

Chapter 34

TELECOMMUNICATIONS*

Article I. In General

Secs. 34-1 – 34-30. Reserved.

Article II. Telecommunications Within Right-of-Way

Sec. 34-31.	Purpose.
Sec. 34-32.	Opting in.
Sec. 34-33.	Repeal of inconsistent provisions.
Sec. 34-34.	Permit for use of right-of-way.
Secs. 34-35 – 34-60.	Reserved.

Article III. Cable Television

Sec. 34-61.	Definitions.
Sec. 34-62.	Franchise required.
Sec. 34-63.	Application for franchise.
Sec. 34-64.	Compliance with applicable laws.
Sec. 34-65.	Indemnification of city; insurance.
Sec. 34-66.	Construction standards and timetable.
Sec. 34-67.	Street vacation or abandonment.
Sec. 34-68.	Conditions for street occupancy.
Sec. 34-69.	Pole use.
Sec. 34-70.	Operational standards.
Sec. 34-71.	Service to municipal buildings and schools.
Sec. 34-72.	Rates.
Sec. 34-73.	Annual fee.
Sec. 34-74.	Assignment of franchise or transfer of control of franchise.
Sec. 34-75.	Forfeiture and revocation of franchise.
Sec. 34-76.	Complaint procedures.
Sec. 34-77.	Service and system maintenance.
Sec. 34-78.	Miscellaneous provisions.
Sec. 34-79.	Filing of franchise agreement.

***Cross references** – Business regulations, ch. 8; streets, sidewalks and other public places, ch. 32; utilities, ch. 38.

State law references – Metropolitan extension telecommunications right-of-way oversight act, MCL 484.3101 et seq.; enactment of local laws, MCL 484.3104; cable franchise, MCL 484.3116; Michigan Telecommunications Act, MCL 484.2101 et seq.

POTTERVILLE CODE

ARTICLE I. IN GENERAL**Secs. 34-1 – 34-30. Reserved.****ARTICLE II. TELECOMMUNICATIONS
WITHIN RIGHT-OF-WAY****Sec. 34-31. Purpose.**

The purpose of this article is to bring the city into conformance with Public Act No. 48 of 2002, commonly known as the metropolitan extension telecommunications right-of-ways oversight act. It is the intention of the city to bring its policies and practices into conformance with the requirements of the act so as to encourage the development of telecommunication services within the city and to improve the opportunities for the delivery of telecommunication services to the citizens of the city.

(Ord. No. 195, § 86.1, 10-14-2002)

Sec. 34-32. Opting in.

The city shall, and hereby does, opt in under the procedures set forth in Public Act No. 48 of 2002 (MCL 484.3101 et seq.). A copy of the ordinance codified in this article shall be filed with the authority as established by such act.

(Ord. No. 195, § 86.2, 10-14-2002)

Sec. 34-33. Repeal of inconsistent provisions.

Effective October 31, 2002, all ordinances, resolutions, provisions of this Code, local regulations or policies applicable to telecommunication providers that are inconsistent with Public Act No. 48 of 2002 (MCL 484.3101 et seq.), or that access fees or require other consideration for access to or use of the public rights-of-way that are in addition to the fees required under such act, are hereby repealed, and shall be no longer subject to enforcement by the city.

(Ord. No. 195, § 86.3, 10-14-2002)

Sec. 34-34. Permit for use of right-of-way.

(a) A provider shall make application with the city for access to and the ongoing use of all public rights-of-way located within the city. The application shall be made using such forms as are approved by resolution of the city council. The city shall require an application fee as set by resolution of the city council from time to time.

(b) The city shall approve or deny access within 45 days from the date a provider files an application for a permit for access to a public right-of-way. The city may require as a condition of the permit that a bond be posted by the provider, which shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the provider's access and use.

(c) A provider under taking an excavation, constructing or installing facilities within a public right-of-way or temporarily obstructing a public right-of-way shall promptly repair all damage done to the street surface and all installations on, over, below or within the public right-of-way and shall properly restore the public right-of-way to its pre-existing condition.

(Ord. No. 195, § 86.4, 10-14-2002)

Secs. 34-35 – 34-60. Reserved.**ARTICLE III. CABLE TELEVISION****Sec. 34-61. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act means the Communications Act of 1934, as amended (and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, PL 102-385), and as may be amended from time to time.

Advertising means all matter cablecast for which any money, service or other valuable consideration is directly or indirectly paid, exchanged or promised or charged or accepted in connection with the presentation of cable services.

Associated equipment means all equipment and services subject to regulation pursuant to 47 CFR 76.923.

Basic cable service means "basic service" as defined in FCC rules, and any other cable television service which is subject to rate regulation by the city pursuant to the act and FCC rules, and shall include, at a minimum, all public, educational and governmental programming or channels required to be carried by the city.

Cable communication system, cable television system, cable system, CATV and system have that meaning have that meaning given by section 602(2) of the act and shall mean a system of coaxial cables or other signal conductors and equipment used or to be used to originate or receive television or radio signals directly or indirectly off the air and to transmit them via cable subscribers for a fixed or variable fee, including the origination, receipt, transmission, and distribution of voices, sound signals, pictures, visual images, digital signals, telemetry, or any other type of closed circuit transmission by means of electrical or light wave impulses, whether or not directed to originating signals or receiving signals off the air.

Cable service means all of the services as defined by section 602(5) of the act which the franchisee has provided or will provide pursuant to the terms of the franchise agreement.

Channel means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a "television channel." For purposes of this article, a channel shall be deemed to have a bandwidth of six Mhz.

City means the City of Potterville, Michigan, and all the territory within its territorial corporate limits.

Commission and *cable commission* mean the city cable commission provided for in this article.

FCC means the Federal Communications Commission.

FCC rules means all rules of the FCC promulgated from time to time pursuant to this act.

Franchise and *franchise agreement* mean the separate agreement by which the franchise is granted to the franchisee, as required by this article.

Increase in rates means an increase in rates or a decrease in programming or customer services.

Institutional network means a trunkline and that portion of the plant dedicated to use by public and private entities as provided for in a franchise.

Local gross revenues means all compensation derived by the franchisee which is attributable to the number of subscribers within the city or derived from cable or noncable service to subscribers or person within the territorial corporate limits of the city. This term shall include, but not be limited to, all subscriber charges for basic cable service, pay TV, and premium channels, payments for advertising, fees for installation and service calls, commissions, revenue sharing or percentage of sales revenues or other compensation received from travel or home shopping services, and any and all compensation from all ancillary cable services, cable operations and cable related activities within the city, including but not limited to the:

- (1) Sale of cable equipment to subscribers;
- (2) Rental or sale of descrambling converters or other devices;
- (3) Rental or sale of remote control devices (including those with volume control); and
- (4) Rental or sale of A/B or input switches.

Deposits and other monies which are returned to the customer (and barter services or trade-

outs received or exchanged for promotion and sale of cable services) shall not be included as part of the local gross revenues. Neither the sale of cable equipment to nonsubscribers nor proceeds or disposition or retirement of assets shall be included in local gross revenue. To the extent that the franchisee's books or accounts do not reflect the source of any revenue, or where the source thereof may not be reasonably determined, that portion of gross revenue allocable to the city shall be based on the ratio of the number of subscribers in the corporate limits of the city to the total number of subscribers of the franchisee.

Pay-per view means cable services through an arrangement under which a charge is made on a per-program or per-diem basis to a subscriber for receiving a television program or other service not a part of the basic cable service.

Pay TV means an arrangement under which a charge is made over and above the basic subscriber rate to a subscriber for receiving any particular channel or package of channels.

Producer means a user providing input services to the cable system for receipt by subscribers.

Public channels means channels which are dedicated to the public interest, according to the following categories:

- (1) Public access;
- (2) Educational use;
- (3) Local government purposes; and
- (4) Local interest programming.

State of the art means a cable system with production facilities, technical performance, capacity, equipment, components and service equal to or better than has been developed and demonstrated to be generally accepted and used in the cable television industry for comparable areas of equivalent population.

Subscriber means a person whose premises are physically and lawfully connected to receive any transmission from the system.

Subscriber service drop means each extension wiring from the franchisee's distribution lines to a subscriber's premises.

User means a person utilizing a system channel as a producer, for purposes of production and/or transmission of material, or as a subscriber, for purposes of receipt of cable services.

All other words and phrases used in this article shall have the same meaning as defined in the act and FCC rules.

(Ord. No. 111, § 2; Ord. No 144, 1-10-1994)

Cross reference – Definitions generally, § 1-2.

Sec. 34-62. Franchise required.

(a) No person shall construct, install, maintain or operate a cable communications system in the city nor shall any person provide a cable communications service or acquire ownership or control of a cable communications company in the city without such person having first obtained a franchise therefor from the city in the form of a franchise agreement between the city and the franchisee, which franchise agreement shall include, at a minimum, compliance with the specifications of this article.

(b) No person shall use, occupy or traverse the city streets, alleys, lanes, avenues, boulevards, sidewalks, bridges, viaducts, rights-of-way or any other public place or public way in the city or any extensions thereof or addictions thereto, whether on, above or under the surface of the ground, for the purposes of installing, constructing, maintaining or operating a cable communications system or facilities therefor or for the purpose of furnishing a cable communications service without such person having first obtained a franchise therefor from the city in the form of a franchise agreement between the city and the franchisee, which franchise agreement shall include, at a minimum, compliance with all the specifications of this article.

(c) The specifications required by this article are minimum requirements of a franchise agreement. Additional requirements, including, but not limited to, rates, charges, deposits,

specifications regarding required interconnections, studios or other signal origination facilities, numbers of channels to be equipped and available for immediate use upon initial construction of the system, use of channels by the city, schools, and other educational institutions, quality of community access, availability of equipment to users, required establishment and expansion of service area, other use of channels and other specifications or requirements of a cable communications franchisee or system may be established in the franchise agreement.

(d) A franchise granted by the city to the company to construct, erect, operate, and maintain a cable television system for the reception, amplification and distribution of video and/or audio signals to subscribing members of the public for a fee shall be nonexclusive, not to exceed 15 years from and after the effective date of the signing of a franchise agreement.

(e) A franchise established by the city shall grant the company the right and privilege to construct, operate and maintain the cable television system in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated within the city boundaries, and all extensions thereof, and all additions thereto, in the city.

(f) Upon the expiration of the original term of the franchise, the company or its successors and assigns shall be entitled to a renewal of the franchise for an additional term of ten years if, after a public hearing affording due process to all interested parties and conducted in accordance with all applicable federal and state laws and regulations, the council shall find that the company or its successors and assigns remain qualified to operate the CATV system and have provided past service to the city and subscribers of the system in substantial compliance with the terms and conditions of the franchise.

(Ord. No. 111, § 3)

Sec. 34-63. Application for franchise.

A franchise application shall be filed with the city council and may be in the form as established by the city council by resolution.

(Ord. No. 111, § 4)

Sec. 34-64. Compliance with applicable laws.

(a) The company shall, at all times during the life of the franchise, be subject to all lawful exercises of police power in the city.

(b) The company agrees to comply with all valid local, state and federal regulations, including the rules and regulations of the FCC.

(Ord. No. 111, § 5)

Sec. 34-65. Indemnification of city; insurance.

The company shall indemnify, protect and save the city harmless from and against any and all losses, costs, expenses resulting from damage to any property or bodily injury or death to any person, including payments made under any workers compensation law, which arise out of or occur by reason of the exercise by the company of the rights granted in the franchise. The company shall carry insurance to protect itself and the city from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. The insurance policy shall specifically provide that the city shall be a named insured. The amounts of such insurance against liability due to physical damage to property and liability due to bodily injury or to death of persons shall be set by resolution of the city council and amended from time to time as necessary. The company shall also carry such insurance as it deems necessary to protect it and the city from any and all claims under the workers compensation laws in effect that may be applicable to the company. All insurance required by this section shall be and remain in force and effect for the entire period of the franchise. The policies of insurance, or certified copies thereof, shall be filed with the city clerk. No franchise granted shall become effective until such copies are filed with the city clerk.

(Ord. No. 111, § 6)

Sec. 34-66. Construction standards and timetable.

(a) The company shall construct not less than 90 percent of its total cable system, and shall commence cable television operations, within one year after the telephone company and/or power company has cleared the poles to permit the cable company to begin construction and the company has secured all necessary federal, state and local permits. It shall thereafter equitably and reasonably extend the system so as to enable it to render service to all feasible areas within the city. The company shall apply for the pole line agreements and necessary permits within 60 days from the enactment of the franchise agreement. A further timetable shall be set out in the franchise agreement.

(b) A strand map shall be filed with the city clerk for city council approval. Such review of the strand map shall be completed within 30 days following its submission to the council.

(c) With regard to the company's construction, operation and maintenance of its cable television system, the following standards shall apply:

- (1) The construction, maintenance and use of the company's cable television system shall comply with the standards for materials and engineering and all other provisions of the National Electrical Safety Code, the National Electrical Code, the Bell Telephone System's Code of Pole Line Construction, and any other standards issued by the FCC or other federal or state regulatory agencies in relation thereto.
- (2) The city shall have the right to supervise all construction and installation work performed subject to the provisions of the franchise and to make such inspections as it shall find necessary to insure compliance with governing ordinances.

(d) Any cable communications company granted a franchise pursuant to this article shall install, construct, maintain and operate its cable communications system in accordance with the accepted standards of the industry, in conformity with the state of the art and any standards of operation or maintenance for a cable communications system which may be established or issued by the Federal Communications Commission. Further, it is the intention of the city that any person granted a franchise to furnish a cable communications service to the public within the city shall possess the financial and technical qualifications necessary to provide a cable communications system which will assure its subscribers a high quality of technical and public service.

(e) Every cable communications system, franchised under this article, as a minimum, shall maintain and make available without charge such public access channels, education access channels and local government access channels as may from time to time be designated, established, required or regulated by the rules and regulations of the Federal Communications Commission, including the expansion of such access channel capacity as may be required to fulfill the needs for such access channels pursuant to those access rules of the Federal Communications Commission as may from time to time be in force and effect.

(Ord. No. 111, § 7)

Sec. 34-67. Street vacation or abandonment.

If any street, alley, public highway, or utility easement, or any portion thereof, used by the company shall be vacated by the city or the use thereof discontinued by the company during the term of the franchise, the company shall forthwith remove its facilities therefrom unless specifically permitted to leave them there, and upon the removal thereof, restore, repair or reconstruct the street area where such removal has occurred in such condition as may be required by the city. In the event of failure, neglect or refusal of the company after 30 days'

notice by the council to repair, improve or maintain such street portions, the city may do such work or cause it to be done, and the cost thereof as found and declared by the city shall be paid by the company, and collection may be by court action or otherwise.

(Ord. No. 111, § 8)

Sec. 34-68. Conditions of street occupancy.

(a) *Use.* All transmission and distribution structures, lines and equipment erected by the company within the city shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways and places.

(b) *Restoration.* In case of any distribution of pavement, sidewalks, driveways or other surfacing, the company shall, at its own cost and expense and in a manner approved by the city, replace and restore all paving, sidewalks, driveways or surfaces of any street or alley disturbed to as good a condition as before such work was commenced.

(c) *Relocation of fixtures.* If at any time during the period of the franchise the city shall lawfully elect to alter or change the grade or width of any street, alley or other public way, the company, upon reasonable notice to the city, shall remove, re-lay, and relocate its poles, wires, cables, underground conduits, manholes, and other system fixtures at its own expense.

(d) *Temporary removal of wires for building moving.* The company shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising and lowering of wires shall be paid by the person requesting the same and the company shall have the authority to require such payment in advance. The company shall be given not less than seven days' advance notice to arrange for such temporary wire changes.

(e) *Trimming of trees.* The company shall have the authority to trim trees upon and over-

hanging any street, alley, or other public way so as to prevent the branches of such trees from coming in contact with its wires, cables, or other equipment.

(Ord. No. 111, § 9)

Sec. 34-69. Pole use.

(a) The company shall, whenever possible and practicable, use the poles owned and maintained by the city and/or utility companies which serve the city. When the use of such poles is not practicable or satisfactory and rental agreements cannot be entered into with such parties, the company shall have the right to erect and maintain its own poles, as may be necessary for the proper construction and maintenance of the television distribution system.

(b) In all sections of the city where the cables, wires, or other like facilities of public utilities are presently placed underground at any time in the future, the company shall place its cables, wires, or other like facilities underground to the maximum extent technology reasonably permits the company to do so.

(Ord. No. 111, § 10)

Sec. 34-70. Operational standards.

(a) The technical standards for operation of the system shall, in addition to meeting the requirements specified in this article, conform to all further requirements specified in the franchise agreement, and any other standards or codes therefor as may be adopted by the city or the commission, provided that such subsequently adopted standards or codes do not materially affect the rights and obligations of the franchisee during the term of the franchise.

(b) A franchisee shall, at all times, meet or exceed the minimum customer service standards set forth in 47 CFR 76.309(c), which standards are hereby incorporated by reference as minimum customer service obligations and requirements of this article and any franchise granted pursuant to this article; provided, however, that nothing contained in this section shall prohibit the city from enforcing, through the end

of the franchise term, any pre-existing customer service requirements that exceed the standards set forth in 47 CFR 76.309(c) and are contained in a current franchise agreement in effect on the effective date of the ordinance from which this subsection is derived, nor shall this subsection prohibit the city and any cable operator from agreeing to customer service requirements that exceed the minimum standards set forth in 47 CFR 76.309(c). If any provision of this article or any franchise granted pursuant to this article is less restrictive with respect to customer service requirements, then the provisions of 47 CFR 76.309(c) shall control. Nothing contained in this subsection shall prevent the city from establishing or enforcing any regulation concerning customer service that imposes customer service requirements that exceed or address matters not covered by the standards set forth in 47 CFR 76.309(c).

(c) The city shall have access at all reasonable hours to the company's books and records relating to the property and the operation of the company and to all other records required to be kept under this article.

(d) A copy of any and all rules, regulations, terms and conditions adopted by the company for the conduct of its business shall be filed with the city clerk, and a copy shall also be available for public inspection at the office of the company.

(e) The franchise shall not in any way be construed as a license or permit to the company to engage in the sale or service of radio or television sets. As parts of the consideration for the granting of this franchise, the company shall not engage in the sale of service of TV sets or appliances.

(Ord. No. 111, § 11; Ord. No. 144, 1-10-1994)

Sec. 34-71. Service to municipal buildings and schools.

The company agrees to and shall furnish, without installation charge or monthly service fee, a free connection to the city hall, municipal buildings designated by the council and to all

public, elementary, secondary, schools located within the city.

(Ord. No. 111, § 13)

Sec. 34-72. Rates.

(a) *Purpose; interpretation.* The purpose of this section is to:

- (1) Adopt regulations consistent with the act and FCC rules with respect to basic cable service rate regulation; and
- (2) Prescribe procedures to provide a reasonable opportunity for consideration of the views of interested parties in connection with basic cable service rate regulation by the city. This article shall be implemented and interpreted consistent with the act and FCC rules.

(b) *Rate regulations promulgated by the FCC.* In connection with the regulation of rates for basic cable service and associated equipment, the city shall follow all FCC rules.

(c) *Rate filing; additional information; burden of proof.*

- (1) A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the act and FCC rules. The cable operator shall include as part of its submission such information as is necessary to show that its schedule of rates or its proposed increase in rates complies with the act and FCC rules. The cable operator shall file ten copies of the schedule or proposed increase with the city clerk. For purposes of this article, the filing by the cable operator shall be deemed to have been made when at least ten copies have been received by the city clerk. The city council may, by resolution, adopt rules and regulations prescribing the information, data and calculations which must be included as part of the cable opera-

tor's filing of the schedule of rates or a proposed increase.

- (2) In addition to information and date required by rules and regulations of the city pursuant to subsection (c)(1) of this section, a cable operator shall provide all information requested by the city manager in connection with the city's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The city manager may establish deadlines for the submission of the requested information and the cable operator shall comply with such deadlines.
- (3) A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the act and FCC rules, including, without limitation, 47 USC 543 and 47 CFR 76.922 and 76.923.

(d) *Proprietary information.* If this article, any rules or regulations adopted by the city pursuant to subsection (c)(1) of this section or any request for information pursuant to subsection (c)(2) of this section requires the production of proprietary information, the cable operator shall produce the information. However, at the time the allegedly proprietary information is submitted, a cable operator may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure pursuant to the procedures and rules set forth in 47 CFR 0.45 regarding confidential business information.

(e) *Public notice; tolling order; hearing on basic cable service rate following tolling order.*

- (1) Upon the filing of ten copies of the schedule of rates or the proposed increase in rates pursuant to subsection (c)(1) of this section, the city clerk shall publish a public notice in a newspaper

of general circulation in the city which shall state that:

- a. The filing has been received by the city clerk and (except those parts which may be withheld as proprietary) is available for public inspection and copying; and
- b. Interested parties are encouraged to submit written comments on the filing to the city clerk not later than seven days after the public notice is published.

The city clerk shall give notice to the cable operator of the date, time and place of the meeting at which the city council shall first consider the schedule of rates or the proposed increase. The notice shall be mailed by first class mail at least three days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the city council, then the city clerk shall mail a copy of the report by first class mail to the cable operator at least three days before the meeting at which the city council shall first consider the schedule of rates or the proposed increase.

- (2) After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after 30 days from the date of filing unless the city council tolls the 30-day deadline pursuant to 47 CFR 76.933 by issuing a brief written order, by resolution or otherwise, within 30 days of the date of filing. The city council may toll the 30-day deadline for an additional 90 days in cases not involving cost-of-service showings and for an additional 150 days in cases involving cost-of-service showings.

- (3) If a written order has been issued pursuant to subsection (e)(2) of this section and 47 CFR 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit to the city any additional 150 days in cases involving cost-of-service showings.
- (4) If a written order has been issued pursuant to subsection (e)(2) of this section and 47 CFR 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit to the city any additional information required or requested pursuant to subsection (c) of this section. In addition, the city council shall hold a public hearing to consider the comments of interested parties within the additional 90-day or 150-day period, as the case may be. The city clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the city which shall state:
 - a. The date, time and place at which the hearing shall be held;
 - b. That interested parties may appear in person, by agent, or by letter at such hearing to submit comments on the objections to the existing rates or the proposed increase in rates; and
 - c. That copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the office of the clerk.

The public notice shall be published not less than 15 days before the hearing. In addition, the city clerk shall mail by first class mail a copy of the

public notice to the cable operator not less than 15 days before the hearing.

(f) *Staff or consultant report; written response.* Following the public hearing, the city manager shall cause a report to be prepared for the city council which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or consultant's review, and other appropriate information) include a recommendation for the decision of the city council pursuant to subsection (g) of this section. The city clerk shall mail a copy of the report to the cable operator by first class mail not less than 20 days before the city council acts under subsection (g) of this section. The cable operator may file a written response to the report with the city clerk. If at least ten copies of the response are filed by the cable operator with the city clerk ten days after the report is mailed to the cable operator, the city clerk shall forward it to the city council.

(g) *Rate decision and orders.* The city council shall issue a written order by resolution which, in whole or in part, approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund, or orders other appropriate relief, in accordance with FCC rules. If the city council issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 46 CFR 76.933. The order specified in this subsection shall be issued within 90 days of the tolling order under subsection (e)(2) of this section in all cases not involving a cost-of-service showing. The order shall be issued within 150 days after the tolling order under subsection (e)(2) of this section in all cases involving a cost-of-service showing.

(h) *Refunds.* The city council may order a refund to subscribers as provided in 47 CFR

76.942. Before the city council orders any refund to subscribers, the city clerk shall give at least seven days' written notice to the cable operator by first class mail of the date, time, and place at which the city council shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by letter at such time for the purpose of submitting comments to the city council.

(i) *Decisions to be in writing; effective date of decisions; public notice of decisions.* Any order of the city council pursuant to subsection (g) or subsection (h) of this section shall be in writing, shall be effective upon adoption by the city council, and shall be deemed released to the public upon adoption. The city clerk shall publish a public notice of any such written order in a newspaper of general circulation within the city which shall:

- (1) Summarize the written decision; and
 - (2) State that copies of the text of the written decision are available for inspection or copying from the office of the city clerk. In addition, the city clerk shall mail a copy of the text of the written decision to the cable operator by first class mail.
- (j) *Additional rules, powers and remedies.*
- (1) Adoption of rules and regulations. In addition to rules promulgated pursuant to subsection (c) of this section, the city council may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the act and FCC rules.
 - (2) *Failure to give notice.* The failure of the city clerk to give the notices or to mail copies of reports as required by this article shall not invalidate the decisions or proceedings of the city council.
 - (3) *Additional hearings.* In addition to the requirements of this article, the city

council may hold additional public hearings upon such reasonable notice as the city council, at its sole discretion, shall prescribe.

- (4) *Additional powers.* The city shall possess all powers conferred by the act, FCC rules, the cable operator's franchise, and all other applicable law. The powers exercised pursuant to the act, FCC rules, and this article shall be in addition to powers conferred by law or otherwise. The city may take any action not prohibited by the act and FCC rules to protect the public interest in connection with basic cable service rate regulation.
- (5) *Remedies for failure to comply.* The city may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided with the city) for failure to comply with the act, FCC rules, any orders or determinations of the city pursuant to this article, any requirements of this article, any requirements of this article, or any rules or regulations promulgated under this article. Subject to applicable law, failure to comply with the act, FCC rules, any orders or determinations of the city pursuant to this article, any requirements of this article, or any rules and regulations promulgated under this article shall be sufficient grounds for revocation or denial of renewal of a cable operator's franchise.
- (6) *Conflicting provisions.* In the event of any conflict between this article and the provisions of any prior ordinance or any franchise, license, permit, consent agreement or other agreement with a cable operator, then the provisions of this article shall control.

(Ord. No. 111, § 14; Ord. No. 144, 1-10-1994)

Sec. 34-73. Annual fee.

(a) The company shall pay to the city, for and in consideration of the right and privilege to conduct cable television operations pursuant to conduct cable television operations pursuant to the franchise, an annual fee in an amount equal to three percent of gross subscription revenue, calculated on a monthly basis, derived from its cable television operations in the city. Each year's fee shall be due and payable to the city clerk by January 31 for the proceeding calendar year.

(b) In the event of revocation or termination of the franchise, the final annual fee payment shall be prorated from the immediately preceding January 1 to the date of termination of service.

(Ord. No. 111, § 15)

Sec. 34-74. Assignment of franchise or transfer of control of franchise.

A franchise shall not be assigned nor shall control of the company be transferred without the prior approval of the council, which approval shall not be unreasonably withheld. No consent by the council shall be required for a transfer in trust, mortgage or other instrument of hypothecation to secure an indebtedness of the company.

(Ord. No. 111, § 16)

Sec. 34-75. Forfeiture and revocation of franchise.

(a) The city may declare a forfeiture of the franchise and revoke the franchise if the company:

- (1) Substantially violates any provision of the franchise and the violation remains uncured for a period of 30 days subsequent to receipt by the company of a written notice of such violation, except where such violation is not the fault of the company or is due to excusable neglect.

(2) Practices any fraud or deceit upon the city.

(b) A forfeiture may be declared, for any reason, by any resolution of the council, duly adopted after 30 days' notice to the company, and shall in no way affect any of the city's rights under the franchise or any provision of law; provided, however, that before the franchise may be terminated and canceled under this section, except for nonpayment of monies due to the city from the company, the company shall be provided with an opportunity to be heard at a public hearing before the council upon ten days' written notice to the company on the time and place of the public hearing; provided that such notice shall affirmatively cite the reasons alleged to constitute a cause for revocation and provided further that notice of such public hearing shall be published in a newspaper of general circulation at least ten days before the hearing.

(Ord. No. 111, § 17)

Sec. 34-76. Complaint procedures.

The company shall maintain a local business office or agent easily accessible to the citizens of the city for the purpose of receiving subscriber complaints expeditiously and normally within 24 hours. The council may designate any officer of the city with the responsibility of monitoring the company's operations and, in cases where customers complaints are unsatisfied by the company's response to the complaints, such person shall have the power, and the company shall accept and give recognition to, recommend changes in the company's complaint procedures.

(Ord. No. 111, § 18)

Sec. 34-77. Service and system maintenance.

The company shall, at its own expense, at all times maintain and furnish telephone answering service and system maintenance service to subscribers both during and after regular business hours. The company, in addition to having its telephone listed in the local telephone

directory, shall advise each of its subscribers in writing of such a telephone number.

(Ord. No. 111, § 19)

Sec. 34-78. Miscellaneous provisions.

(a) *Failure to enforce or comply with article provisions.* Failure to enforce or insist upon compliance with any of the terms or conditions of this article shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

(b) *Filing current map showing location of facilities; furnishing reports.* Every cable communications company shall file annually with the city engineer a current map showing the exact location of the transmission and distribution facilities and equipment in the city used by it in providing cable communications service, and, further, shall prepare and furnish the city, on written request therefor, at such times and in such form as may be prescribed, such reports as to its operations, finances, facilities and activities as may be reasonably necessary to enable the city to perform its obligations, functions and duties under this article.

(Ord. No. 111, § 20)

Sec. 34-79. Filing of franchise agreement.

The company shall, within 15 days after the franchise becomes effective by approval of the franchise by ordinance of the city clerk a copy of the franchise agreement. Failure on the part of the company to file such written agreement within such time shall be deemed an abandonment and rejection of the rights conferred in this article.

(Ord. No. 111, § 23)