

**TITLE XI: BUSINESS REGULATIONS**

Chapter

- 110. HAWKERS, PEDDLERS AND TRANSIENT MERCHANTS**
- 111. SOLICITORS**
- 112. YARD SALES**
- 113. CABLE TELEVISION**



## CHAPTER 110: HAWKERS, PEDDLERS AND TRANSIENT MERCHANTS

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#### ' 110.01 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**HAWKERS** and **PEDDLERS**. Those who go about from place to place selling or offering for sale goods, wares, merchandise of all kinds, traveling on foot or in vehicles and selling from house to house, or crying their wares from the street. The term shall also include those who sell by taking orders for goods from samples, lists or catalogues.

**TRANSIENT MERCHANT**. Any person, firm, association or corporation engaging temporarily in a retail sale of goods, wares or merchandise, or the carrying on of any business, and for the purpose of conducting the business occupies any lot, building,

room or structure of any kind.  
(Ord. 41, passed - -)

#### ' 110.02 LICENSES.

(A) No person, persons, company or corporation shall engage in carrying on or conducting any of the following trades, occupations or business within the limits of the city without first obtaining a license therefor from the City Clerk, who is hereby authorized to issue the same, for which license there shall be paid by the person or party to whom the license is issued the amount mentioned in this section.

(B) For the business or occupation of hawking, selling or peddling goods, wares or merchandise or refreshments on the streets, or from house to house, \$5 per day for the first six consecutive days and \$1 per day for each day thereafter, or \$25 for a month. There shall be an additional fee of \$1 per day for an extra helper assisting the licensee.

(C) For the business of hawking, selling or canvassing for any goods, wares, merchandise, books or other copy, by prospectus, sample or catalogue, \$3 per day for the first six days and \$1 per day thereafter, or \$25 per month. No half-day license shall be granted except by permission of the Council.

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(D) (1) For the business of selling goods, wares, merchandise or other chattels, or for the carrying on of any business upon the street, public places or in any building or upon any premises within the city by itinerant or transient traders or dealers, which shall be held to include all persons or parties who shall be engaged in selling goods, wares or merchandise or other chattels, or the carrying on of any business in the city, who are not on the tax rolls of the city, and shall include also all persons, firms or corporations who shall bring into the city any goods, wares or merchandise or other chattels for the purpose of carrying on a temporary business, and who offers the same for sale at retail to the public, and any person, persons, firm, association or corporation who commences a business after assessment rolls are completed and filed in each year, and who are not assessed on the tax roll for the then current year, the license fee to be paid shall not be less than \$5 or more than \$100 for any part of the fiscal year.

(2) Before any transient or itinerant merchant or any person engaged in carrying on any business as enumerated above, and who commences the business anytime after the assessment rolls are completed and filed, and so that it is impossible to place him or her on the tax roll for the city for the then current year, the license fee as above provided shall be paid, and it shall be the duty of the City Manager to inspect the place of business of that person or persons, association or corporation, and determine and fix the amount to be paid for the issuance of a license, and in so determining the same, the amount of the license shall not be less than \$5, nor more than \$100, and a written statement signed by the City Manager, determining the amount to be paid, and for what time, shall be filed in the office of the City Clerk, and the amount determined shall be paid before the business can be commenced.  
(Ord. 41, passed - -)

### ' 110.03 EXCEPTIONS.

This chapter shall not be constructed to prohibit the sale without license of fuel, food or feed for humans or beasts, provided that the fuel, food or feed is produced by the labor of the person selling, or offering for sale or by any member of his or her family, nor to any mechanic of this state who shall sell

or offer for sale any article of his or her own manufacture, not to any wholesale merchant, nor his or her agent in selling by sample to retail dealers, nor to veterans who carry a proper state license.  
(Ord. 41, passed - -)

### ' 110.04 COUNCIL DISCRETION.

(A) The Council may in its discretion, depending upon the nature and permanency of the business, remit the whole or any part of the license fee paid in pursuance thereof.

(B) In case the object for which the license is sought shall be a worthy one which may be properly encouraged, the President, the City Manager and the City Clerk may at their discretion grant a license therefor free of charge.  
(Ord. 41, passed - -)

### ' 110.05 APPLICATION.

The provisions of this chapter shall apply to all persons who are in actual charge of the stock of goods, wares, merchandise or chattels, or who make sale therefrom within the city.  
(Ord. 41, passed - -)

### ' 110.06 PARKING OF VEHICLES.

It shall be unlawful for hawker or peddler or transient merchant to park a cart, vehicle or automobile anywhere on the streets or sidewalks of this city while in the act of selling his or her wares or produce from a cart, vehicle or automobile except while in the act of peddling from house to house.  
(Ord. 41, passed - -) Penalty, see ' 110.99

### ' 110.99 PENALTY.

Every violation of or failure to comply with the provisions of this chapter shall be punished as a civil infraction.  
(Ord. 41, passed - -)



## CHAPTER 111: SOLICITORS

### Section

- 111.01 Preamble
- 111.02 Short title
- 111.03 Definitions
- 111.04 Registration
- 111.05 Notice regulating soliciting
- 111.06 Prohibitions
- 111.07 Exceptions

- 111.99 Penalty

#### ' 111.01 PREAMBLE.

This chapter provides for the licensing and regulation of solicitors, and permits solicitors to function within the bounds of the city so long as they are licensed hereunder, to prohibit solicitations in the case of violation hereof, and to provide penalties for the violations hereof, all recognition of the fact that soliciting is a valid public and private business, and the promotion of soliciting and the dissemination of public and private views should be encouraged so long as the solicitations and disseminations are not a substantial threat to the public health, safety and welfare, and further recognition of the fact that persons, under the guise of soliciting often go onto premises for the purpose of committing theft, or for other illegal purposes, and in addition that repeated soliciting, contrary to the wishes of the owner or occupant of the premises solicited, can be a public and private nuisance.

(Ord. 79, passed 9-9-1974)

#### ' 111.02 SHORT TITLE.

This chapter shall be known as the city ordinance to license and regulate solicitors, and may be referred to as the solicitor=s ordinance and shall hereinafter be referred to as Athis chapter.@  
(Ord. 79, passed 9-9-1974)

#### ' 111.03 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**REGISTERED SOLICITOR.** Any person who has obtained a valid certificate of registration as hereinafter provided, which certificate is in the possession of the solicitor and on his or her person while engaged in soliciting.

**RESIDENCE.** Every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

#### **SOLICITING.**

(1) Any one or more of the following activities:

(a) Seeking to obtain orders for the purchase of goods, wares, merchandise, food stuffs, services and the like of any kind, character or description whatever, for any kind of consideration whatever;

(b) Seeking to obtain prospective customers for application or purchase of insurance of any kind, type or character;

(c) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication;

(d) Seeking to obtain gifts or contributions of money, clothing or any other valuable things for the support or benefit of any charitable or non-profit association, organization, corporation or project; or

(e) Seeking to sell or vend ice cream, food stuffs, wares or other articles of whatever nature from any vehicle, on or off of any street, roadway, alley, highway or other passageway within this municipality, whether the vehicle is motorized or not.

(2) The above described activities shall not be deemed to be soliciting if the activity takes place in a permanent structure open for business purposes, and if the activity is a part of that business purpose. (Ord. 79, passed 9-9-1974)

**111.04 REGISTRATION.**

(A) Every person desiring to engage in soliciting as herein defined from persons or residences within this municipality shall, prior to engaging in the solicitation, make written application for and in fact obtain a certificate of registration as herein provided. This certificate shall be carried by the solicitor.

(B) Application for certificate of registration shall be made to the City Director of Police Services upon a form provided by the city. The applicant shall truthfully state in full the information requested on the application:

(1) Name and address of present place of residence and length of residence at that address; also business address other than present address;

(2) Address of place of residence during the past three years if other than present address;

(3) Age of applicant;

(4) Physical description of the applicant;

(5) Name and address of the person, corporation or association whom the applicant is employed by or represents, and the length of time of that employment or representation;

(6) Name and address of employer during the past three years, other than present employer;

(7) Description sufficient for identification of the subject matter of the soliciting in which the applicant will engage;

(8) Period of time for which the certificate is sought;

(9) The date or approximate date of the latest previous application for certificate of registration under this chapter, if any;

(10) Whether a certificate of registration issued to the applicant under this chapter ever been revoked;

(11) Whether the applicant ever been convicted of a violation of a felony under the laws of this state or any other state or federal law of the United States; and

(12) All statements made by the applicant under the application or in connection therewith shall be under oath and sworn to.

(C) The City Director of Police Services shall cause to be kept in his or her office an accurate record of every application received and acted upon together with all other information and data pertaining thereto and all certificates of registration issued under the provisions of this chapter. He or she shall also keep a record of the denial of any applications as are denied. Applications for certificates shall be numbered in consecutive order as filed, and every certificate issued, and any renewal thereof, shall be identified with a duplicate number of the application upon which it was issued.

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(D) No certificate of registration shall be issued to any person who has been convicted of the commission of a felony under the laws of the state or any other state or any federal law of the United States, within five years of the date of the application; nor shall any certificate of registration be issued to any person who has been convicted of a violation of any of the provisions of this chapter, nor to any person whose certificate of registration issued hereunder has previously been revoked as herein provided.

(E) Any certificate of registration issued hereunder shall be revoked by the Director of Police Services if the holder of the certificate is convicted of a violation of any of the provisions of this chapter, or if the holder of any certificate has made a false material statement in the application, or if the holder of any certificate otherwise becomes disqualified for the issuance of a certificate of registration in accordance with the terms of this chapter. Immediately upon the revocation, written notice thereof shall be given by the Director of Police Services to the holder of this certificate in person or by mail addressed to his or her or her residence address as set forth in the application. Immediately upon the giving of this notice, or the mailing therefor as aforesaid, the certificate of registration shall become null and void.

(F) The certificate of registration, when issued, shall be for a period of time applied for in accordance with the application as aforesaid or for 60 days, whichever period is the shorter, and the certificate shall state thereon the expiration date thereof.

(G) Upon the compliance of the terms hereof, any person bearing a certificate of registration shall be entitled to solicit, so long as the solicitations are otherwise in compliance with applicable local ordinances and state and federal law.  
(Ord. 79, passed 9-9-1974)

### **' 111.05 NOTICE REGULATING SOLICITING.**

(A) (1) Every person desiring to secure the

protection provided by these regulations pertaining to soliciting shall comply with the following directions.

(2) Any persons soliciting within the city shall abide by any instructions given any person so soliciting by the occupant of any residence within the city where the instructions are an invitation to the solicitor to come upon the premises, or a denial to the solicitor of access to the premises. These instructions may be oral or in writing, and if in writing the instructions shall be in the following form.

(a) A weather-proof card approximately three inches by four inches in size shall be exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant containing words as follows:

1. AOnly solicitors registered in the city invited;@ or
2. ANo solicitors invited.@

(b) The letters on these cards shall be at least one-third inch in height. For purpose of uniformity, the Director of Police Services may, on the direction of the City Council, provide these cards to the city residents requesting them at the cost thereof.

(B) Any card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the directions contained on the card, and any violation of these directions shall be deemed a trespass, punishable as a violation hereof.

(C) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peaceably depart from the premises when requested to do so by the occupant, and any refusal to do so shall be deemed a trespass, and a violation hereof.  
(Ord. 79, passed 9-9-1974)



**' 111.06 PROHIBITIONS.**

(A) It is hereby declared to be unlawful and shall constitute a nuisance for any person to engage in soliciting as defined hereunder unless that person is registered in accordance with the terms hereof.

(B) It is hereby declared to be unlawful, and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door or create any sound in any other manner calculated to attract the attention of the occupant of that residence, for the purpose of securing an audience with the occupant thereof, or engage in soliciting as herein defined, in defiance of the notice exhibited at the residence in accordance with the provision of this chapter as aforesaid.

(C) It is hereby declared to be unlawful and shall constitute a nuisance for any person whether registered under this chapter or not, to go upon any door or create any sound in any other manner calculated to attract the attention of the occupant of that residence, for the purpose of securing an audience with the occupant thereof, or engage in soliciting as herein defined, prior to 9:00 a.m. or after 9:00 p.m. of any day.

(Ord. 79, passed 9-9-1974) Penalty, see ' 111.99

**' 111.07 EXCEPTIONS.**

(A) The City Council may, by resolution, declare any non-profit charitable group to be exempt herefrom.

(B) No exception shall be for more than a 30-day period.

(Ord. 79, passed 9-9-1974)

**' 111.99 PENALTY.**

Any persons violating any of the provisions of this chapter shall, upon conviction thereof be subject to a fine of not more than \$500 for any offense, and/or imprisonment in the county jail for 90 days, or both a fine and imprisonment.

(Ord. 79, passed 9-9-1974)

## CHAPTER 112: YARD SALES

### Section

- 112.01 Purpose and intent
- 112.02 Definitions
- 112.03 Exemptions
- 112.04 Conditions
- 112.05 Enforcement
  
- 112.99 Penalty

**OCCASIONAL SALE.** Includes garage, basement sale and rummage sale and any similar terms such as attic sale, lawn sale and the like, and shall mean sale of tangible personal property, whether used, secondhand, damaged or discarded, not otherwise regulated in this code, advertised by any means whereby the public at large is or can be aware of the sale.

**PERSON.** Individuals, groups, organizations, partnerships, voluntary associations and corporations. (Ord. 126, passed 7-28-1997)

#### ' 112.01 PURPOSE AND INTENT.

The City Council finds that repeated sales of various types of personal property made from residential premises, wherein newspaper advertisements, signs or other means of notification invite the general public to shop at these residential premises, where the property is displayed for sale in the garage, an outbuilding, in the yard area, in the dwelling, or all or a combination of these locations, have the potential of becoming a nuisance to the community. The Council finds that locations where successive sales occur create vehicular traffic problems and detract from the tranquility and privacy of neighborhoods. The Council finds that two sales periods of not more than four days each from any single residential premises do not have an adverse effect on the community. The Council further finds that this chapter offers the minimum regulation necessary to protect the health, safety and welfare of this community in this regard. (Ord. 126, passed 7-28-1997)

#### ' 112.02 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

#### ' 112.04 CONDITIONS.

#### ' 112.03 EXEMPTIONS.

This chapter shall not apply:

(A) To occasional sales by persons selling five or less of household or personal items belonging to them or to any sale regulated under any other provisions of ordinances of the city;

(B) At a sale specifically authorized by statute or judicial order and conducted strictly in conformity with that statute or order or conducted under judicial supervision, such as an estate sale;

(C) For the personal property exposed for sale, offered for sale or displayed upon land which is exempt from taxation under Public Act 203 of 1893, as amended, and the proceeds of the sale are applied to a charitable, religious or governmental purpose; and

(D) For auctions by lawfully qualified auctioneers. (Ord. 126, passed 7-28-1997)

An occasional sale shall be authorized only in the following manner and under the conditions stated.

(A) Two occasional sales may be conducted from any lot occupied for residential purposes within a calendar year with no sale to last more than four consecutive days in duration.

(B) No sale shall begin prior to 8:00 a.m. or extend beyond 7:00 p.m.

(C) During the day and hours of the sale only, a person may place not more than three signs, not in excess of four square feet each, upon private property only, advertising the location, dates and time of the garage sale.

(D) The existence of signs in violation of the provisions of division (C) above shall be prima facie evidence of a violation of this chapter by the occupants of the premises whose location is indicated by those signs.

(E) If a motor vehicle is being sold, only those vehicles owned by the resident may be offered for sale, that not more than one motor vehicle shall be advertised at a time as being for sale, or be parked and be advertised as being for sale, on a residential lot. In addition, not more than two motor vehicles shall be advertised as being for sale and be parked on a residentially used or zoned lot during a calendar year, and no vehicle shall be parked on a residential lot with a for sale sign on it for more than 30 days in a calendar year.

(Ord. 126, passed 7-28-1997) Penalty, see ' 112.99

#### **' 112.05 ENFORCEMENT.**

(A) The City Manager or his or her designate shall enforce this chapter by confiscating any signs erected in violation of ' 112.04(C), ordering the cessation of any sale being conducted in violation of this chapter or directing any other necessary corrective action.

(B) The City Manager or his or her designate are authorized to issue an appearance ticket for violation of this chapter.  
(Ord. 126, passed 7-28-1997)

#### **' 112.99 PENALTY.**

Every violation of or failure to comply with the provisions of this chapter shall be punished as a civil infraction.

## CHAPTER 113: CABLE TELEVISION

Section

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### **GENERAL PROVISIONS**

#### **' 113.001 SHORT TITLE.**

This chapter shall be known and may be cited as the City of the Village of Clarkston cable television ordinance and shall hereinafter be referred to as Athis chapter.@

(Ord. 96, passed 2-17-1983)

#### **' 113.002 INTENT AND PURPOSE.**

The City Council has recognized in the consideration and development of this chapter that in view of the great impact of construction and operation of cable communications systems upon persons and property within the city, and the extent of technological and financial sophistication required in order to make necessary evaluations and decisions with respect to these systems which shall affect lives and property of persons in the city, for an extensive period in the future, and based upon the conferral of authority to the city in the State Constitution and state law providing that local municipalities have been explicitly authorized to act for the state in the licensing and franchising of local cable television systems, it has been determined to be necessary for, and is the intent and purpose of, the City Council to regulate cable television within the city and require the submission and approval of an application of persons desiring to conduct and/or operate cable television systems within the city.

(Ord. 96, passed 2-17-1983)

#### **' 113.003 DEFINITIONS.**

(A) *Definitions.* For the purposes of this chapter as well as the franchise agreement entered into, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AA@ TRUNK CABLE.** A distribution system which connects the headend to feeder cables.

**ACCESS CHANNEL.** Any channel dedicated for use by a governmental institution, educational institution, the public or for license.

**ACCESS CHANNEL, EDUCATIONAL.** Any channel or portion of a channel in which educational institutions are the only designated programmers.

**ACCESS CHANNEL, GOVERNMENT.**

Any channel or portion of a channel to which governmental agencies are the only designated programmers.

**ACCESS CHANNEL, LICENSED.**

Any channel or portion of a channel available for programming for a fee or charge by persons other than the franchisee.

**ACCESS CHANNEL, PUBLIC.**

Any channel or portion of a channel utilized for programming on a nonprofit basis that is available to the general public.

**ACTIVATED** or **ABILITY.** A function, service, channel or piece of equipment that is in working order and may be operated or received by a franchisee, subscriber, programmer, operator or user.

**AB@ TRUNK CABLE** or **INSTITUTIONAL B NETWORK.** A downstream and an upstream distribution system which supplies cable communications signals downstream and upstream to and from the institutional subscriber.

**BASIC SERVICE.** All subscriber services provided by the franchisee, including the delivery of cablecast signals, covered by a regular monthly charge paid by subscribers, excluding optional services for which separate charge is made. The service may be offered at various levels, such as mini-basic and full basic.

**BROADCAST.** The over the air transmissions of an electromagnetic audio or video signal.

**BUILDING DEPARTMENT.** The Building Department of the city, or designee which may be, without limitation, the City Engineer or other consultant.

**CABLE COMMUNICATIONS SERVICE.**

The delivery by the franchisee to television receivers, or any other suitable type of audio-video communication receivers of all subscribers in the city of all broadcast signals, carried over the cable communications system, local origination channels, educational access channels, public access channels, government access channels, licensed access channels, pay television channels and all other services specified in the franchise agreement.

**CABLE COMMUNICATIONS SYSTEM** or **CABLE SYSTEM.** A system of plant and equipment not exclusively regulated by the FCC designed and constructed for the purpose of producing, receiving, amplifying, storing, processing and/or distributing audio, visual, digital or other forms of electronic or electrical signals, whether owned, rented, leased or leased-purchased by the franchisee, which may include some or all of the following: antennas, cables, amplifiers, towers, microwave links, cablecasting studios, real property, records, conductors, home terminals, converters, equipment or facilities.

**CABLECAST.** Transmission of programming and signals over a cable communications system.

**CABLECASTING BOARD.** The agency of the city established under this chapter.

**CAPABILITY.** A function, service, channel or piece of equipment that has the potential to be operated or received at some time in the future by a subscriber, programmer, franchisee, user or operator.

**CHANNEL.** A band of frequencies in the electromagnetic spectrum.

**CHIEF OF FIRE.** The City President.

**CHIEF OF POLICE.** The City President.

**CITY.** The City of the Village of Clarkston, Michigan.

**CLERK.** The Clerk of the city.

**COAXIAL CABLE.** Wire used to transmit

cable communications signals through the cable system.

**COMPLETION OF CONSTRUCTION.**

The date upon which all services of the cable communications system are available to all residents within the city, including all equipment necessary to fully activate the system, including, without limitation, the provision of programming.

**CONVERTER.** An electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of the subscriber, and by an appropriate channel selector which also permits a subscriber to view all signals including the basic service delivered at designated converter dial locations.

**DOWNSTREAM.** Cable communications signals that travel from the headend equipment or transmitter location to the individual subscribers.

**EDUCATIONAL INSTITUTIONS.** Public schools in the Clarkston Community School District, Oakland Schools and/or those colleges and universities within the county.

**EFFECTIVE DATE OF THE FRANCHISE.** The date on which all parties have signed the franchise agreement.

**FCC.** The Federal Communications Commission.

**FEEDER LINE.** The line or cable linking a standard service drop to a main cable.

**FRANCHISE.** The authorization by franchise agreement and licensure granted by the city to construct, operate and maintain a cable communications system in the city pursuant to this chapter.

**FRANCHISEE.** A person granted a franchise and a license under this chapter.

**GROSS REVENUES.** The following definition shall apply except as otherwise defined in the **FRANCHISE AGREEMENT**. All revenue derived directly or indirectly by the franchisee, its affiliates, subsidiaries, parent companies and/or any person in which the franchisee has a financial interest, from or in connection with the operation of a cable communications franchise authorized by the city. **GROSS REVENUES** shall include, but not be limited to, basic subscriber monthly fees, pay television fees, installment and reconnection fees, licensed channel access fees, converter rental fees and advertising revenues. **GROSS REVENUES** shall not include any taxes or services furnished by the franchisee and imposed directly upon any subscriber or user by the state, the city or other governmental unit and collected by the franchisee on behalf of the governmental unit, or deposits for converters and deposits for other items similar to converters.

**HEADEND.** The electronic control center of the cable communications system where incoming cable communications signals are amplified, filtered and converted before being delivered to the subscriber home.

**INITIAL GROUNDBREAKING.** The first step in construction, either stringing of cable or installation of a pole.

**INSTITUTIONAL SUBSCRIBER.** Any place of business, public agency or institution, educational institution, community service agency, school or nonprofit corporation receiving institutional services on the institutional subscriber network.

**INSTITUTIONAL SUBSCRIBER NETWORK.** A cable communications network designed principally for the provision of non-entertainment interactive services to businesses, schools, public agencies or other nonprofit agencies for use in connection with the on-going operations of those institutions.

**INTERCONNECTION.** The linking of separate cable communications systems by microwave, coaxial cable or other means.

**LOCAL ORIGINATION CHANNEL.** Any channel or portion of a channel on which the franchisee is either the only designated programmer or has delegated programming to a third party, and which is utilized to provide television programs to subscribers.

**MICROWAVE.** A high-frequency transmission facility used to relay messages, including cable communications signals from point to point.

**MONITORING.** Observing a communications signal or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means. **MONITORING** shall not include a systematic, nonindividually addressed sweep of the system for the purpose of verifying system integrity, controlling return pass transmissions or billing for pay services.

**OPERATOR.** The franchisee.

**PARENT CORPORATION.** Any corporation of which the franchisee is a subsidiary.

**PAY CHANNEL** or **PAY TELEVISION.** A channel on which programming is delivered to subscribers for a special fee or charge to subscribers over and above the regular charge for basic subscriber services, on a per program, per channel or other subscription basis.

**PERSON.** Any individual, firm, partnership, association, corporation, company or organization of any kind or combination of these.

**POLE AGREEMENTS.** The authorization from utility companies to the franchisee for use of space in their easements, equipment, poles or other facilities for installation of equipment related to the cable communications system.

**PROGRAMMER.** Any person who produces or otherwise provides program material or information for transmission by means of the cable communications system.

**PROPOSAL.** An application filed with the Clerk in response to the city's request for proposal, or

any additions or amendments thereto.

**RELATED PERSONS.** Any agent or employee of an applicant or its parent corporation; any person to whom an applicant or its parent corporation has paid or has promised to pay any money or compensation of any kind whatsoever for that person's services in promoting the applicant's proposal for the city cable communications franchise before the city, its employees, agents, servants and/or elected or appointed officials or any community service agencies or newspaper reporters in the Detroit Standard Metropolitan Statistical Area; officers and directors of any applicant or its parent corporation; persons owning 1% or more of any class of outstanding stock or securities convertible into stock of an applicant or its parent corporation; partners of an applicant; and the spouse, parent, child or sibling of any person described in the foregoing definitions.

**SCHOOL DISTRICT.** The Clarkston Community Schools of Oakland County, Michigan.

**STANDARD SERVICE DROP.** The line or cable connecting the feeder line to individual subscribers and other recipients of cable services.

**STRAND MAPPING.** The designation on maps of where feeder lines and trunk cables will be placed above or below ground.

**STREET.** The surface of and the space above and below a public street, road, highway, freeway, path, public place, sidewalk, alley, boulevard, parkway, drive or other easement or public way.

**SUBSCRIBER.** A paying recipient of services which are delivered over the cable communications system.

**TAMPER** or **TAPPING.** Observing a communication signal which is transmitted over the cable system when the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means.

**TOWNSHIP.** The Township of Independence, County of Oakland, State of Michigan.



**UPSTREAM.** Cable communications signals traveling from subscribers to the headend.

**USER.** A person utilizing a cable communications system channel for purposes of production and transmission of materials to subscribers.

(B) *Terms not expressly defined.* Terms not expressly defined above shall have the meanings customarily assigned to them, unless otherwise expressly defined in the franchise agreement.

(C) *Grammatical usage.* Words used in the present tense includes the future tense. The singular number includes the plural, and the plural the singular. The word "shall" connotes the mandatory, and the word "may" connotes the permissible.  
(Ord. 96, passed 2-17-1983)

### **FRANCHISE REQUIREMENT**

#### **' 113.015 FRANCHISE REQUIREMENT.**

No person shall occupy or use the streets, roads, highways, sidewalks or other public way within the city for the purpose of opening a cable communications system nor operate a system, unless and until an application for a franchise has been submitted and approved by the City Council in accordance with this chapter.  
(Ord. 96, passed 2-17-1983) Penalty, see ' 113.999

#### **' 113.016 INITIAL FRANCHISE.**

Any franchise granted pursuant to this chapter shall comply with all terms and provisions of this chapter except ' 113.030 through 113.037.  
(Ord. 96, passed 2-17-1983)

### **SELECTION OF FRANCHISEE**

#### **' 113.030 REQUEST FOR PROPOSAL.**

In selecting a franchisee pursuant to this chapter, the City Council shall prepare a request for proposal to seek bids for a cable communications system to be established under franchise by the city.  
(Ord. 96, passed 2-17-1983)

#### **' 113.031 APPLICATION PROCESS.**

(A) The city shall only consider those applications for a franchise that may have been submitted on the application form approved by the city. Applications shall only be considered if submitted to the City Clerk's office prior to the deadline authorized by the City Council and if accompanied by the application fee required hereunder.

(B) The requests for proposal shall be sent to the prospective applicants by the City Council.

(C) (1) Notice soliciting the submission of applications shall be sent to all persons who have previously indicated in writing an interest in obtaining a franchise and shall be advertised in a local newspaper of general circulation and at least two national trade magazines.

(2) Applications shall be opened no earlier than 90 days after the initial publication date of the newspaper notice.

(D) Distortion, falsehoods or misinformation by an applicant may be grounds for elimination of the proposal if the city should choose.

(E) The request for proposal shall clearly state that the City Council reserves the right to reject any and all bids and/or choose the bid most favorable to the city. The city shall have the right to negotiate with any person that has submitted an application within the deadline.

(F) The City Council shall adopt a procedure deemed appropriate to and announced by the City Council for the selection of franchisees in connection with the respective bid process and, after a public hearing, select the franchisee.  
(Ord. 96, passed 2-17-1983)

' **113.032 APPLICATION FEES.**

(A) Applications shall only be considered if accompanied by a certified check in the amount of \$2,500, which fee shall not be refundable.

(B) In the event the \$2,500 fee proves inadequate, the City Council may require the submission of additional fees.

(C) Revenues from application fees shall be used to offset the cost of consulting services, if any, and administration of the franchise selection process. In the event the costs of consulting services, if any, and other administrative expenses shall exceed the total revenues from the application fees, the person to whom the cable communications franchise is awarded shall pay the excess costs and expenses.  
(Ord. 96, passed 2-17-1983)

' **113.033 CRITERIA FOR SELECTION OF FRANCHISEE.**

Applicants will be evaluated according to criteria which shall include, without limitation, the following:

(A) *Service priorities.* System capability in terms of no cost or low cost telecasting production facilities and service available to municipal and educational institutions, community groups and individuals; system provisions for two-way communications; and the maximum total channels provided by the system;

(B) *Installation plan.* An installation plan that would provide the flexibility needed to adjust to new developments, maintenance practices and services that would be available to the subscriber and the community upon initial activation and throughout the duration of the franchise;

(C) *Rate schedule.* Installation and subscriber rate schedule;

(D) *Financial soundness.*

(1) The evidence which the applicant has provided regarding the following:

(a) Its financial ability to assure completion of initial construction as called for in the application and franchise agreement within a minimum period following the effective date of the franchise;

(b) Its ability to sustain and enhance a fiscally sound system throughout the duration of the franchise; and

(c) Its ability to obtain necessary performance bonding should it be awarded the franchise.

(2) Evidence of current financial capability shall include but not be limited to, the most recent three years audited or reviewed financial statements of the applicant and of any parent entities. To permit the evaluation required by this division (D), a copy of the most recent published annual report and 10-K report shall be submitted if the applicant is, or is a subsidiary of a publicly-held company.

(E) *Demonstrated experience in operating a cable communications system under local franchise.* Demonstrated experience in operating a cable communications system under local franchise;

(F) *Educational programming.* The extent to which the system presents a program whereby the local school district and other educational institutions may benefit, utilize and develop educational programs for students and subscribers. An activated two-way system and a plan to interconnect public schools within the school district through a cable communications network will be given particular weight;

(G) *Technical standards.* The extent and quality of technical standards and specifications proposed;

(H) *Pay cable service.* The extent to which the system offers alternate levels of pay cable services;

(I) *Interconnection plan.* The extent to which the system includes a firm timetable for active interconnection with other political subdivisions in the Detroit Standard Metropolitan Statistical Area;

(J) *Innovative technology.* The extent to which the system offers technology sufficiently flexible and progressive to adapt to new services. Particular emphasis will be placed upon applications that submit a plan for implementing at least the following services: home security, energy management, meter reading, home computer for entertainment, educational, business or personal purposes, two-way computer data transmission and traffic signalization; and

(K) *System availability.* Extent of system availability throughout the municipality.  
(Ord. 96, passed 2-17-1983)

**113.034 PREPAYMENT OF FRANCHISE FEE.**

In order to concentrate attention on competition in features offered by the cable communications system, no consideration shall be given to offers of advanced payment.  
(Ord. 96, passed 2-17-1983)

**113.035 DISCLOSURE REQUIREMENTS.**

(A) Each applicant for a franchise shall file with its application, a sworn statement setting forth in detail as shall be satisfactory to the city the identification and description of all relationships which the applicants (or related parties, as that term is defined in this chapter) may then have, or may have had during the year prior to the date of filing of the application, directly or indirectly, with the city, its employees, agents, servants and/or elected or appointed officials, including, but not limited to the following:

(1) Written or oral arrangements or undertakings of any nature whatsoever, including as vendor, vendee or the provider of services, credit or counsel or otherwise;

(2) All lending relationships (whether as borrower or lender);

(3) All investing relationships (as stockholder, partner, joint venturer, co-adventurer or otherwise, or as the entity, vehicle or recipient of the investment);

(4) All relationships entailing the granting or holding or security in any property, tangible or intangible, real or personal;

(5) All relationships in which any consideration shall have been required, offered, received, paid or extended, whether in cash, in kind or in services and whether contemporaneous or deferred in whole or in part; and

(6) All relationships involving the assertion of any claim of any nature whatsoever, including administrative proceedings of litigation.

(B) Each applicant shall affirmatively undertake to advise the city during the pendency of the application, and prior to its rejection or acceptance, of any additional relationships which shall come into being, and of the termination or other material change in any relationships as shall have been required to be disclosed prior thereto. Each franchisee shall also affirmatively undertake to so advise the city on a continuing basis, and shall recertify the existence or nonexistence of all relationships (other than as a franchisee pursuant to this chapter) on each annual anniversary of the franchise agreement under which the franchisee shall derive rights pursuant to this chapter.

(Ord. 96, passed 2-17-1983)

' **113.036 AWARD OF FRANCHISE.**

The City Council shall not award a franchise to an applicant until a public hearing on the application and proposal has been conducted, notice of which hearing shall be published in a local newspaper of general circulation at least 20 days before the date of the hearing.

(Ord. 96, passed 2-17-1983)

' **113.037 FRANCHISE AGREEMENT.**

The applicant awarded a franchise by ordinance shall execute a franchise agreement, agreeing to the terms and provisions of this chapter and the request for proposal.

(Ord. 96, passed 2-17-1983)

***FRANCHISE TERRITORY; TIMETABLE***

' **113.050 SERVICE AREA.**

The franchise territory shall include the entire territorial limits of the city and shall include any future area that shall become part of the city during the term of the franchise, by annexation, consolidation, merger, realignment, subdivision development or other means. Any portion of the city which, during the term of the franchise, is annexed from the city or which by consolidation, merger, realignment or other means, shall cease to be within the territorial limits of the city shall cease to be included in the franchise territory. In that event, the city shall, if requested by the franchisee, agree to negotiate with respect to any negative impact resulting from the action taking into consideration all relevant interests, including those of the franchisee.

(Ord. 96, passed 2-17-1983)

' **113.067 CONDITIONS FOR INITIAL FRANCHISE VALIDATION.**

' **113.051 MINIMUM COVERAGE.**

Cable communication service must be available to all potential subscribers within the city within the period set forth in the franchise agreement.

(Ord. 96, passed 2-17-1983)

***NATURE OF FRANCHISE***

' **113.065 NONEXCLUSIVITY OF FRANCHISE.**

Franchises shall be nonexclusive awards and authorizations to construct, erect, operate and maintain in, upon, along, above, over and under the streets, alleys, public rights-of-way and public places, now laid out or dedicated and all extensions thereof, and additions thereto, subject to the franchisee obtaining construction and placement authorization from entities having jurisdiction in the franchise territory, poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the operation and maintenance of a cable communications system, and to furnish and to sell service from that system to the inhabitants of the entire franchise territory pursuant to the terms of this chapter and the franchise agreement entered into between the city and the franchisee. The City Council specifically reserves the right to grant franchises to any person at any time; provided, however, that no franchise shall be granted on terms more favorable to the franchisee, considered as a whole, and determined in the discretion of the City Council, in relation to then existing franchises.

(Ord. 96, passed 2-17-1983)

' **113.066 LENGTH OF FRANCHISE.**

The term of a franchise shall be not more than 15 years from the effective date of the franchise, as specifically set forth in the franchise agreement. The franchise may be terminated sooner pursuant to the provisions of this chapter.

(Ord. 96, passed 2-17-1983)

(A) The continued validity and effectiveness of a

franchise shall be conditioned upon franchisee meeting a timetable for construction, installation and commencement of operation. The franchise agreement shall specify the timetable in detail.

(B) Failure on the part of the franchisee to commence and diligently pursue the construction requirements of the franchise agreement shall be grounds for revocation of the franchise and forfeiture of the franchisee's Security Fund and performance bond in accordance with ' 113.070; provided, however, that the City Council, upon formal application of the franchisee, in its discretion may extend the time for the commencement and completion of construction and installation for additional periods in the event the franchisee, acting in good faith, experiences delays by reason of circumstances beyond its control. The renovation provisions of this section shall not apply if the acts or omissions giving rise to the same were caused by any of the following: act of God; riot; emergency declared by competent government authority; a general strike of the employees of the franchisee or other cause beyond the franchisee's control and which the franchisee could not reasonably have foreseen.  
(Ord. 96, passed 2-17-1983)

#### **' 113.068 FRANCHISE RENEWAL.**

(A) The franchise may be renewed by the City Council upon application by the franchisee pursuant to the procedures established in this section and in accordance with the then existing rules of the FCC, the state and other applicable laws and ordinances.

(B) At least 12 months prior to the expiration of the franchise, the franchisee shall inform the City Council in writing if it intends to seek renewal of the franchise.

(C) After giving public notice, the City Council shall proceed to determine whether the franchisee has satisfactorily performed all obligations under the franchise. To determine satisfactory performance, the City Council shall also consider among other things, technical developments and performance of the system, programming, other services offered, costs of services and any other particular requirements set out in this chapter. The City Council shall also consider the records of the performance evaluation sessions required hereinafter as well as the franchisee's annual reports made to the city as required by this chapter. The City Council may also consider or compare the franchisee's performance with the performance of other systems of comparable configuration nationally in arriving at its decision. The City Council shall also consider comments of subscribers to, and users of, the system submitted during the process of consideration.

(D) Within four months of receiving notice from the franchisee of its desire to renew the franchise, the City Council, after a public hearing, shall arrive at a decision on the eligibility of the franchisee for renewal. Notice of the public hearing shall be given as hereinafter provided. Upon the finding by the City Council that the franchisee's performance is satisfactory, and that superior service for subscribers may not be obtained from other persons, a renewal with any amendments may be granted for a period of not more than 15 years.

(E) Upon finding that the franchisee's performance is not satisfactory or that superior service for subscribers may be obtained from other persons, the City Council may begin to seek other applicants for the franchise and a new franchise may be awarded utilizing the procedures set forth in this chapter.  
(Ord. 96, passed 2-17-1983)

#### **' 113.069 FRANCHISE TERMINATION.**

Any franchise granted by the city pursuant to this chapter may be terminated at the discretion of the city for any material violation by the franchisee of the provisions of this chapter or the terms of the franchise agreement, pursuant to the procedures set forth in this chapter.

(Ord. 96, passed 2-17-1983)

**' 113.070 TERMINATION PROCEDURE.**

(A) (1) Upon resolution of the City Council, or upon receipt by the City Council of a petition seeking termination of the franchise for cause, as determined by the City Council in its discretion and signed by 5% of cable communications system subscriber households in the township and city but in no event less than 240 subscriber households, or upon receipt by the City Council of a written report of the Cablecasting Board recommending investigation into the possibility of franchise termination, the City Council shall by resolution, either:

(a) Direct the Cablecasting Board to:

1. Investigate all areas of concern in the operation of the franchise;

2. Hold public hearings to receive the viewpoint of the franchisee and the general public;

3. Report to the City Council within a specified period of time regarding the condition of the franchise; and

4. Set forth the recommendations of the Cablecasting Board on termination of the franchise.

(b) Mail to the franchisee at least 30 days in advance, a notice of the time, place and date of a public hearing to be conducted by the City Council and a specification of the grounds alleged for termination.

(2) Public notice of the hearing shall be given as hereinafter provided. A copy of the City Council resolution shall be sent to the franchisee after its passage

(B) If so directed by the City Council, the Cablecasting Board shall investigate and collect all relevant data regarding the operation of the franchise. The Cablecasting Board shall, if so directed by the City Council, hold a public hearing to hear the comments and concerns of the general public and to hear, the position of the franchisee. Written notice of the time, place and date of the hearing and a specification of the grounds alleged for termination shall be mailed to the franchisee at least 30 days prior to the scheduled hearing date. Public notice of the hearing shall be given as hereinafter provided.

(C) Upon completion of its investigation, the Cablecasting Board shall prepare a written report outlining the scope of its investigation and the information received, and setting forth its recommendations regarding termination of the franchise. A copy of the report shall be mailed to the franchisee. The report shall be forwarded to the City Council which shall either review the record of the public hearing conducted by the Cablecasting Board, or schedule a public hearing to hear and determine the issue of franchise termination. Written notice of the public hearing shall be mailed to the franchisee at least 30 days prior to the scheduled hearing date. Public notice of the hearing shall be given as hereinafter provided.

(D) (1) The City Council shall consider the views of interested persons, including the franchisee, shall consider the issue and shall determine in its discretion one of the following courses of action:

(a) To continue the franchise without imposition of sanctions;

(b) To set a date certain for termination if the franchisee fails to cure its default within a reasonable period of time as established by the City Council; or

(c) To terminate the franchise without an opportunity to cure upon finding that affording an opportunity to cure would not be equitable under all the circumstances.

(2) In all events, the City Council shall issue a written report within 30 days after making a determination of an appropriate course of action. This report shall specify the grounds for determining a failure of compliance with this chapter or the franchise agreement, the actions which can be taken to cure the franchisee's default, if any, the date by which the cure can be effectuated and the sanction to be imposed (including the possibility of termination), if a cure is not effectuated by the date or the grounds for determining that the opportunity to cure would not be equitable. In the report, the City Council may in its discretion establish a supervisory board or person to oversee the franchisee's curative actions. A copy of the City Council report shall be mailed or otherwise delivered to the franchisee.

(D) Notwithstanding anything to the contrary set forth herein, in no event may action be taken by the City Council unless and until the franchisee is afforded notice of its alleged default and a public hearing at which to respond. Further, no sanction may be taken if the acts or omissions giving rise to franchisee's alleged default were caused by any of the following: act of God; riot; emergency declared by competent government authority; a general strike of the employees of the franchisee or other causes beyond the franchisee's control and which franchisee could not reasonably have foreseen.  
(Ord. 96, passed 2-17-1983)

**' 113.071 REMOVAL OF SYSTEM.**

The franchise agreement shall provide for the removal of the system upon termination by expiration or otherwise, and for the bonded security for the accomplishment of that removal.  
(Ord. 96, passed 2-17-1983)

**' 113.072 RIGHT TO PURCHASE.**

(A) Upon expiration or any other termination of the franchise, or upon notice of intent to sell all or a portion of the franchise and/or the cable system, the city at its option shall have the right to purchase the

cable communications system. The franchise agreement shall provide for the manner in which the city may exercise the option and the manner in which any price is to be paid.

(B) The value of the franchise shall be determined according to provisions set forth in the franchise agreement.  
(Ord. 96, passed 2-17-1983)

**' 113.073 TRANSFER OF OWNERSHIP OR CONTROL.**

(A) The transfer of interests of the franchisee shall be restricted in the franchise agreement so as to require prior approval of the city so as to ensure the presence of responsible franchisees, the compliance with the terms and provisions of this chapter and the franchise agreement, and the provision of continuous subscriber services.

(B) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to the franchise agreement.  
(Ord. 96, passed 2-17-1983)

***RESOLUTION OF DISPUTES***

**' 113.085 ARBITRATION.**

Subject to the following section, all unresolved disputes arising under the cable ordinance and franchise agreement shall be resolved by submitting the dispute to binding arbitration pursuant to Chapter 50 of the Revised Judicature Act for the state, with each of the parties appointing one arbitrator and the two arbitrators thus appointed appointing a third arbitrator.  
(Ord. 96, passed 2-17-1983)

**' 113.086 CIRCUIT COURT.**

In the event a remedy which is reasonably necessary to accord complete relief is not available by the way of arbitration, the party seeking the relief may institute an appropriate action in the County Circuit Court, e.g., seeking injunctive relief. In this event, all disputes arising out of the common nucleus of fact shall be litigated in the same Circuit Court action. (Ord. 96, passed 2-17-1983)

**' 113.087 SPECIFIC EXCLUSIONS FROM ARBITRATION.**

Notwithstanding the provisions above, the obligation to submit a dispute to arbitration shall not apply, and a party may seek relief in the County Circuit Court with respect to the issue of franchise revocation and/or appeals from orders entered by the Cablecasting Board, following appeal to the City Council. (Ord. 96, passed 2-17-1983)

***SYSTEM DESIGN AND SPECIFICATIONS***

**' 113.100 FRANCHISE AGREEMENT PROVISIONS.**

(A) The franchise agreement shall set forth the system design and specifications required to be provided by franchisee as part of the franchise. Provision in the franchise agreement shall be made with respect to the following:

(1) Channel capacity, providing for a capability of carrying at least 50 channels;

(2) Lock-out device to prevent viewing of a specific pay television channel or channels, which devices must be provided to each subscriber upon request without charge;

(3) Services to educational institutions throughout the term of the franchise;

(4) Government access channels;

(5) Public access channels;

(6) Licensed access channels;

(7) Additional services;

(8) Interconnection;

(9) Standby power; and

(10) Underground and above ground installations.

(B) When and where practical, the poles used by the franchisee=s distribution system shall be those erected and maintained by utility companies operating with the city, provided mutually satisfactory agreements can be reached.

(C) In those areas of the city where some or all transmission or distribution facilities of utility companies are overhead, the franchisee may likewise construct, operate and maintain all of its transmission and distribution facilities overhead. In accordance with the then current edition of the National Electrical Safety Code, and the *Telephone System Practices Governing Joint Attachment Practices*, and their successor documents, as well as in conformance with all applicable laws, statutes, ordinances, regulations and/or codes of the federal, state or municipal governments, and subject to obtaining necessary and appropriate approvals for same. If all utilities are underground, the franchisee will construct its facilities underground. If and when necessary, amplifiers and/or transformers in the franchisee=s transmission and distribution lines may be in appropriate housings on the surface of the ground with respect to underground facilities.



(D) All transmission and distribution structures, lines, poles, conduits, fixtures and equipment erected by the franchisee in the city shall be located so as not to endanger life or property or interfere with the normal use of streets, alleys or other public ways and places, so as to cause minimum interference with the rights or reasonable convenience of the general public and adjoining property owners and so as not to interfere with existing traffic control, street lighting, gas, electric, telephone, water hydrant or other public utility installations and so as to comply with the then current edition of the National Electrical Safety Code, and the *Telephone System Practices Governing Joint Attachment Practices*, and their successor documents, as well as in conformance with all applicable laws, statutes, ordinances, regulations and/or codes of the federal, state and municipal governments. In the event the Township Building Director determines any of the above mentioned equipment erected by the franchisee violates the provisions outlined in this division (D), he or she may require the franchisee to alter or remove any or all of the offending equipment.

(E) Prior to the commencement of construction, the franchisee shall file with the Director of the Township Department of Building and Planning all maps of the locations and character of all facilities to be constructed, including underground facilities. The franchisee shall maintain current and accurate maps, plats and permanent records for public inspection and shall file any changes or modifications thereof as soon and as often as made by franchisee.

(F) In the case of any disturbance of pavement, sidewalks, driveways, lawn or other surfacing, the franchisee shall, at its expense, promptly replace and restore all surfacing to its original condition.

(G) The city, or entity having jurisdiction, may, upon reasonable notice, require the franchisee, at its expense, to protect, support, temporarily disconnect, relocate or remove the franchisee=s equipment from a particular area of the streets within the city if reasonably necessary by reason of traffic conditions, public safety, street construction or vacation, change or establishment of communication lines, tracks, traffic signals, street lighting or by reason of other conditions. Reasonable notice for this provision of the chapter shall be construed to mean at least ten days, except in the case of emergencies.

(H) The city shall have the right to inspect all construction and installation work to ensure compliance with all applicable laws, ordinances and codes. The franchisee shall provide the City Building Department with a complete list of installations made on a weekly basis. In the event that the City Building Department determines that the initial installation violates the National Electrical Code and/or National Electrical Rules, as adopted from time to time, the Director of the Building Department shall have the right to direct the franchisee to correct the work so as to comply with the National Electrical Code and National Electrical Rules, as adopted from time to time. After the corrective work has been completed, the City Building Department shall have the right to re-inspect the installation.

(Ord. 96, passed 2-17-1983)

#### **' 113.101 MAINTENANCE AND UPDATING OF EQUIPMENT.**

All maintenance, repair and periodic update/replacement of the original equipment shall be provided by the franchisee at no charge to the educational institutions or any other governmental agency, unless provided otherwise in the franchise agreement.

(Ord. 96, passed 2-17-1983)

#### **' 113.102 CONSTRUCTION STANDARDS AND TECHNICAL REQUIREMENTS.**

(A) All of the franchisee=s plant and equipment, including, but not limited to, the antenna site, headend, distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed/repared, maintained and operated in accordance with good engineering practices, performed by experienced poleline construction crews and so as not to:

(1) Endanger or interfere with the safety of any person or property;

(2) Interfere with improvements;

(3) Interfere in any manner with the rights of any property owners; or

(B) All of the franchisee=s system, including all plant and equipment and all construction shall meet, at a minimum, all relevant and applicable specifications as set forth in the city=s request for proposal, the franchisee=s proposal, this chapter, the franchise agreement and the applicable building codes and regulations, when not in conflict with any rules and regulations of the Federal Communications Commission. The aforesaid specifications, construction standards and performance characteristics shall include, but shall not be limited to, the following listed construction and technical standards.

(1) *Construction standards.*

(a) Methods of construction, installation and maintenance of the cable communications system shall comply with the then current edition of the National Electrical Code to the extent that the Code is consistent with the location and maintenance of electrical supply and communications lines. To the extent that the Code is inconsistent with other provisions of this chapter or with local law, the latter shall govern.

(b) Any tower constructed for use in the cable communications system shall comply with the standards contained in the *Structure Standards for Steel Antenna Towers and Antenna Supporting Structures, EIA Standards RS-222-A* as published by the Engineering Department of the Electronic Industries Association, 2001 Eye Street, N.W., Washington D.C. 20006.

(c) Installation and physical dimensions of any tower constructed for use in the cable communications system shall comply with all appropriate Federal Aviation Agency regulations, including, but not limited to *Objects Affecting Navigable Airspace*, 14 C.F.R. ' ' 77.1 et seq., February, 1965.

(d) Any antenna structure used in the cable communications system shall comply with *Construction Marking and Lighting of Antenna*

(4) Unnecessarily hinder or obstruct pedestrian or vehicular traffic on city property.

*Structure*, 47 C.F.R. ' ' 17.1 et seq., September, 1967.

(e) All working facilities and conditions used during construction, installation and maintenance of the cable communications system shall comply with the standards of the Occupational Safety and Health Administration, both state and federal.

(f) Each cable distribution system in the public streets shall comply with all applicable laws, ordinances, codes and governmental regulations regarding clearance, above ground and between utility wires and cables.

(g) The strand or messenger cable used throughout for trunk shall be one-quarter-inch in diameter or larger, high strength, seven-wire, pre-formed with galvanized zinc coating A.

(h) Stainless steel lashing wire, 0.045 inch in diameter, or larger, shall be used in securing the cable to the supporting strand. Tension in the lashing wire shall vary according to the size of the cable being secured. Cable extending over long spans and steep grades shall be doubly lashed. The lashing wire shall terminate at each side of the pole with a lashing wire clamp. The cables shall be fastened to the strand at each side of the pole with a maximum of ten inches from the suspension clamp bolt.

(i) All electronic equipment shall be protected by a housing which is corrosion-resistant and weather-proofed, and shall be installed so as to be readily accessible for maintenance. Power supply locations shall be provided with self-healing arresters and fused cutout cabinets.

(j) All exposed splices, connectors and terminators shall be water-proofed, and there shall be no more than two splices per mile of trunk cable in the initial system design.

(k) All distribution cable, stand and equipment in the system shall be installed and grounded in accordance with the aforementioned

National Electrical Safety Code and Occupational Safety Standards.

(2) *Technical standards.*

(a) The franchisee shall comply with all the rules and standards for cable communications operations as adopted by the Federal Communications Commission, 47 C.F.R. ' ' 76.601 through 76.613.

(b) The franchisee shall comply with all rules and regulations contained and promulgated within this chapter except when in conflict with rules and regulations of the Federal Communications Commission.

(c) Antennas used in the system shall be constructed so as to be able to withstand 70 mph winds when there is one inch of radial ice on the antenna or 100 mph winds with no ice. All exposed metallic parts of antennas shall be weather-proofed.

(d) A separate broadband log periodic search antenna of rugged construction with an industrial, heavy duty rotor shall be mounted at the highest available location on the tower.

(e) The cable system shall be capable of delivering all National Television Systems Committee (NTSC) color and monochrome standard signals, developed and presented to the Federal Communications Commission on July 21, 1953, to standard Electronics Industries Association approved television receivers without noticeable degradation.

(3) *Performance testing.*

(a) Performance requirements and standards specified in this chapter, and in all FCC requirements and standards, shall be measured at the time of initial testing as provided in ' 113.067, to ensure compliance with all specified requirements and standards for construction. Measurements shall be taken and recorded as specified in FCC specifications. All costs of these tests shall be borne by the franchisee.

(b) Initial proof of performance testing shall occur and be filed with the Township Building Department within 90 days of the commencement of cable service with respect to each section of construction of the system.

(c) All measurements shall be made using instruments which are appropriate for making each performance test. These instruments shall be sufficiently sensitive to measure each parameter accurately. The accuracy of the instruments must meet those standards developed by the National Bureau of Standards for Test Equipment. The test equipment and instruments shall know a correction factor for band width and scale position where applicable. All measurements shall be taken at test points to be designated in the franchisee's application, which shall also be included in the franchise agreement.

(d) Test and measurements to ensure compliance with the technical standards shall be performed in a manner that is consistent with the provisions of 47 C.F.R. ' ' 76.609 et seq.

(e) Performance requirements and standards specified in this document, including all FCC requirements and standards of 47 C.F.R. ' ' 76.601 et seq., and all local performance guidelines, shall be measured annually to ensure compliance with all specified requirements and standards. Measurements shall be taken and recorded as specified in this division. All costs of these tests shall be borne by the franchisee.

(f) Routine tests shall be made on a periodic basis to ensure compliance with applicable performance standards. Measurements shall be taken and recorded as specified in this division. All costs of these tests shall be borne by the franchisee.

(g) When substantive complaints have been made or when other evidence exists which, in the judgment of the City Council, cast doubt on the reliability of quality of cable service, the city shall have the right and authority to compel the franchisee to test, analyze and report on the performance of the system. This test or tests shall be made and the reports of the tests shall be delivered to the city no later than

20 days after the City Council formally notifies the franchisee.

(h) The city's rights under division (B)(3)(g) above shall be limited to requiring tests, analyses and reports covering specific subjects and characteristics based on the complaints or other evidence when and under those circumstances as the city has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service. All costs for these tests shall be borne by the franchisee.

(i) Reports required pursuant to division (B)(3)(g) above shall include information setting forth the nature of the complaint or other evidence which precipitated the special tests, what system component was tested, the equipment used and procedures employed in testing the results of the testing and the resolution of the complaint or problem. Any additional information pertinent to the special test or specifically requested by the city shall be reported.

(j) All performance testing shall be done under the supervision and direction of a person qualified to perform those tests for purposes of FCC requirements and filings.

(4) *Compliance.* If, at any time, the cable communications system or any portion thereof fails to comply with any of the standards set forth in this section, the Township Building Department shall send written notice to the franchisee listing any deficiencies and requiring the franchisee to repair, alter or correct the deficiencies so as to meet all the standards. The franchisee shall have 30 days after the date of the notice within which to correct the deficiencies. The franchisee's failure to correct the deficiencies within 30 days shall subject it to the penalties provided hereinafter. If deficiencies in the cable communications system remain after the 30-day period, the City Council may direct the Building Department to cause those deficiencies to be corrected and the franchisee shall pay all reasonable costs associated therewith.

(5) *Conflict.* Where the provisions of any codes or regulations referred to in this section are in conflict, as determined by the Building Department, the provisions of the codes adopted by the city shall prevail.

(Ord. 96, passed 2-17-1983)

### ' 113.103 SYSTEM DESIGN CHANGES.

(A) The franchisee shall not, without prior written approval (which approval shall not be unreasonably withheld) of the City Council, delete any services and/or equipment set forth in its proposal and/or in the franchise agreement, provided those services are available. Substitution of equivalent equipment shall not be considered a deletion.

(B) The franchisee shall notify the City Clerk, in writing of any proposal to make the following changes;

(1) Reduction in the number of channels;

(2) Change in locations of the headend and/or antenna sites;

(3) Addition to or change in location of centers for origination of programs; and

(4) Interconnection with other cable systems.

(C) The written notice shall set forth, in detail, the proposed changes or substitutions, the reasons for the proposed changes or substitutions and any material, documentation or other information supporting or justifying the proposal.

(D) If granted, the franchisee shall receive formal city approval, in the form of an amended franchise agreement. Before implementation of any of the aforementioned changes, this amendment shall be fully executed. Approval shall not be unreasonably withheld.

(E) The franchisee shall provide the city with advanced written notice of the activation of

bi-directional facilities.

(Ord. 96, passed 2-17-1983)

**' 113.104 STATE OF THE ART.**

The franchisee shall upgrade its facilities, equipment and services so that its system is as advanced as the current state of production technology will allow. If the City Council determines, giving due regard to technological limitation and economic feasibility, that any part or all of the cable television system shall be improved or upgraded (including, without limitation, the increasing of channel capacity, the upgrading of converters and the institution of two-way transmission), then, the City Council shall be and is hereby authorized to order the improvement or upgrading of the cable television system, to be effected by the franchisee within a time reasonably determined and ordered by the City Council. In all events, however, the City Council shall not be authorized to require improvement or upgrading of the system so that it will exceed the technological state of the art as measured against industry standards for comparably sized cable television systems of similar densities.

(Ord. 96, passed 2-17-1983)

**' 113.105 SUBSCRIBER PRIVACY.**

(A) No signals of a cable communications channel shall be transmitted from a subscriber's premises for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for permission shall be contained in a separate document with a prominent statement to be signed by the subscriber acknowledging his or her full understanding of the provisions of the request and permitting the activity to occur. No penalty shall be invoked for a subscriber's failure to provide an authorization. The authorization shall be revocable at any time by the subscriber without penalty. The franchisee may keep the records of viewing or purchasing of services by individual subscribers for those services.

(B) The franchisee shall not monitor or tabulate any records or test results in any manner that would reveal the economic status, commercial product preferences or opinions of individual subscribers or their families, except as an integral part of services to which the subscriber expressly subscribes. The franchisee shall not maintain or tabulate any data on the political, religious, moral or social preferences or opinions of individual subscribers or their families.

(C) The franchisee, or any of its agents or employees, shall not, without the specific written authorization of the subscriber involved, sell or otherwise make available to any party except the city in connection with its regulatory functions under this chapter:

(1) A list of the names and addresses of the subscribers; or

(2) Any list which identifies the viewing habits of subscribers.

(D) The franchisee shall be actively alert to possible abuses of any legal rights of any subscriber, programmer or general citizen resulting from any device or signal associated with the cable communications system. The possibility of abuse may be discussed at every scheduled review session.

(Ord. 96, passed 2-17-1983)

**' 113.106 CONTINUITY OF SERVICE.**

(A) The franchisee shall take all reasonable actions to ensure that all subscribers and programmers receive continuous, uninterrupted service.

(B) In the event of a change of franchisee or in the event a new person acquires the system, the franchisee shall cooperate with the city and the new franchisee or person in maintaining continuity of service to all subscribers and programmers.

(Ord. 96, passed 2-17-1983)

**' 113.107 CUSTOMER SERVICE STANDARDS.**

(A) (1) The franchisee shall:

(a) Maintain an office in the township or city which shall be open during all usual business hours and be staffed so as to receive payments on the accounts of its subscribers;

(b) Have a locally listed telephone which shall be staffed or answered so that complaints and requests for repairs or adjustments may be received at any time;

(c) Designate the office as the place where all notices, directions, orders and requests may be served or delivered under this chapter; and

(d) Provide for regular billings of accounts.

(2) The City Clerk shall be immediately notified of the location of the franchisee=s office and any changes thereof.

(B) The franchisee shall furnish each subscriber at the time service is installed written instructions that clearly set forth procedures for placing a service call, or requesting an adjustment. These instructions shall also include the fact that the system is being operated under a franchise granted by the local municipality.

(C) The franchisee shall provide same day service response seven days a week for all complaints of service outage received prior to 2:00 p.m. each day. In no event shall the response and commencement of repair time for calls received subsequent to 2:00 p.m. exceed 24 hours, provided, repair service shall proceed diligently until completed.

(D) The franchisee may interrupt system service after 7:00 a.m. and before 1:00 a.m., but only with good cause and for the shortest time possible and, except in emergency situations, only after cablecasting notice of service interruption for two days prior to and on the same channel and at the same time as the anticipated interruption. Services may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair, without notification, any day except Saturday, Sunday, the day preceding a holiday or a holiday.

(E) Except for system area outages of 100 contiguous homes, the franchisee shall separately maintain written records listing the date and time of customer complaints, identifying the subscriber and describing the nature of the complaints and when and what actions were taken by the franchisee in response thereto; these records shall be kept at the franchisee=s local office, reflecting the operations to date for a period of at least three years, and shall be available for public inspection during regular business hours. In cases of system area outages affecting 100 subscriber households or more, the franchisee shall maintain a record of describing the problem and remedial action taken.

(Ord. 96, passed 2-17-1983)

**' 113.108 ALL CHANNELS EMERGENCY ALERT.**

The franchisee shall in the case of an emergency or disaster, make its entire system available without charge to the city or its representative, or to any other governmental or civil defense agency that the city shall designate. The system shall be engineered to provide an audio alert system to allow authorized officials to automatically override the audio signal on all channels, and transmit and report emergency information. The system shall provide for visual transmission or emergency messages on the government access channel.

(Ord. 96, passed 2-17-1983)

**' 113.109 HOME SECURITY.**

No home security program shall be promoted, nor shall a home security device be installed by franchisee, without the prior written approval from the city of the overall home security system design. This provision shall include alarm systems, the purpose of which is to detect and warn monitoring agencies of medical emergencies, fires or illegal entry. This section shall be interpreted to cover the general plan and scope of activities, not individual service hook-ups.  
(Ord. 96, passed 2-17-1983)

### ***FRANCHISE FEE AND RATES***

#### **' 113.120 FRANCHISE FEE.**

(A) As compensation for any franchise granted under this chapter, and in consideration for the right to operate a cable communications system within the city, and for the administration and monitoring of construction, operation, maintenance and reconstruction in the normal course of business of a system within the city, the franchisee shall pay to the city an annual amount equal to 3% of the franchisee=s gross revenues from all sources attributable to the operations of the franchisee within the city. This payment shall be in addition to any other tax or payment owed to the city by the franchisee. All funds received under this payment shall be used at the discretion of the city.

(B) In addition, during the term of any franchise granted pursuant to this chapter, the franchise agreement may also provide for additional fees, as authorized under applicable law and regulation.

(C) For purposes of this chapter, gross revenues shall be calculated on a cash or accrual basis as specified in the franchise agreement.  
(Ord. 96, passed 2-17-1983)

#### **' 113.121 PAYMENTS.**

(A) Payment of the franchise fee shall be made quarterly, for each quarter as specified in the franchise agreement to the City Treasurer. Each payment shall be accompanied by a financial statement in a standard form, approved by the City Treasurer, setting forth the basis for the computation and specifically showing the gross revenues attributable to the franchise during the quarter for which payment is made, as well as other relevant facts as may be required by the city.

(B) Each quarterly payment and accompanying financial statement shall be filed with the City Treasurer within 20 days after the last day of the quarter for which the payment is due.

(C) The franchisee shall file with the City Clerk within 120 days of the close of the franchisee=s fiscal year, an annual report prepared and certified under oath by the President or Chief Financial Officer of the franchisee, including, but not limited to, the annual gross revenues attributable to franchisee=s cable communications operation in the city as well as those other items of information required by this chapter. Extension of the period up to 30 additional days may be granted by the City Council upon request by the franchisee.

(D) The city shall have the right to inspect the franchisee=s financial records, and the rights of audit and recomputation of any amounts that may be determined to be payable under this chapter; provided, however, that the audit shall take place within 12 months from the filing of the franchisee=s annual report with the city and provided further the city shall be entitled to audit the franchisee=s financial records back to the date of the last audit performed by a certified public accountant pursuant to ' 113.147(B) hereof. Any additional amount due the city as a result of the audit shall be paid within 30 days following written notice to the franchisee by the city, which notice shall include a copy of the audit report. The cost of the city=s audit shall be borne by the franchisee if it is properly determined that the franchisee=s annual payments to the city for the preceding year are increased thereby by more than 5%.

(E) In the event that any franchise fee payment or recomputed amount is not made on or before the applicable dates heretofore specified, and if the amount is not withdrawn from the Security Fund, a

monthly service charge of 1.5% of the total unpaid amount shall be paid to the city by the franchisee.

(F) No acceptance of any payment by the city shall be construed as a release or as an accord and satisfaction any claim the city may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the franchisee.

(Ord. 96, passed 2-17-1983)

#### **' 113.122 RENEGOTIATION OF FRANCHISE FEES.**

The franchise fees have been established in conformance with the current FCC Rules on cable television systems as stated in 47 C.F.R. ' 76.31 entitled *Franchise Standards*. In the event that the FCC shall modify these Rules so as to eliminate or adjust upward the franchise fee limitation, or in the event that the franchise fee limitation shall be eliminated or adjusted upward by final judicial determination, the city shall have the right to renegotiate the amount of the fee.

(Ord. 96, passed 2-17-1983)

#### **' 113.123 RATES AND CHARGES FOR SERVICE.**

(A) The franchise agreement shall set forth the rates for basic services, connection and installation, disconnection, reconnection and for non-entertainment services.

(B) Initial maximum rates for services of the cable communications system shall be those delineated in the franchise agreement. Initial maximum rates shall not be increased for a specified period after the effective date of the franchise.

(C) The franchisee shall have the right to conduct promotional campaigns which permit subscriptions to the system at lesser rates than those set forth in the franchise agreement, provided those promotional rates shall be available on a nondiscriminatory basis.

(Ord. 96, passed 2-17-1983)

#### **' 113.124 REVISION OF RATES FOR SERVICES.**

The mechanism for the revision of rates for services shall be as ' ' 113.165 through 113.174.

(Ord. 96, passed 2-17-1983)

#### **' 113.125 REFUNDS TO SUBSCRIBERS AND PROGRAMMERS.**

If a subscriber is without service for a period of 24 hours or more, the franchisee shall promptly provide a pro rata credit for all advance charges paid. The 24-hour provision of this section shall not apply if through no fault of franchisee, there is an outage of service to more than 50 contiguous subscriber households, in which event credit shall not be made until after 72 hours after the occurrence of that outage, without a return of service.

(Ord. 96, passed 2-17-1983)

### **ADMINISTRATION AND REGULATION**

#### **' 113.140 PERFORMANCE REVIEW.**

(A) In order to monitor the franchisee's performance and adherence to this chapter and the franchise agreement, the city, through the Cablecasting Board, and the franchisee shall hold no less than the following scheduled review sessions: within 30 days after the second anniversary of the effective date of the franchise; and each three years thereafter during the term of the franchise. All review sessions shall be open to the public and notice thereof shall be published not less than ten days nor more than 30 days before each review session in a local newspaper or general circulation. The published notice shall specify the suggested topics to be discussed. Notice shall be given hereinafter provided.



(B) Special review sessions may be held at any time during the term of the franchise, providing both the franchisee and the city agree on the time, place and topics to be reviewed. All review sessions shall be open to the public and public notice of the review sessions shall be given.

(C) Following is a suggested list of topics to be discussed at every scheduled review session:

- (1) Judicial and federal communications rulings;
- (2) Rate structures;
- (3) Application of new technology or new developments;
- (4) System performance;
- (5) System extension policy;
- (6) Services provided;
- (7) Programming offered;
- (8) Customer complaints;
- (9) Privacy;
- (10) Amendments to the ordinance;
- (11) Interconnection;
- (12) Public, governmental and educational access programs and performance;
- (13) Studio facilities and service;
- (14) Insurance;
- (15) New services; and

(16) Other topics may be added by either party. Members of the general public may also request discussion of additional topics.

(D) The city, at its discretion, may utilize the services of one or more consultants to gather additional information for use during the review sessions and/or rate hearings. The franchisee shall cooperate with the consultants and the city in all aspects of the performance review.

(E) The Cablecasting Board shall, at the conclusion of all review sessions, issue a public report to the City Council on its findings and recommendations for enforcement of or modifications to this chapter or the franchise agreement. (Ord. 96, passed 2-17-1983)

#### ' 113.141 SECURITY FUND.

(A) (1) Within 20 days after the grant of a cable communications franchise, the franchisee shall deposit with the City Treasurer, and maintain on deposit through the term of the franchise, the sum of \$50,000 as security for:

(a) The faithful performance by it of all the provisions of this chapter and the franchise agreement;

(b) Compliance with all orders, permits and directions of any agency, commission, board or department of the city having jurisdiction over its acts or defaults under the franchise agreement; and

(c) The payment by the franchisee of any claims, liens and taxes due the city which arise by reason of the construction, operation or maintenance of the system.

(2) The monies in the Fund may be invested and reinvested in the discretion of the City Treasurer. As an alternative to providing a cash fund, the franchisee may elect to provide an irrevocable letter of credit in the amount of \$50,000, provided that the form and content of the document establishing and governing same has been approved in advance by the Clerk of the City Council. This letter of credit shall be maintained according to the same requirements and for the same purposes as the cash fund, and shall also be referred to as the Security Fund. The letter of credit shall be released within 90 days of the termination or expiration of the franchise, as determined by the City Council. The letter of credit shall contain the following endorsement:

At least 30 days prior written notice shall be given to the city by the bank or savings and loan association issuing the letter of credit, or to cancel, replace or materially alter same, the notice to be given by registered mail to the township and City Clerk.

(B) Within ten days after notice to it that any amount has been drawn against the Security Fund, the franchisee shall pay to or deposit with the City Treasurer a sum of money in the full amount; withdrawn or take action as is necessary to ensure that the letter of credit is maintained in the amount of \$50,000.

(C) (1) The city may draw against the Security Fund on each occasion the franchisee fails:

(a) To pay to the city any fees within the time fixed in this chapter. If the franchisee has failed to make a quarterly payment of franchise fees, the city may draw an amount equal to the previous quarter's franchise fee;

(b) To pay the city any taxes prior to the attachment of interest and/or penalties;

(c) To repay the city any damages, costs or expenses incurred or expended by reason of any act or default of the franchisee in connection with this franchise;

(d) To comply with any provision of the franchise agreement and/or this chapter in connection with which the city reasonably determines that the failure of compliance can be remedied in whole or in part by the withdrawal (or draw); and

(e) To make a contribution to the Cablecasting Fund as required under ' 113.999(B).

(2) As a condition to the city drawing against the Security Fund, it shall provide the franchisee with ten-days written notice of its intention to do so if franchisee's default is not cured.

(D) The Security Fund deposited pursuant to this section shall become the property of the city in the event that the franchise is terminated by reason of the default of the franchisee. The franchisee, however, shall be entitled to the return of the Security Fund, or portion thereof, as remains on deposit at the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the franchisee. If a cash fund is established, interest earned by the investment of the Security Fund shall become part of the Security Fund and unless consumed by the payment of penalties, fees or other charges under this chapter, shall be returned to the franchisee at the expiration of the franchise term, provided that there is then no outstanding default on the part of the franchisee.

(E) The rights reserved to the city with respect to the Security Fund are in addition to all other rights of the city whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to the Security Fund shall affect any other right the city may have.

(Ord. 96, passed 2-17-1983)

#### ' 113.142 PERFORMANCE BOND.

(A) Within 60 days of the effective date of the franchise agreement, the franchisee shall file with the city a performance bond or an irrevocable letter of credit issued by an institution acceptable to the city in favor of the city, in the sum of \$250,000, or in any greater amount specified in the franchise agreement, conditioned that the franchisee shall well and truly observe, fulfill and perform each term and condition of

this chapter and the franchise agreement with respect to construction and removal of the system. This bond or letter of credit shall be maintained by the franchisee

(B) In the event the franchisee fails to comply with any law, ordinance or regulation governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, including the franchisee=s proposal, there shall be recoverable, jointly and severally, from the principal and surety of the bond, 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 franchisee, plus a reasonable allowance for attorney=s fees and costs, up to the full amount of the bond.

(C) The city shall, upon completion of construction (and following additional time reasonably determined by the city) as aforementioned, reduce the requirement of the franchisee with respect to the bond or letter or credit, to \$50,000 to guarantee performance with respect to removal of the system. However, the city may require a performance bond or letter of credit in a reasonable amount to be posted by the franchisee for any subsequent construction, in a reasonable amount and upon those terms as determined by the City Council.

(D) (1) Any bond given under this section shall contain the following endorsement:

At is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the city, by registered mail, of a written notice of the intent to cancel or not to renew.

(2) Any letter of credit given under this section shall contain the following endorsement;

At least 30 days= prior written notice shall be given to the city by the bank or savings and loan association issuing the letter of credit of any intention not to renew the letter of credit, or to cancel, replace or materially alter, same, the notice to be given by registered mail to the township and City

throughout the construction period and until a time as reasonably determined by the city.

Clerk.  
(Ord. 96, passed 2-17-1983)

### ' 113.143 INSURANCE.

(A) The franchisee shall maintain, throughout the term of the franchise, insurance insuring the city and the franchisee in the minimum amount of:

(1) *Workers= compensation.* As required by all applicable federal, state, maritime or other laws including franchisee=s liability with a limit of at least \$100,000 for each occurrence;

(2) *Comprehensive general liability and extended coverage endorsement.* Including broadcaster=s liability, nonownership and hired car coverage, as well as owned vehicles, with minimum limits as follows: bodily injury for each person \$1,000,000 and each occurrence \$1,000,000; property damage for each occurrence \$500,000; and

(3) *Excess liability.* Bodily injury and property damage, \$5,000,000 for each occurrence, or in the greater amount as either the township or city shall carry, whichever amount is higher.

(B) Certified copies of the insurance policies or certificates evidencing the required coverage and provisions, along with written evidence of payment of required premiums, shall be filed and maintained with the City Clerk during the term of the franchise. The certified copies or certificates may be changed from time to time to reflect any increase in liability limits. There shall be no decrease in liability limits. The franchisee shall immediately advise the city of any litigation that may develop that would affect this insurance.

(C) Neither the provisions of this section nor any damages recovered by the city thereunder shall be construed to limit the liability of the franchisee under any franchise issued hereunder or for damages.

(D) All insurance policies or certificates, maintained pursuant to this franchise shall name the city, its employees, agents, boards and officers as additional named insured parties as their interests may appear, and contain the following endorsement:

It is hereby understood and agreed that this insurance policy may not be canceled by the insurer nor the intention not to renew be stated by the insurer until 30 days after receipt by the city, by registered mail, of a written notice of the intention to cancel or not to renew. @

(Ord. 96, passed 2-17-1983)

#### ' 113.144 INDEMNIFICATION.

(A) The franchisee shall, at its sole cost and expenses, fully indemnify, defend and hold harmless the city, its officers, boards, commissions and employees against any and all claims, suits, actions, liability and judgments for damages, including, but not limited to, expenses for legal fees and disbursements and liabilities assumed by the city in connection therewith:

(1) In any way arising out of or through the acts or omissions of the franchisee, its servants, agents or employees, or to which the franchisee=s negligence shall in any way contribute;

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent or of any other rights of any person, firm or corporation, excluding claims arising out of or relating to city programming; and

(3) Arising out of the franchisee=s failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to the franchisee in its business hereunder; provided, however, that the indemnity granted hereby shall not extend to liabilities of any type or kind whatsoever arising out of any acts of negligence or willful misconduct on the part of the city, its officers, elected or appointed officials, servants, agents, employees, contractors or otherwise, while acting on behalf of the city.

(B) The foregoing indemnity is conditioned upon the following. The city shall give the franchisee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the city from cooperation with the franchisee and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the city of any sum by reason of the Security Fund shall be any limitation upon the liability of the franchisee to the city under the terms of this section, except that any sum so received by the city shall be deducted from any recovery the city might have against the franchisee under the terms of this section.

(Ord. 96, passed 2-17-1983)

#### ' 113.145 FORECLOSURE.

Under the foreclosure or other judicial sale of all or a substantial part of the cable communications system, or upon termination of any lease covering all or a substantial part of the cable communications system, the franchisee, the lessor under the lease and all parties interested in the foreclosure shall notify the city of that fact, and the notification shall be treated as a notification that a change in control of the franchisee has taken place, and the provisions of this chapter and the franchise agreement governing transfer or change in control of the franchisee shall apply.

(Ord. 96, passed 2-17-1983)

#### ' 113.146 RECEIVERSHIP.

The franchise herein granted shall, at the option of the city, cease and terminate 90 days after the appointment of a receiver, or trustee, to take over and conduct the business of the franchises, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless the receivership or trustee

**113.147 REPORTS AND RECORDS.**

(A) (1) No later than 120 days after the close of the franchisee's fiscal year, the franchisee shall submit a written and certified report to the city, through the City Clerk's office. Financial information provided by the franchisee shall be in a form approved by the City Council and shall include the following certified statements:

- (a) Statement of revenue and expense;
- (b) Statement of financial condition (balance sheet);
- (c) Statement of changes in retained earnings;
- (d) Statement of sources and applications of funds;
- (e) Statement of capital expenditures; and
- (f) Statement reflecting the calculation of the franchise fee.

(2) Each statement required by divisions (A)(1)(a) through (A)(1)(f) above shall include appropriate information pertaining to the cablecasting system as a whole.

trusteeship shall have been vacated prior to the expiration of 90 days.  
(Ord. 96, passed 2-17-1983)

(B) The financial statements required by division (A) above shall be prepared in a manner consistent with generally accepted accounting principles. With respect to the results of current operations, the aforesaid statements shall be certified under oath by the President or Chief Financial Officer of the franchise or of each joint venturer if the franchisee is a joint venture, except that franchisee shall, at its expense, provide the city with an audited and certified statement prepared by an independent certified public accountant with respect to any two years during the life of the franchise, as determined by the City Council if requested to do so by the city at least 90 days before the end of franchisee's fiscal year. Footnotes to the financial statements shall be provided for all significant accounting policies and other items, including future lease obligations.

(C) In addition to the aforementioned financial statements, the written report required by the preceding divisions (A) and (B) shall include, if requested by the city, the following:

(1) A summary of the previous year's activities in development of the system, including, but not limited to, services begun and dropped, subscribers gained and lost;

(2) A summary of complaints, identifying the number and nature of complaints and their disposition;

(3) A list of officers and members of the Board of the franchisee and parent corporation;

(4) A list containing the names and addresses of all stockholders holding 1% or more of any class of stock or securities convertible into stock of the franchisee and the parent corporation;

(5) All rules, regulations, terms and conditions which it has adopted for the conduct of its business;

(6) A report on those other topics as may be requested by the city at least 120 days in advance of the date the reports are due;

(7) A list containing the names and addresses of persons having loaned the franchisee in

(D) The franchisee shall fully cooperate in making available upon five days= notice, and representatives of the Cablecasting Board and the designated representative of the City Council shall have the right to audit and inspect the books, records, maps, plans and other like materials of the franchisee applicable to the cablecasting system at any time during normal business hours. Where volume necessitates, the franchisee may require inspection to take place on its premises within the city.

(Ord. 96, passed 2-17-1983)

#### **' 113.148 OTHER PETITIONS AND APPLICATIONS.**

With the report required under ' 113.147(A), the franchisee shall provide the city with a list of all petitions, applications, communications and reports submitted by the franchisee to the Federal Communications Commission, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to the franchise. The franchisee is to provide copies of any documents to the city within seven days of request.

(Ord. 96, passed 2-17-1983)

#### **' 113.149 NONDISCRIMINATION REQUIREMENTS.**

(A) The franchisee shall not deny service, deny access or otherwise discriminate against persons on the basis of race, age, color, religion, handicap, national origin or sex. The franchisee shall comply at all times with all applicable federal state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination.

(B) The franchisee shall strictly adhere to the equal employment opportunity requirements of the FCC, federal, state and local regulations, as amended,

excess of \$50,000 during the preceding year; and

(8) A statement setting forth the amount of money on deposit in the Cablecasting Fund.

from time to time.

(Ord. 96, passed 2-17-1983)

#### **' 113.150 COMPLIANCE WITH STATE AND FEDERAL LAWS.**

The franchisee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, that the franchisee shall, in all events, comply with this chapter and the franchise agreement. If any state or federal law or regulation shall require the franchisee to perform any service or take any action or shall prohibit the franchisee from the performance of any service in conflict with the terms of the franchise or of any law or regulation of the city then as soon as possible following knowledge thereof, the franchisee shall notify the city of the point of conflict believed to exist between the regulation or law and the laws or regulations of the city or the franchise. The City Council shall review the possible conflict and determine what action, if any, it shall take regarding the point of possible conflict.

(Ord. 96, passed 2-17-1983)

#### **' 113.151 THEFT OF SERVICE AND TAMPERING.**

(A) No person shall intentionally or knowingly:

(1) Damage or cause to be damaged any wire, cable, conduit, equipment, apparatus or appurtenance of the franchisee or commit any act with intent to cause damage; and

(2) Tap, tamper with or otherwise connect any wires or device to a wire, cable, conduit, equipment, apparatus or appurtenances of the franchisee with the intent to obtain or send a signal or impulse from the cable system without authorization from franchisee, or to obtain or send cable television or other communication service with intent to defraud

the franchisee of any lawful compensation to which it is otherwise entitled.

(B) Each day=s violation of this section shall be considered a separate offense.

(A) Unless otherwise specifically set forth in this chapter, minimum public notice of any public hearing relating to a franchise shall be given by the city by publication, or least once per week, in a local newspaper of general circulation beginning at least 15 days prior to the meeting.

(B) Announcement by the city on at least one channel of the cable communications system between the hours of 7:00 p.m. and 9:00 p.m. for five consecutive days prior to the hearing shall also be provided without charge by the franchisee.  
(Ord. 96, passed 2-17-1983)

### ***CABLECASTING BOARD***

#### **' 113.165 CREATION AND MEMBERSHIP.**

(A) There shall be established by the Township Board and City Council a Cablecasting Board consisting of seven members.

(B) The Township Board shall appoint five members; the City Council shall appoint two members.  
(Ord. 96, passed 2-17-1983)

#### **' 113.166 COMPENSATION AND TERM.**

Members of the Cablecasting Board shall serve without compensation for a term of three years. At the time of initial appointments creating the Cablecasting Board, three members shall be appointed for terms of three years each, two members shall be appointed for a term of two years each, and two members shall be appointed for a term of one year each. Designation of the length of terms for members selected in the initial appointments shall be determined by lot.  
(Ord. 96, passed 2-17-1983)

(Ord. 96, passed 2-17-1983) Penalty, see ' 113.999

#### **' 113.152 PUBLIC NOTICE.**

#### **' 113.167 OFFICERS AND EX OFFICIO MEMBERS.**

(A) The Cablecasting Board shall elect officers as deemed by the Board to be necessary or expedient, including a Chairperson and Secretary.

(B) The City President, and a representative of each franchisee in the city shall serve as ex officio members of the Cablecasting Board, but shall have no voting rights.

(Ord. 96, passed 2-17-1983)

#### **' 113.168 QUORUM.**

Four voting members of the Cablecasting Board shall constitute a quorum for the transaction of business.

(Ord. 96, passed 2-17-1983)

#### **' 113.169 MEETINGS.**

Meetings of the Cablecasting Board shall be held at the call of the Chairperson, and at other times as the Cablecasting Board may by resolution determine, but not less frequently than once per quarter. The Cablecasting Board shall adopt rules of procedure and keep minutes of its meetings, which shall constitute a public record.

(Ord. 96, passed 2-17-1983)

#### **' 113.170 DUTIES AND POWERS.**

The Cablecasting Board shall perform the following roles and functions:

(A) Advise the City Council on matters related to cable communications;

(B) Monitor the franchisee=s compliance with the franchise agreement and this chapter;

(C) Conduct performance reviews as outlined in this chapter;

(E) Consider and make adjustments of rates and services according to the procedure outlined ' ' 113.172 and 113.173;

(F) Advise the City Council on renewal, extension or termination of franchise;

(G) Appropriate monies, if any, as are deposited in an account, in the name of the Cablecasting Board for and in relation to the cable system, and submit an annual budget to the Township Board and City Council;

(H) Oversee and make recommendations to the City Council with respect to the operation of the educational, governmental and public access channels; and

(I) Apprise the City Council of new developments in cable communications technology. (Ord. 96, passed 2-17-1983)

#### **' 113.171 PROCEEDINGS FOR COMPLAINT RESOLUTION.**

(A) Upon receipt of a complaint on a form approved by the Cablecasting Board, the Cablecasting Board as a body, or through one or more designates selected by the Cablecasting Board, shall seek on an informal basis to resolve the complaint.

(B) In the event the complaint cannot in the discretion of the Cablecasting Board, or its designate, be resolved on an informal basis, a formal complaint shall be issued by the Cablecasting Board, and served upon all parties to the complaint or their representatives at least 15 days prior to a hearing at which the complaint shall be discussed. The Cablecasting Board shall, along with the complaint, serve a notice of the date, time and place of the hearing.

(D) Act as liaison between the franchisee and the public; hear complaints from the public and seek resolution, of those complaints as hereinafter provided;

(C) At the hearing, the parties in interest shall be afforded a reasonable opportunity to be heard. The hearing may be adjourned from time to time.

(D) Minutes of the hearing shall be kept by the Secretary of the Cablecasting Board.

(E) Following the hearing, the Cablecasting Board, by majority vote, shall make its determination, and enter the order as it deems appropriate pursuant to this determination. Written reasons for the determination shall be made and entered in the minutes. The order made by the Cablecasting Board shall be in writing.

(F) The Cablecasting Board=s determination and order shall, 20 days following rendition, be final unless an appeal to the City Council is taken from the determination and order within the time hereinafter set forth for appeals. In the event of appeal, the effect of the determination and order shall be stayed unless the City Council determines otherwise. (Ord. 96, passed 2-17-1983)

#### **' 113.172 CHANGES IN RATES.**

(A) The franchisee shall be entitled, on an annual basis, to file a petition seeking a change in rates, subject to any specific provisions with respect thereto contained in the franchise agreement.

(B) The petition shall be filed with the City Clerk and include the alleged justifications for the proposed modifications. With respect to proposed rate changes, the petitions shall be filed at least 120 days prior to the requested implementation date of the rate change.

(C) One copy of the petition shall remain on file with the City Clerk and be open for public inspection.

(D) Within 60 days of the filing of the petition, the Cablecasting Board shall hold a public hearing to consider the proposal, at which hearing all persons



shall be given the opportunity to be heard, including the franchisee, with respect to the matter at issue.

(E) Upon notice of the public hearing, the franchisee shall provide, free of charge to the Cablecasting Board, channel access to notify subscribers of the date, time, place and subject matter of the hearing by announcement on at least one automated (e.g., weather) channel of its system between the hours of 7:00 p.m. and 9:00 p.m. for at least five consecutive days prior to the hearing. In the event of a rate change, notice of the public hearing shall be published by the Cablecasting Board in a newspaper of general circulation at least once, not less than seven nor more than 30 days prior to the public hearing.

(F) Minutes of the hearing shall be kept by the Secretary of the Cablecasting Board.

(G) Within 30 days after the hearing, the Cablecasting Board shall render a written decision on the proposal, either accepting, rejecting or modifying or deferring the same and reciting the basis for its decision. On a schedule specified by the Cablecasting Board prior to its decision, the parties in interest may be permitted by the Cablecasting Board to submit proposed findings of fact and conclusions.

(H) (1) In the event the franchisee seeks a change to which it is not otherwise automatically entitled under the franchise agreement, and has filed a petition hereunder, the franchisee shall pay the fee of one or more consultants selected by the Cablecasting Board if the Cablecasting Board deems the service to be reasonably necessary in the consideration of the proposal. Moreover, with a petition proposing a rate increase, the franchisee shall include the following financial reports, which shall reflect the franchisee's operations in the franchise area:

- (a) A balance sheet;
- (b) Income statement;
- (c) Cash flow statement;

(d) Statement of sources and applications of funds;

(e) Details supporting schedules of expenses, income, assets and other items as may be required; and

(f) Statement of current and proposed subscribers and penetration.

(2) Further, the franchisee's accounting records applicable to the city system shall be available for inspection and copying by the Cablecasting Board at all reasonable hours, after five days' notice to franchisee, and the Cablecasting Board shall have access to records of financial transactions for the purpose of investigating entitlement to a grant of the petition, in whole or in part.

(I) The Cablecasting Board's determination and order shall be, 20 days following rendition, final unless an appeal is taken to the City Council from the determination and ordered within the time hereinafter set forth. In the event of an appeal, the effect of the determination and order shall be stayed unless the City Council determines otherwise.

(Ord. 96, passed 2-17-1983)

### ' 113.173 CHANGES IN SERVICES, SYSTEM FACILITIES AND EQUIPMENT.

(A) The franchisee and/or two or more members of the City Council shall be entitled to file a petition seeking a change in services and/or system facilities and equipment, subject to express limitations, with respect thereto contained in the franchise agreement.

(B) The procedure for consideration of these petitions shall be the same as that set forth in ' 113.172.

(Ord. 96, passed 2-17-1983)

### ' 113.174 APPEALS.

If aggrieved by a decision and order of the Cablecasting Board, any member of the City Council and/or franchisee shall have the right of appeal to the City Council, on the condition that, within 20 days of the date of the decision and order, a written notice of the intention to appeal the decision and order is filed with the Secretary of the Cablecasting Board, the Clerk of the city and with the franchisee. The notice shall contain a statement of the grounds for appeal. Appeals shall be based upon the record made at the Cablecasting Board hearing. The appellant shall, within 20 days of filing of the notice of intention to appeal, file any desired written arguments and authorities with the City Council and serve copies of the same upon other interested parties (or their representatives). Other interested parties shall have 20 days thereafter to file and serve any desired written responsive arguments and authorities. The City Council shall render a decision on the appeal within 20 days of the expiration of the time in which all written arguments must be filed. There shall be no right of rehearing.

(Ord. 96, passed 2-17-1983)

### ***INTERGOVERNMENTAL COOPERATION***

#### **' 113.185 AUTHORIZATION.**

The City Council may, in its discretion, enter into intergovernmental arrangements in connection with the consideration, award, administration and/or termination of the franchises.

(Ord. 96, passed 2-17-1983)

#### **' 113.186 AGREEMENTS.**

In the event that any one or more of the intergovernmental arrangements are entered into, prior to the effectiveness of this arrangement, an agreement

(with respect to each arrangement) shall be prepared, approved and executed specifying, among other things, the manner in which authority shall be exercised and for the coordination of reporting and other requirements so as to minimize, where determined appropriate, duplication of expense and effort.

(Ord. 96, passed 2-17-1983)

### ***FORCE MAJEURE***

#### **' 113.200 FORCE MAJEURE.**

As a condition to franchisee=s right (as set forth in this chapter and the agreement) to rely upon the occurrence(s) of an act of God; riot; emergency declared. by competent government authority; a general strike of the employees of the franchisee; or other causes beyond the franchisee=s control and which the franchisee could not reasonably have foreseen, as a defense to its failure, to comply with the requirements thereof, the franchisee must have first, within ten days following written notice, from the city of the occurrence of a violation for default, transmitted to the City Clerk written notice of its intent to assert the defense. It shall be the franchisee=s burden to prove that defense.

(Ord. 96, passed 2-17-1983)

#### **' 113.999 PENALTY.**

(A) *Misdemeanor.* Any person charged and convicted for violation of the provisions of ' 113.151 shall be guilty of a misdemeanor, punishable by imprisonment for up to 90 days or a fine of up to \$500, or both imprisonment and fine.

(B) *Cablecasting Fund contributions.* Notwithstanding the existence of other penalties, upon the occurrence of any violation this chapter or the franchise agreement, the franchisee shall make a contribution to the Cablecasting Fund in the amount of \$50 per day for each calendar day, or portion thereof, during which the violation occurs. This Fund shall constitute a separate account of and shall be held by the franchisee. The Cablecasting Board shall have exclusive authority to determine the manner and timing of the expenditure of these funds, provided, all expenditures shall be for equipment and/or services as determined in the discretion of the Cablecasting Board. The franchisee shall have a reasonable opportunity to cure without the imposition of penalty. However, in the event 30 days elapse following the transmittal of notice to the franchisee with respect to the occurrence of an event, it shall be rebuttably presumed that there has been a failure to cure within a reasonable period; provided, however, this presumption shall not preclude the imposition of a penalty for failure to cure within a shorter period if all attendant facts and circumstances dictate that a reasonable period would have been shorter than 30 days or a shorter period as specified elsewhere in this chapter.

(C) *Compliance with construction timetable.* In the event of failure to complete construction of the system in a timely manner or to make cable service available to and in all homes desiring service in the city as required under the franchise agreement, the franchisee shall, as determined and directed by the City Council:

(1) Provide all labor and materials to energize and fully activate the following additions to the Cable Communications System. For each week taken for completing construction of making service available following applicable deadline, the franchisee shall make operational 8,000 feet of two-day service within the system in locations determined in the discretion of the City Council; or

(2) Pay to the city as liquidated damages (and not a penalty) \$2,000 for each week taken for completing construction or making service available following the applicable deadline.

(D) *Waiver of penalties.* Upon written petition to

the City Council, all or part of the penalties provided for in divisions (B) and (C), inclusive, above, shall be waived upon a clear demonstration by the franchisee that it has made a diligent effort to comply but has been unable to do so, as a result of the occurrence of: an act of God; riot, emergency declared by competent government authority; a general strike of the employees of franchisee; or other cause beyond the franchisee's control and which the franchisee could not reasonably have foreseen.

(Ord. 96, passed 2-17-1983)

