

Title 12

PUBLIC PROPERTY, PUBLIC WORKS AND PUBLIC UTILITIES

Chapters:

12.04 Engineering Standards

12.08 Underground Utility Districts

12.12 Encroachments

12.16 Cable Television

**12.20 Local Hiring – Contractors Providing Public Works and Public
Improvements**

Chapter 12.04

ENGINEERING STANDARDS

Sections:

12.04.010 Adopted by reference.

12.04.010 Adopted by reference.

The city adopts as the city's engineering standards those certain engineering standards numbered ST-0 through ST-26, SS-01 through SS-06, and SD-01 through SD-03, which were adopted by the city of Seaside, California as its engineering standards by resolution number 71-50 on July 15, 1971. (Ord. 99-02, §1, 1999; Ord. 82-8, 1982)

Chapter 12.08

UNDERGROUND UTILITY DISTRICTS

Sections:

12.08.010 Definitions.

- 12.08.020 Public hearing by council.**
- 12.08.030 Council may designate underground utility districts by resolution.**
- 12.08.040 Unlawful acts.**
- 12.08.050 Overhead facilities--Exceptions.**
- 12.08.060 Other exceptions.**
- 12.08.070 Notice to property owners and utility companies.**
- 12.08.080 Responsibility of utility companies.**
- 12.08.090 Responsibility of property owners.**
- 12.08.100 Responsibility of city.**
- 12.08.110 Extension.**
- 12.08.120 Violation--Penalty.**

12.08.010 Definitions. For the purpose of this chapter, the words set out in this section shall have the following meanings:

- A. "Commission" means the Public Utilities Commission of the state.
- B. "Person" means and includes individuals, firms, corporations, partnerships, and their agents and employees.
- C. "Poles, overhead wires and associated overhead structures" means poles, towers, supports, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, communication circuits, appliances, attachments and appurtenances located above ground within a district and used or useful in supplying electric, communication or similar or associated service.
- D. "Underground utility district" or "district" means that area in the city within which poles, overhead wires, and associated overhead structures are prohibited as such area is described in a resolution adopted pursuant to the provisions of Section 12.08.030.
- E. "Utility" includes all persons or entities supplying electric, communication or similar or associated service by means of electrical materials or devices. (Ord. 75-78 §1, 1975)

12.08.020 Public hearing by council. The council may from time to time call public hearings to ascertain whether the public necessity, health, safety or welfare requires the removal of poles, overhead wires and associated overhead structures within designated areas of the city and the underground installation of wires and facilities for supplying electric communication, or similar or associated service. The city clerk shall notify all affected property owners as shown on the last equalized assessment roll and utilities concerned by mail of the time and place of such hearings at least fifteen days prior to the date thereof. Each such hearing shall be open to the public and may be continued from time to time. At each such hearing all persons interested shall be given an opportunity to be heard. The decision of the council shall be final and conclusive. (Ord. 86-7 Art. 3 §8.1, 1986; Ord. 75-78 §2, 1975)

12.08.030 Council may designate underground utility districts by resolution. If, after any such public hearing the council finds that the public necessity, health, safety or welfare requires such removal and such underground installation within a designated area, and that the city or a public utility has voluntarily agreed to pay over fifty percent of all costs of conversion, excluding costs of user's connections to underground electric or communications facilities, the council shall, by resolution, declare such designated area an underground utility district and order such removal and underground installation. A reason-able time shall be allowed for such removal and underground installation, having due regard for the availability of labor, materials and equipment necessary for such removal and for the installation of such underground facilities as may be occasioned thereby. (Ord. 86-7 Art. 3 §8.2, 1986; Ord. 75-78 §3, 1975)

12.08.040 Unlawful acts. Whenever the council creates an underground utility district and orders the removal of poles, overhead wires and associated overhead structures therein as provided in Section 12.08.030, it shall be unlawful for any person or utility to erect, construct, place, keep, maintain, continue, employ or operate poles, overhead wires, and associated overhead structures in the district after the date when said overhead facilities are required to be removed by such resolution, except as said overhead facilities may be required to furnish service to an owner or occupant of property prior to the performance by such owner or occupant of the underground work necessary for such owner or occupant to continue to receive utility service as provided in Section 12.08.090, and for such reasonable time required to remove said facilities after said work has been performed, and except as otherwise provided in this chapter. (Ord. 75-78 §4, 1975)

12.08.050 Overhead facilities--Exceptions. Notwithstanding the provisions of this chapter, overhead facilities may be installed and maintained for a period, not to exceed ten days, without authority of the council in order to provide emergency service. The council may grant special permission, on such terms as the council may deem appropriate, in cases of unusual circumstances, without discrimination as to any person or utility, to erect, construct, install, maintain, use or operate poles, overhead wires and associated overhead structures. (Ord. 75-78 §5, 1975)

12.08.060 Other exceptions. This chapter and any resolution adopted pursuant to Section 12.08.030 shall, unless otherwise provided in such resolution, not apply to the following types of facilities:

- A. Any municipal facilities or equipment installed under the super-vision and to the satisfaction of the city engineer;
- B. Poles or electroliers used exclusively for street lighting;
- C. Overhead wires (exclusive of supporting structures) crossing any portion of a district within which overhead wires have been prohibited, or connecting to buildings on the perimeter of a district, when such wires originate in an area from which poles, overhead wires and associated overhead structures are not prohibited;

D. Poles, overhead wires and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of thirty-four thousand five hundred volts;

E. Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street;

F. Antennae, associated equipment and supporting structures, used by a utility for furnishing communication service;

G. Equipment appurtenant to underground facilities, such as surface-mounted transformers, pedestal mounted terminal boxes and meter cabinets, and concealed ducts;

H. Temporary poles, overhead wires and associated overhead structures used or to be used in conjunction with construction projects. (Ord. 75-78 §6, 1975)

12.08.070 Notice to property owners and utility companies. Within ten days after the effective date of a resolution adopted pursuant to Section 12.08.030, the city clerk shall notify all affected utilities and all persons owning real property within the district created by said resolution of the adoption thereof. Said city clerk shall further notify such affected property owners of the necessity that, if they or any person occupying such property desire to continue to receive electric, communication, or similar or associated service, they or such occupant shall provide all necessary facility changes on their premises as to receive such service from the lines of the supplying utility or utilities at a new location subject to applicable rules, regulations and tariffs of the respective utility or utilities on file with the commission.

Notification by the city clerk shall be made by mailing a copy of the resolution adopted pursuant to Section 12.08.030, together with a copy of the ordinances codified in this chapter, to affected property owners as such are shown on the last equalized assessment roll and to the affected utilities. (Ord. 75-78 §7, 1975)

12.08.080 Responsibility of utility companies. If underground construction is necessary to provide utility service within a district created by any resolution adopted pursuant to Section 12.08.030, the supplying utility shall furnish that portion of the conduits, conductors and associated equipment required to be furnished by it under its applicable rules, regulations and tariffs on file with the commission. (Ord. 75-78 §8, 1975)

12.08.090 Responsibility of property owners.

A. Every person owning, operating, leasing, occupying or renting a building or structure within a district shall perform construction and provide that portion of the service connection on his property between the facilities referred to in Section 12.08.080 and the termination facility on or within said building or structure being served, all in accordance with applicable rules, regulations and tariffs of the respective utility or utilities on file with the commission. If the above is not accomplished by any person within the time provided for in the resolution enacted pursuant to Section 12.08.030, the city engineer shall give notice in writing to the person in possession of such premises, and a notice in writing to the owner thereof as shown on the last equalized assessment roll, to provide the required underground facilities within ten days after receipt of such notice.

B. The notice to provide the required underground facilities may be given either by personal service or by mail. In case of service by mail on either of such persons, the notice must be deposited in the United States mail in a sealed envelope with postage prepaid, addressed to the person in possession of such premises at such premises, and the notice must be addressed to the owner thereof as such owner's name appears, and must be addressed to such owner's last known address as the same appears on the last equalized assessment roll, and when no address appears, to General Delivery, Sand City, CA. If notice is given by mail, such notice shall be deemed to have been received by the person to whom it has been sent within forty-eight hours after the mailing thereof. If notice is given by mail to either the owner or occupant of such premises, the city engineer shall, within forty-eight hours after the mailing thereof, cause a copy thereof, printed on a card not less than eight inches by ten inches in size to be posted in a conspicuous place of said premises.

C. The notice given by the city engineer to provide the required underground facilities shall particularly specify what work is required to be done, and shall state that if said work is not completed within thirty days after receipt of such notice, the city engineer will provide such required underground facilities, in which case the cost and expense thereof will be assessed against the property benefitted and become a lien upon such property.

D. If upon the expiration of the thirty-day period, the said required underground facilities have not been provided, the city engineer shall forthwith proceed to do the work; provided, however, if such premises are unoccupied and no electric or communications services are being furnished thereto, the city engineer shall, in lieu of providing the required underground facilities, have the authority to order the disconnection and removal of any and all overhead service wires and associated facilities supplying utility service to said property. Upon completion of the work by the city engineer, he shall file a written report with the city council setting forth the fact that the required underground facilities have been provided and the cost thereof, together with a legal description of the property against which such cost is to be assessed. The council shall thereupon fix a time and place for hearing protests against the assessment of the cost of such work upon such premises, which said time shall not be less than ten days thereafter.

E. The city engineer shall forthwith, upon the time for hearing such protests having been fixed, give a notice in writing thereof to the owner thereof, in the manner hereinabove provided for the giving of the notice to provide the required underground facilities, of the time and place that the council will pass upon such report and will hear protests against such assessment. Such notice shall also set forth the amount of the proposed assessment.

F. Upon the date and hour set for the hearing of protests, the council shall hear and consider the report and all protests, if there are any, and then proceed to affirm, modify or reject the assessment.

G. If any assessment is not paid within five days after its confirmation by the council, the amount of the assessment shall become a lien upon the property against which the assessment is made by the city engineer, and the city engineer is directed to turn over to the assessor and tax collector a notice of lien on each of said properties on which the assessment has not been paid, and said assessor and tax collector shall add the amount of said assessment to the next regular bill for taxes levied against the premises upon which said assessment was not paid. Said assessment shall be due and payable, and if not paid when due and payable, shall bear interest at the rate of six percent per year. (Ord. 87-5 Art. 2 §3.0, 1987; Ord. 75-78 §9, 1975)

12.08.100 Responsibility of city. The city shall remove at its own expense all city owned equipment from all poles required to be removed under this chapter in ample time to enable the owner or user of such poles to remove the same within the time specified in the resolution enacted pursuant to Section 12.08.030. (Ord. 75-78 §10, 1975)

12.08.110 Extension. In the event any act required by this chapter or by a resolution adopted pursuant to Section 12.08.030 cannot be performed within the time provided on account of shortage of materials, war, restraint by public authorities, strikes, labor disturbances, civil disobedience, or any other circumstances beyond the control of the actor, then the time within which such act will be accomplished shall be extended for a period equivalent to the time of such limitation. (Ord. 75-78 §11, 1975)

12.08.120 Violation--Penalty. It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person violating any provision of this chapter or failing to comply with any of its requirements shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment. Each such person shall be deemed guilty of a separate offense for each day during any portion of which any violation of any of the provisions of this chapter is committed, continued or permitted by such person, and shall be punishable therefore as provided for in this chapter. (Ord. 75-78 §12, 1975)

Chapter 12.12

ENCROACHMENTS

Sections:

- 12.12.010 Purpose.**
- 12.12.020 Definitions.**
- 12.12.030 Unlawful--When.**
- 12.12.040 Deliveries.**
- 12.12.050 Permit for temporary encroachment.**
- 12.12.060 Issuance of temporary permit.**
- 12.12.070 Appeal of planning director decision.**
- 12.12.080 Access encroachment permit--Application.**
- 12.12.090 Access encroachment permit--Issuance.**
- 12.12.100 Appeal of engineer decision.**
- 12.12.110 Permanent encroachment permit--Application.**
- 12.12.120 Council action.**
- 12.12.130 Permanent encroachment permit--Issuance.**
- 12.12.140 Permit revocation.**
- 12.12.150 Waiver of liability.**
- 12.12.160 Permit fees.**

12.12.010 Purpose. While it is recognized that special and unusual conditions may justify the erection or installation of encroachments into the sidewalk, street, alley, lane, court, park or other public area of the city, it is the policy of the city that such encroachments be kept to a minimum and in general be permitted for the preservation of public health, safety or welfare or in the furtherance of the general zoning objectives of the city. (Ord. 86-11 §1.0, 1986)

12.12.020 Definitions. For the purpose of this chapter, the following definitions shall apply:

A. "Access encroachment" means any physical improvement associated with the improvement of access from a lot of record or parcel of land to the adjoining street, public right-of-way, park or parkway, such as a driveway, curb, gutter, sidewalk or street improvement.

B. "Encroachment" means any physical object including but not limited to any goods, wares, merchandise, merchandise container, refuse or waste container, building materials or equipment, storage box or crate, or structure including but not limited to planter boxes, walls, steps, fences, water and sanitary transmission lines and utility poles and lines except as provided in subsection A of this section.

C. "Permanent encroachment" means any encroachment which remains on city property or in the public right-of-way more than ninety days.

D. "Temporary encroachment" means any encroachment or access encroachment which is not to remain on city property or in the public right-of-way in excess of ninety days. (Ord. 86-11 §2.0, 1986)

12.12.030 Unlawful--When. It is unlawful for any person to create, erect, construct, place or maintain any encroachment in or on any sidewalk area, street, public right of-way, park or parkway without a permit therefore, except as provided in Section 12.12.040. (Ord. 86-11 §3.0, 1986)

12.12.040 Deliveries. Goods, wares, merchandise and materials transported by common carriers may constitute an encroachment in connection with delivery, unloading and restorage in a place of business, provided that such delivery, unloading and restorage is accomplished within two hours, and the encroachment does not occur between the hours of six p.m. and the immediately following six a.m. (Ord. 86-11 §3.1, 1986)

12.12.050 Permit for temporary encroachment. Any person desiring to construct, erect or maintain a temporary encroachment shall apply therefore to the city planning director setting forth on the application the reasons for the proposed construction or encroachment and the duration of need. Such application shall be accompanied by a certificate of the applicant holding the city harmless and a certificate of insurance for the term of the maintenance of the encroachment establishing that the person responsible for the encroachment has public liability and property damage insurance, with limits not less than one million dollars single limit for personal injury and/or property damage caused by or due to the presence of the encroachment. The insurance carrier shall certify that the insurance is currently in force and that it will notify the city within ten days of any material changes in the policy, including nonrenewal thereof. This insurance shall be primary over any other collectible or valid insurance the city may have. (Ord. 86-11 §4.0, 1986)

12.12.060 Issuance of temporary permit. If, in the opinion of the city planning director the issuance of the permit will in no way jeopardize the public health, safety or welfare and that the issuance of the permit is justified by the reasons stated in the application, the city clerk may issue the permit for the specific period applied for. The city planning director has the authority to place conditions on any such permit issued, including but not limited to conditions requiring adequate signs, warnings, lights and other safety devices. (Ord. 86-11 §4.1, 1986)

12.12.070 Appeal of planning director decision. Any decision of the city planning director may be appealed by submitting to the city clerk, in writing, a request for appeal and the reasons therefore. The city clerk shall place any such appeal on the next regular agenda of the city council. Any decision of the city council shall be final and not subject to further appeal. (Ord. 86-11 §4.2, 1986)

12.12.080 Access encroachment permit--Application. Any person desiring to construct, erect or maintain any access encroachment that is not a temporary access encroachment may apply to the city engineer for a permit therefore. The application shall include the reasons for the request, a complete description of the proposed access encroachment, including materials, size and function. The application shall be accompanied by a hold harmless agreement, holding the city harmless for any damages to persons or property incurred because of the access encroachment. (Ord. 86-11 §5.0, 1986)

12.12.090 Access encroachment permit--Issuance. If, in the opinion of the city engineer the issuance of the permit will in no way jeopardize the public health, safety or welfare and that the issuance of the permit is justified by the reasons stated in the application and is consistent with the law of the city, the city engineer may issue the permit. The city engineer has the authority to place conditions on any such permit issued'. (Ord. 86-11 §5.1, 1986)

12.12.100 Appeal of engineer decision. Any decision of the city engineer may be appealed within ten days of the decision by submitting to the city clerk, in writing, a request for appeal and the reasons therefore. The city clerk shall place any such appeal on the next regular agenda of the city council. Any decision of the city council shall be final and not subject to further appeal. (Ord. 86-11 §5.2, 1986)

12.12.110 Permanent encroachment permit--Application. Any person desiring to construct, erect or maintain any encroachment that is not a temporary encroachment may apply to the city council for a permit therefore. The application shall include the reasons for the request, a complete description of the proposed encroachment, including materials, size and function. The application shall be accompanied by a hold harmless agreement, holding the city harmless for any damages to persons or property incurred because of the encroachment. In considering encroachment permit application, the city shall consider the potential environmental impacts upon the community and adjoining properties. (Ord. 86-11 §6.0, 1986)

12.12.120 Council action. The city council shall consider the application for the encroachment permit in light of the general zoning objectives of the city and the effect on the general public of the granting of the permit. If the council determines that the granting of the permit will not jeopardize the public health, safety or welfare, it may authorize granting of the permit. (Ord. 86-11 §6.1, 1986)

12.12.130 Permanent encroachment permit--Issuance. When so ordered by the city council, the city clerk shall issue a permit for a permanent encroachment. Prior to issuance, the applicant shall file with the city clerk a certificate of insurance establishing that the applicant has public liability and damage insurance with limits of not less than one million dollars combined single limit for personal injury and/or property damage caused by or due to the presence of the encroachment. The insurance carrier shall certify

that the insurance is currently in force and that it will notify the city within ten days of any material change in the policy including nonrenewal thereof. This insurance shall be primary over any other collectible or valid insurance the city may have. The permit shall be recorded in the Official Records of Monterey County, California. (Ord. 86-11 §6.2, 1986)

12.12.140 Permit revocation. The city council reserves the rights to revoke any encroachment permit at any time. Further, failure of the applicant, his heirs or assigns, to maintain the required insurance shall result in the immediate revocation of the permit. In the event of revocation of an encroachment permit, the city council may order the removal of the encroachment by the permittee or at the city's expense, in which case the cost of the removal may be assessed and become a lien against the property adjacent to the subject encroachment owned by the applicant or benefitted by the encroachment. (Ord. 86-11 §7.0, 1986)

12.12.150 Waiver of liability. It is expressly provided that the conditions for hold harmless agreements and insurance and the acceptance of the such agreements and insurance or certificates shall not be construed in any way as an assumption of liability by the person, or construed so as to prohibit or limit the city's right to remove or cause a removal of such encroachments as it may from time to time deem advisable, pursuant to applicable law or any provisions of city ordinances. (Ord. 86-11 §8.0, 1986)

12.12.160 Permit fees. The city council may from time to time and at any time establish a fee schedule by resolution for any encroachment permits. (Ord. 86-11 §9.0, 1986)

Chapter 12.16

CABLE TELEVISION

Sections:

12.16.010 Definitions.

12.16.020 Franchise to install and operate.

12.16.030 Cable television service.

12.16.040 Franchise payments.

12.16.050 Franchise term Duration and termination.

12.16.060 Application for new franchise or renewal.

12.16.070 Deposits--Bonds--Indemnification--Insurance.

12.16.080 Acceptance of the franchise.

12.16.090 Limitations of franchise.

12.16.100 Rights reserved to the city.

12.16.110 Council may adopt rules and regulations.

- 12.16.120 Permits and construction.**
- 12.16.130 Technical standards.**
- 12.16.140 Inspection of property and records.**
- 12.16.150 Right to purchase system.**
- 12.16.160 Right of intervention.**
- 12.16.170 Safety requirements.**
- 12.16.180 Removal of facilities upon request.**
- 12.16.190 Repair of streets and public ways.**
- 12.16.200 Erection of poles.**
- 12.16.210 Services.**
- 12.16.220 Special service area.**
- 12.16.230 Receivership.**
- 12.16.240 Authority of city to terminate in the event of condemnation.**
- 12.16.250 Continuity of service mandatory.**
- 12.16.260 Financial disclosure of independent consultant.**
- 12.16.270 Miscellaneous provisions.**
- 12.16.280 Violations.**
- 12.16.290 State Video Service Franchises**

12.16.010 Definitions. For the purpose of this chapter, the following terms, phrases, words, abbreviations and their derivations shall have the meanings given in this section. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the plural number.

A. "Ancillary services" means those services provided to subscribers other than basic services, satellite services and pay television (such as alarm, banking and other non entertainment services).

B. "Basic service" where referred to in this chapter, means a minimum of twelve television channel retransmission by grantee receivable by all television sets via the standard twelve-channel VHF tuner.

C. "Cable television system," "CATV," "CTV" and "broadband two-way communication system" for the purpose of this chapter, are terms describing a system employing antennae, microwave, wires, waveguides, coaxial cables or other conductors, equipment or facilities, designed, constructed or used for the purpose of:

1. Collecting and amplifying local and distant broadcast television or radio signals and distributing and transmitting them;
2. Transmitting original cablecast programming not received through television broadcast signals;

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

4. Transmitting or receiving two-way signals or transmissions;

5. Transmitting and receiving all other signals: digital, voice and audio-visual; provided, however, that any of the services permitted hereunder to be performed as described above shall be those performed by the grantee for subscribers, as defined in this chapter, in the operation of a cable television or CATV system franchised by the city and not otherwise.

D. "City" means the city of Sand City in its present form or in any later reorganized, consolidated, enlarged or modified form.

E. "City clerk" means the city's chief executive officer, or other designation of the city's chief executive officer or any designee thereof.

F. "Council" means the governing body of the city, or any future body constituting the legislative body of the city.

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

H. "Grantee" means the person; firm or corporation granted a franchise by the council under this chapter, and the lawful successor, transferee or assignee of said person firm or corporation.

I. "Gross revenue" means any kind and all compensation and other consideration in any form whatever and any contributing grant or subsidy received directly or indirectly by a grantee from:

1. Subscribers or users in payment for video, audio, or other electrical signals, reception or service received within the city including installation;

2. Any other person or utilization of or connection to the property of grantee to the extent the city may from time to time locally impose a franchise payment on account thereof.

Notwithstanding the above, gross annual receipts shall not include line extension charges or any taxes on services furnished by any city, county, state or other governmental unit and collected by the grantee for such governmental unit; or copyright fees collected on

behalf of and transmitted to the Federal Copyright Tribunal, fees paid to program suppliers, advertising revenues and charges made to subscribers for ancillary services; provided, however, that the city reserves the right to review, consider and negotiate with grantee to impose payment to the city of up to three percent of the revenues deemed from ancillary services as defined in this section. Such payment requirement may be imposed no sooner than five years after the award of the franchise hereunder, and only after a public hearing.

J. Line Extension Charge. A "line extension charge" is that additional capital improvement cost, passed on to the subscriber at the time of construction, for bringing service beyond one hundred fifty feet from an existing main trunk or line cable.

K. "Person" means any natural person and all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, business or common-law trusts and societies.

L. "Property of grantee" means all property owned, installed or used within the city by a grantee in the conduct of a cable television system business under the authority of a franchise granted pursuant to this chapter.

M. "Special service area" means area(s) of the city designated by the council, if it so elects, in the franchise agreement, where the franchise may charge different rates, or provide different service(s), than in the remainder of the city.

N. "Street" means the surface, the air space above than surface and the area below the surface of any public road, public street, other public right-of-way or public place, including public utility easements.

O. "Subscriber" or "user" means any person or entity receiving for any purpose any service of the grantee's cable television system including, but not limited to, the conventional cable television system service of retransmission of television broadcast, radio signals, grantee's original cable casting and the local government, education and public access channels; and other services, such as leasing of channels, data and facsimile transmission, pay television and police, fire and similar public service communication. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §1, 1984)

12.16.020 Franchise to install and operate.

A. A nonexclusive franchise to install, construct, operate and maintain a cable television system on roads or streets within all or a specific portion of the city may be granted by the council to any person, whether operating under an existing franchise, who or which offers to furnish and provide such system under and pursuant to the terms and provisions of this chapter.

No provision of this chapter may be deemed or construed as to require the granting of a franchise when in the opinion of the council it is in the public interest to restrict the number of grantees to one or more.

B. When in the event that the grantee of any franchise granted hereunder uses in his cable television system distribution channels furnished to the grantee by a telephone company pursuant to tariff or contract on file with a regulatory body having jurisdiction and said grantee makes no use of the streets independent of such telephone company furnished facilities, said grantee shall be required to comply with all of the provisions hereof as a "licensee" and in such event whenever the term "grantee" is used in this chapter it shall be deemed to mean and include "licensee." (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §2, 1984)

12.16.030 Cable television service.

A. Basic Service. The cable television system permitted to be installed and operated hereunder shall:

1. Be operationally capable of relaying to subscriber terminals those television and signals for the carriage of which the grantee is now or hereafter authorized by the Federal Communications Commission;
2. Be constructed or reconstructed to be capable of becoming two-way operational;
3. Distribute color television signals which it receives in color;
4. Be constructed and maintained so as to consist of currently used technology which is economically and technically feasible.

B. Nonbasic Services. The cable television system permitted to be installed and operated hereunder, shall have the right to engage in the business of:

1. Transmitting original cablecast programming not received through television broadcast signals;
2. Transmitting television pictures, FM radio signals, film and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers or subscribers;
3. Transmitting and receiving all other signals: digital, voice and audio-visual.

C. Subscriber Complaints. In addition to other service regulations adopted by the council, and excepting circumstances beyond grantee's control such as acts of God, riots and civil disturbances and in providing the foregoing services, the grantee shall:

1. Limit system failures to minimum time duration by locating and correcting malfunctioning promptly, but in no event longer than twenty-four hours after occurrence, irrespective of holidays or other nonbusiness hours;

2. Upon complaint by a subscriber, make a demonstration satisfactory to the city clerk that a signal is being delivered which is of sufficient strength and quality to meet the standards set forth in the regulations of the Federal Communications Commission;

3. Render efficient service, making repairs promptly and interrupting service only for good cause and for the shortest time possible. Planned interruptions, insofar as possible, shall be preceded by notice given to subscribers twenty-four hours in advance and shall occur during periods of minimum use of system. Notice may be by newspaper advertisement or a reasonable number of notices over the cable system itself to subscribers;

4. Maintain an office in the city or within thirty miles of the city boundary, which office shall be open during all the usual business hours, with its telephone number listed in the directories of the telephone company serving the city. The phone system shall be so operated that complaints and requests for repairs or adjustment may be received at any time, day or night, seven days a week, or provide a local telephone directory listing and "toll free" telephone service maintained on a seven-day, twenty-four hour basis for the receipt of consumer complaints;

5. Maintain a record, or "log," listing date of customer complaints, identifying the subscriber and describing the nature of the complaint, and when and what action was taken by grantee in response thereto; said record shall be kept at grantee's local office for a period of one year from the date of complaint, and shall be available for inspection during regular business hours without further notice or demand, by the city clerk or his designated representative. Provided, however, the city clerk may require records be maintained for an additional one-year period in specific circumstances, including where complaints have been excessive. The cable operator shall provide upon request a monthly report of complaints received to the city.

D. Governmental Service. With respect to the basic television services, the grantee shall provide subscriber services, and a tie-in connection, without cost, when the system's main trunk or feeder lines pass the following facilities when requested by the grantor, subject to the requirements of federal law to:

1. Public schools and community colleges within the city; and
2. Buildings owned and/or controlled by the city, used for public purposes and not for residential use (fire stations excepted).

E. Uses Permitted. Any franchise granted pursuant to the provisions of this chapter shall authorize and permit the grantee to engage in the business of operating and providing a cable television system in the city, and for that purpose subject to the encroachment ordinance to erect, install, construct, repair, replace, reconstruct, maintain, and retain in, or over, under, upon, across and along any road, street, such poles, wires, cables, conductors, ducts, conduit, vaults, manholes, amplifiers, and appliances, attachments and other property as may be necessary and appurtenant to the cable television system; and, in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other grantee franchised or permitted to do business in the city.

F. Notwithstanding the provisions of this section, grantor may waive specific requirements in unusual circumstances, including small systems (under five hundred subscribers) or low density (under twenty homes per mile of cable). The adequacy of an application for such waiver shall be weighed against the public interest, by the grantor. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §3, 1984)

12.16.040 Franchise payments.

A. In consideration of the granting and exercise of a franchise to use the roads, streets, as defined in this chapter, for the operation of a cable television system, any grantee shall pay to the city during the life of the franchise three percent of the franchisee's gross revenue, as defined in subsection I of Section 12.16.010, per year, from all cable services in the community. The city, if permitted by the FCC, during the term of any franchise, may negotiate for a higher fee percentage consistent with such fee authority.

B. The percentage payments shall be made annually, due each year on or before July 1st, to the city finance director or in the manner, and at times directed in said franchise or in a council resolution fixing franchise fees and adopting rules for service and rate regulation. All receivables shall be maintained on an accrual basis for the purpose of determining the percentage of moneys due to the city under this agreement with an annual adjustment for bad debts.

C. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable under this chapter or for the performance of any other obligation hereunder.

D. In the event that the above payment is not received by the city within the specified time in addition to the unpaid balance, grantee shall pay to the city as interest thereon the same percentage on the unpaid balance as the city earned on its invested funds during the same period. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 85-4 §1, 1985; Ord. 84-14 §4, 1984)

12.16.050 Franchise term--Duration and termination.

A. Any franchise granted by the council under the ordinance codified in this chapter shall be for a maximum term of fifteen years from the date of its acceptance by the grantee. The grantee may apply for renewal during the last five years of the franchise.

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

C. The city clerk may make written demand that the grantee do or comply with any such requirement, limitation, term, condition, rule or regulation. If the failure, refusal or neglect of the grantee continues for a period of thirty days following such written demand, the city clerk shall cause to be served upon such grantee, at least ten days prior to the date of such council meeting, a written notice of intent to request such termination, and the time and place of the meeting, notice of which shall be published by the city clerk at least once, ten days before such meeting in a newspaper of general circulation within the city.

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

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

F. If the council shall determine such failure, refusal or neglect by the grantee was without just cause, then the council may, by resolution, declare that the franchise of such grantee shall be terminated and forfeited unless there be compliance by the grantee within such period as the council may fix, or reduce the length of the franchise by a period of time up to the duration of the failure and/or violation.

G. The termination and forfeiture of any franchise shall in no way affect any of the rights of the council or grantee under the franchise or any provision of law.

H. In the event of any holding over after expiration of any franchise granted hereunder, the grantee shall pay to the council reasonable compensation and damages, of not less than one hundred percent of its gross revenue during said period. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §5, 1984)

12.16.060 Application for new franchise or renewal.

A. Each application for a franchise to construct, operate, or maintain any cable television systems to the city shall be filed with the city clerk and shall contain or be accompanied by the following:

1. The name, address and telephone number of the applicant;
2. A detailed statement of the corporate or other business entity organization of the applicant, including but not limited to, the following, and to whatever extent required by the city:
 - a. The names, residence and business addresses of all officers, directors and associates of the applicant,
 - b. The names, residence and business addresses of all officers, persons and entities having controlling, or being entitled to have control of five percent or more of the ownership of the applicant and the respective ownership share of each such person or entity,
 - c. The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable television systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby,
 - d. A description of previous experience of the applicant in providing cable television system service and in related or similar fields,
 - e. A detailed and complete financial statement of the applicant, prepared by an independent certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the city or a statement from a certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed system in the city,
 - f. A statement identifying, by place and date, any other cable television franchise(s) awarded to the applicant, its parent or subsidiary; the status of said franchise(s) with respect to completion thereof; the total cost of completion of such system(s); and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof;
3. A detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:

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

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

c. A detailed, informative and referenced statement describing the actual equipment and operational standards proposed by the applicant and that such standards of operations are in compliance with those contained in Title 47, Subpart K (76.601 et seq.), of the Rules and Regulations of the Federal Communications Commission,

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

4. A copy of any agreement covering the franchise area, if existing between the applicant and any public utility subject to regulation by the California Public Utilities Commission, providing for the use of any facilities of the public utility, including but not limited to poles, lines or conduits;

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

6. An application fee in the sum of five hundred dollars, which shall be in the form of cash, cashier's check, or money order to pay the costs of studying, investigating, and otherwise processing such application, which shall be in consideration thereof.

B. The council may by advertisement or any other means, solicit and call for applications for cable television system franchises, and may determine and fix any date upon or after which the same shall be received by the city, or the date before which the same must be received, or the date after which the same shall be received, and may make any other determinations and specify any other times, terms, conditions or limitations respecting the soliciting, calling for, making and receiving of such applications.

C. Upon receipt of any application for franchise, the council shall refer the same to the city clerk who shall prepare a report and make his recommendations respecting such application, and cause the same to be completed and filed with the council.

D. If the council shall determine to further consider the application, it shall pass a resolution setting a public hearing for the consideration of competing applications, setting a day, hour and place certain when and where a person having any interest therein or

objections may file written protests and/or appear before the council and be heard, and directing the city clerk to publish said resolution at least once within ten days of the passage thereof in a newspaper of general circulation in the city.

E. In making any determination hereunder as to any application for a new franchise, or renewal thereof, the council may give due consideration to the quality of the service proposed, rates to subscribers, income to the city, experience, character, background and financial responsibility of any applicant and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements and to abide by policy conditions, franchise limitations and requirements and any other considerations deemed pertinent by the council for safeguarding the interests of the city and the public.

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

1. That such application(s) be denied, which determination shall be final and conclusive; or
2. That such franchise be granted and the terms and conditions thereof.

G. The council may reject any and all applications and may, if it so desires, request new and/or additional proposals.

H. The council may at any time demand and applicant shall provide such supplementary, additional or other information as the council may deem reasonably necessary to determine whether the requested franchise should be granted.

I. Any grantee, upon the effective date of its franchise, shall be required to reimburse the city for its estimated engineering, administrative, environmental publication and legal expenses incurred in connection with the processing, evaluation, and preparation of documents relating to such franchise, as such shall be established in the franchise agreement, in a total amount not to exceed fifteen thousand dollars, less the five hundred dollar application fee. Actual costs shall be determined by the city clerk.

J. The city may waive any of the requirements in this section. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §6, 1984)

12.16.070 Deposits--Bonds--Indemnification--Insurance.

A. Performance Deposit to City. The grantee shall, concurrently with the filing of an acceptance of award of a new franchise as opposed to a renewal of an existing, built system granted under this chapter, deposit in a financial institution selected by the city the sum of not to exceed fifty thousand dollars in a joint account with the grantee and the

city as cosignators. The amount shall be determined by the council upon recommendation by the city clerk. This sum shall be maintained in an interest bearing joint account during the period of construction of the cable television system within the city limits, but in no event in excess of three years. The return of the sum plus interest to the grantee shall be conditioned upon the faithful performance of the grantee and upon the further condition that in the event grantee shall fail to comply with any one or more of the provisions of this chapter, or of the franchise issued to the grantee hereunder, there shall be recoverable from this sum any damages or loss suffered by the city as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee as prescribed herein which may be in default, plus a reasonable allowance for the attorney's fees and costs, up to the full amount. In lieu of said deposit, grantee may file with the city a corporate surety bond or other adequate security in the same amount and condition as above.

B. Performance Bond for Subscribers. Upon being granted a franchise, and upon filing of the acceptance required hereunder, the grantee shall file, annually, with the city clerk and shall thereafter during the entire term of the franchise maintain in full force and effect a corporate surety bond or other adequate surety agreement in an amount no to exceed ten thousand dollars. The bond or agreement shall be so conditioned that in the event such grantee shall fail to comply with any one or more of the provisions of any agreement or undertaking made between grantee and any subscriber, then there shall be recoverable jointly and severally from the principal and surety any damages or costs suffered or incurred by a subscriber as a result thereof, including reasonable attorneys' fees and costs of any action or proceeding. Said conditions shall be a continuing obligation during the entire term of such franchise and thereafter until grantee shall have satisfied in full any and all obligations to any subscriber which arise out of or pertain to any such agreement or undertaking. An additional performance bond may be required in appropriate amounts and conditions if grantee solicits prepayment from potential subscribers prior to becoming operational.

C. Hold Harmless Agreement. Grantee shall indemnify and hold harmless the city, its officers, boards, commissions, agents and employees against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including but not limited to damages to city property and damages arising out of copyright infringements, and damages arising out of any failure by grantee's cable television system), costs or liabilities of the city with respect to its employees, of every kind and nature whatsoever, including but not limited to damages for injury or death or damage to person or property, and regardless of the merit or any of the same, and against all liability to others, and against any loss, cost and expense resulting or arising out of any of the same, and against all liability to others, and against any loss, cost and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per them expense, traveling and transportation expense, or other costs or expenses arising out of or pertaining to the exercise of the enjoyment of any franchise hereunder by grantee, or the granting thereof by the city.

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

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

E. Insurance Required. Upon being granted a franchise, and upon the filing of the acceptance required hereunder, the grantee shall file with the city clerk and shall thereafter during the entire term of such franchise, maintain in full force and effect at its own cost and expense each of the following policies of insurance:

1. General comprehensive liability insurance in the amount of one million dollars, together with bodily injury liability insurance in an amount of not less than five hundred thousand dollars for injuries including accidental death to any one person, and subject to the same limit for each person in an amount not less than one million dollars on account of any one occurrence, and property damage liability insurance in an amount not less than fifty thousand dollars resulting from any one occurrence; and worker's compensation insurance as required by statute; provided, however, as follows:

a. The city shall be named as an additional insured in any of said insurance policies; and said policies shall contain an endorsement that the insurance shall be primary as to any insurance coverage which the city may have.

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

c. The city shall be provided thirty days written prior notice of the cancellation of any such policy. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §7, 1984)

12.16.080 Acceptance of the franchise.

A. No franchise granted under this chapter shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the city clerk. Written acceptance, which shall be in the form and substance approved by the city attorney, shall

also be and operate as an acceptance of each and every term and condition and limitation contained in this chapter, or in such franchise, or otherwise specified as provided in this chapter.

B. The written acceptance shall be filed by the grantee not later than one minute past twelve noon of the fortieth day next following the effective date of the resolution granting such franchise.

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

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

E. Any franchise granted and accepted under this chapter shall be in lieu of any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled, or exercisable by the grantee, pertaining to the construction, operation or maintenance of any cable television systems in the city. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §8, 1984)

12.16.090 Limitations of franchise.

A. Every franchise granted under this chapter shall be nonexclusive.

B. No privilege or exemption shall be granted or conferred by any franchise granted under this chapter except those specifically prescribed in this chapter.

C. Any privilege claimed under such franchise by the grantee in any road, street or other public property shall be subordinate to any prior lawful occupancy to the roads, streets or other public property.

D. Any such franchise shall be a privilege to be held in personal trust by the original grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by force or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, without prior consent of the council expressed by ordinance, and then only under such conditions as may therein be prescribed. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale, or similar document, a duly executed copy of which shall be filed with the city clerk within thirty days after such transfer or assignment. The said consent of the council may not be unreasonably refused; provided, however, that proposed assignee must show

responsibility as determined by the council utilizing the factors specified in Section 12.16.060 and must agree to comply with all provisions of this chapter; and provided further, that no such consent shall be required for a transfer in trust, mortgage or other hypothecation, in whole or in part, to secure an indebtedness, except that when such hypothecation shall exceed twenty-five percent of the market value of the property used by the franchise in the conduct of the cable television system, prior consent of the council shall be required for a transfer. Such consent shall not be unreasonably withheld.

In the event that grantee is a corporation, prior approval of the council, expressed by ordinance, shall be required where there is an actual change in control or where ownership of more than twenty-five percent of the voting stock of grantee is acquired by a person or group of persons acting in concert, none of whom already own fifty percent or more of the voting stock, singly or collectively. Any such acquisition occurring without prior approval of the council shall constitute a failure to comply with a provision of this chapter within the meaning of Section 12.16.050.

E. Time shall be of the essence of any such franchise granted hereunder. The grantee shall not be relieved of its obligation to comply promptly with any of the provisions of this chapter by any failure of the city to enforce prompt compliance.

F. Any right or power in, or duty impressed upon, any officer, employee, department or board of the city shall be subject to transfer by the city to any other officer, employee, department or board of the city.

G. The grantee shall have no recourse whatsoever against the city for any loss, cost, expense, or damage arising out of any provision or requirement of this chapter or of any franchise issued hereunder or because of its enforcement.

H. The grantee shall be subject to all requirements of city laws, rules, regulations and specifications heretofore or hereafter enacted or established.

I. Any such franchise granted shall not relieve the grantee of any obligations involved in obtaining encroachment permit or permits to excavate in any road or street from any department of the city.

J. Any franchise granted hereunder, shall be in lieu of any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled, or exercisable by grantee, or any successor to any interest of grantee, pertaining to the construction, operation or maintenance of any cable television system in the city; and the acceptance of any franchise hereunder shall operate, as between grantee and the city, as an abandonment of any and all of such rights, privileges, powers, immunities and authorities within the city, to the effect that as between grantee and the city, all construction, operation and maintenance by any grantee of any cable television system in the city shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to said franchise, and not hereunder pursuant to any other right,

privilege, power, immunity or authority whatsoever. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §9, 1984)

12.16.100 Rights reserved to the city. The city reserves the power to adopt and enforce requirements and regulations if financially feasible on any or all of the following matters, if and when deemed necessary and proper in the public interest by the council and provided such requirements and regulations are consistent with Rules and Regulations of the Federal Communications Commission:

A. Operational standards pertaining to the quality of audio-visual reception by subscribers;

B. Channel capacity requirements;

C. Requirements for the provision of equipment and channels for local production and presentation of cablecast programs and regulations pertaining thereto;

D. Requirements and regulations pertaining to minimum service requirements included in this chapter and fair business practices by the grantee;

E. Public safety requirements pertaining to the installation and use of all CATV equipment;

F. Procedures for the investigation and resolution of all complaints by subscribers regarding grantee's CATV operations, including implementation thereof by designated city officers, employees or agents;

G. Public access channels, equipment facilities;

H. There is reserved to the city every right and power which is required to be reserved in this chapter or provided by law, and the grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirements of the city in its exercise of such rights or powers, heretofore or hereafter enacted or established;

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

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

K. The council may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and may determine any question of fact which may arise during the existence of any franchise granted hereunder. The city clerk, with the approval of the city attorney, is authorized and empowered to adjust, settle or compromise any controversy or charge arising from the operations of any grantee under this chapter, either on behalf of the city, the grantee, or any subscriber, in the best interest of the public. Either the grantee or any members of the public who may be dissatisfied with the decision of the city clerk may appeal the matter to the council for hearing and determination. The council may accept, reject or modify the decision of the city clerk, and the council may adjust, settle or compromise any controversy or cancel any charge arising from the operations of the grantee or from any provisions of this chapter;

L. In the event that the Federal Communications Commission elects to deregulate any area of cable communication over which it currently exercises jurisdiction, or grant authority to municipalities to regulate in these areas, any franchise issued pursuant to this chapter shall be automatically amended, without any additional act by any party to it, to reflect these new municipalities' regulatory powers, and the city may if it so elects, adopt rules and regulations in these areas. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §10, 1984)

12.16.110 Council may adopt rules and regulations.

A. Standards of Operation.

1. Prior to granting any franchises, the council may adopt further rules, regulations and standards governing the operation of cable television systems in the city. Such rules, regulations and standards shall apply to and shall govern the operation of the grantee of any franchise hereunder, and are expressly declared a part of any franchise hereunder.
2. The standards adopted pursuant to these procedures shall be exclusively in those areas not either expressly or impliedly preempted by the Federal Communications Commission at the time of adoption.

B. Rates.

1. Grantee shall have the right, after thirty days advance notice to its subscribers and to the city council, to increase the rates charged for basic cable television installation, subscriber rates and services; provided, however, that the rates charged to subscribers within the city following such a proposed increase shall not exceed the average of all other similar rates charged by the grantee within its service area in Monterey County. Said resulting increase shall be rounded to the nearest five cents. At least twelve calendar months shall elapse between each rate increase as defined herein. In the event the grantee wishes to increase the basic rates in excess of said amount, it may submit a request to the city council together with supporting documentation. The city council shall refer the matter to the city clerk for review and recommendation back to the city council for

consideration at a regular meeting. Said meeting shall be within one hundred and twenty days of the date of rate increase application by the grantee unless extenuating circumstances exist. Notice of said meeting shall be published at least ten days prior to said meeting in a newspaper of general circulation in the city. The council may approve, disapprove or modify the amount of the requested increase which is in excess of the amount based on the service area average as provided herein. This section shall not apply if the cable system is deregulated pursuant to state or federal law.

2. No charge shall be imposed upon any subscriber for termination of CATV service or removal of CATV apparatus upon termination of such service. No rate or charge of any type shall be imposed on a subscriber after receipt of notice of termination from subscriber, unless such subscriber withdraws such notice prior to actual termination of service.

3. No charge shall be made to any subscriber by reason of the maintenance, repair, removal or replacement of any CATV apparatus, or property of grantee, unless the same was caused by the deliberate or negligent act of said subscriber.

4. Except as otherwise provided by subdivision 1 of this subsection, the grantee shall not charge different rates to subscribers receiving the same services, nor shall there be any difference in the services or facilities or in any other respect between subscribers, except as authorized in special service areas and, except that installation charges may vary according to the costs of installation. No grantee shall make or grant any preference to any corporation or person as to rates, charges, services, facilities, or rebates, or in any other respect, nor subject any corporation or person to any prejudice or disadvantage.

C. In addition to any other rate for services, the grantee may make an additional charge representing the actual cost of the federal copyright fee imposed pursuant to the Federal Copyright Act of 1976. The fee shall be separately identified on any billing as the "Federal Copyright Fee" or other similar wording. Within sixty days after July 1st and January 1st of each year, the grantee shall submit to the city proof of the amount actually paid the federal government, the amount collected from customers for the previous six months, and the amount to be billed to customers for the next six month period. The amount billed customers shall be adjusted each six months to the nearest one cent so that the gross fee collected from customers is as nearly equal as possible to the amount of fee paid by the grantee. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §11, 1984)

12.16.120 Permits and construction.

A. Within thirty days after acceptance of any new franchise, the grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business including, but not limited to, any utility joint use attachment, agreements, microwave carrier licenses and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the cable television systems, or associated microwave transmission facilities.

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

B. Within ninety days after obtaining all necessary permits, licenses and authorizations, including right of access to poles and conduits, encroachment permits in roads and streets, the grantee shall commence construction and installation of the cable television system.

C. Within one hundred and eighty days after commencement of construction and installation of the system, the grantee shall proceed to render service to subscribers, and the completion of the installation and construction shall be pursued with reasonable diligence thereafter, so that service to all of the areas designated and scheduled on the map and plan of construction made part of the franchise shall be provided as set forth therein. The grantee is required to complete said construction in a maximum of three years, although a shorter time may be specified in the franchise.

D. The grantee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits or other facilities on public property unless and until first securing the written approval of the city clerk.

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

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

F. In those areas of the city where the transmission or distribution facilities of the respective public utilities providing telephone, communication and electric services are underground or hereafter are placed underground, the grantee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground. The

term "underground" shall include a partial underground system; provided, however, that upon obtaining the written approval of the city clerk, amplifiers in the grantee's transmission and distribution lines may be placed aboveground where similar telephone, electrical distribution and gas distribution facilities are located aboveground.

G. 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 clerk the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of road or street grade, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks or any other types of structure or improvement of governmental agencies whether acting in a governmental or a proprietary capacity, or any other structure or public improvement, including but not limited to, movement of buildings, urban renewal and redevelopment and any general program under which the city shall undertake to cause all such properties to be located beneath the surface of the ground. The grantee shall, in all cases, have the privilege, subject to the corresponding obligations, to abandon any property of grantee in place, as provided in this chapter. 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. Upon the failure, refusal or neglect of the grantee to cause any work or other act required by law hereunder to be properly completed in, on, over or under any street within any time prescribed therefore, or upon notice given, where no time is prescribed, the city clerk may cause such work or other act to be completed in whole or in part, and upon so doing shall submit to grantee an itemized statement of the costs thereof. The grantee shall, within thirty days after receipt of such statement, pay to the city the entire amount thereof.

I. In the event that:

1. The use of any part of the system of the grantee is discontinued for any reason for a continuous period of thirty days, without proper written notice to and approval by the city; or
2. Any part of such system has been installed in any street or other area without complying with the requirements hereof; or
3. Any franchise shall be terminated, canceled or shall expire, then the grantee shall, at the option of the city, and upon demand of the city, promptly remove from any roads of streets or other area all property of the grantee, and the grantee shall promptly restore the road or street or other area from which such property has been removed to such condition as the city clerk shall approve.

The council may, upon written application therefor from the grantee, approve the abandonment of any property in place by grantee and under such terms and conditions as

the council may prescribe. Upon abandonment of any such property in place, 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. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §12, 1984)

12.16.130 Technical standards.

A. The grantee shall put, keep and maintain all parts of the system in good condition throughout the entire license period, in conformity with Federal Communication Commission requirements.

B. Upon request of the city after completion of the annual performance test required by the Federal Communications Commission, a copy of the results thereof shall be filed with the city clerk.

C. Upon reasonable request for service by any person located within the license area, the grantee shall within one hundred and twenty days, furnish the requested service to such person within the terms of the line extension policy. A request shall be unreasonable for the purpose of this subsection if no trunk line installation capable of servicing that person's block has as yet been installed. The city clerk may grant the grantee relief from the one-hundred-twenty-day requirement upon the grantee's presentation of evidence of good faith effort and its inability to meet the one-hundred-twenty-day requirement.

D. The grantee shall continue, throughout the term of the license, to maintain the technical standards and quality required in this chapter. Should the council find, by resolution, that the grantee has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made, the grantee shall make such improvements. Failure to make such improvements within sixty days of such resolution will constitute a breach of franchise conditions. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §13, 1984)

12.16.140 Inspection of property and records.

A. At all reasonable times, the grantee shall permit any duly authorized representative of the city to examine all property of the grantee, together with any appurtenant property of the grantee situated within or without the city and to examine and transcribe any and all maps and other records kept or maintained by the grantee or under its control which deal with the operations, transactions or property of the grantee with respect to its franchise. If any such maps or records are not kept in the city, or upon reasonable request not made available in the city, and if the council shall determine that an examination thereof is necessary or appropriate, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by the grantee.

B. The grantee shall prepare and furnish to the city clerk at the times and in the form prescribed by said officer, such reports with respect to its operations, affairs, transactions

or property, as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the city or any of its officers in connection with the franchise.

C. The grantee shall at all times make and keep in its office the full and complete plans and records showing the exact location of all CATV system equipment installed or in use in streets and other public places in the city.

D. The grantee shall, upon written request of the city, file with the city engineer, a current map or set of maps drawn on scale, showing all CATV system equipment installed and in place in streets and other public places of the city. Once the first set of maps is filed, revisions may be filed upon request in lieu of a full new set of maps. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §14, 1984)

12.16.150 Right to purchase system. Upon the revocation of the franchise or the expiration of the terms thereof to the extent authorized by law, the city may purchase, acquire, takeover, or hold said system. For purposes of this section, "fair market value" shall be determined by valuing the grantees system as a going concern. No value shall be assigned to the franchise granted hereunder. If upon revocation or expiration of the franchise the city chooses to purchase the cable system in the city, the city and grantee shall attempt to mutually agree upon the fair market value of the system. However, if within a reasonable period of time, they cannot agree upon the fair market valuation, then said valuation shall be determined by a three member board of appraisers, one selected by the city, one selected by the grantee, and one selected by the appraisers themselves. The cost of said appraisal shall be borne equally by the city and the grantee. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §15, 1984)

12.16.160 Right of intervention. The city may intervene in any suit or proceeding in which the grantee is a party, provided that the city's interests are not adequately represented by the existing parties, and provided further, that the disposition of each suit or proceeding without the city's participation may, as a practical matter, impair or impede the city's ability to protect those interests. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §16, 1984)

12.16.170 Safety requirements.

A. The grantee shall at all times employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

B. The grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Code as it now exists or hereafter may be amended, and in such manner that they will not interfere with any installations of the city or a public utility serving the city.

C. All structures and all liens, equipment and connections in, over, under and upon the roads, streets, sidewalks, alleys and public ways or places of the city, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition and in good order and repair.

D. The grantee shall strictly adhere to all building and zoning codes currently or hereafter in force. The grantee shall arrange its lines, cables, and other appurtenances on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any person. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §17, 1984)

12.16.180 Removal of facilities upon request. Upon termination of service to any subscriber, the grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §18, 1984)

12.16.190 Repair of streets and public ways. Any and all roads, streets and public ways which are disturbed or damaged during the construction, operation, maintenance or reconstruction of the cable television system, shall be promptly repaired by the grantee, at its expense, to the satisfaction of the city. This shall be done under authority of encroachment permit. Upon any failure of the grantee to commence, pursue or complete any work required of it by law, ordinance or by the provisions of this chapter to be done in any street, the city clerk, at his option and according to law, may cause such work to be done and the grantee shall pay to the city the cost thereof in the itemized amounts reported by the city clerk to the grantee within thirty days after receipt of such itemized report. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §19, 1984)

12.16.200 Erection of poles. The grantee is expected to make use of existing aerial poles. This shall be done under authority of encroachment permit. However, the grantee shall have the right to erect poles if written permission is obtained from the city. Except as may be permitted, the grantee shall lease pole space from existing owners for all construction. The city shall utilize its best efforts to assist in arriving at equitable rental agreement. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §20, 1984)

12.16.210 Services. Services shall be offered to all city residents served by the franchise in accordance with the provisions of the franchise agreement. The grantee shall not materially reduce the level of service without permission of the city, but may, at its discretion, substitute programming to offer subscribers an equal or better array of services. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §21, 1984)

12.16.220 Special service area. As defined in the franchise agreement, the grantee shall be permitted to charge higher installation fees for areas of low housing density, commercial areas and/or underground utility areas that require exceptionally high construction costs.

Upon petition by the grantee, the council may defer or indefinitely suspend any expansion into such a special service after a showing by grantee that such expansion would cause unreasonable financial hardship to the grantee. The adequacy of such a showing shall be determined and weighed against the public interest in system expansion by the council after a public hearing. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §22, 1984)

12.16.230 Receivership.

A. Upon foreclosure or other judicial sale of all or substantial parts of the CATV system, or upon termination of any lease converting all or a substantial part of the CATV system, the grantee shall notify the city clerk of such fact, and such notification shall be treated as a notification that a change of control of the grantee has taken place and the provisions of this chapter governing the consent of the council to such change in control of the grantee shall apply.

B. The city shall have the right to revoke the franchise one hundred and twenty days after the appointment of a receiver or trustee and to take over and conduct the business of the grantee in such action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty days, or unless:

1. Within one hundred and twenty days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of the franchise and remedied all defaults there under; and

2. Such receiver or trustee, within said one hundred and twenty days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the franchise. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §23, 1984)

12.16.240 Authority of city to terminate in the event of condemnation. In order to preserve the right of the city under the franchise provided for, and its right to acquire the property of the grantee by purchase or by eminent domain proceedings at its then fair market value, at any time during the existence of the franchise, it is especially provided that if, at any time the franchise or the property of the grantee under the franchise shall become the subject of eminent domain proceedings by the city, the city reserves and shall have the right at such time such proceedings are commenced, or at any time thereafter, to terminate said franchise by resolution. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §24, 1984)

12.16.250 Continuity of service mandatory. It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to overbuild, rebuild, modify or sell the system, or if the grantor revokes or fails to renew the franchise, the grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances during the lifetime of the franchise. In the event

of purchase by the city, or a change of grantee, the current grantee shall cooperate with the city to operate the system for a temporary period, in maintaining continuity of service to all subscribers. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §25, 1984)

12.16.260 Financial disclosure of independent consultant.

A. Any individual, partnership or corporation employed by the city for the purposes of advising the city, its council, commissions, city clerk, or staff, on matters relating to cable television, or reviewing and evaluating, or assisting the city in regulating a cable television system shall, as a term condition of their employment, file within ten days of the date of employment with the city clerk a statement containing:

1. A listing and description of any financial and/or ownership held by the consultant in any cable television company, any subsidiary or affiliate of any cable television company which is a supplier or customer of any cable television company, or any other company which owns stock or has any interest in any of those types of companies which are described in this section. If the consultant is a partnership, the financial and/or ownership interests in cable television companies' affiliates, subsidiaries, suppliers, and customers of any partner must be disclosed. If the consultant is a corporation, the financial and/or ownership interests in cable television companies, affiliates, subsidiaries, suppliers and customers of any shareholder, officer, or directors must be disclosed.

2. A listing and description of any cable television company, affiliate, subsidiary, supplier or customer which the consultant has represented, on a compensated or non-compensated basis, within the last fifteen years.

B. The statement filed pursuant to this section shall be a public document open to inspection by any person. Failure to file this statement, or the inclusion of a material misrepresentation or omission within the statement, shall constitute grounds for the city's termination of the employment contract. The provision shall not apply to individuals who are subject to the reporting requirements of the "Political Reform Act of 1974" (California Government Code Section 8100 et seq.) under the local Conflict of Interest Code if the disclosures required by the code are substantially similar to those of this section. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §26, 1984)

12.16.270 Miscellaneous provisions.

A. A franchise granted to provide service within the city shall authorize and permit the grantee to solicit, sell, distribute, and make a charge to subscribers within the city for connection to the cable television system of the grantee, and may also authorize and permit the grantee to traverse any portion of the city in order to provide service outside the franchise area.

B. Arrangements for response to security alarms must be made with an appropriate response agency and must be in conformance to their regulations and those of Monterey County communications department.

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

D. The grantee shall be subject to all provisions of the other ordinances, rules, regulations, and specifications of the city heretofore or hereafter adopted, including, but not limited to, those pertaining to works and activities in, on, over, under and about roads or streets.

Any privilege claimed under any franchise granted pursuant to this chapter in any road or street or other public property shall be subordinate to any prior lawful occupancy of the roads, street or other public property.

The grantee also shall be subject to the provisions of general laws of the state, or as hereafter amended, when applicable to the exercise of any privilege contained in any franchise granted under this chapter, including, but not limited to, those pertaining to works and activities in and about state highways.

E. The grantee shall be prohibited from directly or indirectly providing information concerning the viewing patterns of identifiable individual subscribers to any person, group or organization for any purpose. The grantee shall not directly or indirectly provide any information contained in two-way communications to any unauthorized recipient.

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

G. When not otherwise prescribed in this chapter, all matters herein required to be filed with the city shall be filed with the city clerk.

H. No person, firm or corporation within the service area of the grantee, and where trunk lines are in place, shall be refused service; provided, however, that the grantee shall not be required to provide service to any subscriber who does not pay the applicable connection, fee or service charge.

I. When economically and technically feasible, the grantee shall enter into an agreement with a subdivider or developer to provide cable service when the development is within the grantee's service area and when such service is required as a condition of a tentative subdivision map, use permit or other special permit. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §27, 1984)

12.16.280 Violations.

A. From and after the effective date of the ordinance codified in this chapter, it shall be unlawful for any person to construct, install or maintain within any public street in the city, or within the city which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the city, any equipment or facilities for distributing any television signals or radio signals through a cable television system, unless a franchise authorizing such use of such road or street or property has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

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

C. It is unlawful for any person, without the consent of the owner, to wilfully tamper with, remove or injure any cables, wires, equipment used for distribution of television signals, radio signals, pictures, programs or sound. (Ord. 99-02 §2, 1999; Ord. 88-8, 1988; Ord. 84-14 §28, 1984)

Section 12.16.290

STATE VIDEO SERVICE FRANCHISES

Sections:

- A. General Provisions**
- B. Definitions**
- C. Franchise Fees**
- D. Customer Service**
- E. Permits and Construction**
- F. Emergency Alert**
- G. Public, Educational, and Government Access Channel Capacity, Interconnection, Signal Carriage and Support**
- H. Notices**

A. General Provisions.

1. Purpose

This Section 12.16.290 is intended to be applicable to state franchise holders who have been awarded a state video franchise under the California Public Utilities Code section 5800 *et seq.* (the Digital Infrastructure and Video Competition Act of 2006 [“DIVCA”]), to serve any location(s) within the incorporated boundaries of the City. It is the purpose of this Section to implement within the incorporated boundaries of the City the provisions of DIVCA and the rules of the California Public Utilities Commission promulgated there under that are applicable to a “local franchising entity” or a “local entity” as defined in DIVCA.

2. Rights Reserved.

a. The rights reserved to the City under this Section 12.16.290 are in addition to all other rights of the City, whether reserved by Section 12.16.290 or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.

b. Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:

i. compliance with generally applicable requirements for the privilege of transacting and carrying on a business within the City, including, but not limited to, compliance with the conditions that the City may establish before facilities may be constructed for, or providing, non-video services;

ii. any permit or authorization required in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits and street cut permits; and

iii. any permit, agreement or authorization for occupying any other property of the City or any private person to which access is not specifically granted by the state franchise.

c. Except as otherwise provided in DIVCA, a state franchise shall not relieve a state franchisee of its duty to comply with all laws, including the ordinances, resolutions, rules, regulations, and other laws of the City, and every state franchisee shall comply with the same.

3. Compliance with Section 12.16.290

Nothing contained in this Section 12.16.290 shall ever be construed so as to exempt a state franchise holder from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are consistent with this Section or California Public Utilities Code section 5800 *et seq.*

B. Definitions.

1. Definitions Generally -- Interpretation of Language.

For purposes of this Section 12.16.290, the following terms, phrases, words, and their derivations shall have the meaning given in this subsection B. Unless otherwise expressly stated, words not defined in this Section 12.16.290 shall be given the meaning set forth in Section 5.12.010 of the Sand City Municipal Code as may be amended from time to time, unless the context indicates otherwise. Words not defined in this subsection B or Section 5.12.010 of the Sand City Municipal Code shall have the same meaning as established in (1) DIVCA, and if not defined therein, (2) Commission rules implementing DIVCA, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47USC § 521 et. seq., and if not defined therein (4) their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and "including" and "include" are not limiting. The word "shall" and "will" are always mandatory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

a. "Access," "PEG access," "PEG use," or "PEG" means the availability of a cable or state franchise holder's system for public, educational, or governmental use by various agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to acquire, create, and distribute programming not under a state franchise holder's editorial control.

b. "Gross revenues" means all revenues actually received by the holder of a state franchise that are derived from the operation of the holder's network to provide cable service or video service within the incorporated areas of the City, subject to the specifications of California Public Utilities Code section 5860.

c. "State franchise holder" or "State Franchisee" means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the incorporated limits of the City.

C. Franchise Fees.

1. State Franchise Fees.

Any state franchise holder operating within the incorporated areas of the City shall pay to the City a state franchise fee equal to five percent (5%) of gross revenues.

2. Payment of Franchise Fees.

The state franchise fee required pursuant to this subsection C shall each be paid quarterly, in a manner consistent with California Public Utilities Code section 5860. The state franchise holder shall deliver to the City, by check or other means, which shall be agreed to by the City, a separate payment for the state franchise fee not later than forty-

five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the City.

3. Audits.

The City may audit the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code section 5860(I).

4. Late Payments.

In the event a state franchise holder fails to make payments required by this section on or before the due dates specified in this section, the City shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

5. Lease of City-Owned Network.

In the event a state franchise holder leases access to a network owned by the City, the City may set a franchise fee for access to the City-owned network separate and apart from the franchise fee charged to state franchise holders pursuant to this subsection C, which fee shall otherwise be payable in accordance with the procedures established by this subsection.

D. Customer Service.

1. Customer Service Standards.

A state franchise holder shall comply with Sections 53055, 53055.2, 53055.2 and 53088.2 of the California Government Code; the FCC customer service and notice standards set forth in Sections 76.309, 76.1602, 76.1603, and 76.1619 of Title 47 of the Code of Federal Regulations; Section 637.5 of the California Penal Code; the privacy standards of Section 551 of Title 47 of the United States Code; and all other applicable state and federal customer service and consumer protection standards pertaining to the provision of cable service or video service, include any such standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this paragraph shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

2. Penalties for Violations of Standards.

The City shall enforce the compliance of state franchisees with respect to the state and federal customer service and consumer protection standards set forth in paragraph 1 of this subsection D. The City will provide a state franchisee with a written notice of any material breaches of applicable customer service or consumer protection standards, and will allow the state franchisee 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following penalties to be imposed by the City:

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

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

c. For a third material breach of the same nature within 12 months, a fine of \$2,500 may be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.

3. Any penalties imposed by the City shall be imposed in a manner consistent with California Public Utilities Code section 5900.

E. Permits and Construction.

1. Except as expressly provided in this Section 12.16.290, the provisions of Sand City Municipal Code Sections 5.12.070, 5.12.120, 5.12.130, 5.12.140, 5.12.170, 5.12.180, 5.12.190 and 5.12.200 shall apply to all work performed by or on behalf of a state franchise holder on any City public rights-of-way, public property, or City easement as those terms are defined in Chapter 5.12 of the Sand City Municipal Code.

2. Permits.

Prior to commencing any work for which a permit is required by this subsection E, a state franchise holder shall apply for and obtain a permit in accordance with the provisions referred to in paragraph 1 of this subsection E and shall comply with all other applicable laws and regulations, including but not limited to all applicable requirements of Division 13 of the California Public Resources Code, section 21000, *et seq.* (the California Environmental Quality Act).

3. The City Administrator shall either approve or deny a state franchise holder's application for any permit required under paragraph 1 of this subsection E within sixty (60) days of receiving a completed permit application from the state franchise holder.

4. If the City Administrator denies a state franchise holder's application for a permit, the City Administrator shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.

5. A state franchise holder that has been denied a permit by final decision of the City Administrator may appeal the denial to the City Council. Upon receiving a notice of appeal, the City Council shall take one of the following actions:

a. Affirm the action of the City Administrator without any further hearing;

or

b. Refer the matter back to the City Administrator for further review with or without instructions; or

c. Set the matter for a de novo hearing before the City Council.

6. In rendering its decision on the appeal, the City Council shall not hear or consider any argument or evidence of any kind other than the record of the matter received from the City Administrator unless the City Council is itself conducting a public hearing on the matter.

7. Notification to Residents Regarding Construction or Maintenance.

Prior to any construction, rebuild, or upgrade of a cable or video system, a state franchise holder shall establish procedures to notify City residents in the impacted area of construction schedules and activities. Such notices must be provided in the predominant languages spoken by those persons who work and/or reside in the impacted area. The notices shall be provided to the City Administrator for review and approval no later than twenty (20) days before commencement of construction, rebuild, or upgrade activities.

8. At a minimum, the notice required in paragraph 7 of this subsection E shall be provided by the state franchise holder to impacted residents and occupants in the construction area not less than forty-eight (48) hours prior to the planned construction. The state franchise holder shall provide additional notice to the persons described in paragraph 7 of this subsection E on the day of construction. The notice may be in the form of door hangers that indicate, at a minimum, the dates and times of construction and the name and telephone number of a state franchise holder contact.

9. The state franchise holder shall provide notice at least twenty (20) days prior to entering private property or public ways or public easements adjacent to or on such private property, public ways, or public easements, and provide a second notice three (3) days prior to entering such property.

a. Should there be above ground or underground installations (excluding aerial cable lines utilizing existing poles and cable paths) which will affect the private property, such notice shall be in writing and shall contain specific information regarding any above ground or underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths) which shall affect the private property.

b. To the extent practicable, aboveground or underground equipment placed on private property shall be placed at the location requested by the property owner. A state franchise holder shall provide the private property owner with at least twenty (20) days advance written notice of its plans to install such equipment, and shall obtain express written consent, in the form of a recorded easement agreement, from the private property owner before installing its appurtenances. The state franchise holder shall notify the property owner, in writing, that the property owner is not obligated to agree to the placement on their property or to enter into an easement agreement with the state franchise holder. Should property owner notify the state franchise holder of objection to placement of any such above-ground or underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), the state franchise holder shall confer with the City public works department regarding appropriate location and placement of such appurtenances.

10. In addition to any other notice of proposed entry required under this subsection E, a state franchise holder's personnel shall make a reasonable attempt to give personal notice to residents immediately preceding entry on private property or public ways or public easements adjacent to or on such private property.

11. Identification Required.

A state franchise holder, its employees, agents, contractors, and subcontractors shall be properly identified as agents of the state franchise holder prior to

and during entry on private and public property. Identification shall include the name and telephone number of the state franchise holder on all trucks and vehicles used by installation personnel.

12. Restoration of Private and Public Property.

After performance of work, the state franchise holder shall restore such private and public property to a condition equal to or better than its condition prior to construction. Any disturbance of landscaping, fencing, or other improvements upon private or public property shall, at the sole expense of the state franchise holder, be promptly repaired or restored (including replacement of such valuables as shrubbery and fencing) to the reasonable satisfaction of the property owner, in addition to the furnishing of camouflage plants on public property.

13. Reports to the City Administrator.

Each state franchise holder, within 60 days after the expiration of each calendar year, shall file a report with the City Administrator, which shall contain a street and highway map or maps of any convenient scale on which shall be plotted the location of the entire transmission and distribution system or systems covered by the report as of the last day of the calendar year, with the system or systems located in City highways indicated by distinctive coloration or symbols.

F. Emergency Alert.

1. Emergency Alert Systems.

Each state franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the state franchise holder's network.

2. To the extent consistent with California Public Utilities Code section 5880, each state franchisee shall provide the system capability to transmit an emergency alert signal to all participating subscribers, in the form of an emergency override capability to permit the City to interrupt and cablecast an audio message on all channels simultaneously in the event of a disaster or public emergency. Each state franchisee shall be exempt from all liability for the use of the emergency alert, and the City shall indemnify and hold each state franchisee harmless from any claims and damages arising out of any such use.

G. Public, Educational, and Government Access Channel Capacity, Interconnection, Signal Carriage and Support.

1. PEG Channel Capacity.

a. A state franchisee that has been authorized by the California Public Utilities Commission to provide video service in the City shall designate and activate three PEG channels within three months from the date that the City requests that the state franchisee designate and activate these PEG channels. However, this three-month period shall be tolled for such a period, and only for such a period, during which the state franchisee's

ability to designate or provide such PEG capacity is technically infeasible, as set forth in Sections 5870(a), 5870(c) and 5870(h) of the California Public Utilities Code.

b. A state franchisee shall provide an additional PEG channel when the standards set forth in Section 5870(d) of the California Public Utilities Code are satisfied by the City or any entity designated by the City to manage one or more of the PEG channels.

2. PEG Support.

a. Amount of PEG Support Fee.

Any state franchise holder operating within the City shall pay to the City, or if directed by the City, pay to the City's designated PEG provider a PEG support fee equal to one percent (1%) of gross revenues

b. The PEG support fee shall be used for PEG purposes that are consistent with state and federal law.

c. A state franchisee shall remit the PEG support fee to the City, or if directed by the City, to the City's designated PEG provider on a quarterly basis, within forty-five days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the PEG support fee was calculated.

d. If a state franchisee fails to pay the PEG support fee when due, or underpays the proper amount due, the state franchisee shall pay a late payment charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%), to the extent that such a late payment charge is deemed to be consistent with DIVCA.

3. PEG Carriage and Interconnection.

a. As set forth in Sections 5870(b) and 5870(g)(3) of the California Public Utilities Code, state franchisees shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchisee shall be of similar quality and functionality to that offered by commercial channels, shall be capable of carrying a National Television System Committee (NTSC) quality television signal, and shall be carried on the state franchisee's lowest cost tier of service. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the lowest cost tier of service and the channel numbers for the PEG channels shall be the same channel numbers used by any incumbent cable operator, unless prohibited by federal law. After the initial designation of the PEG channel numbers, the channel numbers shall not be changed without the agreement of the City unless federal law requires the change.

b. As set forth in Section 5870(h) of the California Public Utilities Code, the holder of a state franchise and an incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. If a state franchisee and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the City shall require the incumbent cable operator to allow the state franchisee to interconnect its network with the incumbent

cable operator's network at a technically feasible point on the state franchisee's network as identified by the state franchisee. If no technically feasible point of interconnection is available, the state franchisee shall make interconnection available to each PEG channel originator programming a channel in the City and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state franchisee requesting the interconnection unless otherwise agreed to by the parties.

H. Notices.

1. Each state franchise holder or applicant for a state franchise shall file with the City a copy of all applications or notices that the state franchise holder or applicant are required to file with the California Public Utilities Commission.

2. Unless otherwise specified in this Section 12.16.290, all notices or other documentation that a state franchise holder is required to provide to the City under this Section or the California Public Utilities Code shall be provided to both the City Manager and the City staff person in charge of cable and telecommunications, or their successors or designees. (Ord 08-02, 2008)

CHAPTER 12.20

LOCAL HIRING –CONTRACTORS PROVIDING PUBLIC WORKS AND PUBLIC IMPROVEMENTS

Section 12.20.010 Definitions.

Section 12.20.020 Finding of Local Need.

Section 12.20.030 Local Hiring Requirement.

Section 12.20.040 Record Keeping Requirements.

Section 12.20.050 Exemptions.

Section 12.20.060 Remedies.

12.20.010 Definitions. For the purpose of this Chapter, certain words and phrases shall mean:

A. “Qualified Individual” shall mean an individual enrolled in a certified state or federally-approved apprentice- ship program in an applicable trade or an individual employed in the classification of laborer or an individual who has already become a journey person in his or her applicable trade. A journey person shall demonstrate proof of five years experience in each applicable craft by declaring under penalty of perjury that his or her sworn statement of experience is complete and correct.

B. “Local Resident” shall mean persons who maintain a permanent residence for not less than one year immediately preceding the date of the award of contract to perform labor in

either Santa Cruz, Monterey, or San Benito counties. A worker who is a building trade apprentice whose local hiring hall has jurisdiction over the Monterey Bay Area is also deemed a resident of either Santa Cruz, Monterey or San Benito counties. (Ord. 99-05 §1, 1999)

Section 12.20.020 Finding of Local Need. The City of Sand City and surrounding communities have encountered considerable economic displacement due to the closure of Fort Ord. This economic displacement has resulted in higher than average unemployment rates in comparison to other coastal urban areas of California. Therefore, the City finds it necessary to encourage local employment as specified by this Chapter. (Ord. 99-05 §1, 1999)

Section 12.20.030 Local Hiring Requirement. Unless preempted by state or federal law or exempt under Section 12.20.050 of this Chapter, all formal bids as identified in Section 12.20.040 shall contain contractual provisions requiring the contractor to make good-faith efforts, with the assistance of the Employment Development Department and/or local recruitment sources to hire qualified local residents in sufficient numbers so that no less than eighty (80%) percent is comprised of qualified individuals. (Ord. 99-05 §1, 1999)

Section 12.20.040 Record Keeping Requirements. Records of compliance with this Chapter shall be maintained in the manner prescribed by this Section.

A. The contractor shall keep an accurate record on standardized forms showing the name, place of residence, trade classification, proof of journey person or apprenticeship status, hours employed, per diem wages and benefits of each person employed by the contractor, and the contractor's subcontractors, on the specific public works or public improvements, including full-time, part-time, permanent and temporary employees, and make such records available to the City upon request within five (5) business days.

B. Record of Compliance. The contractor shall keep, and provide to the City, on forms acceptable to the City, an accurate record documenting the good-faith effort of complying with the provisions of this Chapter. Said records shall include: a listing, by name and address of all local recruitment sources contacted by the contractor, the date of the local recruitment contact and the identity of the person contacted, the trade and classification and number of hire referrals requested, the number of local hires made as a result of the contact, and the identity and address of the person(s) hired pursuant to the contract.

C. Forms Submitted Under Penalty of Perjury. All forms required under this Chapter shall be attested as true as to the information set forth therein and shall be submitted under penalty of perjury.

D. Binding on Subcontractors. The good-faith effort local hiring provisions of this Chapter shall bind the contractor both with respect to persons hired directly by the

contractor and to all persons hired by the contractor's subcontractors. The contractors shall be responsible for assuring that all subcontractors document said compliance by submitting, and making available to the City, the forms required by Section 12.20.040(B). (Ord. 99-05 §1, 1999)

Section 12.20.050 Exemptions. This Chapter shall not apply in any of the following circumstances.

A. Where the City determines that because of a declared emergency which endangers the public health, welfare or safety of the public or material damage to public or private property, there is no time to apply the provisions of this Chapter.

B. Construction, remodeling or rehabilitation of any public building, structure or site improvement for which a bid package has been approved before the adoption of this Chapter.

C. Projects where federal or state law prohibit imposing a local hiring preference.

D. Any project constructed using City employees.

E. Any project constructed under the direction of a non-profit community organization in which volunteer labor constitutes more than fifty (50%) percent of labor. (Ord. 99-05 §1, 1999)

Section 12.20.060 Remedies. Should any contractor or subcontractor fail to meet the local hiring standard or to document the good-faith effort local hiring provisions of this Chapter, the City shall notify the contractor or subcontractor of said code violation and shall declare the contractor or subcontractor an irresponsible bidder for purposes of this Chapter. Furthermore, if the Council finds that the contractor or subcontractor has failed to meet the good-faith effort local hiring provisions of this Chapter, the Council may disqualify the contractor from bidding on any City contract for public works for a period of one (1) year from the date of the Council's disqualification action. A subsequent violation of this Chapter by a contractor may result in disqualification by the Council for a period of three (3) years from the date of the subsequent disqualification. (Ord. 99-05 §1 (1999)