

If you would like to do a further  
Search of this document.

Please click on the icon below.



## **Title 5**

### **BUSINESS REGULATIONS<sup>1</sup>**

#### **Chapter:**

- 5.08 Franchises - Generally**
- 5.12 Franchises - Cable Television**
  - Article I Purpose**
  - Article II Definitions**
  - Article III Grant of Franchise**
  - Article IV Regulation of Franchise**
  - Article V General Financial and Insurance Provisions**
  - Article VI Design and Construction Provisions**
  - Article VII Operation and Maintenance**
  - Article VIII Rights Reserved to the City**
  - Article IX Rights Reserved to the Grantee**
  - Article X Reports**
  - Article XI Miscellaneous Provisions**
- 5.13 Franchises - Digital Infrastructure and Video Competition Act of 2006**
- 5.14 Franchises - Yard Debris Collection and Compost Program**
  - Article I Purpose**
  - Article II Definitions**
  - Article III Grant of Franchise**
  - Article IV Regulation of Franchise**
  - Article V General Financial and Insurance Provisions**
  - Article VI Operation of Franchise**

	<b>Article VII</b>	<b>Collection of Fees</b>
	<b>Article VIII</b>	<b>Miscellaneous Provisions</b>
<b>5.16</b>		<b>Solid Waste Collectors</b>
<b>5.24</b>		<b>House-to-House Peddling and Soliciting</b>
<b>5.28</b>		<b>Vehicles for Hire</b>
	<b>Article I</b>	<b>General Provisions</b>
	<b>Article II</b>	<b>Owners of Vehicles for Hire</b>
	<b>Article III</b>	<b>Drivers of Vehicles for Hire</b>
	<b>Article IV</b>	<b>Vehicle for Hire Permit</b>
	<b>Article V</b>	<b>Administrative Review</b>
<b>5.30</b>		<b>Ambulances</b>
<b>5.32</b>		<b>Cardrooms</b>
<b>5.36</b>		<b>Bingo Games</b>
<b>5.38</b>		<b>Food Facilities</b>
<b>5.40</b>		<b>Alarm Systems</b>
	<b>Article I</b>	<b>General Provisions</b>
	<b>Article II</b>	<b>Alarm System Permits</b>
	<b>Article III</b>	<b>False Alarms</b>

NOTE: Footnotes are numbered throughout the text and are located at the end of this title.

## Chapter 5.08

### FRANCHISES - GENERALLY<sup>2</sup>

**Section:**

- 5.08.010**      **Persons eligible to exercise franchise.**
- 5.08.015**      **Exceptions to franchise requirements.**
- 5.08.020**      **Application.**
- 5.08.030**      **Filing fee and cash deposit required.**
- 5.08.040**      **Investigation and recommendation by city manager.**
- 5.08.050**      **Resolution of council to consider application.**
- 5.08.060**      **Protest against granting franchise.**
- 5.08.070**      **Public hearing - Decision of council.**
- 5.08.080**      **Franchise not effective until formally accepted by grantee.**
- 5.08.090**      **Bond or security required of grantee.**
- 5.08.100**      **Term.**
- 5.08.110**      **Council to determine payments due city from grantee.**
- 5.08.120**      **Special permits - Term - Application - Conditions for granting.**

**5.08.010**    **Persons eligible to exercise franchise - Applicability of chapter to railroads.**

Except as hereinafter provided, no person shall exercise in the city any franchise right or privilege mentioned in Article XII of the Charter of the city except such person as may be otherwise entitled to do so by law, unless such person shall have obtained a grant therefor in accordance with the provisions of this chapter and of the applicable provisions of the Charter. Nothing herein contained shall be constructed to invalidate any lawful franchise heretofore granted, nor necessitate the obtaining of a new franchise for a use for which a franchise holder shall have a valid unexpired franchise.

(Prior code §10A.1 (Ord. 702 §1, Ord. 1353 §1))

**5.08.015**    **Exceptions to franchise requirements.**

- A. Nothing in this chapter shall apply to the granting of permits by the council to any railroad for the construction and operation of spur, lead or side tracks along any street, avenue or highway in the city for the purpose of connecting the facilities of any business, warehouse or industry with the line of any railroad.
- B. Nothing in this chapter shall require a person, firm or corporation operating a CATV system under a valid franchise granted pursuant to Chapter 5.12 of this code to have an additional franchise granted pursuant to this chapter in order to use the public streets, ways and places for the operation of a pay TV system.

(Ord. 1353 §2)

**5.08.020**    **Application.**

An applicant for a franchise shall file with the city manager an application which shall state:

- A. The name of the applicant;

- B. The purpose and term, whether definite or indeterminate, for which this franchise is desired;
- C. A limitation as to time, place or type of services proposed by the applicant;
- D. Any other terms or conditions that the applicant may desire, including surrender of existing franchises or parts thereof, or claims to such franchises or proposals to settle any litigation or controversies between the applicant and the city;
- E. Such other information as is deemed necessary by the city manager.

(Prior code §10A.2 (Ord. 702 §2))

#### **5.08.030 Filing fee and cash deposit required.**

Every application for a franchise shall be accompanied by a filing fee in such amount or amounts as shall be determined by the council and adopted by resolution thereof. In addition thereto, there shall be deposited with the city a cash deposit in such amount as shall be determined by the city manager as a fund out of which to pay all expenses in connection with the application. If the city manager later finds the deposit insufficient to pay such expenses, the city manager may require the applicant to make an additional deposit in an amount sufficient to cover the estimated expenses. The amount so deposited shall be retained until the franchise is granted or until the council determines not to grant the franchise. Whereupon the remainder, if any, of the amount deposited, except the filing fee, shall be returned after payment therefrom of all expenses incurred by the city in connection with the advertising, engineering, legal and clerical work, and the awarding of the franchise.

(Prior code §10A.3 (Ord. 702 §3, Ord. 845 §11), Ord. 2268)

#### **5.08.040 Investigation and recommendation by city manager.**

The city manager shall investigate the application so made and make a written report to the council recommending either for or against the granting of such franchise. If, in the judgment of the city manager, the franchise applied for should not be granted, the city manager shall so report, stating the reasons therefor; and if in the city manager's judgment the franchise should be granted, the city manager shall recommend the terms and conditions upon which the same should be granted.

(Prior code §10A.4 (Ord. 702 §4), Ord. 2268)

#### **5.08.050 Resolution of council to consider application.**

Upon receipt of the recommendation of the city manager, the council, if it desires to consider the granting of the franchise, shall pass a resolution declaring its intention to consider the application fixing, stating or declaring the following:

- A. Name of applicant;
- B. Character of the franchise;
- C. Term of franchise (whether definite or indefinite);
- D. That copies of the proposed franchise may be obtained in the office of the city clerk;
- E. The day, hour and place when and where any and all persons may appear before the council and be heard;
- F. Direct the city clerk to give notice of time and place fixed for such hearing by causing a copy of such resolution of intention to be published once in the official newspaper of the city at least ten days before the day fixed for such hearing.

(Prior code §10A.5 (Ord. 702 §5))



**5.08.060 Protest against granting franchise.**

At any time not later than the hour set for the hearing, any person interested may make written protest stating objections against the granting of such franchise. Such protest must be signed by the protestant and delivered to the city clerk.

(Prior code §10A.6 (Ord. 702 §6))

**5.08.070 Public hearing - Decision of council.**

At the time set for the hearing, the council shall proceed to hear the matter and may adjourn such hearing from time to time. After concluding the public hearing the council shall proceed to deny such franchise or to grant the same by ordinance adopted in the manner prescribed by the Charter.

(Prior code §10A.7 (Ord. 702 §7))

**5.08.080 Franchise not effective until formally accepted by grantee.**

Any franchise granted hereunder shall not become effective until written acceptance thereof shall have been filed by the grantee thereof with the city clerk. Such acceptance shall be filed within thirty days after the ordinance granting the franchise becomes effective, unless the time is extended by the council.

By its acceptance of any franchise, the grantee shall covenant and agree to perform and be bound by each and all of the terms and conditions proposed by the franchise ordinance.

(Prior code §10A.8 (Ord. 702 §8))

**5.08.090 Bond or security required of grantee.**

The council may require the grantee of any franchise to provide such bond or security as it deems the public interest requires.

(Prior code §10A.9 (Ord. 702 §9))

**5.08.100 Term.**

The term of the franchise shall be such as is limited by the council in the franchise ordinance.

(Prior code §10A.10 (Ord. 702 §10))

**5.08.110 Council to determine payments due city from grantee.**

The council may fix and determine in the ordinance granting the franchise the amount of franchise payments which shall be made by the grantee to the city. Such amount may be upon a fixed fee basis or upon a gross annual receipts basis. If upon a gross annual receipts basis, the council shall fix a percentage in the ordinance that shall be paid annually by the grantee.

As part of the consideration for the granting of each franchise, the grantee shall agree to pay the price or payments fixed by the council. In determining the consideration to be paid by the grantee, the council shall have the right to take into consideration any benefits (other than franchise payments) to the city and its inhabitants, giving weight to such factors as:

- A. Extensions of service;
- B. Improvement of services;
- C. Surrender of existing franchise or parts thereof;
- D. Settling litigation between city and grantee;
- E. Performance of specific franchise obligations; and
- F. Any other similar beneficial factors.

Where the council has fixed a percentage of gross receipts to be paid for the exercise of grantee's franchise, and where the operations of the grantee extend beyond the territorial boundaries of the city, the council shall have the right to allocate such percentage payments so that such grantee shall pay only for its operations, for which a franchise is required, within the city.

(Prior code §10A.11 (Ord. 702 §11))

**5.08.120 Special permits - Term - Application - Conditions for granting.**

When the council shall find that an emergency exists and that public convenience and necessity require it and that by reason of such emergency the operation or performance of the public utility service should be permitted before the securing of the franchise under this chapter is possible, the council by resolution may grant to any applicant for a franchise under the ordinance a special permit to operate in the city.

No such special permit shall be granted for a period in excess of six months; provided, however, that the council may by resolution extend the term for such a special permit for such periods not to exceed six months each as the public convenience and necessity require.

The application for a special permit shall be filed in writing with the council, setting forth such information as will permit action thereon.

Such special permit may be granted to an applicant for a franchise under this chapter and after the filing of the application for a franchise as in this chapter provided.

In granting special permits, the council may require as conditions to the granting thereof any special requirements that the council may deem necessary in the public interest, including the requirement of the furnishing of a bond for the condition upon the performance of the terms and conditions of the permit.

(Prior code §10A.12 (Ord. 702 §12))

**Chapter 5.12**

**FRANCHISES - CABLE TELEVISION<sup>3</sup>**

**Section:**

**ARTICLE I. PURPOSE**

**5.12.010 Purpose.**

**ARTICLE II. DEFINITIONS**

- 5.12.014 General provisions.**
- 5.12.016 Basic cable service.**
- 5.12.018 Broadcast signal.**
- 5.12.020 Cable communications system.**
- 5.12.022 Cablecast signal.**
- 5.12.024 Cable service.**
- 5.12.026 Channel.**
- 5.12.028 Commence construction.**
- 5.12.030 Commence operation.**
- 5.12.032 Commercial subscriber.**
- 5.12.034 Community access channel.**
- 5.12.036 Completion of construction.**
- 5.12.038 Converter.**
- 5.12.040 FCC.**
- 5.12.042 Franchise.**
- 5.12.044 Franchise fee.**
- 5.12.046 Grantee.**
- 5.12.048 Gross revenues.**
- 5.12.050 Initial service area.**
- 5.12.052 Installation.**
- 5.12.054 Monitoring.**
- 5.12.056 Nonbroadcast signal.**
- 5.12.058 Pay cable service.**
- 5.12.060 Programmer.**
- 5.12.061 Regulated equipment.**
- 5.12.062 Resident.**
- 5.12.064 Residential subscriber.**
- 5.12.066 School.**
- 5.12.068 Service area.**
- 5.12.070 Subscriber.**

**ARTICLE III. GRANT OF FRANCHISE**

- 5.12.074 Franchise required.**
- 5.12.076 Franchise application.**
- 5.12.078 Grant.**
- 5.12.080 Franchise nonexclusive.**

- 5.12.082 Use of public streets and rights-of-way.
- 5.12.084 Term.
- 5.12.086 Service area.
- 5.12.088 Franchise fee.
- 5.12.090 Transfer of ownership or control.
- 5.12.092 Franchise renewal.
- 5.12.094 Franchise processing costs.

#### **ARTICLE IV. REGULATION OF FRANCHISE**

- 5.12.098 City regulations.
- 5.12.100 Federal and state regulations.
- 5.12.102 Joint regulatory responsibility.
- 5.12.104 Community access channel management.
- 5.12.106 City council determinations on maximum permitted rates for basic cable service and regulated equipment.
- 5.12.108 Audit to be filed incident to city council rate determinations.
- 5.12.109 Public hearing before city council on proposed rates.
- 5.12.110 Rate schedules.
- 5.12.112 System and services review.
- 5.12.114 Triennial review.
- 5.12.116 Annual review of performance.
- 5.12.118 Default.
- 5.12.120 Remedies upon default.
- 5.12.122 Procedures in the event of termination or expiration.
- 5.12.124 Receivership and foreclosure.

#### **ARTICLE V. GENERAL FINANCIAL AND INSURANCE PROVISIONS**

- 5.12.128 Construction bond.
- 5.12.130 Performance bond.
- 5.12.132 Security fund.
- 5.12.134 Insurance.
- 5.12.136 Indemnification.

#### **ARTICLE VI. DESIGN AND CONSTRUCTION PROVISIONS**

- 5.12.140 System design.
- 5.12.142 Geographical coverage.
- 5.12.144 System construction schedule.
- 5.12.146 Remedies for delay in construction.
- 5.12.148 Provision of service.
- 5.12.150 Undergrounding of cable.
- 5.12.152 New development Undergrounding.
- 5.12.154 Undergrounding at multiple dwelling units.
- 5.12.156 Street occupancy.
- 5.12.158 Construction and technical standards.

**ARTICLE VII. OPERATION AND MAINTENANCE**

- 5.12.162 Services to be provided.
- 5.12.164 Open books and records.
- 5.12.166 Records required.
- 5.12.168 Consumer service standards.
- 5.12.169 Complaint procedures.
- 5.12.170 Rights of individuals.
- 5.12.172 Continuity of service.
- 5.12.174 Grantee rules and regulations.
- 5.12.176 Tenant rights.
- 5.12.178 Subscriber notices.

**ARTICLE VIII. RIGHTS RESERVED TO THE CITY**

- 5.12.180 Rights of grantee generally.
- 5.12.182 Right of appeal.

**ARTICLE IX. RIGHTS RESERVED TO THE GRANTEE**

- 5.12.184 Rights of grantee generally.
- 5.12.188 Right of appeal.

**ARTICLE X. REPORTS**

- 5.12.192 Annual reports.
- 5.12.194 Plant survey report.
- 5.12.196 Public reports.
- 5.12.198 Surveys.
- 5.12.200 Miscellaneous reports.
- 5.12.202 Inspection of facilities.
- 5.12.204 Public inspection.
- 5.12.206 Failure to report.
- 5.12.208 False statements.
- 5.12.210 Cost of reports.

**ARTICLE XI. MISCELLANEOUS PROVISIONS**

- 5.12.214 Severability.
- 5.12.216 Service of notices.
- 5.12.218 Nonenforcement by the city.
- 5.12.220 Theft of services and tampering.
- 5.12.222 Force majeure.

**ARTICLE I. PURPOSE****5.12.010 Purpose.**

The city council finds that the development of cable communications systems has the potential of having great benefit and impact upon the residents of Chico. The city council further finds that the public convenience, safety, and general welfare can best be served by

establishing regulatory powers governing the installation, construction, operation, and maintenance of cable communications systems which should be vested in the city and such persons as the city shall designate. It is the intent of this chapter to provide for and specify the means to attain the best possible public interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

(Ord. 1695 (part))

## **ARTICLE II. DEFINITIONS**

### **5.12.014 General provisions.**

Unless the contrary is stated or clearly appears from the context, the definitions set forth in this article shall govern the construction of the words and phrases used in this chapter.

(Ord. 1695 (part))

### **5.12.015 Affiliate.**

“Affiliate” means any subsidiary of Grantee, any parent of Grantee, any Person in which Grantee has a Financial Interest of ten percent (10%) or more, any Person which has a Financial Interest of ten percent (10%) or more in Grantee and any Person having common ownership or control (including Financial Interest) with Grantee of ten percent (10%) or more in Grantee, provided that the foregoing shall not include any Person whose rates are subject to regulation by the public utilities commission of any State. As used in this Chapter, an Affiliate must be a Cable Operator as that term is used in 47 U.S.C. 522(5), unless the imposition of such a qualifying requirement would allow the Grantee to unfairly evade or avoid its obligation under its franchise to pay franchise fees on all revenue arising from or attributable to, the operation of the Cable System to provide Cable Service.

(Ord. 2198)

### **5.12.016 Basic cable service.**

“Basic cable service” means basis service or the basis service tier as defined in the cable rate regulations adopted by the FCC in Subpart N, Part 76, Chapter I, Title 47 of the Code of Federal Regulations (commencing with Section 76.900).

(Ord. 1695 (part), Ord. 1977 §1)

### **5.12.017 Applicable Law.**

“Applicable Law” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable to city either specifically or by being made applicable to a discrete class of entities including City, by any Governmental Authority.

(Ord. 2198)

### **5.12.018 Broadcast signal.**

“Broadcast signal” means a television or audio signal originating from a broadcast facility licensed by the FCC that is transmitted over the air to a wide geographic audience, is

intended for reception by the general public, and is received by a cable communications system off-the-air, by satellite, or by microwave.

(Ord. 1695 (part))

#### **5.12.020 Cable communications system.**

“Cable communications system,” “cable system,” or “system” means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video and/or audio programming and which is provided to multiple subscribers within the city, but such term does not include:

- A. A facility that serves only subscribers in one or more multiple dwelling units under common ownership, control, or management, unless such facility uses any public street or right-of-way;
- B. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video and/or audio programming directly to subscribers; or
- C. Any facilities of any electric utility used solely for operating its electric utility system.

(Ord. 1695 (part))

#### **5.12.022 Cablecast signal.**

“Cablecast signal” means a nonbroadcast signal that originates within the facilities of the cable communications system, including local origination programming and community access programming.

(Ord. 1695 (part))

#### **5.12.024 Cable service.**

“Cable service” means (i) the one-way transmission to subscribers of video and/or audio programming or other programming service and (ii) subscriber interaction, if any, which is required for the selection of such video and/or audio programming or other programming service.

(Ord. 1695 (part))

#### **5.12.026 Channel.**

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

(Ord. 1695 (part))

#### **5.12.028 Commence construction.**

“Commence construction” means that time and date when construction of the cable communications system is considered to have commenced, which shall be when the first connection is physically made to a utility pole or undergrounding of cables is initiated after preliminary engineering (strand mapping) and after all necessary permits and authorizations have been obtained.

(Ord. 1695 (part))

**5.12.030 Commence operation.**

“Commence operation” means that time and date when operation of the cable communications system is considered to have commenced, which shall be when sufficient distribution facilities have been installed so as to permit the offering of full service to one or more subscribers.

(Ord. 1695 (part))

**5.12.032 Commercial subscriber.**

“Commercial subscriber” means a subscriber who receives cable service in a place of business, where the service may be utilized in connection with a business, trade, or profession.

(Ord. 1695 (part))

**5.12.034 Community access channel.**

“Community access channel” means such channel capacity on the cable communications system as from time to time may be allocated to public, educational, or governmental programming, together with such facilities and equipment as are made available for the use of such channel capacity.

(Ord. 1695 (part))

**5.12.036 Completion of construction.**

“Completion of construction” means that point in time when all distribution facilities of the cable communications system required by a franchise have been installed and are in an operational state.

(Ord. 1695 (part))

**5.12.038 Converter.**

“Converter” means an electronic device which converts signal carriers from one form to another.

(Ord. 1695 (part))

**5.12.039 Financial Interest.**

“Financial Interest” means and includes without limitation:

- A. Any form of equity ownership interest, which is either (a) direct or (b) indirect through another form of Person;
- B. Any form of contingent or optional ownership interest; and
- C. Any option or warrant to purchase the stock or other equity interest in any Person which generates revenues arising from or attributable to the operation of the Cable System to provide Cable Service.

(Ord. 2198)

**5.12.040 Permits - Number of permits to be issued.**

The number of permits which may be issued by the city council pursuant to the provisions of this chapter shall not exceed a total of two, and no more than one permit shall be issued to any one applicant.

(Prior code §11.22 (Ord. 1065 §2, Ord. 1193 §3, Ord. 1460 §1, Ord. 1699 §2, Ord. 1860 §1, Ord. 2047 §2))

**5.12.042 Franchise.**

“Franchise” means the nonexclusive rights granted pursuant to this chapter to install, construct, operate, and maintain a cable communications system along the public streets and rights-of-way within all or a specified area of the city. Any such authorization, in whatever form granted, shall be in lieu of any license or permit required for the privilege of transacting and carrying on a business within the city as required by other chapters of this code.

(Ord. 1695 (part))

**5.12.044 Franchise fee.**

“Franchise fee” means any tax, fee, or assessment of any kind imposed by the city on the grantee or any of its cable subscribers, or both, solely because of their status as such. The term “franchise fee” does not include:

- A. Any tax, fee, or assessment of general applicability;
- B. Capital costs which are required by the franchise to be incurred by the grantee for community access facilities;
- C. Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
- D. Any fee imposed under Title 17, United States Code.

(Ord. 1695 (part))

**5.12.045 Government Authority.**

“Governmental Authority” means any court of competent jurisdiction or other federal or state department, commission, board or agency.

(Ord. 2198)

**5.12.046 Grantee.**

“Grantee” means any person receiving a franchise pursuant to this chapter and such person’s lawful successor, transferee, or assignee.

(Ord. 1695 (part))

**5.12.048 Gross revenues.**

“Gross Revenues” means all revenue received directly or indirectly by Grantee, or any Affiliate thereof, arising from or attributable to, the operation of the Cable System to provide Cable Service in the City. Gross Revenues shall include, but shall not be limited to:

- A. Revenue from (1) payments received from Subscribers for Cable Service, and related equipment, late fees, and franchise fees; (2) advertising carried on the Cable System or in Subscriber bills; and (3) commissions received from home shopping revenues and revenue in whatever manner derived from the operation of the Cable System to provide Cable Service in the City.
- B. All revenue directly or indirectly attributable to Grantee that is received by any Affiliate, whether or not such revenue is actually received by Grantee.
- C. Revenue that is not actually received by Grantee or an Affiliate thereof reflecting the value of services bartered or exchanged for non-monetary consideration, provided that such revenue shall not include non-monetary bartered or exchanged with an organization qualified a section 501(c)(3) under the Internal Revenue Code.

- D. To the maximum extent permitted by Applicable Law, revenues derived from the provision by Grantee or any Affiliate thereof of Internet access, cable modems and/or other Internet-related services.
- E. Revenue from any activity, product or service in the production or provision of which any of the assets of the Cable System are used to provide Cable Service, including without limitation cable, computers, servers, production facilities and administrative facilities, are utilized, unless such revenue is expressly excluded from Gross Revenues by Applicable Law.
- F. If Grantee shall, during the term of the Franchise, bundle, tie or combine Cable Services (which are subject to the Franchise Fee provisions hereof) with non-Cable Services (which are not subject to the Franchise Fee provisions hereof), the Grantee shall not unlawfully or unfairly distribute the revenue as between Cable Service and non-Cable Service for the purpose of evading Franchise Fee payments required hereby.

Gross Revenues shall not include the amount of any tax, fee or other assessment imposed by law upon Subscribers or others which Grantee is obligated to collect and pass on in full to the applicable taxing authority. Moreover, revenues of both Grantee and any Affiliate which represent a transfer of funds between them shall be counted only once for purposes of determining Gross Revenues. Refunds of revenues previously received and accounted that are paid to Subscribers shall reduce Gross Revenues by the amount of the refunds received during the reporting period in which such refunds are made.

This definition shall be deemed to include all gross receipts and revenues to the fullest extent permitted by Applicable Law. Moreover, no portion of revenue may be excluded by Grantee from the calculation of Gross Revenues on grounds of asserted exemption or preemption by State or Federal law unless the use of such revenues for the calculation of Franchise Fees has been expressly prohibited (a) by an enactment of State or Federal statutory law applicable to this Franchise or (b) by a judicial decision of a State or Federal appellate court which is controlling upon city and applicable to this Franchise.

(Ord. 2198)

#### **5.12.050 Initial service area.**

“Initial service area” means the area of the city which will receive cable service initially, as set forth in the grantee’s franchise. If not stated otherwise in the franchise, the initial service area shall consist of the entire city.

(Ord. 1695 (part))

#### **5.12.052 Installations.**

“Installation” means the connection of the cable communications system from feeder cable to subscribers’ terminals and the provision of service.

(Ord. 1695 (part))

#### **5.12.054 Monitoring.**

“Monitoring” means observing a communication signal, or the absence of a signal, where the observer is neither of the communicating parties, whether the signal is observed by visual or electronic means for any purpose whatsoever. Monitoring shall not include individually addressed sweeps of the cable communications system solely for the purpose of detecting

unauthorized connections to the system nor systemwide, non-individually addressed sweeps of the system for purposes of verifying system integrity, controlling return path transmissions, or billing for pay cable.

(Ord. 1695 (part))

**5.12.056 Nonbroadcast signal.**

“Nonbroadcast signal” means a signal that is transmitted by a cable communications system and that is not involved in an over-the-air broadcast transmission path intended for reception by the general public.

(Ord. 1695 (part))

**5.12.058 Pay cable service.**

“Pay cable service” means the delivery to subscribers, over the cable communications system, of video and/or audio signals for a fee or charge to subscribers over and above the charge for basic cable service, or a per program, per channel, or other subscription basis.

(Ord. 1695 (part))

**5.12.059 Persons.**

“Person” means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

(Ord. 2198)

**5.12.060 Programmer.**

“Programmer” means a person who or which produces or otherwise provides program material or information for transmission by video, audio, digital, or other signals, either live or from recorded tapes or other storage media, to subscribers by means of the cable communications system.

(Ord. 1695 (part))

**5.12.061 Regulated equipment.**

“Regulated equipment” means all equipment which may be regulated by a franchising authority under the cable rate regulations adopted by the FCC in Subpart N, Part 76, Chapter I, Title 47 of the Code of Federal Regulations (commencing with Section 76,900)

(Ord. 1695 (part))

**5.12.062 Resident.**

“Resident” means any person residing in the city as otherwise defined by applicable law.

(Ord. 1695 (part))

**5.12.064 Residential subscriber.**

“Residential subscriber” means a person occupying a dwelling unit who receives cable service and is billed directly by the grantee on an individual subscriber basis.

(Ord. 1695 (part))

**5.12.066 School.**

“School” means any nonprofit educational institution, including primary and secondary schools, colleges, and universities, both public and private.

(Ord. 1695 (part))

**5.12.068 Service area.**

“Service area” means the entire geographic area within the city in which the grantee is authorized to provide cable service under the terms of its franchise. Unless otherwise specified in the franchise, a grantee’s service area shall include any new or additional territory which is annexed to the city immediately upon completion of annexation, provided that the city shall give the grantee prompt written notice thereof and shall identify the area which has been so annexed.

(Ord. 1695 (part))

**5.12.070 Subscriber.**

“Subscriber” means any person who or which elects to subscribe to, for any purpose, a cable service provided by the grantee by means of or in connection with the cable communications system.

(Ord. 1695 (part))

**ARTICLE III. GRANT OF FRANCHISE****5.12.074 Franchise required.**

No cable communications system shall be allowed to occupy or use the public streets or rights-of-way of the city or be allowed to operate such a system without a franchise granted in accordance with the provisions of this chapter.

(Ord. 1695 (part))

**5.12.076 Franchise application.**

- A. Application. Any person seeking a franchise to operate a cable communications system within the city shall file an application for such franchise with the city. Such application shall be in the form and contain the information required by the city manager and shall be accompanied by a nonrefundable filing fee established by the city council in an amount not to exceed the reasonable cost of processing the application.
- B. Public Hearing. When filed, the application shall be available for public inspection at places designated by the city manager. No later than ninety (90) days after filing the application, a public hearing or hearings shall be held by the city council on the application. Notice of the initial public hearing shall be published in a newspaper of general circulation within the city on three (3) separate days not less than five (5) nor more than ten (10) days immediately preceding such hearing.
- C. Decision. At the conclusion of such hearing or hearings, the city council shall determine to grant the franchise subject to any appropriate terms and conditions as the council may prescribe or determine not to grant the franchise.

(Ord. 1695 (part))

**5.12.078 Grant.**

- A. **Scope of Grant.** Any franchise granted under this chapter shall authorize and permit the grantee to engage in the business of operating and providing a cable communications system in the city within the service area specified in the franchise and for that purpose to erect, install, construct, inspect, repair, replace, reconstruct, maintain, and retain in, under, on, across, along, over, and above any street or right-of-way such structures and equipment as are necessary, appurtenant, or useful in the operation of the cable communications system.
- B. **Grant Both a Right and an Obligation.** In the event that the city council shall grant to the grantee a franchise to install, construct, operate, and maintain a cable communications system within a service area, said franchise shall constitute both a right and an obligation to provide the services of a cable communications system as required by the provisions of this chapter and the franchise.

(Ord. 1695 (part))

**5.12.080 Franchise nonexclusive.**

Any franchise granted shall be nonexclusive. The city council specifically reserves the right to grant, at any time, such additional franchises for a cable communications system as it deems appropriate.

(Ord. 1695 (part))

**5.12.082 Use of public streets and rights-of-way.**

For the purpose of operating and maintaining a cable communications system in the service area, and subject to the provisions of this chapter, the grantee may erect, install, construct, inspect, repair, replace, reconstruct, maintain, and retain in, under, on, across, along, over, and above any street or right-of-way within the service area such wires, cables, conductors, connectors, poles, anchors, guys, pole attachments, ducts, conduits, vaults, manholes, amplifiers, transformers, appliances, pedestals, drops, hookups, attachments, and other structures and equipment as are necessary, appurtenant, or useful to the operation of the cable communications system. Prior to construction or alteration of any part of the cable communications systems situated in the streets or rights-of-way for which an encroachment permit or other approval is required by this code, the grantee shall in each such case file plans with the appropriate city department and receive such encroachment permit or other approval before proceeding. The grantee shall comply with all applicable city requirements relating to construction performed within city streets or rights-of-way.

(Ord. 1695 (part))

**5.12.084 Term.**

The term of any franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall be as set forth in the grantee's franchise, but shall in no event be for a period of more than twenty (20) years from the effective date of the franchise. The effective date of the franchise shall be the date written acceptance thereof by the grantee is filed with the city clerk or such other date as may be specified in such franchise.

(Ord. 1695 (part))

**5.12.086 Service area.**

The city council may grant a franchise for the construction, operation, and maintenance of a cable communications system for the entire city or any defined portion of the city.

(Ord. 1695 (part))

**5.12.088 Franchise fee.**

- A. Amount of Franchise Fee. A grantee of a franchise hereunder shall pay to the city a franchise fee in an amount equal to five percent (5%) of the grantee's gross revenues or such other amount as may be specified in the grantee's franchise.
- B. Acceptance by City. The acceptance of a franchise fee payment by the city shall not be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee.
- C. Failure to Make Required Payment. In the event that any franchise fee payment is not made on or before the date specified herein and the grantee fails to make such payment within five (5) days after receipt of written notice from the city demanding such payment, the grantee shall pay as additional compensation:
  - 1. An interest charge, computed from such due date, at the legal rate of interest under California law in effect upon the due date;
  - 2. A sum of money equal to five percent (5%) of the amount due (exclusive of interest due under subsection (C)(1) of this section) in order to defray those additional expenses and costs incurred by the city by reason of delinquent payment.
- D. Quarterly Payments. Franchise fee payments due the city under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed in the previous sentence. Each payment shall be accompanied by a statement of gross revenues received by the grantee for such quarterly period showing the basis for the computation of the franchise fee then due. Such statement shall be certified by an authorized representative of the grantee.
- E. Annual Certification. Within one hundred eighty (180) days after the expiration of each calendar year or portion thereof during which the franchise is in force or within such other time as may be specified in the grantee's franchise, the grantee shall file with the city finance director a statement setting forth the gross revenues of the grantee for such calendar year or portion thereof. Such statement shall be prepared by an independent certified public accountant retained by the grantee, all costs of which shall be borne by the grantee. If the amount of the gross revenues reported by such certified public accountant exceeds the amount thereof as reported in the statements prepared by the grantee for all quarterly periods of such calendar year, the grantee shall pay to the city, within fifteen (15) days after the time for filing the statement certified by such certified public accountant, the amount of the additional franchise fee due for such calendar year or portion thereof, provided that if the amount of the additional franchise fee is in excess of five percent (5%) of the gross revenues as reported by such certified public accountant, the grantee shall also pay the city interest on the amount of the additional franchise fee at the legal rate of interest under California law as in effect and computed from and after January 1 of the year in which such

certified statement is furnished to the city. If the amount of the gross revenues reported by such certified public accountant is less than the amount thereof as reported in the quarterly statements prepared by the grantee, the city shall pay to the grantee, within fifteen (15) days after the time for filing the statement certified by such certified public accountant, the amount by which the franchise fee was overpaid or, at the option of the city, such overpayment shall be credited against the franchise fee next becoming due and payable to the city.

- F. **Right of Inspection.** At all reasonable times upon prior written notice to the grantee, the city shall have the right to inspect and audit the grantee's records showing the gross revenues from which its franchise payments are computed, provided that such inspection and audit shall extend to no other books or records of the grantee. If any independent audit of the grantee's records directed by the city evidences an underpayment of the franchise fee in excess of five percent (5%), the grantee shall assume all reasonable costs for said audit.

(Ord. 1695 (part), Ord. 2037)

#### **5.12.090 Transfer of ownership or control.**

- A. **Transfer of Franchise.** Any franchise granted hereunder shall be a privilege to be held for the benefit of the public. Said franchise cannot in any event be sold, transferred, leased, assigned, or disposed of by forced or voluntary sale, merger, consolidation, receivership, or other means without the prior consent of the city, and then only under such conditions as the city may establish.
- B. **Ownership or Control.** The grantee shall promptly notify the city of any proposed change in, transfer of, or acquisition of any other party of control of the grantee. The word "control" as used herein is not limited to major partners or stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or transfer by any person or group of persons of 25% of the aggregate partnership interests in or voting shares of the grantee. Every change, transfer, or acquisition of control of the grantee shall make the franchise subject to cancellation unless and until the city shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into the qualifications of the prospective controlling party, and the grantee shall assist the city in any such inquiry. In seeking the city's consent to any change in ownership or control of the grantee, the grantee shall have the responsibility to establish to the satisfaction of the city:
1. Whether the proposed purchaser, transferee, or assignee (the "proposed transferee") which, in the case of a partnership or corporation, shall include all partners, officers, directors, and all persons having a legal or equitable interest in five percent or more of its partnership interests or voting stock, or any of the proposed transferee's principals:
    - a. Has ever been convicted or held liable for acts involving moral turpitude or is presently under an indictment, investigation, or complaint charging such acts; or
    - b. Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee or its principals by any court of competent jurisdiction; or
    - c. Has pending against the proposed transferee or its principals any legal claim, lawsuit, or administrative proceeding arising out of or involving a cable

- communications system; and
2. Whether the proposed transferee has the financial and technical capability to enable it to maintain and operate the cable communications system for the remaining term of the franchise under the existing franchise provisions.
- C. **Right of Lender to Operate System.** Notwithstanding anything to the contrary contained in this chapter, any financial institution having a pledge of the franchise for the advancement of money for the construction and/or operation of the cable communications system operating under authority of such franchise shall have the right to notify the city that it or its designee satisfactory to the city will take control and operate the cable communications system in the event of a grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one (1) year unless extended by the city in its discretion and during said period of time it shall have the right to petition the city to transfer the franchise to another grantee. If, after considering the legal, financial, character, technical, and other public interest qualities of the proposed transferee, the city finds that such transfer is satisfactory, the city will approve the transfer and assign the rights and obligations of such franchise to such proposed transferee.
- D. **No Transfer Before Completion of Construction.** In the absence of extraordinary circumstances, the city will not approve any transfer or assignment of the franchise prior to completion of construction of the proposed cable communications system.
- E. **Transferee to Assume Grantee's Obligations Under Franchise.** In no event shall a transfer of ownership or control be approved without the successor in interest to the grantee assuming all of the grantee's obligations under its franchise. Notwithstanding the requirements of the grantee's franchise, the city may require, as a condition of the transfer of such franchise, that the proposed transferee furnish either or both a security fund and a performance bond in such amount or amounts as the city shall designate.
- F. **Permitted Encumbrances.** Notwithstanding the provisions of this section, the grantee may pledge, assign, hypothecate, or create a security interest in its franchise without the consent of the city in favor of any bank, financial institution, or other lender with respect to any indebtedness of the grantee to such person.

(Ord. 1695 (part), Ord. 2268)

#### **5.12.092 Franchise renewal.**

Renewal of any franchise granted under this chapter shall be undertaken in accordance with applicable federal or state law or, in the absence of any such renewal procedures, the following provisions of this section shall apply.

- A. **Application.** Not later than eighteen (18) nor earlier than twenty-four (24) months prior to the expiration of any franchise granted pursuant to this chapter, a grantee may submit an application for renewal of such franchise. Such application shall be in the form and contain the information required by the city manager and shall be accompanied by a nonrefundable application fee established by the city council in an amount not to exceed the reasonable cost of processing the application.
- B. **Public Hearing.** When filed, the application shall be available for public inspection at places

designated by the city manager. No later than ninety (90) days after filing the application, a public hearing or hearings shall be held by the city council on the application. Notice of the initial public hearing shall be published in a newspaper of general circulation within the city on three (3) separate days not less than five (5) nor more than ten (10) days immediately preceding such hearing.

- C. Decision. At the conclusion of such hearing or hearings, the city council shall determine to renew the franchise subject to any appropriate terms and conditions as the council may prescribe or determine not to renew the franchise.
- D. Nonrenewal. If the decision of the city council is not to renew the franchise, the council may initiate public solicitations for applications for a new franchise. The original grantee shall not be precluded from submitting such an application.
- E. Additional Services. In any renewal or public solicitation, the city council may require additional services, system upgrade, or any other conditions it deems feasible and appropriate in the light of the state of art of the cable communications industry at the time, taking into consideration the cost of such services, upgrades, or other conditions to both the grantee and its subscribers.
- F. Renewal of Existing Franchises. The provisions of this section relating to the time for filing a franchise renewal application and the time for holding a hearing or hearings on such application shall not be applicable to any franchise originally granted prior to January 1, 1987.

(Ord. 1695 (part))

#### **5.12.094 Franchise processing costs.**

For either a new franchise award, a franchise transfer, or a franchise renewal, costs to be borne by the grantee, unless otherwise specified in the grantee's franchise, shall include, but shall not be limited to, all costs incurred for publication of any notice of a public hearing on the franchise award, transfer, or renewal, all costs incurred in the development and publication of relevant ordinances or agreements, and any cost not covered by the application fees but reasonably incurred by the city in its study preparation of proposal solicitation documents, and evaluation of applications, including, but not limited to, consultant and attorney fees and city staff time.

(Ord. 1695 (part))

### **ARTICLE IV. REGULATION OF FRANCHISE**

#### **5.12.098 City regulations.**

Every cable communications system for which a franchise is required by this chapter shall be constructed, operated, and maintained in accordance with the regulations now or hereafter adopted by or pursuant to this chapter, as well as the provisions of any city law or regulation of general application now or hereafter in effect, including, but not limited to, any such city law or regulation requiring the issuance of a permit and payment of a permit fee incident to the performance of work within a public street or right-of-way, provided that in the event of a conflict between a regulation adopted by or pursuant to this chapter and the provisions of any city law or regulation of general application, the regulations adopted by or pursuant to this chapter shall prevail. However, the provisions of this section shall not be

construed to accord to the city any right to adopt any law or regulation which results in the unconstitutional impairment of any right of a grantee under a franchise granted pursuant to this chapter.

(Ord. 1695 (part))

#### **5.12.100 Federal and state regulations.**

The regulations adopted by or pursuant to this chapter shall be interpreted and applied so as to be consistent with any applicable federal or state law or regulation now or hereafter in effect to the extent such federal or state law or regulation is preemptive of local laws and regulations, provided that in the event of any conflict between this chapter or any regulations adopted by or pursuant to this chapter and any such federal or state law or regulation, the federal or state law or regulation shall prevail.

(Ord. 1695 (part))

#### **5.12.102 Joint regulatory responsibility.**

If the area served by the grantee's cable communications system also serves other contiguous or neighboring communities, the city may, at its sole option, participate in a joint regulatory agency with delegated responsibility in the area of cable and related communications. The city, acting jointly with other grantors, may exercise or delegate the following regulatory responsibility:

- A. Administration. Administering and enforcing the provisions of this chapter and the cable communications system franchise(s).
- B. Coordination. Coordination of the operation of community access channels and public programming services.
- C. Support. Providing technical, programming, and operational support to public agency users, such as governmental agencies, schools, and health care institutions.
- D. Interconnection. Analyzing the possibility of integrating cable communications systems with other national, state, or local telecommunications networks.

Policy. Formulating and recommending long-range telecommunications policy.

(Ord. 1695 (part))

#### **5.12.104 Community access channel management.**

A. Intent. It is the intent of the city to ensure that the community access channel(s) provided for and/or time allocated to community access programming under any franchise shall be managed in the best public interest, so that community access programming on such channel(s) will be free of censorship, open to all residents, and available for all forms of public expression, community information, and debate of public issues. Pursuant to these objectives, the city may delegate the responsibility for community access channel and/or programming management to a nonprofit public entity which may include, but not be limited to, any of the following:

- 1. A community access management commission or committee, appointed by the city, and representing a broad spectrum of the communities served by such community access channel(s); or
- 2. A nonprofit corporation or public agency with special cablecasting capability, such as a local or regional college.

- B. Functions. The entity designated to manage the community access channel(s) and/or programming shall have the following functions:
1. To produce community access programming and manage the community access channel(s) and/or programming time;
  2. To ensure that the community access channel(s) and/or programming time is (are) made available to all residents of the service area on a nondiscriminatory basis;
  3. To ensure that no censorship or control over program content of the community access channel(s) and/or programming time exists, except as necessary with respect to material that is obscene or otherwise constitutionally unprotected;
  4. To devise, establish, and administer all rules, regulations, and procedures pertaining to the use and scheduling of the community access channel(s) and/or programming time;
  5. To prepare such regular or special reports as may be required or desirable;
  6. To develop additional sources of funding, such as foundation or federal or state grants, to further community programming; and
  7. To perform such other functions relevant to community access programming as may be appropriate.
- C. Access Rules. The community access management entity shall complete a set of rules for the use of the community access channel(s) and/or programming time which shall be promptly forwarded to the city. The rules shall be prepared in cooperation with the grantee, and confirmed by agreement between the community access management entity and the grantee. The rules shall, at a minimum, provide for:
1. Access on a nondiscriminatory basis for all residents of the communities served by the grantee's cable communications system;
  2. Prohibition of any presentation of any material which is obscene or otherwise constitutionally unprotected;
  3. Public inspection of the log of producers, which shall be retained by the community access management entity for a period of four (4) years; and
  4. Free use of such cablecasting facilities and technical support as are provided for in the agreement between the community access management entity and the grantee, provided that such agreement shall in all respects be consistent with the grantee's franchise and shall not increase the obligations of the grantee with respect to cablecasting facilities or technical support beyond that required under the franchise.
- D. Community Access Management Entity Reports to City. The community access management entity shall provide a report to the city, at least annually, indicating achievements in community-based programming and services.

(Ord. 1695 (part))

#### **5.12.106 City council determinations on maximum permitted rates for basic cable service and regulated equipment.**

The city council shall make all determinations on the maximum permitted rates charged by a grantee for basic cable service and regulated equipment which are authorized by the Cable Television Consumer Protection and Competition Act of 1992 (47 USC Section 521 et seq.). Such determinations shall be made by the city council in the manner provided for by the cable rate regulations adopted by the FCC in Subpart N, Part 76, Chapter I, Title 47 of the Code of Federal Regulations (commencing with Section 76.900) and the provisions of this

chapter. However, if there is any conflict between the regulations adopted by the FCC and the provisions of this chapter, the regulations adopted by the FCC shall control over the regulations adopted by the provisions of this chapter.

(Ord. 1695 (part), Ord. 1977 §3)

#### **5.12.108 Audit to be filed incident to city council rate determinations.**

- A. Required Audits. Incident to a city council determination on the maximum permitted rates charged by a grantee for basic cable service and regulated equipment, the grantee shall file with the city council an audit prepared by an independent certified public accounting firm containing the certifications and information hereinafter required by this section. Such audit shall be filed with the city council at the time of submitting a completed FCC Form 393 or such other form as may be hereafter utilized by the FCC for the determination of the maximum permitted rates for basic cable service and regulated equipment.
- B. Audit Certifications and Information. The audit required by this section shall contain the following certifications and information:
1. A certification that the data as set forth on FCC Form 393, or such similar form required by the FCC, truly and accurately reflect the actual costs of regulated equipment and other costs reported therein as determined by the auditor in accordance with generally accepted auditing standards and that the financial information contained therein is reported in compliance with FCC rules and regulations;
  2. An explanation of the source data, assumptions and methodology utilized by the auditor in performing the audit; and
  3. A list of documents furnished by the grantee to the auditor and utilized by the auditor in performing the audit.
- C. Auditor's Working Papers. Upon the request of the city manager, the auditor shall provide to the city council a copy of the audit working papers utilized in performing the audit required by this section within five days of such request. The confidentiality of such working papers shall be maintained by the city, pursuant to the provisions of Section 6254(n) of the Government Code which exempts such financial data from the disclosure requirements of the California Public Records Act.

(Ord. 1695 (part), Ord. 1977 §4)

#### **5.12.109 Public hearing before city council on proposed rates.**

On or before the date of making a determination on the maximum permitted rates charged by a grantee for basic cable service and/or regulated equipment, the city council shall convene a public hearing on the grantee's proposed rates for such service and equipment. At least ten days prior to the date of such hearing the city clerk shall cause notice of such hearing to be published once in a newspaper of general circulation within the city. Such notice shall set forth the date, time and place of the hearing as well as a schedule of the grantee's proposed rates for basic cable service and regulated equipment to be considered by the city council at the hearing.

(Ord. 1977 §5)

**5.12.110 Rate schedules.**

A grantee shall maintain on file with the city manager a current schedule of all subscriber rates including, but not limited to, all rates for basic cable service and regulated equipment subject to a maximum rate determination made by the city council in the manner provided for by this chapter. In the event a grantee increases or decreases such subscriber rates, the grantee shall file with the city manager a new schedule of subscriber rates which includes the increased or decreased rates on or before the date the increase or decrease in such rates becomes effective. The grantee shall not receive any consideration for or in connection with the provision of cable service to its subscribers over or by means of its cable communications system other than as set forth in such schedule of subscriber rates.

(Ord. 1695 (part), Ord. 1977 §6)

**5.12.112 System and services review.**

To evaluate technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, and to promote a continuing, advanced modern system, the city and the grantee shall comply with the system and services review provisions set forth in the following sections.

(Ord. 1695 (part))

**5.12.114 Triennial review.**

- A. Review. At the city council's sole option, the city council and the grantee shall hold a system and services review session on or about the third (3rd) anniversary of the effective date of the franchise. Subsequent review sessions may be scheduled by the city each three (3) years thereafter. The grantee shall, at its expense, notify its subscribers of each such review reasonably in advance thereof so as to afford such subscribers the opportunity to comment with respect to any proceedings held in connection with such review. Such notice may be given by electronic means across one or more channels of the grantee's cable communications system.
- B. Issues. Topics for discussion and review at the system and services review sessions shall include, but shall not be limited to, services provided, application of new technologies and the economic impact with respect thereto, system performance, programming, subscriber complaints, user complaints, rights of privacy, undergrounding processes, developments in the law, and regulatory constraints.
- C. Additional Topics. Either the city council or the grantee may select additional topics for discussion at any such review session.
- D. Services Not Offered. Prior to the date scheduled for any such review, the grantee shall furnish the city council with a report of those cable services, if any, being provided on a full-time operational basis (excluding tests and demonstrations) by similarly situated local cable communications systems which services are not then offered by the grantee.
- E. Findings. Not later than sixty (60) days after the conclusion of each system and services review session, the city council may issue findings.

(Ord. 1695 (part))

**5.12.116 Annual review of performance.**

- A. Review. At the city council's sole option, within ninety (90) days after any anniversary of

the effective date of the grantee's franchise, the city council and the grantee shall meet to review the grantee's performance and quality of service with respect to operation of the cable communications system. The reports required of the grantee under this chapter regarding subscriber complaints and the records of performance tests shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. The grantee shall, at its expense, notify its subscribers of any such review reasonably in advance thereof, which notice may be given by electronic means across one or more channels of the grantee's cable communications system.

- B. Findings. Within thirty (30) days after the conclusion of such meetings, the city council may issue findings with respect to the adequacy of system performance and quality of service. If any event of default (as defined in this chapter) by the grantee is found to exist, the city may direct the grantee by written notice to correct such default within such period of time as is specified therefor in accordance with the provisions of this chapter.

(Ord. 1695 (part))

#### **5.12.118 Default.**

The grantee shall be deemed to be in default with respect to the performance of its obligations under its franchise upon the occurrence of any of the following events (any such occurrence, an "event of default"):

- A. The grantee is in violation of the provisions of its franchise, this chapter or any federal or state law or regulation applicable to the operation of the grantee's cable communications system in the city and such violation is not corrected within thirty (30) days following receipt of written notice thereof from the city manager specifying such violation or, if more than thirty (30) days are reasonably required to correct such violation, within such additional time as the city manager shall consider reasonably necessary to effect such correction;
- B. The grantee has engaged in repeated violations of any of its material obligations under its franchise or this chapter or any material federal or state law or regulation applicable to the operation of the grantee's cable communications system in the city which, for purposes of this chapter, shall be deemed to exist if the same or similar violation occurs three (3) or more times within any twelve (12) month period. In any such case, the grantee shall not be entitled to notice or a period to correct the third such violation; or
- C. If the grantee ceases to operate the cable communications system in all or substantially all of its service area for a period of seven (7) consecutive days without the prior approval of the city or for any reason within the control of the grantee.

(Ord. 1695 (part))

#### **5.12.120 Remedies upon default.**

- A. Remedies. Upon the occurrence of any event of default by the grantee, the city council may:
1. Assess against the grantee monetary penalties not to exceed five hundred dollars (\$500.00) for each such event of default or series of related events of default and/or require the grantee to cure each such event of default within such time, in such manner, and upon such terms and conditions as the city council shall designate; or
  2. Revoke and terminate the grantee's franchise.

- B. **Public Hearing.** Prior to imposing any such remedy or remedies upon the grantee upon the occurrence of any such event of default, the city shall do the following:
1. The city shall provide the grantee with at least thirty (30) days' prior written notice of the time and place of a public hearing to be held before the city council for purposes of determining whether such event of default has occurred and, if it has occurred, whether such event of default was for just cause. Notice as to the time and place of such hearing shall be published at least once ten (10) days before such hearing in a newspaper of general circulation within the grantee's service area;
  2. The grantee shall be afforded full due process in connection with such hearing, including, but not limited to, adequate notice of the hearing and fair opportunity to introduce evidence, to require the production of evidence, and to introduce and/or question persons connected with or having knowledge of the alleged default. A transcript may be made of the hearing at the grantee's expense;
  3. The city council shall hear any persons interested therein and, based upon the evidence presented at such hearing, shall determine whether or not an event of default by the grantee has occurred;
  4. If the city council shall determine that there occurred an event of default by the grantee and such default was with just cause, the city council shall direct the grantee to correct or remedy the same within such additional time, in such manner, and upon such terms and conditions as the council determines to be necessary; or
  5. If the city council shall determine that there occurred an event of default by the grantee and such default was without just cause, then the city council may, by resolution, impose any one or more of the remedies set forth in subsection A of this section.
- C. **Remedies Cumulative.** The city council may, in its sole judgment and discretion, impose any one or more of the foregoing remedies against the grantee, which administrative remedies shall be in addition to any and all other legal or equitable remedies it has under the franchise or under any applicable law.

(Ord. 1695 (part))

#### **5.12.122 Procedures in the event of termination or expiration.**

- A. **Disposition of Facilities.** In the event a franchise expires, is revoked, or is otherwise terminated, the city council may order the removal of the cable communications system facilities from the franchise area or require the original grantee to maintain and operate its cable communications system until a subsequent grantee is selected and a subsequent or modified cable system becomes operational, but in no event shall the original grantee be required to continue maintenance and operation of its cable system for more than six (6) months after such expiration, revocation, or termination. If the city council orders removal of the system facilities of the grantee upon any such expiration, revocation, or termination, such removal shall be diligently pursued and shall be completed by the grantee within twelve (12) months after the grantee's receipt of notice of termination or forfeiture of its franchise, provided that the city council or the city manager may extend the time for removal for such reasonable additional period as shall be required to complete the same in the event the grantee, acting in good faith, cannot reasonably remove its cable system within such twelve (12) month period or by reason of any circumstance beyond the grantee's control. The grantee may, at its option, abandon all or any part of the cable system in place, provided

that the part of the system so abandoned does not unreasonably interfere with the use of the public streets or rights-of-way. Upon abandonment of any such property, the grantee shall cause to be executed, acknowledged, and delivered to the city such instruments as the city council shall prescribe and approve transferring and conveying the ownership of such property to the city.

- B. Restoration of Property. In removing its facilities, the grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all streets affected by such removal in as good condition as that prevailing prior to the grantee's removal of its facilities without unreasonably affecting the electrical or telephone cable, wires, or attachments. The city shall inspect and approve the condition of such streets after removal. The liability insurance and performance bond required of the grantee under its franchise shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this section.
- C. Restoration by City; Reimbursement of Costs. In the event of a failure by the grantee to complete any work required of it under this section within the period allowed therefor to the satisfaction of the city, the city may cause such work to be done and the grantee shall reimburse the city the cost thereof within thirty (30) days after receipt of an itemized list of such costs or the city may recover such costs through the security fund or bonds provided by the grantee in accordance with the terms of its franchise.
- D. Extended Operation. In the event the city council requires the grantee to continue to operate the cable communications system subsequent to the expiration, revocation, or termination of its franchise, the grantee shall, as trustee for its successor in interest, continue to operate the cable system under the terms and conditions of this chapter and its franchise and to provide the cable services that may be provided at that time. The grantee shall be entitled to collect and retain all revenues derived from the operation of the cable communications system during this period, subject to the obligation to pay the franchise fee with respect thereto in accordance with the provisions of this chapter.
- E. City's Rights Not Affected. The termination and forfeiture of any franchise shall in no way affect any of the rights of the city under the franchise or any provisions of law.

(Ord. 1695 (part))

#### **5.12.124 Receivership and foreclosure.**

- A. Receivership. Any franchise herein granted shall, at the option of the city, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the grantee whether in a receivership, reorganization, bankruptcy, or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days or unless:
  - 1. Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all material defaults under the franchise; and
  - 2. Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises whereby such

receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of the franchise.

- B. Foreclosure. Subject to the provisions of this chapter permitting a lender to operate a cable communications system upon the default of the grantee in its obligations to such lender, in the case of a foreclosure or other judicial sale of the plant, property, and equipment of the grantee, or any part thereof, the city may serve notice of termination upon the grantee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
1. The city council shall have approved the transfer of the franchise in the manner provided by this chapter; and
  2. Such successful bidder shall have covenanted and agreed with the city to assume and be bound by all the terms and conditions of the franchise.

(Ord. 1695 (part))

## **ARTICLE V. GENERAL FINANCIAL AND INSURANCE PROVISIONS**

### **5.12.128 Construction bond.**

- A. Filing Bond. Within thirty (30) days after the granting of a franchise and prior to the commencement of any construction work by the grantee, the grantee shall, if required by the franchise, file with the city a construction bond in the amount specified in the franchise in favor of the city and any other person who may claim damages as a result of the breach of any duty by the grantee assured by such bond. Such bond shall be in a form approved by the city attorney.
- B. No Limitation of Liability. In no event shall the amount of said bond be construed to limit the liability of the grantee for damages.
- C. Waiver. The city, at its sole option, may waive this requirement, or permit consolidation of the construction bond with the performance bond and security fund specified in this chapter.

(Ord. 1695 (part))

### **5.12.130 Performance bond.**

- A. Filing of Bond. In addition to the construction bond set forth above, the grantee shall, at least thirty (30) days prior to the commencement of operation or, if completion of construction of the cable communications system has occurred, within thirty (30) days after the effective date of the franchise, file with the city a performance bond in the amount specified in the franchise in favor of the city and any other person who may be entitled to damages as a result of any act or omission of the grantee, its employees, agents, and contractors arising in the operation or termination of the cable communications system operated under the franchise, and including the payments required to be made to the city hereunder. Such bond shall be in a form approved by the city attorney.
- B. No Limitation of Liability. In no event shall the amount of said bond be construed to limit the liability of the grantee for damages.

(Ord. 1695 (part))

**5.12.132 Security fund.**

- A. Deposit and Amount. If so required under its franchise, within thirty (30) days after the effective date of the franchise or such later time as may be expressly established by the franchise documents, the Grantee shall deposit with the city, and maintain on deposit through the term of the franchise the sum specified in the franchise as security for the faithful performance by it of all the provisions of the franchise, and compliance with all lawful orders, permits, and directions of any department of the city having jurisdiction over its acts or defaults under this chapter, and the payment by the Grantee of any claims, liens, and taxes due the city which arise by reason of the Grantee's installation, construction, operation, or maintenance of the cable communications system, including without limitation the city's customer service regulations. No interest shall accrue or be paid to the Grantee with respect to such Security Fund. The Security Fund may be assessed by the city for purposes including, but not limited to, the following:
1. Failure of the Grantee to pay the city sums due under the terms of the franchise;
  2. Reimbursement of costs borne by the city to correct franchise violations not corrected by Grantee, after due notice and any required opportunity to cure; and
  3. Monetary remedies or damages assessed against the Grantee due to default or violation of franchise or other lawful requirements, including without limitation the city's customer service regulations.
- B. Letter of Credit in Lieu of Deposit. At the grantee's sole option, all or a portion of the Security Fund may be provided by way of an irrevocable letter of credit in a form approved by the City Attorney.
1. The letter of credit may be drawn upon by city for any of those purposes specified in this franchise, including without limitation any lawful monetary sanctions imposed under the city's customer service regulations, provided that Grantee has received written notice and thirty (30) days after receipt of such notice to cure any material violations or breaches prior to any assessment. As long as city follows the procedures specified herein for utilizing and/or withdrawing funds from said Security Fund, Grantee shall not initiate litigation or non-city administrative action to prevent or impair city from accessing those funds. Moreover, Grantee shall take no action to prevent or discourage the issuer of the letter of credit from paying city's draft thereupon. If Grantee believes that city's actions in drawing upon the letter of credit are improper, Grantee's recourse shall be through legal action after the letter has been drawn upon. If city's action is found to be improper by any court or agency of competent jurisdiction, Grantee shall be entitled to a refund of the funds plus interest.
  2. The irrevocable letter of credit shall contain the following endorsement:  
"It is hereby understood and agreed that this letter of credit may not be canceled by the issuer nor the intention not to renew be stated by the issuer until thirty (30) days after receipt by city, by registered mail, of written notice of such intention to cancel or not to renew."
  3. If any letter of credit provided by Grantee for this Security Fund shall contain an expiration date occurring before the expiration date of the franchise, Grantee shall provide a replacement letter of credit, an extension of the existing letter of credit or a substitutional cash deposit of equivalent amount not less than thirty (30) days prior to such expiration date. If Grantee should fail, neglect or refuse to provide such

replacement, extension or substitutional deposit at least thirty (30) days prior to said expiration, city may draw upon the then-existing letter of credit prior to its expiration in order to convert the Security Fund deposit to cash and Grantee shall not initiate litigation or non-city administrative action to prevent or impair city from accessing those funds nor take any action to prevent or discourage the issuer of the letter of credit from paying city's draft thereupon.

- C. Restoration of Fund. Within thirty (30) days after notice that any amount has been withdrawn by the city from the Security Fund or letter of credit pursuant to the provisions of this section (including without limitation during the pendency of any judicial challenge to the withdrawal by city), the Grantee shall deposit with the city a sum of money sufficient to restore such Security Fund to the original amount or shall restore the letter of credit to the original amount thereof. The failure, neglect or refusal of Grantee to so restore the Security Fund to its full amount shall be a separate event of default which shall be separately subject to all of the remedies provided by this code and the franchise.
- D. Withdrawal of Funds. If Grantee fails to pay to city any compensation within the time fixed in the franchise; or, fails, after thirty (30) days' notice to pay to city any monetary sanctions due and unpaid; or fails to repay city within thirty (30) days, any damages, costs or expenses which city is compelled to pay by reason of any act or default of Grantee in connection with the franchise; or, fails, after thirty (30) days' written notice by city to comply with any provision of the franchise which city reasonably determines can be remedied by payment of the Security Fund, city may immediately present the irrevocable letter of credit and demand payment of the amount thereof, or withdraw said amount from the Security Fund, with interest and any penalties. Upon such payment, city shall notify Grantee of the amount and date thereof.
- E. Forfeiture or Return of Fund. The Security Fund deposited pursuant to this section shall become the property of the city in the event that the franchise is revoked for cause by reason of the occurrence of any event of default by the Grantee in accordance with the procedures of this chapter. The Grantee, however, shall be entitled to the return of such Security Fund, or portion thereof, as remains on deposit no later than ninety (90) days after the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the Grantee in the performance of its obligations required under its franchise.
- F. No Limitation of Liability. In no event shall the amount of such Security Fund be construed to limit the liability of the Grantee for damage. The rights reserved to city with respect to the cash deposit and/or irrevocable letter of credit are in addition to all other rights of city, whether reserved by the franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such cash deposit and/or irrevocable letter of credit shall affect or limit any other right city may have.

(Ord. 1695 (part), Ord. 2198)

#### **5.12.134 Insurance.**

- A. Scope of Coverage. The grantee shall maintain throughout the term of the franchise insurance in amounts at least as follows:
  - 1. Worker's Compensation Insurance. Worker's compensation insurance shall be maintained in accordance with the worker's compensation insurance and safety laws of the state of California.

2. Comprehensive General Liability. Comprehensive general liability insurance, including, but not limited to, coverage for bodily and property damage shall be maintained in the sum(s) specified in the franchise.
  3. Comprehensive Automobile Liability. Comprehensive automobile liability insurance including, but not limited to, non-ownership and hired car coverage, as well as owned vehicles with coverage for bodily injury and property damage, shall be maintained in the sum(s) specified in the franchise.
- B. Certificates of Insurance. The grantee shall furnish the city with copies of such insurance policies or certificates of insurance evidencing compliance by the grantee with the provisions of this section and the corresponding provisions of the franchise.
- C. City as Additional Insured. The city, its officers, boards and commissions, and members thereof, its employees and agents shall be named as additional insureds in any of said liability insurance policies required under subsections A.2 and A.3 of this section. The obligation of the insurers under such policies to provide coverages in the amounts specified in the grantee's franchise shall be primary up to the limits of liability as set forth in such franchise without right of contribution from any insurance in effect for the city. Such policies shall not be cancelled or reduced in coverage without thirty (30) days' prior written notice to the city of the effective date thereof.
- D. No Limitation of Liability. The minimum amounts set forth in the franchise for such insurance shall not be construed to limit the liability of the grantee to the city under the franchise issued hereunder to the amounts of such insurance.
- E. Licensed Insurers. All insurance carriers providing coverage under this section shall be duly licensed to operate in the state of California and shall be subject to approval of the city, which approval shall not be unreasonably withheld.

(Ord. 1695 (part))

#### **5.12.136 Indemnification.**

The grantee shall by acceptance of any franchise granted herein indemnify the city, its officers, boards and commissions, and members thereof, its employees and agents from any and all liabilities which might arise out of or relate to the exercise or enjoyment by the grantee of such franchise, except with respect to any such liability as may be due to the active negligence of the city, its employees, agents, or contractors. Should the city or any of its officers, boards and commissions, and members thereof, its employees or agents be named in any suit, or should any claim be made against it or any of them by suit or otherwise, whether the same be groundless or not, arising out of or relating to any claim for which the grantee may be required to indemnify the city hereunder, the grantee shall defend the city and said officers, boards and commissions, and members thereof, its employees and agents and shall indemnify them for any judgment rendered against them or any sums paid out in settlement or otherwise, provided that neither the city nor any such other person shall agree to any settlement, compromise, or other resolution or disposition with respect to such suit or claim without the prior written consent of the grantee.

(Ord. 1695 (part))

## ARTICLE VI. DESIGN AND CONSTRUCTION PROVISIONS

### 5.12.140 System design.

The cable communications system shall be constructed in accordance with the design requirements contained in the franchise.

(Ord. 1695 (part))

### 5.12.142 Geographical coverage.

The grantee shall design and construct the cable communications system in such a manner as to have the eventual capability to pass by every residential dwelling unit, commercial establishment, school, and public agency within the service area of the franchise, except as otherwise provided in the grantee's franchise. Cable system construction and provision of service shall be non-discriminatory, and the grantee shall not delay or defer service to any section of the service area on the grounds of economic preference, but shall extend the cable system to such section in accordance with the construction schedules and/or line extension policies set forth in the franchise.

(Ord. 1695 (part))

### 5.12.144 System construction schedule.

- A. Compliance with Schedule. The grantee shall comply with the requirements of the system construction schedule contained in the franchise.
- B. Construction Plan. If required by the franchise, the grantee shall provide a detailed construction plan indicating progress schedule, area construction maps, test plan, and projected dates for offering service. In addition, the grantee shall update this information on a monthly basis, showing specifically whether schedules are being met and the reasons for any delay.

(Ord. 1695 (part))

### 5.12.146 Remedies for delay in construction.

The city may, at its sole option, apply any or all of the following remedies in connection with delays in system construction occasioned by events within the grantee's reasonable control:

- A. Forfeiture of Bonds and Other Monetary Assessments. Forfeiture of construction bonds, as well as the assessment of monetary penalties in such amounts as are specified in the grantee's franchise.
  - B. Termination (Delay in Construction). Termination of the franchise within one (1) year after award of the franchise if the grantee has failed to commence construction within such period.
  - C. Termination (Other Delays). Termination of the franchise or other delays exceeding eighteen (18) months including failure to commence operation within such period.
- Any remedies applied for delays in construction shall be in accordance with the procedures provided in this chapter, including, but not limited to, notice, hearing, and due process.

(Ord. 1695 (part))

### 5.12.148 Provision of service.

Following commencement of operations in any area, the grantee shall provide service to

any person requesting cable service in such area within thirty (30) days from the date of request, provided that such person's residence or commercial establishment for which such service is requested is located within 150 feet of the grantee's activated trunk cable and, provided further, that such person has the financial capacity to pay the grantee for such services as are to be provided to such subscriber.

(Ord. 1695 (part))

#### **5.12.150 Undergrounding of cable.**

The undergrounding of cable is encouraged. In any event, cables shall be installed underground at the grantee's cost where both telephone and electric utilities are already underground. Previously installed aerial cable shall be undergrounded and relocated in concert with other utilities when both telephone and electric utilities convert from aerial to underground construction. Where public funds or funds from property owners are specifically available for such work of undergrounding the cable system, whether pursuant to statute or otherwise, the grantee shall be reimbursed for such work to the extent of the availability of such funds.

(Ord. 1695 (part))

#### **5.12.152 New development undergrounding.**

- A. Notice and Specifications. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee at least thirty (30) days' advance notice of the particular date on which utilities are to be placed underground in conjunction with such construction or property development. The grantee shall promptly thereafter provide the developer or property owner with specifications as needed for the prewiring of the units being constructed.
- B. Obligations of Grantee. If the grantee is authorized to provide cable communications services to the area in which the project is located, the grantee shall, at its own cost and expense:
1. Either provide for system trenches, including all necessary excavation and backfilling, within easements appropriate for the extension of grantee's underground distribution system, or coordinate with providers of utility services for the project to co-locate the grantee's facilities within the same trenches provided for such utility services;
  2. Provide for the installation within such trenches of all conduit needed for the distribution system to serve the project;
  3. Provide for the installation of all cable within such conduit and of all pedestals, vaults, and electronic components within such vaults, as are necessary to serve all new units within the project; and
  4. Provide for the installation of conduit, and cable within it, for each service trench needed to connect a dwelling unit to the grantee's facilities within the system or utility trench. However, the grantee and the developer or property owner may agree to installation of the conduit and cable in the service trench or trenches by the developer or property owner and to reimbursement of the developer or property owner by the grantee for the reasonable costs incurred for such work.
- C. Allocation of Costs.
1. If the grantee installs conduit in a trench provided by a developer or property owner for use and occupation by one or more utility services, the developer or property owner

shall be entitled to reimbursement of the value of the trench work attributable to the grantee, as determined by reference to the joint trench authorization schedule applicable to all entities distributing services by means of facilities installed within such trench.

2. Unless the grantee and the developer or property owner agree otherwise, all costs of rewiring the units being constructed shall be borne by the developer or property owner.

(Ord. 1695 (part); Ord. 2230)

#### **5.12.154 Undergrounding at multiple dwelling units.**

In cases of multiple dwelling units serviced by aerial utilities, the grantee shall make every effort to minimize the number of individual aerial drop cables giving preference to undergrounding of multiple drop cables between the pole and the dwelling unit.

(Ord. 1695 (part))

#### **5.12.156 Street occupancy.**

- A. Existing Facilities. The grantee shall utilize existing poles, conduit occupied by the grantee's activated cable distribution system, and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits or other facilities in the streets until the written approval of the city is obtained. However, no location of any pole or wire holding structure of the grantee in the streets shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense for any of the reasons set forth in this section.
- B. Notice of Construction. The grantee shall notify the city at least ten (10) days prior to the intention of the grantee to commence any construction in any streets. The city shall cooperate with the grantee in granting any permits required therefor. Construction by the grantee shall not unreasonably interfere with the use of such streets and shall be done in accordance with the pertinent provisions of this code or the grantee's franchise.
- C. Manner of Installation. All transmission lines, equipment, and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The grantee shall employ ordinary care and shall install and maintain in the use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of members of the public. Any poles or other fixtures placed in any street by the grantee shall be placed in such a manner as not to unreasonably interfere with the usual travel on such public way.
- D. Restoration. The grantee shall, at its own expense, and in a manner approved by the city, restore to the standards and specifications required by this code or the grantee's franchise any damage or disturbance caused to the streets by the grantee, its employees, agents, or contractors as a result of its operations or construction on its rights under its franchise.
- E. No Charge To City. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the city to remove any of the grantee's facilities due to material and imminent harm to the public health, safety, property, or welfare, no charge shall be made by the grantee against the city for the restoration and repair.
- F. Tree Trimming. The grantee shall have the authority to trim trees on public property in

- accordance with the provisions of this code at its own expense as may be necessary to protect its wires and facilities, subject to the supervision and direction of the city. Trimming of trees on private property shall require consent of the property owner.
- G. Relocation. The grantee at its expense shall protect, support, temporarily disconnect, relocate, or remove any property of the grantee when, in the opinion of the city, the same is reasonably required by reason of traffic conditions, public safety, street vacation, freeway or street grade, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other type of structure or improvement by governmental agencies whether acting in a governmental or a proprietary capacity, or any other public improvement, including, but not limited to, movement of buildings, redevelopment, or any general program under which the city shall undertake to cause any such properties to be located beneath the surface of the ground, provided the facilities of both the telephone and electric utilities are to be similarly undergrounded. Where public funds or funds from property owners are specifically available for such work of protection, support, disconnection, relocation, removal, or undergrounding of the cable system, whether pursuant to statute or otherwise, the grantee shall be reimbursed for such work to the extent of the availability of such funds. Nothing hereunder shall be deemed a taking of the property of the grantee and the grantee shall be entitled to no surcharge by reason of anything hereunder.
- H. Right of City to Perform. Upon failure of the grantee to commence, pursue, or complete any work required by law or by the provisions of this chapter or the grantee's franchise to be done by the grantee in any street within the time prescribed therein or herein and to the satisfaction of the city, the city may, at its option, cause such work to be done if the grantee has failed to promptly commence such work following written direction by the city to perform such work, and the grantee shall pay to the city the reasonable cost thereof in the itemized amounts reported by the city to the grantee within thirty (30 ) days after receipt of such itemized report, provided that no such written direction need be given by the city in the event of material and imminent harm to the public health, safety, property, or welfare.
- I. Paving or Curb Cuts. The grantee shall make no paving or curb cuts in the streets unless absolutely necessary, and only after the grantee has secured an encroachment permit issued by the city authorizing such cuts.
- J. Conduit Required. The city reserves the right to require conduits for underground cabling.  
(Ord. 1695 (part))

### **5.12.158 Construction and technical standards.**

- A. Construction Standards.
1. The grantee shall comply with all applicable city construction codes and permit procedures and pay all applicable permit and inspection fees with respect thereto.
  2. Construction undertaken by the grantee with respect to its cable communications system shall comply with all federal, state, and city laws, rules, and regulations applicable thereto.
  3. All of the grantee's plant and equipment, including, but not limited to, the antenna site, headend, distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures, and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in

accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or unreasonably interfere with the streets or public improvements or to unreasonably interfere with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

- B. Technical Standards. The cable communications system shall meet all technical and performance standards contained in the franchise.
- C. Test and Compliance Procedure. The grantee shall submit within sixty (60) days after request by the city a detailed test plan describing the methods and schedules for testing the cable communications system on an ongoing basis to determine compliance with the provisions of the franchise. The proof of performance requirements for cable communications systems set forth in the FCC's Rules and Regulations shall constitute a satisfactory test plan for purposes of demonstrating compliance with such provisions.
- D. Special Tests. At any time after commencement of service to subscribers the city may require additional tests, full or partial repeat tests, or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating a material unresolved controversy or significant noncompliance, and such tests shall be limited to the particular matter in controversy. The city shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to the grantee and to the subscriber.

(Ord. 1695 (part))

## **ARTICLE VII. OPERATION AND MAINTENANCE**

### **5.12.162 Services to be provided.**

The grantee shall provide the cable services set forth in its franchise, including, but not limited to, the furnishing of community access channels for purposes of public, educational, and governmental programming where required.

(Ord. 1695 (part))

### **5.12.164 Open books and records.**

The city shall have the right to inspect at any time during normal business hours and upon reasonable prior notice to the grantee all maps, cable communications system construction plans, financial records limited to gross revenues, service complaint logs, and performance test results which relate to the operation of the franchise and are maintained at the grantee's office within the service area. If any of such records are not kept in the grantee's local office, or upon reasonable request made available to the city, and if the city shall determine that an examination of such records is necessary or appropriate to the performance of any of the city's duties, then all travel and maintenance expenses necessarily incurred in making such examination shall be paid by the grantee.

(Ord. 1695 (part))

### **5.12.166 Records required.**

In any event the grantee shall at all times maintain:

- A. Subscriber Complaints. A record of complaints received and interruptions or degradation of service experienced for the preceding three (3) years and such other related records as the grantee maintains in the usual and ordinary course of its business. Such records or a

reasonable summary thereof identifying the number and nature of complaints and their disposition for each month at issue will be furnished to the city upon request of the city, allowing reasonable time to assemble and/or copy the same.

- B. System Maps. A full and complete set of plans, records, and “as-built” maps as of a reasonably current date accurately showing the location of all the cable communications system equipment the installed or in use in the service area, exclusive of subscriber service drops. Such plans, records, and maps will be furnished to the city upon request of the city, allowing reasonable time to assemble and/or copy the same.

(Ord. 1695 (part))

### **5.12.168 Customer Service Regulations.**

#### **A. Definitions**

1. These Regulations may be cited as the “Customer Service Regulations” and shall apply only to video services.
2. “Adequate Staffing” as used herein means that sufficient Customer Service Representatives are available to respond to customer inquiries within the required Telephone Answer Time hereunder.
3. “Basic Service Level” as used herein means any service tier which includes the retransmission of local television broadcast signal.
4. “Business Day” as used herein means any day which is not a Sunday and not a designated state or federal holiday.
5. “Business Hours” as used herein means a nine (9) hour period on any Business Day that falls on any weekday (Monday through Friday) and a five (5) hour period on any Saturday.
6. “Channel Outage” as used herein means a loss of a cable signal for at least one channel of cable service reported to the Company and simultaneously affecting at least ten (10) Customers or otherwise confirmed by the Company but which is not a Service Outage.
7. “Channel Positioning” as used herein means the cable system channel number on which various programming is located and to which Customer equipment is set for the reception of said programming.
8. “Closing Date” as used herein means the date of a Business Day through which all charges are imposed and payments and credits reflected for any given billing.
9. “Collection Action” as used herein means any initiation of adverse credit evaluation or referral to any credit-reporting agency, association, or bureau not owned or operated by the Company and/or the threatened or actual initiation of legal action.
10. “Company” as used herein means any Persons or entity which constructs and/or operates a cable television system which occupies in whole or any part the public rights of way, including without limitation public utility easements and, to the extent authorized by law, other Video Providers as that term is defined by the Video Customer Service Act (Cal. Govt. Code § 53088 et seq.), provided that no failure, refusal or neglect on the part of the Franchise Authority to enforce the provisions hereof against such Video Providers who are not Franchisees or Licensees of the Franchise Authority shall be a defense or mitigation to any degree whatever to any enforcement by the Franchise Authority against such Franchisees and/or Licensees.
11. “Customer” as used herein means any Persons or entity in a building comprising four (4)

- or fewer residential units utilizing video cable services provided by the Company for consideration.
12. "Customer Service Representative" as used herein means an agent, employee, or contractor of the Company authorized and empowered to bind the Company as to the subject matter of the Standard utilizing the term "Customer Service Representative."
  13. "Customer Service Supervisor" as used herein means one or more agents, employees, or contractors of the Company authorized and empowered by the Company to control and direct the activities of Customer Service Representatives.
  14. "Deposit" as used herein means all amounts paid by a Customer which are not credited to a current charge otherwise attributable to Customer within ten (10) Business Days after receipt thereof.
  15. "Downgrade" as used herein means a change, deletion, and/or modification of a Customer's subscriptions to premium services and/or service tiers above the Basic Service Level which results in a net deletion of at least one premium service and/or one service tier above the Basic Service Level.
  16. "Due Date" as used herein means the date of a Business Day not less than ten (10) days after the inception of the period of cable television service for which the billing is being made by which date payment of the billing is due.
  17. "Franchise Area" as used herein means the geographical area which is subject to the Franchise granted to the Company.
  18. "Franchise Authority" as used herein means the city, or the city's designee, as it is empowered by Federal, State, or local law to authorize the construction and/or operation of a cable television system by franchise, permit, license, contract, resolution, certificate or any other agreement or authorization.
  19. "Instrument of Payment" as used herein means any means by which a Customer makes payment to the Company, including without limitation cash, check, draft, money order or electronic funds transfer.
  20. "Poor Signal Quality" as used herein means a signal reception by a Customer below the standards for such a signal as adopted by the Federal Communications Commission, including without limitation Part 76 of the Federal Communications Commission Code.
  21. "Pre-Cable Condition" as used herein means the array and inter-connection of the Customer's equipment, including without limitation connection to interior and/or exterior antenna as the Customer's equipment was connected and arrayed immediately prior to installation and inception of delivery of cable service by the Company and/or its predecessor in interest.
  22. "Service Call" as used herein means any work requiring the visit of the Company's representative to the point of service and any appointment requiring the presence of the Customer, including without limitation installation, repair and additional outlets.
  23. "Service Center" as used herein means a fixed location where Customers and potential Customers may conduct business with the Company.
  24. "Service Outage" as used herein means a loss of all channels upon the cable system resulting from a common cause reported to the Company and simultaneously affecting at least ten (10) Customers or otherwise confirmed by the Company within a given geographical area defined by the Company of not less than one-half (1/2) square mile.
  25. "Standard Installation" as used herein means that active cable is in the easement within

one hundred twenty-five (125) feet or such greater distance and circumstance as is defined as a 'standard installation' in the Company's franchise agreement with the Franchise Authority.

26. "Telephone Answer Time" as used herein means that period of time beginning with the first ring to the Company and ending when the caller is first connected to a Customer Service Representative or to the menu selection presented by an Automatic Response Unit ("ARU"), and includes all waiting and/or "on hold" time. Connection to an ARU which does not provide the Customer or potential customer the opportunity to select from a menu of options which includes the option of transfer to a customer service representative within 30 seconds after answering the call shall not be considered answering the call within the meaning of these Regulations.
  27. "Toll-Free" as used herein means that no charge shall be imposed upon a party calling from a residential, flat rate telephone at a point of service delivery.
  28. "Transfer Time" as used herein means that period of time beginning when a Customer or potential customer either, (1) requests that a Customer Service Representative transfer the call to another department or (2) selects an option from an ARU for transfer to a Customer Service Representative, and ends when the Customer or potential customer is connected to a Customer Service Representative in the requested department and includes all waiting and "on hold" time.
- B. Office and Telephone Availability
1. Availability. The Company shall provide a Service Center located within the sphere of influence of the City of Chico, as that term is used in Government Code section 56425 et seq., with Adequate Staffing to serve the public and Customers not less than eight (8) hours per Monday through Friday Business Day and for not less than an additional five (5) hours between the hours of 5 p.m. on Friday and 8 a.m. on the following Monday, and to provide at least the following services to Customers:
    - a. Accept payments,
    - b. Issue, exchange or accept return of remote controls, converters or other equipment,
    - c. Respond to inquiries and/or complaints, and
    - d. Schedule installation, service or technical calls.
  2. Telephone Access. During Business Hours, as defined herein, the Company shall maintain Toll-Free telephone access lines with Adequate Staffing by trained Customer Service Representatives to provide Customer Service. Outside Business Hours as defined herein, an Adequately-Trained answering service or automated answering device is permissible.
    - a. "Customer Service" includes, without limitation, answering questions, responding to complaints, dispatch of personnel in situations affecting the health and safety of persons, providing information as to Business Hours, and appropriate telephone numbers for Business Hour contacts.
    - b. "Adequately Trained" includes without limitation the capability to provide Customer Service services.
  3. Telephone Service Standards.
    - a. Telephone Answer Time. Under normal operating conditions, Telephone Answer Time by a Customer Service Representative or ARU, including wait or on-hold time, shall not exceed thirty (30) seconds; this requirement shall be attained not less

- than ninety percent (90%) of the time when measured on a quarterly basis;
- b. **Transfer Time.** Under normal operating conditions, upon the selection by a Customer or potential customer of an ARU menu option to speak to a Customer Service Representative, or upon the request of a Customer or potential customer that a call be transferred by a Customer Service Representative to another department, the transfer time, including all wait or on-hold time, shall not exceed thirty (30) seconds; this requirement shall be attained not less than eighty percent (80%) of the time when measured on a quarterly basis.
  - c. **Busy Signals.** Under normal operating conditions during Business Hours, busy signals shall not occur more than three percent (3%) of the time; this requirement shall be attained not less than ninety percent (90%) of the time when measured on a quarterly basis.
  - d. **Franchisee's Telephone Equipment and Compliance Plans.** In the event that the Company's existing telephone equipment shall not be sufficiently sophisticated in capability to record, recall and report data as to compliance with the foregoing, within one (1) year of the effective date hereof, the Company shall submit a plan of compliance ("Telephone Compliance Plan") to the Franchise Authority for approval which shall provide (1) a period of time within which the Company shall acquire equipment of sufficient technical sophistication to record, recall and report such data, (2) assurance that the Company will not, in the interim, acquire any additional equipment which is not capable of such recording, recalling and reporting such data, and (3) the Company will, in the interim, undertake reasonable objective sampling observations of its telephone service to estimate its compliance with the foregoing standards and report the results of that sampling to the Franchise Authority. The Telephone Compliance Plan shall be subject to the reasonable approval of the Franchise Authority.
4. **Resolution of Complaints Relating to Customer Service Representatives.** The Company may elect to resolve complaints of Customers regarding the handling and/or resolution of their matters by Customer Service Representatives in one of the two following ways, depending upon its organizational structure.
- a. If the Company elects an organizational structure which does not allow Customers to speak with Customer Service Supervisors, and a Customer requests to speak with a Customer Service Supervisor or otherwise evidences dissatisfaction with the handling and/or resolution of the Customer's matter by the Customer Service Representative, the Customer Service Representative shall orally advise the Customer of the Customer's right to file a written complaint regarding the handling and/or resolution of the Customer's matter by the Customer Service Representative with the Company and/or with the Franchise Authority, offer to provide the Customer with a form devised by the Company for that purpose and, upon request of the Customer, so provide that form.
  - b. If the company elects an organizational structure which does allow Customers to speak with Customer Service Supervisors, and a Customer requests to speak with a Customer Service Supervisor or otherwise evidences dissatisfaction with the handling and/or resolution of the Customer's matter by the Customer Service Representative and no Customer Service Supervisor is available, the Customer

Service Representative shall record the pertinent information, and the Customer Service Supervisor shall return the telephone call of the Customer within one (1) Business Day. If the Customer Service Supervisor does not achieve direct contact with the Customer on the return call, the Customer Service Supervisor shall leave, in any message for the Customer, a direct dial or extension number which will reach the Customer Service Supervisor for the subsequent use of the Customer. If the Customer does not answer and an answering machine is not in use, the Customer Service Supervisor shall be deemed to have fulfilled this obligation by documenting the date and time of the Supervisor's efforts to reach the Customer.

5. Customer Service Representative Identification. For purposes of documenting the Customer's communications with the Customer Service Representative, the Customer shall be provided with the Customer Service Representative's name and/or number or other identification utilized by the Company.
  6. Telephone Listings. Company telephone numbers shall be listed conspicuously on all customer bills, and in the major directories published by all telephone companies operating within boundaries of the Franchise Authority. Numbers that are inadvertently omitted by the Company shall be inserted in the next available publishing schedule of the directories.
  7. Franchise Authority Identification. Telephone number(s) and address(es) of the Franchise Authority shall be listed conspicuously on all customer bills.
- C. Installation, Disconnects, and Appointments
1. Installation. All Standard installations shall be performed within seven (7) Business Days after an order has been placed by the Customer, except in those instances in which the Customer specifically requests an installation date beyond the seven (7) Business Day period. This requirement shall be met with regard to at least ninety-five percent (95%) of all such installations, measured on a quarterly basis.
  2. Voluntary Disconnection and Cessation of Billing. The Customer shall have the right to disconnect service at any time. In the instance of a voluntary disconnection, cessation of billing shall be effective upon the earlier of:
    - a. The Business Day the Customer makes the request, if the Customer has no Company-owned equipment; or
    - b. The Business Day the Customer returns all Company-owned converters and other equipment to the Company or one of its approved agents; or
    - c. The day of an appointment, mutually scheduled as between the Company and the Customer, at which the Company retrieves all Company-owned equipment that is in the Customer's possession.
      - (1). A Customer requesting this option for equipment retrieval may request the Company to reconnect the Customer's television equipment to its Pre-Cable Condition at the time of that appointment. If the restoration of Pre-Cable Condition of the Customer's equipment cannot be restored due to the loss, deterioration or misplacement of necessary equipment by the Customer, the Company shall be excused from the restoration.
      - (2). The mutually scheduled appointment shall occur within seven (7) Business Days following the Customer's request for disconnection.

- (3). Should the Customer, after advisement of the effect of such a request, scheduled pick-up of equipment beyond the aforesaid seven (7) Business Day period, the effective date for the cessation of billing shall be extended by that number of days by which the scheduled date exceeds the aforesaid seven (7) Business Day period.
- (4). Should the Customer fail, neglect, or refuse to keep the first scheduled appointment for the pick-up of the Company's equipment, the effective date for cessation of billing shall be extended to the next scheduled date of pick-up.
- (5). If the Company should fail, neglect or refuse to pick-up the Company equipment at the agreed upon appointment Company shall:
  - (i). Provide the Customer with a credit in the amount specified by Section D.7.(a) below; and
  - (ii). Thereafter, schedule any further appointments for the pick-up of the equipment at the reasonable convenience of the Customer.
  - (iii). The Company, at its option, may provide the Customer with mailers for postage prepaid return of the Company equipment in lieu of the foregoing pick-up procedure, or accept return of the equipment COD.
3. Collection Actions. With respect to voluntary disconnections pursuant to the preceding section, the Company shall not initiate any Collection Action against a Customer by reason of the failure to return any cable equipment unless and until the Company and the Customer shall have fully complied with provisions of Section C.3. above.
4. Junction Box Disconnection. The Company in its sole discretion, and upon evidence of theft of service by the Customer or former Customer, may remove its wires from the junction of its distribution system to the outer wall of the Customer's or former Customer's dwelling. The Company must repair all damage to exterior walls of the structure so as to prevent any damage resulting from the elements or other external sources.

#### D. Service Call Standards

1. Service Call Response Times. The Company shall maintain a sufficient number of repair technicians and related support staff, equipment, and facilities to enable the Company to respond to a Customer request for service in all reasonably anticipated circumstances within the following time limitations:
  - a. For Service Outages - response within three (3) hours, including weekends and holidays, after the receipt of notice from Customers meeting the minimum criteria of a Service Outage.
  - b. For a Channel Outage - response within nine (9) Business Hours after the receipt of a request for service from Customers.
  - c. For Poor Signal Quality - response within eighteen (18) Business Hours after the receipt of a request for repair and/or rectification of such Poor Signal Quality.
2. Service Call Scheduling.
  - a. The Company shall offer Customers not less than three (3) "appointment window" alternatives for Service Call appointments (as necessary to meet customer convenience), each of which shall not exceed a specific four (4) hour block of time, and upon request of the Customer, the Company shall schedule an appointment accordingly, or

- b. The Company may schedule a Service Call at any other time during its Business Hours, if agreeable to Customer.
3. Service Call Alternatives. In lieu of a Service Call, the Company may arrange for the return and replacement of converters, remote controls and/or other Company equipment through the use of parcel delivery services, COD parcel service, and/or postage pre-paid mailers at the sole cost of the Company. The Company may provide Customers with the option of delivery and exchange of converters and other Company equipment at specified locations of the Company and/or its agents. The Company shall disclose to its Customers no less than once each year the availability of this service.
4. Service Call Response Criteria. The Company shall be deemed to have responded to a request for service or to the Pre-Cable Condition reconnection requirement for the purposes of determining compliance with time limitations of this section when a qualified Company technician arrives at the Customer's location (or the site of the problem requiring correction if other than the Customer's location) and begins work in response to the request at the time scheduled or during the four-hour block arranged with the Customer, provided that the qualified Company technician continues said work without cessation to completion and rectification to the extent reasonably possible. The service call shall be considered completed upon a determination that no service problem related in any way to Company equipment remains to be remedied and that the signal quality meets or exceeds the guidelines set forth by the FCC. In the case of a Customer not being home when the technician arrives, the technician will leave written notification of arrival and the Customer will be provided information on rescheduling the appointment. Two successive failures of the Customer to be present at the appointed time shall excuse the Company of the duty to respond. Moreover, the Company shall be excused from responding at the agreed-upon time for a service call, if the Customer does not answer at least one of two telephone calls placed by the Company at least ten (10) minutes apart during the "appointment window" agreed-upon with the Customer, provided that (a) the Customer was told, during the telephone conversation in which the agreed-upon window was selected, that the Company would make two such telephone calls prior to arrival of the Company's representative, and (b) the Company has retained records generated by a third-party of the two calls to the Customer during the "appointment window."
5. No Charge for Cable-Related Service Call. A Customer shall not be charged for a Service Call unless the service request can be demonstrated by the Company to be proximately caused by Customer's negligence or damage to the Company equipment due to the failure of the Customer to reasonably protect the Company-owned equipment (e.g. dog chewing, etc), and to be unrelated to the Company's system or service.
6. Force Majeure. The Company shall not be excused from any provision of these Regulations by reason of any cause or excuse except for causes which are not reasonably foreseeable and which are beyond the control of the Company. Causes which have not been contributed to or aggravated by acts or omissions by the Company shall only be excused to the extent Company's acts or omissions did not contribute to the lack of compliance.

The following are examples of acts or omissions by the Company or circumstances

which shall be deemed not to be beyond the control of the Company and which shall not constitute excuses or justifications for violations:

- a. The failure at any time by the Company or its officers, agents or employees to exercise diligence in planning, organizing, arranging for or prosecuting the work of construction and installation, or in taking any other action necessary to permit or facilitate the work of construction and installation;
- b. Unanticipated cost increases or insufficiency of capital with which to take actions necessary to comply or facilitate compliance with any of the terms, provisions and conditions of these Regulations;
- c. Considerations relating to economy or cost efficiency, as respects acts or omissions by the Company;
- d. Delays occasioned by the failure of the Company to diligently apply for and prosecute any request for a required certificate, approval or consent from the FCC or other governmental body;
- e. Delays occasioned by the customary and usual time required to obtain approval to attach lines to poles owned by private or public utilities or in the attaching of cable to the poles; provided that if the Company submits all plans and documentation required by private or public utility in connection with the approval to attach lines to poles, any time consumed by such approval process which is longer than that provided by CPUC Decision 98-10-05 Appendix A, Sections III and IV shall be deemed to excuse the Company from any violations which are proximately caused by such delay in excess of the periods provided therein.

Examples of circumstances beyond the control of the Company which excuse the Company from violation and being in breach of the terms, provisions and conditions of these Regulations, to the extent and only to the extent that such violations are caused thereby, include the following: strikes, acts of public enemies; orders by military authority or civil emergency authorities; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; floods; civil disturbances; explosions; and/or partial or entire failure of utilities.

7. Company Failure to Keep Appointment. For each otherwise unexcused failure of the Company to meet any scheduled appointment within the parameters specified in this Section D. with a Customer who is available and present therefor, the Company must offer the Customer so affected, in the sole discretion of the Customer after providing oral and/or written information on each of the options below:
  - a. A credit to the Customer's then current billing balance of not less than twenty dollars (\$20), (provided that the Company may, in its discretion, substitute other credits of reasonably comparable value); or
  - b. With respect to service connection or repair appointments, an opportunity to elect to seek remedies under California Civil Code Section 1722, if applicable.

The Company shall have the burden of establishing that its representative met the date and time period of the scheduled appointment and that the Customer was not present or available. The Company may discharge its obligation to provide information regarding Civil Code section 1722 under subsection (b) above by providing the Customer with a written summary of the provisions thereof which has theretofore been reviewed as to form and content by the Franchise Authority. The Customer shall not be deemed to have made an

election unless and until the Company shall demonstrate that it has informed the Customer orally or in writing that, by Customer's acceptance of the credit specified above, the Customer shall have waived such Customer's remedies under the Civil Code for the missed appointment. Nothing in the foregoing shall be construed to limit the Company's authority to offer a larger credit to Customers than that specified, provided that the same amount of credit shall be offered to all similarly situated Customers in any given period of time. Any credit or payment made to Customers under this section shall be deemed a penalty for failure to meet the requirements of these Regulations and such expense shall not be passed through to Customers in rates or charges for any reason.

In addition to the foregoing, the Company shall establish the next succeeding service call at a specific date and time agreed to the Company and the Customer.

E. Service Outages, Refunds and Credits

1. Credit for Outage. Upon a telephone or written request of a Customer which is received by the Company within seven (7) Business Days asserting that the Customer has experienced an outage which, if taken together with others could constitute a Channel Outage or Service Outage, has occurred, the Company shall investigate and substantiate the cause of the outage or interruption. For outages which are not excused pursuant to Section D.6. above, the Company shall credit the Customer's account in an amount equal to one (1) day's proration of the total monthly charges to the Customer for that month, exclusive of taxes, for each increment of twenty-four (24) hours or portion thereof in excess of the initial four (4) hours of time of the outage of one or more channels.
2. Refund Check Processing Time. In the event a refund is due to a Customer at the time of a service disconnection, such refund amount must be paid to the Customer within thirty (30) Business Days after such disconnection provided that all equipment of the Company shall have theretofore been returned.

F. Billings, Deposits, and Disconnections

1. Billing Detail. Every Company billing to a Customer shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. The bill must also specify:
  - a. A Due Date for the payment thereof which is not less than ten (10) days after the inception of the period of cable television service for which the billing is being made. In the case of a delinquent account, the due Date may be listed as "On Receipt";
  - b. The Closing Date of the billing;
  - c. The amount(s) of all payments and other credits applicable through the Closing Date;
  - d. Accounts which may be subject to the following charges shall also include the following on their bills:
    1. The amount of the Late Charge, if any, which shall be imposed by the Company for instruments of payment received after the Due Date;
    2. The amount of any additional fee, if applicable, which may be imposed by the Company in connection with any collection efforts.
2. Late Charges. No late charge may be imposed on any contract or account except in strict compliance with Cal. Govt. Code § 53088.

3. Deposits. In the event that the Company retains any Customer Deposits, said Deposit(s) shall accrue interest at a rate equal to the effective interest rate for new issues of one-year United States Treasury Bills, issued during the last week of October of each year. This interest rate rounded to the nearest percent shall apply to all Deposits held during the subsequent calendar year. If, at any time, the Deposit is applied to an outstanding balance of a Customer, the interest on the Deposit shall be prorated.
4. Involuntary Disconnections. The Company shall not disconnect service to a Customer for non-payment of amounts due until the Company has provided a written notice of its intent to do so to the Customer. The notice shall be mailed no earlier than ten days after the Due Date, and at least fifteen (15) days in advance of the proposed disconnection. The notice shall specify, at a minimum, the following:
  - a. The proposed date of disconnection of service;
  - b. The total payment required and the date by which payment is required in order to avoid disconnection, including any permissible Late Charge pursuant to Section F.2. above;
  - c. The total amount in arrears, if that amount differs from the payment required to avoid disconnection; and
  - d. The telephone number of a Customer Service Representative authorized to explain, adjust and resolve such proposed disconnection.

In the event that the Company's system is incapable of disconnecting or interrupting the Customer's cable television service by remote action of the Company at the head-end and that a service call is necessary to the Customer's location to effect such an involuntary disconnection, the Company may impose a disconnection fee ("Disconnection Fee") not in excess of Ten (\$10) Dollars in addition to the Late Charge permitted by Section F.2. above, provided that the amount and circumstances of imposition of the Collection Fee shall have theretofore been disclosed to the Customer in the Billing Detail pursuant to Section F.1.(c) above, in the notice of intent to involuntarily disconnect pursuant to this section and in the General Rate and Programming Disclosure pursuant to Section G.1. et seq. Such a Disconnection Fee may not be imposed in any other circumstances other than those specified in this section. Nothing in the foregoing shall be deemed to preclude the Company from assessing a field collection fee pursuant to Cal. Govt. Code § 53088.7(b).

5. Disconnection and Downgrade Charges. The Company shall not impose any fee or charge for:
  - a. Complete disconnection of service; or
  - b. Downgrading to lesser levels of service if such downgrading is accomplished solely by computer entry or similar simple method, and is requested within thirty (30) days after the Company has given notice of a change in rates affecting the services theretofore received by the Customer; or
  - c. Downgrading from any new or additional level of service within thirty (30) days after the Customer adds such level of service if the service was ordered by the Customer as a result of a telephone solicitation, provided that the Company shall be obligated to provide only one such downgrade to each Customer without charge.
6. Escrow Account. The Company may, at its option, establish a supervised escrow

account wherein a Customer may be required to deposit the disputed portion of any charge pending final determination of the accuracy or legitimacy of that charge, provided that if a final determination as to the accuracy or legitimacy of the charge has not been completed within ninety (90) days from the date of the Customer's deposit therein, any such deposit shall be returned to the Customer notwithstanding the continuing pendency of the dispute resolution procedure. The nature, location, supervision and other procedures relating to the use of such an escrow account are subject to the approval of the Franchise Authority.

7. Customer Credit Reporting. The Company may not disclose, refer, enter or cause or allow to be disclosed, referred or entered ("referral"), any negative report to any consumer credit reporting agency, association, or bureau relating to the payment performance of Customer until the Company has provided a written notice of its intent to do so to the Customer. For purposes of this section, any comment or evaluation other than "as agreed" shall be deemed to be a "negative" report. The notice shall be mailed, separately from the Customer's billing, at least seven (7) Business Days in advance of the proposed referral, or, in the alternative, may be delivered personally at least five (5) Business Days in advance of the referral. The notice shall specify, at a minimum, the following:
  - a. The date and nature of the proposed referral;
  - b. The total payment required to avoid referral;
  - c. The total amount in arrears if that amount differs from the payment required to avoid the referral;
  - d. The telephone number of a Customer Service Representative authorized to explain, adjust and resolve such proposed referral;
  - e. The name and address of each entity or agency to whom the Company proposes to make such referral together with advisement that the Customer is entitled to advise said entity or agency of the nature and circumstances of the dispute, if any, with respect to said amount and the proposed referral.

#### G. Notices and Identification

1. General Rate and Programming Disclosure. The Company shall provide each Customer at the times and in the circumstances specified in these Regulations with a General Rate and Programming Disclosure ("GRP Disclosure"). The GRP Disclosure shall contain at a minimum:
  - a. All of the programming bundling, tiers and combinations, equipment, and services currently available pursuant to the Company's obligations to provide uniform service and rates (and subject to lawful exceptions thereto, such as limited time promotional offers), and the rates and charges which apply thereto, including without limitation all installation charges;
  - b. The Channel Positioning of all programming bundling, tiers and combinations, and custom Channel Positioning, currently available pursuant to the Company's obligations to provide uniform service and rates, public access and leased access to cable facilities (and subject to lawful exceptions thereto, such as limited time promotional offers);
  - c. The amount(s) and basis of any required Deposit(s) and the Company's detailed policies and procedures relating to deductions or offsets therefrom;

- d. The Company's Toll-Free telephone number, office hours, street address and mailing address, including without limitation, the address(es) to which complaints and inquiries may be directed and a telephone number;
  - e. The Company's general billing policies and complaint resolution procedures;
  - f. The full extent of the Customer's liability for Company equipment in the event of loss, damage, or destruction thereof;
  - g. The charges imposed by the Company related to a Customer's account, including without limitation fees and charges for returned checks, and late charges;
  - h. Notification of the Customer's right to Downgrade or disconnect service pursuant to these Regulations without charge;
  - i. The Customer's right to refer problems, inquiries or complaints to the Franchise Authority at its designated address and telephone number and to request complete copies of these Regulations from the Franchise Authority;
  - j. The Customer or potential customer's right to an installation within seven (7) Business Days pursuant to the provisions of Section C.1;
  - k. The Customer's right to a service call appointment within a selection of "appointment windows" pursuant to the provisions of Section D.2.a.; and
1. Notification to the Customer that delivery of a GRP Disclosure precedes any binding obligation in any amount by the Customer for the services or equipment to be provided and that the Customer retains the right to rescind, reject, or modify any earlier incremental service or equipment request which was not accompanied by a GRP Disclosure identifying the costs relating thereto at the time of obligation.
  2. When General Rate and Programming Disclosure Required. The Company shall provide each affected Customer with the GRP Disclosure at each of the following times and circumstances:
    - a. Prior to any binding agreement for the provision of initial cable service to the Customer by the Company (except for those agreements which were entered into by the Customer prior to the effective date hereof);
    - b. Upon request of any Customer at any time;
    - c. In any event, not less than once every twelve (12) months to each Customer.
  3. Change in Rate and/or Programming Disclosure. The Company shall provide each Customer at the times and in the circumstances specified in these Regulations with a Change in Rate and/or Programming Disclosure ("CRP Disclosure"). The CRP Disclosure shall contain at a minimum:
    - a. All of the programming bundling, tiers and combinations, equipment, and services currently available pursuant to the Company's obligations to provide uniform service and rates (and subject to lawful exceptions thereto, such as limited time promotional offers), and the rates and charges which apply thereto, including without limitation all relevant change of service fees, provided that in the event of a notification of a change in rates, charges and fees, the Disclosure shall disclose both the current rates and the proposed future rates in a form suitable for comparison of those rates;
    - b. The Channel Positioning of all programming bundling, tiers and combinations, and custom Channel Positioning, currently available pursuant to the Company's obligations to provide uniform service and rates (and subject to lawful exceptions

- thereto, such as limited time promotional offers), public access and leased access to cable facilities, including without limitation all changes in Channel Positioning and availability, provided that in the event of a notification of a change in Channel Positioning, the disclosure shall disclose both the current availability and placement and the proposed future positioning in a form suitable for comparison of channels;
- c. The Company's Toll-Free telephone number, office hours, street address and mailing address, including without limitation, the address(es) to which complaints and inquiries may be directed and a telephone number;
  - d. Notification of the Customer's right to Downgrade or disconnect service pursuant to these Regulations without charge;
  - e. The Customer's right to refer problems, inquiries or complaints to the Franchise Authority at its designated address and telephone number and to request complete copies of these Regulations from the Franchise Authority.
4. When Change in Rate and/or Programming Disclosure Required. The Company shall provide each affected Customer with the CRP Disclosure at each of the following times and circumstances:
- a. Upon any change in rates, charges and fees which raises the net monthly cost to the Customer of any given programming service, bundle, tier, equipment, or service (or any combination thereof) provided by the Company to that customer by at least five percent (5%). This shall include, but not be limited to changes to the pricing of any programming bundle, tier or combination of channels. The notice shall include both the current rates and the proposed rates in a form suitable for comparison of those rates.
  - b. Any transfer of one (1) or more channel(s) from one programming bundle, tier or combination of channels to another programming bundle, tier or combination of channels.
  - c. Upon any substantial change in Channel Positioning by the Company which shall include, but not be limited to the following:
    - (1). Any transposition or movement of the Channel Positioning of any combination of six (6) channels within any ninety (90) day period.
    - (2). Any transposition or movement of the Channel Positioning of one (1) or more channels where the move transfers any channel from a Channel Positioning which permits reception with any customer's television to a Channel Positioning which requires an independent device for reception on any customer's television.
    - (3). Any movement of the Channel Positioning of one (1) or more channels such that it increases the cost to the subscriber to receive that channel in any way, including without limitation the cost of an independent device necessary to receive the channel.
5. Employee Identification. All Company representatives dealing with the public shall have, and prominently display at all times, identification badges identifying the Company and the representative's name with a current picture to authenticate the representative's identity and affiliation.
6. Proration in Event of Downgrade or Disconnection in Response to Disclosure. In the event that a Customer should elect to Downgrade services or disconnect within thirty

- (30) days following mailing of a CRP Disclosure in connection with a change in rates, charges, and fees or a change in programming, any proration of charges to the time of Downgrade or disconnect shall be at the levels of rates, charges, and fees existing prior to the issuance of the CRP Disclosure.
7. Complaint Procedures. Within six (6) months after the effective date of these Regulations, and within sixty (60) days of any transfer of ownership or control the Company shall file with the Franchise Authority a copy of its written procedures for receiving, acting upon, and resolving Customer complaints. The procedures shall prescribe the manner in which a Customer may submit a complaint and the time within which the Company commits to investigate and resolve such complaints and, in the event the Company has elected an organizational structure which does not allow Customers to speak with Customer Service Supervisors, the procedures shall prescribe the manner in which a Customer may file a written complaint regarding the handling and/or resolution of the Customer's matter by the Customer Service Representative with the Company and/or with the Franchise Authority and the time within which the Company commits to investigate and resolve such complaints.
  8. Alternative Dispute Resolution Procedure. Within sixty (60) days after the effective date of this regulation, and within sixty (60) days after the approval of a franchise or the approval of a transfer of ownership or control of a franchise, the Company shall file with the Franchise Authority a copy of any written policy or procedure it has adopted for resolving customer complaints or disputes using an Alternative Dispute Resolution Procedure. "Alternative Dispute Resolution Procedures" means any policy or procedure for the use of arbitration, mediation or other manner of dispute resolution other than those already available under local, state or federal law and which precludes the use of any remedy otherwise available to the Customer under State or Federal law. Any Alternative Dispute Resolution Procedure adopted or implemented by the Company and applicable to Customers in the Franchise Area shall comply with all of the following:
    - a. The Alternative Dispute Resolution Procedure shall provide that any dispute will be governed by California law.
    - b. The Alternative Dispute Resolution Procedure shall provide that the location of any hearings or meetings which may take place pursuant to the procedure will be held within fifty (50) miles of the Franchise Area.
    - c. The Alternative Dispute Resolution Procedure shall not prohibit Customers from disclosing the existence, content or results of any arbitration, mediation or other procedure carried forth pursuant to the Alternative Dispute Resolution.
    - d. If the Alternative Dispute Resolution Procedure provides that a specific arbitration, mediation or other dispute resolution service will be used in the resolution of Customer disputes, the location of the business office which will provide those services shall be located within 200 miles of the Franchise Area.
    - e. The Alternative Dispute Resolution Procedure shall not abrogate any rights that a Customer would otherwise have under California or Federal Law through the exercise of a "negative option." "Negative option" means a procedure whereby the Customer is deemed to accept the terms of an Alternative Dispute Resolution Procedure merely by the Customer's continued use of the services provided by the

Company.

- f. The Alternative Dispute Resolution shall not purport to require the waiver by the Customer of any of the provisions of the Consumer's Legal Remedies Act, found at Section 1750 et seq. of the California Civil Code.
9. Franchise Fee Calculations Reported to Customers. If the Company chooses to report a percentage of a Customer's bill as being attributable to franchise fees, the Company shall not calculate that percentage in any other than one which represents the franchise fee as a percentage of all revenue of the Company which is subject to the fee.
10. Misleading Statements. All information and calculations contained in any communication from the Company to any Customer shall be fair and accurate and shall not contain any false or misleading statements.

#### H. Logs and Reporting

1. Promotional Material. The Company shall retain for at least one year, and furnish to the Franchise Authority upon request, copies of all promotional material distributed by the Company to Customers, including that material circulated by means of newspapers and/or magazines of general circulation.
2. Company's Filing of Documents and GRP Disclosure. The Company shall file with the Franchise Authority a copy of all of its written documentation that will be presented to and executed by Customers, including without limitation the GRP Disclosure and the CRP Disclosure forms, excepting promotional material.
3. Service Request Record. The Company shall maintain for two years a written record (or, at the option of the Company, an equivalent stored on magnetic media capable of reproduction in printed form by the Company) of all Customer requests which result in a Service Call, including the name of the caller (or account name), date, and the date and time of the Company's response, and a brief (or coded) description of the problem reported and resolved.
4. Installation Record. The Company shall maintain for two years a written record (or an equivalent stored on magnetic media capable of reproduction in printed form by the Company) of all requests for installation (and/or work orders related thereto), including the date of the request and the time and date of actual service activation.
5. Telephone Reporting.
  - a. Quarterly Reporting. Except as otherwise provided by a Telephone Compliance Plan approved by the Franchise Authority pursuant to Section B.3. above, or when biweekly reporting is required by Section H.5., below, the Company shall provide the Franchise Authority with telephone usage reports, on or before the first day of every February, May, August and November, in a form prescribed by the Franchise Authority, detailing its telephone response statistics. These reports shall include the results during the previous quarter for busy signals, Telephone Answer Times and Transfer Times. The form shall state whether any time periods during business hours for that quarter have been excluded from the calculations based on the assertion that normal operating conditions did not exist for such time periods. If any time periods have been so excluded, the report shall state the specific reasons therefor. The General Manager of the Company shall certify to the Franchise Authority the accuracy of the statistics and the Company's compliance or noncompliance with the telephone response standards of these Regulations.

- b. Biweekly Reporting. If any quarterly report submitted by the Company indicates that any of the Telephone Service standards set forth in Section B.3, above, have not been met during the reporting period, the Company shall thereafter submit telephone usage reports biweekly. Each biweekly report shall include the results during the previous two weeks for busy signals, Telephone Answer Times and Transfer Times. The Company shall be required to submit biweekly reports until ten (10) consecutive such reports indicate full compliance with the telephone service standards set forth in Section B.3, above. Thereafter, quarterly reports shall be submitted with the first such report due on the next regularly scheduled quarterly reporting date.
  - c. Franchise Area Data. The data used to prepare the telephone usage reports shall be only that data applicable to all calls received from the Franchise Area. If calls from the Franchise Area are made to one or more call centers which also receive calls from locations outside the Franchise Area, the Company shall segregate the calls from within the Franchise Area and report the required information applicable to those calls only. If the Company is unable to, or chooses not to, segregate calls received from within the Franchise Area, then all calls received at the call centers shall be deemed to be Franchise Area calls for purposes of reporting.
6. Response to Franchise Authority Inquiry. The Franchise Authority may, from time to time, make inquiry of the Company regarding the Company's response to particular inquiries and complaints of Customers who have contacted the Franchise Authority. In such instances, the Company shall respond to the Franchise Authority staff within six Business Days from receipt of the Franchise Authority inquiry with the date, time, and nature of the Company's prior responses to the Customer and the Company's then-current position relative to resolution of the Customer's inquiry and/or complaint. While the Company's responses are subject to the privacy restrictions of Section 631 of the Cable Act (47 U. S. C. § 551), the Company may not withhold information from the Franchise Authority upon such asserted grounds if the Customer has given prior written or electronic consent to the disclosure of personally identifiable information to the Franchise Authority with respect to its review of the Company's handling of the Customer's inquiry or complaint.
- I. Enforcement
1. Attempted Informal Resolution. In the event that the Company shall fail, refuse, or neglect to comply fully with the requirements of these Regulations, the Franchise Authority shall, except in instances in which time is of the essence in obtaining the Company's compliance and/or the Franchise Authority determines that such efforts would be futile, notify the Company by letter of its desire to attempt informal resolution and rectification of the Company's non-compliance. Said informal resolution efforts shall be initiated by the Franchise Authority's general statement of the alleged violations under investigation and the general nature of the evidence then known to the Franchise Authority. Notwithstanding the foregoing, the nature and extent of evidence which may be presented by the Franchise Authority or its designee in any subsequent Enforcement Hearing, as set forth herein, shall not be limited or abridged by reason of the presentment or non-presentment or recitation or non-recitation of such evidence in the course of the informal resolution efforts.

2. **Time to Cure.** To the extent reasonably consistent with the goal of obtaining compliance with these Regulations, it shall be the policy of the Franchise Authority to notify the Company of a possible or alleged violation and allow a reasonable time (not to exceed thirty (30) days) for the Company to cure the possible or alleged violation. If the Company does so cure, in the absence of aggravating circumstances, it shall be the preference of the Franchise Authority to abstain from further enforcement action. For purposes of this Section, "aggravating circumstances" shall include, but are not limited to, the willful nature of the violation, the length of time the violation has persisted, the seriousness of the violation, and the number of Customers affected by the violation. For purposes of this section, mere non-repetition of the offending behavior does not necessarily constitute a "cure." Moreover, nothing in the foregoing shall imply that all potential violations are curable.

Notwithstanding the above, in the event of a violation of the telephone service standards, set forth in Section B.3., above, the Company shall only be considered to have cured the violation and no enforcement action shall be taken if all of the following conditions are met:

- a. There has been no other violation of the telephone service standards within the three years immediately preceding the violation at issue;
  - b. The Company timely files the biweekly telephone usage reports required by Section H.5., above;
  - c. The biweekly reports indicate, no later than the third such report, that the telephone service standards are being met; and
  - d. The telephone service standards are continuously met thereafter for a period of one year.
3. **Probable Cause Determination.** In the event that the informal efforts at resolution are ineffective or otherwise inappropriate, the Franchise Authority may notice the Company to meet with the Franchise Authority on not less than ten (10) days notice to determine whether or not probable cause exists to believe that the Company has failed, neglected or refused to comply with the provision of these Regulations. The probable cause determination shall be initiated by the Franchise Authority's general statement of the alleged violations under investigation and the general nature of the evidence then known to the Franchise Authority. The Franchise Authority shall disclose to the Company all such evidence in its possession that demonstrates that the Company has failed, neglected or refused to comply with the provisions of these Regulations. Notwithstanding the foregoing, the nature and extent of evidence which may be presented by the Franchise Authority in any subsequent Enforcement Hearing pursuant to this section shall not be limited or abridged by reason of the presentment or non-presentment or recitation or non-recitation of such evidence in the course of the probable cause determination. The Company, however, shall put forth all relevant evidence at this meeting with the Franchise Authority in order to permit Franchise Authority to make an informed determination on the existence of probable cause to believe that the Company has failed, neglected or refused to comply with the provisions of these Regulations, and non-presentment or non-recitation by the Company of such evidence may result in the Franchise Authority and/or Hearing Officer limiting or denying admissibility of such evidence by the Company at any subsequent Enforcement

- Hearing if the Franchise Authority and/or Hearing Officer finds that such evidence was available to the Company and was consciously withheld by the Company.
4. Hearing. Upon a determination by the Franchise Authority, pursuant to the provisions of this section, that probable cause exists to believe that the Company has failed, neglected, or refused to comply with the provisions of these Regulations, the Franchise Authority may hold such hearings, conduct such procedures, and impose such remedies as are authorized by these Regulations.
  5. Hearing Officer Option. The hearing may be conducted either by the governing body of the Franchise Authority or, at the sole discretion of the governing body of the Franchise Authority, by a hearing officer appointed by the governing body to conduct the hearing.
  6. Hearing Officer Selection. If the matter shall be referred to a hearing officer, such hearing officer shall be selected from a listing of neutral, unaffiliated candidates provided by the American Arbitration Association (AAA) in San Francisco, California. From the listing provided, each party shall have ten (10) Business Days to select three candidates as potential hearing officers. The final selection of the person who will serve as hearing officer will be made by AAA. Any such hearing officer shall be an attorney licensed to practice under the laws of the State of California. The cost of providing quarters for the hearing, fees charged by AAA, the compensation and expenses for the hearing officer, if any, and the per diem cost of any reporter retained to record the proceedings shall be borne equally by the Company and the Franchise Authority. The costs incurred by the parties for attorney's fees, expert witness fees and other expenses shall be borne solely by the party incurring the costs.
  7. Evidence at Hearing. At any hearing conducted as set forth herein, a designee of the Franchise Authority shall put forth evidence showing the alleged failure, neglect or refusal to comply with these Regulations, and shall have the burden of establishing such violation by a preponderance of the evidence. The Company may present such evidence consistent with the provisions of this Section, as it may desire.
  8. Hearing Procedures. All witnesses testifying at the hearing shall be sworn. Witnesses shall be subject to direct and cross-examination. However, formal rules of evidence applicable to the trial or civil or criminal proceedings in the trial courts of this State shall apply to evidence adduced at the hearing only to the extent that such rules are reasonably necessary in the sound discretion of the hearing officer to the preservation of the probative nature of the evidence proffered. The provisions of the Administrative Procedure Act, commencing at Section 11500 of the California Government Code or any successor legislative enactment, shall not be applicable to any such hearing. The hearing may be continued from time to time. Either party may maintain a substantially verbatim record, by means of court reporter or audio or video tape recording. Unless otherwise agreed by the parties, the party requesting the record shall bear the cost thereof.
  9. Hearing Officer Decision; Options. If the hearing is conducted by a hearing officer, the officer shall, upon conclusion of the hearing, prepare a recommended decision that includes findings of fact and conclusions. The recommended decision shall be filed with the Clerk of the governing body of the Franchise Authority and mailed to the parties not later than thirty (30) calendar days after conclusion of the hearing. The verbatim

record, if such was maintained as permitted herein, shall be made available to the parties, provided that, absent agreement of the parties to the contrary, nothing contained herein shall obligate either party to obtain a written transcript of the record of the hearing. Upon receipt of such a recommended decision, the governing body may, without a hearing, except as otherwise required herein, either

- a. Adopt the recommended decision, including findings of fact and conclusion submitted by the hearing officer,
- b. Adopt the findings of fact and conclusions contained in the recommended decision, modify the decision, and adopt the recommended decision as so revised;
- c. Based upon the record of the hearing, modify the findings of fact, conclusions or decision, and adopt the recommended decision as so revised; or
- d. Reject the recommended decision and conduct a new hearing, before a hearing officer provided at the Franchise Authority's expense.

The Franchise Authority shall allow a reasonable time to receive comments upon and objections to the recommended decision of the hearing officer from the Company. If the Franchise Authority acts under either Subsection (b) or (c) above, the Franchise Authority shall set forth clearly its rationale and grounds for so doing and shall allow representatives of the Company a reasonable time to summarize the views of the Company upon the evidence and as to the proposed action.

10. Franchise Authority Decision. If the hearing is conducted by the governing body of the Franchise Authority, upon conclusion of the hearing, the governing body shall adopt a decision that includes findings of fact and conclusions.
11. Remedies Available. Remedies that may be imposed for a violation of an order of the Franchise Authority issued pursuant to these Regulations shall include, but not be limited to, the monetary sanctions established by these Regulations. The monetary sanctions established by these Regulations shall be construed as police power impositions pursuant to the Franchise Authority's exercise of Constitutional police power pursuant to the Franchise Authority's franchising ordinance.

#### J. Remedies

1. Monetary Sanctions. Upon the finding, after a noticed hearing conducted pursuant to Section I. above, of a violation of any Order of the Franchise Authority issued pursuant to these Regulations at the conclusion of a noticed hearing pursuant to Section I., the Franchise Authority may impose monetary sanctions for each such violation so found, not to exceed the amount(s) set forth for the violation of the applicable provision(s) as set forth herein.
2. Conscious Violation. A Conscious Violation is any failure, neglect or refusal of the Company to materially comply with any order issued pursuant to these Regulations under such circumstances as to indicate:
  - a. A conscious policy of non-compliance with the requirements thereof, or
  - b. A conscious lack of a policy of compliance with the requirements thereof.

A prior finding of a violation of this Section for substantially the same or similar conduct shall create a rebuttable presumption of conscious action or inaction on the part of the Company. For each such violation, the Franchise Authority may impose a monetary sanction in an amount not to exceed Twenty Seven Thousand Five Hundred Dollars (\$27,500), and an additional like sum for each month or portion thereof during

- which the Company shall fail, neglect, or refuse to rectify said violation beginning thirty (30) calendar days after written notice thereof from the Franchise Authority to the Company.
3. Inadvertent Customer Violation. An Inadvertent Customer Violation is any failure, neglect, or refusal to the Company to comply with the requirements of an Order issued under these Regulations as to its obligations hereunder in relation to one or more Customers under such circumstances as do not indicate a pattern of behavior by the Company in derogation of the referenced requirement. For each such violation, the Franchise Authority may impose a monetary sanction:
    - a. In an amount not to exceed One Hundred Fifty Dollars (\$150) for each such subscriber and Five Thousand Dollars (\$5,000) in cumulation of the violations as to all such Customers resulting from any substantially continuous behavior, act or omission, and
    - b. In addition, a like sum for each month or portion thereof during which the Company shall fail, neglect, or refuse to rectify said violation beginning thirty (30) days after written notice thereof from the Franchise Authority to the Company.
    - c. In any proceeding relating to an alleged violation of the disclosure requirements of these Regulations with respect to any particular subscriber, the Company shall be conclusively presumed to have provided such disclosure if it shall produce a writing, in a form approved by the Franchise Authority, signed or initialed by the Customer evidencing acknowledgment of receipt of the disclosure.
  4. Inadvertent Company Violation. An Inadvertent Company Violation is any failure, neglect or refusal of the Company to materially comply with the requirements of an Order issued pursuant to these Regulations with respect to the Company in relation to the Franchise Authority. For each such violation, the Franchise Authority may impose a monetary sanction in an amount not to exceed Five Thousand Five Hundred Dollars (\$5,500) and an additional like sum for each month or portion thereof during which the Company shall fail, neglect, or refuse to rectify said violation beginning thirty (30) calendar days after written notice thereof from the Franchise Authority to the Company.
  5. Repeated Conscious Violations. The maximum amount(s) specified for a Conscious Violation shall be doubled for the second violation under that section for substantially the same or similar conduct occurring within any given thirty (30) month period and shall be quintupled for the third violation under that section for substantially the same or similar conduct occurring within any given thirty (30) month period provided that, subsequent to the imposition and collection of an enhanced sanction under this section, a prior violation providing, in whole or in part, the basis for such an enhancement shall be invalidated, the portion of the sanction theretofore collected which is attributable to the invalidated prior violation shall be refunded and/or otherwise offset. Nothing in the foregoing shall be deemed to preclude imposition of enhanced sanctions by the Franchise Authority upon the basis of prior violations that are then pending judicial challenge by the Company.
  6. Sanctions Not a Bar to Judicial Remedies. Neither monetary sanctions, imposed hereunder nor any order issued by the Franchise Authority related hereto shall be deemed to bar or otherwise limit the right of the Franchise Authority to obtain judicial enforcement of the Company's obligations by means of specific performance, injunctive

relief, mandate, or other remedies at law or in equity, other than monetary damages.

7. Denomination of Sanctions. The Franchise Authority may, in its sole discretion, denominate any monetary sanctions imposed pursuant to this Section on a per-Customer basis or on a total dollar basis, provided that the total of any such monetary sanctions imposed for any single violation shall not exceed the totals provided therefor herein. Such monetary sanctions may be levied, in the sole discretion of the Franchise Authority, in the form of refunds or credits to then-current Customers. Any credit or refund made to Customers under these Regulations shall be deemed a penalty for failure to meet the requirements of these Regulations and such cost shall not be passed through to the Customers in rates or charges for any reason. All refunds owing by Company to Customers shall be paid by the Company to affected Customers by direct payment or credited to the Customer's bill within seventy five (75) days from the date of the determination that refunds are due or levy of the sanction so designated.
8. Sanction Factors. In establishing the amount of any penalty or assessment within the ranges specified in this section, the Franchise Authority shall consider factors including, but not limited to, the following:
  - a. The materiality of the violation;
  - b. Whether the violation resulted from an intentional act, a conscious and affirmative act, active negligence, passive negligence or inadvertence;
  - c. The number of Customers affected by the violation;
  - d. The duration of the violation;
  - e. The nature and extent of the services impacted by the violation;
  - f. The degree of control the Company exercised, or failed to exercise, over circumstances which resulted in the violation (even if such circumstances would not constitute force majeure as that term is defined in these regulations);
  - g. Whether the Company has attempted in good faith to cure the violation; and
  - h. Whether the violation has occurred in the past.
9. Failure to Enforce Not a Waiver. Failure of the Franchise Authority to enforce any requirements set forth herein of the Company's franchise or any other applicable ordinance or law shall not constitute a waiver of the Franchise Authority's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

#### K. Federal and State Regulations

1. The Franchise Authority hereby adopts and incorporates by reference any customer service regulations of the FCC, and California statutes and regulations relating to cable television services. In the event of any conflict between these Regulations, the Federal and/or California provisions, the regulation with the highest standard shall apply. In the event any provision of these Regulations shall be invalidated for any reason or cause, all remaining portions shall be deemed severed therefrom and shall remain in full force and effect thereafter.

#### L. General

1. Amendment. These Regulations may be amended by majority vote of the Franchise Authority's governing board only after public proceedings on such amendment(s) and shall be subject to Applicable Law.
2. No Bar to Additional Regulations. Nothing contained herein shall prevent or prohibit

the Franchise Authority from imposing additional customer service regulations that exceed the Regulations set forth herein subject only to Applicable Law.

3. No Excuse Apart from Force Majeure. The Company shall not be excused from any provision of these Regulations by reason of any cause or excuse except for causes that are caused by an event of Force Majeure.
4. No Limitation of Rights of Judicial Review. Nothing contained in these Regulations is intended to foreclose, delimit or otherwise restrain the rights of the Company to obtain such administrative review or judicial review as may otherwise be available to it, provided that decisions of the Franchise Authority shall be accorded the maximum deference allowed by law.

(Ord. 2198; Ord. 2249, Ord. 2268)

#### **5.12.169 Complaint Procedures.**

- A. Complaints to Grantee. Grantee shall establish written procedures for receiving, acting upon, and resolving subscriber complaints. The written procedures shall prescribe the manner in which a subscriber may submit a complaint, either orally or in writing, that grantee has violated any provisions of this chapter, the franchise granted by city to grantee pursuant to this chapter, or the terms and conditions of the subscriber's contract with the grantee. At the conclusion of the grantee's investigation of the subscriber's complaint, but in no event more than ten days after receiving the complaint, the grantee shall notify the subscriber of the results of the investigation and its proposed action or resolution, if any. The grantee shall also notify the subscriber of the subscriber's right to file a complaint with the city in the event the subscriber is dissatisfied with the grantee's decision. All written procedures established by the grantee for receiving, acting upon and resolving subscriber's complaints shall be filed with the city.
- B. Complaint to the City. A subscriber who is dissatisfied with the grantee's proposed decision or who was not sent a written decision within a 10-day period after the grantee received the complaint, shall be entitled to have the complaint reviewed by the city manager or a designee as follows:
  1. Initiating Complaint Review. A subscriber shall initiate complaint review by the city by filing a written request for such review with the city manager and by serving a copy of the request for review on the grantee. Such request for complaint review shall be filed by the subscriber within twenty days of the receipt of the grantee's decision, or, if grantee's decision has not been provided, within thirty days after filing the original complaint with the grantee; provided, however, that the city manager may extend such time limits for good cause shown. Such request for complaint review shall set forth the substance of the subscriber's complaint together with the grantee's decision, if any, on the complaint.
  2. Complaint Review Procedures. Upon receipt of a request for complaint review, the city manager, on the basis of the information set forth in such request, shall determine whether further review is warranted. In the event the city manager determines that further review is not warranted, then the grantee's decision shall be final. On the other hand, if the city manager determines that further review is warranted, city manager shall require the grantee and subscriber to submit, within ten days after notice thereof, a written statement of the facts and arguments in support of their respective positions.

The grantee or the subscriber may request in such statement that a hearing be conducted by the city manager. If requested, a hearing shall then be conducted by the city manager following notice in writing specifying the time and place for the hearing. The hearing shall be conducted informally by the city manager and the parties may offer any evidence relative to the dispute. In addition, the grantee and the subscriber shall produce any additional evidence requested by the city manager, including testing reports from the grantee, which the city manager may deem necessary for a full understanding and determination of the dispute. Within fifteen days of the conclusion of the hearing, the city manager shall render a written decision on the dispute which decision shall fully resolve the matter and which shall be final as to the parties thereto.

- C. Escrow Account. The city may establish an account wherein a subscriber may deposit any disputed portion of the subscriber's monthly service charge which is the subject of a complaint filed pursuant to the provisions of this section. If following the filing of such complaint, a subscriber either continues to make full and timely payment to the grantee or deposits any disputed portion of such monthly service charges in such account, the grantee shall not disconnect service during the pendency proceedings to resolve such complaint in accordance with provisions of this section. Any amount deposited in such account shall be paid to the grantee or subscriber in accordance with the final determination on the complaint.

(Ord. 1761 §2, Ord. 2268)

#### **5.12.170 Rights of individuals.**

- A. Nondiscrimination. The grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age, or sex. The grantee shall comply at all times with all other applicable federal, state, and city laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.
- B. Equal Employment Opportunity. The grantee shall strictly adhere to the equal employment opportunity requirements of the FCC and state and local authorities, as amended from time to time.
- C. Monitoring. No signals of a cable communications channel shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year, which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such authorization is required for each type of classification of cable television activity planned, provided that the grantee shall be entitled to conduct statewide or individually addressed sweeps for the purpose of verifying system integrity, controlling return path transmission, or billing for pay services, or for the purpose of detecting unauthorized connections to the cable communications system.

D. **Subscriber Information.** The grantee's policy with respect to personally identifiable information shall be consistent with federal, state and local laws, rules and regulations with respect thereto.

(Ord. 1695 (part))

**5.12.172 Continuity of service.**

- A. **Continuity Required.** It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to overbuild, rebuild, modify, or sell the cable communications system, or the city gives notice of intent to terminate or fails to renew the franchise, the grantee shall act so as to minimize the period of any interruption in service resulting therefrom. Such interruptions, insofar as possible, shall be preceded by notice to the affected subscribers and shall be limited to periods of minimum use of the service or services to be interrupted.
- B. **Operation by Grantee after Termination.** In the event of a change of franchisee, or in the event a new operator acquires the cable communications system, the grantee shall cooperate with the city, new franchisee, or operator in maintaining continuity of service to all subscribers. During such period, the grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

(Ord. 1695 (part))

**5.12.174 Grantee rules and regulations.**

The grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as the grantee shall consider reasonably necessary to enable the grantee to exercise its rights and perform its obligations under the franchise and to assure service to each and all of its subscribers, provided that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable federal and state laws, rules and regulations. The grantee shall provide the city with copies of any such rules, regulations, terms and conditions within thirty (30) days after any change therein.

(Ord. 1695 (part))

**5.12.176 Tenant rights.**

The grantee shall be required to provide tenants in individually billed units of a multiple dwelling unit housing facility with all cable services offered to other dwelling units located within the service area, so long as the owner of the facility consents in writing, if requested by the grantee, to the following:

- A. To the grantee's providing of the service directly to individual units of the facility;
- B. To reasonable conditions and times for installation, maintenance and inspection of the system of the facility premises;
- C. To reasonable conditions promulgated by the grantee to protect the grantee's equipment and to encourage widespread use of the system; and
- D. To not discriminate in rental charges or otherwise between tenants who receive cable service and those who do not.

(Ord. 1695 (part))

**5.12.178 Subscriber notices.**

- A. Notice of Operating Policies. As subscribers are connected or reconnected to the cable system, and at least once annually thereafter, the grantee shall provide each such subscriber with written information concerning the procedure for making inquiries or complaints, including the title, address and telephone number of the employee or agent to whom such inquiries or complaints are to be addressed, and also furnish information concerning the name, address and telephone number of the city employee who has been designated by the city manager as being responsible for the administration of the grantee's franchise. Such notice shall also indicate the grantee's business hours, telephone number, and procedures for responding to inquiries after normal business hours. In the event there is any change in the foregoing information, the grantee shall provide all of its subscribers with written notice of such changes not less than thirty days prior to the date such proposed changes are to go into effect.
- B. Notice of Change in Rates and Services. The grantee shall provide all subscribers with at least thirty days' written notice prior to the implementation of any change in rates or programming services.
- C. Copies of Subscriber Notices to City. Copies of all notices to be provided by the grantee to a subscriber pursuant to the provisions of this section shall be filed concurrently with the city.

(Ord. 1695 (part))

**ARTICLE VIII. RIGHTS RESERVED TO THE CITY****5.12.180 Right to purchase system.**

The city may in any lawful manner and upon the payment of a fair valuation lawfully ascertained, purchase, condemn, acquire, take over and hold the property and plant of the grantee in whole or in part. If such purchase or taking over be upon revocation of the franchise or at the expiration of the term of the franchise, such evaluation shall not include any sums for the value of the franchise or grant under which such plant and property is being operated.

(Ord. 1695 (part))

**5.12.182 Right of inspection of construction.**

The city shall have the right to inspect all construction or installation work performed in the streets pursuant to the provisions of the grantee's franchise and to make such tests as are provided in this chapter, such franchise, or applicable federal, state or city law as it shall find necessary to ensure compliance with the terms of this chapter, the franchise, and such other pertinent provisions of law.

(Ord. 1695 (part))

**ARTICLE IX. RIGHTS RESERVED TO THE GRANTEE****5.12.184 Rights of grantee generally.**

In the event of any dispute between the city and the grantee arising with respect to this

chapter or the grantee's franchise, or with respect to any rights or obligations arising therefrom, the grantee shall first pursue and exhaust all available administrative remedies. Thereafter, the grantee may pursue appropriate legal action.

(Ord. 1695 (part))

#### **5.12.188 Right of appeal.**

The grantee may appeal any action by any officer, employee, department, board or commission of the city with respect to the grantee's franchise to the city council in accordance with the procedures set forth in Chapter 2.80 of this code.

(Ord. 1695 (part), Ord. 2004 §6)

### **ARTICLE X. REPORTS**

#### **5.12.192 Annual reports.**

At the city's sole option, within sixty (60) days after the close of the grantee's fiscal year, the grantee shall submit a written annual report, in a form approved by the city, which shall contain the following information:

- A. **Activities Undertaken.** A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities in development of the cable communications system, including, but not limited to, services begun or discontinued during the reporting year and the number of subscribers for each class of service.
- B. **Partners, Officers and Directors.** A list of the grantee's general partners, officers, members or its board of directors, or other principals, as the case may be.
- C. **Principal Partners and Stockholders.** A list of partners, stockholders or other equity investors holding five percent (5%) or more of the partnership interests in the grantee or the voting interest in the grantee, its parent, and subsidiary and affiliated corporations, if any.

(Ord. 1695 (part))

#### **5.12.194 Plant survey report.**

At the city's sole option, the grantee shall submit to the city within ninety (90) days after its request therefor an annual plant survey report which shall be a complete survey of the grantee's plant and a full report thereon relating to the most recently completed calendar year. Said report shall contain a description of the portions of the service area that have been cabled and have all cable services available and shall reference the availability of "as-built" maps showing the location of the cable communications system installed in the service area as of the end of the calendar year for which such report is requested. Said report shall be in sufficient detail to enable the city to ascertain that the technical standards of the FCC are achieved and maintained, which shall be satisfied by incorporating in the plant survey report the proof of performance report completed by the grantee for such calendar year. If the city has reason to believe that portions or all of the system materially fail to satisfy the FCC technical standards applicable to cable communications systems, at the city's request, but no more often than once each three (3) years, the grantee and the city shall agree upon the appointment of a qualified independent engineer to evaluate and verify the technical performance of the cable system. The cost of such evaluation shall be borne equally by the grantee and the city, unless such evaluation

indicates that the cable communications system materially fails to meet such FCC technical standards, in which case the cost thereof shall be borne solely by the grantee.

(Ord. 1695 (part))

#### **5.12.196 Public reports.**

Upon request of the city, the grantee shall furnish copies of any publicly available reports concerning the grantee, its parent, or affiliates, including, but not limited to, annual and other periodic reports filed with the Securities and Exchange Commission.

(Ord. 1695 (part))

#### **5.12.198 Surveys.**

Upon request of the city, the grantee shall furnish the results of any survey undertaken by the grantee of a representative sample of all of its subscribers, provided that the grantee shall give the city at least ten (10) days' prior notice of any such survey to permit the city to submit requests for items to be included in such survey. The grantee may, in its reasonable judgment, elect not to include any or all of those items requested by the city for incorporation in such survey.

(Ord. 1695 (part))

#### **5.12.200 Miscellaneous reports.**

The grantee shall submit to the city such other information or reports in such forms and at such times as the city may reasonably request, provided that such information or reports shall relate directly to information or reports which the city is entitled to receive under the terms of this chapter or the grantee's franchise and, provided, further, that the city shall bear the reasonable expense of preparing such information or reports.

(Ord. 1695 (part))

#### **5.12.202 Inspection of facilities.**

The grantee shall allow the city to make inspections of any of the grantee's distribution facilities and equipment at any time during the grantee's normal business hours upon reasonable notice or, in case of emergency, upon demand without prior notice, to allow the city to verify the accuracy of any submitted report.

(Ord. 1695 (part))

#### **5.12.204 Public inspection.**

All reports subject to public disclosure and maintained in the city's records shall be available for public inspection at a designated city office during normal business hours.

(Ord. 1695 (part))

#### **5.12.206 Failure to report.**

The refusal, failure, or neglect of the grantee to file any of the reports required under this chapter or the grantee's franchise shall be deemed a material breach of the franchise if the grantee fails to file such report, after receipt of written notice from the city with respect thereto, within the period of cure allowed under this chapter for an event of default by the grantee in the performance of any of its material obligations under this chapter, and shall subject the grantee to

all remedies, legal or equitable, which are available to the city under the grantee's franchise or otherwise.

(Ord. 1695 (part))

**5.12.208 False statements.**

Any materially false or misleading statement or representation made knowingly by the grantee in any report required under this chapter or the franchise shall be deemed a material breach of the franchise and shall subject the grantee to all remedies, legal or equitable, which are available to the city under the grantee's franchise or otherwise.

(Ord. 1695 (part))

**5.12.210 Cost of reports.**

All reports and records required under this or any other section shall be furnished at the sole expense of the grantee, except with respect to miscellaneous information and reports as set forth herein.

(Ord. 1695 (part))

**ARTICLE XI. MISCELLANEOUS PROVISION**

**5.12.214 Severability.**

If any term, covenant, condition, or provision of this chapter or any franchise granted pursuant to this chapter or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remaining terms, covenants, conditions, and provisions of this chapter or such franchise, or the application of such term, covenant, condition, or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this chapter or such franchise shall be valid and enforced to the fullest extent permitted by law.

(Ord. 1695 (part))

**5.12.216 Service of notices.**

The grantee shall maintain within the franchise area throughout the term of the franchise an address for service of notices by mail.

(Ord. 1695 (part), Ord. 1761 §4)

**5.12.218 Nonenforcement by the city.**

The grantee shall not be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of the city to enforce prompt compliance.

(Ord. 1695 (part))

**5.12.220 Theft of services and tampering.**

No person, whether or not a subscriber to the cable communications system, may intentionally or knowingly damage or cause to be damaged any wire, cable, conduit, equipment, apparatus, or appurtenance of the grantee, or commit any act with intent to cause damage, or to tap, tamper with, or otherwise connect any wire or device to a wire, cable, conduit, equipment, apparatus, or appurtenance of the grantee with the intent to obtain a signal or impulse from the cable communications system without authorization from or compensation to the grantee, or to obtain cable or other communication services

with intent to cheat or defraud the grantee of any lawful charge to which it is entitled.  
(Ord. 1695 (part))

**5.12.222 Force majeure.**

In the event the grantee's performance of any of the terms, conditions, obligations, or requirements of its franchise, including such terms, conditions, obligations, or requirements as are set forth in this chapter, is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided that the grantee has notified the city in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond the grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God and civil emergencies.

(Ord. 1695 (part))

**Chapter 5.13****FRANCHISES - DIGITAL INFRASTRUCTURE AND  
VIDEO COMPETITION ACT OF 2006****Section:****5.13.010 Purpose and applicability****5.13.020 Definitions****5.13.030 Franchise fee****5.13.040 Public, educational and government (PEG) channels****5.13.050 PEG support fee****5.13.060 Customer services regulations - penalties for violations****5.13.010 Purpose and applicability****5.13.010 Purpose and applicability**

This chapter shall apply to all holders of a franchise issued pursuant to the Digital Infrastructure and Video Competition Act of 2006, found at Public Utilities Code section 5810 et seq.

**5.13.020 Definitions.**

When used in this Chapter, the following terms shall have the meanings set forth below.

- A. Act. "Act" shall refer to the Digital Infrastructure and Video Competition Act of 2006, found at Public Utilities Code section 5810 et seq.
- B. Franchisee. "Franchisee" shall mean any person or entity holding a franchise issued pursuant to the Act and pursuant to which the franchisee provides video services within the City of Chico.

**5.13.030 Franchise fee.**

- A. The franchise fee payable to the City by a franchisee shall be five percent (5%) of gross revenues, as the term "gross revenues" is defined by the Act.
- B. Franchisees shall retain all records reflecting any gross revenues for at least four years. City or its agent may, not more than once annually, examine those records to the extent reasonably necessary to ensure compliance with this section. The costs of such examination shall be paid by Franchisee if the examination establishes an underpayment of franchise fees by more than five percent.

**5.13.040 Public, educational and government (PEG) channels.**

Each franchisee shall designate three PEG channels. The PEG channels shall be provided for use pursuant to the provisions for PEG channels set forth in the Act.

**5.13.050 PEG support fee.**

Each franchisee shall pay a PEG support fee to support PEG channel facilities of one percent (1%) of gross revenues. Use of the PEG fees shall be consistent with applicable state and federal law.

**5.13.060 Customer service regulations - penalties for violations.**

Franchisees shall comply with the provisions of section 637.5 of the Penal Code and the privacy standards contained in Section 631 of the federal Cable Act. (47 U.S.C. section 551 et seq.) Franchisees shall also comply with all customer service standards referenced in section 5900 of the Act. The City will enforce, in the manner set forth in section 5900 of the Act, all such customer service standards.

The following schedule of penalties is hereby established for any material breach of applicable customer standards including, but not limited to, section 5900 of the Act, by a franchisee:

- (a) Five hundred dollars (\$500) per day for each material breach, not to exceed one thousand five hundred dollars (\$1,500) for occurrence of a material breach.
- (b) If a material breach has occurred and the City has provided notice and a fine or penalty has been assessed, any subsequent breach of the same nature within twelve (12) months, shall be subject to a penalty of up to one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach.
- (c) If a third or further material breach of the same nature occurs within those same twelve (12) months, and the City has provided notice and a fine or penalty has been assessed; the penalties shall be increased to a maximum of two thousand five hundred dollars (\$2,500) for each occurrence of the material breach, not to exceed

(Ord. 2368)

**Chapter 5.14**

**FRANCHISES - YARD DEBRIS COLLECTION AND COMPOST PROGRAM**

**Section:**

**ARTICLE I. PURPOSE**

**5.14.010 Purpose.**

**ARTICLE II. DEFINITIONS**

- 5.14.020 General provisions.**
- 5.14.030 Commercial yard debris generator.**
- 5.14.040 Compost facility.**
- 5.14.050 Franchise.**
- 5.14.055 Director.**
- 5.14.060 Franchise fee.**
- 5.14.070 Grantee.**
- 5.14.080 Initial service area.**
- 5.14.090 Leaf drop season.**
- 5.14.100 Residential yard debris generator.**
- 5.14.110 Service area.**
- 5.14.130 Yard debris.**
- 5.14.140 Yard debris collection and compost program.**
- 5.14.150 Yard debris collection service.**

**ARTICLE III. GRANT OF FRANCHISE**

- 5.14.160 Franchise required.**
- 5.14.170 Qualifications of grantee.**
- 5.14.180 Competitive bid procedure.**
- 5.14.190 Public hearing and award of franchise.**
- 5.14.200 Grant of franchise.**
- 5.14.210 Franchise exclusive.**
- 5.14.220 Term.**
- 5.14.230 Service area.**
- 5.14.240 Franchise fee.**
- 5.14.250 Transfer of ownership.**

**ARTICLE IV. REGULATION OF FRANCHISE**

- 5.14.260 City regulations.**
- 5.14.270 Federal and state regulations.**
- 5.14.280 City council determinations on maximum permitted rates for service.**
- 5.14.290 Default.**
- 5.14.300 Remedies on default.**
- 5.14.310 Receivership and foreclosure.**

**ARTICLE V. GENERAL FINANCIAL AND INSURANCE PROVISIONS**

- 5.14.320 Performance bond.**

- 5.14.330 Insurance.**  
**5.14.340 Indemnification.**

#### **ARTICLE VI. OPERATION OF FRANCHISE**

- 5.14.350 Yard waste collection and compost services to be provided.**  
**5.14.360 Provision of containers.**  
**5.14.380 Open books and records.**  
**5.14.390 Complaint procedures.**  
**5.14.400 Rights of individuals.**  
**5.14.410 Grantee rules and regulations.**  
**5.14.420 Customer notices.**  
**5.14.430 Inspection of facilities.**  
**5.14.440 False statements.**

#### **ARTICLE VII. COLLECTION OF FEES**

- 5.14.450 Yard debris collection fees.**  
**5.14.470 Schedule of fees.**  
**5.14.480 Collection of fees.**

#### **ARTICLE VIII. MISCELLANEOUS PROVISIONS**

- 5.14.610 Severability.**  
**5.14.620 Service of notices.**  
**5.14.630 Non-enforcement by the city.**  
**5.14.640 Force majeure.**

#### **ARTICLE I. PURPOSE**

##### **5.14.010 Purpose.**

This chapter is adopted pursuant to the municipal affairs provision of the city charter. In enacting this ordinance the city council makes the following findings:

- A. That, in 1989, the California State Legislature adopted Assembly Bill 939, known as the California Integrated Waste Management Act of 1989. The purpose of that Act is to reduce, reuse and recycle solid waste generated in the State to the maximum extent feasible. To achieve that goal, the Act requires the City to implement programs for recycling, composting and source reduction which, in combination, will divert fifty percent of all solid waste generated in the city from landfills by the year 2000;
- B. That in order to comply with the requirements of AB 939 that the city implement a composting program and that fifty percent of all solid waste generated in the city be diverted from landfills by the year 2000, it is necessary to divert yard waste debris generated in the city from landfills to the maximum extent possible; and
- C. That the most effective method for such diversion is the implementation of a yard debris collection and composting program which will make yard debris collection services available to all residential yard debris generators and which will provide for the operation of a compost facility at which such yard debris shall be composted and at which commercial yard debris generators will be permitted to drop off yard debris for composting.

(Ord. 2107 §1, Ord. 2127 §2)

**ARTICLE II. DEFINITIONS****5.14.020 General provisions.**

Unless the contrary is stated or clearly appears from the context, the definitions set forth in this article shall govern the construction of the words and phrases used in this chapter.

(Ord. 2107 §1)

**5.14.030 Commercial yard debris generator.**

“Commercial yard debris generator” means a generator of yard debris which is a business having its own landscape maintenance staff, solid waste collection companies whose customers may use bins or drop boxes for large landscaping jobs, and commercial landscaping maintenance businesses located or doing business in the City.

(Ord. 2107 §1)

**5.14.040 Compost facility.**

“Compost facility” means a compost and wood chipping facility at which the yard debris and leaves collected by a yard debris collection service are taken for composting and chipping and at which commercial yard debris generators may drop-off yard debris for processing into compost and wood chips.

(Ord. 2107 §1)

**5.14.050 Franchise.**

“Franchise” means the exclusive rights granted pursuant to this chapter to operate a yard debris collection and compost program along the public streets and rights-of-way within the incorporated territory of the city, or such other area in the city’s sphere of influence as designated by the city council.

(Ord. 2107 §1, Ord. 2127 §3)

**5.14.055 Director.**

“Director” means the Director of the general services department.

(Ord. 2364 §95)

**5.14.060 Franchise fee.**

“Franchise fee” means any fee or assessment of any kind imposed by the city on a grantee for the privilege of operating a franchise granted pursuant to this chapter.

(Ord. 2107 §1)

**5.14.070 Grantee.**

“Grantee” means any person receiving a franchise pursuant to this chapter and such person's lawful successor, transferee, or assignee.

(Ord. 2107 §1)

**5.14.080 Initial service area.**

“Initial service area” means the area within the incorporated territory of the city which will receive yard debris collection initially, as set forth in the grantee's franchise. If not stated otherwise in the franchise, the initial service area shall consist of the entire incorporated territory of the city.

(Ord. 2107 §1, Ord. 2127 §4)

**5.14.090 Leaf drop season.**

“Leaf drop season” is that period of time beginning on the second Monday of each October and ending on the third Sunday of each January.

(Ord. 2107 §1)

**5.14.100 Residential yard debris generator.**

“Residential yard debris generator” means the owner of a parcel of property which is improved with one, two or three dwelling units and which is within the service area.

“Residential yard debris generator” shall not include common interest developments, as defined in California Civil Code section 1351, which have a homeowners’ association that provides landscaping and landscape maintenance services to all or substantially all of the yard area within the development.

(Ord. 2107 §1)

**5.14.110 Service area.**

“Service area” means the incorporated territory of the city and such other areas in the city’s sphere of influence as designated by the city council in which the grantee is authorized to provide services under the terms of its franchise. Unless otherwise specified in the franchise, a grantee's service area shall include any new or additional territory which is annexed to the city immediately upon completion of annexation, provided that the city shall give the grantee prompt written notice thereof and shall identify the area which has been so annexed.

(Ord. 2107 §1)

**5.14.130 Yard debris.**

“Yard debris” means lawn cuttings, weeds, leaves and remnants from tree or shrub pruning which are less than four inches in diameter and are four feet long or less, excluding palm fronds, yucca plants and sod.

(Ord. 2107 §1)

**5.14.140 Yard debris collection and compost program.**

“Yard debris collection and compost program” means the combined provision of yard debris collection service and the operation of a compost facility, as those terms are defined herein.

(Ord. 2107 §1)

**5.14.150 Yard debris collection service.**

“Yard debris collection service” means a service for the year-round collection of yard debris in containers or bundles.

(Ord. 2107 §1, Ord. 2127 §6)

### ARTICLE III. GRANT OF FRANCHISE

#### 5.14.160 Franchise required.

No person shall be allowed to occupy or use the public streets or rights-of-way of the city for the purpose of conducting a service for the periodic collection of yard debris or be allowed to operate such a system without a franchise granted in accordance with the provisions of this chapter. Provided, however, that solid waste collectors which have obtained a permit pursuant to Chapter 5.16 of this code and businesses which provide landscaping or landscape maintenance services within the city may also provide for the collection and disposal of yard debris incidental to such solid waste collection or landscape services.

(Ord. 2107 §1, Ord. 2127 §7)

#### 5.14.170 Qualifications of grantee.

A franchise shall not be awarded pursuant to this chapter except to a grantee who meets all of the following qualifications:

- A. The grantee has not been convicted or held liable for acts involving moral turpitude within the previous five years and is not presently under an indictment, investigation, or complaint charging such acts;
- B. The grantee has not had a judgment in an action for fraud, deceit, or misrepresentation entered against grantee by any court of competent jurisdiction within the past five years;
- C. The grantee does not have pending against grantee any legal claim, lawsuit, or administrative proceeding arising out of or involving the operation of the type of service which is subject to the franchise; and
- D. The grantee has the financial and technical capability to enable it to maintain and operate the services for the term of the franchise.

(Ord. 2107 §1, Ord. 2268)

#### 5.14.180 Competitive bid procedure.

Any franchise for a yard debris collection and compost program shall be awarded after the solicitation of competitive bids pursuant to the formal bidding procedures set forth chapter 3.20 of this code.

(Ord. 2107 §1, Ord. 2127 §8)

#### 5.14.190 Public hearing and award of franchise.

After the bids have been opened, the city clerk shall schedule a public hearing for the council to determine whether it would serve the public interest and necessity to award the franchise for which the bids have been solicited. The city clerk shall also cause a notice of that hearing to be published in at least one paper of general circulation within the city at least ten days prior to the date of that hearing. The notice shall state the purpose of the hearing and the time and date of its location. At the time and place set for the public hearing on the matter, the council shall conduct a public hearing to determine whether the franchise should be awarded. The public hearing may be continued from time to time at the discretion of the council. At the conclusion of the hearing, the council may award the franchise to the lowest responsible bidder or reject all bids.

(Ord. 2107 §1)

**5.14.200 Grant of franchise.**

- A. Scope of Grant. Any franchise granted under this chapter shall authorize and permit the grantee to engage in the service for which the franchise has been granted within the service area specified in the franchise.
- B. Grant Both a Right and an Obligation. In the event that the city council shall grant a franchise under this chapter, the franchise shall constitute both a right and an obligation to provide the services required by the provisions of this chapter and the franchise.

(Ord. 2107 §1)

**5.14.210 Franchise exclusive.**

Any franchise granted pursuant to this chapter shall be exclusive.

(Ord. 2107 §1)

**5.14.220 Term.**

The term of any franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall be as set forth in the grantee's franchise, but shall in no event be for a period of more than five years from the effective date of the franchise. The effective date of the franchise shall be the date written acceptance thereof by the grantee is filed with the city clerk or such other date as may be specified in such franchise.

(Ord. 2107 §1)

**5.14.230 Service area.**

The city council may grant a franchise for the operation of a yard debris collection and compost program for the entire incorporated territory of the city or for any defined portion of the city.

(Ord. 2107 §1, Ord. 2127 §9)

**5.14.240 Franchise fee.**

- A. Amount of Franchise Fee. The city council may fix and determine in the ordinance granting the franchise the amount of a franchise fee which shall be paid to city by grantee. Such amount may be based on a fixed fee basis or upon a gross annual receipts basis.
- B. Acceptance by City. The acceptance of a franchise fee payment by the city shall not be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee.
- C. Failure to Make Required Payment. In the event that any franchise fee payment is not made on or before the date specified in the ordinance granting the franchise, the grantee shall pay a late fee and/or interest as set forth in the ordinance granting the franchise.
- D. Payments. The manner and time for payment of the franchise fee shall be set forth in the ordinance granting the franchise.

(Ord. 2107 §1)

**5.14.250 Transfer of ownership.**

- A. Transfer of Franchise. Any franchise granted hereunder shall be a privilege to be held for the benefit of the public. Such franchise cannot in any event be sold, transferred,

- leased, assigned, or disposed of by forced or voluntary sale, merger, consolidation, receivership, or other means without the prior consent of the city, and then only under such conditions as the city may establish.
- B. **Ownership or Control.** The grantee shall promptly notify the city of any proposed change in, transfer of, or acquisition by any other party of control of the grantee. The word “control” as used herein is not limited to major partners or stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or transfer by any person or group of persons of twenty-five percent (25%) of the aggregate partnership interests in or voting shares of the grantee. Every change, transfer, or acquisition of control of the grantee shall make the franchise subject to cancellation unless and until the city shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into the qualifications of the prospective controlling party, and the grantee shall assist the city in any such inquiry. In seeking the city's consent to any change in ownership or control of the grantee, the grantee shall have the responsibility to establish to the satisfaction of the city that the proposed purchaser, transferee, or assignee (the “proposed transferee”) which, in the case of a partnership or corporation, shall include all partners, officers, directors, and all persons having a legal or equitable interest in five percent (5%) or more of its partnership interests or voting stock, or any of the proposed transferee’s principals, meets all of the qualifications applicable to the grantee of a franchise as set forth in section 5.14.170, herein.
- C. **Right of Lender to Operate System.** Notwithstanding anything to the contrary contained in this chapter, any financial institution having a pledge of the franchise for the advancement of money for the construction and/or operation of the franchise service for which the franchise is granted shall have the right to notify the city that it or its designee satisfactory to the city will take control and operate the services for which the franchise was granted in the event of a grantee default in its financial obligations. Further, such financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year unless extended by the city in its discretion and during that period of time it shall have the right to petition the city to transfer the franchise to another grantee. If, after considering the legal, financial, character, technical, and other public interest qualities of the proposed transferee, the city finds that such transfer is satisfactory, the city will approve the transfer and assign the rights and obligations of such franchise to such proposed transferee.
- D. **Transferee to Assume Grantee's Obligations Under Franchise.** In no event shall a transfer of ownership or control be approved without the successor in interest to the grantee assuming all of the grantee's obligations under its franchise. Notwithstanding the requirements of the grantee's franchise, the city may require, as a condition of the transfer of such franchise, that the proposed transferee furnish either or both a security fund and a performance bond in such amount or amounts as the city shall designate.
- E. **Permitted Encumbrances.** Notwithstanding the provisions of this section, the grantee may pledge, assign, hypothecate, or create a security interest in its franchise without

the consent of the city in favor of any bank, financial institution, or other lender with respect to any indebtedness of the grantee to such person.

(Ord. 2107 §1)

#### **ARTICLE IV. REGULATION OF FRANCHISE**

##### **5.14.260 City regulations.**

The yard debris collection and compost program for which a franchise is required by this chapter shall be operated in conformance with the regulations now or hereafter adopted by or pursuant to this chapter, as well as the provisions of any city law or regulation of general application now or hereafter in effect. In the event of a conflict between a regulation adopted by or pursuant to this chapter and the provisions of any city law or regulation of general application, the regulations adopted by or pursuant to this chapter shall prevail.

(Ord. 2107 §1, Ord. 2127 §10)

##### **5.14.270 Federal and state regulations.**

The regulations adopted by or pursuant to this chapter shall be interpreted and applied so as to be consistent with any applicable federal or state law or regulation now or hereafter in effect to the extent such federal or state law or regulation is preemptive of local laws and regulations, provided that in the event of any conflict between this chapter or any regulations adopted by or pursuant to this chapter and any such federal or state law or regulation, the federal or state law or regulation shall prevail.

(Ord. 2107 §1)

##### **5.14.280 City council determinations on maximum permitted rates for service.**

The fees to be charged by a grantee for yard debris collection services, and for yard debris drop off services at the compost site shall be as set forth in the ordinance granting the franchise for such services.

(Ord. 2107 §1, Ord. 2127 §11)

##### **5.14.290 Default.**

The grantee shall be deemed to be in default with respect to the performance of its obligations under its franchise upon the occurrence of any of the following events:

- A. The grantee is in violation of the provisions of its franchise, this chapter or any federal or state law or regulation applicable to the operation of the grantee's service in the city and such violation is not corrected within thirty (30) days following receipt of written notice thereof from the city manager specifying such violation or, if more than thirty (30) days are reasonably required to correct such violation, within such additional time as the city manager shall consider reasonably necessary to effect such correction;
- B. The grantee has failed to perform according to the specifications and standards included in the ordinance granting the franchise, including, but not limited to, any required standards for the maintenance of collection schedules, hours of collection, vehicle and equipment maintenance and condition, collection of missed collections within a specified time, compost site hours of operation, and maintenance of a business office location with specified hours of operation and procedures for responding to customer complaints.

- C. The grantee has engaged in repeated violations of any of its material obligations under its franchise or this chapter or any material federal or state law or regulation applicable to the operation of the grantee's service in the city which, for purposes of this chapter, shall be deemed to exist if the same or similar violation occurs three (3) or more times within any twelve (12) month period. In any such case, the grantee shall not be entitled to notice or a period to correct the third such violation; or
- D. The grantee ceases to operate the service in all or substantially all of its service area for a period of seven consecutive days without the prior approval of the city or for any reason within the control of the grantee.

(Ord. 2107 §1, Ord. 2127 §12)

#### **5.14.300 Remedies upon default.**

- A. Remedies. Upon the occurrence of any event of default by the grantee, the city council may:
1. Assess against the grantee monetary penalties not to exceed One Thousand Dollars (\$1,000.00) for each such event of default or series of related events of default and/or require the grantee to cure each such event of default within such time, in such manner, and upon such terms and conditions as the city council shall designate; or
  2. Revoke and terminate the grantee's franchise.
- B. Public Hearing. Prior to imposing any such remedy or remedies upon the grantee upon the occurrence of any such event of default, the city shall do the following:
1. The city shall provide the grantee with at least fifteen (15) days' prior written notice of the time and place of a public hearing to be held before the city council for purposes of determining whether such event of default has occurred and, if it has occurred, whether such event of default was for just cause. Notice as to the time and place of such hearing shall be published at least once ten (10) days before such hearing in a newspaper of general circulation within the grantee's service area;
  2. The grantee shall be afforded full due process in connection with such hearing, including, but not limited to, an opportunity to introduce evidence, to require the production of evidence, and to introduce and/or question persons connected with or having knowledge of the alleged default. A transcript may be made of the hearing at the grantee's expense;
  3. The city council shall hear any persons interested therein and, based upon the evidence presented at such hearing, shall determine whether or not an event of default by the grantee has occurred;
  4. If the city council shall determine that there occurred an event of default by the grantee and such default was with just cause, the city council shall direct the grantee to correct or remedy the same within such additional time, in such manner, and upon such terms and conditions as the council determines to be necessary; or
  5. If the city council shall determine that there occurred an event of default by the grantee and such default was without just cause, then the city council may, by resolution, impose any one or more of the remedies set forth in subsection A of this section.

- C. Remedies Cumulative. The city council may, in its sole judgment and discretion, impose any one or more of the foregoing remedies against the grantee, which administrative remedies shall be in addition to any and all other legal or equitable remedies it has under the franchise or under any applicable law.
- D. City's Rights Not Affected. The termination and forfeiture of any franchise shall in no way affect any of the rights of the city under the franchise or any provisions of law.
- (Ord. 2107 §1)

**5.14.310 Receivership and foreclosure.**

- A. Receivership. Any franchise herein granted shall, at the option of the city, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days or unless:
1. Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees within the one hundred twenty (120) days shall have remedied all material defaults under the franchise; and
  2. Such receivers or trustees shall, within the one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises whereby such receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of the franchise.
- B. Foreclosure. Subject to the provisions of this chapter permitting a lender to operate the service upon the default of the grantee in its obligations to such lender, in the case of a foreclosure or other judicial sale of the equipment of the grantee, or any part thereof, the city may serve notice of termination upon the grantee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
1. The city council shall have approved the transfer of the franchise in the manner provided by this chapter; and
  2. Such successful bidder shall have covenanted and agreed with the city to assume and be bound by all the terms and conditions of the franchise.

(Ord. 2107 §1)

**ARTICLE V. GENERAL FINANCIAL AND INSURANCE PROVISIONS**

**5.14.320 Performance bond.**

- A. Filing of Bond. The grantee of any franchise granted pursuant to this chapter shall, at least thirty days prior to the commencement of operation, file with the city a performance bond in the amount specified in the franchise in favor of the city for all losses and damages the city may sustain as a result of any act or omission of the grantee, its employees, agents, and contractors arising from the operation or termination of the services under the franchise, and including the payments required to be made to the city hereunder. Such bond shall be obtained from an insurance company licensed to do business in the State of California with a Best's Guide rating

- of “B” or better, or, in the alternative, an unlicensed, U.S. domiciled company with a Best’s Guide rating of “A”, and shall be in a form approved by the city attorney.
- B. No Limitation of Liability. In no event shall the amount of such bond be construed to limit the liability of the grantee for damages.

(Ord. 2107 §1)

**5.14.330 Insurance.**

- A. Scope of Coverage. The grantee shall maintain throughout the term of the franchise the following insurance:
1. Workers’ Compensation Insurance. Workers’ compensation insurance shall be maintained in accordance with the workers’ compensation insurance and safety laws of the state of California.
  2. Comprehensive General Liability. Comprehensive general liability insurance, including, but not limited to, coverage for bodily injury and property damage, shall be maintained in the sum(s) specified in the franchise.
  3. Comprehensive Automobile Liability. Comprehensive automobile liability insurance including, but not limited to, non-ownership and hired car coverage, as well as owned vehicles with coverage for bodily injury and property damage and an MSC-90 endorsement including environmental restoration coverage for accidents during transportation, shall be maintained in the sum(s) specified in the franchise.
  4. Pollution Liability. Pollution liability or sudden accidental pollution liability coverage shall be maintained in the sum(s) specified in the franchise.
  5. Employer’s Liability. Employer’s liability coverage shall be maintained in the sum(s) specified in the franchise.
- B. Certificates of Insurance. The grantee shall furnish the city with copies of such insurance policies and any endorsements thereto for approval by city’s risk manager. Thereafter, grantee may substitute for same a certificate of insurance issued by the respective insurance company or companies certifying that such insurance policy or policies are in full force and effect.
- C. City As Additional Insured. The city, its officers, boards and commissions, and members thereof, its employees and agents shall be named as additional insureds in all of the liability insurance policies required under subsections A.2, A.3 and A.4 of this section. The obligation of the insurers under such policies to provide coverages in the amounts specified in the grantee's franchise shall be primary up to the limits of liability as set forth in such franchise without right of contribution from any insurance in effect for the city. Such policies shall not be canceled or reduced in coverage without thirty (30) days' unqualified prior written notice to the city of the effective date thereof.
- D. No Limitation of Liability. The minimum amounts set forth in the franchise for such insurance shall not be construed to limit the liability of the grantee to the city under the franchise issued hereunder to the amounts of such insurance.
- E. Licensed Insurers. All insurance carriers providing coverage under this section shall be duly licensed to operate in the state of California and with a Best’s Guide rating of “B” or better, or, in the alternative, an unlicensed, U.S. domiciled company with a Best’s Guide Rating of “A”, and shall be subject to approval of the city.

(Ord. 2107 §1)

**5.14.340 Indemnification.**

The grantee shall, by acceptance of any franchise granted herein, indemnify the city, its officers, boards and commissions, and members thereof, its employees and agents from any and all liabilities which might arise out of or relate to the exercise or enjoyment by the grantee of such franchise. Should the city or any of its officers, boards and commissions, and members thereof, its employees or agents be named in any suit, or should any claim be made against it or any of them by suit or otherwise, whether the same be groundless or not, arising out of or relating to any claim for which the grantee may be required to indemnify the city hereunder, the grantee shall defend the city and said officers, boards and commissions, and members thereof, its employees and agents and shall indemnify them for any judgment rendered against them or any sums paid out in settlement or otherwise.

(Ord. 2107 §1)

**ARTICLE VI. OPERATION OF FRANCHISE****5.14.350 Yard waste collection and compost services to be provided.**

The grantee shall provide the yard waste debris collection and compost service as set forth in this chapter and the franchise.

(Ord. 2107 §1)

**5.14.360 Provision of containers.**

As part of the basic service provided by grantee, grantee shall provide all residential yard debris generators which subscribe to the yard debris collection service with containers as specified in the ordinance granting the franchise.

(Ord. 2107 §1, Ord. 2127 §13)

**5.14.380 Open books and records.**

The city shall have the right to inspect at any time during normal business hours, and upon reasonable prior notice to the grantee, all route maps, service complaint logs, and performance test results which relate to the operation of a franchise and are maintained at the grantee's office within the service area. If any of such records are not kept in the grantee's local office, or upon reasonable request made available to the city, and if the city shall determine that an examination of such records is necessary or appropriate to the performance of any of the city's duties, then all travel and maintenance expenses necessarily incurred in making such examination shall be paid by the grantee.

(Ord. 2107 §1)

**5.14.390 Complaint procedures.**

A. Complaints to Grantee. Grantee shall establish written procedures for receiving, acting upon, and resolving customer complaints. The written procedures shall prescribe the manner in which a customer may submit a complaint, either orally or in writing, that grantee has violated any provisions of this chapter or the franchise granted by city to grantee pursuant to this chapter. At the conclusion of the grantee's investigation of the customer's complaint, but in no event more than ten days after receiving the complaint, the grantee shall notify the customer of the results of the investigation and its proposed action or resolution, if any. The grantee shall also notify the customer of the customer's right to file a complaint with the city in the event the customer is dissatisfied with the

grantee's decision. All written procedures established by the grantee for receiving, acting upon and resolving customer complaints shall be filed with the city.

- B. Complaint to the City. A customer who is dissatisfied with the grantee's proposed decision or who was not sent a written decision within a 10-day period after the grantee received the complaint, shall be entitled to have the complaint reviewed by the director or designee as follows:
1. Initiating Complaint Review. A customer shall initiate complaint review by the city by filing a written request for such review with the director of public works and by serving a copy of the request for review on the grantee. Such request for complaint review shall be filed by the customer within twenty days of the receipt of the grantee's decision, or, if grantee's decision has not been provided, within thirty days after filing the original complaint with the grantee; provided, however, that the director may extend such time limits for good cause shown. Such request for complaint review shall set forth the substance of the customer's complaint together with the grantee's decision, if any, on the complaint.
  2. Complaint Review Procedures. Upon receipt of a request for complaint review, the director, on the basis of the information set forth in such request, shall determine whether further review is warranted. In the event the director determines that further review is not warranted, then the grantee's decision shall be final. On the other hand, if the director determines that further review is warranted, the director shall require the grantee and customer to submit, within ten days after notice thereof, a written statement of the facts and arguments in support of their respective positions. The grantee or the customer may request in such statement that a hearing be conducted by the director. If requested, a hearing shall then be conducted by the director following notice in writing specifying the time and place for the hearing. The hearing shall be conducted informally by the director and the parties may offer any evidence relative to the dispute. In addition, the grantee and the customer shall produce any additional evidence requested by the city manager, including testing reports from the grantee, which the director may deem necessary for a full understanding and determination of the dispute. Within fifteen days of the conclusion of the hearing, the director shall render a written decision on the dispute, which decision shall fully resolve the matter and which shall be final as to the parties thereto.

(Ord. 2107 §1, Ord. 2136 §3, Ord. 2268, Ord. 2364 §96)

#### **5.14.400 Rights of individuals.**

- A. Non-Discrimination. The grantee shall not deny service, deny access, or otherwise discriminate against customers or general citizens on the basis of race, color, religion, national origin, age, or sex. The grantee shall comply at all times with all other applicable federal, state, and city laws and regulations, and all executive and administrative orders relating to non-discrimination which are hereby incorporated and made part of this chapter by reference.
- B. Equal Employment Opportunity. The grantee shall strictly adhere to the equal employment opportunity requirements of federal, state and local authorities, as amended from time to time.

(Ord. 2107 §1)

**5.14.410 Grantee rules and regulations.**

The grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as the grantee shall consider reasonably necessary to enable the grantee to exercise its rights and perform its obligations under the franchise and to assure service to each and all of its subscribers, provided that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this chapter or the ordinance granting the franchise. The grantee shall provide the city with copies of any such rules, regulations, terms and conditions within thirty (30) days after any change therein.

(Ord. 2107 §1)

**5.14.420 Customer notices.**

- A. Notice of Operating Policies. As new properties are added to those properties to be served by the grantee, the grantee shall provide each with written information concerning the services to be provided and the schedule of such services, the procedure for making inquiries or complaints, including the title, address and telephone number of the employee or agent to whom such inquiries or complaints are to be addressed, and the name, address and telephone number of the city employee who has been designated by the city manager as being responsible for the administration of the grantee's franchise. Such notice shall also indicate the grantee's business hours, telephone number, and procedures for responding to inquiries after normal business hours. In the event there is any change in the foregoing information, the grantee shall provide the owners of all properties which it is required to serve with written notice of such changes not less than thirty days prior to the date such proposed changes are to go into effect.
- B. Notice of Change in Rates and Services. The grantee shall provide the owners of all properties for which it is required to provide services with at least thirty days' written notice prior to the implementation of any change in rates.
- C. Copies of Notices to City. Copies of all notices to be provided by the grantee to a property owner pursuant to the provisions of this section shall be filed concurrently with the city.

(Ord. 2107 §1)

**5.14.430 Inspection of facilities.**

The grantee shall allow the city to make inspections of any of the grantee's facilities and equipment at any time during the grantee's normal business hours upon reasonable notice or, in case of emergency, upon demand without prior notice, to allow the city to verify the accuracy of any submitted report.

(Ord. 2107 §1)

**5.14.440 False statements.**

Any materially false or misleading statement or representation made knowingly by the grantee in any report required under this chapter or the franchise shall be deemed a material breach of the franchise and shall subject the grantee to all remedies, legal or equitable, which are available to the city under the grantee's franchise or otherwise.

(Ord. 2107 §1)

**ARTICLE VII. COLLECTION OF FEES****5.14.450 Yard debris collection fees.**

All residential yard debris generators which subscribe to the yard debris collection service shall be assessed the fees set forth by resolution of the city council or in the ordinance granting the franchise for yard debris collection services in consideration of the provision of such services.

(Ord. 2107 §1, Ord. 2127 §15)

**5.14.470 Schedule of fees.**

A copy of the schedule of all fees for yard debris collection shall be maintained and available for public inspection at the office of the city manager.

(Ord. 2107 §1, Ord. 2127 §17)

**5.14.480 Collection of fees.**

Grantee shall be responsible for the collection of all fees imposed pursuant to grantee's franchise and shall bill all customers in advance no less frequently than on a quarterly basis.

(Ord. 2107 §1, Ord. 2127 §18)

**ARTICLE VIII. MISCELLANEOUS PROVISIONS****5.14.610 Severability.**

If any term, covenant, condition, or provision of this chapter or any franchise granted pursuant to this chapter or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remaining terms, covenants, conditions, and provisions of this chapter or such franchise, or the application of such term, covenant, condition, or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this chapter or such franchise shall be valid and enforced to the fullest extent permitted by law.

(Ord. 2107 §1)

**5.14.620 Service of notices.**

The grantee shall maintain within the franchise area throughout the term of the franchise an address for service of notices by mail.

(Ord. 2107 §1)

**5.14.630 Non-enforcement by the city.**

The grantee shall not be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of the city to enforce prompt compliance.

(Ord. 2107 §1)

**5.14.640 Force majeure.**

In the event the grantee's performance of any of the terms, conditions, obligations, or requirements of its franchise, including such terms, conditions, obligations, or requirements as are set forth in this chapter, is prevented or impaired due to any cause

beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided that the grantee has promptly notified the city in writing of its discovery of the occurrence of such an event, the nature of the event and the anticipated extent of the delay. Such causes beyond the grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God and civil emergencies.  
(Ord. 2107 §1)

## Chapter 5.16

### SOLID WASTE COLLECTORS<sup>4</sup>

**Section:**

<b>5.16.010</b>	<b>Definitions.</b>
<b>5.16.020</b>	<b>Permit required.</b>
<b>5.16.025</b>	<b>Permit exceptions.</b>
<b>5.16.030</b>	<b>Permits - Authority of council to issue or deny.</b>
<b>5.16.035</b>	<b>Permits - Types of permits.</b>
<b>5.16.040</b>	<b>Permits - Number of permits to be issued.</b>
<b>5.16.050</b>	<b>Permits - Application.</b>
<b>5.16.053</b>	<b>Restricted permits - administrative modification.</b>
<b>5.16.055</b>	<b>Restricted permits - Biannual reports.</b>
<b>5.16.060</b>	<b>Permits - Renewal, issuance and term.</b>
<b>5.16.065</b>	<b>Permits - Annual Permit Fee.</b>
<b>5.16.070</b>	<b>Permits - Transferability.</b>
<b>5.16.075</b>	<b>Permits - Interest in another business entity holding a valid permit.</b>
<b>5.16.080</b>	<b>Permits - Standards.</b>
<b>5.16.085</b>	<b>Permits - Recyclable Solid Waste Collection.</b>
<b>5.16.087</b>	<b>Permits - Recyclable yard debris collection.</b>
<b>5.16.090</b>	<b>Permits - Revocation.</b>
<b>5.16.100</b>	<b>Permits - Revocation - Procedure.</b>
<b>5.16.110</b>	<b>Permits - Monetary penalty in lieu of revocation.</b>
<b>5.16.120</b>	<b>Collection vehicles and drop boxes.</b>
<b>5.16.130</b>	<b>Rates to be fixed by council.</b>
<b>5.16.135</b>	<b>Repealed.</b>
<b>5.16.140</b>	<b>Business license tax.</b>
<b>5.16.150</b>	<b>Performance bond - Bond not relief from liability of grantee under chapter.</b>
<b>5.16.160</b>	<b>Financial responsibility.</b>
<b>5.16.170</b>	<b>Hours of collection.</b>
<b>5.16.180</b>	<b>Solid waste collectors serving public facilities pursuant to a contract with the city.</b>

**5.16.010 Definitions.**

- A. The definitions contained in Section 8.04.010 of this code apply to the provisions of this chapter.
- B. Additional Definitions.
1. Permittee. "Permittee" means any person who has been issued either an unrestricted or a restricted solid waste collector permit.
  2. Solid waste collector permit or permit. "Solid waste collector permit" or "permit" means either an unrestricted or a restricted permit issued pursuant to this chapter.

(Prior code §11.20-1 (Ord. 1111 §16), Ord. 2276)

**5.16.020 Permit required.**

It shall be unlawful to engage in the collection and/or transportation of solid waste in the city of Chico without first obtaining a solid waste collector's permit, except as otherwise provided in this chapter.

(Prior code §11.20 (Ord. 1065 §2), Ord. 2253)

**5.16.025 Permit exceptions.**

The following persons may collect solid waste without first obtaining a solid waste collector's permit:

- A. A person engaged in a recycling business who charges no fee for the collection of source separated recyclable solid waste;
- B. A person engaged in a rendering business;
- C. A person who removes such person's solid waste or recyclable solid waste to an approved disposal or recycling facility;
- D. A person who collects vegetable matter or food waste to use for animal food or composting;
- E. A person who operates a lawful business having waste material, or refuse residue, which is collected, transported, and disposed of in the natural course of the business, including, but not limited to gardeners, tree trimmers, street sweepers, roofers, and construction or demolition contractors who clean up a construction or demolition project site and then transport the residual material resulting from the project to a disposal or recycling facility;
- F. A person, acting as part of a recognized charitable or nonprofit organization as registered under the Revenue and Taxation Code of the State of California, who collects rubbish or recyclables in exchange for a donation; and
- G. A person in the business of collecting or transporting hazardous wastes as defined in State or Federal law or regulation

(Ord. 2253, Ord. 2268)

**5.16.030 Permits - Authority of council to issue or deny.**

The city council is hereby authorized to issue a solid waste collector permit to any person having submitted a proper application for same if the city council determines that such person has or can obtain the skills, equipment, and personnel necessary to provide solid waste collection services to the residents of the city in a manner that complies with the standards and other requirements of this chapter.

(Prior code §11.91 (Ord. 1065 §2, Ord. 1699 §1, Ord. 2047 §1))

**5.16.035 Permits - Types of permits.**

- A. Unrestricted Permits. An unrestricted permit shall authorize the permittee to operate as a solid waste collector throughout the city without restriction as to the properties for which the permittee may provide services.
- B. Restricted Permits. A restricted permit shall authorize the permittee to provide services only to specified properties within the city for which all of the following conditions are met:
  - 1. The solid waste collector commenced providing services to the specified properties on or after July 1, 2000, and has provided those services continuously

since that date;

2. The properties at which the services are provided were located in the unincorporated area of Butte County at the time the solid waste collector began providing services to those properties; and
3. The properties were annexed to the city on a date after the solid waste collector commenced providing the services.

A restricted permit shall authorize the provision of services to a property only so long as such services are continuously provided. If the permittee ceases to provide services to a property to which a restricted permit applies, the permittee may not later resume providing services to that property.

(Ord. 2276)

#### **5.16.040 Permits - Number of permits to be issued.**

- A. Unrestricted Permits. The number of unrestricted permits which may be issued by the city council shall not exceed a total of two, and no more than one permit shall be issued to any one applicant.
- B. Restricted Permits. There is no limitation to the number of restricted permits that may be issued. However, such permits may only be issued to authorize services to properties meeting the conditions set forth in section 5.16.035B.

(Ord. 2276)

#### **5.16.050 Permits - Application.**

The person applying for a solid waste collector permit shall be the legal representative of the solid waste collector company applying for the permit. The application for the permit shall be submitted to the city manager upon such application form as the city manager prescribes.

The solid waste collector permit application shall include the following information:

- A. All applications for a solid waste collector permit:
  1. Name, address, and phone number of firm and owner applying for permit;
  2. License number, yardage capacity, and type of all collection vehicles;
  3. Total number of collection vehicles used within the city;
  4. Proposed color(s) of vehicles; and
  5. Such other information as the city manager may require.
- B. Applications for restricted permits. In addition to the information required in subsection A, above, applications for restricted permits shall also include:
  1. The addresses of all the properties meeting the criteria set forth in section 5.16.035B, and to which the restricted permit is proposed to apply; and
  2. Financial statements evidencing gross receipts received by the permit applicant during the previous 12 months which are attributable to those properties.

(Prior code §11.23 (Ord. 1065 §2, Ord. 2113 §1), Ord. 2268, Ord. 2276)

#### **5.16.053 Restricted permits - administrative modification.**

A restricted permit authorizing services to specified properties may be modified by the city manager to include additional properties that are annexed into the city after the date the restricted permit is issued when all the conditions set forth in section 5.16.035B, are met as to each additional property.



**5.16.055 Restricted permits - Biannual reports.**

It shall be a condition of every restricted permit that the permittee submit biannual reports. Such reports shall be in a form prescribed by the city manager and shall state, for each property to which the permit applies, whether the permittee continues to provide services to that property or whether service has been discontinued.

(Ord. 2276)

**5.16.060 Permits - Renewal, issuance and term.**

- A. Except as provided in subsections B and C of this section, commencing as of July 1, 1985, the term of any permit issued pursuant to this chapter prior to June 30, 1996, shall expire on June 30, 1996. However, commencing as of July 1, 1996, the term of any permit issued pursuant to this chapter shall be for the five-year period which begins on July 1, 1996, or on July 1st of each fifth year thereafter; provided, that where a permit is issued subsequent to July 1, 1996, or July 1st of any fifth year thereafter, such permit shall be for a term of less than five years which begins on the date of issuance and terminates at the end of the five-year period during which such permit was issued.
- B. The term of all solid waste collector permits which are issued and in effect on the effective date of the ordinance adding this paragraph B shall be extended for an additional period of 10 years beyond the term otherwise provided for in subsection A above.
- C. The term of a restricted permit shall commence on the date of issuance of the permit and terminate on the fifth July 1 thereafter or on the date upon which the permittee no longer serves any of the properties for which the permit was issued, whichever occurs first.
- D. Application for the renewal of a solid waste collector permit shall be submitted to the city manager prior to January 1<sup>st</sup> of the year in which the term of a permit issued pursuant to this chapter will expire.

(Prior code §11.24 (Ord. 1065 §2, Ord. 1180 §1, Ord. 1460 §2, Ord. 1766 §1, Ord. 1860 §2, Ord. 2127 §31), Ord. 2276)

**5.16.065 Permits - Annual Permit Fee.**

Each permittee shall pay to the city an annual solid waste collector permit fee in the amount of 2% of the annual gross receipts received from all customers served within the city during the permittee's most recently ended fiscal year. If a business has not previously operated in the city, or has operated in the city less than 12 months during its most recently ended fiscal year, gross receipts shall be estimated by the finance director who shall determine the amount of the fee due.

The annual permit fee payable hereunder shall be due and payable in advance on the first day of July of each year. If a permit is issued with an effective date other than July 1, the fee due for the period between the date of issuance of the permit and the next July 1 shall be the amount of the annual fee, as calculated above, prorated from the date the permit is issued to the next July 1. Such fee shall be due and payable as a condition precedent to the issuance of the permit.

Each permittee shall submit to the finance director, not later than 60 days after the end of permittee's fiscal year, an annual statement containing all financial information reflecting the total amount of gross receipts obtained from the permittee from operations within the city boundaries during the year covered by that annual statement. Such financial statements shall be prepared by an independent public or certified accountant, or by a financial officer of the permittee. No

statements shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the city from collecting by appropriate action such sum as is actually due and payable hereunder. Such statements and each of the several items therein contained shall be subject to audit and verification by the finance director, a designee, or such other employees as may be authorized by the finance director, who are hereby authorized to examine, audit, and inspect such books and records of any permittee as may be necessary in their judgment to verify or ascertain the amount of fee due.

(Ord. 2276)

#### **5.16.070 Permits - Transferability.**

No permit issued pursuant to the provisions hereof shall be transferable or assignable without prior council approval; provided that in event of a permittee's death, permittee's legal representative, i.e., executor or administrator, may continue to operate under said deceased permittee's permit, during the course of probate not exceeding a period of one year, or until the beginning of the next five-year renewal period, whichever time occurs first. If such permit has not been transferred with approval of the council prior to the occurrence of said time, such permit shall expire.

(Prior code §11.25 (Ord. 1065 §2, Ord. 1766 §2), Ord. 2268)

#### **5.16.075 Permits - Interest in another business entity holding a valid permit.**

- A. No permit shall be issued to a person or business entity having a controlling interest in another business entity holding a valid permit issued under this chapter. Where a person or business holding a valid permit issued under this chapter acquires the controlling interest of another business entity which also holds a valid permit issued under this chapter, the permit of the person or business entity making such acquisition shall be surrendered to the city manager for cancellation unless, by agreement, the business entity in which the controlling interest is acquired surrenders its permit to the city manager for cancellation. Where two or more persons or business entities associate in a new partnership, joint venture, or other unincorporated association for the purpose of engaging in a solid waste collection business and one or more of such persons or business entities hold a valid permit issued under this chapter, each person or business entity associating in the new partnership, joint venture, or other unincorporated association which holds a valid permit issued under this chapter shall surrender their permit to the city manager for cancellation, and the city manager, upon receiving and canceling all of such permits, shall issue a new permit in the name of the new partnership, joint venture, or other unincorporated association.
- B. For purposes of this section, the term "business entity" shall mean any organization or enterprise operated for profit, including but not limited to a proprietorship, a partnership, joint venture, or corporation or association, and the term "controlling interest" shall mean an ownership interest in the stock or assets of a business entity which would entitle the person or business entity having such interest to participate in the management of the business entity.

(Ord. 1439 §1)

#### **5.16.080 Permits - Standards.**

The following standards must be met and maintained by a solid waste collector in order to acquire and maintain a valid permit:

- A. Pay a business license tax when it is due and before it is delinquent;
- B. Collect solid waste, recyclable yard debris and recyclable solid waste as required by this chapter and as per agreement with each customer;
- C. Comply with the provisions of the solid waste collection fees, as adopted by resolution of the city council;
- D. Submit for approval to the city manager any notice regarding solid waste collection services which a solid waste collector intends to send or otherwise give to a customer. All such notices shall be filed with the city manager no later than 14 days prior to the date such notice is to be sent or otherwise provided to a customer. The failure of the city manager to respond to such notice within 7 days after it was filed shall constitute the city manager's approval of same.

Provided, however, that bills sent to a customer in the regular course of business for services rendered or to be rendered and/or a notice of termination of services by reason of the non-payment of such bills shall be exempt from the approval process required pursuant to this subsection;

- E. Submit an annual statement to the finance director in a form prescribed by the finance director and containing all financial information relating to a solid waste collector's prior year of operations, both within and outside of the corporate boundaries of the city, which the finance director deems necessary in order to evaluate the need for any adjustment to the solid waste collection rates established by the city council pursuant to this chapter. Said statement shall be prepared by an independent public accountant or certified public accountant licensed under the laws of the state of California and shall be submitted to the finance director not later than 90 days after the end of each solid waste collector's fiscal year.

In order to verify such statements, the finance director shall have the right to audit the accounts and other related financial records of each solid waste collector;

- F. Maintain at all times a current list of residential and commercial customer names, addresses and collection schedules, which shall be made available to the city finance director or other appropriate city representative upon request, for the purpose of audit. Such list shall be available for audit at any time during the business day. Failure to comply with this section will be grounds for revocation of the permit;
- G. Submit a quarterly report to the city manager which is in a form prescribed by the city manager and which sets forth such information on the solid waste collector's recycling and solid waste disposal operations, both within and outside of the corporate boundaries of the city, as may be determined by the city manager to be necessary in order to evaluate the solid waste collector's compliance with the city's recycling program. Said report shall be submitted to the city manager no later than 30 days after the end of the quarter. Documentation supporting the amount of recyclable solid waste collected, marketed for re-use, or otherwise disposed of, and any other documentation and/or materials necessary to verify the solid waste collector's recycling and solid waste disposal operations, shall be maintained by each solid waste collector for at least two years and shall be subject to audit by the City;

- H. Not allow any solid waste, recyclable yard debris, or recyclable solid waste to spill, drop, fall or remain on the ground or surface in or upon any public street, alley, way or place;
- I. Maintain a business office within the Chico urban area open to the general public during the hours of 8 a.m. to 5 p.m., Monday through Friday, holidays excepted, which is staffed with at least one employee to respond to customer questions and complaints submitted either in person or by telephone. However, in lieu of maintaining a business office open to members of the general public, the solid waste collector may place in operation a telephone answering machine capable of recording customer questions and complaints during the hours of 8 a.m. to 5 p.m., Monday through Friday, holidays excepted, provided such recorded questions and complaints are responded to not later than the end of business hours on the business day next following the day such question or complaint was recorded;
- J. Provide rear-yard solid waste and recyclable solid waste collection services to each single-family and two-family customer who elects to receive same. Notice of the availability of such service shall be provided to single-family and two-family customers upon commencement of service with the solid waste collector;
- K. Collect recyclable solid waste and recyclable yard debris from residential customers on the same day(s) and with the same frequency established for the collection of solid waste;
- L. Provide to customers no fewer than two free solid waste collection events each year, which events shall be of a type and shall be conducted in a manner which has been approved in advance by the City Manager; and
- M. Provide information regarding the recycling service, the benefits of recycling, the type of materials collected and not collected, and the procedures for preparing recyclable solid waste for collection to all new residential customers, and to existing residential customers on a semi-annual basis.

(Prior code §11.26 (Ord. 1065 §2 (part)), Ord. 1115 §1, Ord. 1460 §3, Ord. 1766 §3, Ord. 1860 §3, Ord. 1894 §1, Ord. 1942 §1, Ord. 1955 §1, Ord. 2047 §3, Ord. 2106, Ord. 2113 §1, Ord. 2225, Ord. 2253)

#### **5.16.085 Permits - Recyclable Solid Waste Collection.**

Each solid waste collector issued a permit to collect solid waste from single-family, two-family residential and multi-family residential customers within the city pursuant to the provisions of this chapter shall be required to provide to single-family and two-family residential customers a curbside recycling program, and to multi-family residential customers a recycling program within each multi-family complex, to allow for the separation and collection of recyclable solid waste as defined in section 8.04.010 of this code. At the election of each solid waste collector, front yard or rear yard recycling collection may be provided to each single-family and two-family customer.

Single-family, two-family and multi-family residential customers shall not be required by the provisions of this chapter to recycle their solid waste. However, for those customers who elect to recycle, it shall be the responsibility of the customer to separate recyclable solid waste from their solid waste prior to collection of recyclables.

(Ord. 1860 §4, Ord. 1894 §2, Ord. 1955 §2, Ord. 2253)

#### **5.16.087 Permits - Recyclable yard debris collection.**

Each solid waste collector issued a permit to collect solid waste from single-family, two-family residential customers within the city pursuant to the provisions of this chapter shall be required to provide to single-family and two-family residential customers a curbside

recyclable yard debris collection service to allow for the separation and collection of recyclable yard debris as defined in section 8.04.010 of this code. At the election of each solid waste collector, front yard or rear yard services may be provided to each single-family and two-family customer.

Single-family and two-family residential customers shall not be required by the provisions of this chapter to recycle their recyclable yard debris. However, for those customers who elect to recycle, it shall be the responsibility of the customer to separate recyclable yard debris from their solid waste prior to collection.

(Ord. 2225, Ord. 2253)

#### **5.16.090 Permit - Revocation.**

The city council may, following a public hearing, revoke the permit issued to any solid waste collector found by the council to be operating a solid waste collection business in violation of the provisions of this chapter, including, but not limited to, the permit standards adopted pursuant to this chapter.

Notice of such hearing shall be served on such solid waste collector by certified mail, return receipt requested, addressed to such solid waste collector at such solid waste collector's last known address, at least ten days prior to the date set for the hearing. Said notice, in addition to setting forth the time and date of the hearing, shall specify the grounds upon which the council will consider the revocation of such solid waste collector permit and shall include a statement of such solid waste collector's right to appear and be heard at the hearing.

(Prior code §11.27 (Ord. 1065 §2, Ord. 1460 §4))

#### **5.16.100 Permits - Revocation - Procedure.**

Upon revocation of a permit, the following procedure shall be followed:

- A. The city shall send a registered letter to the solid waste collector containing notification of permit revocation.
- B. A solid waste collector whose permit has been revoked shall not collect garbage, rubbish and waste matter, or otherwise perform the duties and business of a solid waste collector within the city after a period of 30 days following the date of revocation.
- C. The solid waste collector shall notify all of collector's customers of revocation within a period of 15 days following the date of said revocation, or the city shall notify said customers at the sole expense of and recoverable from the performance bond of said solid waste collector, as provided for within this chapter.
- D. The solid waste collector shall notify the city manager upon the completion of customer notification.

(Prior code §11.29 (Ord. 1065 §2 (part), Ord. 1766 §4), Ord. 2268)

#### **5.16.110 Permits - Monetary penalty in lieu of revocation.**

If the city council, after convening a hearing on the proposed revocation of a permit issued to a solid waste collector pursuant to the provisions of this chapter, determines that such solid waste collector, although having violated the provisions of this chapter, has nevertheless corrected such violation subsequent to the date the solid waste collector was served with a notice of such hearing, the city council may, in lieu of revoking the permit issued to the solid waste collector, assess a monetary penalty against the solid waste collector in the amount of five hundred dollars or in an amount equal to the costs and expenses incurred by the city for the

staff time committed to the preparation for such hearing, whichever amount is greater. All such monetary penalties assessed by the city council shall be due and payable no later than the thirtieth day following the date of such hearing and the failure to pay such sum within such time shall be further grounds for the revocation of the permit issued to the solid waste collector against whom such penalty was assessed.

(Ord. 1766 §5)

#### **5.16.120 Collection vehicles and drop boxes.**

- A. It shall be unlawful for any solid waste collector to use any truck or other vehicle for the removal or transportation of any solid waste, recyclable solid waste, or recyclable yard debris from any property within the city unless the same conforms to the specifications set forth in this chapter.
- B. Collection vehicles must be of the mechanical-compaction type, provided that in the case of an emergency such as mechanical breakdown or other cause beyond the control of the solid waste collector, the city manager may, upon the request of the solid waste collector, approve the use of nonmechanical-compaction-type equipment for a limited period of time during such emergency, as determined by the city manager. Enclosed covered-body-type vehicles may be used in the collection of rubbish and/or waste matter only.
- C. Each collection vehicle shall be maintained in a clean and mechanically safe condition.
- D. All collection vehicles shall be painted and have the name of the solid waste collector distinct and unique from all other licensed solid waste collectors in the city. Said names, colors, and size of lettering must first be approved and recorded by the city manager.
- E. Each collection vehicle shall be constructed and maintained in such manner that it is watertight and free from odor leakage.
- F. Doors and openings to collection vehicle bodies shall be kept closed at all times when said vehicles are not being loaded or unloaded of solid waste, recyclable solid waste, or recyclable yard debris.
- G. All collection vehicles shall be of such type and design and shall be operated in such manner so as not to incur any damage to public or private property in their use and operation.
- H. Any permit granted pursuant to this chapter shall include the right to utilize “drop boxes” for the use by customers for collection of dry rubbish and waste matter (not garbage), provided that:
  - 1. Such boxes shall contain the name of the solid waste collector owning or otherwise entitled to possession of the box in a conspicuous place on the exterior of the box;
  - 2. Such boxes shall not be dropped or placed on a public sidewalk, street or way, except in that portion of a sidewalk, street or way that may have been temporarily closed during the course of construction of an improvement on an adjoining property by order of the city; and
  - 3. Such boxes shall be so maintained and handled as to not permit the contents placed therein to fall or be blown therefrom.

(Prior code §11.30 (Ord. 1065 §2 (part), Ord. 1766 §§6, 7), Ord. 2253)

#### **5.16.130 Rates to be fixed by council.**

- A. Rates for Collection of Solid Waste and Recyclable Solid Waste

The city council is authorized to establish by resolution the maximum rates or charges that may be charged by solid waste collectors for the collection by any means of garbage, rubbish and waste matter in the city. Such rates or charges for single-family, two-family and multi-family residential customers shall include an amount sufficient to adequately compensate solid waste collectors for the collection of recyclable solid waste, and shall be applicable to such customers whether or not such customers avail themselves of the recyclable solid waste collection services, the city council having determined that the collection of such rates or charges from such residential customers is necessary in order to make a citywide recycling program economically feasible. However, the rate set for collection of solid waste by use of an approved bag system as authorized by Section 8.12.045, and without utilizing the recyclable solid waste collection services, shall not include a component for such recyclable solid waste collection services.

**B. Rates for Collection of Recyclable Yard Debris**

All residential customers who subscribe to recyclable yard debris collection service shall be assessed a separate fee set forth by resolution of the city council in consideration of the provision of such services.

**C. The current schedules of rates so fixed by the council shall be at all times on file in the office of the city clerk, and a copy shall be available to each solid waste collector.**

(Prior code §11.31 (Ord. 1065 §2 (part), Ord. 1860 §5, Ord. 1955 §3, Ord. 2165 §2; Ord. 2225))

**5.16.140 Business license tax.**

Nothing in this chapter shall be construed to exempt solid waste collectors from any business license tax as set forth in chapter 3.32 of this code which the council may impose for revenue purposes.

(Prior code §11.32 (Ord. 1065 §2 (part), Ord. 2253))

**5.16.150 Performance bond - Bond not relief from liability of grantee under chapter.**

A. The applicant shall, concurrently with the filing of and acceptance of permit granted under this chapter, file with the city manager, and at all times thereafter maintain in full force and effect for the term of the permit, at the applicant's sole expense, a corporate surety bond, in a company approved by and in a form to be approved by the city attorney, in the minimum amount of \$2,000.00, continuous in form and conditioned upon the faithful performance by the applicant of all the terms and conditions of the permit granted and the provisions of this chapter; and, further, in the event the applicant shall fail to comply with any one or more of the provisions of this chapter, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the city as a result thereof, including a reasonable allowance for attorney's fees and costs, up to the full amount of the bond, such condition to be a continuing obligation for the duration of such permit and thereafter until applicant has liquidated all of its obligations with the city that may have arisen from the issuance and acceptance of such permit. The bond shall provide that ten (10) days' prior notice of intention not to renew, cancellation, or material change, be given to the city.

B. The council shall have the authority at any time during the term of the permit to require the amount of such bond to be increased to a greater sum than the minimum sum herein provided, not exceeding the sum of \$10,000, if, in the exercise of its discretion as

determined by resolution, such increase is required for the better protection of the rights and interests of the city. Such additional bond, if so required, shall be furnished and delivered by the applicant to the city within 30 days from the receipt by the grantee of a copy of such resolution.

- C. Neither the provisions of this section, any bond accepted by the city pursuant thereto, nor any damages recovered by the city thereunder shall be construed to excuse faithful performance by the applicant, or limit the liability of the applicant under such permit, or for damages, either to the full amount of the bond or otherwise.

(Prior code §11.33 (Ord. 1065 §2 (part))

#### **5.16.160 Financial responsibility.**

Each solid waste collector issued a permit pursuant to the provisions of this chapter shall maintain in full force and effect public liability insurance obtained from one or more insurance companies licensed to do business in the state of California which has combined single limits of at least one million dollars (\$1,000,000) and provides coverage for any liabilities arising out of the operation of a solid waste collection business within the city, including but not limited to any liabilities arising out of the operation of a vehicle engaged in the collection of solid waste within the city. Such insurance coverage shall be evidenced by a certificate of insurance or such other form of documentation of insurance coverage as may be acceptable to the city manager, executed by an authorized official of the insurer or insurers. In addition to the coverage hereinbefore provided for, such certificate of insurance or other documentation of insurance coverage shall provide that the city, its boards and commissions, and members thereof, its officers, employees and agents are named as additional insureds under the coverage afforded, that the coverage afforded is primary to any other insurance coverage which may be available to the city, and that the insurer or insurers will provide to the city at least thirty days' prior notice of cancellation or material change in coverage.

The city manager may, based on an increase in the Consumer Price Index or by reason of the number or types of claims which have or might result from the operations of a particular solid waste collector within the city, require such solid waste collector to increase the limits of the public liability insurance coverage required by this section; provided that the city manager shall serve such solid waste collector with a notice of any required increase in its limits of public liability insurance coverage at least thirty (30) days prior to the date that such insurance must be in effect.

(Prior code §11.34 (Ord. 1065 §2 (part), Ord. 1766 §8), Ord. 2253)

#### **5.16.170 Hours of collection.**

- A. Central Business District. It shall be unlawful for any solid waste collector to collect any garbage, rubbish or waste matter between the hours of 8:00 a.m. and 7:00 p.m. in the central business district area described as follows: Bounded on the north by Big Chico Creek, on the south by the south line of Fifth Street, on the west by the west line of Salem Street, and on the east by the east line of Wall Street. This restriction is intended to prohibit collections from any and all properties fronting on the aforementioned boundary streets, as well as the area within said boundaries.
- B. Adjacent to or Within Residential Districts. It shall be unlawful for any solid waste collector to collect any garbage, rubbish, or waste matter between the hours of 8:00 p.m. and 6:00

a.m., either in or within five hundred feet of any residential district established pursuant to Title 19, entitled “Land Use Regulation,” of this code.  
(Prior code §11.35 (Ord. 1065 §2 (part), Ord. 1538, Ord. 1860 §6))

**5.16.180 Solid waste collectors serving public facilities pursuant to a contract with the city.**

The provisions of this chapter shall not apply to any solid waste collector providing solid waste collection services to public facilities pursuant to a contract with the city, save and except those provisions of Section 5.16.120 of this chapter, entitled “Vehicles” including the provisions of Section 5.16.120(H)(1) and (2) relating to the utilization of “Drop boxes”; the provisions of Section 5.16.140, entitled “Business license tax”; the provisions of Section 5.16.160, entitled “Financial responsibility”; and the provisions of Section 5.16.170, entitled “Hours of collection.”

(Ord. 1699 §3)

## Chapter 5.24

### HOUSE-TO-HOUSE PEDDLING AND SOLICITING<sup>5</sup>

**Section:**

<b>5.24.010</b>	<b>Purpose.</b>
<b>5.24.020</b>	<b>Definitions.</b>
<b>5.24.030</b>	<b>Administration by finance director.</b>
<b>5.24.040</b>	<b>Manner of serving required notices.</b>
<b>5.24.050</b>	<b>Appeals from a decision of the finance director.</b>
<b>5.24.060</b>	<b>Permit requirements.</b>
<b>5.24.070</b>	<b>Permit requirements - Exceptions.</b>
<b>5.24.080</b>	<b>Permit applications.</b>
<b>5.24.090</b>	<b>Permit fees.</b>
<b>5.24.100</b>	<b>Permit bonds.</b>
<b>5.24.110</b>	<b>Review of permit applications by chief of police.</b>
<b>5.24.120</b>	<b>Action on permit applications by finance director.</b>
<b>5.24.130</b>	<b>Approval of application and issuance of permit.</b>
<b>5.24.140</b>	<b>Denial of application and permit.</b>
<b>5.24.150</b>	<b>Display of permits.</b>
<b>5.24.160</b>	<b>Revocation of permits.</b>
<b>5.24.170</b>	<b>Times and manner of engaging in house-to-house peddling or soliciting.</b>
<b>5.24.180</b>	<b>Compliance with other laws and regulations/payment of business license taxes.</b>
<b>5.24.190</b>	<b>Rights of recourse under permit bond.</b>
<b>5.24.200</b>	<b>Violations.</b>

**5.24.010 Purpose.**

This chapter is adopted pursuant to the municipal affairs provisions of the City Charter for the purpose of regulating house-to-house peddling and soliciting within the city in order to ensure that such activities are conducted in a reasonable manner and at reasonable times, to provide some means of redress for those citizens who are the victims of fraudulent offers or shoddy merchandise, and to detect, to the extent reasonably possible, those persons with recent criminal histories who are likely to engage in house-to-house peddling or soliciting within the city in connection with or as part of an unlawful activity.

(Ord. 2062)

**5.24.020 Definitions.**

Unless the contrary is stated or clearly appears from the context, the following definitions shall govern the construction of the words and phrases used in this chapter:

- A. Charitable organization. The term “charitable organization” shall mean any organization which is engaged in charitable activities and exempt from taxation under Section 501(c)(3)

of the Internal Revenue Code.

- B. House. The term “house” shall mean any building, portion of a building or mobile home used as a single-family dwelling unit.
- C. Peddling. The term “peddling” shall mean the act of traveling about for the purpose of selling goods, wares, merchandise or services which are delivered immediately at the time of sale.
- D. Soliciting. The term “soliciting” shall mean the act of traveling about for the purpose of taking orders for goods, wares, merchandise, or services which are to be delivered in the future, and/or the act of requesting money or some other thing of value based on the representation that the money or other thing of value will be used in the future for a charitable purpose.

(Ord. 2062)

#### **5.24.030 Administration by finance director.**

The finance director shall have the primary responsibility for the administration of the provisions of this chapter. In carrying out such responsibilities, the duties of the finance director shall include, but not be limited to, acting on all applications for a permit required by this chapter and conducting permit revocation proceedings when appropriate. The finance director shall be assisted in administering the provisions of this chapter by the chief of police who shall be responsible for determining whether an applicant for a permit required by this chapter has a criminal record and enforcing the criminal sanctions provided for by this chapter in those situations in which a person unlawfully engages in house-to-house peddling or soliciting without a permit required by this chapter.

(Ord. 2062)

#### **5.24.040 Manner of serving required notices.**

All notices to be served on a person filing an application for a permit required by this chapter or issued a permit pursuant to the provisions of this chapter shall be deemed served when made in writing and deposited in the United States mail, first class and postage prepaid, addressed to such person at the address as set forth in the permit application.

(Ord. 2062, Ord. 2268)

#### **5.24.050 Appeals from a decision of the finance director.**

Any person aggrieved by a decision, determination or action of the finance director made or taken pursuant to the provisions of this chapter may appeal such decision, determination or action to the city council within the time and in the manner provided for by Title 2 of this code. Where such appeal is from a decision of the finance director to revoke a permit issued pursuant to the provisions of this chapter, the action of the finance director revoking such permit shall be stayed pending a final decision by the city council on the appeal.

(Ord. 2062)

#### **5.24.060 Permit requirements.**

Except as hereinafter provided by this chapter, it shall be unlawful for any person to undertake or engage in the practice of peddling or soliciting from house to house within the city without a permit authorizing such peddling or soliciting issued by the finance director in the

manner hereinafter provided by this chapter.

(Ord. 2062)

#### **5.24.070 Permit requirements - Exceptions.**

Notwithstanding the provisions of this chapter to the contrary, a permit authorizing house-to-house peddling or soliciting shall not be required when:

- A. The person undertaking or engaging in the peddling or soliciting is under 16 years of age; or
- B. The person undertaking or engaging in the peddling or soliciting is undertaking or engaging in such activities solely in the capacity as an agent or representative of a charitable organization.
- C. The person undertaking or engaging in the peddling or soliciting is a licensed realtor soliciting new real estate listings.

(Ord. 2062, Ord. 2093, Ord. 2268)

#### **5.24.080 Permit applications.**

Applications for a permit required by this chapter shall be filed in the office of the finance director, shall be in the form prescribed by the finance director, and shall contain the following information:

- A. The name, address, date of birth and telephone number of the applicant.
- B. All dates during which the applicant proposes to engage in house to house peddling or soliciting within the city.
- C. A brief description of goods, wares, merchandise or services to be peddled by the applicant or for which the applicant proposes to solicit orders.
- D. If the applicant proposes to peddle or solicit orders for goods, wares, merchandise or services within the city as the employee or agent of a company, the name, address and telephone number of the company, and the name, address and telephone number of the employee or agent of the company who is coordinating or supervising the applicant's peddling or soliciting activities.
- E. If the applicant has been convicted of a criminal act involving theft, fraud, the intentional infliction of bodily injury or other act involving moral turpitude, a statement setting forth the nature of the conviction, the date of conviction and the court in which the conviction occurred.
- F. Such other information as may reasonably be required by the finance director in order to administer the provisions of this chapter.

(Ord. 2062)

#### **5.24.090 Permit fees.**

Every application for a permit required by this chapter shall be accompanied by a permit fee in an amount which shall be established by resolution of the city council and which shall be based on the estimated cost of processing permit applications and otherwise administering the provisions of this chapter.

(Ord. 2062)

**5.24.100 Permit bonds.**

Every application for a permit required by this chapter shall be accompanied by a permit bond issued by a surety company licensed to do business in the State of California and having a financial rating in Best's Insurance Guide of at least "B."

Such bond shall be in the amount of one thousand dollars (\$1,000), shall identify the permit applicant as the principal on the bond, and shall include the city and any city resident ordering goods or services from the permit applicant as obligees on the bond. In addition, such bond shall be conditioned on the permit applicant faithfully observing and complying with the requirements of this code, the provisions of any permit issued to the permit applicant pursuant to this chapter, and the terms and conditions of any oral or written agreement or order for goods or services made or taken in the course of house-to-house peddling or soliciting authorized by such permit. Prior to issuance of a permit, the bond shall be approved as to form by the city attorney.

Where applications have been filed for permits required by this chapter which authorize house-to-house peddling or soliciting by two or more persons as employees or agents of the same company or other business organization, a joint permit bond may be filed by such company or other business organization on behalf of all of such employees or agents in lieu of individual bonds for each such employee or agent. Such joint bond shall be in an amount equal to the product of one thousand dollars (\$1,000) multiplied by the total number of employees or agents of such company or other business organization who seek to engage in house-to-house peddling or soliciting pursuant to a permit required by this chapter, and shall indicate that the company or other business organization, as well as all such employees or agents, are principals on the bond.

(Ord. 2062)

**5.24.110 Review of permit applications by chief of police.**

Upon receipt of an application for a permit required by this chapter, the finance director shall immediately forward a copy of the application to the chief of police who, based solely on a review of criminal records maintained by the city police department or by other law enforcement organizations within the County of Butte, shall promptly advise the finance director whether the applicant has been convicted of a criminal act involving fraud, theft, the intentional infliction of bodily injury or other act involving moral turpitude within the preceding seven-year period.

(Ord. 2062)

**5.24.120 Action on permit applications by finance director.**

Within ten calendar days following the filing of an application for a permit required by this chapter, the finance director shall act on the application either by approving the application and issuing a permit authorizing the applicant to engage in house-to-house peddling or soliciting within the city, or by denying the application, all in the manner hereinafter provided by this chapter.

(Ord. 2062)

**5.24.130 Approval of application and issuance of permit.**

Where the finance director determines that a completed application has been filed for a permit required by this chapter in the manner provided for herein, the finance director shall approve the application and issue such permit unless the finance director, after considering the application and information on the criminal record of the applicant provided by the chief of police, determines that the applicant has been convicted of a criminal act involving fraud, theft, the intentional infliction of bodily injury or other act involving moral turpitude within the preceding seven-year period. Such permit shall be in a form prescribed by the finance director and shall set forth the name of the permittee and, if the permittee is peddling or soliciting as the employee or agent of a company or other business organization, the name and address of the company or other business organization; the dates the permittee is authorized to engage in peddling or soliciting within the city pursuant to the permit; and such other information as may be reasonably required by the finance director.

(Ord. 2062)

**HOUSE-TO-HOUSE PEDDLING AND SOLICITING****5.24.140 Denial of application and permit.**

Where the finance director determines that an application has been filed for a permit required by this chapter which is incomplete, or where the finance director, after considering the application and information on the applicant's criminal record provided by the chief of police, determines that the applicant has been convicted of a criminal act involving fraud, theft, the intentional infliction of bodily injury or other act involving moral turpitude within the preceding seven-year period, the finance director, by written notice served on the applicant in the manner hereinbefore provided by chapter, shall deny the application and permit. In addition to notifying the applicant that the application and permit have been denied, such notice shall set forth a brief statement of the basis for the determination of the finance director to deny the application and permit, and the right of the applicant to appeal such determination to the city council within the time and in the manner provided by Chapter 2.80 of this code.

(Ord. 2062)

**5.24.150 Display of permits.**

Every person undertaking or engaging in house-to-house peddling or soliciting within the City pursuant to a permit required by this chapter shall display their permit on their person in a manner that renders the permit plainly visible to any other person who is the subject of the permittee's peddling or solicitations.

(Ord. 2062)

**5.24.160 Revocation of permits.**

- A. Grounds for permit revocation. The finance director may revoke a permit authorizing house-to-house peddling or soliciting issued in the manner provided by this chapter if the finance director finds that:
1. The permittee was convicted of a criminal act involving fraud, theft, intentional infliction of bodily injury or other act involving moral turpitude within the preceding seven-year

period which was not set forth in the permit application or revealed by the chief of police's review of local criminal records at the time the application was filed.

2. There is substantial evidence that the permittee committed a criminal act involving fraud, theft, intentional infliction of bodily injury or any other act involving moral turpitude subsequent to the issuance of the permit.
  3. The permittee is engaging in house-to-house peddling or soliciting within the city in violation of the conditions of such permit or in violation of any federal, state or city law or regulation applicable thereto, and the permittee has been served with a notice by the finance director advising the permittee of the violation and requiring immediate correction thereof and the permittee has failed to correct the violation in the manner required by the notice.
  4. The permittee is engaging in house-to-house peddling or soliciting within the city in violation of the conditions of such permit or in violation of any federal, state or city law or regulation applicable thereto, after having been served with two prior notices of violation by the finance director.
- B. Notice of revocation. Where the finance director determines to revoke a permit authorizing house-to-house peddling or soliciting issued in the manner provided by this chapter, the finance director shall cause notice of the permit revocation to be served on the permittee in the manner hereinbefore required by this chapter. In such notice, the finance director shall state the reasons for the determination to revoke the permit and shall set forth the right of the person to whom the permit was issued to appeal such determination to the city council within the time and in the manner required by Chapter 2.80 of this code.

(Ord. 2062)

#### **5.24.170 Times and manner of engaging in house-to-house peddling or soliciting.**

Every permittee or other person undertaking or engaging in house-to-house peddling or soliciting within the city, including, but not limited to, any person undertaking or engaging in such activities who is under 16 years of age and/or who is undertaking or engaging in such activities on behalf of a charitable organization shall conduct peddling and soliciting activities only during the following times and in the following manner:

- A. A person undertaking or engaging in house-to-house peddling and soliciting within the city shall conduct such activities only between the hour of 9:00 a.m. and the hour of 7:00 p.m. or sunset, whichever first occurs.
- B. A person undertaking or engaging in house to house peddling or soliciting shall immediately state their name, identify any company or organization they represent, and briefly describe the goods or services they seek to sell when first approaching a potential customer, all in the manner required by Section 17500.3 of the Business and Professions Code.
- C. Where a person is engaging only in soliciting charitable contributions, such person shall immediately state their name and clearly identify the charitable organization they represent when first approaching a potential donor.
- D. Where a person executes a "home solicitation contract," as defined in Section 1689.5 of the Civil Code, with a customer, such contract shall be in the form, be accompanied by a notice of cancellation and otherwise be tendered to a customer in the manner required by Section 1689.5 et seq. of the Civil Code.

(Ord. 2062)

**5.24.180 Compliance with other laws and regulations/payment of business license taxes.**

Every permittee or other person engaging in house-to-house peddling and soliciting within the city, including, but not limited to a person undertaking or engaging in such activities who is under 16 years of age and/or a person undertaking or engaging in such activities as a representative of a charitable organization, shall conduct such peddling and soliciting activities in compliance with all applicable federal or state laws or regulations, as well as all other applicable laws and regulations of the city. In this regard, any person issued a permit pursuant to the provisions of this chapter shall not undertake house-to-house peddling or soliciting authorized by such permit unless and until the permittee has paid the business license taxes and secured a business license as required by Chapter 3.32 of this code.

(Ord. 2062)

**5.24.190 Rights of recourse under permit bond.**

Any person aggrieved by the failure of a person peddling or soliciting under a permit issued pursuant to this chapter to deliver goods or services in the manner provided for by the oral or written agreement or order for such goods or services shall have a right of action on the permit bond posted by such permittee in the manner required by this chapter.

(Ord. 2062)

**5.24.200 Violations.**

Any violation of the provisions of this chapter, including any violation of the terms and conditions of a permit issued pursuant to this chapter, shall be an infraction which is punishable by a fine in the amount provided for by Section 1505 of the Charter of the City of Chico.

(Ord. 2062, Ord. 2136 §8)

**Chapter 5.28**

**VEHICLES FOR HIRE**

**Section:**

**ARTICLE I. GENERAL PROVISIONS**

- 5.28.010 Purpose.**
- 5.28.020 Definitions.**
- 5.28.030 Permits - Administration.**
- 5.28.040 Permits - Fees.**
- 5.28.050 Permits - Required.**
- 5.28.060 Permits - Applications.**
- 5.28.070 Permits - Exemptions.**
- 5.28.080 Vehicle for hire - Fares and charges.**

**ARTICLE II. OWNERS OF VEHICLES FOR HIRE**

- 5.28.090 Owner’s Permit - Qualifications of owner.**
- 5.28.100 Owner’s Permit - Insurance requirements.**
- 5.28.110 Owner’s Permit - Issuance.**
- 5.28.120 Owner’s Permit - Denial.**
- 5.28.125** Repealed by Ord. 2352
- 5.28.130 Owner’s Permit - Term.**
- 5.28.140 Owner’s Permit - Revocation.**

**ARTICLE III. DRIVERS OF VEHICLES FOR HIRE**

- 5.28.150 Driver’s Permit - Qualifications.**
- 5.28.160 Driver’s Permit - Issuance.**
- 5.28.170 Driver’s Permit - Denial.**
- 5.28.180 Driver’s Permit - Term.**
- 5.28.190 Driver’s Permit - Revocation.**
- 5.28.195** Repealed by Ord. 2352

**ARTICLE IV. VEHICLE FOR HIRE**

- 5.28.200 Vehicle Permit - Qualifications.**
- 5.28.210 Vehicle Permit - Issuance.**
- 5.28.220 Vehicle Permit - Denial.**
- 5.28.230 Vehicle Permit - Term.**
- 5.28.240 Vehicle Permit - Revocation.**

**ARTICLE V. ADMINISTRATIVE REVIEW**

- 5.28.250 Request for administrative review of denial or revocation of permits.**
- 5.28.260 Administrative review of denial or revocation of permits.**
- 5.28.270** Repealed by Ord. 2352

## ARTICLE I. GENERALLY

### 5.28.010 Purpose.

This chapter is adopted pursuant to the municipal affairs provision of the charter to enact rules and regulations reasonably necessary to govern vehicles for hire, and the owners and drivers of such vehicles for hire, to protect the peace, health, safety, and welfare of the community.

(Prior code §26.1 (Ord. 895 §2, Ord. 1360 §1, Ord. 1778 §1, Ord. 1910 §1, Ord. 2303, Ord. 2352 §2))

### 5.28.020 Definitions.

As used in this chapter, the following words and phrases have the meanings set forth in this section, unless the context in which any such word or phrase is used clearly requires another meaning:

- A. "Chief of Police" means the chief of the city of Chico police department, or a designee.
- B. "City Manager" means the city manager of the city of Chico, or a designee.
- C. "Driver" means a person who drives, operates or is in actual physical control of any vehicle for hire.
- D. "Owner" means any person who has title, in whole or in part, to any vehicle for hire.
- E. "Vehicle for hire" means any of the following:
  1. "Jitney" or "jitney vehicle" means a vehicle used for the transportation of passengers at a predetermined rate between certain fixed points within the city, originating or terminating within the city, the route of which is not under the direction of the passenger or person who hires the vehicle;
  2. "Taxi" or "taxicab" means every vehicle used for the transportation of passengers for hire operated over the public streets of the city, but not over a defined route, the destination of such vehicle being under the direction of the passenger or person who hires the vehicle; and
  3. Whenever the word "vehicle" shall appear in this chapter, it shall mean vehicle for hire unless specifically defined otherwise.

(Ord. 2352 §2)

### 5.28.030 Permits - Administration.

The chief of police shall receive applications for permits, issue and revoke permits, and otherwise implement the provisions of this chapter.

(Prior code §26.3 (Ord. 895 §2, Ord. 2352 §2))

### 5.28.040 Permits - Required.

It shall be unlawful for any owner, driver, or vehicle for hire to operate within the limits of the city without first obtaining the appropriate permit required under this chapter. The vehicle for hire shall be deemed to be operated within the city if the point of origin or terminus of such travel or operation is within the limits of the city.

(Prior code §26.4 (Ord 895 §2, Ord. 2352 §2))

### 5.28.050 Permits - Exemptions.

The provisions of this chapter are not intended to regulate the following:

- A. Pedicabs and any like vehicle driven by human motive power;

- B. Limousines, charter buses, or any other charter party carrier, as defined by the Public Utilities Commission and subject to regulation by the Public Utilities Commission; and
  - C. Non-emergency medical transportation services as defined by and subject to regulation by Title 22 of the California Code of Regulations, as amended.
- (Prior code §26.5 (Ord. 895 §2, Ord. 1778 §2, Ord. 2352 §2))

**5.28.060 Permits - Applications.**

Applications for permits required by this chapter shall be made in writing to the chief of police on such forms as prescribed by the chief of police.

(Prior code §26.6 (Ord. 895 §2, Ord. 2268 Ord. 2352 §2))

**5.28.070 Permits - Fees.**

The city council may establish fees for the permits required by this chapter. Such fees shall be due and payable upon submission of an application to the chief of police, and shall not be refundable, regardless of the disposition of the application. In addition to such permit fees, the applicant shall pay currently any and all other taxes or fees as may be required by the provisions of this code, including, but not limited to, city business licenses.

(Prior code §26.7 (Ord. 895 §2, Ord. 2268, Ord. 2352 §2))

**5.28.080 Vehicle for hire - Fares and charges.**

The city council is hereby empowered from time to time when in its discretion the public welfare requires such action, to adopt by resolution and enforce a schedule of fares and charges for vehicles for hire.

(Prior code §26.7-1 (Ord. 895 §2, Ord. 2268 Ord. 2352 §2))

**ARTICLE II. OWNERS OF VEHICLES FOR HIRE**

**5.28.090 Owner's Permit - Qualifications of owner.**

Owner-applicants must have the following qualifications:

- A. Owner-applicant's title to each vehicle for which a permit is sought, or proof of obtaining title to such vehicle within 90 days of the issuance of the permit, if a permit is issued. If a permit is issued and title to the vehicle is not obtained and provided to city by the owner within 90 days of issuance, the permit shall be revoked immediately;
- B. The make, type, vehicle identification number, and license number of each vehicle the owner-applicant proposes to operate;
- C. The number of vehicles to be operated;
- D. A distinguishing color scheme, design, or characteristic insignia to designate the owner-applicant's vehicles;
- E. The location of the owner-applicant's business from which vehicles are to be operated;
- F. A city business license issued pursuant to chapter 3.32 of this code;
- G. If the owner-applicant is an entity, owner-applicant shall provide written authorization for the submission of the application on behalf of such entity;
- H. Proof of the insurances as required by this chapter; and

- I. Any information pertaining to the revocation of any permit issued pursuant to this chapter, either under owner-applicant's current or previous name or any other business entity in which the owner-applicant had an ownership interest.  
(Prior code §26.8 (Ord. 895 §2 Ord. 2352 §2))

**5.28.100 Owner's Permit - Insurance requirements.**

Each owner-applicant shall obtain, provide proof of and, at all times following issuance of a permit, maintain in full force and effect, automobile liability and commercial general liability insurance policies with limits and deductibles as required by the city's human resources and risk management director.  
(Prior code §26.9 (Ord. 895 §2 Ord. 2352 §2))

**5.28.110 Owner's Permit - Issuance.**

Upon a determination by the chief of police that the owner-applicant meets all the qualifications required by this chapter, the chief of police shall issue a permit to such owner-applicant.  
(Prior code §26.10 (Ord. 895 §2, Ord. 2268 Ord. 2352 §2))

**5.28.120 Owner's Permit - Denial.**

Owner-applicant's permit application shall be denied if the chief of police finds that:  
A. The information submitted by the owner-applicant is materially false; or  
B. The owner-applicant does not meet the qualifications required by this chapter.  
(Prior code §26.11 (Ord. 895 §2, Ord. 1778 §2, Ord. 2352 §2))

**5.28.125** Repealed by Ord. 2352

**5.28.130 Owner's Permit - Term.**

The term of an owner's permit issued under this chapter shall be for one year from the date of issuance and may be renewed upon submittal of a renewal application form, as prescribed by the chief of police.  
(Prior code §26.12 (Ord. 895 §2, Ord. 2352 §2))

**5.28.140 Owner's Permit - Revocation.**

- A. The chief of police shall revoke any owner's permit when the owner violates or fails to meet any qualifications required by this chapter. If the owner does not correct the violations or meet the qualifications within 30 days from the date of such notice, then such permit shall be revoked.
- B. The chief of police shall send a written notice that specifies each reason for the revocation to the owner's last known address.
- C. The owner may request administrative review pursuant to Article V of this chapter.  
(Prior code §26.13 (Ord. 895 §2, Ord. 2352 §2))

**ARTICLE III. DRIVERS OF VEHICLES FOR HIRE****5.28.150 Driver's Permit - Qualifications.**

Driver-applicants must have the following qualifications:

- A. Owner of the vehicle to be operated under this permit, or be employed by the owner or provide driver services as an independent contractor to such owner;
- B. Eighteen years of age or older;
- C. Possess a valid driver's license issued by the California Department of Motor Vehicles;
- D. Not have been convicted or have entered a plea of nolo contendere within a period of five years prior to the application of any offense involving the unlawful operation of a motor vehicle, including but not limited to, driving under the influence of alcohol and/or drugs, reckless driving, or hit and run, or any other offense, whether misdemeanor or felony, which poses a potential risk to the public;
- E. Pursuant to California Government Code Section 53075.5, as amended, driver shall test negative for controlled substances specified in Part 40 (commencing with Section 40.1) of Title 49 of the Code of Federal Regulations, as amended, before employment as part of the mandatory controlled substance and alcohol testing certification program. Driver's shall test negative for these controlled substances and for alcohol as a condition of permit renewal;
- F. Any information pertaining to the revocation or suspension of any driver's license, either issued by a state or other governmental agency;
- G. Verification of employment, including the name and address of the owner by whom the driver-applicant is to be employed, or for whom driver services are provided as an independent contractor; and
- H. Current photographs and fingerprints to be on file with the Chico Police Department.

(Prior code §26.14 (Ord. 895 §2, Ord. 2268, Ord. 2352 §2))

**5.28.160 Driver's Permit - Issuance.**

Upon a determination by the chief of police that the driver-applicant meets all the qualifications required by this chapter, the chief of police shall issue a permit to such driver-applicant.

(Prior code §26.15 (Ord. 895 §2, Ord. 2352 §2))

**5.28.170 Driver's Permit - Denial.**

Driver-applicant's permit application shall be denied if the chief of police finds that:

- A. The information submitted by the driver-applicant is materially false; or
- B. The driver-applicant does not meet the qualifications required by this chapter.

(Prior code §26.16 (Ord. 895 §2, Ord. 2352 §2))

**5.28.180 Driver's Permit - Term.**

The initial term of the drivers's permit issued under the provision of this article shall be established by the chief of police based on the expiration date of a valid driver's license issued by the California Department of Motor Vehicles. Such permit may be renewed for a term consistent with the renewal term established by the California Department of Motor Vehicles upon submittal of a renewal application form, as prescribed by the chief of police. If the driver is terminated from employment or ceases

to provide driver services as an independent contractor for an owner, the driver's permit shall become void upon such termination of employment or cessation of driver services, and must be returned to the chief of police.

(Prior code §26.17 (Ord. 895 §2, Ord. 2268, Ord. 2352 §2))

**5.28.190 Driver's Permit - Revocation.**

- A. The chief of police shall revoke any driver's permit when the driver violates or fails to meet any qualifications required by this chapter. If the driver does not correct the violations or meet the qualifications within 30 days from the date of such notice, then such permit shall be revoked.
- B. The chief of police shall immediately revoke any driver's permit when the driver is convicted of or enters a plea of nolo contendere for offenses which relate to the unlawful operation of a motor vehicle, or any other offense, whether misdemeanor or felony, which poses a potential risk to the public.
- C. The chief of police shall send a written notice that specifies each reason for the revocation to the driver's last known address.
- D. The driver may request administrative review pursuant to Article V of this chapter.

(Prior code §26.18 (Ord. 895 §2, Ord. 1312, Ord. 2352 §2))

**5.28.195** Repealed by Ord. 2352

**ARTICLE IV. VEHICLE FOR HIRE**

**5.28.200 Vehicle Permit - Qualifications.**

The vehicle shall meet the following qualifications:

- A. Meet or exceed all requirements of the Vehicle Code of the state;
- B. Be in safe, working condition and well-maintained;
- C. The vehicle's owner shall have title and provide proof of such title to city;
- D. Keep posted in the vehicle in a conspicuous place a schedule of fares and charges which shall conform to the schedule established by the city council under the provisions of Section 5.28.060; and
- E. Agree that vehicle shall be made available to the chief of police at any reasonable time for inspection for the purpose of verifying that the vehicle meets all qualifications, as required by this chapter.

(Prior code §26.19 (Ord. 895 §2, Ord. 2352 §2))

**5.28.210 Vehicle Permit - Issuance.**

Upon a determination by the chief of police that the vehicle meets all the qualifications required by this chapter, the chief of police shall issue a permit for the vehicle.

(Prior code §26.20 (Ord. 895 §2, Ord. 2352 §2))

**5.28.220 Vehicle Permit - Denial.**

Vehicle-applicant's permit application shall be denied if the chief of police finds that:

- A. The information submitted by the vehicle-applicant is materially false;
- B. The vehicle does not meet the qualifications required by this chapter.

(Prior code §26.21 (Ord. 895 §2, Ord. 2268, Ord. 2352 §2))

**5.28.230 Vehicle Permit - Term.**

The term of the vehicle permit shall be for one year from the date of issuance and may be renewed upon submittal of a renewal application form, as prescribed by the chief of police.

(Prior code §26.22 (Ord. 895 §2, Ord. 2352 §2))

**5.28.240 Vehicle Permit - Revocation.**

- A. The chief of police shall revoke any vehicle permit when the vehicle violates or fails to meet any qualifications required by this chapter. If the vehicle owner does not correct the violations or meet the qualifications within 30 days from the date of such notice, then such permit shall be revoked.
- B. The chief of police shall send a written notice that specifies each reason for the revocation to the vehicle owner's last known address.
- C. The owner of the vehicle may request administrative review pursuant to Article V of this chapter.

(Prior code §26.23 (Ord. 895 §2, Ord. 1360 §3, Ord. 1778 §6, Ord. 2268, Ord. 2352 §2))

**ARTICLE V. ADMINISTRATIVE REVIEW****5.28.250 Request for administrative review of denial or revocation of permits.**

Any applicant for a permit authorized under this chapter who has had such permit denied or revoked by the chief of police, shall have the right to request administrative review. Such request for administrative review shall be filed with the city manager, on a form prescribed by the city manager, within 10 days of the formal action resulting in the denial or revocation of the permit.

(Prior code §26.24 (Ord. 895 §2, Ord. 2352 §2))

**5.28.260 Administrative review of denial or revocation of permits.**

Upon receiving a request for administrative review, the city manager will review the request and, within 10 days of receiving the request, provide the appellant with a written notification that the decision of the chief of police is affirmed, modified, or reversed. During the administrative review process, the city manager may request additional information from the chief of police or the appellant. The notice of decision shall be mailed first class, postage prepaid to the address provided by the appellant on the request for administrative review. The city manager's decision is final and may not be appealed to the city council.

(Prior code §26.25 (Ord. 895 §2, Ord. 2352 §2))

**5.28.270** Repealed by Ord. 2352

**Chapter 5.30****AMBULANCES****Section:****5.30.010 Ambulance defined.****5.30.020 Notice of operation.****5.30.030 Rules and regulations relating to the operation of ambulances.****5.30.010 Ambulance defined.**

As used in this chapter, the term “ambulance” shall mean any vehicle licensed as an ambulance by the California Highway Patrol pursuant to the applicable provisions of Section 2500 et seq. of the California Vehicle Code.

(Ord. 1360 §4 (part))

**5.30.020 Notice of operation.**

It shall be unlawful for any person, firm or corporation to operate an ambulance within the limits of the city and dispatched from a point within the County of Butte without first filing a notice of operation with the chief of police upon such form as the chief of police prescribes and which shall set forth the name and address of the ambulance operator and a telephone number where the ambulance operator can be reached on a 24-hour basis. For purposes of this section, an ambulance shall be deemed to be operated within the limits of the city if the point of origin or destination of such operation is within the limits of the city.

(Ord. 1360 §4 (part), Ord. 2268)

**5.30.030 Rules and regulations relating to the operation of ambulances.**

The city manager, with the approval of the city council, may promulgate rules and regulations providing for the manner in which ambulances will be dispatched by city employees when a need arises or a request is received for emergency ambulance services and establishing requirements necessary for the operation of ambulances within the limits of this city when using red warning lights and sirens (commonly referred to as “Code 3 ” operation).

(Ord. 1360 §4 (part))

## Chapter 5.32

### CARDROOMS

**Section:**

- 5.32.010**      **Definitions.**
- 5.32.020**      **License - Required.**
- 5.32.030**      **License - Application - Generally.**
- 5.32.035**      **License - Presentation of State license.**
- 5.32.040**      **License - Fee.**
- 5.32.050**      **License - Term.**
- 5.32.060**      **License - Number per person limited.**
- 5.32.070**      **License - Transferability.**
- 5.32.080**      **License - Limitation on number of card tables which may be authorized.**
- 5.32.090**      **Employee work permits - Required of cardroom employees.**
- 5.32.100**      **Employee work permits - Application - Generally.**
- 5.32.110**      **Employee work permits - Fee.**
- 5.32.120**      **Employee work permits - Term.**
- 5.32.130**      **Appeal.**
- 5.32.140**      **Cardroom rules and regulations.**
- 5.32.150**      **State law violation.**

**5.32.010 Definitions.**

For the purposes of this chapter, the following words and phrases shall be defined as follows:

- A. Cardroom. Any space, room or enclosure, furnished, or equipped with a table used or intended to be used as a card table for the lawful playing of controlled games as defined in California Penal Code Section 337j(e) or any successor statutes thereto.
- B. Cardroom Employee. Cardroom employee means any person employed in the operation of a cardroom including, without limitation, dealers, floor employees, security employees, countroom personnel, cage personnel, collection personnel, surveillance personnel, data processing personnel, appropriate maintenance personnel, waiters and waitresses, and secretaries, or any other person whose employment duties require or authorize access to restricted areas where any controlled gambling occurs.
- C. The Gambling Control Act. The Gambling Control Act, as set forth in California Business and Professions Code Section 19800 et seq., or any successor statutes thereto.

(Ord. 1249 §1 (part), Ord. 2173 §1, Ord. 2203)

**5.32.020 License - Required.**

- A. It shall be unlawful for any person to engage in, carry on, maintain, or conduct, or to cause to be engaged in, carried on, maintained, or conducted, any cardroom in the city without first obtaining a license from the city to do so in accordance with the provisions of this chapter.

- B. Any nonprofit society, club, fraternal, labor, or other organization having adopted bylaws, duly elected directors, and members which have card tables for the exclusive use of its members, even where no charge is made for any of the facilities, shall not be exempt from the provisions of this chapter.

(Ord. 1249 §1 (part), Ord. 2203)

**5.32.030 License - Application - Generally.**

- A. Application for a cardroom license shall be made to the finance director upon such form as the director may prescribe. Such application shall include, among other things, the following:
1. The names and addresses of all persons financially interested in the business proposing to operate a cardroom. "Persons financially interested" shall include all persons who share, directly or indirectly, in the income of the business on the basis of gross or net revenue;
  2. Previous criminal records, if any, of the applicant and of all persons financially interested in the business;
  3. Physical descriptions of the applicant and of all persons financially interested in the business.
- B. Such application shall be certified as to its correctness by the applicant under penalty of perjury.
- C. On receipt of a completed city application form, the finance director shall issue the applicant a cardroom license subject to the following provisions:
1. No cardroom license shall be issued, re-issued, or renewed unless the cardroom is located or proposed to be located in a zoning district in which cardrooms are a permitted use and a valid use permit has been obtained for the cardroom as authorized by the zoning regulations;
  2. No cardroom license shall be issued unless the applicant and all persons financially interested have been fingerprinted and approved by the Chico police department.
  3. No cardroom may be located near any unsuitable area, as specified in California Business and Professions Code Section 19852A(a)(3) or any successor statutes thereto.

(Ord. 1249 §1 (part), Ord. 2113 §1, Ord. 2173 §2, Ord. 2177, Ord. 2203)

**5.32.035 License - Presentation of State license.**

Once received, applicant shall provide to the finance director a copy of a valid gambling license issued to applicant by the State of California pursuant to the Gambling Control Act.

(Ord. 2203)

**5.32.040 License - Fee.**

The applicant for a cardroom license shall pay a license fee with the application. The entire fee shall be retained by the city. The amount of the license fee shall be established by city council resolution.

(Ord. 1249 §1 (part), Ord. 1262 §1, Ord. 2173 §3, Ord. 2203)

**5.32.050 License - Term.**

A license issued pursuant to this chapter shall be valid until the end of the city's fiscal year in which such license is issued.

(Ord. 1249 §1 (part), Ord. 2173 §4, Ord. 2203)

**5.32.060 License - Number per person limited.**

No person shall be granted more than one license to conduct a cardroom.

(Ord. 2203)

**5.32.070 License - Transferability.**

No license issued pursuant to this chapter shall be transferable or assignable.

(Ord. 2203)

**5.32.080 License - Limitation on number of card tables which may be authorized.**

No more than 15 card tables shall be allowed to operate in the city, and no more than 5 card tables shall be allowed to operate in any cardroom. There shall be no more than 3 cardroom licenses issued in the city at any one time. Each cardroom license shall set forth the number of card tables authorized for that cardroom. The city council may by amending this section decrease the number of card tables or cardrooms allowed in the city when it determines that it is in the best public interest to do so. The number of card tables or cardrooms may be increased only to the extent allowed in California Business and Professions Code Section 19950.1.

(Ord. 2203)

**5.32.090 Employee work permits - Required of cardroom employees.**

Cardroom employees shall obtain a work permit in accordance with the provisions of this chapter.

(Ord. 1249 §1 (part), Ord. 2203)

**5.32.100 Employee work permits - Application - Generally.**

- A. Application for a cardroom employee work permit shall be made to the finance director upon such form as the director may prescribe. Such application shall include, among other things, the following:
  1. The name and address of the applicant;
  2. Previous criminal records, if any, of the applicant;
  3. Physical description of the applicant.
- B. The application shall be certified as to its correctness by the applicant under penalty of perjury.
- C. Photo identification shall be presented at such time as the application is submitted to the finance director.
- D. The finance director shall forward such application to the chief of police for fingerprint certification and a background check. Upon receipt of approval of an application by the chief of police, the finance director shall approve the application and issue the applicant an employee work permit.
- E. An employee work permit shall not be issued to any individual who would be disqualified from holding a state gambling license for the reasons specified in California Business and Professions Code Section 19850A paragraphs (1) through (7), inclusive of subdivision (a).

F. The Division of Gambling Control may object to the issuance of a work permit by the city for any cause deemed reasonable by the Division, and if the Division objects to the issuance of a work permit, the work permit shall be denied.

(Ord. 1249 §1 (part), Ord. 2203)

**5.32.110 Employee work permits - Fee.**

The applicant for a cardroom employee work permit shall submit, along with the application, a nonrefundable fee in an amount determined by resolution of the city council.

(Ord. 1249 §1 (part), Ord. 2173 §6, Ord. 2177, Ord. 2203)

**5.32.120 Employee work permits - Terms.**

Work permits shall be valid until the end of the city's fiscal year in which such permit is issued. Only one such work permit shall be required each fiscal year even though the holder thereof may change places of employment within the city.

(Ord. 1249 §1 (part), Ord. 2203)

**5.32.130 Appeal.**

Any person aggrieved by any decision or determination made pursuant to this chapter may appeal to the city council in accordance with the provisions of Chapter 2.80 of this code.

(Ord. 1249 §1 (part), Ord. 2113 §1, Ord. 2173 §7, Ord. 2203)

**5.32.140 Cardroom rules and regulations.**

It shall be unlawful to operate a cardroom in violation of any of the following regulations and rules:

- A. Location. Not more than one cardroom shall be located at any one address or within any building. A cardroom shall not operate at any location for which a valid use permit is not in effect pursuant to the zoning regulations of this code.
- B. Minors. No person under the age of twenty-one shall be permitted at any card table, nor shall participate in any game played thereat. This subsection does not permit greater access to cardrooms than what is set forth in California Business and Professions Code Section 19915.5 or any successor statutes thereto.
- C. Hours of Operation. Cardrooms may operate twenty-four hours a day, seven days a week. Each cardroom shall adopt a schedule specifying its hours of operation. Each cardroom shall clearly post its hours of operation so as to give law enforcement and patrons adequate notice of the hours of operation.
- D. Police Inspection. All cardrooms shall be open to police inspection during all hours of operation, or at any other time which, in the judgment of the chief of police, it is necessary to inspect for violations of this chapter.
- E. Doors to be Unlocked. During the hours of operation, all entry and exit doors shall be unlocked and accessible to the general public.
- F. Supervision of Tables. Each card table shall have assigned to it a person whose duty shall be to supervise the game and to see that it is played strictly in accordance with the terms of this chapter and with the provisions of the Penal Code. That person may have more than one table under supervision at any one time but shall not, however, participate in the game unless that person is clearly identified on a nameplate or such other visible means of identification as an employee of the establishment.

- G. Signs to be Posted. There shall be posted in every cardroom in letters plainly visible from all parts thereof signs stating such information relating to the regulations contained herein as the finance director may require including, but not limited to, the amount of the time charge for participation, the hours of operation in the cardroom, and the wagering limits established by that cardroom.
- H. Intoxicated Persons. No person who is in a state of intoxication shall be permitted in a cardroom. This subsection does not prohibit other grounds for removing individuals from cardrooms as set forth in California Business and Professions Code Section 19835.5A or any successor statutes thereto.
- I. “Cuts” of Pots. The operator of a cardroom shall establish a reasonable time charge to customers and there shall not be permitted any “rakeoff” or “cut” of any pots or bets.
- J. No “Shills.” In addition to the limitations set forth in subsection F above, no other person employed by or receiving consideration from the cardroom establishment shall participate in any card game unless such person is clearly identified on a nameplate or such other visible means of identification as an employee of such establishment.
- K. Food and beverage service. Cardrooms may serve complimentary food or beverages to patrons incidental to the cardroom operations. The provision of complimentary food and beverages shall not be used to directly solicit any person to participate by offering to provide free food or beverages in exchange for that person’s participation in a card game.
- L. Money on Tables, Etc. It shall be illegal to have money on any card table or to use money in any card game.
- M. Exhibition of Permits. Operators and employees shall present their state and city licenses or permits on demand of any law enforcement officer.
- N. Security. Each cardroom shall be responsible and liable for its patrons’ safety and security in and around it. Each cardroom shall adopt and enforce a plan that is sufficient to provide for the safety and security of its patrons.
- O. Unlimited Wagering. There are no mandatory limits on the amount wagered in any permitted games. A gambling establishment permittee may impose wagering limits on any game, at his or her discretion. Before a gambling establishment is allowed to operate, the rules for wagering limits shall be approved by the city council. Such rules shall be clearly posted at the gambling tables where the games are offered during hours of operation to provide the patrons adequate notice of those rules.  
(Ord. 1249 §1 (part), Ord. 2203, Ord. 2366, Ord. 2390)

#### **5.32.150 State law violation.**

The city council hereby declares that it is not the intention of this chapter to permit the licensing of any cardroom for the playing of any game prohibited by the laws of the state, including but not limited to those games enumerated in Section 330 of the Penal Code or any successor statutes thereto.

(Ord. 2203)

## Chapter 5.36

### BINGO GAMES

**Section:**

- 5.36.010**      **Definitions.**
- 5.36.020**      **License required.**
- 5.36.030**      **License - Eligibility.**
- 5.36.040**      **License - Application generally.**
- 5.36.050**      **License - Fee.**
- 5.36.060**      **License - Application and investigation.**
- 5.36.070**      **License - Issuance and contents.**
- 5.36.080**      **Appeal.**
- 5.36.090**      **License - Term - Renewal.**
- 5.36.100**      **License - Transferability.**
- 5.36.110**      **License - Summary suspension by chief of police.**
- 5.36.120**      **Misdemeanor to continue after summary suspension.**
- 5.36.130**      **Order of summary suspension to include right of appeal.**
- 5.36.140**      **Suspension, other than summary suspension, and revocation of license.**
- 5.36.150**      **Reapplication after revocation.**
- 5.36.160**      **Rules and regulations governing the conduct of bingo games.**

**5.36.010 Definitions.**

For the purpose of this chapter, the following words and phrases shall be defined as follows:

- A. **Bingo Game.** A game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random.
- B. **Eligible Organization.** Any organization allowed to be included in a local bingo regulation ordinance pursuant to Section 326.5 of the Penal Code of the state of California or its successor section or sections.

(Ord. 1269 §1 (part))

**5.36.020 License required.**

It shall be unlawful for any person to engage in, carry on, maintain or conduct, or cause to be engaged in, carried on, maintained or conducted, any bingo game in the city without first having obtained a license from the city to do so in accordance with the provisions of this chapter.

(Ord. 1269 §1 (part))

**5.36.030 License - Eligibility.**

A bingo license shall only be issued to eligible organizations as defined herein.

(Ord. 1269 §1 (part))

**5.36.040 License - Application generally.**

Application for a bingo license shall be made to the finance director upon such form as the finance director prescribes. Such application shall include, among other things, the following:

- A. The name of the applicant organization and a statement that such organization is an eligible organization as defined herein;
- B. The names and signatures of at least two (2) officers, including the presiding officer, of the eligible organization;
- C. The address of the property on which bingo games will be conducted, and the occupant capacity of such place;
- D. A statement that the applicant agrees to conduct bingo games in strict accordance with the applicable provisions of the Penal Code, and this chapter, as they may be amended from time to time, and agrees that the license to conduct such bingo games may be revoked by the city upon violation of any such provisions.

Such application shall be accompanied by satisfactory proof of status as an eligible organization.

Such application shall be certified to its correctness by the applicant under penalty of perjury.

(Ord. 1269 §1 (part), Ord. 2113 §1, Ord. 2268)

**5.36.050 License - Fee.**

The applicant for a bingo license shall submit along with the application, a fee, not to exceed \$50.00, in an amount determined by resolution of the city council. In the event that the application is denied, one-half of the application fee shall be refunded.

(Ord. 1269 §1 (part))

**5.36.060 License - Application and Investigation.**

- A. Upon receipt of the completed application and fee, the finance director shall refer such application to the department of public works, police department, fire department and the city planning office for investigation as to the correctness of the information contained in the application and the suitability of the premises described in the application for the conduct of bingo games. The head of each department or office shall consider fire, occupancy, parking, traffic and other applicable laws and ordinances in making a determination hereunder.
- B. Each department or office head listed above also shall determine whether the conduct of bingo games on the premises will have a substantially greater impact on its neighborhood than the normal use of the premises.
- C. The department or office head shall recommend denial if after investigation it is opined that the premise is unsuitable for bingo game play. The finance director shall thereupon deny the application and attach the reasons therefor to the denial.
- D. Any application for bingo game play in a residential land use district shall be denied summarily unless the proposed premise is normally used as a place of public or private assemblage in which latter case the application shall be considered in the manner described herein.

(Ord. 1269 §1 (part), Ord. 2113 §1, Ord. 2268)

**5.36.070 License - Issuance and contents.**

Upon being satisfied that the applicant is fully qualified under the law to conduct bingo games in the city, the finance director shall issue a license to said applicant, which license shall contain the following information:

- A. The name and type of the organization to which the license is issued;
- B. The address where bingo games are authorized under the license;
- C. The occupancy capacity of the room in which bingo games are to be conducted;
- D. The date of the expiration of such license;
- E. Such other information as may be necessary or desirable for the enforcement of the provisions of this chapter.

(Ord. 1269 §1 (part), Ord. 2113 §1)

**5.36.080 Appeal.**

Any person aggrieved by the denial or issuance of a bingo license may appeal to the city council in accordance with the provisions of Chapter 2.80 of this code.

(Ord. 1269 §1 (part), Ord. 2004 §8)

**5.36.090 License - Term - Renewal.**

The term of such license shall be for a period of one year unless revoked or suspended prior thereto as provided herein. Such license may be renewed upon completion of the application procedures provided herein and the payment of the appropriate fee.

(Ord. 1269 §1 (part))

**5.36.100 License - Transferability.**

No license issued pursuant to this chapter shall be transferable or assignable.

(Ord. 1269 §1 (part))

**5.36.110 License - Summary suspension by chief of police.**

The chief of police may suspend any bingo license and may terminate any further operation of any bingo game when, in the opinion of said chief of police, the licensee is conducting a bingo game in violation of any of the applicable provisions of the Penal Code of the state of California or of this chapter.

(Ord. 1269 §1 (part))

**5.36.120 Misdemeanor to continue after summary suspension.**

Any person who continues to conduct a bingo game after any summary suspension thereof shall be guilty of a misdemeanor.

(Ord. 1269 §1 (part))

**5.36.130 Order of summary suspension to include right of appeal.**

Any order for the summary suspension of a bingo license issued pursuant to Section 5.36.110 shall be appealable to the city council pursuant to Chapter 2.80 of this code.

(Ord. 1269 §1 (part), Ord. 2113 §11)

**5.36.140 Suspension, other than summary suspension, and revocation of license.**

The finance director shall suspend any bingo license when any or all of the following actions occur:

- A. The organization holding such license is conducting bingo games in violation of any of the applicable provisions of the Penal Code of the state of California or of this chapter, and a summary suspension therefor has not been ordered by the chief of police;
- B. It is determined that the license was obtained or renewed by fraudulent representation.

The finance director shall give a notice in writing to the organization holding such license specifying the reasons for such suspension and the right of appeal therefrom. If the grounds for suspension as set forth by the finance director are not corrected within a period of thirty days from the date of giving such notice, or an appeal is not filed as provided herein, then such license shall be forthwith revoked.

(Ord. 1269 §1 (part), Ord. 2113 §1)

**5.36.150 Reapplication after revocation.**

Any organization whose license is revoked may not again apply for a license to conduct bingo games in the city for a period of one (1) year from the date of revocation; provided, however, if the ground for revocation is cancellation of the exemption granted under Section 23701d of the Revenue and Taxation Code, such organization may again apply for a license upon proof of the reinstatement of said exemption.

(Ord. 1269 §1 (part))

**5.36.160 Rules and regulations governing the conduct of bingo games.**

It shall be unlawful to conduct a bingo game other than in accordance with the following rules and regulations:

- A. The maximum amount of prizes, the handling of bingo game profits and the conduct and administration of bingo games generally shall be in accordance with the applicable provisions of the Penal Code of the state of California which govern bingo games.
- B. No licensee shall conduct any bingo game for more than six (6) hours out of any twenty-four (24) hour period. No bingo game shall be conducted between the hours of 2:00 a.m. and 9:00 a.m. of any day.
- C. Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the legal occupancy capacity of the room in which such game is conducted. The licensee shall not reserve seats or space for any person.
- D. The licensee shall keep and maintain a complete and accurate record of the income received and expenses disbursed in connection with the operation, conduct, promotion, supervision and any other phase of the bingo game authorized by this chapter. The city, by and through its authorized officers, shall have the right to examine and audit such record at any reasonable time and licensee shall fully cooperate with the city by making such record available.

(Ord. 1269 §1 (part))

## Chapter 5.38

### FOOD FACILITIES\*

**Section:**

<b>5.38.010</b>	<b>Purpose.</b>
<b>5.38.020</b>	<b>Definitions.</b>
<b>5.38.030</b>	<b>Permit required.</b>
<b>5.38.040</b>	<b>Application for permit.</b>
<b>5.38.050</b>	<b>Issuance of permit.</b>
<b>5.38.060</b>	<b>Term of permit.</b>
<b>5.38.070</b>	<b>Renewal of permit.</b>
<b>5.38.080</b>	<b>Prohibited transfer of permit.</b>
<b>5.38.090</b>	<b>Suspension and revocation of permit.</b>
<b>5.38.100</b>	<b>Posting of permit.</b>
<b>5.38.110</b>	<b>Special identification requirements for vending machines and food vehicles.</b>
<b>5.38.120</b>	<b>Food facility construction, alterations, and additions.</b>
<b>5.38.130</b>	<b>Food facility inspections.</b>
<b>5.38.140</b>	<b>Local food facility standards.</b>
<b>5.38.150</b>	<b>Appeals.</b>
<b>5.38.160</b>	<b>Abatement actions.</b>
<b>5.38.170</b>	<b>Other permits required by this code.</b>

---

\* Prior ordinance history: Ord. 1495.

**5.38.010 Purpose.**

This chapter is adopted for the purpose of implementing the provisions of the California Uniform Retail Food Facilities Law, as set forth in Chapter 4, Part 7, Division 104 of the California Health and Safety Code (commencing with Section 113700). (Ord. 1642 (part); Ord. 2176)

**5.38.020 Definitions.**

Unless the contrary is stated or clearly appears from the context, the following definitions shall govern the construction of the words and phrases used in this chapter:

- A. Food Facility. The term “food facility” shall mean a food facility as defined in Section 113785 of the California Health and Safety Code.
- B. Health Department. The term “health department” shall mean the city health department; provided that, where the city council has consented by ordinance or resolution to the enforcement of public health laws in the city by the Butte County health officer, the term “health department” shall mean the Butte County health department.
- C. Health Officer. The term “health officer” shall mean the city health officer; provided that, where the city council has consented by ordinance or resolution to the

enforcement of public health laws in the city by the Butte County health officer, the term “health officer” shall mean the Butte County health officer.

(Ord. 1642 (part); Ord. 2176)

**5.38.030 Permit required.**

No person shall operate or maintain a food facility within the city unless a food facility permit required by Article 3, Chapter 4, Part 7, Division 104 of the California Health and Safety Code (commencing with Section 27550) has been issued for such food facility in the manner provided by this chapter.

(Ord. 1642 (part); Ord. 2176)

**5.38.040 Application for permit.**

An application for a permit to operate and maintain a food facility shall be filed by the owner or owners of the food facility with the health department. Such application shall be in the form prescribed by the health officer, and shall contain the information and be accompanied by such plans and specifications as may be required by the health officer in order to determine whether the food facility complies with the sanitation requirements set forth in Chapter 4, Part 7, Division 104 of the California Health and Safety Code, any regulations adopted by the State Department of Health Services to implement or administer such sanitation requirements, and any local food facility standards adopted by or pursuant to the provisions of this chapter. In addition, such application shall be accompanied by a permit application fee; provided, that if a food facility has been unlawfully operated or maintained without a permit, such application shall also be accompanied by a late filing fee in an amount equal to 50 percent of the application fee, which late filing fee shall be in addition to the application fee.

(Ord. 1642 (part); Ord. 2176; Ord. 2189 §4)

**5.38.050 Issuance of permit.**

A permit to operate and maintain a food facility shall be issued by the health officer to the owner or owners of such food facility if, following the filing of an application for such permit, the health officer determines that such food facility complies with the sanitation requirements set forth in Chapter 4, Part 7, Division 104 of the California Health and Safety Code, any regulations adopted by the State Department of Health Services to implement or administer such sanitation requirements, and any local food facility standards adopted by or pursuant to the provisions of this chapter. Provided that, where an application is filed for a permit to operate and maintain a food facility that was in existence on the effective date of this chapter but which does not comply with the sanitation requirements set forth in Chapter 4, Part 7, Division 104 of the California Health and Safety Code, any regulations adopted by the State Department of Health Services to implement or administer such sanitation requirements, and/or any local food facility standards adopted by or pursuant to the provisions of this chapter, the health officer may, nevertheless, issue a permit for such facility if the health officer determines that such food facility can be operated and maintained in a safe and sanitary manner and also expressly conditions the issuance of such permit on compliance with such requirements and standards in accordance with a reasonable time schedule.

(Ord. 1642 (part); Ord. 2176)

**5.38.060 Term of permit.**

The term of a permit to operate and maintain a food facility which has been issued in the manner provided by this chapter shall be for a period of not more than one year commencing on the date such permit is issued and terminating on December 31st of the same year in which such permit is issued.

(Ord. 1642 (part))

**5.38.070 Renewal of permit.**

A permit to operate and maintain a food facility which has been issued in the manner provided by this chapter may be renewed for additional one-year terms, commencing on January 1st of each year following the end of the initial or any such renewed term and ending on December 31st of the same year in which such permit is renewed, by the payment of a permit renewal fee in an amount established by resolution of the city council on or before the date such permit expires. Provided that, where a permit to operate and maintain a food facility has expired by reason of the non-payment of a permit renewal fee, such permit may, nevertheless, be renewed by the payment of late filing fee in an amount equal to 50 percent of the permit renewal fee on or before January 31st of the year following the expiration of such permit, which late filing fee shall be in addition to the permit renewal fee.

(Ord. 1642 (part))

**5.38.080 Prohibited transfer of permit.**

A permit to operate and maintain a food facility which has been issued pursuant to the provisions of this chapter shall apply only to the person to whom the permit was issued and for the location, type of food sale, and type of food distribution activity for which the permit was issued and, in accordance with the provisions of Section 113920 of the California Health and Safety Code, shall not be transferable. Any attempt to transfer such permit shall be null and void and shall be grounds for the revocation of the permit.

(Ord. 1642 (part); Ord. 2176)

**5.38.090 Suspension and revocation of permit.**

A permit to operate and maintain a food facility which has been issued pursuant to the provisions of this chapter may be suspended or revoked by the health officer in the manner provided for in Article 5, Chapter 4, Part 7, Division 104 of the California Health and Safety Code (commencing with Section 113950) at any time the health officer determines that such food facility is being operated in violation of the sanitation requirements set forth in Chapter 4, Part 7, Division 104 of the California Health and Safety Code, any regulation adopted by the State Department of Health Services to implement or administer such sanitation requirements, and/or any local food facility standards adopted by or pursuant to this chapter.

(Ord. 1642 (part); Ord. 2176)

**5.38.100 Posting of permit.**

A permit to operate and maintain a food facility shall be posted on or within the food facility in the manner required by Section 113920 of the California Health and Safety Code.

(Ord. 1642 (part); Ord. 2176)

**5.38.110 Special identification requirements for vending machines and food vehicles.**

Each vending machine and food vehicle for which a permit has been issued pursuant to the provisions of this chapter shall have affixed to it, in a conspicuous place, a decal or tag furnished by the health officer which shall indicate that such vending machine or food vehicle is being operated and maintained pursuant to a valid permit for which all permits fees have been paid. In addition, each vending machine for which a permit has been issued pursuant to the provisions of this chapter shall have affixed to it, in a conspicuous place, an identification plate made of durable material setting forth the manufacturer, model number, and serial number of such vending machine.

(Ord. 1642 (part))

**5.38.120 Food facility construction, alterations, and additions.**

No person shall construct a new food facility nor make alterations or additions to an existing food facility until plans and specifications for the work to be performed on such food facility have been approved by the health officer as required by Article 3, Chapter 4, Part 7, Division 104 of the California Health and Safety Code. Such plans and specifications shall be filed with the health department, shall be accompanied by a plan review fee in an amount established by resolution of the city council, and, within 20 days following the filing of such plans and specifications, shall be either approved or disapproved by the health officer based on whether the plans and specifications comply with applicable sanitation requirements set forth in Chapter 4, Part 7, Division 104 of the California Health and Safety Code, any regulations adopted by the State Department of Health Services to implement or administer such sanitation requirements, and/or any local food facility standards adopted by or pursuant to this chapter. No building permit shall be issued by the building official for the work to be performed on such food facility until the plans and specifications for such work have been approved by the health officer.

(Ord. 1642 (part); Ord. 2176)

**5.38.130 Food facility inspections.**

A food facility operated and maintained within the city shall be subject to inspections by the health officer in the manner provided for in Article 4, Chapter 4, Part 7, Division 104 of the California Health and Safety Code.

(Ord. 1642 (part); Ord. 2176)

**5.38.140 Local food facility standards.**

The city council may, by resolution, adopt local standards governing the operation and maintenance of a food facility within the city provided that such local standards are not in conflict with the sanitation requirements set forth in Chapter 4, Part 7, Division 104 of the California Health and Safety Code and/or any regulations adopted by the State Department of Health Services to implement or administer such sanitation requirements.

(Ord. 1642 (part); Ord. 2176)

**5.38.150 Appeals.**

Any person aggrieved by a determination made or action taken by the health officer pursuant to this chapter may appeal such determination or action to the city council in the manner provided for by Title 2 of this code.

(Ord. 1642 (part), Ord. 2113 §6)

**5.38.160 Abatement actions.**

Any food facility being operated and maintained in violation of the provisions of this chapter is declared to be a public nuisance and the city attorney is authorized to commence an action in superior court against the owner of such food facility to abate such nuisance when requested by the health officer.

(Ord. 1642 (part))

**5.38.170 Other permits required by this code.**

Nothing in this chapter shall be construed to exempt a person operating or maintaining a food facility from obtaining any other license permit or other entitlement required by this code including, but not limited to, a business license required by Chapter 3.32 of this code or a permit required by Chapter 14.60 of this code.

(Ord. 1642 (part), Ord. 2113 §12, Ord. 2136 §3, Ord. 2364 §97)

## Chapter 5.40

### REGULATION OF ALARM SYSTEMS

**Section:**

#### ARTICLE I. GENERAL PROVISIONS

- 5.40.010 Purpose.**
- 5.40.020 Definitions.**
- 5.40.030 Administration and enforcement.**
- 5.40.040 Standards for alarm systems - Compliance required.**
- 5.40.050 Violations.**

#### ARTICLE II. ALARM SYSTEM PERMITS

- 5.40.060 Permit required.**
- 5.40.070 Separate permit required for each premises - Exception.**
- 5.40.080 Application for permit.**
- 5.40.090 Permit application and renewal fees.**
- 5.40.100 Issuance of permit - Limitation.**
- 5.40.110 Term of permit - Residential premises.**
- 5.40.120 Term of permit - Nonresidential premises.**
- 5.40.130 Display of permit - Nonresidential premises.**
- 5.40.140 Nontransferability of permit.**
- 5.40.150 Duty to maintain current permit information.**
- 5.40.160 Information furnished by applicants confidential.**

#### ARTICLE III. FALSE ALARMS

- 5.40.170 Reduction and elimination of false alarms.**
- 5.40.180 False alarms - Investigation and determination - Maintenance of records.**
- 5.40.190 Notice of false alarm determination.**
- 5.40.200 False alarm suppression fee - Assessment required - Exceptions.**
- 5.40.210 Notice of assessment of fee.**
- 5.40.220 Payment of fee - Effect of nonpayment.**
- 5.40.230 Administrative review of false alarm suppression fee determinations.**

#### ARTICLE I. GENERAL PROVISIONS

**5.40.010 Purpose.**

This chapter is adopted pursuant to the municipal affairs provisions of the City Charter to enact rules and regulations reasonably necessary to govern alarm systems and alarm users so as to promote prompt, efficient and effective responses to alarms and reduce the occurrence of false alarms, thereby reducing the potential for unnecessary and possibly dangerous responses to such alarms by city police and fire personnel.

(Ord. 2020 §1 (part))

**5.40.020 Definitions.**

The following words and phrases, when used in this chapter, have the meanings indicated, unless the context in which any word or phrase is used requires another meaning.

- A. "Alarm system" means any mechanical, electrical or electronic device designed or used to detect fire in, or intrusion into a building, structure or facility, or both, which when activated emits, transmits or relays a signal intended to summon a response by the fire or police department to a fire, burglary, robbery, unauthorized intrusion or similar threat to a premises or persons occupying it. "Alarm system" does not include an alarm system:
  - 1. Installed on any vehicle or boat, unless the vehicle or boat is permanently located or stored in a building, structure or facility;
  - 2. Designed to alert only the inhabitants of a residence or business premises;
  - 3. Not designed or used to invoke a fire or police department response;
  - 4. Installed on a temporary basis by the fire or police department.
- B. "Alarm system permit" and "permit" mean a permit issued pursuant to this chapter to authorize installation, connection, operation, maintenance and use of an alarm system in compliance with this chapter and other applicable laws and regulations.
- C. "Alarm user" means any person in possession and control, whether as an owner, lessee or otherwise, of any building, structure or facility in which an alarm system has been installed and is operated. "Alarm user" includes but is not limited to any person who holds a valid and current permit or who is required by this chapter to obtain such a permit.
- D. "False alarm" means activation of an alarm system through improper installation, misoperation, malfunction, misuse or neglect on the part of an alarm user, accidental triggering, or mechanical, electrical or electronic failure, which results in an emergency response to the alarm system site by the fire or police department. "False alarm" does not include activation of an alarm system caused by:
  - 1. Earthquake, violent wind or similar acts of nature;
  - 2. Malfunction offsite of electrical, telephone or wireless equipment or services provided to support an alarm system; or
  - 3. Other extraordinary circumstances not reasonably subject to the control of the alarm user.

(Ord. 2020 §1 (part))

**5.40.030 Administration and enforcement.**

- A. The finance director shall administer and enforce the provisions of this chapter as to the issuance and cancellation of alarm system permits.
- B. The fire chief or police chief, as appropriate, shall administer this chapter as to inspections of alarm systems, responses to alarm system activations, investigation of apparent false alarms, assessment of false alarm suppression fees, and citations for violation of this chapter.
- C. The community services director shall enforce any provision of law governing the physical aspects of the installation, operation and maintenance of alarm systems, including, requirements for a building, electrical or other permit necessary for installation of an alarm system.

(Ord. 2020 §1 (part))

**5.40.040 Standards for alarm systems - Compliance required.**

- A. All alarm system installations shall comply with National Fire Protection Agency (NFPA) Standard 72 or such equivalent standard that may be promulgated to supersede this standard.
- B. The city council may adopt by resolution such standards for alarm system equipment and operations as it deems appropriate and necessary to further implement the provisions of this chapter. Following such adoption, alarm system permittees shall comply with such standards in the installation, connection, operation, maintenance and use of alarm systems.

(Ord. 2020 §1 (part))

**5.40.050 Violations.**

- A. No person shall install, connect, operate, maintain or use any alarm system for which a permit is required unless a valid and current permit is first obtained.
- B. No person shall install, connect, operate, maintain or use any alarm system in violation of any standard adopted pursuant to the chapter for the operation and maintenance of alarm systems.

(Ord. 2020 §1 (part), Ord. 2136 §8)

**ARTICLE II. ALARM SYSTEM PERMITS****5.40.060 Permit required.**

- A. No alarm system shall be installed, connected, operated, maintained, used or caused to be installed, connected, operated, maintained or used in any building, structure or facility, and no building, structure or facility upon or in which an alarm system is operated shall be occupied, inhabited or used, unless the alarm user possesses a valid and current alarm system permit issued by the finance director pursuant to this chapter.
- B. Notwithstanding subsection A above, a permit is not required for the first installation of an alarm system as part of a newly constructed or renovated building, structure or facility, provided that the owner of the premises, or the owner's authorized representative, obtains a permit for the system before the system is connected to an alarm service provider or is otherwise made operational.

(Ord. 2020 §1 (part))

**5.40.070 Separate permit required for each premises - Exception.**

A separate permit is required for each alarm system to be operated in a building, structure or facility. However, the finance director has discretion to determine, in the interests of economy and efficiency, that a single permit may be applied for and issued for multiple systems to be operated by a permittee on a premises to which only one street address applies.

(Ord. 2020 §1 (part), Ord. 2268)

**5.40.080 Application for permit.**

An application for a permit shall be filed in the office of the finance director. The application shall be in the form prescribed by the finance director and shall contain all of the following information:

- A. The name, street and mailing address, and 24-hour telephone number of the premises in which the alarm system or systems will be installed;
- B. The name, street and mailing address, and 24-hour telephone number of the permittee, if the permittee cannot be reached 24 hours a day at the telephone number provided under subsection A;
- C. The names, street addresses and 24-hour telephone numbers of two other persons residing locally who have access to the premises and who may be contacted by the fire or police department for assistance if a false alarm occurs;
- D. The type (e.g., fire, burglary, intrusion) of alarm system or systems to be installed;
- E. The classification of the site as residential or nonresidential;
- F. A description of all hazardous materials or hazardous wastes, firearms, ammunition, explosives, flammable liquids, poisonous materials, guard dogs and any other condition present on the premises that may pose a threat or danger to fire or police department personnel responding to an alarm at the site;
- G. Information as to whether the alarm system has a feature that automatically terminates the alarm in 15 minutes or less, automatically resets the system, or automatically performs both functions;
- H. Information as to whether the alarm system has a backup power supply and if so, the number of hours of rated backup capacity;
- I. The signature of the applicant and, when the applicant is not the owner of the premises, the signature of the owner or owner's authorized agent; and
- J. Such other information as the finance director may reasonably require to determine whether to issue the permit.

(Ord. 2020 §1 (part))

#### **5.40.090 Permit application and renewal fees.**

Each application for a permit or renewal of a permit shall be accompanied by an application fee in an amount established by resolution of the city council. If a single permit is issued or renewed for multiple alarm systems on a premises, a separate permit fee shall be paid for each system.

(Ord. 2020 §1 (part))

#### **5.40.100 Issuance of permit - Limitation.**

- A. If the finance director reviews the application and finds that all required information has been supplied and is true and correct and that all required application fees have been paid, the director shall issue an alarm system permit to the applicant. The permit shall be issued within 14 days following the date of the filing of the application for the permit; however, if the information supplied by the applicant is incomplete or incorrect, that time period shall be extended on a day-to-day basis for each day required to secure complete and correct information.
- B. Issuance of a permit under this chapter does not constitute or excuse compliance with any other laws applicable to work required to install or connect an alarm system, including but not limited to the requirements of Title 16 of this code.

(Ord. 2020 §1 (part))

#### **5.40.110 Term of permit - Residential premises.**

The term of a permit issued for residential premises commences on the date of permit issuance and continues thereafter until such time as the alarm system is rendered inoperative or the permittee no longer owns, leases or occupies the premises for which the permit was issued, whichever first occurs.

(Ord. 2020 §1 (part))

**5.40.120 Term of permit - Nonresidential premises.**

- A. Initial Term. The term of a permit issued for nonresidential premises shall commence on the date of permit issuance. Permits may be issued for a one or two year term.
- B. Renewed Term. A permit issued for nonresidential premises may be renewed for successive one or two year terms. Application for renewal of a permit issued for nonresidential premises shall be filed in the office of the finance director, on or before the expiration of the initial or any renewed term, pursuant to sections 5.40.080, 5.40.090 and processed pursuant to section 5.04.100.
- C. Early Expiration. A permit shall also expire during the initial or any renewal term at the time the alarm system is rendered inoperative or the permittee no longer owns, leases or occupies the premises for which the permit was issued, whichever first occurs.

(Ord. 2020 §1 (part), Ord. 2395 §2)

**5.40.130 Display of permit - Nonresidential premises.**

A permit issued for nonresidential premises shall be maintained and displayed in a prominent location within the premises in which the alarm system is installed and shall be clearly visible from the main entrance to the premises. In lieu of posting the permit at such location, a notice may be posted in the same manner. The notice shall identify the alarm company which maintains the alarm system and its 24-hour telephone number. The permit shall be made available for inspection by city personnel upon request.

(Ord. 2020 §1 (part))

**5.40.140 Nontransferability of permit.**

A permit issued under this chapter shall apply only to the premises for which the permit was issued and shall not be transferable by the permittee to another person or to other premises. Any attempt to so transfer a permit is null and void.

(Ord. 2020 §1 (part))

**5.40.150 Duty to maintain current permit information.**

If a change occurs in any of the information supplied on a permit or renewal application, the permittee shall notify the finance director of the particulars of such change in writing within seven days of such change.

(Ord. 2020 §1 (part))

**5.40.160 Information furnished by applicants confidential.**

All information provided on an application for a permit is deemed to be confidential in nature. The city council finds that public disclosure of such information would seriously jeopardize the safety and security of a permittee's premises, and, in accordance with the provisions of Section 6255 of the Government Code, further finds that the public interest served by not making such application information public clearly outweighs the interest of the public served by disclosure of the information on such applications.

(Ord. 2020 §1 (part))

### ARTICLE III. FALSE ALARMS

#### **5.40.170 Reduction and elimination of false alarms.**

The purpose of this article is to provide a process to reduce and eliminate the occurrences of false alarms and the frequency of responses by the fire and police departments to such alarms.

(Ord. 2020 §1 (part))

#### **5.40.180 False alarms - Investigation and determination - Maintenance of records.**

- A. If the fire or police department responds to an alarm and, following appropriate investigation, finds no evidence of fire, burglary, unauthorized intrusion or other need or cause for activating the alarm system, a determination that a false alarm response occurred will be made by one or both departments, as appropriate to the incident. When activation of an alarm system operates to invoke a response by both departments, and each department determines that a false alarm has occurred as to matters within the department's authority, two false alarm responses shall be deemed to have occurred.
- B. Records of the time, date and address of the location of each activated alarm system to which the fire or police department responds shall be maintained by the fire or police chief in such form and for such time as the chief determines to be appropriate for efficiently administering and enforcing this chapter.

(Ord. 2020 §1 (part))

#### **5.40.190 Notice of false alarm determination.**

- A. Notice. When a false alarm determination is made pursuant to section 5.40.180, the chief of the affected department shall cause a notice of the determination to be mailed to the alarm user whose alarm system generated the false alarm. The notice shall be mailed by first class mail, addressed to the permittee at the address set forth in the permit application, or, if for any reason the alarm user does not have a valid permit, to the address at which the false alarm occurred and to the address of the owner of record of the premises. In addition to stating that a false alarm determination has been made, the notice shall set forth the date and time of the false alarm, advise the addressees that the occurrence of future false alarms may subject the permittee or alarm user to payment of a false alarm suppression fee, and set forth the right of the permittee or alarm user to seek administrative review of the false alarm determination in the manner provided by this chapter.
- B. Presumptions. When a permit has been issued and is in effect for the premises at which a false alarm occurs, the permittee shall be presumed to be the alarm user. When a valid and current permit is not in effect for a premises for which such a permit is required and at which a false alarm occurs, the owner of the premises shall be presumed to be the alarm user.

(Ord. 2020 §1 (part))

#### **5.40.200 False alarm suppression fee - Assessment required - Exceptions.**

- A. Assessment Required. Except as hereinafter provided by this section, whenever a

false alarm occurs, the alarm user shall be assessed a false alarm suppression fee in an amount established by resolution of the city council, based on the average cost to the city of providing an emergency response to individual false alarms.

- B. Exceptions. An alarm user shall not be assessed a false alarm suppression fee when:
1. A false alarm is generated within the 30-day adjustment period following the initial installation of an alarm system for which a permit has been issued;
  2. Three or less false alarms have been generated from the same location during the immediately preceding six-month period; or
  3. A police department response has been initiated by the city, and the alarm user or an authorized agent of the alarm user has notified the city's dispatch center by telephone or otherwise that the alarm is a false alarm either prior to the time the city initiates the response to the alarm or, when a police response has already been initiated, prior to the time the responding police unit arrives at the location of the false alarm.
- C. Limitation. Not more than one false alarm suppression fee shall be assessed when more than one false alarm is generated from the same alarm system during any 24-hour period.

(Ord. 2020 §1 (part))

#### **5.40.210 Notice of assessment of fee.**

When a false alarm suppression fee is assessed under section 5.40.200, the chief of the appropriate department shall notify the finance director, who shall cause notice of the assessment to be mailed to the alarm user by first class mail, addressed to the alarm user at the address set forth in the permit application, or, if for any reason the alarm user does not have a valid permit, at the address of the location where the false alarm occurred. The notice shall set forth the amount of the assessment, the reasons for the assessment, the date the assessment is due and payable, and the right of the alarm user to request administrative review of the assessment in the manner hereinafter provided by this chapter.

(Ord. 2020 §1 (part))

#### **5.40.220 Payment of fee - Effect of nonpayment.**

- A. When Payment is Due. A false alarm suppression fee assessed pursuant to this chapter is due and payable to the finance director on or before the last day of the month immediately following the month in which notice of the assessment was mailed.
- B. Penalty and Interest. If an assessed fee is not paid when due:
1. A delinquency penalty of ten percent (10%) shall be added to the fee on the last day of each month after the due date thereof, but the total amount of such penalties subject to collection shall not exceed fifty percent (50%) of the delinquent fee.
  2. Interest shall be assessed on the amount of the delinquent fee, exclusive of any penalties thereon, at the rate of one percent (1%) per month, or fraction thereof, from the date the fee first becomes delinquent until the date the fee and all accrued interest and penalties are paid to the finance director.
- C. Permit Withheld. Until a false alarm suppression fee assessed under this chapter and all accrued interest and penalties are paid, no permit shall be issued to or renewed for any alarm system on the site where the false alarm occurred.

(Ord. 2020 §1 (part))

**5.40.230 Administrative review of false alarm suppression fee determinations.**

- A. Right to Review. Any alarm user aggrieved by a determination that a false alarm response has occurred or aggrieved by a determination to assess a false alarm suppression fee may apply for administrative review of such determination.
- B. Application for Review. Applications for administrative review of a determination that a false alarm response has occurred or a determination to assess a false alarm suppression fee shall be in writing and shall be filed with the fire department as to a fee assessed for fire department services or police department as to a fee assessed for police department services, no later than 15 days from the date notice of the determination was mailed to the alarm user. The application shall also contain a brief statement of the reasons why the alarm user believes that such determination does not comply with the provisions of this chapter and state the relief requested by the alarm user from the determination.
- C. Decision on Application for Review. Upon the filing of an application for administrative review of the determination that a false alarm response has occurred or a determination to assess a false alarm suppression fee, the fire or police chief, as appropriate, shall consider the application and render a decision either affirming, modifying or reversing the determination. Prior to rendering a decision, the chief may convene a hearing, at the chief's discretion, to review evidence or hear arguments bearing on such decision, provided notice of the date, time and place of such hearing is served by mail on the alarm user at least 10 days prior to such hearing. After rendering a decision, the chief shall promptly cause written notice of that decision to be served by mail on the applicant, provide a copy to the finance director, and cause a summary of the decision to be entered in the records maintained under section 5.40.180.
- D. Payment of Fee Following Review. If the chief renders a decision affirming assessment of a false alarm suppression fee, in whole or in part, such fee, or the part thereof found by the chief to have been validly assessed, shall not become due and payable until the last day of the month immediately following the month in which notice of the decision is mailed to the applicant for administrative review, and the provisions of section 5.40.220 thereafter apply to payment of the fee.

(Ord. 2020 §1 (part), Ord. 2268, Ord. 2345)

**TITLE 5 FOOTNOTES**

1. Business license law, see Ch. 3.32; registration certificates for transient and nontransient occupancy, see Ch. 3.52; shooting galleries, hours of operation, see Ch. 9.34.
2. For Charter provisions on the granting of franchises, see §1200; for statutory provisions on municipalities granting franchises, see Government Code §39732 and Public Utilities Code §6001 et seq.
3. For statutory provisions on the granting of community antenna television system franchises, see Government Code §53066. Prior ordinance history: Prior code §§10A.13 - 10A.31 as amended by Ords. 766, 778, 800, 830, 919, 1111 and 1357.
4. For statutory provisions on the power of cities to contract for the disposal of garbage and rubbish, see Public Resources Code §49300; solid waste disposal, see Chs. 8.04 - 8.12; solid waste collection rules and regulations, see Appendix Title 8R.
5. Soliciting trade on streets see Ch. 9.52.
6. For statutory provisions on licensing of for-hire vehicles, see Vehicle Code §16501; for provisions on carriers generally, see Public Utilities Code §200 et seq. and Civil Code §2085 et seq.; for provisions on financial responsibility, see Vehicle Code §16500 et seq; for provisions authorizing cities to license and regulate for-hire vehicles and their drivers, see Vehicle Code §21100.