

CHAPTER 4
CABLE COMMUNICATIONS

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7-4-1: **INTENT:** The city finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the residents of the city. Because of the complex and rapidly changing technology associated with cable television, the city further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the city or such persons as the city shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof. (Ord., 8-1-1989)

7-4-2: **SHORT TITLE:** This chapter shall be known and may be cited as *THE FRUIT HEIGHTS CITY CABLE COMMUNICATIONS ORDINANCE*. (Ord., 8-1-1989)

7-4-3: **DEFINITIONS:** For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

CABLE COMMUNICATIONS SYSTEM OR SYSTEM (Also Referred To As CABLE TELEVISION SYSTEM, CABLE SYSTEM, CATV SYSTEM Or COMMUNITY ANTENNA TV SYSTEM):

A system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, amplifiers, headend equipment, master controls, earth stations, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals within the city.

CITY:

Fruit Heights City, state of Utah, and all the territory within its present and future boundaries and including any area over which the city exercises jurisdiction. The city council is the authority of the city.

FRANCHISE:

The right granted through a contractual agreement between the city and a person by which the city authorizes such person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a cable communications system in the city. Any franchise awarded by an agreement in accordance herewith shall be a nonexclusive franchise.

FRANCHISE AGREEMENT:

An agreement entitled "franchise agreement" entered into between the city and grantee, which is enforceable by city and grantee, and which sets forth the rights and obligations between city and grantee arising out of the franchise.

FRANCHISE FEES:

Any tax, fee or assessment of any kind imposed by a franchising authority or other governmental entity on a grantee solely because of its status as such. The term "franchise fee" does not include:

A. Any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services, but not including a

tax, fee or assessment which is unduly discriminatory against grantee);

B. Capital costs which are required by the franchise to be incurred by grantee for public, educational or governmental access facilities;

C. Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

D. Any fee imposed under United States Code title 17.

GRANTEE: The franchisee, its agents, employees, lawful successors, transferees or assignees.

GRANTOR OR CITY: Fruit Heights City as represented by the city council or any delegate acting within the scope of its jurisdiction.

GROSS REVENUES: A. Revenue from all charges for services provided to subscribers of entertainment and nonentertainment services (including leased access fees);

B. Revenue from all charges for the insertion of commercial advertisements upon the cable television system;

C. Revenue from all charges for the leased use of studios;

D. Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the cable television system and the provision of subscriber and other services.

LEASED ACCESS: The use on a fee for service basis of the cable television system by business enterprises (whether profit, nonprofit or governmental) to render services to the citizens of the city and

shall include without limitation all use pursuant to section 612 of the cable communications policy act of 1984 (47 USC 521 et seq.)

- PERSON:** Any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee successor, assignee, transferee or personal representative thereof.
- STREET:** The surface of and the space above and below any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway or driveway now or hereafter existing as such within the city.
- SUBSCRIBER:** Any person who legally receives any one or more of the services provided by the cable communications system. (Ord., 8-1-1989)

7-4-4: **POLICE POWERS:** Nothing in this chapter or in any agreement awarding a franchise in accordance herewith shall be construed as an abrogation by the city of any of its police powers. (Ord., 8-1-1989)

7-4-5: **APPLICATION FOR FRANCHISE:** Applications for a franchise shall include at a minimum:

- A. **Applicant Identification:** A clear description of the identity of the applicant, including, but not limited to, the name of the applicant, the address of the applicant, the nature of the business entity, and evidence of the compliance of the business entity with all applicable law;
- B. **Encroachment Permits:** Evidence that the applicant has applied (including the payment of all applicable fees) to the city for all applicable encroachment permits;
- C. **Zoning Compliance:** Evidence that all aspects of the applicant's cable television system comply with applicable zoning laws of the city;

- D. Maps: A map or maps of a scale of not less than one inch equaling one hundred feet (1" = 100') showing the precise geographic area for which applicant seeks a franchise ("franchise area");
- E. Building, Electrical Code Review: Evidence that applicant has applied (including the payment of all applicable fees) to the city for building and electrical code review and approval of the plans and construction of the entire cable television system within the franchise area;
- F. Performance Bond: Evidence of financial responsibility in the form of a performance bond conforming to section 7-4-27 of this chapter; (Ord., 8-1-1989)
- G. Nonrefundable Application Fee: A nonrefundable application fee shall be in such amount as established by resolution of the city council to cover the costs of review, issuance and enforcement of franchises issued pursuant to this chapter; (Ord., 8-1-1989; amd. 2006 Code)
- H. Construction Schedule: A schedule of construction, as established by the applicant and reflected upon the maps provided pursuant to subsection D of this section, showing by a logical geographic progression which streets within the franchise area shall be constructed by the applicant within each calendar quarter during the period of construction; and
- I. Plans And Specifications: Detailed plans and specifications for the cable television system which is proposed by the applicant. (Ord., 8-1-1989)

7-4-6: GRANT OF FRANCHISE:

- A. Authority To Grant Franchise: The grantor may grant a franchise for all or any defined portion of the city. The service area shall be the entire area defined in the franchise agreement. The initial service area shall be that portion of the franchise area scheduled to receive initial service, as stated in the franchise agreement.
- B. Grant:
 - 1. In the event that grantor shall grant to a grantee a nonexclusive, revocable franchise to construct, operate, maintain and reconstruct a cable communications system within the franchise area, or a renewal

of an existing franchise, said franchise shall constitute both a right and an obligation to provide the services of a cable communications system as required by the provisions of this chapter and the franchise agreement. The franchise agreement shall include those provisions of the grantee's "application for franchise" that are finally negotiated and accepted by the grantor and grantee.

2. Any franchise granted under the terms and conditions contained herein shall be consistent with federal laws and regulations and state general laws and regulations. In the event of conflict between the terms and conditions of the franchise and the terms and conditions on which the grantor can grant a franchise, the general law and/or statutory requirements shall, without exception, control.

3. Any franchise granted is hereby made subject to the general ordinance provisions now in effect or hereafter made effective. Nothing in the franchise shall be deemed to waive the requirements of the other codes and ordinances of the grantor regarding permits, fees to be paid or manner of construction.

- C. Franchise Required: No cable communications system shall be allowed to occupy or use the streets in the franchise area or be allowed to operate without a franchise in accordance with the provisions of this chapter.
- D. Establishment Of Franchise Requirements: The grantor may establish reasonable requirements for new franchises or franchise renewals, and may modify these requirements from time to time to reflect changing conditions and state of art in the cable industry. Such requirements shall not be retroactive to franchises then in effect, except as set forth in section 7-4-4 of this chapter, but shall become applicable when the franchise is renewed.
- E. Duration: The term of any new franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be as established in the franchise agreement, unless terminated sooner as hereinafter provided.
- F. Franchise Nonexclusive: Any franchise granted shall be nonexclusive. The grantor specifically reserves the right to grant, at any time, such additional franchises for a cable communications system as it deems appropriate; provided, however, that such additional grants shall not operate to materially modify, revoke or terminate any rights previously granted to any grantee.

- G. Franchise Applications: Applicants for a franchise shall submit to the grantor written applications utilizing the standardized format provided by the grantor, at the time and place designated by the grantor for accepting applications, and including the application fees designated by grantor.
- H. Grant Procedure; Hearing: All franchise applications when filed shall be available for public inspection at places designated by the grantor. No later than ninety (90) days after the final date for filing applications, one or more public hearings shall be held on the applications. A decision shall be made by the grantor not later than ninety (90) days after the conclusion of all such public hearings based upon an evaluation of the applications, the hearings and other information that the grantor may deem relevant. Grantor may grant one or more franchises, or may decline to grant any franchise. (Ord., 8-1-1989)

7-4-7: AUTHORITY FOR USE OF STREETS:

- A. Grant Of Authority: For the purposes of operating and maintaining a cable communications system in the city, the grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the streets within city such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the cable system; provided, that all applicable permits are applied for and granted, all fees paid and all other city codes and ordinances are otherwise complied with.
- B. Plans Filed; Monthly Progress Reports: Prior to construction or alteration, grantee shall in each case file plans with all appropriate city agencies and utility companies and receive written approval of such plans which approval shall not be unreasonably withheld. Grantee shall provide a monthly progress report to city through the completion of construction or alteration.
- C. Interference; Use Of Existing Facilities; Notification: Grantee shall construct and maintain a cable communications system so as not to interfere with other uses of streets. Grantee shall make use of existing poles and other facilities available to grantee. Grantee shall individually notify all residents affected by proposed construction prior to the commencement of that work.

- D. **Prohibited Streets:** Notwithstanding the above grant to use streets, no street shall be used by grantee if the city, in its sole opinion, and prior to the design of the grantee being initiated, determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used. (Ord., 8-1-1989)

7-4-8: CONDITIONS ON STREET OCCUPANCY:

- A. **Interference:** All transmissions and distributions structures, lines and equipment erected by the grantee within the city shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places.
- B. **Restoration:** In case of disturbance of any street, sidewalk, alley, public way or paved area, the grantee shall, at its own cost and expense and in a manner approved by the city (director of public works or other appropriate official), replace and restore such street, sidewalk, alley, public way or paved area in as good a condition as before the work involving such disturbance was done.
- C. **Tree Removal:** The grantee shall not, and shall prohibit any officer, agent, employee, contractor or subcontractor which it retains from removing or trimming any tree or portion thereof (either above, at or below ground level), which is located within a street without the prior written approval of the city. Such consent may be given or withheld upon such terms and conditions as the city deems appropriate. Each grantee shall be responsible for, shall indemnify, defend and hold harmless the city and its officers, agents and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of or any injury to any tree or trees proximately caused by the grantee or its officers, agents, employees, contractors or subcontractors. (Ord., 8-1-1989)

7-4-9: ERECTION OF POLES:

- A. **Consent Required:** No franchise shall be deemed to expressly or impliedly authorize the grantee to construct or install poles or wire holding structures within streets for the purpose of placing cables, wires, lines or otherwise, without the written consent of the city

within which the street is situated. Such consent shall be given upon such terms and conditions as the city council, in its reasonable discretion, may prescribe, which shall include a requirement that the grantee perform, at its sole expense, all tree trimming required to maintain the poles clear of obstructions.

- B. **Use By Public Utility Or District:** With respect to any poles or wire holding structures which a grantee is authorized to construct and install within streets, a public utility or public utility district serving the city may, if denied the privilege of utilizing such poles or wire holding structures by the grantee, apply for such permission to the city council. If the city council finds that such use would enhance the public convenience and would not unduly interfere with the grantee's operations, the city council may authorize such use subject to such terms and conditions as it deems appropriate. Such authorization shall include the condition that the public utility or public utility district pay to the grantee any and all actual and necessary costs incurred by the grantee in permitting such use. (Ord., 8-1-1989)

7-4-10: **UNDERGROUNDING:**

- A. **Required:** Except as hereinafter provided, in all areas of the city where the cables, wires and other like facilities of a public utility or public utility district are placed underground, each grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed aboveground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. In any area of the city where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles, a grantee may construct and install its cables, wires and other facilities from the same pole.
- B. **Reconstruction:** With respect to any cables, wires and other like facilities constructed and installed by a grantee aboveground, the grantee shall, at its sole expense, reconstruct and reinstall such cables, wires or other facilities underground pursuant to any project under which the cables, wires or other like facilities of such utilities are placed underground within an area. The duty of a grantee to place its cables, wires and other facilities underground shall arise

only if all like facilities of utilities which are existing aboveground are placed underground. (Ord., 8-1-1989)

7-4-11: **RELOCATION:** If during the term of a franchise the city, a public utility district, a public water district, a public sanitation district, a public drainage district or any other similar special public district elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street or to replace, repair, install, maintain, or otherwise alter any aboveground or underground cable, wire conduit, pipe, line, pole, wireholding structure, structure, or other facility utilized for the provision of utility or other services or transportation of drainage, sewage or other liquids, the grantee, shall, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed. If such removal or relocation is required within the subdivision in which all utility lines, including those for the cable television system were installed at the same time, the entities may decide among themselves who is to bear the cost of relocation; provided, that the city shall not be liable to a grantee for such costs. Regardless of who bears the costs, a grantee shall take action to remove or relocate at such time or times as are directed by the agency or company undertaking the work. Reasonable advance written notice shall be mailed to the grantee advising the grantee of the date or dates removal or relocation is to be undertaken. (Ord., 8-1-1989)

7-4-12: **MOVEMENT OF BUILDINGS:** Each grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the city or state, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting the same, and a grantee shall be authorized to require such payment in advance. A grantee shall be given not less than forty eight (48) hours' oral or written notice to arrange for such temporary wire changes. (Ord., 8-1-1989)

7-4-13: **COMPLETION:**

A. **Issuance Of Final Order Of Completion:** A final order of completion shall be issued by the city council when:

1. Construction of the cable television system has been completed within the entirety of each franchise area in compliance with

construction standards and the design and other requirements of this chapter;

2. Cable television services have been made available to all dwelling units within the density requirements prescribed in the franchise agreement;

3. Any and all studio facilities, equipment, channels and other services, resources or benefits required for public, educational and governmental access purposes pursuant to the provisions of this chapter have been completed and made available;

4. Complete and accurate "as built" plans pursuant to section 7-4-7 of this chapter have been filed by the grantee with the city; and

5. A notice of completion has been filed by the grantee as hereinafter provided.

- B. **Availability Of Service Determined:** For purposes of this chapter, cable television service shall be deemed to be made available when cable television services are offered on a nondiscriminatory basis for immediate provision to the owner or legal representative of the owner empowered to consent to use of the property of such individual dwelling units.
- C. **Determination Of Compliance:** For the purpose of determining compliance with the provisions of this chapter and of determining completion under this section, the total number of dwelling units within each franchise area shall be deemed to be the actual number of units available for occupancy as of a date forty five (45) calendar days in advance of the date of filing by the grantee of the notice of completion; provided, that the grantee files the notice of completion with a good faith belief that it has in fact achieved completion as of the date of filing.
- D. **Notice Of Completion:** A grantee who asserts completion shall file a written notice of completion with the city recorder. The notice of completion shall state the total number of dwelling units available for occupancy within each franchise area forty five (45) calendar days in advance of the filing of the notice, the total number of dwelling units to which cable television service have been made available within each franchise area as of the date of filing, and shall otherwise certify completion as defined by subsection A of this section. Neither the notice of completion nor the statements, assertions or

certifications contained therein shall be deemed to be binding upon the city.

- E. **Inspection:** During the period of construction of the cable television system during the sixty (60) day period following filing of the notice of completion, all elements and components thereof, and all equipment and studio facilities required by the franchise documents shall be subject to inspection by city employees or authorized agents or representatives thereof, for the purpose of determining whether the system and related facilities comply with the franchise and the provisions of this chapter. The grantee shall authorize such inspection and provide such information and cooperation as is required in order to permit an adequate investigation to determine the existence or nonexistence of such compliance.
- F. **Offer Of Service:** The grantee shall offer to install, make operational and render cable communications services to all dwelling units within the city in accordance with this chapter and any agreement awarding a franchise within twelve (12) months of the date of execution of any agreement awarding a new franchise. (Ord., 8-1-1989)

7-4-14: REMOVAL:

- A. **Underground Facilities:** Upon expiration or termination of a franchise, if the franchise is not renewed and if neither the city nor an assignee purchase the cable television system, the grantee may remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. The grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. The grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the city council based upon a determination, in the sole discretion of the city council, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the city council to remove cable or conduit shall be mailed to the grantee not later than thirty (30) calendar days following the date of expiration of the franchise. A grantee shall file written notice with the city recorder not later than thirty (30) calendar days following the date of expiration or termination of the franchise of its intention to remove

cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the city. Removal shall be completed not later than twelve (12) months following the date of expiration of the franchise. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in the city.

- B. **Aboveground Facilities:** Upon expiration or termination of a franchise, if the franchise is not renewed and if neither the city nor an assignee purchase the system, the grantee, at its sole expense, shall, unless relieved of the obligation by the city, remove from the streets all aboveground elements of the cable television system, including, but not limited to, amplifier boxes, pedestal mounted terminal boxes, and cable attached to or suspended from poles, which are not purchased by the city or its assignee.
- C. **Required Permits And Fees; Restoration:** The grantee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinances of the city, shall conduct and complete the work of removal in compliance with all such applicable ordinances, and shall restore the streets in a reasonable and professional manner to the condition they were in before the work of removal commenced. The work of removal shall be completed not later than one year following the date of expiration of the franchise. (Ord., 8-1-1989)

7-4-15: **UNIVERSAL SERVICE:** Any cable television system franchise pursuant to the provisions of this chapter shall provide equal and uniform cable television service to all dwelling units within the franchise area defined by the applicant and within the density requirements prescribed in the franchise agreement; subject only to a reasonable construction schedule established by the applicant pursuant to section 7-4-5 of this chapter. (Ord., 8-1-1989)

7-4-16: **FRANCHISE AREA:** The applicant shall define a franchise area whose contour, so far as is possible, shall follow streets. Within the perimeter of the contour, no dwelling units shall be excluded from service provided to the franchise area defined by the applicant and within the density requirements prescribed in the franchise agreement. (Ord., 8-1-1989)

7-4-17: **GENERAL CAPABILITY:** Each cable television system shall, at minimum:

- A. FCC Required Broadcast Signals: Relay to subscriber terminals those broadcast signals required by the FCC;
- B. Color Distribution: Distribute in color all television signals which it receives in color;
- C. Lockout Device: Make available upon request by any subscribers receiving channels showing premium services and pay per view events, a lockout device which prevents the unauthorized viewing of such channels;
- D. RF Switch: Make available to subscribers, upon request, an RF switch (an A-B switch) permitting conversion from cable to antenna reception; and
- E. Megahertz Capacity: Have a present, activated capacity of four hundred fifty (450) megahertz with all amplifier cascades designed and spaced to accommodate conversion to five hundred fifty (550) megahertz capacity. (Ord., 8-1-1989)

7-4-18: **STANDBY POWER:** Each cable television system shall include equipment capable of providing standby powering for headend, transportation and trunk amplifiers for a minimum of two (2) hours. The equipment shall be so constructed as to automatically revert to the standby mode when the AC power returns. The system shall incorporate safeguards necessary to prevent injury to linemen resulting from a standby generator powering a "dead" utility line. (Ord., 8-1-1989)

7-4-19: **OVERRIDE CAPABILITY:** Each cable television system shall include an "emergency alert capability" which will permit the city, in times of emergency, to override by remote control alternatively the audio and video of all channels simultaneously. Each cable television system shall include the capability to broadcast from the city's headquarters for civil defense, disaster and emergency services. (Ord., 8-1-1989)

7-4-20: **INTERCONNECTION:** The cable television system shall be capable of interconnection with other cable systems within the city and the greater Metropolitan Wasatch Front area so as to enable each

system to carry and cablecast the public, educational and governmental access programming of the other systems; provided, however, that the interconnect can be accomplished only with the consent of the neighboring cable operator. The interconnect shall be made where technically feasible along the boundaries of the city. (Ord., 8-1-1989)

7-4-21: TECHNICAL STANDARDS:

- A. **Compliance Required; FCC Standards:** Each grantee shall construct, install and maintain its cable television system in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards equivalent to those established by the FCC (FCC rules, part 76, subpart K, and amendments). Each grantee shall provide to the city council, upon request, written reports of the grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements.
- B. **Electrical Code Compliance:** Each grantee shall at all times comply with the national electrical safety code (National Bureau of Standards); national electrical code (National Bureau of Fire Underwriters); applicable FCC and other federal, state and local regulations; and codes and other ordinances of the city.
- C. **Safety Of Persons And Property:** In any event, the cable television system shall not endanger or interfere with the safety of persons or property within the city or other areas where the grantee may have equipment located.
- D. **Occupational Safety And Health Administration:** All working facilities, conditions and procedures used or occurring during construction of the cable television system shall comply with the standards of the occupational safety and health administration.
- E. **Construction, Installation And Maintenance:** Construction, installation and maintenance of the cable television system shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the city following accepted construction procedures and practices and working through existing committees and organizations.
- F. **Parallel Installation Of Cables And Wires:** All cables and wires shall be installed, where possible, parallel with electric and telephone

lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.

- G. **Antenna Structures:** Any antenna structure used in the cable television system shall comply with construction, marking and lighting of antenna structures, required by the United States department of transportation.
- H. **RF Leakage:** RF leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Radiation shall be measured adjacent to any proposed aeronautical navigation or communication radio sites to prove no interference to air navigational reception, in accordance with FCC rules. (Ord., 8-1-1989)

7-4-22: PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS:

- A. **Requirements:** Every cable television system franchised pursuant to the provisions of this chapter shall provide not less than the following for public, educational and governmental access pursuant to the provisions of the cable communications policy act of 1984, section 611 (47 USC 531):
 1. Three (3) downstream video channels for public and community access;
 2. Two (2) downstream video channels for educational access; and
 3. One downstream video channel for governmental access.
- B. **Two-Way Capability:** The above mentioned channels shall be constructed so as to be two-way capable. The grantee shall be allowed to use any such channels for the provision of other services when not being used for the designated purpose. (Ord., 8-1-1989)

7-4-23: SUPPORT FOR USE OF ACCESS: Nothing contained in this chapter shall be construed to limit the authority of the grantee to make payments in support of the use of public, educational and/or governmental television channels; however, such payments are expressly not a requirement of any franchise granted hereunder and shall in no event be considered in the calculation of franchise fees pursuant this chapter. (Ord., 8-1-1989)

7-4-24: AVAILABILITY OF ACCESS FACILITIES:

- A. Requirements: Use of channels for public, educational and governmental access upon the cable television system pursuant to section 7-4-22 of this chapter shall be made available, without rental, deposits or any other charge whatsoever, for use twenty four (24) hours per day, seven (7) days a week in connection with the production of public, educational and/or governmental access programming cablecast upon the cable television system. A grantee shall:
1. Allow all persons and entities desiring to cablecast public, educational and/or governmental access programming to produce programming upon and electronically interface directly with cable television system of grantee so as to effectively cablecast the public, educational and/or governmental access programming, or, in the alternative,
 2. Establish such reasonable rules and procedures, designed to promote the utilization of such public, educational and/or governmental access programming and subject to the approval of the city council, which approval shall not be unreasonably withheld, whereby the grantee shall accept and cablecast such public, educational and/or governmental access programming upon the cable television system as shall be provided to the grantee by such persons and entities.
- B. Coordination With Other Systems: A grantee shall make all reasonable efforts to coordinate the cablecasting of public, educational and/or governmental access programming upon the cable television system at the same time and upon the same channel designations as such programming is cablecast upon other cable television systems within the community. (Ord., 8-1-1989)

7-4-25: APPROVAL BY CITY; INSPECTION; CORRECTIONS; BREACH OR DEFAULT:

- A. Approval Of Construction By City; Inspection: Except for individual service drops, the grantee shall not, within the city, run any line, make any attachment, nor shall any construction of any kind be commenced without the prior approval of the city. Such approval shall not be unreasonably withheld and action shall be taken on any request for approval within three (3) business days of receipt of the request, or it shall be deemed granted. Grantee shall be able to

make emergency repairs as needed. The city shall have and maintain the right to inspect the construction, operation and maintenance of the system by the grantee to ensure the proper performance of the terms of this chapter.

B. In the event the grantee should violate any of the terms of this chapter or local law, or any of the rules and regulations as may hereafter be from time to time lawfully adopted hereunder, or any provision of the franchise agreement, or if it has been determined that the grantee has violated any federal or state law by a final order of an appropriate court or agency, in accordance with the procedures of section 7-4-30 of this chapter, the city may:

1. Make such correction itself and charge the cost of the same to the grantee; and/or

2. Secure the proceeds from any financial performance instrument posted by the grantee or impose the sum of fifty dollars (\$50.00) per day for each day of breach or violation following the cure date that grantee fails to meet an agreed upon limit for such activity or its contractual or legal obligations; and/or

3. In the case of a material breach of this chapter or the franchise agreement, declare the grantee in default and terminate the franchise and rights granted under the franchise.

C. **Removal Of Facilities Upon Termination:** Upon any termination of the franchise by the city or the city's refusal to renew the same pursuant to applicable federal law, the grantee shall within ninety (90) days of receipt of notice of termination or refusal to renew the franchise, remove its facilities and equipment, and in the event that the grantee does not remove its facilities and equipment within the time provided in this section, the city may do so, the removal cost to be borne in any event by the grantee. Any enforcement action or remedy provided by this section or this chapter, or by the franchise agreement, shall not be deemed exclusive but shall be alternative or cumulative in nature. Notwithstanding anything to the contrary in this chapter, the city shall not impose any penalty upon the grantee where either the violation or failure to cure the same result from force majeure, labor dispute, declaration of war or other hostilities, act of God, or any other reason beyond the control of the grantee. (Ord., 8-1-1989)

7-4-26: TRANSFERS:**A. Consent Required; Exception:**

1. A franchise shall not be sold, assigned or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the city.

2. No such consent shall be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness.

3. The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as determined by the city and must agree to comply with all provisions of the franchise and such conditions as may be prescribed by the city council, expressed by resolution. The city shall not unreasonably withhold consent.

B. Notification To City: The grantee shall promptly notify the city of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the grantee. The word "control", as used herein, is not limited to major stockholders, but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the grantee shall make the franchise subject to cancellation unless and until the city shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the city may inquire into the qualifications of the prospective controlling party and the grantee shall assist the city in any such inquiry.

C. Presumption Of Transfer: A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty percent (50%) of the voting interest of the grantee.

D. Consent Not Waiver Or Release Of City Rights: The consent or approval of the city council to any transfer of the franchise shall not constitute a waiver or release of the rights of the city in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of a franchise.

- E. **Approval Prior To Completion:** In any absence of extraordinary circumstances, the city will not approve any transfer or assignment of a franchise prior to substantial completion of construction of the proposed system.
- F. **Successor To Become Signatory:** In no event shall a transfer of ownership or control be approved without successor in interest becoming a signatory to the franchise agreement. (Ord., 8-1-1989)

7-4-27: **PERFORMANCE BOND:**

A. **Required; Amount; Failure To Comply, Recovery:**

1. Each grantee shall file with its application for a franchise, and at all times thereafter until the filing of a final notice of completion pursuant to section 7-4-13 of this chapter, maintain in full force and effect, an acceptable corporate surety bond issued by a surety licensed therefor by the state in the amount as established by resolution in the bond schedule.

2. In the event the grantee shall fail to comply with any one or more of the provisions of the franchise, whether or not the franchise is terminated, then there shall be recoverable, jointly and severally from the principal and surety of such bond, any damages, delinquent franchise fees, compensation and costs of repairing or completing the cable television system, and compensation and cost of removal or abandonment of property and repair of streets and other public or private improvements, up to the full amount of the bond; said condition to be a continuing obligation for the duration of the franchise and thereafter until the grantee has satisfied all of its obligations which may have arisen from the acceptance of the franchise or from its exercise of any privileges thereunder.

- B. **Reduction Upon Issuance Of Final Order Of Completion:** Upon the issuance of a final order of completion pursuant to section 7-4-13 of this chapter, the amount of the aforesaid corporate surety bond shall be reduced to an amount as established by resolution in the bond schedule upon the date of the notice of final completion, and maintained at such an amount at all times thereafter during the operation of the cable television system.
- C. **Cancellation Notice:** Neither the provisions of this section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall be construed to excuse unfaithful performance by the grantee

or to limit the liability of the grantee under the franchise or for damages, either to the full amount of the cancellation by the surety during the term of the franchise, whether for failure to pay a premium or otherwise, without thirty (30) calendar days' advance written notice mailed by the surety to the city recorder. The form of the bond and surety shall be subject to the approval of the city council. (Ord., 8-1-1989; amd. 2006 Code)

7-4-28: INDEMNIFICATION BY GRANTEE:

- A. Required: Each grantee shall, at its sole expense, fully indemnify, defend and hold harmless the city, and in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability, attorney fees, and judgments for damages or otherwise, with the exception of wilful misconduct or gross negligence by the city, its officers, agents or employees:
1. For actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of the grantee or its officers, agents, employees or contractors, or to which the grantee's, or its officers, agents, employees or contractors, acts or omissions in any way contribute;
 2. Arising out of or alleged to arise out of any claim for damages for invasion of the right of privacy, 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 right of any person, firm or corporation; and
 3. Arising out of or alleged to arise out of grantee's failure to comply with the provisions of any statute, regulation or ordinance of the United States, this state or any local agency applicable to the grantee in its business.
- B. Participation In Defense Of Litigation: Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at the grantee's sole expense. Such participation shall not under any circumstances relieve the grantee from its duty of defense against liability or of paying any judgment entered against such party. (Ord., 8-1-1989)

7-4-29: GRANTEE INSURANCE:

- A. Requirements: As a part of the indemnification provided by section 7-4-28 of this chapter, but without limiting the foregoing, each grantee shall file with the application, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance products/completed operations liability, personal injury liability, owners and contractors protective liability, broad form property damage, contractual liability, automobile liability (owned; nonowned and hired automobiles), workers' compensation and employer liability. The policy or policies shall name as primary insured the city, and in their capacity as such, their officers, agents and employees. The grantee and said city and officers, agents and employees shall be named as coinsureds, and the policy or policies shall contain cross liability endorsements. Policies of insurance shall be: 1) five hundred thousand dollars (\$500,000.00) for bodily injury or death to any one person within the limit, however, of one hundred thousand dollars (\$1,000,000.00) for bodily injury or death resulting from any one accident; 2) five hundred thousand dollars (\$500,000.00) for property damage resulting from any one accident; and 3) workers' compensation insurance in such coverages as may be required by the workers' compensation insurance and safety laws of the state, and amendments thereto. The insurance policy or policies shall contain contractual liability insurance naming the grantee, and shall insure against the types of liabilities covered by the indemnification and hold harmless provisions of section 7-4-28 of this chapter.
- B. Approval: The insurer or insurers shall be authorized to write the required insurance, approved by the insurance commissioner of the state, and subject to the reasonable approval of the city council. The form and substance of the policy or policies of insurance shall also be subject to approval by the city council.
- C. Effect During Term Of Franchise; Notice To City: Hearing:
1. The policy or policies of insurance shall be maintained by the grantee in full force and effect during the entire term of the franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the grantee or for other reasons, except after thirty (30) calendar days' advance written notice mailed by the insurer to the city recorder, and that such notice shall be transmitted postage

prepaid, with return receipt. Upon receipt of such notification, the city council may conduct a hearing to determine whether the franchise should be terminated.

2. If the hearing is conducted by the city council, upon conclusion of the hearing the city council shall adopt a decision which includes findings of fact and conclusions. If the decision by the city council is that there are grounds for termination of the franchise and that the franchise shall be terminated, the city council shall adopt a resolution which terminates the franchise and include its decision. The effective date of termination shall be such date as is prescribed by the city council, within its sole discretion, in the resolution. (Ord., 8-1-1989)

7-4-30: **VIOLATIONS; PROCEDURE FOR REMEDYING:** In the event that city determines that grantee has violated any material provision of the franchise, the city shall make a written demand on grantee that it remedy such violation, which demand shall be personally served upon grantee's general manager or his agents at grantee's office designated to the city for this purpose, and which shall detail the facts forming the basis of the alleged violation. If the violation is not remedied, or in the process of being remedied, to the reasonable satisfaction of city within thirty (30) days following such a demand, the city shall determine whether or not such violation by grantee was excusable or inexcusable, in accordance with the following procedure:

- A. An informal conference shall be held to review the alleged violation. If this conference does not result in a resolution of the alleged violation satisfactory to both the city and grantee, either party may request a public hearing. A public hearing shall be held and thereupon grantee shall be given thirty (30) days' written notice of the time and the place of the hearing. Only the issues and allegations specified in a written notice under this section shall be heard and resolved at said hearing, unless additional issues are agreed to be decided by grantee.
- B. If, after notice and a hearing, the city determines that such violation by grantee was excusable as provided in section 7-4-25 of this chapter, city shall direct grantee to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as city may reasonably direct.

- C. If, after notice and a hearing, the city determines that such violation was inexcusable, then the city may impose a remedy in accordance with section 7-4-25 of this chapter.
- D. Any hearing held may be conducted either by the city council or, at the sole discretion of the council, by a hearing officer appointed by the city council to conduct the hearing. Any such hearing officer shall be an attorney licensed to practice under the laws of the state, with no prior attorney/client relationship with either the city or grantee.
- E. The cost of providing quarters for the hearing, compensation for the hearing officer, if any, and the per diem cost of any reporter retained to record the proceedings shall be borne by the city. The costs incurred by the parties for attorney fees, expert witness fees and other expenses shall be borne solely by the party incurring the costs.
- F. All witnesses testifying at any hearing held pursuant to this section shall be sworn witnesses and shall be subject to direct and cross examination. However, formal rules of evidence applicable to the trial of civil and criminal proceedings in the trial courts of the state shall not be applicable to the hearing; provided, that no contested issue of fact may be based solely on hearsay evidence. The hearing may be continued from time to time.
- G. If the hearing is conducted by a hearing officer, the officer shall, upon conclusion of the hearing, prepare a recommended decision which includes findings of fact and conclusions. The recommended decision shall be filed with the city recorder and mailed to the parties not later than thirty (30) calendar days after the conclusion of the hearing. Upon receipt of such a recommended decision, the city council may, at a public hearing called for such purpose, and at which grantee will be allowed to speak and make argument for or against the recommended decision:
 - 1. Adopt the recommended decision, including findings of fact and conclusions submitted by the hearing officer;
 - 2. Adopt the findings of fact and conclusions contained in the recommended decision, modify the decision and adopt the recommended decision as so revised;
 - 3. Based upon the record of the hearing, modify the findings of fact, conclusions or decisions, and adopt the recommended decision as so revised; or

4. Reject the recommended decision and conduct a new hearing.
- H. If the hearing is conducted by the city council, upon conclusion of the hearing, the city council shall adopt a decision which includes findings of fact and conclusions.
 - I. If the decision by the city council is that there are grounds for termination of the franchise and that the franchise shall be terminated, the council may adopt a resolution which terminates the franchise and includes its decision and its findings and conclusions. The effective date of termination shall be such date as is prescribed by the city council, within its sole discretion, in the resolution, giving due consideration to the needs of the public, who are then subscribing for cable service from grantee, and the need for an orderly transition to a new grantee. (Ord., 8-1-1989)

7-4-31: **ALTERNATIVE REMEDIES:** No provision of this chapter shall be deemed to bar the right of either party to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation prescribed herein, or judicial enforcement of the obligations prescribed herein by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity. (Ord., 8-1-1989)

7-4-32: **NONENFORCEMENT:** Grantee shall not be relieved of any obligation to comply with any of the provisions of the franchise or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the city or its officers, agents or employees to enforce prompt compliance. (Ord., 8-1-1989)

7-4-33: **COMMUNICATIONS WITH REGULATORY AGENCIES:** Copies of all petitions, applications, communications and reports submitted by a grantee to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a cable television system or services provided through such a system, shall be filed simultaneously with the city. Copies of responses or any other communications from the

regulatory agencies to a grantee likewise shall be filed immediately upon receipt with city. (Ord., 8-1-1989)

7-4-34: RATES:

- A. **Schedule Filed Yearly:** The grantee shall file with the city on December 31 of each year a full schedule of all subscriber and user rates and all other charges, including, but not limited to, pay TV, lease channel and discrete services, made in connection with the cable communications system.
1. All rates shall be published and on file with the city.
 2. The grantee shall not discriminate in the assessment, levy, charge, imposition or collection of rates on the basis of age, race, creed, color, religion, national origin, sex or marital status.
- B. **Promotional Campaigns Not Prohibited:** Nothing in this chapter shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers or users.
- C. **Advance Payments:** The grantee may require all subscribers to pay for service not more than two (2) months in advance. The grantee shall require no other advancement of payment for service; provided, however, that nothing herein shall be construed to prohibit an advancement of payment for installation of cable communications services.
- D. **Disconnection Charges Prohibited:** The grantee shall neither impose nor collect any additional charge for the disconnection of any installation or outlet.
- E. **Disconnection Due To Failure To Pay:** In the event that a subscriber fails to pay as properly due and owing a fee or charge, the grantee may disconnect the subscriber's service outlet, upon giving ten (10) days' written notice thereof.
- F. **Refund Policy:** The grantee shall establish and conform to the following policy regarding refunds to subscribers and users:
1. If the grantee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the grantee shall provide such service or equipment within thirty (30) days of the

collection of the deposit or charge, or it shall refund such deposit or charge within five (5) days thereafter.

a. Nothing in this section shall be construed to relieve the grantee of any responsibility to subscribers or users under any contractual agreements into which it enters with them.

b. Nothing in this section shall be construed as limiting the grantee's liability for fines or penalties which may be imposed under this chapter or any agreement awarded in accordance herewith for violation or breach of any of their provisions.

c. Nothing in this section shall be construed to limit the grantee's liability for damages because of its failure to provide the service for which the deposit or charge was made.

2. In the event that a subscriber terminates basic service prior to the end of a prepaid period, the pro rata portion of any prepaid subscriber fee which represents payment for services which are no longer to be rendered shall be refunded promptly, but in no case more than thirty (30) days after receipt of the request for termination.

G. Security Deposit:

1. The grantee shall not charge a converter security deposit greater than such converter's actual cost to the grantee.

2. Any converter security deposit collected by the grantee shall be returned to the subscriber twenty four (24) months after the installation of such converter or upon termination of service by the subscriber and return of such converter undamaged, with allowance for reasonable wear and tear, and payment of any outstanding balance due and payable, whichever occurs first. (Ord., 8-1-1989)

7-4-35: **FRANCHISE FEE:** For the use of the streets and for the purposes of providing revenue with which to defray the costs of regulation arising out of the granting of franchises under this chapter and promoting, assisting and financing public, educational and governmental access programming, each grantee shall pay franchise fees in the amount prescribed by section 7-4-36 of this chapter. (Ord., 8-1-1989)

7-4-36: AMOUNT AND PAYMENT OF FRANCHISE FEES:

- A. Annual Gross Revenue: During the term of each franchise, each grantee shall pay to the city council an amount equal to five percent (5%) per year of the grantee's annual gross revenue.
- B. When Due; Signed Statement Required: Said fees shall be paid quarterly not later than August 1, November 1, February 1 and May 1 for the preceding three (3) month period ending, respectively, June 30, September 30, December 31 and March 31. Not later than the date of each payment, each grantee shall file with the city council, a written statement signed under penalty of perjury by an officer of the grantee, which identifies in detail the sources and amounts of gross revenues received by a grantee during the quarter for which payment is made.
- C. Acceptance Not Construed As Satisfaction: No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the city may have for further or additional sums payable under the provisions of this section. (Ord., 8-1-1989)

7-4-37: INTEREST ON DELINQUENT FRANCHISE FEES: Any franchise fees which remain unpaid after the dates specified in section 7-4-36 of this chapter shall be delinquent and shall thereafter accrue interest at the maximum legal rate until paid. (Ord., 8-1-1989)

7-4-38: ACCOUNTING STANDARDS: Not less than every two (2) years, the grantee shall provide the city council with an unqualified certification of an independent certified public accountant certifying the accuracy of the quarterly franchise fee payments paid within the preceding twenty four (24) months pursuant to section 7-4-36 of this chapter. Said certification shall be prepared in accordance with generally accepted accounting standards as established by the financial accounting standards board (FASB). (Ord., 8-1-1989)

7-4-39: GROSS REVENUE CALCULATIONS: For purposes of the gross revenue calculations required by section 7-4-36 of this chapter, "gross revenue" shall be as defined by section 7-4-3 of this chapter. (Ord., 8-1-1989)

7-4-40: AUDITING AND FINANCIAL RECORDS:

- A. **City Standards:** The city auditor may, from time to time during the term of a franchise, prescribe reasonable standards governing the nature, extent and type of accounting system and accounting procedures utilized by a grantee and require changes in accounting standards or procedures utilized by a grantee, for the purpose of promoting the efficient administration of the franchise fee requirements of this chapter. Any such standards shall be in writing, shall be filed with the city, and shall be mailed to the grantee to whom directed. A grantee shall promptly comply with all such standards.
- B. **Audit:** During the term of each franchise, the city may, not more frequently than once each year, conduct an audit of the books, records and accounts of the grantee for the purpose of determining whether the grantee has paid franchise fees in the amounts prescribed by section 7-4-36 of this chapter. The audit may be conducted by the city auditor or by an independent certified public accounting firm retained by the city, and shall be conducted at the sole expense of the city. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with the city, and mailed to the city and grantee.
- C. **Inspection:** Each grantee shall make available for inspection by authorized representatives of the city, its books, accounts, and all other financial records at reasonable times and upon reasonable advance notice for the purpose of permitting exercise of the authority conferred by this section. (Ord., 8-1-1989)

7-4-41: PUBLICATION COSTS: The grantee shall assume the reasonable cost of publication of this franchise as such publication is required by law and such is payable upon the grantee's filing of acceptance of this franchise. (Ord., 8-1-1989)

7-4-42: LIQUIDATED DAMAGES:

- A. **Amount Of Damages:** By acceptance of the franchise granted by the city, a grantee understands and shall agree that failure to comply with any time and performance requirements as stipulated in this chapter and the franchise agreement will result in damage to the city, and that it is and will be impracticable to determine the actual

amount of such damage in the event of delay or nonperformance; the franchise agreement shall include provisions for liquidated damages to be paid by the grantee, in amounts set forth in the franchise agreement and chargeable to and payable by the grantee for the following concerns:

1. Failure to complete system construction or reconstruction in accordance with sections 7-4-7, 7-4-8, 7-4-9, 7-4-10, 7-4-11, 7-4-12, 7-4-13 and 7-4-14 of this chapter, unless the city council specifically approves the delay by motion or resolution, due to the occurrence of conditions beyond grantee's control, a grantee shall pay an amount as established by resolution of the fee schedule per day for each day, or part thereof, the deficiency continues.

2. Failure to provide (within 60 days) upon written request, data, documents, reports, information or to cooperate with the city during an application process or CATV system review, a grantee shall pay an amount as established by resolution of the fee schedule per day, or part thereof, each violation occurs or continues.

3. Failure to test, analyze and report (within 60 days) on the performance of the system following a written request pursuant to this chapter, a grantee shall pay to the city an amount as established by resolution of the fee schedule per day for each day, or part thereof, that such noncompliance continues.

4. For failure to provide in a continuing manner the types of services proposed in the accepted application, unless the city council specifically approves grantee a delay or change, or the grantee has obtained modification of its obligation under section 625 of the cable communications policy act of 1984; grantee shall pay to the city an amount as established by resolution of the fee schedule per day for each day, or part thereof, that each noncompliance continues.

5. Any other action or nonaction by the grantee, as agreed upon between the city and grantee, and set forth in the franchise agreement. Nothing in this section shall preclude further liquidated damages as agreed upon by parties in the franchise agreement. (Ord., 8-1-1989; amd. 2006 Code)

B. Notice Of Intent To Assess; Appeal; Hearing:

1. If the city concludes that a grantee is liable for liquidated damages pursuant to subsection A of this section, it shall issue to grantee by certified mail a notice of intention to assess liquidated damages. The

notice shall set forth the basis for the assessment, and shall inform the grantee that liquidated damages will be assessed from the date of the notice, unless the assessment notice is appealed for hearing before the city council and the city council rules: a) that the violation has been corrected; or b) that an extension of time or other relief should be granted.

2. A grantee desiring a hearing before the city council shall send a written notice of appeal by certified mail to the city within ten (10) days of the date on which the city sent the notice of intention to assess liquidated damages. The hearing on the grantee's appeal shall be within thirty (30) days of the date on which the city sent the notice of intention to assess liquidated damages. Unless the city council indicates to the contrary, said liquidated damages shall be assessed beginning with the date on which the city sent the notice of the intention to assess liquidated damages and continuing thereafter until such time as the violation ceases, as determined by the city. (Ord., 8-1-1989)