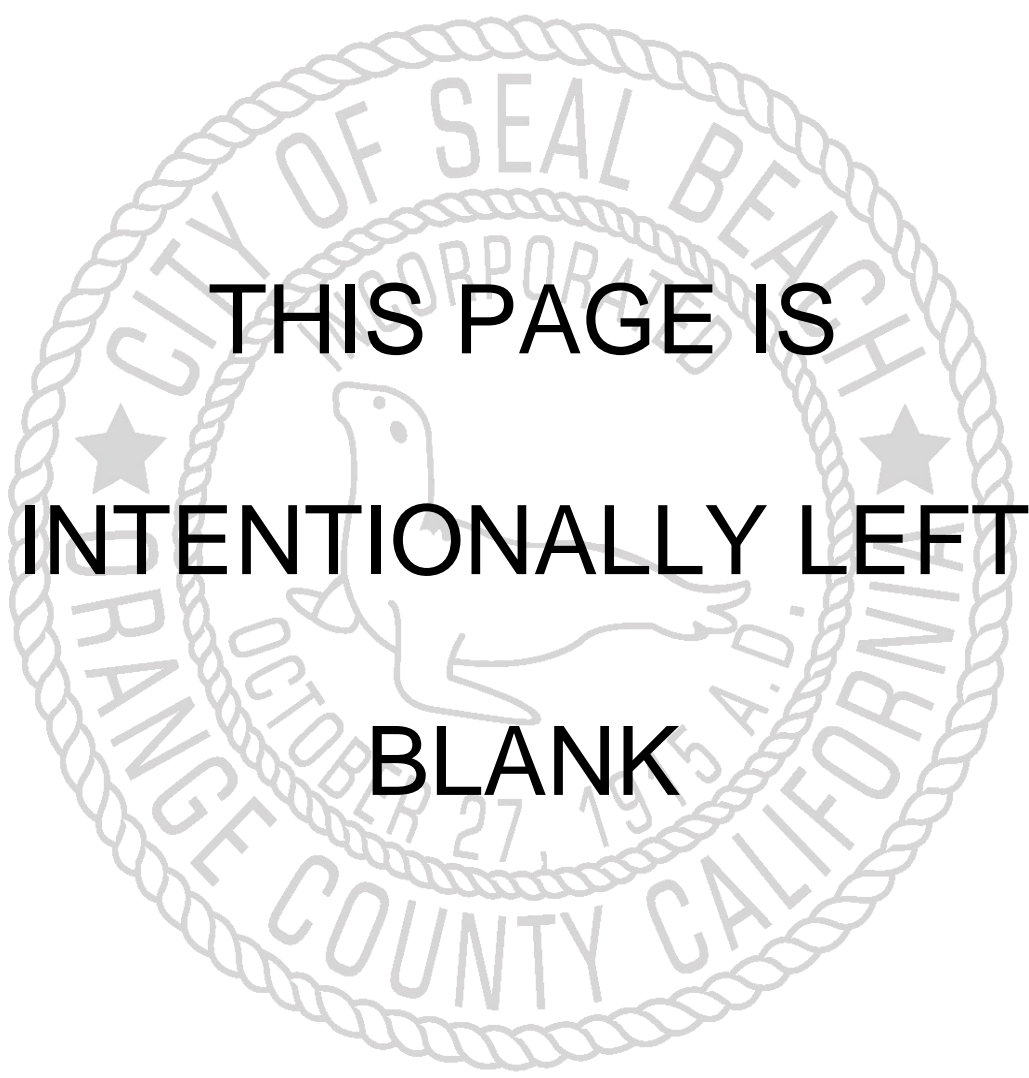
Before granting, amending or extending any franchise, the city council shall hold at least one public hearing thereon. Notice of the time and place of the hearing shall be published at least once in a newspaper of general circulation. The hearing shall be held not less than 3 days following publication of the notice therefore, and may be continued from time to time by the city council. Any protest to the grant, amendment or extension of a franchise shall be heard by the city council at the hearing before final action is taken.

### **§ 6.05.010 Bonds and Insurance.**

A. Whenever any bond or insurance policy is required to be filed in connection with the issuance of a franchise pursuant to this title, such franchise shall not be effective until the bond or insurance policy has been approved by the city attorney as to sufficiency and form. If the bond or insurance policy becomes ineffective during the term of such franchise, then the franchise shall automatically be suspended until a new bond or insurance policy is furnished and approved by the city attorney as to sufficiency and form.

B. The city and its officers, employees and agents shall be named as additional insureds under any liability insurance policy required by this title, which policy shall not be subject to cancellation without 30 days written notice to the city. The liability on any surety bond deposited with the city pursuant to this title may be terminated upon the surety's filing of 30 day advance written notice with the city clerk. In no case shall the termination of liability by the surety on any bond affect any liability incurred prior to the date of termination.

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## **Chapter 6.10**

### **Cable, Video and Telecommunications**

#### **§ 6.10.005 Purpose.**

A. The city council finds and determines as follows:

1. The development of cable, video and telecommunications services and systems may provide significant benefits for, and have substantial impacts upon, the residents of the city.

2. Because of the complex and rapidly changing technology associated with cable, video and telecommunications services and systems, the public convenience, safety, and general welfare can best be served by exercise of the city's regulatory powers.

3. To obtain fair and reasonable compensation for the city and its residents in exchange for the private use of the public right-of-way and public property by entities that is not exempt from paying compensation for such use.  
(Ord. No. 1521)

4. The cable, video and telecommunications services that are addressed in this chapter include without limitation services provided by the following: cable television systems; open video systems; master antenna television systems; satellite master antenna television systems; direct broadcast satellite systems; multi-channel multipoint distribution systems; and local multipoint distribution systems. This also includes voice and data services provided by telephone corporations.

B. The purpose of this chapter is to provide for the attainment of the following objectives:

1. To enable the city to discharge its public trust in a manner consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

2. To authorize and to manage reasonable access to the city's public rights-of-way and public property for cable, video and telecommunications purposes on a competitively neutral and nondiscriminatory basis.

3. To obtain fair and reasonable compensation for the city and its residents in exchange for the private use of the public rights-of-way and public property by entities that are not exempt from paying compensation for such use.  
(Ord. No. 1521)

4. To promote competition in cable, video and telecommunications services, minimize unnecessary local regulation of cable, video and telecommunications service providers, and encourage the delivery of advanced and competitive cable, video and telecommunications services on the broadest possible basis to local government and to the businesses, institutions, and residents of the city.

5. To establish clear local guidelines, standards, and time frames for the exercise of local authority with respect to the regulation of cable, video and telecommunications service providers.

6. To encourage the deployment of advanced cable, video and telecommunications infrastructure that satisfies local needs, delivers enhanced government services and provides informed consumer choices in an evolving cable, video and telecommunications marketplace.

#### **§ 6.10.010 Definitions.**

For the purposes of this chapter, the following words and phrases have the meanings set forth below. Unless otherwise expressly stated, words and phrases not defined in this chapter will be given their meaning as used in Title 47 of the United States Code and, if not defined in that code, their meaning as used in Title 47 of the Code of Federal Regulations.

A. Cable Service: the one-way transmission to subscribers of video programming, or other programming services, and subscriber interaction, if any, that is required for the selection or use of that video programming or other programming service.

B. Cable Television and Video Customer Service and Information Act: Government Code Section 53054 et seq.

C. Cable Television System: a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community. "Cable television system" does not include any of the following:

1. A facility that serves only to retransmit the television signals of 1 or more television broadcast stations.

2. A facility that serves subscribers without using any public right-of-way.

3. A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such



facility will be considered a cable system (other than for purposes specified in Section 621(c) of the Communications Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services.

4. An open video system that complies with Section 653 of the Communications Act.

5. Facilities of an electric utility that are used solely for operating its electric utility system.

D. Cable System Operator: any person or group of persons who either:

1. Provides cable service over a cable system and directly or through 1 or more affiliates owns a significant interest in that cable system.

2. Otherwise controls or is responsible for, through any arrangement, the management and operation of that cable system.

E. Communications Act: the Communications Act of 1934 (47 U.S.C. Section 153 et seq.), as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996.

F. FCC: Federal Communications Commission.

G. Franchise: an initial authorization, or the renewal of an initial authorization, granted by the city council (whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, or otherwise) that authorizes the construction or operation of a cable system or an open video system.

H. Franchise Fee: a fee or assessment of any kind that is authorized by state or federal law to be imposed by the city on a franchisee as compensation in the nature of rent for the franchisee's use of the public rights-of-way. "Franchise fee" does not include any of the following:

1. Any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and franchisees or their services).

2. Capital costs that are required by the franchise to be incurred by a franchisee for PEG access facilities.

3. Costs or charges that are incidental to the award or enforcement of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages.

4. Any fee imposed under Title 17 of the United States Code.

I. Franchise Service Area: the entire geographic area of the city as it is now constituted, or may in the future be constituted, unless otherwise specified in the ordinance granting a franchise, or in a franchise agreement.

J. Franchisee: any person that is awarded a franchise in accordance with this chapter, and that person's lawful successor, transferee, or assignee.

K. Gross Annual Cable Service Revenues: the annual gross revenues derived from the franchisee's operations of its cable television system to provide cable services within the city, excluding uncollected bad debt, refundable deposits, rebates or credits, and further excluding any sales, excise, or other taxes or charges that are required to be collected for direct pass-through to the local, state or federal government. Revenues identified and collected from subscribers as franchise fees may not be excluded from a franchisee's gross annual cable service revenues.

L. Multi-channel Video Programming Distributor: a person who makes available multiple channels of video programming for purchase by subscribers or customers. "Multi-channel video programming distributor" includes without limitation the following: a cable system operator; an open video system operator; a multi-channel multipoint distribution service; a direct broadcast satellite service; and a television receive-only satellite program distributor.

M. Open Video System: a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service, including video programming, and that is provided to multiple subscribers within the city, provided that the FCC has certified that such system is authorized to operate in the city and complies with 47 CFR 1500 et seq.

N. Open Video System Operator: any person or group of persons who provides cable service over an open video system and directly or through affiliates owns a significant interest in that open video system, or otherwise controls or is responsible for the management and operation of that open video system.

O. Other Programming Service: information that a cable system operator makes available to all subscribers generally.

P. PEG Access Facilities: the total of the following:

1. Channel capacity designated for noncommercial public, educational or government use; and
2. Facilities and equipment for the use of that channel capacity.

Q. Subscriber: any person who, for any purpose, subscribes to the services provided by a multichannel video programming distributor and who pays the charges for those services.

R. Public Right-of-Way: each of the following that has been dedicated to the public and maintained under public authority or by others and is located within the city limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way, and similar public property that the city from time to time authorizes to be included within the definition of a street.

S. Telecommunications: the transmission, between or 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.

T. Telecommunications Equipment: equipment, other than customer premises equipment, used by a telecommunications service provider to provide telecommunications service, including software that is integral to that equipment.

U. Telecommunications Service: the offering of telecommunications directly to the public for a fee, or to such classes of users as to be effectively available directly to the public, regardless of the equipment or facilities that are used.

V. Telecommunications Service Provider: any provider of telecommunications service.

W. Video Customer Service Act: Government Code Section 53088 et seq.

X. Video Programming: programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Y. Video Programming Provider: any person or group of persons who has the right under the federal copyright laws to select and to contract for the carriage of specific video programming on a cable system or an open video system.

Z. Video Provider: any person, company, or service that provides 1 or more channels of video programming to a residence, including a home, multi-

family dwelling complex, congregate-living complex, condominium, apartment, or mobile home, where some fee is paid for that service, whether directly or as included in dues or rental charges, and whether or not public rights-of-way are used in the delivery of that video programming. "Video provider" includes without limitation providers of the following: cable television service; open video system service; master antenna television; satellite master antenna television; direct broadcast satellite; and multipoint distribution services.

#### **§ 6.10.015 Cable Television Franchise – General Provisions.**

A. Franchise Purposes. A franchise granted by the city under the provisions of this section may authorize the franchisee to do the following:

1. Engage in the business of providing cable service and such other telecommunications services as may be authorized by law and that the franchisee elects to provide to its subscribers within the designated franchise service area.

2. Erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain, cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the cable system in, on, over, under, upon, along and across streets or other public places within the designated franchise service area.

3. Maintain and operate the franchise properties for the origination, reception, transmission, amplification, and distribution of television and radio signals, and for the delivery of cable services and such other services as may be authorized by law.

B. Franchise Requirement. It is unlawful for any person to construct, install, or operate a cable television system within any public right-of-way in the city without first obtaining a franchise under the provisions of this chapter.

C. Franchise Term.

1. A franchise granted under this chapter shall be for the term specified in the franchise agreement, commencing upon the effective date of the ordinance or resolution adopted by the city council that authorizes the franchise.

2. A franchise granted under this chapter may be renewed upon application by the franchisee in accordance with the then-applicable provisions of state and federal law and this chapter.

D. Franchise Territory. A franchise is effective within the territorial limits of the city, and within any area added to the city during the term of the

franchise, unless otherwise specified in the ordinance granting the franchise or in the franchise agreement.

E. Federal or State Jurisdiction. This chapter will be construed in a manner consistent with applicable federal and state laws, and it applies to all franchises granted or renewed after the effective date of this chapter, to the extent authorized by applicable law.

F. Franchise Nontransferable.

1. A franchisee may not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation, or otherwise, the franchise or any of the rights or privileges therein granted, without the prior written consent of the city council and then only upon such terms and conditions as may be prescribed by the city council, which consent may not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign, or otherwise dispose of the franchise without the written consent of the city council is null and void. The granting of a security interest in any assets of the franchisee, or any mortgage or other hypothecation, will not be deemed a transfer for the purposes of this subparagraph.

2. The requirements of subparagraph 1 apply to any change in control of a franchisee. The word "control" as used herein is not limited to the ownership of major stockholder or partnership interests, but includes actual working control in whatever manner exercised. If a franchisee is a partnership or a corporation, prior authorization of the city council is required where ownership or control of 25% or more of the partnership interests or of the voting stock of the franchisee, or any company in the tier of companies controlling the franchisee, whether directly or indirectly, is acquired by a person or a group of persons acting in concert, none of whom, singularly or collectively, owns or controls those partnership interests or that voting stock of the franchisee, or of the franchisee's upper tier of controlling companies, as of the effective date of the franchise.

3. A franchisee must notify the city in writing of any foreclosure or judicial sale of all or a substantial part of the franchisee's franchise property, or upon the termination of any lease or other interest covering all or a substantial part of that franchise property. That notification will be considered by the city as notice that a change in control of ownership of the franchise has taken place, and the provisions of this paragraph that require the prior written consent of the city council to that change in control of ownership will apply.

4. For the purpose of determining whether it will consent to an acquisition, transfer or change in control, the city may inquire as to the qualifications of the prospective transferee or controlling party, and the franchisee must assist the city in that inquiry. In seeking the city's consent to any change of ownership or control, the franchisee or the proposed transferee, or

both, must complete FCC Form 394 or its equivalent. This application must be submitted to the city not less than 120 days prior to the proposed date of transfer. The transferee must establish that it possesses the legal, financial and technical capability to operate and maintain the cable system and to comply with all franchise requirements during the remaining term of the franchise. If the legal, financial and technical qualifications of the proposed transferee are determined to be satisfactory, then the city will consent to the transfer of the franchise.

5. Any financial institution holding a pledge of the franchisee's assets to secure the advance of money for the construction or operation of the franchise property has the right to notify the city that it, or a designee satisfactory to the city, will take control of and operate the cable television system upon the franchisee's default in its financial obligations. Further, that financial institution must also submit a plan for such operation within 90 days after assuming control. The plan must insure continued service and compliance with all franchise requirements during the period that the financial institution will exercise control over the system. The financial institution may not exercise control over the system for a period exceeding 18 months unless authorized by the city, in its sole discretion, and during that period of time it will have the right to petition the city to transfer the franchise to another franchisee.

6. A franchisee must reimburse the city for the city's reasonable review and processing expenses incurred in connection with any transfer or change in control of the franchise. These expenses may include without limitation costs of the following: administrative review; financial, legal, and technical evaluation of the proposed transferee; consultants (including technical and legal experts and all costs incurred by these experts); notice and publication; and document preparation. The total amount of these reimbursable expenses may be subject to maximum limits that are specified in the franchise agreement between the city and the franchisee. No reimbursement may be offset against any franchise fee payable to the city during the term of the franchise.

#### G. Geographical Coverage.

1. Unless otherwise provided in the franchise agreement, a franchisee must design, construct and maintain the cable television system to have the capability to pass every dwelling unit and commercial building in the franchise service area, subject to any service-area line extension requirements or territorial restrictions set forth in the franchise agreement.

2. After service has been established within all or any part of the franchise service area by activating trunk or distribution cables, a franchisee must provide service to any requesting subscriber within that activated part of the service area within 5 days from the date of request, provided that the franchisee is able to secure on reasonable terms and conditions all rights-of-way necessary to extend service to that subscriber within that 5-day period.

H. Non-exclusive Franchise. Every franchise granted is non-exclusive. The city specifically reserves the right to grant, at any time, such additional franchises for a cable television system that it deems appropriate, subject to applicable state and federal law. If an additional franchise is proposed to be granted to a subsequent franchisee, a noticed public hearing shall first be held if required by Government Code Section 53066.3.

I. Multiple Franchises.

1. The city may grant any number of franchises, subject to applicable state and federal law. The city may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and the following specific local considerations:

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

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

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

2. The city may require that any new franchisee be responsible for its own underground trenching and the associated costs if, in the city's opinion, the public rights-of-way in any particular area cannot reasonably accommodate additional cables.

**§ 6.10.020 Cable Television Franchise – Applications and Renewal.**

A. Filing of Applications. Any person desiring an initial franchise for a cable television system must file an application with the city. A reasonable application fee deposit in an amount established by city council resolution must accompany the application. That application fee deposit will cover all anticipated costs associated with reviewing and processing the application including without limitation costs of the following: administrative review; financial, legal, and technical evaluation of the applicant; consultants (including technical and legal experts and all costs incurred by those experts); notice and publication; and document preparation. If actual costs exceed the application fee deposit, the applicant must pay the difference to the city within 30 days following receipt of an itemized statement of those costs.

B. Applications - Contents. An application for an initial franchise for a cable television system must contain, as applicable:

1. A statement describing the proposed franchise service area.
2. A resume of the applicant's prior history, including the experience and expertise of the applicant in the cable television industry.
3. A list of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a closely-held corporation. If the applicant is a publicly-owned partnership or corporation, each owner of 10% or more of the partnership interests, or of the issued and outstanding capital stock, must be identified.
4. A list of officers, directors, and managing employees of the applicant, together with a description of the background of each such person.
5. The names and addresses of any parent or subsidiary of the applicant, or any other business entity owning or controlling the applicant in whole or in part, or that is owned or controlled in whole or in part by the applicant.
6. A current financial statement of the applicant verified by a certified public accountant or otherwise certified to be accurate.
7. The proposed construction and service schedule, the proposed rate structure for cable services, and the proposed commitment to provide PEG access facilities.
8. Any additional information that the city deems to be reasonably necessary.

C. Consideration of Initial Applications.

1. Upon receipt of an application for an initial franchise, the city manager shall prepare a report and make recommendations to the city council concerning that application.
2. Within 30 days after the close of the public hearing on the application, the city council will make a decision, based upon the documents and testimony received at the hearing, as to whether the franchise should be granted, and, if granted, subject to what conditions. The city council may grant 1 or more franchises, or may decline to grant any franchise.

D. Franchise Renewal. Franchise renewals will be processed in accordance with then-applicable law and with the renewal terms, if any, of the franchise agreement. The city and the franchisee, by mutual consent, may enter



into renewal negotiations at any time during the term of the franchise. A renewal application fee deposit in an amount established by city council resolution must accompany the renewal application or the renewal request. That renewal application fee deposit will cover all anticipated costs associated with reviewing and processing the renewal application, including without limitation: the review of franchisee's prior compliance with the franchise; the ascertainment of the community's cable-related needs and interests; the engagement of technical and legal consultants; and expenses related to negotiations and document preparation. If actual costs exceed the renewal application fee deposit, the franchisee must pay the difference to the city within 30 days following receipt of an itemized statement of those costs.

#### **§ 6.10.025 Cable Television Franchise – Agreement Contents.**

A. The terms and provisions of a franchise agreement for the operation of a cable television system shall relate to or include, without limitation, the following subject matters:

1. The nature, scope, geographical area and duration of the franchise.
2. The applicable franchise fee to be paid to the city, including the percentage amount, the method of computation, and the time for payment.
3. Requirements relating to compliance with and implementation of state and federal laws and regulations pertaining to the operation of the cable television system.
4. Requirements relating to the construction, upgrade, or rebuild of the cable television system, as well as the provision of special services, such as outlets for public buildings, emergency alert capability and parental control devices.
5. Requirements relating to the maintenance of a performance bond, a security fund, a letter of credit, or similar assurances to secure the performance of the franchisee's obligations under the franchise agreement.
6. Requirements relating to comprehensive liability insurance, workers' compensation insurance and indemnification.
7. Requirements relating to consumer protection and customer service standards, which requirements may include, without limitation, those set forth in this chapter.
8. Requirements relating to the franchisee's support of local cable usage, including the provision of PEG access facilities, the coverage of

public meetings and special events, and financial support for the PEG access facilities.

9. Requirements relating to construction, operation, and maintenance of the cable television system within the public rights-of-way, including compliance with applicable building codes and permit requirements of the city, the abandonment, removal, or relocation of facilities, and compliance with FCC technical standards.

10. Requirements relating to recordkeeping, accounting procedures, reporting, periodic audits and performance reviews, the inspection of the franchisee's books and records, and reimbursement for technical audits and franchise fee audits under specified circumstances.

11. Acts or omissions constituting material breaches of or defaults under the franchise agreement, and the applicable penalties or remedies for such breaches or defaults, including fines, penalties, liquidated damages, suspension, revocation and termination.

12. Requirements relating to the sale, assignment or other transfer or change in control of the franchise.

13. The franchisee's obligation to maintain continuity of service and to authorize, under certain specified circumstances, the city's operation and management of the cable system.

14. Such additional requirements, conditions, policies, and procedures as may be mutually agreed upon by the parties to the franchise agreement and that will, in the judgment of city staff and the city council, best protect the public health, welfare, and safety.

B. If there is any conflict or inconsistency between the provisions of a franchise agreement and provisions of this chapter, the provisions of the franchise agreement will control.

**§ 6.10.030 Cable Television Franchise – Consumer Protection and Service Standards.**

A. Operational Standards. Unless otherwise provided in the franchise agreement, the franchisee must maintain the necessary facilities, equipment, and personnel to comply with the following consumer protection and service standards under normal operating conditions not less than 95% of the time, measured on a quarterly basis:

1. Sufficient toll-free telephone line capacity shall be provided during normal business hours to ensure that telephone calls are answered before

the fourth ring. Telephone answer time by a customer service representative, including wait time, may not exceed 30 seconds. Callers who must be transferred may not be required to wait more than 30 seconds before being connected to a service representative.

2. A caller must receive a busy signal less than 3% of the time.

3. Emergency toll-free telephone line capacity shall be provided on a 24 hour per day basis, including weekends and holidays. After normal business hours, the telephone calls may be answered by an answering service in accordance with the telephone answering standards set forth above. Calls received after normal business hours must be responded to by a trained company representative on the next business day.

4. A conveniently-located local business and service or payment office shall be open during normal business hours at least 8 hours daily on weekdays, and at least 4 hours weekly on evenings or weekends. The office shall be adequately staffed with trained customer service representatives to accept subscriber payments and to respond to service requests, inquiries and complaints.

5. Emergency system maintenance and repair staff shall be available on a 24 hour per day basis for response to major system malfunctions.

6. A trained installation staff must provide service to any subscriber requiring a standard installation within 5 days after receipt of a request, in all areas where trunk and feeder cable have been activated. "Standard installations" are those that are located up to 125 feet from the existing distribution system, unless otherwise defined in the franchise agreement.

7. The franchisee must schedule, within a specified 4 hour time period Monday through Saturday (holidays excluded), all appointments with subscribers for installation of service, service calls and other activities at the subscriber's location. The franchisee may schedule installation and service calls outside of normal business hours for the convenience of the subscriber. The franchisee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment. If a franchisee representative is delayed in keeping an appointment with a subscriber and will not be able to honor the scheduled appointment, the subscriber must be contacted prior to the time of the scheduled appointment, and the appointment must be rescheduled, as necessary, at a time that is convenient for the subscriber. The franchisee must use its best efforts to contact the customer within 2 weeks after an installation or repair work is completed to ensure that the customer is satisfied with the work.

8. Subscribers who have experienced a missed appointment due to the fault of the franchisee will receive an installation free of charge if the appointment was for an installation. If an installation was to have been provided free of charge, and for all other appointments, the subscriber will receive 1 month of the subscribed-to service tier, free of charge. Subscribers also will be entitled to receive a free installation, or one month free service, as provided above if the franchisee fails to complete a standard installation within 5 days of receiving an installation request due to its fault, its failure to schedule an appointment within a specified 4 hour time period, or its failure to notify the subscriber that the franchisee's representative will be late for an appointment. Subscribers who have experienced 2 missed appointments due to the fault of the franchisee will receive 2 months of the subscribed-to service tier, free of charge, in addition to the free installation or free month of service provided for the first missed appointment.

9. Upon a subscriber's request, the franchisee will arrange for pickup or replacement of converters or other equipment provided by the franchisee at the subscriber's address within 14 days after the request is made if the subscriber is mobility-limited.

B. Service Standards.

1. The franchisee will render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Except in emergency situations, scheduled interruptions will occur during a period of minimum use of the cable system, preferably between midnight and 6:00 a.m. Unless the scheduled interruption lasts for no more than 2 hours and occurs between midnight and 6:00 a.m. (in which event 24 hours prior notice must be given to the city), 48 hours prior notice must be given to subscribers.

2. The franchisee will maintain a repair force of technicians who will respond to subscriber requests for service within the following time frames:

a. For a system outage: within 2 hours, including weekends, of receiving subscriber calls or requests for service that by number identify a system outage of sound or picture, affecting 5 or more subscribers.

b. For an isolated outage: within 24-hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture.

c. For inferior signal quality: no later than the following business day, excluding Sundays and holidays, after a request for service identifying a problem concerning picture or sound quality.

3. The franchisee will be deemed to have responded to a request for service under this paragraph when a technician arrives at the service location and begins work on the problem. If a subscriber is not home when the technician arrives, the technician must leave written notification of arrival.

4. The franchisee may not charge for the repair or replacement of defective or malfunctioning equipment provided by the franchisee to subscribers, unless the defect or malfunction was caused by the subscriber.

5. The franchisee must determine the nature of the problem within 24 hours after commencing work and resolve all cable system related problems within 3 business days, unless technically infeasible.

C. Billing and Information Standards.

1. Subscriber bills must be clear, concise, and understandable. Bills must be fully itemized, with itemizations including without limitation basic and premium service charges and equipment charges. Bills also must clearly delineate all activity during the billing period, including optional charges, rebates and credits.

2. The first billing to a subscriber after a new installation or service change must be prorated based upon when the new or changed service commenced. Subscribers must not be charged a late fee or otherwise penalized for any failure attributable to the franchisee, including the failure to timely or correctly bill the subscriber.

3. In case of a billing dispute, the franchisee must respond in writing to a written complaint from a subscriber within 10 days after receiving the complaint at the office specified on the billing statement for receiving that complaint.

4. Credits or refunds must be provided by the franchisee to subscribers who experience an outage, interruption, or disconnection of service of 4 or more consecutive hours, provided that such loss of service is neither caused by the subscriber nor attributable to scheduled repairs, maintenance or construction in circumstances where the franchisee has provided advance written notice to subscriber, and the loss of service does not exceed the time period specified by the franchisee. Subject to these exceptions, credits or refunds must be provided under the following circumstances:

a. The outage, interruption or disconnection is isolated and involves the sound, picture or reception, and affects no more than 4 subscribers.

b. The outage, interruption, or disconnection is of a system-wide nature that involves the sound, picture or reception, and affects 5 or more subscribers.

If the franchisee's cable system is equipped with monitoring equipment that enables the franchisee to identify an isolated or system-wide loss of service, then the credit or refund referenced in the following paragraph will be provided to subscribers without the necessity for any prior notice or request from the affected subscribers. If the franchisee's cable system has no such monitoring equipment, then prior notice or request must be given by the affected subscribers, and the franchisee must maintain a record of such notices or requests. The existence of monitoring equipment for the franchisee's cable system will be determined at the time of the grant or renewal of a cable television franchise agreement, or at such other times as may be agreed upon. For each day that an isolated or system-wide loss of service has continued for 4 consecutive hours or more, the credit or refund must equal a pro-rata share of the monthly billing for one full day. The credits or refunds for such loss of service must be issued no later than the subscriber's next billing cycle following the franchisee's determination that a credit or refund is due. For subscribers terminating service, credits or refunds must be issued promptly, but no later than 30 days after the return of any franchisee-supplied equipment.

5. Subject to prior review by the city, the franchisee must provide written information on each of the following areas at the time of the installation of service, at least annually to all subscribers, and at any time upon request:

- a. Products and services offered.
- b. Prices and options for programming services and conditions of subscription to programming and other services.
- c. Installation and service maintenance policies.
- d. Instructions on the use of the cable service.
- e. Channel positions of programming carried on the system.
- f. Billing and complaint procedures, including the address and telephone number of the city's office designated for dealing with cable-related issues.
- g. Consumer protection and service standards and penalties for noncompliance.

6. Subscribers must be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of 30 days in advance of those changes if the change is within the control of the franchisee. In addition, the franchisee must notify subscribers through announcements on the cable system and in writing 30 days in advance of any significant changes in the information required in the preceding subparagraph.

7. The franchisee must maintain a public file containing all notices provided to subscribers under these consumer protection and service standards and all promotional offers made by the franchisee to subscribers. These documents must be maintained for a minimum period of 4 years.

D. Verification of Compliance with Standards.

1. Upon 15 days prior written notice, the city may require the franchisee to provide a written report demonstrating its compliance with any of the consumer service standards specified in this section. The franchisee must provide sufficient documentation to enable the city to verify compliance.

2. A repeated and verifiable pattern of noncompliance with the consumer protection and service standards of this section, after the franchisee's receipt of written notice and an opportunity to cure, may be deemed a material breach of the franchise agreement.

E. Subscriber Complaints and Disputes.

1. The franchisee must establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the city. The written procedures must prescribe the manner in which a subscriber may submit a complaint, either orally or in writing, specifying the subscriber's grounds for dissatisfaction. The franchisee must file a copy of these procedures with the city. These procedures must include a requirement that the franchisee respond in writing to any written complaint from a subscriber within 10 days after receiving the complaint at the office specified on the billing statement for receiving that complaint.

2. The city has the right to review the franchisee's response to subscriber complaints in order to determine the franchisee's compliance with the franchise requirements.

3. All subscribers have the right to continue receiving service so long as their financial and other obligations to the franchisee are honored. If the franchisee elects to rebuild, modify or sell the system, or if the city gives notice of intent to terminate or not to renew the franchise, the franchisee must act

so as to ensure that all subscribers receive service while the franchise remains in force.

4. Upon a change of control of the franchisee, or if a new operator acquires the cable system, the original franchisee must cooperate with the city, the new franchisee or the new operator in maintaining continuity of service to all subscribers. During that transition period, the franchisee is entitled to the revenues derived from its operation of the cable system.

F. Disconnection/Downgrades.

1. A subscriber may terminate or downgrade service at any time, and the franchisee must promptly comply with the subscriber's request within 5 days or at any later time requested by the subscriber. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers. A franchisee will impose no charges for the voluntary termination or downgrade of service unless a visit to the subscriber's premises is required to remove a converter box or other equipment or property owned by the franchisee.

2. The franchisee may disconnect a subscriber's service if the subscriber fails to pay a monthly fee or charge, but such disconnection must not occur prior to 45 days after the fee or charge is due, plus 10 days prior written notice to the subscriber of the franchisee's intent to disconnect service. If the subscriber pays all past due amounts, including late charges, before the scheduled disconnection date, the franchisee may not disconnect service. If service is disconnected for nonpayment of past due fees or charges, the franchisee must promptly reinstate service upon payment in full by the subscriber of all such fees and charges, including late charges.

3. Notwithstanding the requirements of the preceding subparagraph, the franchisee may immediately disconnect service to a subscriber if the subscriber is damaging or destroying the franchisee's cable system or equipment. In the event of disconnection on such grounds, the franchisee will resume service to the subscriber upon receiving adequate assurances that the subscriber has ceased the conduct that resulted in disconnection and has paid all proper fees and charges, including any amounts reasonably owed the franchisee for the damage caused by the subscriber.

4. The franchisee may also disconnect service to a subscriber when it causes signal leakage exceeding federal limits. If service is disconnected, the franchisee will immediately resume service without charge upon the satisfactory correction of the signal leakage problem.

5. Upon termination of service to a subscriber, the franchisee will remove its equipment from the subscriber's premises within 30 days. The



equipment will be deemed abandoned if it is not removed within such time period unless the franchisee has been denied access to the subscriber's premises.

G. Changes in Service. Except as otherwise provided by federal or state law, subscribers must not be required to pay any additional fee or charge, other than the regular service fee, in order to receive the services selected (such as upgrade or downgrade charges). No charge may be imposed for any service or product that the subscriber has not affirmatively selected. Payment of the regular monthly bill will not by itself constitute an affirmative selection.

H. Deposits. The franchisee may require a reasonable, nondiscriminatory deposit on equipment provided to subscribers. Such deposits must be placed in an interest-bearing account. The deposit must be returned, with interest earned to the date of repayment, within 30 days after the equipment is returned to the franchisee.

I. Parental Control Option. The franchisee must provide parental control devices to all subscribers who desire to block the video or audio portion of any programming that the subscriber finds objectionable. Such devices will be provided at no charge to the subscriber, unless otherwise required by federal law or unless a converter box is required to be installed for the purpose of providing the parental control device.

J. Additional Requirements.

1. If the franchisee fails to operate the system for 7 consecutive days without the city's prior approval or subsequent ratification, the city may, at its sole option, operate the system or designate an operator until the franchisee restores service under conditions acceptable to the city, or until a permanent operator is selected. If the city satisfies this obligation on behalf of the franchisee, then during that time period the city is entitled to collect all revenues derived from the system, and the franchisee will indemnify the city against any damages that the city may suffer as a result of the franchisee's failure to operate the system.

2. All officers, agents, and employees of the franchisee, or of its contractors or subcontractors, who, in the normal course of work come into contact with members of the public, or who require entry onto subscribers' premises, must carry a photo identification card in a form approved by the city. The franchisee must account for all identification cards at all times. All vehicles of the franchisee or its subcontractors must be clearly identified as vehicles engaged in providing services for the franchisee.

3. Additional standards relating to service, consumer protection and response by the franchisee to subscriber complaints not otherwise provided for in this section may be set forth in the franchise agreement or by separate

ordinance, and the franchisee must comply with those standards in the operation of the cable television system. A verified and continuing pattern of noncompliance may be deemed a material breach of the franchise agreement, provided that the franchisee receives written notice and an opportunity to cure before any penalty or other remedy is imposed.

K. Penalties for Noncompliance.

1. Purpose. The purpose of this paragraph is to authorize the imposition of penalties for the violation of the customer service standards established by this section in accordance with the Video Customer Service Act (Government Code Section 53088 et seq.). These penalties are in addition to any other remedies provided by this chapter, the franchise agreement or any other law, and the city has the discretion to elect the remedy that it will apply. The imposition of penalties authorized by this paragraph will not prevent the city or any other affected party from exercising any other remedy to the extent permitted by law, including but not limited to any judicial remedy.

2. Administration and Appeals.

a. The city manager is authorized to administer this chapter. Decisions by the city manager to assess penalties against the franchisee must be in writing and must contain supporting findings. Decisions by the city manager are final unless appealed to the city council.

b. If the franchisee or any interested person is aggrieved by a decision of the city manager, the aggrieved party may, within 10 days of the written decision, appeal that decision in writing to the city council. The appeal letter must be accompanied by the fee established by city council resolution for processing the appeal. The city council may affirm, modify or reverse the decision of the city manager.

c. Schedule of Penalties. The following schedule of monetary penalties may be assessed against the franchisee for the material breach of the provisions of the customer service standards set forth in this section, provided that the breach is within the reasonable control of the franchisee:

(1) The maximum penalty is \$200 for each day of material breach, but not to exceed \$600 for each occurrence of the material breach.

(2) For a second material breach of the same nature within a 12 month period for which the city has provided notice and a penalty has been assessed, the maximum penalty is \$400 for each day of the

material breach, but not to exceed \$1,200 for each occurrence of the material breach.

(3) For a third material breach of the same nature within a 12 month period for which the City has provided notice and a penalty has been assessed, the maximum penalty is \$1,000 for each day of the material breach, but not to exceed \$3,000 for each occurrence of the material breach.

d. Notification of Breach. The city must give the franchisee written notice of any alleged breach of the consumer service standards and allow the franchisee at least 30 days from receipt of the notice to remedy the specified breach. For the purpose of assessing penalties, a material breach is deemed to have occurred for each day, following the expiration of the period for cure specified herein, that any breach has not been remedied by the franchisee, irrespective of the number of subscribers affected.

L. Free Service for Noncompliance. Notwithstanding any other penalties or remedies provided by this section, the franchise agreement or any other law, the franchisee must provide the following months of free service to subscribers affected by the franchisee's failure to comply with the specified consumer protection and service standard:

1. One Month Free Service. The franchisee will provide one month of free service to each subscriber affected by the failure of the franchisee to timely and satisfactorily comply with any of the following requirements:

a. Pickup or replacement of converters or other equipment within 14 days after subscriber request.

b. 48 hour notice of service interruption.

c. Response time for system outages and inferior signal quality as set forth in Section 6.10.030.B, Service Standards. (Ord. No. 1533)

d. Resolution of cable system related problems within 3 business days. One additional month of free service will be provided for each 7 day period that the problem remains unresolved.

e. Written response to billing complaints.

f. Credits and refunds.

g. Provision of all required information to subscribers.

h. Notification of rate, service or channel changes.

- i. Completion of termination or downgrade of service.
- j. Provision of parental control devices.

2. Three Months Free Service. The franchisee will provide 3 months of free service to each subscriber affected by the franchisee's disconnection of subscriber service without just cause, provided that the franchisee fails to restore service within 4 hours after the disconnection.

3. Definition of Free Service. The free service required by this paragraph relates to the service tier subscribed to by the affected subscriber.

#### **§ 6.10.035 Open Video System – Applicability.**

The open video system provisions of this chapter apply to an open video system operator that intends to deliver video programming to consumers in the city over an open video system.

#### **§ 6.10.040 Open Video System – Application Requirement.**

A. Before commencing the delivery of video programming services to consumers in the city over an open video system, the open video system operator must file an application with the city. That application must include or be accompanied by the following, as applicable:

1. The identity of the applicant, including all affiliates of the applicant.
2. Copies of FCC Form 1275, all "Notices of Intent" filed under 47 CFR 76.1503(b)(1), and the Order of the FCC, all of which relate to certification of the applicant to operate an open video system in the city in accordance with Section 653(a)(1) of the Communications Act and the FCC's rules.
3. The area or areas of the city that the applicant desires to serve.
4. A description of the open video system services that will be offered by the applicant over its existing or proposed facilities.
5. A description of the transmission medium that will be used by the applicant to deliver the open video system services.
6. Information in sufficient detail to establish the applicant's technical qualifications, experience, and expertise regarding the ownership and operation of the open video system described in the application.

7. Financial statements prepared in accordance with generally accepted accounting principles that demonstrate the applicant's financial ability to:

a. Construct, operate, maintain and remove any new physical plant that is proposed to be constructed in the city.

b. Comply with the city's PEG access facility requirements.

c. Comply with the city's requirement that gross revenue fees be paid in the maximum amount authorized under federal law.

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

9. If the applicant's operation of the open video system will require the construction of new physical plant and facilities in the city, the following additional information must be provided:

a. A preliminary construction schedule and completion dates.

b. Preliminary engineering plans, specifications, and a network map of any new facilities to be constructed in the city, in sufficient detail to identify:

(1) The location and route requested for the applicant's proposed facilities.

(2) The locations, if any, for interconnection with the facilities of other telecommunications service providers.

(3) The specific structures, improvements, facilities, and obstructions, if any, that the applicant proposes to add, remove, or relocate on a temporary or permanent basis.

c. The applicant's statement that, in constructing any new physical plant, the applicant will comply with applicable ordinances, rules, and regulations of the city, including the payment of all required permit and processing fees.

10. The information and documentation that is required to be submitted to the city by a video provider.

11. Such additional information as may be requested by the city manager.

12. An application fee deposit in an amount established by resolution of the city council.

B. If any item of information specified above in is determined under paramount federal or state law to be unlawful, the city manager is authorized to waive the requirement that such information be included in the application.

**§ 6.10.045 Open Video System – Application Review.**

Within 30 days after receipt of an application that is deemed to be complete, the city manager will give written notice to the applicant of the city's intent to negotiate an agreement setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the city. The commencement of those negotiations will be on a date that is mutually acceptable to the city and to the applicant.

**§ 6.10.050 Open Video System – Agreement Requirement.**

A. No video programming services may be provided in the city by an open video system operator unless the operator and the city have executed a written agreement, which may be designated as a franchise, setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the city.

B. The agreement between the city and the open video system operator may contain terms and conditions that relate to the following subject matters, to the extent that such terms, conditions, and subject matters are not preempted by federal law or regulations:

1. The nature, scope, and duration of the agreement, including provisions for its renewal or extension.

2. The obligation of the open video system operator to pay to the city, at specified times and in lieu of the franchise fees permitted under Section 622 of the Communications Act, fees on the gross revenue received by the operator, as authorized by 47 CFR 76.1511, in accordance with the following standards and procedures:

a. The amount of the fees on the gross revenue will be the maximum amount authorized by Section 653(c)(2)(B) of the Communications Act, which is the rate imposed by the city on the existing franchised cable operator.

b. The term “gross revenue” has the meaning set forth in 47 CFR 76.1511, and includes: (1) all gross revenue received by an open video system operator or its affiliates, including all revenue received from subscribers and all carriage revenue received from unaffiliated video programming providers; and (2) all advertising revenue received by the operator or its affiliates in connection with the provision of video programming, where such revenue is included in the calculation of the cable franchise fee paid to the city by the franchised cable operator. The term “gross revenue” does not include revenue, such as subscriber or advertising revenue, collected by unaffiliated video programming providers.

3. The obligation of the open video system operator to comply with requirements relating to information collection and recordkeeping, accounting procedures, reporting, periodic audits and inspection of records in order to ensure the accuracy of the fees on the gross revenue that are required to be paid.

4. The obligation of the open video system operator to meet the city’s requirements with respect to PEG access facilities, as provided for in 47 CFR 76.1505. In this regard, the following standards and procedures are applicable:

a. The open video system operator is subject to the same PEG access facilities requirements that apply within the cable television franchise service area with which its system overlaps.

b. The open video system operator must ensure that all subscribers receive all public, educational, and governmental access channels within the franchise service area in which the city’s subscribers are located.

c. The open video system operator may negotiate with the city to establish the operator’s obligations with respect to PEG access facilities. These negotiations may include the city’s franchised cable operator if the city, the open video system operator and the franchised cable operator so desire.

d. If the open video system operator and the city are unable to reach an agreement regarding the operator’s obligations with respect to PEG access facilities within the city’s jurisdiction, then the following obligations will be imposed:

(1) The open video system operator must satisfy the same PEG access facility obligations as the city’s franchised cable operator by providing the same amount of channel capacity for public, educational, and governmental access and by matching the city’s franchised cable operator’s annual financial contributions in support of PEG access facilities that are actually

used by the city. For in-kind contributions, such as cameras or production studios, the open video system operator may satisfy its statutory obligation by negotiating mutually agreeable terms with the city's franchised cable operator, so that public, educational, and governmental access services to the city are improved or increased. If such terms cannot be agreed upon, the open video system operator must pay to the city the monetary equivalent of the franchised cable operator's depreciated in-kind contribution, or, in the case of facilities, the annual amortization value. Any matching contributions provided by the open video system operator must be used to fund activities arising under Section 611 of the Communications Act.

(2) The city will impose upon the open video system operator the same rules and procedures that it imposes upon the franchised cable operator with regard to the open video system operator's use of channel capacity designated for public, educational, and governmental access use when that capacity is not being used for such purposes.

e. The city's franchised cable operator is required under federal law to permit the open video system operator to connect with its public, educational, and governmental access channel feeds. The open video system operator and the franchised cable operator may decide how to accomplish this connection, taking into consideration the physical and technical characteristics of the cable and the open video systems involved. If the franchised cable operator and the open video system operator have not agreed on how to accomplish the connection after 15 days of negotiations, then the city has the right to decide. The city may require that the connection occur on city-owned property or on public rights-of-way.

f. All costs of connection to the franchised cable operator's public, educational, and governmental access channel feed must be borne by the open video system operator. These costs will be counted towards the open video system operator's matching financial contributions set forth above in (d)(1).

g. The city will not impose upon the open video system operator any PEG access facility obligations that are greater than those imposed upon the franchised cable operator.

h. If there is no existing franchised cable operator, the provisions of 47 CFR 76.1505(d)(6) will be applicable in determining the obligations of the open video system operator.

i. The open video system operator must adjust its system to comply with new PEG access facility obligations imposed on the city's franchised cable operator following a renewal of the cable television franchise; provided, however, that the open video system operator will not be required to



displace other programmers using its open video system to accommodate public, educational, and governmental access channels. The open video system operator must comply with such new public, educational, and governmental access obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or to decreased demand for channel capacity.

5. If the city and the open video system operator cannot agree on the application of the FCC's rules regarding the open video system operator's obligations to provide PEG access facilities, then either party may file a complaint with the FCC in accordance with the dispute resolution procedures set forth in 47 CFR 76.1514. No agreement will be executed by the city until the dispute has been finally resolved.

6. If the open video system operator intends to maintain an institutional network, as defined in Section 611(f) of the Communications Act, the city will require that educational and governmental access channels be designated on that institutional network to the same extent that those channels are designated on the institutional network of the city's franchised cable operator.

7. The authority of an open video system operator to exercise editorial control over any public, educational, or governmental use of channel capacity will be restricted in accordance with the provisions of 47 CFR 76.1505(f).

8. The obligation of the open video system operator to comply with applicable federal, state, and local statutes, ordinances, and regulations relating to customer service standards and this chapter.

9. If new physical plant is proposed to be constructed within the city, the obligation of the open video system operator to comply with the following rights-of-way use and management responsibilities that are also imposed by the city upon other cable television and telecommunications service providers in a nondiscriminatory and competitively neutral manner:

a. Compliance with applicable city codes, including applications for excavation, encroachment and construction permits and the payment of all required permit and inspection fees.

b. The coordination of construction activities.

c. Compliance with established standards and procedures for constructing lines across private property.

d. Compliance with applicable insurance and indemnification requirements.

e. The repair and resurfacing of construction-damaged streets.

f. Compliance with all public safety requirements that are applicable to cable television and telecommunications service providers using public property or public rights-of-way.

10. Acts or omissions constituting breaches or defaults of the agreement, and the applicable penalties, liquidated damages, and other remedies, including fines or the suspension, revocation, or termination of the agreement.

11. Requirements relating to the sale, assignment or transfer of the open video system.

12. Requirements relating to the open video system operator's compliance with and implementation of state and federal laws, rules and regulations pertaining to the operation of the open video system.

13. Such additional requirements, conditions, terms, policies and procedures as may be mutually agreed upon by the city and the open video system operator and that will, in the judgment of the city council, best protect the public health, welfare, and safety.

#### **§ 6.10.055 Miscellaneous Multi-channel Video Programming Distributors.**

The term "cable system," as defined in federal law and in this chapter, does not include a facility that serves subscribers without using any public rights-of-way. Consequently, the categories of multi-channel video programming distributors identified below are not deemed to be "cable systems" and are therefore exempt from the city's franchise requirements and from certain other local regulatory provisions authorized by federal law, provided that their distribution or transmission facilities do not involve the use of public rights-of-way.

A. Multi-channel multipoint distribution service ("MMDS"), also known as "wireless cable," which typically involves the transmission by a FCC licensed operator of numerous broadcast stations from a central location using line-of-sight technology.

B. Local multipoint distribution service ("LMDS"), another form of over-the-air wireless video service for which licenses are auctioned by the FCC, and which offers video programming, telephony, and data networking services.

C. Direct broadcast satellite (“DBS”), also referred to as “direct-to-home satellite services,” which involves the distribution or broadcasting of programming or services by satellite directly to the subscribers premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.

**§ 6.10.060 Video Providers - Registration; Customer Service Standards.**

A. Unless the customer protection and customer service obligations of a video provider are specified in a franchise, license, lease, or similar written agreement with the city, a video provider must comply with applicable provisions of the following state statutes:

1. The Cable Television and Video Customer Service and Information Act.
2. The Video Customer Service Act.

B. All video providers that are operating in the city on the effective date of this chapter, or that intend to operate in the city after the effective date of this chapter, must register with the city; provided, however, that this registration requirement is not applicable to any video provider that has executed a franchise, license, lease or similar written agreement with the city. The registration form must include or be accompanied by the following:

1. The video provider’s name, address and local telephone numbers.
2. The names of the officers of the video provider.
3. A copy of the video provider’s written policies and procedures relating to customer service standards and the handling of customer complaints. These customer service standards must include, without limitation, standards regarding the following:
  - a. Installation, disconnection, service and repair obligations, employee identification and service call response time and scheduling.
  - b. Customer telephone and office hours.
  - c. Procedures for billing, charges, refunds and credits.
  - d. Procedures for termination of service.

e. Notice of the deletion of a programming service, the changing of channel assignments or an increase in rates.

f. Complaint procedures and procedures for bill dispute resolution.

g. The video provider's written commitment to distribute annually to the city, and to its employees and customers, a notice describing the customer service standards specified above. This annual notice must include the report of the video provider on its performance in meeting its customer service standards.

4. Unless a video provider is exempt under federal law from its payment, a registration fee in an amount established by city council resolution to cover the reasonable costs incurred by the city in reviewing and processing the registration.

5. In addition to the registration fee, the written commitment of the video provider to pay to the city, when due, all costs and expenses reasonably incurred by the city in resolving any disputes between the video provider and its subscribers.

C. Pursuant to Government Code Sections 53088.2(a)-(n) and 53056(a), the city council hereby establishes the following schedule of monetary penalties for material breaches by a video provider and for the failure of a video provider to distribute the annual notice required by Government Code Section 53055.1:

1. The maximum penalty is \$200 for each day of material breach, but not to exceed \$600 for each occurrence of the material breach.

2. For a second material breach of the same nature within a 12 month period for which the city has provided notice and a penalty has been assessed, the maximum penalty is \$400 for each day of the material breach, but not to exceed \$1,200 for each occurrence of the material breach.

3. For a third material breach of the same nature within a 12 month period for which the city has provided notice and a penalty has been assessed, the maximum penalty is \$1,000 for each day of the material breach, but not to exceed \$3,000 for each occurrence of the material breach.

**§ 6.10.065 Telecommunications Service Provided by Telephone Corporations.**

A. The city council finds and determines as follows:

1. The Communications Act preempts and declares invalid all state rules that restrict entry or limit competition in both local and long-distance telephone service.

2. The California Public Utilities Commission (“CPUC”) is primarily responsible for the implementation of local telephone competition, and it issues certificates of public convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service, whether using their own facilities or the facilities or services provided by other authorized telephone corporations.

3. Public Utilities Code Section 234(a) defines a “telephone corporation” as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.”

4. Public Utilities Code Section 616 provides that a telephone corporation “may condemn any property necessary for the construction and maintenance of its telephone line”.

5. Public Utilities Code Section 2902 authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets.

6. Public Utilities Code Section 7901 authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers or abutments for supporting the insulators, wires and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

7. Public Utilities Code Section 7901.1 confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner. Nothing in Section 7901.1 adds to or subtracts from any existing authority that municipalities have with respect to the imposition of fees.

8. Government Code Section 50030 provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the

FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes.

B. In recognition of and in compliance with the statutory authorizations and requirements set forth above, the following regulatory provisions are applicable to a telephone corporation that desires to provide telecommunications service by means of facilities that are proposed to be constructed within public rights-of-way:

1. The telephone corporation must apply for and obtain, as may be applicable, an excavation permit, an encroachment permit, or a building permit (“ministerial permit”).

2. In addition to the information required by this code in connection with an application for a ministerial permit, a telephone corporation must submit to the city the following supplemental information:

a. A copy of the certificate of public convenience and necessity issued by the CPUC to the applicant, and a copy of the CPUC decision that authorizes the applicant to provide the telecommunications service for which the facilities are proposed to be constructed in the public rights-of-way. Any applicant that, prior to 1996, provided telecommunications service under administratively equivalent documentation issued by the CPUC may submit copies of that documentation in lieu of a certificate of public convenience and necessity.

b. If the applicant has obtained from the CPUC a certificate of public convenience and necessity to operate as a “competitive local carrier,” the following additional requirements are applicable:

(1) As required by Decision No. 95-12-057 of the CPUC, the applicant must establish that it has timely filed with the city a quarterly report that describes the type of construction and the location of each construction project proposed to be undertaken in the city during the calendar quarter in which the application is filed, so that the city can coordinate multiple projects, as may be necessary.

(2) If the applicant’s proposed construction project will extend beyond the utility rights-of-way into undisturbed areas or other rights-of-way, the applicant must establish that it has filed a petition with the CPUC to amend its certificate of public convenience and necessity and that the proposed construction project has been subjected to a full-scale environmental analysis by the CPUC, as required by Decision No. 95-12-057 of the CPUC.

(3) The applicant must inform the city whether its proposed construction project will be subject to any of the mitigation measures specified in the Negative Declaration ["Competitive Local Carriers (CLCs) Projects for Local Exchange Communication Service throughout California"] or to the Mitigation Monitoring Plan adopted in connection with Decision No. 95-12-057 of the CPUC. The city's issuance of a ministerial permit will be conditioned upon the applicant's compliance with applicable mitigation measures and monitoring requirements imposed by the CPUC upon telephone corporations that are designated as "competitive local carriers."

C. The city reserves all rights that it now possesses or may later acquire with respect to the regulation of any cable or telecommunications service that is provided, or proposed to be provided, by a telephone corporation. These reserved rights may relate, without limitation, to the imposition of reasonable conditions in addition to or different from those set forth in this section, the exaction of a fee or other form of consideration or compensation for use of public rights-of-way, and related matters; provided, however, that such regulatory rights and authority must be consistent with federal and state law that is applicable to cable or telecommunications services provided by telephone corporations.

**§ 6.10.070 Use of Public Rights-of-Way.** (Ord. No. 1521)

A. The city council finds and determines that numerous and repetitive excavations in the public rights-of-way diminish the useful life of the surface pavement and generally cause adverse negative impacts for residents, local businesses, and vehicular and pedestrian traffic. The city council further finds and determines that the utility substructure in the public rights-of-way is subject to potential adverse negative impacts as a consequence of new economic and regulatory policies that foster increased competition between various utility service providers, including telephone corporations, and between other service providers, such as cable system operators. In order to mitigate these potential adverse negative impacts, the following policies are adopted:

1. The city manager is directed to develop and to implement public rights-of-way policies and procedures that incorporate, to the extent reasonably feasible and consistent with applicable laws and regulations, the following requirements that are intended to encourage the shared use by utility and other service providers of existing facilities in the public rights-of-way. In no event shall these policies and procedures allow exclusion from public rights-of-way or delay the issuance of any permits because of utility or other service provider rejects shared use.

a. A requirement that utility and other service providers requesting permits submit a written statement that describes in reasonable detail the efforts made to obtain from other utility service providers the right to use

excess capacity within existing facilities, and to thereby avoid the construction of new facilities.

b. A requirement that utility and other service providers occupying the public rights-of-way submit to the city a map, which shall be in a format specified by the public works department, that shows the location of their respective facilities in the public rights-of-way. An updated facilities map shall be provided when there are changes to the location of the facilities in the public rights-of-way and when requested by the city. Pursuant to the California Public Records Act, a facilities map submitted by a utility or other service provider is not a public record and shall not be disclosed by the city to the public.

c. Such additional requirements as will encourage utility and other service providers to share excess capacity within previously-constructed facilities and to coordinate the construction of new facilities so as to minimize the number of excavations in the public rights-of-way.

2. The city manager is directed to ensure that all utility and other service providers, including telephone corporations and cable system operators, comply with all local design, construction, maintenance and safety standards that are consistent with state and federal laws and regulations and that are contained within, or are related to, any permit that authorizes the construction of facilities within the public rights-of-way, including applicable insurance provisions.

B. The city council finds and determines that the installation in the public rights-of-way of numerous above-ground facilities by utility service providers, including telephone corporations, and other service providers may create safety hazards and adverse visual impacts. Consequently, the public works department is authorized to impose reasonable conditions in order to mitigate those potential adverse impacts that may result, whether on an individual or a cumulative basis, from permitted above-ground facilities. Those conditions may include or relate to, without limitation, the following:

1. Prior to issuance of the requisite permits, all above-ground facilities proposed to be installed by a utility or other service provider in the public rights-of-way must be clearly delineated on the plans when they are submitted for the city's review.

2. The design and installation by qualified professionals of landscaping and barriers to minimize public view of above-ground facilities whose location has been approved by the city.

3. The maintenance of all above-ground facilities in good condition, including compliance with the city's ordinances regarding graffiti removal. In this regard, a utility or other service provider may be required to affix



to its above ground facilities a coded label or marker that identifies the specific facility and sets forth a telephone number that may be called to report any damage, destruction, or graffiti vandalism involving that facility. This provision shall not apply to poles and vertical attachments to poles.

4. The placement of above-ground facilities, such as overhead drops, as close as possible to other utility drops, consistent with applicable electrical codes.

5. Reasonable limitations upon the number of above-ground facilities that may be installed within a designated geographical area.

6. Reasonable limitations upon the dimensions or volume, or both, of above-ground facilities.

7. The specification of colors of above-ground facilities reasonably requested by the city to ensure that these facilities blend with the surrounding environment to the maximum extent possible.

8. Such additional conditions regulating the time, place, and manner of installations of above-ground facilities as will reasonably mitigate potential safety hazards and adverse visual impacts attributable to these facilities.

C. The city reserves all rights that it now possesses or may later acquire to adopt and implement city-wide requirements for the undergrounding of above-ground facilities, or any portion thereof, in a competitively neutral and non-discriminatory manner. All utility and other service providers will be required to comply with those requirements and to bear the expense of such compliance, as provided by federal and state law.

#### **§ 6.10.075 Violations.**

A. Unless precluded by law, any person who violates any provision of this title is guilty of a misdemeanor. (Ord. No. 1521)

B. The misdemeanor penalty specified above is not applicable to a violation of any provision of this chapter for which another sanction or penalty may be imposed under any franchise, license, lease, or similar written agreement between the city and a multi-channel video programming distributor or telecommunications service provider.

#### **§ 6.10.080 Existing Cable Television Franchisee.**

Notwithstanding any provisions to the contrary set forth in this chapter, the provisions of Chapter 23A (entitled "Franchises For Cable Television Systems

and Telecommunications Systems”) of the previous city code will continue in full force and effect as an uncodified ordinance of the city. This uncodified ordinance will continue to be applicable to the existing cable television franchise agreement between the city and its franchised cable operator, Adelpia Communications Corporation, or its duly authorized assignee. This uncodified ordinance is subject to repeal by the city council at such time as the franchised cable operator executes an amendment to the existing cable television agreement or executes a new cable television franchise agreement, the terms of which subject the franchised cable operator to this chapter.

**§ 6.10.085 Special Provisions Applicable to Holders of State Video Franchises.** (Ord. No. 1563)

**A. Fee for Support of PEG Access Facilities and Activities.**

1. The City Council has determined that the public interest will best be served by imposing, to the extent authorized by applicable law, comparable financial obligations upon similarly-situated multi-channel video programming providers that are franchised to provide video services within the City. Consistent with the City’s policy of requiring franchisees to provide financial support for public, educational, and governmental (PEG) access channel facilities and activities, a fee is established as set forth below in subparagraph (3).

2. On December 31, 2006, the City’s incumbent cable operator was contractually obligated to pay an annual fee of \$75,000 to support PEG channel facilities and activities. This fee is in excess of 1% of the cable operator’s reported gross revenues, and it is approximately equivalent to 1.20% of the reported gross revenues. The term “gross revenues” shall be defined as set forth in California Public Utilities Code Section 5860.

3. The City hereby establishes and imposes upon any state video franchise holder operating in the City a fee, separate from the 5% franchise fee, to support PEG access channel facilities and activities. This separate fee is in the amount of 1.20% of a video service provider’s gross revenues. The restrictions and limitations set forth below in subparagraph (4) apply to this PEG access support fee.

4. The fee in support of PEG access channel facilities and activities specified above in subparagraph (3), as applied to a state video franchise holder, is subject to the following provisions:

a. The fee must not exceed 3% of the holder’s gross revenues, as the term “gross revenues” is defined in the Public Utilities Code section 5860.

b. The fee will terminate upon expiration of the state video franchise, but it may be reauthorized by ordinance adopted by the City Council.

c. If the imposition of this fee, or any component thereof, is determined to be contrary to or inconsistent with the provisions of Public Utilities Code section 5870 by subsequent legislative action, judicial decision, or administrative interpretation, then an alternative fee for PEG support obligations may be imposed by ordinance adopted by the City Council.

d. The fee established by this paragraph (A) shall be remitted quarterly to the City Treasurer and must be received not later than 45 days after the end of the preceding calendar quarter. The fee payment shall be accompanied by a summary that describes all sources of the gross revenues upon which the fee is based, which summary must be verified by a responsible financial officer or employee of the video service provider.

B. Franchise Fee.

A state video franchise holder operating in the City shall pay to the City a franchise fee that is equal to 5% of the gross revenues of that state video franchise holder. The term “gross revenues” shall be defined as set forth in Public Utilities Code section 5860.

C. Audit Authority.

Not more than once annually, the City may examine and perform an audit of the business records of a holder of a state video franchise to ensure compliance with all applicable statutes and regulations related to the computation and payment of franchise fees.

D. Customer Service Penalties Under State Video Franchises.

1. The holder of a state video franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.

2. The City shall monitor a state video franchise holder’s compliance with state and federal customer service and protection standards. The City will provide to the state video franchise holder written notice of any material breaches of applicable customer service and protection standards, and will allow the state video franchise holder 30 days from receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following monetary penalties to be imposed by the City in accordance with state law:

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

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

c. For a third or further violation of the same nature within 12 months, a monetary penalty of \$2,500 shall be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.

3. A state video franchise holder may appeal a monetary penalty assessed by the City within 60 days. After relevant evidence and testimony is received, and staff reports are submitted, the City Council will vote to either uphold or vacate the monetary penalty. The City Council's decision on the imposition of a monetary penalty shall be final.

E. City Response to State Video Franchise Applications.

1. Applicants for state video franchises within the boundaries of the City must concurrently provide to the City complete copies of any application or amendments to applications filed with the California Public Utilities Commission. One complete copy must be provided to the City Manager.

2. The City will provide any appropriate comments to the California Public Utilities Commission regarding an application or an amendment to an application for a state video franchise.

F. PEG Access Channel Capacity.

1. A state video franchise holder that uses the public rights-of-way shall designate sufficient capacity on its network to enable the carriage of at least three public, educational, or governmental (PEG) access channels.

2. Additional requirements relating to PEG access channels are as follows:

a. A state video franchise holder is subject to payment of the PEG support fee specified above in paragraph (A).

b. PEG access channels shall be for the exclusive use of the City or its designees to provide public, educational, or governmental programming.

c. Advertising, underwriting, or sponsorship recognition may be carried on the PEG access channels for the purpose of funding PEG-related activities.

d. The PEG access channels shall be carried on the basic service tier.

e. To the extent feasible, the PEG access channels shall not be separated numerically from other channels carried on the basic service tier, and the channel numbers for the PEG access channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law.

f. After the initial designation of PEG access channel numbers, the channel numbers shall not be changed without the prior written consent of the City, unless the change is required by federal law.

g. Each PEG access channel shall be capable of carrying a National Television System Committee (NTSC) television signal.

G. Interconnection.

Where technically feasible, a state video franchise holder and incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG access channel programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. State video franchise holders and incumbent cable operators shall provide interconnection of the PEG access channels on reasonable terms and conditions and may not withhold the interconnection. If a state video franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the City may require the incumbent cable operator to allow the state video franchise holder to interconnect its network with the incumbent's network at a technically feasible point on the holder's network as identified by the holder. If no technically feasible point for interconnection is available, the state video franchise holder shall make an interconnection available to the channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state video franchise holder requesting the interconnection unless otherwise agreed to by the parties.

H. Emergency Alert System and Emergency Overrides.

A state video franchise holder must comply with the Emergency Alert System requirements of the Federal Communications Commission in order that emergency messages may be distributed over the holder's network. Provisions in City-issued franchises authorizing the City to provide local

emergency notifications shall remain in effect, and shall apply to all state video franchise holders in the City for the duration of the City-issued franchise, or until the term of the franchise would have expired had it not been terminated pursuant to subdivision (m) of Section 5840 of the California Public Utilities Code, or until January 1, 2009, whichever is later.

I. Encroachment Permit Applications.

1. As used in this section, the term “encroachment permit” means any permit issued by the City relating to construction or operation of facilities by the holder of a state video franchise.

2. The City shall either approve or deny an application from a holder of a state video franchise for an encroachment permit within 60 days of receiving a completed application.

3. If the City denies an application for an encroachment permit, the City shall, at the time of notifying the applicant of the denial, furnish to the applicant a detailed explanation of the reason for the denial. An applicant may appeal the City’s denial of an encroachment permit application to the City Council. A written notice of appeal stating the facts of the matter and the grounds for appeal shall be filed with the City Clerk within ten days of the denial. The City Clerk shall set the matter for hearing at a regular meeting of the City Council and shall give the appellant written notice of the time and place of hearing at least five days before the hearing. The decision of the City Council taken after the appellant has had an opportunity to be heard will be final.

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## Chapter 6.15 Pipelines

### § 6.15.005 Definitions.

For the purpose of this chapter, the following words and phrases have the meaning set forth below. The city and a franchisee may incorporate into a franchise agreement definitions that differ from or augment those set forth in this section.

- A. Director: director of public works/city engineer.
- B. Facilities: all property of the franchisee that is erected or maintained in, upon, over, under, along or across any street pursuant to a pipeline franchise. "Facilities" includes without limitation appurtenances, pipelines, pump stations and service connections with the franchisee's facilities.
- C. Franchisee: the person to whom a pipeline franchise is awarded, and any person to whom such franchise is lawfully assigned.
- D. Franchise Payment Period: (i) the period between the effective date of the ordinance awarding the pipeline franchise and December 31st of that calendar year; and (ii) each calendar year thereafter during the term of the pipeline franchise.
- E. Franchise Report Period: (i) the period between the effective date of the ordinance awarding the pipeline franchise and December 31st of that calendar year; and (ii) each calendar year thereafter during the term of the pipeline franchise.
- F. Main: any pipeline or conduit laid in, along, or approximately parallel with any street for the collection, transmission or distribution of any substance or commodity.
- G. Major Street: any street or portion thereof designated as a major or primary arterial highway in the circulation element of the Seal Beach General Plan.
- H. Minor Street: all streets in the city other that are not a major street.
- I. Pipeline Franchise: a franchise to lay or construct from time to time, and to maintain, operate, renew, repair, change the size of, remove or abandon in place pipes and pipelines for the collection, transportation or distribution of oil, gas, gasoline, petroleum, wet gas, mud, steam and other liquid substances not more hazardous than the aforesaid substances, together with all

manholes, valves, appurtenances and service connections necessary or convenient for the operation of such pipes or pipelines including conduits, cathodic protection devices, wires, cables and other appurtenances necessary or convenient for the exercise of the franchisee's business, in, under, along or across any and all streets within the city as approved from time to time by city council resolution.

J. Service connection: means the wire, pipes or conduits connecting a main located in a street to the building or place on private property.

K. Street: any street, road, highway, alley, lane or other public easement in which the city may grant a pipeline franchise.

#### **§ 6.15.010 General Conditions.**

Every pipeline franchise awarded by the city shall be subject to the provisions of this chapter except as expressly provided in the ordinance awarding the franchise.

#### **§ 6.15.015 Above-Ground Facilities.**

Nothing in this chapter, or in any ordinance awarding a pipeline franchise, shall be construed to permit the franchisee to construct new facilities above ground.

#### **§ 6.15.020 Franchise Acceptance.**

Within 30 days after enactment of the ordinance awarding the pipeline franchise, the franchisee shall file with the city clerk and the director a written acceptance of the terms of the franchise.

#### **§ 6.15.025 Non-exclusive Franchise.**

The award of a pipeline franchise shall not preclude the city council from awarding an identical or similar pipeline franchise to any other person.

#### **§ 6.15.030 Change in Status.**

If any non-public utility franchisee should qualify before the California Public Utilities Commission as a common carrier during the term of the franchise, then the franchisee shall have no right to continue to operate under the franchise after the qualification date except as approved by the city council.



**§ 6.10.035 Maps.**

Within 90 days after any facilities have been laid, removed or abandoned under a franchise, the franchisee shall file maps with the director showing the accurate “as built” location, depth and size of such facilities.

**§ 6.15.040 Insurance.**

A. Requirement. On or before commencement of any franchise operations, the franchisee shall submit to the city manager certificates confirming the procurement of liability and workers’ compensation insurance in accordance with this section from companies authorized to transact business in the state. Franchise operations shall cease during any period that the franchisee fails to maintain such insurance in full force and effect. The insurance policies shall be noncancellable without 30 days advance written notice to the city manager.

B. Liability Insurance. The policy of liability insurance shall:

1. Be issued by an insurer with a current rating A.M. Best’s rating of A:VII or better.
2. Name the city and its officers, agents and employees as additional insureds.
3. Be primary and provide that any insurance maintained by the city shall be excess insurance.
4. Indemnify for all liability for personal and bodily injury, death and damage to property arising from activities conducted in connection with the franchise.
5. Provide coverage for:
  - a. Negligent acts or omissions of the franchisee and the agents, servants and employees thereof, committed in the conduct of franchise operations.
  - b. Provide a combined single limit liability insurance of at least \$10,000,000.

C. Workers’ Compensation Insurance. The policy of workers’ compensation insurance shall:

1. Be approved by the California Insurance Commissioner as to substance and form.

2. Cover all franchisee employees who perform work on the franchise operations.

**§ 6.15.045 Faithful Performance Bond.**

On or before the effective date of the ordinance awarding the franchise, the franchisee shall file with the city manager and shall thereafter maintain a faithful performance bond in the amount of \$10,000. Such bond shall be subject to the city attorney's approval as to form and shall be with a surety approved by the director.

**§ 6.15.050 Length.**

Whenever the length of any wire, pipe or conduit is a factor in calculating any payment due under a franchise, all service connections shall be excluded in determining such lengths.

**§ 6.15.055 Forfeiture.**

The terms and conditions of franchises shall be strictly construed against the franchisee. Any neglect, failure or refusal to comply with such terms and conditions shall constitute grounds for suspension or forfeiture of the franchise. Prior to suspending or deeming a franchise forfeited, the city council shall afford the franchisee no less than 30 days written notice of default. If the franchisee does not commence compliance within such period, or does not prosecute the work to completion with due diligence, the city council may thereafter suspend the franchise or deem it forfeited. Prior to taking such action, the city council shall hold a hearing, written notice of which shall be given to the franchisee at least 5 days in advance.

**§ 6.15.060 State Highways.**

Except for such rights as by law remain with the city, if any street or portion thereof becomes a state highway during the franchise term, then the state shall succeed to all rights reserved to the city by the franchise.

**§ 6.15.065 Processing Costs.**

Franchisees shall reimburse the city for all costs incurred by the city in processing the franchise including without limitation: staff costs; attorney's fees; and publication costs. Payment shall be tendered within 30 days of receipt of an invoice from the city.

**§ 6.15.070 Franchise Assignment.**

Franchisees shall not sell, transfer, assign or lease their franchise or any part thereof without the prior approval of the city council. As a condition of approving a franchise sale, assignment or lease, the city council may impose such additional terms and conditions as deemed in the public interest.

**§ 6.15.075 Indemnification.**

Franchisees shall indemnify, defend and hold harmless the city and its officers, employees and agents against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies that the city shall incur or suffer as a result of the franchisee's operations. Such obligation shall include payment of interest, penalties and attorneys fees.

**§ 6.15.080 Conflicting Improvements.**

If the city or any other public entity constructs or maintains a storm drain, sewer structure or other improvement under or across any facility of a franchisee, then the franchisee shall at its sole expense provide such support as is necessary for the preservation of the franchisee's facility.

**§ 6.15.085 Relocation.**

Franchisees shall be responsible for relocating at their sole expense any franchise facilities that must be moved to accommodate a public improvement project by the city or another public entity. If a franchisee fails to perform such relocation after reasonable notice, then the city or other public entity may cause the work to be performed and may bill the cost therefore to the franchisee. The franchisee shall reimburse such cost and shall indemnify the city or other public entity against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies that the city shall incur or suffer as a result of the relocation.

**§ 6.15.090 Defective Facilities.**

If any street or portion thereof shall be damaged by reason of defective facilities of a franchisee, then the franchisee shall at its sole expense repair such street or portion thereof to the satisfaction of the director. If a franchisee fails to commence such work within 10 days of written notice from the city, or fails to prosecute the work to completion with due diligence, then the city may cause the work to be performed at the franchisee's expense. In the event defective facilities of a franchisee result in an immediate danger to the public health, safety or welfare, the city may immediately repair the damage at the franchisee's expense.

### **§ 6.15.095 Hazardous Substances.**

Franchisees shall obtain director approval prior to the issuance of an excavation permit for a pipeline to be used for transmission of flammable liquids or gases heavier than air. The city manager shall withhold approval unless a finding can be made that the proposed pipeline will not create an undue fire hazard. To make such a determination, the city manager shall consider the following:

- A. Type of commodity to be transmitted.
- B. Population density in the area of the pipeline.
- C. Adequacy of water supplies for fire control.
- D. Extent of available fire protection facilities.
- E. Number and location of shut-off valves in the pipeline.

### **§ 6.15.100 Franchise Fees.**

A. Public Utilities. Public utility franchisees shall pay to the city in lawful United States currency 2% of the franchisee's gross annual receipts arising from the use, operation or possession of the franchise; provided, however, that such payment shall in no event be less than 1% of the gross annual receipts derived by the franchisee from the sale within the city of the franchisee's utility service.

B. Nonpublic Utilities. Nonpublic utility franchisees shall pay to the city in lawful United States currency one of the following fees:

- 1. 4% of the franchisee's gross annual receipts arising from the use, operation or possession of the franchise.
- 2. 4% of the annual royalty paid by the franchisee to the state in connection with the operation of gathering lines used to extract oil, gas or other minerals from state-owned tidelands or submerged lands. This fee shall only apply if the following conditions are satisfied: (i) the franchise involves only gathering lines and (ii) no revenues are derived from the use, operation or possession of such gathering lines.
- 3. An amount based upon the size and length of the pipeline calculated as follows:

<u>Pipelines With an Internal Diameter of</u>	<u>Amount per Linear Foot</u>
0-4" .....	12¢
6" .....	16¢
8" .....	22¢
10" .....	25¢
12" .....	30¢
14" .....	35¢
16" .....	40¢
18" .....	50¢
20" .....	55¢
22" .....	60¢
24" .....	70¢
26" .....	75¢
28" .....	80¢
30" .....	85¢

The rate applicable to pipelines with an internal diameter falling between incremental size categories shall be determined by adding the price corresponding to the lower size to a figure computed by multiplying the difference between the higher and lower prices times the multiplier. The multiplier shall be determined by dividing the difference between the categories. In determining the number of feet of pipeline upon which the annual fee will be computed, the greatest number of feet of pipeline covered by the franchise during the franchise payment period shall be used. A penalty at the rate of 10% per month or fraction thereof shall be charged but in no event shall such penalty exceed 50%.

C. Base Construction Charges. At the time of installation, relocation or replacement of any pipeline or other facility covered by the franchise, the franchisee shall pay a base construction charge of \$2,350 per ½ mile of pipeline or fractional part thereof on major streets and \$1,550 per ½ mile or fractional part thereof on minor streets.

D. Adjustments. The amount of each base fee shall be revised at the time payment is due in accordance with the following formula:

1. If 90 days prior to the due date the Consumer Price Index for all Urban Consumers, Los Angeles-Long Beach-Anaheim area (1967 equals 100.00) prepared by the United States Bureau of Labor Statistics, Department of Labor shall stand at a level different than the base level, then the rate of payment shall vary in direct proportion as such Index has increased or decreased from the base level. For purpose of this provision, "base level" means the level of the Index on December 31, 1984.

2. If the Bureau should discontinue the preparation of the Index using prices prevailing during the year 1967 as the base 100 and if no transposition table is available, then the amount of each payment shall be computed by using the most nearly comparable successor index.

3. In no event shall any fee less than the base fees established by paragraph B(1) and C be charged.

E. Proration of Payments. In the event the initial franchise payment period is less than one year, or in the event of abandonment or removal of facilities during a franchise payment period, the franchise fee shall be prorated for that period. Proration shall be based as of the end of the calendar month in which the franchise is granted or the facilities are abandoned or removed.

F. Records. Franchisees shall maintain all records necessary to determine the franchise fee amount for at least 5 years following the end of the franchise payment period. At all reasonable times a franchisee shall permit city representatives to examine all property of the franchisee utilized in connection with the franchise, and to examine the franchisee's records related to the franchise. The franchisee shall make the records available at a location within the county.

#### **§ 6.15.105 Emergency Equipment.**

Franchisees shall maintain during the franchise term adequate emergency equipment, with a properly trained crew, on a 24 hour per day basis. Such equipment and crew shall be located within a 25 mile radius of the franchisee's facilities in the city and shall be capable of shutting of the facilities.

#### **§ 6.15.110 Franchise Expiration.**

A. Within 30 days of the expiration, revocation or termination of a franchise, the franchisee shall submit a written application to the director for authority to either (i) abandon in place all or a portion of the franchise facilities; or (ii) remove all or a portion of the franchise facilities. The director may approve, conditionally approve or deny such application as deemed appropriate for the public interest.

B. In the event a franchisee shall fail to comply with the terms and conditions of an abandonment or removal, or shall fail to prosecute such work to completion with due diligence, the city may cause the work to be performed at the franchisee's expense.

C. All facilities abandoned in place by a franchisee shall be removed at the franchisee's expense at any time the city should determine that the facilities interfere with a proposed public improvement project.

### **§ 6.15.115 Oil Pipelines.**

A. Materials Used. All pipelines used or to be used for transportation of oil, gas, gasoline, petroleum, wet gas, hydrocarbon substances or other flammable liquid shall be first class and standard material as set forth by current American Petroleum Institute pipelines specifications.

B. Approvals. On any pipeline laid pursuant to the franchise, the location and installation of flush valve connections shall be subject to the approval of the director. The director shall consider the availability of adequate water supplies, the commodity transmitted in the line and the location of control valves when making such determination.

C. Reports. Within 90 days after the expiration of each franchise payment period, the franchisee shall:

1. File with the director of finance 2 copies of a verified report showing for the immediately preceding franchise payment period the franchisee's total gross receipts attributable to the franchise. Such report shall be accompanied by any additional data requested by the director to enable calculation of the annual payment owed by the franchisee.

2. File with the director of finance a report in triplicate showing the permit number for each permit obtained for the installation of new mains during the immediately preceding franchise payment period. Such report shall indicate: the length and size of the mains; any change in the franchise footage since the last franchise payment period; and any footage of mains in territory annexed or incorporated since the last franchise payment period. The report shall specify new mains laid, old mains removed and old mains abandoned in place.

D. Payment Due. Except as otherwise provided by law, the payments shall accrue from the respective dates of installation whether before or after the effective date of the ordinance awarding the franchise. Such payments, together with the initial construction charge if any, shall be due and payable annually.

E. Non-applicability. Paragraphs B through D of this section do not apply to public utilities.

### **§ 6.15.120 Public Utilities.**

The requirements of this section shall apply only to public utility franchisees.

A. Within 90 days after the expiration of each franchise payment period, the franchisee shall file with the director of finance 2 copies of a verified

report showing the franchise's total gross receipts attributable to the franchise for such period. The report shall include any additional data deemed necessary by the director of finance for verification of the franchise payment amount.

B. Within 90 days after the expiration of each franchise report period, the franchisee shall file with the director of finance a report in triplicate. Such report shall indicate the (i) permit number for each permit obtained during the report period to install new mains; and (ii) the length and size of such mains. Such report also shall indicate any change since the previous report in the franchise footage, which shall be segregated as to new mains laid, old mains removed, old mains abandoned in place and existing mains in newly annexed property.

C. Public utility franchisees agree, by accepting the terms of the franchise, that in any proceeding for adjusting franchisee's rates no greater value shall be placed upon the franchise than the actual cash paid by the franchisee.

**§ 6.15.125 Gas Pipelines.**

The requirements of this section shall apply only to franchisees operating gas pipelines.

A. The franchisee shall have the right, subject to the terms and conditions of its franchise, to make service connections with all property in the city adjoining streets and to furnish and distribute gas through its pipelines to all territory in the city adjacent to the pipelines.

B. On all pipelines laid pursuant to a franchise and carrying gas heavier than air, the director shall approve the placement of flush valve connection in the line. The availability of adequate water supplies, the commodities transmitted in the line and the location of control valves shall be considered when making such determination. Flush valve connections shall be installed in the manner prescribed by the director.

\* \* \* \* \*



## Chapter 6.20 Solid Waste and Recyclables

### § 6.20.005 Purpose.

The purpose of this chapter is to set forth terms and conditions pursuant to which city council authorization may be granted for the provision of solid waste and recyclables collection services. This chapter also is intended to promote the public health, safety and welfare by establishing reasonable regulations relating to the accumulation, collection, processing and disposal of solid waste and recyclables.

### § 6.20.010 Definitions.

For the purpose of this chapter, the following words and phrases have the meaning set forth below. The city and a collector may incorporate into a collection agreement definitions that differ from or augment those set forth in this section.

A. Bulky Waste: oversized or overweight household articles that have weights, volumes or dimensions exceeding the capacity of containers for residential premises. "Bulky waste" includes without limitation: stoves; freon free refrigerators; water heaters; washing machines; furniture; sofas; mattresses; box springs; large rugs; and landscaping debris.

B. Collection: gathering of solid waste and recyclables within the city and transportation of such matter to the point of disposal or processing.

C. Collection Agreement: an agreement between the city and a solid waste enterprise for the provision of solid waste and recyclables collection services in the city.

D. Collection Permit: a permit authorizing collection of solid waste and recyclables that are not subject to collection pursuant to a collection agreement.

E. Collector: a solid waste enterprise operating under the provisions of a collection agreement or a collection permit.

F. Collector Fee: the fee paid to the city by a collector.

G. Commercial/Industrial Owner: a person owning or occupying commercial/industrial premises.

H. Commercial/Industrial Premises: occupied real property in the city other than residential premises and property occupied by public agencies that are exempt from the requirement of utilizing a collector.

I. Construction and Demolition Site: real property in the city on which construction and demolition waste is generated.

J. Construction and Demolition Waste: non-putrescible solid waste generated from construction or demolition of a building or structure. "Construction and demolition waste" does not include liquid waste, hazardous waste or medical and infectious waste.

K. Container: any bin, box, cart or similar device provided by a collector to residential premises or commercial/industrial premises for the storage and movement of solid waste or recyclables to the point of collection by the collector.

L. Disposal: treatment and disposal of solid waste after collection.

M. Fee: includes rate, fee and charge.

N. Green Waste: solid waste consisting of leaves, grass clippings, brush, branches and other forms of organic materials generated from landscapes or gardens.

O. Hazardous Waste: as set forth in 14 California Code of Regulations Section 17225.32.

P. Holiday: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day. "Holiday" also means any other day designated as a holiday by city council resolution, collection agreement or collection permit.

Q. Household Hazardous Waste: as set forth in 14 California Code of Regulations Section 18502.

R. Landscaping Debris: green waste that does not fit into a standard container for residential premises green waste.

S. Medical and Infectious Waste: biomedical waste generated at hospitals, medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and similar establishments.

T. Mobile home: as set forth in Health and Safety Code Section 18200.

U. Mobile home Park: a site at which mobile home spaces are provided for residential use.

V. Multi-family Residence: a building or structure, or portion thereof, that is used for residential purposes and contains 5 or more distinct living units. "Multi-family residence" includes mobile home park.

W. Processing: the reduction, separation, recovery and conversion of solid waste.

X. Public Agency: a governmental agency or department thereof.

Y. Recyclables: those materials designated by city council resolution, collection agreement or collection permit as suitable for recycling.

Z. Recycling: collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become solid waste, and returning such matter to the economic mainstream in the form of raw material for new, reused or reconstituted products. "Recycling" does not include transformation as defined in Public Resources Code Section 40201.

AA. Residential Householder: any person holding or occupying residential premises in the city.

BB. Residential Premises: (i) any building or structure, or portion thereof, that is used for residential housing purposes and contains 4 or less distinct living units; and (ii) any multi-family residence that, with the prior written approval of the city manager, receives solid waste and recyclables collection services using standard containers for residential premises.

CC. Resource Recovery: use of solid waste in a manner not involving landfill disposal. "Resource recovery" includes without limitation: transformation; composting; and multi-material recycling.

DD. Solid Waste: all putrescible and non-putrescible solid, semisolid, and liquid wastes. "Solid waste" includes without limitation: garbage; trash; refuse; paper; rubbish; ashes; industrial wastes; construction and demolition waste; discarded home appliances; dewatered, treated, or chemically fixed sewage sludge that is not a hazardous waste; manure; green waste; vegetable or animal solid and semisolid wastes; special wastes; and other discarded solid and semisolid wastes. "Solid waste" does not include hazardous waste or medical and infectious waste.

EE. Solid Waste and Recyclables Collection Services: collection, storage and transfer of solid waste and recyclables to the point of disposal or processing.

FF. Solid Waste Enterprise: an individual, partnership, joint venture, unincorporated private organization, or private corporation regularly engaged in the business of providing solid waste and recyclables collection services.

GG. Source Separated Recyclables: recyclables separated by a commercial/industrial owner from solid waste generated at the owner's commercial/industrial premises.

HH. Special Items: any bulky or heavy objects that require bin service and are not bulky waste. "Special items" includes without limitation: dirt; sod; brick; manure; poultry yard or stable waste; and construction and demolition waste.

II. Special Wastes: includes flammable waste; waste transported in a bulk tanker; liquid waste; sewage sludge; pollution control process waste; residue and debris from the cleanup of a spill or release of chemical substances or any other special wastes; contaminated soil, waste, residue, debris and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of any other special wastes; dead animals; waste water; explosive substances; radioactive substances; industrial appliances; and abandoned vehicles and parts thereof.

JJ. Vacant Property: real property that is not occupied by any person for a period of 30 days or more.

#### **§ 6.20.015 Collection Agreement Requirement.**

A. Except as specifically provided in this chapter, no person shall collect or dispose of solid waste or recyclables in the city unless that person has entered into a collection agreement with the city. Collectors operating in the city on the effective date of this chapter under a collection permit or a collection agreement may continue to operate until the rights thereunder are terminated or revoked, or until such rights expire pursuant to the provisions of Public Resources Code Section 49520.

B. With or without competitive bidding, the city council may approve collection agreements authorizing solid waste enterprises to provide solid waste and recyclables collection services for residential premises and commercial/industrial premises. In the sole discretion of the city council, the solid waste and recyclables collection services may be authorized on an exclusive or non-exclusive basis, and may relate to any class or type of solid waste within all or any part of the city.

**§ 6.20.020 Collection Permit.**

The city council may approve collection permits authorizing collection of such solid waste and recyclables as are not subject to collection pursuant to a collection agreement.

**§ 6.20.025 Collector Fee.**

Each collector shall pay a collector fee in an amount determined by city council resolution or by collection agreement.

**§ 6.20.030 Conflict Resolution.**

In the event of any conflict between the provisions of a collection agreement and the provisions of this chapter, the provisions of the collection agreement shall control.

**§ 6.20.035 Permits and Licenses.**

Collectors shall obtain and maintain at all times during their operations a city business license and applicable permits and licenses required by any public agency having jurisdiction.

**§ 6.20.040 Transfer of Collection Agreement or Collection Permit.**

No collection agreement or collection permit shall be transferred, delegated, sublet, subcontracted or assigned to another person without the prior approval of the city council. This restriction includes the transfer of ownership or control in the collector, as well as the transfer to another person of 30% or more of the collector's stock.

**§ 6.20.045 Urgency Disciplinary Action.**

Without a hearing, the city manager may suspend a collection agreement or collection permit for not more than 60 days upon making a finding that continued operation by the collector will constitute an immediate threat to the public health, safety, or general welfare.

**§ 6.20.050 Non-Urgency Disciplinary Action.**

A. After a hearing, the city manager may suspend or revoke a collection agreement or collection permit upon making a finding that the collector has violated the terms of the agreement or permit, or a provision of this chapter, or any other applicable law.

B. The city clerk shall give the collector written notice of the hearing, and the reasons for the proposed suspension or revocation, at least 15 days in advance. Any decision by the city manager to suspend or revoke a collection agreement or collection permit shall be made in writing and shall be supported by findings. The city clerk shall transmit a copy of the city manager's decision to the collector.

**§ 6.20.055 Appeals.**

Decisions of the city manager to suspend or revoke a collection agreement or collection permit shall be subject to the administrative review procedure of chapter 1.20 of this code. The city council shall be the hearing officer for the purposes of such procedure.

**§ 6.20.060 Fee Limits.**

The city council may limit the fees that collectors charge for the collection of solid waste and recyclables in the city. Such limits may be imposed by resolution, as a term of a collection agreement or as a condition of a collection permit approval. No collector shall charge a fee that is greater than the maximum permitted by the city council.

**§ 6.20.065 Billing and Collection of Fees.**

A. The billing and collection of the fees imposed by collectors for solid waste and recyclables collection services at commercial/industrial premises shall be the sole responsibility of the collector. Every commercial/industrial owner shall pay the collector the applicable fees for solid waste and recyclables collection services.

B. The billing and collection of fees imposed by collectors for solid waste and recyclables collection services at residential premises shall be the responsibility of the city. The city may collect such fees by causing the fees to be placed on the county tax rolls through procedures established by the county tax collector. Collectors shall not directly charge residential householders except as expressly authorized by the city council. Charges for solid waste and collection services billed by the city shall be billed on the same bill and to the same ownership as the water bill for each property whenever possible.

C. Liability for Payment. The occupants of each place or premises shall be liable for payment of applicable fees set forth in this chapter. To the extent allowed by state law, in the event an occupant should fail to pay any such fee prior to delinquency, the owner of the place or premises shall be liable for the payment.

**§ 6.20.070 Collection Vehicles – License and Fee Requirements.**

No person may operate any vehicle for the collection of solid waste or recyclables in the city other than a collector who has a valid business license and has paid applicable city fees.

**§ 6.20.075 Collection Vehicles - Standards.**

Each vehicle utilized for the collection, transportation or disposal of solid waste or recyclables in the city shall comply with the following standards:

- A. The vehicle shall be constructed and used so that no solid waste, recyclables, oil, grease or other substance will blow, fall or leak out of the vehicle.
- B. A broom and shovel shall be carried on the vehicle at all times.
- C. The vehicle shall be under 7 years of age unless specifically authorized in writing by the city manager.
- D. The vehicle shall be inspected annually by the California Highway Patrol and certificates for the inspection shall be filed with the city manager.
- E. The vehicle shall be kept clean and sanitary, in good repair and well and uniformly painted to the satisfaction of the city manager.
- F. The vehicle shall be equipped with a watertight body fitted with a close-fitting metal cover.
- G. The sides of the vehicle shall contain in conspicuous letters not less than 5 inches in height: the collector's name; the collector's telephone number; and the vehicle identification number.
- H. If the vehicle is 80 inches or wider, then it shall be equipped with high intensity fog lamps consisting of 2 red tail lamps in addition to the standard tail lamps. Such fog lamps shall be utilized when visibility is less than 50 feet.
- I. All vehicle equipment shall be maintained at all times in a manner to prevent unnecessary noise during its operation.
- J. As existing equipment on the vehicle is replaced, the collector shall obtain the city manager's prior approval of the type and make of the new equipment.

**§ 6.20.080 Operation of Equipment.**

All persons operating equipment for the collection or transportation of solid waste or recyclables shall do so in a manner that prevents undue interference with normal traffic flows. No such vehicle shall be parked or left unattended on the public streets.

**§ 6.20.085 Gardener's Exclusion.**

No provision of this chapter shall prevent a gardener, tree trimmer or person engaged in a similar trade from collecting and disposing of green waste when incidental to providing such gardening, tree trimming or similar services.

**§ 6.20.090 Commercial/Industrial Exclusion.**

A. Source Separated Recyclables.

1. No provision of this chapter shall prevent a commercial/industrial owner from selling or donating source separated recyclables provided that both of the following conditions are satisfied: (i) the buyer or recipient is not engaged in the business of collecting solid waste or recyclables for a fee; and (ii) no such material is transported for disposition to a landfill or transfer station.

2. No provision of this chapter shall prevent a recycler, junk dealer or similar enterprise from buying source separated recyclables and removing and transporting such materials to a destination for marketing provided that the following conditions are satisfied: (i) such buyer is not engaged in the business of collecting solid waste or recyclables for a fee; (ii) such buyer has obtained prior authorization from the city as required by this code; and (iii) no such material is transported for disposition to a landfill or transfer station.

B. In-House Recycling Programs. No provision of this chapter shall prevent a commercial/industrial owner from utilizing its own recycling or resource recovery program for recyclables generated by the owner's business provided that such program does not involve use of a solid waste enterprise. The recyclables included in any such program are excepted from collection agreements awarded by the city.

C. Renovation, Rebuilding, Repairs. No provision of this chapter shall prevent a commercial/industrial owner from arranging for defective business equipment to be picked up, restored and returned. Nor shall any provision of this chapter prevent any person engaged in the business of restoring such equipment from picking up, transporting or returning such equipment in connection with a repair or service contract.



**§ 6.20.095 Contractor Exclusion.**

No provision of this chapter shall prevent a person contracted to demolish or reconstruct a building, structure or pavement from doing either of the following: (i) marketing items salvaged from the construction and demolition waste; or (ii) causing such salvage items to be transported from the construction and demolition site pursuant to the provisions of the contract. This exclusion does not allow use of a non-collector subcontractor to transport such salvage items.

**§ 6.20.100 Document Destruction Service Exclusion.**

No provision of this chapter shall prevent any person engaged in the business of disposing of confidential documents from transporting or disposing of such documents by shredding, lumping, incinerating or other means as a part of the document destruction or disposal service.

**§ 6.20.105 Self-Haul Exclusion.**

A. Occasional Hauling. No provision of this chapter shall prevent commercial/industrial owners or residential householders from collecting and disposing of occasional loads of solid waste generated in or on their premises, or from composting green waste, or from selling or disposing of recyclables generated in or on their premises. Notwithstanding the preceding, no commercial/industrial owner or residential householder shall employ or engage any non-collector solid waste enterprise to haul or transport such materials to a transfer station or landfill.

B. Regular Hauling. Nothing in this chapter shall prevent a commercial/industrial owner or residential householder from, on a regular basis and without utilizing a collector, collecting and disposing of solid waste generated in or on its premises provided that the following conditions are satisfied: (i) a self-haul permit has been obtained from the city; and (ii) no such material is transported to a landfill or a transfer station by a non-collector solid waste enterprise. The city council may approve self-haul permits upon making a finding that approval will not be detrimental to the public health, safety or general welfare. The city council may by resolution establish procedures to govern self-hauling.

**§ 6.20.110 Effect of Exclusion on Fee Obligations.**

Except as set forth in this section, exercise of an exclusion afforded by this chapter does not eliminate the obligation to pay a collector the minimum fee for available solid waste and recyclables collection services that are not utilized. The following categories of persons shall be exempt from the obligation of paying a collector any fee for available solid waste and recyclables collection services that are not utilized:

1. Persons who have a valid self-haul permit.
2. Owners of vacant property.

**§ 6.20.115 Mandatory Service.**

A. Subject to the exclusions set forth in this chapter, all solid waste and recyclables collected from residential premises or commercial/industrial premises for a fee shall be collected by a collector.

B. Except as expressly allowed by this chapter, no solid waste enterprise that is not a collector shall contract for or provide, within the city, solid waste and recyclables collection services for a fee.

C. Except as expressly allowed by this chapter, each residential householder and commercial/industrial owner shall utilize the services of a collector for solid waste and recyclables collection services and shall pay for such services the fees set by the collector and authorized by the city council.

**§ 6.20.120 Litter.**

Publicly patronized establishments shall provide, empty and maintain adequate containers for public deposit of solid waste generated by the public as a result of patronization.

**§ 6.20.125 Transfer of Loads on Public Streets.**

No collector shall transfer solid waste or recyclables from a collection vehicle to another on any public street unless such transfer either is approved by the city manager or is necessary because of mechanical failure or accidental damage to a vehicle.

**§ 6.20.130 Unauthorized Removal from Containers.**

No person other than a collector shall remove solid waste or recyclables from a container. This prohibition shall not apply to the owner or occupant of the property served by such container or to city employees engaged in the discharge of official duties.

**§ 6.20.135 Collection Hours.**

A. In residential areas and commercial/industrial areas contiguous to residential premises, no solid waste and recyclables collection services shall be performed between the hours of 6:00 p.m. and 7:00 a.m. Monday through Saturday or at any time on Sunday.

B. In commercial/industrial areas not contiguous to residential premises, no solid waste and recyclables collection services shall be performed between the hours of 6:00 p.m. and 5:00 a.m. Monday through Saturday or at any time on Sunday.

C. The city manager may waive the hours restrictions set forth in this section when necessitated by conditions beyond the control of the collector.

**§ 6.20.140 Ownership.**

At such time as solid waste and recyclables are placed for collection at the designated point of collection, ownership of such matter vests in the collector.

**§ 6.20.145 Disposal.**

No person shall burn, bury, dump or otherwise dispose of any solid waste or recyclables within the city.

**§ 6.20.150 Trespass.**

No collector shall enter on private property beyond the extent necessary to collect the solid waste or recyclables properly placed for collection, or beyond the extent necessary to provide any agreed upon special collection service.

**§ 6.20.155 Reports.**

A. Collectors shall provide the city manager with reports to the extent required by the applicable collection agreement or collection permit. An officer of the collector shall sign each report. Collectors shall maintain, and upon request shall provide the city manager, the following: copies of waste disposal and recycling facility invoices that indicate the net amount of all waste disposed, transferred or recycled during each month that collection services are provided.

B. Collectors annually shall submit to the city manager a report detailing the quantity and nature of all solid waste or recyclables removed from the city. The report shall include the following information: the facilities to which solid waste and recyclables were transported; a compilation of monthly tonnage reports; copies of tipping receipts; and a customer list that identifies the name and address of each customer in the city receiving service from the collector. The report shall be delivered on or before January 31st of each year for the immediately preceding calendar year.

**§ 6.20.160 Insurance.**

A. Requirement. On or before commencement of any collection operations, collectors shall submit to the city manager certificates confirming the procurement of liability and workers' compensation insurance in accordance with this section from companies authorized to transact business in the state. Collection operations shall cease during any period that the franchisee fails to maintain such insurance in full force and effect. The insurance policies shall be non-cancellable without 30 days advance written notice to the city manager.

B. Liability Insurance. The policy of liability insurance shall:

1. Be issued by an insurer with a current rating A.M. Best's rating of A:VII or better.
2. Name the city and its officers, agents and employees as additional insureds.
3. Be primary and provide that any insurance maintained by the city shall be excess insurance.
4. Indemnify for all liability for personal and bodily injury, death and damage to property arising from activities conducted in connection with the franchise.
5. Provide coverage for:
  - a. Negligent acts or omissions of the franchisee and the agents, servants and employees thereof, committed in the conduct of franchise operations.
  - b. Provide a combined single limit liability insurance of at least \$10,000,000.

C. Workers' Compensation Insurance. The policy of workers' compensation insurance shall:

1. Be approved by the California Insurance Commissioner as to substance and form.
2. Cover all franchisee employees who perform work on the franchise operations.

**§ 6.20.165 Indemnification.**

Each collector shall indemnify, defend, and hold harmless the city and its officers, employees and agents against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies that the city shall incur or suffer as a result of the collector's solid waste and recyclables services. Such obligation shall include payment of interest, penalties and attorney's fees.

**§ 6.20.170 Construction and Demolition Sites.** (Ord No. 1578)

A. All owners, builders and demolition contractors shall maintain their construction and demolition sites in a clean, safe and aesthetic manner and free of any solid waste.

B. Any collector may collect construction and demolition waste. The collector must comply with all provisions of Title 9, Public Property, Public Works and Building Regulations, Chapter 9.65, Recycling and Diversion of Construction and Demolition Waste.

**§ 6.20.175 Accumulation of Solid Waste Declared Nuisance.**

The accumulation of solid waste by any person beyond the period of 1 week or in any manner other than as specified in this chapter is hereby declared to be a nuisance. The city council shall by separate ordinance provide for the summary abatement of such nuisances.

**§ 6.20.180 Unauthorized Containers.** (Ord No. 1578)

No cardboard box or paper or plastic bag may be used as a receptacle for solid waste or recyclables. Except as expressly authorized by this Chapter, no person other than a collector may place a container or other receptacle for the collection of solid waste or recyclables within the City. The City shall have the authority to impound: (1) containers owned or leased by, or otherwise under the control of, non-franchised or unauthorized collectors and other persons; and (2) containers that are not properly identified pursuant to Section 6.20.225.B.1. The City may impound such containers anywhere in the City using any means available and may deliver such containers to an impound facility of its choosing. The City shall arrange to have the solid waste present in such containers delivered to a material recovery facility, recycling facility, or other facility of its choosing. In order to retrieve such containers from impound, the owner or an authorized representative of the owner of said containers must first reimburse the City for any and all expenses the City incurs related to this enforcement action, including but not limited to disposal fees. The owner or authorized representative of the owner of said containers may then retrieve said containers from the impound facility operator after paying the operator any retrieval fees. In the City's sole

discretion, the owner of said containers shall also be subject to any other penalty authorized by this Chapter.

**§ 6.20.185 Interference with Collection.**

No person shall interfere with collection and disposal of solid waste or recyclables by a collector.

**§ 6.20.190 Residential Collection – Frequency.**

Unless otherwise approved by the city council, collection of solid waste and recyclables from residential premises shall take place no less than once each calendar week in accordance with a schedule approved by the city council.

**§ 6.20.195 Residential Collection – Provision of Containers.**

Collectors shall provide standard residential solid waste, recyclables, and green waste containers to each residential householder.

**§ 6.20.200 Residential Collection - Placement and Removal of Containers.**

Every residential householder shall place each solid waste, recyclables, and green waste container for collection at the curb in front of its premises, or at the curb at the side of the premises where the premises are adjacent to multiple streets. No person shall place any such container for collection earlier than sunset of the day preceding the day designated for collection, and all containers shall be removed from the place of collection prior to 10:00 p.m. of the day the containers have been emptied. Such containers shall be removed to a storage location not visible from any public right-of-way, excluding alleys. Violation of this section shall constitute an infraction.

**§ 6.20.205 Residential Collection - Care of Containers.**

Upon collection, all solid waste, recyclables, and green waste containers shall be replaced in an upright position, at the location where found by the collector.

**§ 6.20.210 Residential Collection - Special Collection Services.**

Upon request of a residential householder, collectors shall provide special collection of solid waste, bulky waste and special items. Such special collection shall be performed at time agreed upon by the collector and the person requesting the service; provided, however, that if no agreement is reached, then the service shall performed at the time designated by the city manager. Such special collection may include carry-out service, or any other service beyond that required by this chapter, collection agreement or collection permit.

**§ 6.20.215 Residential Collection – Encroachment Permit.**

Any residential householder receiving temporary service for collection of special items shall obtain an encroachment permit from the city prior to placing any container for special items in a public right-of-way.

**§ 6.20.220 Commercial/Industrial Collection – Frequency.**

Collectors shall collect solid waste from commercial/industrial premises not less than once per week. In no event shall such collection schedule permit the accumulation of solid waste in quantities detrimental to public health or safety. The city manager may adjust the frequency of collection and size or number of containers if necessary to maintain public health.

**§ 6.20.225 Commercial/Industrial Collection – Provision of Containers.**

A. Every commercial/industrial premises served by a collector shall use the standard containers provided by the collector.

B. Every collector that provides any container for the storage of commercial/industrial solid waste shall:

1. Place and maintain on the outside of such container, in legible letters and numerals not less than one inch in height, the collector's business name and telephone number in a color contrasting with the background color of the container; and

2. Provide containers on wheels or skids or with hasps and locks upon request by the commercial/industrial owner.

**§ 6.20.230 Commercial/Industrial Collection – Maintenance and Placement of Containers.**

A. Solid waste and recyclables containers provided by the collector shall be maintained in a clean, safe and sanitary condition by the collector. Containers that are not provided by the collector shall be maintained in a clean, safe and sanitary condition by the commercial/industrial owner. Every commercial/industrial owner shall provide a solid waste container location on the commercial/industrial premises and shall keep the area in good repair, clean and free of solid waste outside of the container. Every collector shall remove any solid waste or litter that is spilled or deposited on the ground as a result of the collector's emptying of the container or other activities of the collector.

B. Upon collection of solid waste and recyclables by the collector, all containers shall be replaced, upright, where found, with the lids closed. No person, other than the owner thereof, shall in any manner, break, damage,

roughly handle or destroy containers placed on the premises of a commercial/industrial owner. Any container that has defects likely to hamper collection or injure the person collecting the contents thereof, or the public generally, shall be replaced promptly by the commercial/industrial owner or, if provided by a collector, by the collector. Failure to replace any such container within 5 days of written notification from the city shall constitute a violation of this section.

**§ 6.20.235 Commercial/Industrial Collection – Special Circumstances.**

Collectors and commercial/industrial owners may make arrangements for collection on mutually agreeable terms whenever: (i) particular commercial / industrial premises require collections at times, frequencies or in a manner such that the collector is unable to perform the collection in the normal course of business; (ii) unusual quantities of solid waste or special types of material are to be collected and disposed of; (iii) special methods of handling are required, or (iv) the quantity of solid waste requires the use of more than 3 containers. If a collector and a commercial/industrial owner cannot agree as to the methods for the service provided for in this section, then the city manager shall determine the method of service. If the collector is unable or unwilling to provide such service, then the city manager may authorize the owner to use another solid waste enterprise for such special service until the collector can provide such service in its normal course of business.

**§ 6.20.240 New Commercial/Industrial Buildings.**

No building permit shall be issued for construction of any commercial/industrial building until the adequacy, location and accessibility of solid waste containers has been approved by the city manager.

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