

FILE NO. 000198

ORDINANCE NO. 58-00

[Administrative Code Revisions – Chapter 11]

AMENDING CHAPTER 11 OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY  
REPLACING ARTICLES I, II, AND IV IN THEIR ENTIRETY WITH NEW ARTICLES I  
THROUGH VIII AND MAKING MINOR AMENDMENTS TO ARTICLE III AND  
RENUMBERING ARTICLE III TO BECOME ARTICLE IX.

Note: All the text in Section 2 is new. In Section 3, additions are underlined; deletions are in ((double parentheses)).

Be it ordained by the People of the City and County of San Francisco:

Section 1. **FINDINGS.** The Board of Supervisors finds that:

1. In order to promote and protect the public health, safety, welfare and convenience of its citizens, businesses and visitors, the City and County of San Francisco ("City") has a substantial interest in adopting and enforcing such laws and regulations as may be necessary to manage private use of the public rights of way and to govern the companies that use the public rights of way to provide services to the public.
2. The public rights of way of San Francisco are a valuable public asset belonging to all the citizens of San Francisco.
3. The City is charged with the obligation to manage the public rights of way in trust for its citizens.
4. The City manages the public rights of way by, among other things, requiring those companies who construct, install, operate, or provide services using facilities laid within or along the public rights of way to obtain a franchise which sets forth the terms and conditions governing such use and governing the companies' services to the public.
5. Pursuant to the authority granted to the City by Sections 3, 4, 5, 7 and 9 of Article XI of the California Constitution, the City has adopted a Charter which, in Section 16.111, sets forth

SUPERVISOR KAUFMAN, NEWSOM  
BOARD OF SUPERVISORS

Page 1  
3/6/00

1 the Board's authority to grant franchises to persons using the public rights of way. Section  
2 16.111 provides:

3 The Board of Supervisors shall have the power by ordinance to grant to any  
4 person, firm or corporation, any franchise, including any renewal, extension,  
5 transfer or amendment thereof, for the use of any public right-of-way or public  
6 place within the boundaries of the City for the purpose of providing services to  
7 customers. . . .

- 8 6. City franchises set forth the terms and conditions for use of the public rights of way,  
9 require a franchise grantee to pay fair and reasonable compensation for the use of the  
10 public rights of way, and set forth such other conditions as may be necessary to govern  
11 the services provided to the public.
- 12 7. Chapter 11 of the San Francisco Administrative Code ("Chapter 11"), addressing  
13 franchises, was originally adopted in part in 1939 and in part in 1974. It has been  
14 amended occasionally since 1974 to address specific issues.
- 15 8. Many of the industries required to obtain a franchise under Chapter 11, such as the  
16 electric, gas, and cable industries, have evolved dramatically since the time Chapter 11  
17 was adopted and then revised, primarily due to technological innovations and changes in  
18 the state and federal regulatory frameworks governing these industries.
- 19 9. Many of the laws regarding the regulation and franchising of the industries covered by  
20 Chapter 11 have changed significantly.
- 21 10. The convergence of the telecommunications and cable industries has created confusion  
22 and left many unanswered questions regarding the scope of the City's franchising authority  
23 over providers of cable television, telecommunications and other related services,  
24 especially where such services are provided using the same facilities.
- 25

1 11. This evolution has rendered the current version of Chapter 11 outdated, unclear, and  
2 administratively difficult to implement.

3 12. The Amendments to Chapter 11 made by this ordinance ("Amendments") will enable the  
4 City to more effectively manage the public rights of way, maximize the public's investment  
5 in the public rights of way, and exercise the City's authority to the full extent permitted by  
6 law in order to protect the public health, safety, welfare and convenience.

7 13. In some instances, state and federal laws have expressly limited the City's ability to  
8 require a company using the public rights of way to obtain a franchise, or to require certain  
9 terms from a franchise grantee. For example, Section 7901 of the California Public  
10 Utilities Code has been interpreted to limit the City's authority to require a franchise from  
11 telephone corporations using telephone lines to provide telecommunications services.

12 14. Given the different state and federal limitations on City authority over providers offering  
13 different kinds of services, it is the City's intent to treat franchise grantees similarly while  
14 recognizing the differences that have been established in the City's jurisdictional  
15 responsibilities. It is further the City's intent to exercise its franchising authority in the  
16 public interest to the fullest extent permitted by law and to be constrained only in those  
17 instances where the law expressly states a limitation on that authority.

18 15. The Amendments make clear that it is the City's intent that, except where precluded by  
19 law, all persons conducting business by constructing, installing, or operating facilities laid  
20 within or along the public rights of way shall obtain a franchise or subscribe to the terms of  
21 a franchise held by another person if they plan to use their facilities in the public rights of  
22 way.

23 16. Unless and until California law is changed, it is the City's intent to specifically exclude the  
24 provision of telecommunications services from the City's franchise requirements because  
25 state law has been interpreted to prohibit local governments from franchising the provision

1 of telecommunications services; however, to the extent that a person providing  
2 telecommunications services is also providing other services, it is the City's intent that they  
3 shall obtain a franchise to provide those services.

4 17. It is the City's intent to require franchise grantees to pay fair and reasonable  
5 compensation, in the form of franchise fees, for the benefits they derive from the use of the  
6 public rights of way. Franchise fees, like rental payments under many commercial real  
7 estate leases, have traditionally been based upon a percentage of a franchise grantee's  
8 gross revenues.

9 18. Basing franchise fees on the gross revenues of a franchise grantee is an appropriate  
10 method of compensating the public for the use of its rights of way because 1) it has been  
11 the traditional method of valuing the public rights of way for over sixty (60) years; 2) a  
12 specific measure of usage, such as one based on the linear feet of facilities installed in the  
13 public rights of way would be difficult or impossible to administer because a franchise  
14 grants a right to pervasively use and occupy the public rights of way, not to use a specific  
15 measured amount of the public rights of way; 3) franchise fees based upon gross revenue  
16 are easily computed using accounting procedures already employed for other purposes;  
17 and 4) franchise fees based upon gross revenues compensate the public in a manner  
18 reflecting the value derived by the Grantee from the use of the public's asset.

19 19. A franchise is an agreement under which the City grants a private party the authority to  
20 use the public rights of way and secures agreement that the private party will serve the  
21 public according to specific terms. However, notwithstanding the express terms of a  
22 franchise, the City retains, and by issuing a franchise cannot limit, its inherent authority to  
23 exercise its police powers to preserve the public health, safety and welfare.

24 20. It is to the benefit of the public health, safety and welfare to administer the City's  
25 franchises in a consistent and efficient manner, and to require franchise grantees to

1 comply with certain minimum standards regarding their use and occupation of the public  
2 rights of way and provision of services to the public. Consequently, it is the City's intent to  
3 apply the provisions of this Chapter 11 to all franchises, including those existing prior to  
4 adoption of this Chapter, to the extent permitted by law, recognizing that the Contracts  
5 Clauses of both the federal and state constitutions limit the ability of a government to  
6 substantially and significantly impair a contractual right unless it is acting through its police  
7 powers authority.

8 Section 2. Articles I, II, and IV of Chapter 11 of the San Francisco Administrative Code  
9 are hereby amended by amending Sections 11.1 through 11.46 and 11.75, to read as follows:

## 10 CHAPTER 11

## 11 FRANCHISES

## 12 ARTICLE I

## 13 FRANCHISE PROCEDURE

14 **SEC. 11.1 DEFINITIONS.** For purposes of Articles I through VIII of this Chapter, and for  
15 any Franchise granted pursuant to this Chapter, the following terms, phrases, words,  
16 abbreviations their derivations, and other similar terms, when capitalized, shall have the  
17 meanings given herein. When not inconsistent with the context, words used in the present  
18 tense include the future tense; words in the plural number include the singular number; and  
19 words in the singular number include the plural number. The words "shall" and "will" are  
20 mandatory. "May" is permissive. However, as applied to official action, the words "shall" and  
21 "will" shall be directory in effect. Unless otherwise expressly stated, words not defined herein  
22 shall be given their common and ordinary meaning. References to governmental entities  
23 (whether persons or entities) refer to those entities or their successors in authority. Unless  
24 otherwise expressly stated, if specific provisions of law referred to herein are renumbered or  
25 amended, then the reference shall be read to refer to the renumbered or amended provision.

1       (a) "Affiliate," when used in relation to any Person, means another Person who owns or  
2       Controls, is owned or Controlled by, or is under common ownership or Control with, such  
3       Person.

4       (b) "Applicable law" means all applicable federal, state, and City laws, ordinances, codes,  
5       rules, regulations and orders, as the same may be amended or adopted from time to time.

6       (c) "Applicant" means any Person submitting a Proposal pursuant to this Chapter.

7       (d) "Board" means the City's Board of Supervisors.

8       (e) "Bona Fide Institutional Lender" means any one or more of the following: (1) a savings  
9       bank, a savings and loan association, a commercial bank or trust company, an insurance  
10       company, a real estate investment trust, or any other Person which, at the time a pledge in  
11       trust or mortgage is recorded in favor of such Person or Persons, has assets of at least  
12       \$500 million in the aggregate (or the equivalent in foreign currency), and is regularly engaged  
13       in the financial services business; or (2) any special account, managed fund, department,  
14       agency or Affiliate of any of the foregoing; or (3) any Person acting in a fiduciary capacity for  
15       any of the foregoing. For purposes hereof: (1) acting in a "fiduciary capacity" shall be deemed  
16       to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan  
17       agreement, indenture or other loan document; and (2) a lender, even if not a Bona Fide  
18       Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if, no more than  
19       thirty (30) City business days after such loan is consummated, the note(s) or other evidence  
20       of indebtedness or the collateral securing the same are assigned to a Person then qualifying  
21       as a Bona Fide Institutional Lender.

22       (f) "Cable Service" means the one way transmission to Subscribers of video programming  
23       or other programming service and subscriber interaction, if any, required to select or use such  
24       video programming or other programming service.

1       (g) "Cable System" means a Facility that consists of a set of closed transmission paths and  
2       associated signal generation, reception, and control equipment designed to provide Cable  
3       Service to multiple Subscribers. Except where expressly stated otherwise, Cable System  
4       includes an Open Video System. Cable System does not include (1) a Facility that serves  
5       only to retransmit the television signals of one or more television broadcast stations; (2) a  
6       Facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of  
7       the Communications Act of 1934 (47 U.S.C. Sections 201-276) except that such Facility shall  
8       be considered a Cable System to the extent such Facility is used to provide Cable Services;  
9       and (3) any Facilities of a gas or electric utility necessary or proper and used solely for: (i) the  
10       transmission, distribution, or supply of gas or electricity; or (ii) the transmission or collection of  
11       gas and electric usage and pricing information incidental thereto; or (iii) to provide services  
12       required by the City.

13       (h) "Cable System Franchise" means a Franchise authorizing construction, installation, or  
14       operation of a Cable System or the provision of Cable Service over a Cable System. "Cable  
15       System Franchise" includes an OVS Franchise, unless expressly excluded hereunder.

16       (i) "CPUC" means the California Public Utilities Commission.

17       (j) "City" means the City and County of San Francisco, a municipal corporation of the  
18       State of California.

19       (k) "Control" means the power to control the affairs and key decisions of another Person,  
20       in whatever manner exercised, whether directly or indirectly.

21       (l) "Department," in reference to a Cable System Franchise or any other communications-  
22       related Franchise, means the Department of Telecommunications and Information Services.  
23       In reference to any gas, electric, or steam Franchise, "Department" means the San Francisco  
24       Public Utilities Commission. In reference to any other type of Franchise, "Department" means  
25

1 the City department assigned by the Board to process the Proposal or administer the  
2 Franchise.

3 (m)"Facilities" includes any physical element used in connection with, or designed to be  
4 used in connection with, the provision of Services, whether or not located in the Public Rights-  
5 of-Way, including, without limitation, pedestals, cabinets, ducts and conduits (whether empty  
6 or occupied), transformers, equipment, drains, handholds, lines, line extensions, service  
7 drops, manholes, poles, power supplies and generators, splice boxes, surface location  
8 markers, vaults, tunnels, amplifiers, power guards, nodes, cables, and fiber optics (whether  
9 active or dark).

10 (n) "FCC" means the Federal Communications Commission.

11 (o) "Final Report" means a report submitted to the Board by the Department making a final  
12 recommendation upon a Proposal.

13 (p) "Franchise" means an authorization granted by ordinance of the Board to a Person to  
14 construct, install, or operate Facilities in the Public Rights-of-Way or to provide Services using  
15 Facilities installed in the Public Rights-of-Way. "Franchise" shall not mean or include any  
16 license or permit required for the privilege of transacting and carrying on a business within the  
17 City as required by other ordinances or laws of the City, including, without limitation: (1) any  
18 permit, agreement or authorization required in connection with operations on public streets or  
19 property such as permits and agreements for placing devices on or in poles, conduits or other  
20 structures, whether owned by the City or a private entity, or for excavating or performing other  
21 work in or along Public Rights-of-Way; and (2) express or implicit authorization to provide  
22 Service to, or install Facilities on, private property without owner consent.

23 (q) "Franchise Area" means the geographic area of the City in which a Franchise  
24 authorizes a Grantee to construct, install, or operate Facilities or to provide Services.



1       (r) "Franchise Fee" means a payment made to the City in accordance with SEC. 11.21  
2 below. In the case of a UVPP, "Franchise Fee" shall mean a fee in lieu of a franchise fee,  
3 pursuant to 47 U.S.C. Section 573(c)(2)(B).

4       (s) "Grantee" means a Person granted a Franchise by the City, and any lawful permitted  
5 successor or assign.

6       (t) "Gross Revenues" means any and all income, receipts and other revenue of any kind  
7 or nature arising from or in connection with the operation of, or provision of Service using,  
8 Facilities in the Franchise Area and as may be more specifically defined in a Franchise.

9       (u) "Material Breach" means a breach of the Franchise that has a substantial and  
10 significant effect on the rights or benefits either party to the Franchise has secured pursuant to  
11 the Franchise. "Material Breach" shall include, but not be limited to, those breaches  
12 designated as such in the Franchise and this Chapter.

13       (v) "Open Video System" or "OVS" means a Cable System owned, operated, or Controlled  
14 by a Person certified by the FCC pursuant to 47 U.S.C. Section 573 and holding an OVS  
15 Franchise pursuant to this Article.

16       (w) "Operator" means any Person who (1) provides Service over Facilities and either:  
17 directly or indirectly owns, or has an Affiliate that owns, a significant interest in the Facilities;  
18 or (2) otherwise Controls, or is responsible for, through any arrangement, the operation or  
19 management of Facilities.

20       (x) "OVS Franchise" means a Franchise authorizing construction, installation, or operation  
21 of an Open Video System or the provision of Cable Service over an Open Video System.

22       (y) "Person" means any individual, group, company, partnership, association, joint stock  
23 company, trust, corporation, society, syndicate, club, business, or governmental entity.  
24 Person shall not include the City.

1       (z) "Proposal" means any application, proposal, submission or request filed pursuant to  
2 the requirements of this Chapter to (1) obtain a new Franchise; (2) Transfer a Franchise; (3)  
3 extend a Franchise; or (4) otherwise modify a Franchise. A Proposal includes an Applicant's  
4 initial proposal, submission or request, as well as any and all amendments or supplements to  
5 the Proposal and relevant correspondence.

6       (aa) "Proposal Fee" means a charge to recover the City's actual costs of processing  
7 Proposals hereunder.

8       (bb) "Public Rights-of-Way" means the area in, on, upon, above, beneath, within,  
9 along, across, under, and over the public streets, sidewalks, roads, lanes, courts, ways,  
10 alleys, spaces, and boulevards within the geographic area of the City in which the City now or  
11 hereafter holds any property interest, which is dedicated to public use, and which, consistent  
12 with the purposes for which it was dedicated, may be used for the purpose of installing and  
13 maintaining Facilities to provide Service to customers.

14       (cc) "Required Service Area" means the geographic area of the City a Grantee  
15 must construct, install or operate Facilities in or provide Service in, pursuant to its Franchise.

16       (dd) "Revocation" means the City's affirmative act of Terminating a Franchise.

17       (ee) "Service" means any service provided on a commercial or for hire basis using  
18 Facilities installed in the Public Rights-of-Way. "Service" includes, without limitation: (1)  
19 leasing or, through any other arrangement, offering the use of, a Facility installed in the Public  
20 Rights-of-Way (except for the mandatory provision of Facilities pursuant to 47 U.S.C. Section  
21 224 or California Public Utility Commission orders) and (2) the transmission of electronic  
22 signals through Facilities installed in the Public Rights-of-Way, whether or not owned by the  
23 Person providing service to Subscribers. "Service" shall not include Telecommunications  
24 Service unless and until Applicable Law permits local governments to require telephone  
25 corporations in California to obtain a local Franchise or pay fair and reasonable compensation

1 for the use of the Public Rights-of-Way in connection with the provision of  
2 Telecommunications Service.

3 (ff) "Subscriber" means the City or any Person who legally receives any Service.

4 (gg) "Telecommunications Service" means any service regulated by the CPUC or the  
5 FCC as a telecommunications service and provided to customers by a telephone corporation  
6 regulated by the CPUC.

7 (hh) "Termination" means the conclusion of a Franchise by any means, including, but  
8 not limited to, by expiration of its term, abandonment, or Revocation.

9 (ii) "Transfer" means any transaction in which: (1) all or a portion of any Facilities or any  
10 rights to use or operate Facilities located in the Public Rights-of-Way are sold, conveyed,  
11 transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part,  
12 directly or indirectly, by one or more transactions to another Person, whether voluntarily or by  
13 operation of law or otherwise; or (2) there is any change, acquisition, or transfer in the identity  
14 of the Person in Control of the Grantee, or any Person that controls Grantee, including,  
15 without limitation, forced or voluntary sale, merger, consolidation, or receivership; or (3) the  
16 rights or obligations under the Franchise are sold, conveyed, transferred, assigned,  
17 encumbered (except as set forth herein) or leased, in whole or in part, directly or indirectly, by  
18 one or more transactions to another Person, whether voluntarily or by operation of law or  
19 otherwise. It will be presumed, for purposes of clause (2) above, that any transfer or  
20 cumulative transfer of a voting interest by a Person or group of Persons acting in concert of  
21 twenty five percent (25%) or more of Grantee, or Person that Controls Grantee, or any change  
22 in the managing general partners of a Grantee is a change of Control. "Transfer" does not  
23 include: (1) a lease to a UVPP pursuant to 47 U.S.C. Sections 532 or 573; (2) the  
24 transmission of a commodity or electronic signal using Facilities on a common carrier basis;  
25 (3) a lease or other right to use Facilities mandated pursuant to 47 U.S.C. Section 224,

1 California Public Utilities Code Section 767.5, or by an order of the CPUC; or (4) a pledge in  
2 trust, mortgage or other encumbrance against the Facilities, or any portion thereof, given to a  
3 Bona Fide Institutional Lender in connection with a loan or other financing required to secure  
4 the construction, operation, or repair of the Facilities ("Loan") provided that such Loan is  
5 subject to the rights and powers of the City pursuant to the Franchise and Applicable Law,  
6 including, without limitation, the right of the City to approve any Transfer pursuant to SEC.  
7 11.14 below upon foreclosure. "Transferring" and "Transferee" shall have correlative  
8 meanings.

9 (jj) "Unaffiliated Video Programming Provider" or "UVPP" means any Person who uses  
10 capacity on a franchised Cable System to deliver Cable Service or other communications  
11 service (as that term is used in 47 U.S.C. Section 542(h)) to Subscribers and who is not an  
12 Affiliate of the Grantee.

13 (kk) "Utility Conditions Permit" or "UCP" means a permit issued by the Department of  
14 Public Works authorizing a Person to construct, install, operate specific Facilities in the Public  
15 Rights-of-Way.

16 **SEC. 11.2 BOARD AUTHORITY TO ISSUE FRANCHISES.** Pursuant to Charter Section  
17 16.111, the Board has the power by ordinance to grant any Person a Franchise, or renew,  
18 extend, transfer, or amend a Franchise, to authorize use of the Public Rights-of-Way to  
19 provide service. This Chapter 11 sets forth the procedural and substantive rules the Board  
20 will apply in exercising this power. Nothing in this Chapter may be deemed or construed to  
21 compel the grant of a Franchise.

22 **SEC. 11.3 FRANCHISE REQUIRED.** Except as provided in SEC. 11.4 below, no Person  
23 may construct, install, or operate Facilities in the Public Rights-of-Way, or provide Service  
24 using any Facilities installed in the Public Rights-of-Way, without a Franchise that authorizes  
25 each and every Service provided. Any Person using Facilities owned by another Person to

1 provide Service, whether by lease or other arrangement, shall be required to obtain a  
2 Franchise pursuant to this Chapter. A Grantee may, at any time and pursuant to this Chapter,  
3 apply to expand the scope of its Franchise, subject to appropriate conditions, or apply for a  
4 separate Franchise to provide other Services. The fact that a Person uses Facilities to  
5 provide Service not requiring a Franchise does not obviate the need to obtain a Franchise  
6 where the Facilities are also used to provide other Services.

7 **SEC. 11.4 EXCEPTIONS TO FRANCHISE REQUIREMENT.** The following shall not be  
8 required to obtain a Franchise under this Chapter:

9 (a) The City;

10 (b) A UVPP that is only delivering Cable Service or other communications service (as that  
11 term is used in 47 U.S.C. Section 542(h)) to Subscribers;

12 (c) Persons using Facilities solely to provide only Telecommunications Services unless  
13 and until Applicable Law permits local governments to require telephone corporations in  
14 California to obtain a local Franchise or pay fair and reasonable compensation for the use of  
15 the Public Rights-of-Way in connection with the provision of Telecommunications Service;

16 (d) Persons using Facilities solely to provide Service to themselves, and not to any third  
17 parties on a for hire or commercial basis;

18 (e) Persons, other than Operators of a Cable System, using Facilities installed in the  
19 Rights-of-Way where (1) such Person, or its Affiliates do not or will not own directly or  
20 indirectly, a significant interest in Facilities installed in the Rights-of-Way and are not  
21 responsible for the installation or maintenance of Facilities in the Public Rights-of-Way; and  
22 (2) the Facilities used by such Person have been authorized to occupy the Public Rights-of-  
23 Way for the purposes for which they are being used;

24 (f) Persons using any portion of Facilities installed in the Public Rights-of-Way to provide  
25 Service where (1) such Facilities are covered by a Franchise; and 2) such Person agrees, in

1 writing in a form acceptable to the City Attorney, to be bound by the terms and conditions of  
2 such Franchise as a Grantee under such Franchise and for purposes of this Chapter; and

3 (g) Persons who hold an encroachment permit, or other valid permit or permission, issued  
4 by the Department of Public Works or the Board, consistent with Applicable Law, allowing  
5 them to place all of the Facilities at issue in the Public Rights-of-Way, so long as such  
6 Facilities are limited to those of a specified type and size and placed only at specifically  
7 authorized and discrete locations in the Public Rights-of-Way.

8 **SEC. 11.5 FAILURE TO OBTAIN A FRANCHISE.** Consistent with the requirements of  
9 due process, a Person's failure to obtain a Franchise as required by this Chapter may, in the  
10 City's discretion, result in: 1) forfeiture, by operation of law, of the Person's Facilities located in  
11 the Public Rights-of-Way that are not authorized by an existing Franchise; and/or 2) a  
12 requirement that the Facilities be removed, and that penalties and damages be paid.

13 **SEC. 11.6 EXISTING FRANCHISES.** Grantees of Franchises existing as of the effective  
14 date of this Chapter shall, in addition to all the obligations and duties prescribed by the terms  
15 of their existing Franchises, be subject to the substantive and procedural requirements herein,  
16 except as prohibited by Applicable Law. Nothing herein is intended to invalidate a lawful,  
17 existing Franchise or to waive any obligations imposed by such a Franchise. Notwithstanding  
18 the foregoing, provisions of this Chapter that expressly refer to a "Franchise granted pursuant  
19 to this Chapter" shall not apply to Franchises initially granted prior to the effective date of this  
20 Chapter.

21 **SEC. 11.7 CONTINUED USE AFTER EXPIRATION OF FRANCHISE.** So long as a  
22 Grantee is seeking in good faith to renew a Franchise, upon expiration of a Franchise, the  
23 continued use by a Grantee of the Public Rights-of-Way shall continue on a month-to-month  
24 basis, for a maximum of twelve (12) months, under the same terms and conditions, and for  
25

1 the same consideration, as provided in the expired Franchise, unless the Franchise has been  
2 Revoked or unless otherwise determined by ordinance of the Board.

3 **SEC. 11.8 NO EXCLUSIVE FRANCHISES.** A Franchise is nonexclusive and shall not  
4 explicitly or implicitly preclude the issuance of other Franchises or preclude the City from  
5 installing, constructing, operating, and/or maintaining its own Facilities.

6 **SEC. 11.9 UTILITY CONDITIONS PERMIT.**

7 (a) Telephone Corporations. The Department of Public Works may require a Person,  
8 including a Grantee of an existing Franchise, to obtain a Utility Conditions Permit prior to their  
9 construction, installation, or maintenance of Telephone Lines (as defined in the California  
10 Public Utilities Code) in the Public Rights-of-Way. UCPs shall be issued by the Department of  
11 Public Works in a manner consistent with Applicable Law to Persons who have authority as a  
12 Telephone Corporation (as defined in the California Public Utilities Code) to occupy the Public  
13 Rights-of-Way pursuant to California Public Utilities Code Section 7901 and who are willing to  
14 comply with the City's requirements regarding the physical use and occupation of the Public  
15 Rights-of-Way. Persons intending to construct, install, or maintain Telephone Lines to provide  
16 Telecommunications Services shall prove their legal right to occupy and use the Public  
17 Rights-of-Way by providing the Department of Public Works a current copy of their certificate  
18 of public convenience and necessity issued by the CPUC, or otherwise demonstrate that they  
19 have been authorized to occupy the Public Rights-of-Way by the CPUC ("CPCN"). Such  
20 CPCN shall expressly state the Person's authority to provide facilities-based  
21 Telecommunications Service. The UCP shall set forth such conditions, in addition to those  
22 already set forth in Applicable Law, as may be required to govern the construction,  
23 installation, or occupancy in the Public Rights-of-Way to protect and benefit the public health,  
24 safety and welfare. The terms and conditions of a UCP shall be limited to those areas  
25 consistent with the City's authority under Applicable Law. A UCP shall expressly limit the

1 services which may be offered using the Telephone Lines to those services that do not require  
2 a Franchise and shall have a term of no longer than two (2) years.

3 (b) **Persons Subject To Franchise Requirements.** Where a Person seeks to construct  
4 or install Facilities that will be used to provide both Telecommunications Service and Service  
5 requiring a Franchise pursuant to SEC. 11.3 above, a UCP may be issued only if (1) the  
6 Person has obtained or has submitted a Proposal to obtain any required Franchise; and (2)  
7 the Person agrees not to provide Service requiring a Franchise until a Franchise has been  
8 granted by the Board. Where a Person has not already obtained any required Franchise, the  
9 term of its UCP shall be limited to six (6) months and shall not be extended more than twice.  
10 A UCP shall not be issued to a Person seeking to construct or install Facilities to provide only  
11 Service requiring a Franchise.

12 (c) **Cost Recovery.** The Department of Public Works may assess a Person obtaining a  
13 UCP a charge to recover the costs incurred by the City to process and grant a UCP. A UCP  
14 shall not assess a charge for use of the Public Rights-of-Way.

15 **SEC. 11.10 FILING OF PROPOSAL.** Any Person seeking to (1) obtain a Franchise; (2)  
16 Transfer a Franchise; (3) extend the term of an existing Franchise; (4) renew a Franchise; or  
17 (5) modify an existing Franchise to add new Services that are required to be authorized by a  
18 Franchise pursuant to this Chapter, shall submit a signed original of its Proposal and eleven  
19 (11) copies to the Clerk of the Board and nine (9) copies to the Department. The Clerk of the  
20 Board shall make a Proposal available for public inspection. The Proposal must conform to all  
21 of the requirements of this Chapter. Requests for other types of Franchise modifications may  
22 be processed by the Department without a Proposal, and submitted to the Board for approval.  
23 However, nothing herein shall prevent the Department from requiring a Proposal in the event  
24 the Department determines, based on the nature of the requested modification, that the public  
25 interest would best be served by the submission of a Proposal pursuant to this Article.



1     **SEC. 11.11 PROPOSAL FEE.**

2         (a) Reasonable Costs. An Applicant shall pay all reasonable costs incurred by the City  
3     related to the processing of any Proposal. Processing costs shall include, but not be limited  
4     to, the costs of services rendered by any City employee, agent or representative, including  
5     consultants and attorneys.

6         (b) Controller's Estimate. Upon receipt of a Proposal, the Clerk of the Board shall  
7     immediately ask the Controller to estimate the City's processing costs. The Controller shall  
8     complete his or her estimate of such costs within fifteen (15) City business days of receipt of a  
9     Proposal. The Clerk of the Board shall notify the Applicant of the Controller's Proposal Fee  
10    estimate within three (3) City business days of receipt from the Controller. Applicant shall pay  
11    the amount contained in the Controller's estimate within fifteen (15) City business days of  
12    notice.

13        (c) Failure To Pay. Failure to pay the estimated Proposal Fee shall render the Proposal  
14    incomplete. If no Proposal Fee is paid within six (6) months of notification to the Applicant of  
15    the Controller's estimate, the Board may deny the Proposal on that basis.

16        (d) Deposit/Offset. The Proposal Fee shall be deposited with the Controller. Within  
17    twenty (20) City business days of final action on a Proposal or an Applicant's formal  
18    acceptance or rejection of a Franchise, whichever is later, the Controller shall provide an  
19    account of the City's actual Proposal processing costs to the Applicant. The Controller may  
20    offset the Proposal processing costs from the Proposal Fee deposit consistent with the  
21    provisions of Administrative Code Sections 10.27-1 through 10.27-7. Where the City's actual  
22    costs are determined by the Controller to fall below the amount of the Proposal Fee deposit,  
23    the difference shall be refunded to the Applicant. Where the City's actual costs exceed the  
24    amount of the Proposal Fee deposit the Applicant shall be required to pay the difference to  
25    the Controller within twenty (20) City business days of notice.

1 (e) Exceptions. Where required by controlling Applicable Law a Proposal Fee paid  
2 pursuant to this Section shall be credited against any other charge, including Franchise Fees,  
3 required to be paid to the City.

4 **SEC. 11.12 PROPOSAL CONTENTS.** Each Department shall adopt regulations setting  
5 forth the information that each type of Proposal must contain, and make such regulations  
6 available immediately upon request. A Proposal shall include all information required by the  
7 Department unless the Department determines, in its discretion, that a substitute reasonably  
8 satisfies the purpose of the regulations. At a minimum, regulations shall require Applicants to  
9 provide information required by Applicable Law and sufficient for the City to consider the  
10 Proposal pursuant to SEC. 11.13(g) and, where applicable, SEC. 11.13(h) below.

11 Regulations shall also, where appropriate, distinguish among the requirements applicable to  
12 Proposals for initial Franchises, Transfer Proposals, Renewal Proposals, and Proposals to  
13 modify an existing Franchise. Regulations may require, without limitation:

14 **(a) Identifying Information.** Information identifying the Applicant, its principle place of  
15 business, its corporate structure, and its ownership;

16 **(b) Experience.** A statement describing all previous experience of the Applicant and any  
17 Affiliate(s) in providing the proposed Service(s), or constructing, operating, or maintaining  
18 Facilities used to provide the proposed Service(s), identifying any other Franchises to provide  
19 similar Service(s) awarded to Applicant, or any Affiliate(s), and the status of the construction  
20 of the Facilities under each Franchise;

21 **(c) Proposed Franchise.** The text of Applicant's proposed Franchise complying with  
22 Applicable Law, including, without limitation, a statement of the type of Service proposed to be  
23 provided. In the case of a Cable System Franchise: (1) the Applicant must specify whether it  
24 seeks an OVS Franchise or a Cable System Franchise that is not an OVS; and (2) a proposed  
25 Franchise shall not be required to be submitted with a renewal Proposal for a Cable System

1 Franchise that is not an OVS if the Grantee is exercising its renewal rights pursuant to 47  
2 U.S.C. Section 546.

3 (d) **Related Documents.** Any contracts, regulatory filings, shareholder reports, or other  
4 documents, including press releases, that refer to the Proposal, and all documents,  
5 schedules, exhibits, or the like referred to therein;

6 (e) **Proposed Operations.** To the extent applicable, a detailed description of the  
7 Applicant's plan of operation which shall include, at a minimum, a description of the existing  
8 and proposed Facilities and any construction plan;

9 (f) **Financial Qualifications.** Evidence that the Applicant has the financial resources and  
10 capacity to undertake and complete construction of the proposed Facilities, and to operate,  
11 maintain, repair, replace, and reconstruct the Facilities over the term of the Franchise;

12 (g) **Technical Qualifications.** Evidence that the Applicant is technically qualified to  
13 construct, operate and repair the Facilities;

14 (h) **Legal Qualifications.** Evidence that the Applicant is legally qualified to own, install,  
15 construct, operate, or provide Services using, the Facilities;

16 (i) **Customer Service and Consumer Benefits.** A description of how the Applicant plans  
17 to address customer service issues and the benefits its market entry will provide to consumers  
18 in the City;

19 (j) **Other Agreements.** A detailed summary and copies of any and all agreements and  
20 undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist  
21 between the Applicant and any Person regarding the use of a Person's equipment or Facilities  
22 on which the Proposal depends;

23 (k) **Certification.** An affidavit or declaration, under penalty of perjury, by an officer of  
24 Applicant legally qualified to bind Applicant certifying: (1) the truth and accuracy of the  
25 information in the Proposal and that the Proposal meets all requirements of Applicable Law;

1 (2) that Applicant is willing to enter into a Franchise meeting the requirements of Applicable  
2 Law, to pay required compensation, and to abide by the City's standard contract terms and all  
3 provisions of Applicable Law; and (3) that Applicant has not entered into any agreement that  
4 would prevent it from complying with any of these requirements.

5 **SEC. 11.13 PROPOSAL REVIEW PROCEDURE.**

6 **(a) Competitive Process For Initial Franchises.** To fulfill the requirements of Charter  
7 Section 16.111, at any time between the receipt of a Proposal for an initial Franchise and the  
8 grant of a Franchise thereunder, the Department shall, by advertisement or any other means,  
9 solicit and call for additional Proposals for similar Franchises. The Department shall evaluate  
10 the responses and report to the Board regarding the results of the solicitation. The Board  
11 shall consider the responses to the solicitation prior to granting any Franchise. The  
12 solicitation need not comply with the provisions of Chapter 21 of this Code and the City may  
13 award more than one Franchise as a result of the solicitation. However, nothing herein  
14 precludes the Department from requiring a competitive process similar to that set forth in  
15 Chapter 21 of this Code, nor does anything herein require the City to award any Franchise.

16 **(b) Completeness.** Promptly, upon receipt of a Proposal, the Department shall report to  
17 the Applicant regarding the Proposal's completeness. The Department shall also report to the  
18 Board within twenty (20) City business days regarding the Proposal's completeness. The  
19 Proposal shall not be deemed complete until such time as the Applicant provides all  
20 information and certifications required pursuant to regulations adopted pursuant to SEC.  
21 11.12 above.

22 **(c) Additional Information.** An Applicant shall provide any other details, clarifications,  
23 statements, information or references relevant to its Proposal which are requested by the  
24 Board or the Department in connection with their review of the Proposal and which are: (1)  
25 relevant to issues raised in the Proposal or related facts and circumstances that affect the

1 Proposal; and/or (2) referenced in the Proposal but not provided therein. Such information  
2 shall not be required to determine that a Proposal is complete; however, the Board may  
3 require that this information be submitted prior to acting on a Proposal.

4 (d) **Incomplete Information.** To the extent that any data required pursuant to SEC. 11.12  
5 above are not available at the time the Proposal is filed with the Board, the Proposal shall so  
6 state. Where the Department determines, in its sole discretion, that such information is not  
7 immediately critical to review of a Proposal, the Proposal may be reviewed by the City subject  
8 to the following conditions: (1) that the data are filed and approved by the City before the  
9 Board takes action on the Proposal; and (2) that, for purposes of applying any deadlines  
10 provided under Applicable Law, the date of the Proposal shall be the date all required  
11 information is submitted to the City.

12 (e) **Negotiations.** The Department shall negotiate the terms of a proposed Franchise on  
13 behalf of the City and may engage in negotiations with an Applicant at any time.

14 (f) **Final Report.** After finding a Proposal complete, the Department shall submit a Final  
15 Report to the Board recommending approval or denial of the Proposal. If the Department  
16 recommends approval of a Proposal, it shall include a proposed Franchise ordinance in the  
17 Final Report.

18 (g) **Issues For Consideration.** In reviewing a Proposal, the City shall consider, where  
19 applicable and without limitation, the issues set forth in this subsection. It shall be presumed  
20 that the issues set forth in subsections 2, 3, 4, 6, 8, and 9 are applicable to all Proposals. In  
21 any Final Report submitted to the Board, the Department shall state which additional issues it  
22 considers applicable to the consideration of any particular Proposal:

23 (1) Whether the Applicant's Proposal is sufficient to meet current and future community  
24 needs and interests, taking into account the cost to the Applicant of meeting such needs and  
25 interests;

1           (2) The positive and negative impacts to the City and consumers of approving the  
2 Proposal;

3           (3) The financial, technical, and legal qualifications of the Applicant and its ability to  
4 perform as promised;

5           (4) Whether the proposed provision of Services or operation of the Facilities is  
6 economically feasible;

7           (5) The projected technical performance of the proposed Facilities;

8           (6) The impact of Proposal approval on competition and whether it will interfere with the  
9 City's desire to ensure universal availability of Services;

10           (7) The Applicant's commitment to meeting the construction and physical requirements  
11 of the City;

12           (8) The Applicant's commitment to abide by City conditions, Applicable Law, and the  
13 terms of any proposed Franchise;

14           (9) The extent to which the Applicant has substantially complied with the Applicable  
15 Law and the material terms of any existing agreement it has with the City;

16           (10) Whether there will be an unreasonable adverse economic or aesthetic impact  
17 upon public or private property within the proposed Franchise Area, also taking into  
18 consideration the impact of any competing Proposals;

19           (11) Whether there will be an unreasonable disruption or inconvenience to existing  
20 users, or any adverse effect on future use, of utility poles, public easements, and the Public  
21 Rights-of-Way, also taking into consideration the impact of any competing Proposals; and

22           (12) Such other additional matters, both procedural and substantive, the City  
23 determines are relevant.

1 (h) Cable System Proposal Considerations. If the Proposal involves a Cable System  
2 Franchise, the City shall, in addition to the considerations set forth in subsection (g) above,  
3 also consider, to the extent applicable:

4 (1) Whether the Applicant has provided adequate assurance that it will provide  
5 adequate public, educational, and governmental access channel capacity, facilities, or  
6 financial support;

7 (2) Whether the proposed Franchise reasonably meets current and future community  
8 cable-related needs and interests, taking into account the cost to the Applicant of meeting  
9 such needs and interests; and

10 (3) The issues identified in California Government Code § 53066.3 and other  
11 Applicable Law.

12 (i) Board Disposition of Proposal. The Board may take action on a Proposal and any  
13 proposed Franchise by resolution or ordinance, as appropriate, and shall consider any  
14 applicable provisions of subsections (g) and (h) above. A Board determination to grant a new  
15 Franchise shall comply with all applicable sections of the Charter, including Sections 2.105  
16 and 16.111.

17 (j) Grantee's Acceptance. An Applicant shall file an unconditional written acceptance, in  
18 a form approved by the City Attorney, of any Board action approving a Proposal no later than  
19 twenty (20) City business days following such Board action. An Applicant's failure to submit  
20 an unconditional written acceptance within the twenty (20) Day period shall constitute a  
21 rejection by the Applicant of the approval, unless time for acceptance is extended by motion of  
22 the Board.

23 **SEC. 11.14 TRANSFER PROPOSALS.**

24 (a) City Approval Required. A Franchise is a privilege that is in the public trust and  
25 personal and specific to the Grantee and is granted in consideration of the unique knowledge,

1 skill and expertise possessed by the Grantee. The City and other Subscribers shall not be  
2 required to accept performance of a Franchise from a third party who has not submitted its  
3 qualifications for review and approval by the Board pursuant to this Section. Except as  
4 otherwise expressly permitted herein pursuant to subsection (e) below, a Grantee shall not  
5 complete a Transfer unless a Proposal is submitted to the Board pursuant to SEC. 11.10  
6 above ("Transfer Proposal") and the Board's approval is obtained by ordinance or resolution,  
7 as appropriate, and only then upon such terms and conditions as the Board deems necessary  
8 and proper, in its sole discretion, after conducting a review pursuant to SEC. 11.13(g) and  
9 SEC. 11.13(h) above. An Applicant, as defined in subsection (d) below, shall be given notice  
10 of its opportunity to be heard at a Board proceeding to consider the Transfer Proposal. Any  
11 Transfer without the approval of the Board shall be considered to impair the City's assurance  
12 of due performance, and may, at City's sole option, be null and void and constitute a Material  
13 Breach of the Franchise. Notwithstanding anything to the contrary in this Chapter or a  
14 Franchise, until expressly determined otherwise by the Board, Facilities constructed, installed,  
15 operating, or being used to provide Services pursuant to a Franchise shall remain subject to  
16 the Franchise regardless of any Transfer, whether or not City approval was obtained.

17 **(b) Subsequent Transfers.** The Board's approval of a Transfer Proposal in one instance  
18 shall not render unnecessary approval of any subsequent Transfer.

19 **(c) No Waiver.** The City's approval of a Transfer Proposal does not constitute a waiver or  
20 release of any of the rights of the City against the Transferring Grantee under this Chapter, a  
21 Franchise, or Applicable Law, whether such rights arose before or after the date of approval of  
22 the Transfer Proposal.

23 **(d) Proposal Submission.** For purposes of this Section, the Applicant shall be the  
24 proposed Transferee. At least one hundred twenty (120) calendar days prior to the  
25



1 contemplated effective date of a Transfer, the Applicant shall submit a Transfer Proposal to  
2 the Board for approval of the Transfer.

3 (e) Exceptions.

4 (1) Affiliate Transfers. Neither a Transfer Proposal or Board approval shall be required  
5 for a Transfer to an Affiliate of the Grantee ("Affiliate Transfer") where the Grantee and the  
6 proposed Transferee (the "Transfer Parties") meet the following requirements:

7 (i) The Transfer Parties provide all instruments and legal documents effecting  
8 the Affiliate Transfer, a description of the nature of the Affiliate Transfer, complete information  
9 describing who will have direct and indirect ownership and Control of the Franchise and the  
10 Facilities after the Affiliate Transfer within one hundred and twenty (120) calendar days of the  
11 effective date of the Affiliate Transfer, and any additional information within ten (10) City  
12 business days of the Department's request; and

13 (ii) The Transfer Parties meet the following conditions and provide the following  
14 assurances, guarantees, and warranties to the City in writing, expressly for the benefit of the  
15 City, in a form acceptable to the Department and the City Attorney, and no later ninety (90)  
16 calendar days before the effective date of the Affiliate Transfer, and:

17 (a) The Grantee is not in Material Breach of the Franchise, this Code or a UCP  
18 and there have been no more than two minor breaches of the Franchise, this Code, or a UCP  
19 as determined pursuant to Article VIII of this Chapter, in the prior twelve (12) month period;  
20 and

21 (b) The proposed Transferee (1) has demonstrated to the City's reasonable  
22 satisfaction that it is reputable and capable, financially and otherwise, of performing each of  
23 the Grantee's obligations under the Franchise and any other documents to be assigned; and  
24 (2) is not forbidden by Applicable Law from transacting business or entering into contracts  
25

1 with the City; and (3) is subject to the jurisdiction of the courts of the State of California; and  
2 (4) is not in default with respect to any obligations that it has to City; and

3 (c) Any Person guaranteeing the performance of the Grantee under the  
4 Franchise (or any other Person approved by the Department and the City Attorney),  
5 guarantees in a substantially similar manner the performance of the proposed Transferee; and

6 (d) The Transfer Parties warrant that the Transfer is being made for a legitimate  
7 business purpose and not to deprive the City of the benefits of the Franchise, any other  
8 documents proposed to be Transferred, or other Applicable Law; and

9 (e) The proposed Transferee warrants that it has read, accepts, and agrees to  
10 be bound by each and every term of the Franchise, any other documents to be Transferred,  
11 and other Applicable Law then in effect; and

12 (f) The proposed Transferee agrees to assume all responsibility for all liabilities,  
13 acts, and omissions know and unknown of each of its predecessor Grantees for all purposes,  
14 including renewal of the Franchise, and to cure all defects; and

15 (g) The proposed Transferee agrees that the Transfer will not permit it to take  
16 any position or exercise any right which could not have been exercised by the Grantee; and

17 (h) The Transfer Parties warrant that the Transfer will not substantially increase  
18 the financial burdens upon or substantially diminish the financial resources available to the  
19 proposed Transferee (the warranty to be based upon comparing the burdens upon and  
20 resources that will be available to the proposed Transferee compared to the Grantee), or  
21 otherwise adversely affect the ability of the proposed Transferee to perform its commitments  
22 under the Franchise; and

23 (i) The Transfer Parties warrant that the Transfer will not in any manner  
24 adversely affect the City or Subscribers (including by increasing rates); and  
25

1           (i) The proposed Transferee agrees that the Transfer does not affect any  
2 evaluation of its legal, financial, or technical qualifications that may arise under the Franchise  
3 or other Applicable Law after the Transfer, and does not directly or indirectly authorize any  
4 additional Transfers.

5           (iii) The Transfer Parties notify the City within thirty (30) City business days that  
6 the Transfer is complete and provide copies to the Department of all fully executed documents  
7 reflecting the Transfer.

8           (2) Transfer Proposal May Be Required. If the Transfer Parties are unable to provide  
9 information and assurances in a form acceptable to the Department and the City Attorney as  
10 provided in subsection (e)(1)(ii) above, the Department, in its sole discretion, may require the  
11 immediate submission of a Transfer Proposal to the Board for its approval pursuant to this  
12 Section.

13 **SEC. 11.15 CABLE SYSTEM RENEWAL PROPOSALS.**

14           (a) Initial Proceeding. Notwithstanding the provisions of SEC. 11.10 above, within six (6)  
15 months of the City's receipt of a written Cable System Franchise renewal notice pursuant to  
16 47 U.S.C. Section 546(a), or upon the Director's own motion, the Director of the Department  
17 shall initiate a proceeding pursuant to that Section to identify the City's future cable-related  
18 community needs and interests and to review the performance of the Cable System Operator  
19 under its current Franchise.

20           (b) Request for Proposal. Based upon the proceeding initiated pursuant to subsection  
21 (a) above, and such other investigation as the Department deems necessary, the Department  
22 shall prepare a report for the Board proposing findings regarding the future cable-related  
23 community needs and interests of the City and the past performance of the Operator of the  
24 Cable System Franchise. The report shall include a proposed request for proposal to renew  
25 the Cable System Franchise ("Request For Renewal Proposal") pursuant to terms and

1 conditions consistent with the report's proposed findings. The Director shall serve the renewal  
2 Applicant with a copy of the report and proposed Request For Renewal Proposal concurrently  
3 with the Director's submission to the Board. The Board may adopt the findings of the report  
4 by resolution and urge the Director to issue the Request For Renewal Proposal. Issuance of  
5 such a Request For Renewal Proposal shall constitute closing of the proceeding.

6 **(c) Department Recommendation Regarding a Renewal Proposal.** The Request For  
7 Renewal Proposal shall, among other things, establish the soonest date and the latest date on  
8 which the Department will accept a Renewal Proposal. The Director of the Department shall  
9 provide prompt public notice of receipt of a Renewal Proposal and shall evaluate the Renewal  
10 Proposal and forward a recommendation to the Board stating either: (1) that the Franchise  
11 should be renewed pursuant to the terms of the Renewal Proposal; or (2) that, as a  
12 preliminary matter, the Franchise should not be renewed, and the City should initiate an  
13 administrative proceeding pursuant to 47 U.S.C. Section 546(c) to evaluate the issues set  
14 forth in that Section. The Director's recommendation shall include a proposed ordinance or  
15 resolution consistent with the Director's recommendation. The Director shall serve the  
16 renewal Applicant with a copy of the recommendation and proposed ordinance or resolution  
17 concurrently with the Director's submission to the Board.

18 **(d) Board Action On The Director's Recommendation.** The Board shall take action  
19 within the time required by 47 U.S.C. Section 546(c) by adopting either: (1) an ordinance to  
20 renew the Franchise pursuant to the terms set forth in the Renewal Proposal; or (2) a  
21 resolution making a preliminary assessment that the Franchise should not be renewed on the  
22 terms set forth in the Renewal Proposal and urging the Director of the Department to  
23 commence an administrative proceeding pursuant to 47 U.S.C. Section 546(c).

24 **(e) Administrative Proceeding.** In the event the Board adopts a resolution making a  
25 preliminary assessment that the Franchise should not be renewed pending the results of an

1 administrative proceeding pursuant to 47 U.S.C. Section 546(c), the Director of the  
2 Department shall designate a hearing officer(s) and the Department shall administer the  
3 hearing consistent with the requirements of that Section. Within forty-five (45) City business  
4 days of the conclusion of the hearing, the hearing officer(s) shall issue a proposed  
5 recommendation to grant or deny the Renewal Proposal. The proposed recommendation  
6 shall be based upon the record of the proceeding and include a summary of the issues, the  
7 evidence presented, and findings and conclusions. It shall also include a proposed ordinance  
8 or resolution for the Board's consideration. Copies of the proposed recommendation shall be  
9 served upon the parties to the hearing by certified mail. A notice that a copy of the proposed  
10 recommendation is available for inspection during normal business hours shall be posted at  
11 the office of the Director of the Department. The proposed recommendation shall be a  
12 recommendation to the Director, and the Director shall adopt, modify, or deny such  
13 recommendation and prepare a final recommendation on the matter based upon the record of  
14 the proceeding. Such final recommendation shall be served upon the parties to the hearing  
15 and posted in the same manner as provided for the proposed recommendation herein.

16 (f) **Final Board Action.** The final recommendation of the Director shall be a  
17 recommendation to the Board, and the Board shall act to adopt, modify, or deny such  
18 recommendation and issue a final decision on the matter based upon the record of the  
19 proceeding. A decision to deny the Renewal Proposal shall be by resolution. A decision to  
20 grant the Renewal Proposal shall be by ordinance. The Board's decision on the Renewal  
21 Proposal shall state the reasons therefor and shall be final and conclusive.

22 (g) **Suspension Of Hearing.** Nothing herein shall preclude the Director from suspending  
23 the proceeding in the event the Department and the Cable System Operator reach agreement  
24 regarding proposed renewal of the Franchise. In the event the Board does not approve such  
25

1 proposal, the Director may resume the proceeding. Board approval of the proposal shall  
2 constitute termination of the proceeding.

3 **SEC. 11.16 FRANCHISE REVOCATION.**

4 **(a) Revocation For Failure To Comply With The Franchise Or This Chapter.** In the  
5 event of a Material Breach of the Franchise or this Chapter the City may Revoke a Grantee's  
6 Franchise.

7 **(b) Revocation Recommendation.** In the event the Department believes that a Grantee  
8 has committed a Material Breach of its Franchise, the Department shall notify the Grantee in  
9 writing that the Grantee must comply with any requirement with which the Grantee has failed  
10 to comply and pay any fines or damages owed as a result of the Material Breach. The  
11 Grantee shall have twenty (20) City business days to respond to the Department's notice.  
12 Thereafter, the Department may recommend Revocation of the Franchise to the Board if it  
13 concludes that the Grantee has committed a Material Breach and (1) the Material Breach is  
14 incurable (as in the case with fraud or attempted fraud); or (2) the Grantee has, after twenty  
15 (20) City business days' of the written notice from the Department: (i) failed to comply with  
16 the requirement; or (ii) if compliance will take more than twenty (20) City business days, even  
17 with the exercise of due diligence, failed to agree to a compliance plan acceptable to the City.

18 **(c) Board Proceeding Regarding Revocation.**

19 (1) The Board may consider the Department's Revocation recommendation and may  
20 hear any Persons interested therein, and may determine whether (i) Grantee committed a  
21 Material Breach; and (ii) if Grantee committed a Material Breach, whether such Material  
22 Breach was or should be excused. The Grantee shall be noticed and have an opportunity to  
23 be heard at a Board proceeding to consider the Department's Revocation recommendation.

24 (2) If the Board determines Grantee has committed a Material Breach, but such  
25 Material Breach is excused, the Board may, by motion, direct the Grantee to comply with the

1 City's requirements within such time, and upon such terms and conditions, as the Board  
2 deems reasonable. If the Board determines Grantee has committed a Material Breach and  
3 such Material Breach is not excused, the Board may, by ordinance, Revoke Grantee's  
4 Franchise. Nothing herein precludes the Board from setting additional time for Grantee to  
5 cure a Material Breach in lieu of Revocation.

6 **SEC. 11.17 TERMINATION.** Upon Termination of a Franchise, the City may, by ordinance,  
7 acquire ownership or effect a Transfer of the Facilities, or any portion thereof, for which the  
8 Grantee shall be compensated, consistent with Applicable Law.

9 **SEC. 11.18 REMOVAL OF FACILITIES.** Upon Termination of a Franchise, or abandonment  
10 of any portion of the Facilities, the City may require a Grantee, by Board resolution, to remove  
11 all or a portion of its Facilities at Grantee's expense and to restore City property as required  
12 by City and consistent with Applicable Law. If the Grantee fails to do so within a reasonable  
13 period of time, the City shall be entitled to remove the Facilities and restore City property on  
14 behalf of Grantee and charge the reasonable costs actually incurred, including but not limited  
15 to administrative costs, to Grantee.

16 **SEC. 11.19 FORECLOSURE/ASSIGNMENT FOR CREDITOR'S BENEFIT/APPOINTMENT**  
17 **OF A RECEIVER.** The following events shall constitute a Material Breach of this Chapter or a  
18 Franchise: (1) foreclosure or other judicial sale of any of the Facilities, equipment or property  
19 of a Grantee in the Franchise Area necessary for the provision of the Service for which the  
20 Franchise was granted where the Bona Fide Institutional Lender does not enter into an  
21 operating agreement for the use and operation of the Facilities with an Operator approved by  
22 the City in writing, in a form acceptable to the City Attorney; or (2) an assignment for the  
23 benefit of creditors; or (3) the appointment of a receiver or trustee to take over the business  
24 of the Grantee, whether in a receivership, reorganization, bankruptcy assignment for the  
25 benefit of creditors, or other action or proceeding.

1 **SEC. 11.20 CONFIDENTIALITY OF PROPRIETARY INFORMATION.** The City shall  
2 provide an Applicant the opportunity to protect from disclosure to the public any information  
3 contained in a Proposal that is proprietary, trade secret or is otherwise protected from  
4 disclosure under the California Public Records Act (Cal. Gov't Code Section 6254, et seq.),  
5 the City's Sunshine Ordinance (S.F. Admin. Code Chapter 67) and other Applicable Law by  
6 (a) permitting an Applicant to submit the information under seal; and (b) making reasonable  
7 efforts to notify an Applicant in advance if the City determines that it must disclose any  
8 information provided under seal or clearly and obviously identified as proprietary, trade secret,  
9 or otherwise protected from disclosure. In the event the City seeks to disclose, or receives a  
10 request for disclosure of such information, the City shall inform the affected Applicant either  
11 that the City will refuse to disclose the protected information or, if there is no proper basis for  
12 such refusal, that the City intends to disclose the information unless ordered otherwise by a  
13 court. Nothing herein shall require the City to take any action, or to refuse to release  
14 information where to do so would violate Applicable Law. The City's obligations under this  
15 Section are limited to confidential, trade secret or otherwise protected information that is  
16 provided to the City in a sealed envelope and identified on the envelope and on the face of  
17 each page of the document as proprietary, trade secret or otherwise protected from  
18 disclosure, and that is accompanied by a written certification from the Applicant that it  
19 believes, in good faith, that such information is protected from disclosure.

## 20 **ARTICLE II**

### 21 **FRANCHISE FEES**

#### 22 **SEC. 11.21 AMOUNT.**

23 (a) **Grantee Fees.** In consideration of the grant and exercise of a Franchise to construct,  
24 install, operate, or provide Services using, Facilities in the Public Rights-of-Way, a Grantee  
25 shall pay to the City a Franchise Fee expressed as a percentage of Gross Revenues or some

SUPERVISOR KAUFMAN  
BOARD OF SUPERVISORS



1 other measure. The Franchise shall specify the fee to be paid, and the Gross Revenues to be  
2 included in the fee calculation. If a Franchise granted pursuant to this Chapter specifies a  
3 Franchise Fee established as the result of limiting Applicable Law, the City shall have the  
4 option to renegotiate the amount of the Franchise Fee upon a change in Applicable Law  
5 pursuant to the process set forth in SEC. 11.70 below. In considering changes to the  
6 Franchise Fee amount, the City shall consider the impact on consumers of any pass through  
7 that may be permitted. Nothing herein requires a Person to pay amounts in excess of any  
8 limits that may be established by state or federal law.

9 (b) **UVPP FEES.** A UVPP that provides Services using a Cable System for which charges  
10 are assessed to Subscribers, but are not received by the Cable System Grantee, shall pay a  
11 fee in lieu of a Franchise Fee on such Service pursuant to the Franchise Fee calculation  
12 contained in the Cable System Franchise.

13 **SEC. 11.22 PAYMENT.** Unless otherwise specified in a Franchise, Grantees and Operators  
14 shall pay the Franchise Fee due to the City on a quarterly basis. Payment for each quarter  
15 shall be made to the City Controller not later than forty (40) City business days after the end of  
16 each calendar quarter.

17 **SEC. 11.23 GRANTEE RESPONSIBILITY FOR FEES OF THIRD PARTIES.** A Grantee  
18 shall fully cooperate with the City in collection of Franchise Fees owed to the City by any  
19 Person using the Grantee's Facilities.

20 **SEC. 11.24 FRANCHISE FEES OWED BY GAS AND ELECTRIC GRANTEES.** Nothing in  
21 this Chapter is intended to waive the City's authority to collect franchise fee surcharges  
22 pursuant to Division 3, Chapter 2.5 of the California Public Utilities Code.

23 **SEC. 11.25 ACCEPTANCE OF PAYMENT NOT A RELEASE.** No acceptance by the City  
24 of any Franchise Fee payment shall be construed as an accord that the amount paid is in fact  
25

1 the correct amount owed, nor shall such acceptance of such Franchise Fee payment be  
2 construed as a release of any claim the City may have for additional sums payable.

3 **SEC. 11.26 FEE DISPUTES.** In the event of any good faith dispute between a Person  
4 owing Franchise Fees and the City regarding the amount of Franchise Fees owed the City,  
5 the Person alleged to owe the Franchise Fees shall place the amount in dispute in an escrow  
6 fund from which, once the dispute is resolved, the Franchise Fees plus interest at the rate of  
7 the City's pooled funds shall be paid to the appropriate party.

8 **SEC. 11.27 FAILURE TO PAY.** In the event that a Franchise Fee payment is not received  
9 by the City on or before the due date set forth herein, or is underpaid, (except for Franchise  
10 Fees placed in an escrow fund pursuant to SEC. 11.26 above) the Person subject to the fee  
11 will be charged interest on the amount due from the due date at an interest rate equal to 1.5%  
12 per month, compounded on an annual basis. A Person's failure to (a) place any disputed  
13 amount of Franchise Fees in an escrow fund pursuant to SEC. 11.26 above; or (b) make two  
14 successive quarterly Franchise Fee payments to the City shall constitute a Material Breach of  
15 Grantee's Franchise.

16 **SEC. 11.28 FRANCHISE FEE NOT IN LIEU OF TAXES.** A Franchise Fee payment is not a  
17 payment in lieu of any tax, fee or other assessment of general applicability.

### 18 **ARTICLE III**

### 19 **PERMITS AND CONSTRUCTION**

#### 20 **SEC. 11.29 COMPLIANCE WITH LAWS.**

21 (a) **Applicable Laws.** All work performed in the geographic boundaries of the City by a  
22 Grantee, including work not involving excavation and including work performed on both public  
23 and private property, shall be performed in compliance with this Chapter, the Franchise, and  
24 other Applicable Law, including, but not limited to, the City's Municipal Code, (including the  
25 Public Works Code), and CPUC General Orders 95, 112, and 128. Grantee shall, at its sole

1 expense, procure and maintain in force at all times during the term of its Franchise any and all  
2 business and other licenses or approvals necessary to construct Facilities and provide any  
3 Services in the City. Grantee shall obtain any necessary approvals regarding the impact that  
4 its Facilities may have upon the environment. Nothing in this Chapter or in any Franchise is  
5 intended to imply that such approvals will be issued.

6 **(b) Construction, Operation, and Maintenance Standards.** Experienced and properly  
7 trained maintenance and construction personnel shall perform the construction, operation and  
8 maintenance of Facilities in a manner consistent with industry standards and good  
9 engineering practices. In the event of a conflict among codes and standards, the most  
10 stringent applicable code or standard shall apply, except insofar as that standard, if followed,  
11 would result in Facilities that could not meet requirements of Applicable Law. A Grantee shall  
12 at all times employ reasonable care, within the meaning of Applicable Law, and shall install  
13 and maintain in use commonly accepted methods and devices to prevent failures and  
14 accidents that are likely to cause damage, injury, or nuisance to the public.

15 **SEC. 11.30 MAPS AND PLANS.** Grantee shall make a good faith effort to maintain current,  
16 accurate and complete plans and record drawings showing, in detail, all physical features of  
17 the Facilities, including, without limitation, the approximate location, depth, and size of its  
18 Facilities constructed or installed in the Public Rights-of-Way in relation to the adjoining  
19 property lines, and the services provided over the Facilities. Upon demand, such plans and  
20 record drawings shall be delivered to City, in a format acceptable the City, within ten (10) City  
21 business days of a written request, or immediately, upon oral request and in whatever format  
22 is available, in the event of an emergency.

23 **SEC. 11.31 PLACEMENT OF FACILITIES.** All privileges prescribed by a Franchise shall be  
24 subordinate to any prior lawful occupancy in the Public Rights-of-Way, and the City reserves  
25 the authority to designate where a Grantee's Facilities may be placed. A Grantee may not

1 place Facilities inconsistent with the City's Public Works Code or the rules, regulations, or  
2 orders of the Department of Public Works or other Applicable Law, or in such a way as to  
3 interfere with public use of the Public Rights-of-Way.

4 **SEC. 11.32 REMOVAL, RELOCATION, AND WORK-AROUNDS.**

5 **(a) Grantee Must Remove, Relocate, Adjust, And/Or Support Facilities To**  
6 **Accommodate City Needs.** The City reserves the right to occupy the Public Rights-of-Way,  
7 or any part thereof, which is occupied or to be occupied by a Grantee's Facilities. When  
8 required to ensure the public health, safety, and welfare, a Grantee shall, at its own cost and  
9 expense, temporarily or permanently remove, relocate, adjust, and/or support the Facilities, or  
10 any part thereof, to such other location(s) in the Public Rights-of-Way, or in such manner, as  
11 appropriate, as may be designated or approved, in writing and in advance, by the City. The  
12 City may not unreasonably withhold Approval of any plan for removal, relocation, adjustment  
13 and/or support of the Facilities ordered pursuant to this Section. Such removal, relocation,  
14 adjustment and/or support shall be completed within the time prescribed by the City. If the  
15 Facilities are not removed, relocated, adjusted and/or supported in the manner and time  
16 prescribed by the City, the City may take all reasonable, necessary, and appropriate action,  
17 including removing the Facilities, and may charge the reasonable costs actually incurred,  
18 including, but not limited to, administrative costs, to Grantee.

19 **(b) Grantee Must Restore The Public Rights-of-Way.** Whenever the removal,  
20 relocation, adjustment, and/or support of Facilities is required pursuant to subsection (a)  
21 above, Grantee shall, after such work is complete, at its own cost and expense, promptly  
22 repair, restore and return the Public Rights-of-Way in which the Facilities were located, to a  
23 safe and satisfactory condition, as approved by the City in accordance with Applicable Laws.

24 **SEC. 11.33 ABANDONMENT.**

1       (a) Notice of Abandonment. Within three (3) months of the effective date of this Section,  
2       all Grantees shall provide a map to the Department of Public Works, in a form approved by  
3       the City, showing the location of those Facilities located in the Public Rights-of-Way that have  
4       been abandoned by Grantee. The map shall include street names and shall show the size  
5       and type of the abandoned facilities. Thereafter, Grantees shall provide updated maps to the  
6       Department of Public Works at the end of each calendar quarter showing those Facilities in  
7       the Public Rights-of-Way abandoned by Grantee during the calendar quarter. For purposes of  
8       this Section, "abandon" and other similar terms means that Facilities are no longer used by  
9       Grantee for any purpose authorized by a Franchise or by Section 7901 of the California Public  
10      Utilities Code.

11      (b) City Determination Regarding Abandonment. A director of a department may  
12      determine by department order that Facilities located in the Public Rights-of-Way, or any part  
13      thereof, have been abandoned. A Grantee shall promptly provide information to the  
14      Department, upon request, describing in detail the location and use of any Facilities under  
15      inquiry. Prior to the department director making an abandonment determination, the  
16      department shall provide Grantee written notice of its intent to deem the Grantee's Facilities  
17      abandoned. In the event the department cannot determine, after a good faith effort, the owner  
18      of the Facilities, notice shall be made by publication. A Grantee may appeal any department  
19      determination regarding abandonment by requesting an administrative hearing within ten (10)  
20      City business days of the effective date of such a determination, consistent with the provisions  
21      of SEC. 11.81 below.

22      (c) Treatment of Abandoned Facilities. In the event Grantee has notified the  
23      Department that it has abandoned any part of its Facilities, or the City's determination that  
24      Facilities have been abandoned has not been appealed pursuant to SEC. 11.81 below, at  
25      City's option, Grantee shall: (1) convey all or a portion of the abandoned Facilities to City at no

1 cost; (2) leave all or a portion of the abandoned Facilities in place; or (3) promptly remove all  
2 or a portion of the abandoned Facilities and restore City property as required by City,  
3 consistent with SEC. 11.18 above. In the event the City elects to have all or a portion of the  
4 Facilities conveyed to it, Grantee shall execute such documents of title in a form acceptable to  
5 the City Attorney as will convey to the City free and clear of liens and/or adverse claims of title  
6 all right, title, and interest in the abandoned Facilities, or any part thereof.

7 **(d) Abandonment May Be A Material Breach.** If a Grantee abandons a substantial  
8 portion of its Facilities so as to compromise the provision of Service under its Franchise, such  
9 abandonment may be a Material Breach of a Franchise.

10 **(e) Liability.** A Grantee shall assume all liability for abandoned Facilities unless and until  
11 title is conveyed to another Person consistent with any requirements of a Franchise or other  
12 Applicable Law or the City takes title to such Facilities pursuant to this Section.

13 **(f) Expedited Abandonment Determination.**

14 (1) Request For Determination. Notwithstanding the provisions of subsections (a)  
15 through (d) above, in the event that during an excavation a Person or City department  
16 discovers Facilities that appear to be abandoned and the Person or City department requests  
17 a determination of abandonment in order to: (1) avoid unnecessary excavation through use of  
18 the abandoned Facilities; (2) resolve an emergency situation; or (3) prevent significant delays  
19 or cost overruns on the excavation project, the Person or City department may request the  
20 Director of the Department of Public Works to issue an expedited abandonment  
21 determination.

22 (2) Abandonment Order. If demonstrated to be necessary to preserve the public  
23 health, safety and welfare, or for the public convenience and necessity, the Director of the  
24 Department of Public Works may issue an expedited abandonment determination in the form  
25 of a departmental order ("Order") and shall serve a copy of the Order by certified mail on the

owner of the Facilities, or provide notice as set forth in subsection (4) below, if the owner is unknown. The Order shall set forth the City's proposed disposition of the Facilities.

(3) Appeal And Final Order. The owner of the Facilities shall have three (3) City business days from receipt of the Order to comply with or appeal the Order in writing on the basis that the Facilities are not abandoned. In the event of a request for appeal, the Department of Public Works shall hold an administrative hearing within five (5) City business days of the request. If no appeal is requested, the Order shall become final upon passage of the time for appeal and the City may dispose of the Facilities as set forth therein.

(4) Unknown Owner. In the event the owner of the Facilities cannot be readily identified, the Director of the Department of Public Works shall post the Order at the excavation site and shall serve a copy of the departmental Order by certified mail on the following Persons: (1) all utility excavators installing Facilities in the Public Rights-of-Way within the last three (3) years of the discovery of the Facilities; and (2) after reviewing excavation permits issued within the last three (3) years, all Persons the Department of Public Works has reason to believe may have an ownership interest in the Facilities.

#### **ARTICLE IV**

#### **REPORTING REQUIREMENTS**

**SEC. 11.34 FINANCIAL REPORTS.** Unless otherwise provided in a Franchise, any Person subject to a Franchise Fee computed in relation to Gross Revenues shall file the following financial statements with the Controller:

(a) Quarterly Statement Of Gross Revenues. Within forty (40) City business days of the end of each calendar quarter, a statement showing its Gross Revenues during the preceding quarter and the number of Subscribers served.

(b) Annual Statement Of Gross Revenues. Within sixty (60) City business days of the end of its fiscal year, a statement setting forth the computation of Gross Revenues used to

1 calculate the Franchise Fee for the preceding year and a detailed explanation of the method  
2 of computation showing (i) Gross Revenues by category; and (ii) what, if any, deductions were  
3 made from Gross Revenues in calculating the Franchise Fee (e.g., bad debt, credits and  
4 refunds), and the amount of each deduction. The statement shall be certified by a certified  
5 public accountant, the chief financial officer of the Person liable for the fee, or such other  
6 Person who is authorized and qualified to make representations on behalf of the Person  
7 owing the Franchise Fees regarding its revenues.

8 (c) **Final Statement Of Gross Revenues.** Within sixty (60) City business days following  
9 Termination of a Franchise, a final statement of Gross Revenues for the period from the  
10 beginning of the previous annual report through the end of the Franchise term, which  
11 statement shall contain the information and be certified in the same manner as required for an  
12 Annual Statement of Gross Revenues.

13 **SEC. 11.35 SERVICE PROVIDER LIST.** A Grantee shall provide a list of all Persons using  
14 its Facilities to provide Service or sell a commodity, including UVPPs, to the Director of the  
15 Department each time that it makes a Franchise Fee payment to the City. Failure to submit  
16 an accurate list may constitute a Material Breach of the Franchise. Cable System Grantees  
17 shall not include leased access providers or public, educational, or government users of its  
18 Facilities on such a service-provider list.

19 **SEC. 11.36 DOCUMENTS DUE UPON FILING.** A Grantee shall deliver the following  
20 documents to the Director of the Department concurrent with the filing of the documents or  
21 within seven (7) City business days of receipt by the reporting entity:

22 (a) Notices of deficiency, forfeiture, or foreclosure related to the Facilities in the Public  
23 Rights-of-Way;

24 (b) Any request for protection under bankruptcy laws, or any judgment related to a  
25 declaration of bankruptcy by the Grantee or any Affiliate; and



(c) Any pledge in trust, mortgage or other encumbrance which has been recorded against or attached to the Grantee's Facilities, whether by act of the Grantee or otherwise.

## ARTICLE V

## RECORD REVIEW, RETENTION, AND ACCESS RIGHTS

**SEC. 11.37 APPLICABILITY.** All Persons required to pay a Franchise Fee to the City shall be subject to the provisions of this Article.

**SEC. 11.38 ACCESS TO RECORDS.** The City shall have the right to inspect and copy at any time during normal business hours at the nearest office of a Person owing a Franchise Fee, or at such location within the City as the City may designate, all books and records reasonably necessary to monitor compliance with the terms of this Chapter, a Franchise, or other Applicable Law. This right includes the right to inspect not only the books and records of such a Person, but also any books and records related to the management of the Facilities or its operations held by an Affiliate or any other Operator, contractor, subcontractor or any Person holding any form of management contract for the Facilities. It shall be the obligation of a Person owing a Franchise Fee to make such books and records available to the City and to collect and produce the information requested by City. For purposes of this Article, the term “books and records” shall be read expansively to include information in whatever format stored.

**SEC. 11.39 VOLUMINOUS MATERIALS.** If any books and records are too voluminous, or for security reasons cannot be copied and moved, then the Person owing a Franchise Fee may designate a location mutually agreed to by the City and the Person at which the inspection shall take place, provided that (1) the Person must make necessary arrangements for copying documents selected by the City after its review; and (2) the Person must pay all travel and additional copying expenses incurred by the City (above those that would have

1 been incurred had the documents been produced in the City) in inspecting those documents  
2 or having those documents inspected by its designee.

3 **SEC. 11.40 PROPRIETARY DOCUMENTS.** Access to the books and records of a Person  
4 owing a Franchise Fee shall not be denied on the basis that said books and records contain  
5 proprietary information. Proprietary information received by the City from such a Person, and  
6 clearly marked as proprietary pursuant to SEC. 11.20 above shall be treated as provided in  
7 that Section. Notwithstanding the provisions of SEC. 11.38 above, where the City concludes  
8 that maintaining copies of proprietary, trade secret, or otherwise protected materials is not  
9 reasonably required in order for the City to fairly determine a Person's compliance with the  
10 terms of this Chapter, a Franchise, or other Applicable Law, the City shall consider inspecting  
11 such information at the Person's local office, rather than copying and maintaining such  
12 information.

13 **SEC. 11.41 AUDIT RESULTS.** If an audit reveals that a Person has underpaid Franchise  
14 Fees owed in an amount equal to or exceeding five (5) percent of the Franchise Fees actually  
15 paid (excluding Franchise Fees deposited in an escrow account pursuant to SEC. 11.26  
16 above), and the Gross Revenues of such Person exceed one million dollars (\$1,000,000)  
17 within any twelve (12) month period covered by the audit, the cost of the audit shall be borne  
18 by the Person owing the Franchise Fees.

19 **SEC. 11.42 FIVE YEAR RETENTION.** Books and records required to be retained under this  
20 Chapter, a Franchise, or other Applicable Law shall be kept for at least five (5) years from the  
21 date such book or record was prepared.

22 **SEC. 11.43 INSPECTION.** Facilities shall be subject to the right of periodic inspection by  
23 the City, without notice, to determine compliance with the provisions of this Chapter, the  
24 Franchise, or other Applicable Law.

25 **SEC. 11.44 FRANCHISE COMPLIANCE REPORTS.**

1 (a) Controller's Report. No less than every two (2) years, the Controller shall file a report  
2 with the Board analyzing whether each Person owing a Franchise Fee is complying with the  
3 audit, reporting requirements, and payment obligations contained in this Chapter and any  
4 Franchise.

5 (b) Department's Report. No less than every two (2) years, the Department shall file a  
6 report with the Board analyzing whether each Grantee is complying with all provisions of this  
7 Chapter and its Franchise, except for those addressed by the Controller's Report. The  
8 Department's Report shall also identify any Person who may be subject to this Chapter but  
9 has not complied with the obligation to obtain a Franchise or pay Franchise Fees.

## 10 ARTICLE VI

### 11 CABLE SYSTEM REQUIREMENTS

12 SEC. 11.45 APPLICABILITY. In addition to satisfying requirements established in a  
13 Franchise, all of the provisions of this Article VI shall apply to Cable Systems providing Cable  
14 Service to Subscribers, except as prohibited by Applicable Law.

### 15 SEC. 11.46 CUSTOMER SERVICE REQUIREMENTS.

16 (a) Non-Discriminatory Access To Service. A Cable System Grantee shall provide  
17 Cable Service upon request to the City or any Person in the Required Service Area, at no  
18 more than the standard installation rate for all Subscribers, without charge for any line  
19 extension, regardless of whether extension of plant is required. A Cable System Grantee or  
20 UVPP shall not be required to provide Cable Service to any Subscriber who does not pay the  
21 applicable fees or charges, except as may be required by the terms of an applicable  
22 Franchise.

23 (b) Inside Wiring. The obligation to provide Cable Service includes the obligation to  
24 provide the inside wiring required to deliver the Cable Service to the customer premises  
25 equipment used to receive the Cable Service, at no more than the standard installation rate,

1 so long as the Grantee can obtain any necessary consent to access the premises. However,  
2 a Grantee or UVPP may not require a Subscriber or the City to use inside wiring provided by  
3 Grantee as a condition of receiving Service.

4 (c) **Exclusive Contracts.** A Cable System Grantee may not require a Subscriber or a  
5 building owner or manager to enter into an exclusive contract as a condition of receiving  
6 Service. Any exclusive contract executed after the effective date of the ordinance adopting  
7 this Chapter shall inform the Person executing the exclusive contract, in type of equal size  
8 and prominence to the rest of the contract: (1) that the Person cannot be denied Service for  
9 refusing to agree to an exclusive contract; and (2) that installation rates may be subject to  
10 regulation and they should contact the City's Department of Telecommunications and  
11 Information Services for additional information. The notice shall include a phone number and  
12 contact for the Department of Telecommunications and Information Services provided by the  
13 Director.

14 (d) **Month-to-Month Service.** Cable Services shall be available to Subscribers on a  
15 month-to-month basis.

16 (e) **Disconnection/Downgrades.** A Cable System Grantee or UVPP shall promptly  
17 disconnect from the Cable System or downgrade any Subscriber who so requests. No period  
18 of notice prior to voluntary termination or downgrade of Service may be required of  
19 Subscribers by any Grantee or UVPP. A Subscriber shall not be liable for any penalty,  
20 termination charge, or charge for Service after the date of any voluntary disconnection unless  
21 all of the following apply: (1) the Subscriber took Service pursuant to a bona fide promotional  
22 offering that offered the Subscriber reduced rates or increased Service if Service was taken  
23 for a designated period; and (2) the Service offering required the Subscriber to pay for  
24 disconnection if Service was terminated before the end of the Service period; and (3) the  
25 disconnection fee does not exceed the difference between the price paid by the Subscriber for

1 Service already received and the price the Subscriber would have paid if Service had been  
2 purchased at the standard price available to Subscribers; and (4) the disconnection fee was  
3 prominently displayed, and agreed to in writing by the Subscriber.

4 **SEC. 11.47 TECHNICAL REQUIREMENTS.**

5 (a) Technical Standards. All Cable Systems shall meet or exceed the technical  
6 standards set forth in 47 C.F.R. Subpart K (Sections 76.601 – 76.630) and any other  
7 applicable technical standards established by Applicable Law.

8 (b) Tests. A Cable System Grantee shall perform all tests necessary to demonstrate  
9 compliance with technical and performance standards established by its Franchise and other  
10 Applicable Law. Unless a Franchise or Applicable Law provides otherwise, all tests shall be  
11 performed following procedures prescribed by the Department. A written report of any test  
12 results shall be filed with the City within seven (7) City business days of a request by the City.  
13 If a location fails to meet technical or performance specifications, the Cable System Grantee  
14 shall, without requiring additional action by the City, promptly take corrective action, retest the  
15 locations until compliance is achieved, and report the results of its corrective action to the  
16 City.

17 **SEC. 11.48 RATE REGULATION.** The City reserves all power to implement and impose  
18 regulation on a Cable System's rates and charges to the maximum extent permissible under  
19 Applicable Law.

20 **SEC. 11.49 SUBSCRIBER PRIVACY.** Every Cable System Grantee or UVPP shall at all  
21 times protect the privacy of all Subscribers by implementing and complying with the provisions  
22 of 47 U.S.C. Section 551. A Grantee or UVPP shall not condition the provision of Service on  
23 the Subscriber's grant of permission to disclose information which, pursuant to Applicable  
24 Law, cannot be disclosed without the Subscriber's explicit consent. Any notice provided to a  
25 Subscriber pursuant to subsection (a) of 47 U.S.C. Section 551 shall inform the Subscriber, in

1 type of equal size and prominence to the rest of the notice: (1) that the Subscriber cannot be  
2 denied Service for failure to grant permission to disclose information requiring the  
3 Subscriber's consent; and (2) that the Subscriber shall have the right to prevent disclosure of  
4 his or her name and address.

5 **SEC. 11.50 TYPE OF FRANCHISE.** A person holding a Cable System Franchise that is not  
6 for an OVS may not acquire an OVS Franchise for the same Facilities unless the Person  
7 applies for an OVS Franchise. Similarly, a Person holding an OVS Franchise may not acquire  
8 a Cable System Franchise that is not for an OVS unless the Person applies for an appropriate  
9 Franchise. In either case, the Person's acceptance of a new Franchise pursuant to SEC.  
10 11.13(j) above shall not be effective unless it includes an instrument in a form approved by the  
11 City Attorney surrendering the pre-existing Franchise.

12 **SEC. 11.51 COMPLIANCE WITH CUSTOMER SERVICE STANDARDS AND CONSUMER**  
13 **PROTECTION LAWS.** A Cable System Grantee or UVPP shall, at all times, comply with all  
14 applicable customer service standards and consumer protection laws established by  
15 Applicable Law, including, without limitation, those established by the FCC at 47 C.F.R.  
16 76.309. A Cable System Grantee or UVPP shall also comply with any additional customer  
17 service standards established by the City from time to time that exceed or address matters not  
18 addressed by the standards established by other Applicable Law and any consumer  
19 protection laws enacted by the City from time to time that are not specifically preempted by  
20 other Applicable Law.

21 **SEC. 11.52 PUBLIC SERVICE ANNOUNCEMENTS IN THE EVENT OF AN EMERGENCY.**  
22 Every Cable System Grantee shall install and maintain an emergency alert system that can  
23 override audio and video on all channels to provide an emergency alert to Subscribers. Such  
24 an emergency alert system must be designed and maintained so that local officials  
25 designated by the City can activate the system remotely without the Grantee's assistance.

1 **SEC. 11.53 INTERCONNECTION.** To the extent financially and technically possible and  
2 when requested by the City, a Cable System shall interconnect with another Cable System  
3 within or adjacent to the City and with any City-owned communications network for which the  
4 City requests interconnection, on fair, reasonable, and non-discriminatory terms for purposes  
5 of ensuring the full availability of access to public, educational, and government access  
6 signals. Such interconnection shall not give any Person the right to use or distribute another  
7 Person's proprietary, commercial programming.

## 8 **ARTICLE VII**

### 9 **MISCELLANEOUS PROVISIONS**

10 **SEC. 11.54 CITY RESERVATION OF RIGHTS.** Except where rights are expressly waived  
11 by the City in a Franchise, they are reserved, whether expressly enumerated or not. The City  
12 shall have the plenary authority to regulate Grantees, UVPPs, or Facilities as may now or  
13 hereafter be lawfully permissible pursuant to its police powers and municipal powers authority.

14 **SEC. 11.55 COMPLIANCE WITH ALL APPLICABLE LAW.** A Grantee or UVPP shall at all  
15 times be subject to and shall comply with the provisions of this Chapter, its Franchise, and all  
16 other Applicable Law.

17 **SEC. 11.56 LIQUIDATED DAMAGES.** A Franchise granted pursuant to this Chapter shall  
18 require liquidated damages for specified breaches of the Franchise. The Franchise shall also  
19 provide that the City may withdraw any liquidated damages owed from the Grantee's security  
20 deposit pursuant to SEC. 11.60 below, if the Grantee has failed to cure such breach after ten  
21 (10) City business days' notice from the City.

22 **SEC. 11.57 ACTS AT GRANTEE'S EXPENSE.** Any act that a Grantee or UVPP is or may  
23 be required to perform under this Chapter, a Franchise, or other Applicable Law shall be  
24 performed at the Grantee or UVPP's expense, unless expressly provided to the contrary in  
25 this Chapter, the Franchise, or other Applicable Law.

1 **SEC. 11.58 NO RECOURSE FOR GRANTEE'S DAMAGES.** No Person shall have  
2 recourse against the City for any loss, cost, expense, or damage arising out of the  
3 enforcement of any provision or requirement of this Chapter, a Franchise, or other Applicable  
4 Law. Notwithstanding the foregoing, nothing herein precludes a Person from seeking and  
5 obtaining any injunctive relief against the City.

6 **SEC. 11.59 INSURANCE.** A Franchise granted pursuant to this Chapter shall require a  
7 Grantee to obtain insurance or self insure as required by the City's Risk Manager. Failure to  
8 provide or maintain any required insurance shall constitute a Material Breach of a Franchise.

9 **SEC. 11.60 SECURITY.**

10 **(a) Security For Subscribers And The City.** In addition to any bond, and/or deposit  
11 requirements established by the City's Public Works Code, a Franchise granted pursuant to  
12 this Chapter shall require a Grantee to provide to the Department such cash deposits and any  
13 other security instrument(s) (including, without limitation, performance bonds and letters of  
14 credit) deemed necessary by the Risk Manager to guarantee Grantee's faithful performance  
15 of and compliance with all provisions of this Chapter, the Franchise, and other Applicable  
16 Law. A Franchise granted pursuant to this Chapter shall require separate cash deposits and  
17 other security instrument(s) to cover costs and damages incurred by the City and to cover  
18 costs and damages incurred by any Subscriber, including attorneys fees and costs, as a result  
19 of Grantee's failure to comply with any provision of this Chapter, the Franchise, or other  
20 Applicable Law. A Grantee's failure to provide or maintain any required cash deposit and  
21 other security instrument(s) shall constitute a Material Breach of its Franchise.

22 **(b) Amount of Security Required.** The City's Risk Manager shall determine the amount  
23 and type of security required pursuant to subsection (a) above. Notwithstanding the  
24 foregoing, the Franchise may contain terms permitting the value of the cash deposit and other  
25 security instrument(s) to be reduced upon completion of a substantial portion of any



1 construction obligation contained in a Franchise. At a minimum, the Franchise shall establish  
2 procedures whereby the City may unilaterally withdraw money from the cash deposit and  
3 security instrument(s) to pay monies owed by a Grantee to the City, and shall require a  
4 Grantee to replenish the cash deposit and security instrument(s) when such withdrawals are  
5 made. Within twenty (20) City business days of a Grantee's submission of its Annual  
6 Statement of Gross Revenues, the City shall pay interest to the Grantee on any cash deposit  
7 held by the City pursuant to this Section at the rate of the City's pooled funds.

8 **SEC. 11.61 FRAUD.** If a Grantee defrauds or attempts to defraud the City or Subscribers,  
9 or intentionally submits false or misleading information to the City, such actions may be  
10 deemed a Material Breach of the Franchise.

11 **SEC. 11.62 LOCAL OFFICE.** Grantees providing retail Service to residential Subscribers  
12 shall maintain an office in the City to address Subscriber billing and other customer service-  
13 related issues.

14 **SEC. 11.63 CITY MAY PERFORM WORK.** Upon Grantee's failure, refusal, or neglect to  
15 perform any work or other act required by this Chapter, its Franchise, or other Applicable Law  
16 within any time prescribed therefor, the City may cause such work or other act to be  
17 completed in whole or in part, and upon so doing shall submit to Grantee an itemized  
18 statement of the costs thereof. The Grantee shall, within twenty (20) City business days after  
19 receipt of such statement, pay to the City the entire amount thereof. In the event Grantee fails  
20 to make such payment, or any other payment due the City under this Chapter, the monies  
21 shall be charged against Grantee's deposit or other security instrument(s) as provided  
22 pursuant to SEC. 11.59 above.

23 **SEC. 11.64 INSTALLATION OF CITY-OWNED COMMUNICATIONS FACILITIES.** Unless  
24 precluded by Applicable Law, at a City department's timely request consistent with the  
25 excavation coordination process set forth in Section 2.4.11 of the City's Public Works Code, a

1 Grantee excavating in the Public Rights-of-Way or on other City property shall install City-  
2 owned communications Facilities, including, without limitation, conduit, fiber, and/or hand  
3 holds, in the excavation site at a charge to the City of the incremental costs incurred for such  
4 installation, including without limitation, any additional design costs necessary to install the  
5 City-owned communications Facilities.

6 **SEC. 11.65 ORDER OF PRECEDENCE.** Except as precluded by Applicable Law, to the  
7 extent the provisions of this Chapter, a Franchise, or other Applicable Law are in conflict, the  
8 provisions which impose the higher or greater legal duty or obligation upon a Grantee or  
9 UVPP shall take precedence, unless a different order of precedence is expressly set forth in a  
10 Franchise.

11 **SEC. 11.66 INDEMNIFICATION.** In addition to an indemnification provision required by the  
12 City's Risk Manager, a Franchise granted pursuant to this Chapter shall require a Grantee to  
13 indemnify the City for any costs associated with defending the award of a Franchise to  
14 Grantee.

15 **SEC. 11.67 REMEDIES CUMULATIVE.** All remedies under this Chapter, a Franchise, or  
16 other Applicable Law are cumulative unless otherwise expressly stated. The exercise of one  
17 remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment  
18 of liquidated damages or penalties relieve a Grantee of its obligations to comply with this  
19 Chapter, its Franchise, or other Applicable Law. Remedies may be used singly or in  
20 combination. In addition, the City may exercise any rights it has at law or in equity.

21 **SEC. 11.68 EMINENT DOMAIN.** Nothing herein shall be deemed or construed to impair or  
22 affect, in any way or to any extent, the City's exercise of the right of eminent domain or to  
23 grant a right of eminent domain to any Person.

24 **SEC. 11.69 NO REPRESENTATIONS.** No reference herein, or in any Franchise, to a  
25 "Public Rights-of-Way" shall be deemed to be a representation or guarantee by the City that

1 its interest or other right to control the use of such property is sufficient to permit its use for  
2 such purposes, and a Grantee shall be deemed to gain only those rights to use as are vested  
3 in the City.

4 **SEC. 11.70 REOPENER.** Every Franchise granted pursuant to this Chapter shall contain a  
5 provision requiring that the City and Grantee shall amend the Franchise to assure that each  
6 party receives the benefit of the bargain intended under the Franchise in the event that: (1)  
7 any provision of a Franchise is preempted by Applicable Law; or (2) the parties agree in the  
8 Franchise that any other matter will trigger such renegotiation rights. The provision shall  
9 permit either party to request negotiations to implement the provision and shall provide for a  
10 dispute resolution process to be available to either party forty (40) City business days after a  
11 request for negotiations in the event that the parties are unable to mutually agree on how to  
12 revise the Franchise to properly redistribute the benefits of the bargain.

13 **SEC. 11.71 TIME IS OF THE ESSENCE.** Time shall be of the essence for any Franchise.  
14 A Grantee or UVPP shall not be relieved of its obligation to comply promptly with any of the  
15 provisions of a Franchise or this Chapter by any failure of the City to enforce prompt  
16 compliance.

17 **SEC. 11.72 SEVERABILITY.** If any part of this Chapter, or the application thereof to any  
18 Person or circumstance, is held invalid, the remainder of this Chapter, including the  
19 application of such part or provision to other Persons or circumstances, shall not be affected  
20 thereby and shall continue in full force and effect. To this end, provisions of this Chapter are  
21 severable.

## 22 **ARTICLE VIII**

### 23 **VIOLATIONS OF THIS CHAPTER, A FRANCHISE, OR A UTILITY CONDITIONS PERMIT**

24 **SEC. 11.73 DUTY TO IDENTIFY POTENTIAL VIOLATIONS.** The Department of Public  
25 Works and the Department shall identify potential violations of this Chapter, a Franchise, or a

1 UCP. In consultation with the City Attorney's Office, the Department shall take appropriate  
2 action to resolve violations of this Chapter, a Franchise, or a UCP.

3 **SEC. 11.74 COMPLAINTS OF ALLEGED VIOLATIONS OF THIS CHAPTER OR A**  
4 **FRANCHISE.**

5 (a) Filing A Complaint. Any Person affected by any alleged violation of any provision of  
6 this Chapter, a Franchise, or a UCP may file a formal complaint with the Department. The  
7 complaint shall contain the following:

8 (1) The name and address of the complainant;

9 (2) The nature and location of the alleged violation;

10 (3) The manner in which the complainant was affected;

11 (4) The provisions of this Chapter, a Franchise, or a UCP allegedly violated; and

12 (5) The specific action which complainant requests.

13 (b) Hearing In Response To Complaints. If, upon receipt and investigation of a complaint,  
14 the Department finds no basis for concluding that a violation of this Chapter, a Franchise, a  
15 UCP, or other Applicable Law has occurred, the complainant will be notified and no further  
16 action need be taken. The Department may hold a hearing based on the allegations of the  
17 complaint or at the request of the Person alleged to be responsible for a violation where it  
18 determines that such a hearing would facilitate the Department's determination of whether a  
19 violation has occurred. The Department shall provide ten (10) City business days' written  
20 notice to the complainant and the Person alleged to be responsible for the violation if it  
21 determines to hold such a hearing. Such notice shall set forth the time and place of such  
22 hearing and shall notify the complainant and the Person alleged to be responsible for the  
23 violation that they will have an opportunity to be heard and to present evidence at the hearing.

24 **SEC. 11.75 NOTICE OF VIOLATION.** If the Department believes a violation of this Chapter,  
25 a Franchise, or a UCP has occurred, either as the result of a complaint filed pursuant to

1 Section SEC. 11.74 above, or through any other means independent of that process, which,  
2 after consultation with the City Attorney, the Department determines does not warrant  
3 Franchise revocation pursuant to SEC. 11.16 above, or action pursuant to SEC. 11.5 above,  
4 the Department shall serve a written notice of violation upon the Person responsible for the  
5 violation. The notice of violation shall contain specific allegations, setting forth the violations  
6 of this Chapter, a Franchise, or a UCP, shall specify the manner in which the violation must be  
7 remedied, and shall state whether the Department intends to seek suspension of excavation  
8 permits pursuant to SEC. 11.83 below. The responsible Person shall have ten (10) City  
9 business days to correct or otherwise remedy the violation. The responsible Person may  
10 contact the Department, if necessary, to discuss the violation. For violations that create an  
11 imminent danger to public health, safety, or welfare, the Department shall have the authority  
12 to: (1) remedy the violation and charge the costs of such remedy to the responsible Person; or  
13 (2) notify the responsible Person to immediately remedy the violation.

14 **SEC. 11.76 NOTICE IMPOSING ADMINISTRATIVE PENALTIES AND ENFORCEMENT**

15 **COSTS.** If a Person fails to remedy a violation within the time specified in a notice of violation  
16 issued pursuant to SEC. 11.75 above, the Department shall provide written notice to the  
17 responsible Person if the Department intends to impose administrative penalties or  
18 enforcement costs. This notice shall include the amount of the penalties and an estimate of  
19 the enforcement costs that will be due, and declare that such penalties and costs are due and  
20 payable to the City Treasurer within twenty (20) City business days. The notice also shall  
21 state that the violator has the right, pursuant to SEC. 11.81 below, to request administrative  
22 review of the Department's determination.

23 **SEC. 11.77 AMOUNT OF ADMINISTRATIVE PENALTIES.** Any Person who fails to comply  
24 with a notice of violation issued pursuant to Section SEC. 11.75 above for violation of this  
25 Chapter may be liable for an administrative penalty consistent with the procedure set forth in

1 SEC. 11.76 above. The imposition of administrative penalties is within the discretion of the  
2 Department. The Department may assess an administrative penalty of up to one thousand  
3 dollars (\$1,000.00) per day, per violation. In assessing the amount of the administrative  
4 penalty, the Department may consider any one or more of the following: the nature and  
5 seriousness of the misconduct, the number of violations, the persistence of the misconduct,  
6 the length of time over which the misconduct occurred, the willfulness of the responsible  
7 Person's misconduct, and the responsible Person's assets, liabilities, and net worth.

8 **SEC. 11.78 ENFORCEMENT COSTS.** In addition to any administrative penalty assessed  
9 pursuant to this Article, the Department may assess the responsible Person the reasonable  
10 enforcement costs incurred by the Department, including reasonable attorneys' fees. The  
11 imposition of enforcement costs is within the discretion of the Department.

12 **SEC. 11.79 ACCRUAL OF PENALTIES AND COSTS.** Penalties and costs assessed  
13 pursuant to this Article shall continue to accrue against the responsible Person until the  
14 violation is corrected or otherwise remedied in the judgment of the Department. A timely  
15 request for administrative review or appeal shall stay the accrual of penalties and costs until a  
16 final determination concerning the violation is issued by the Department. In the event of a  
17 final determination adverse to the responsible Person, the responsible Person shall pay the  
18 penalties and costs set forth in an accounting from the Department within ten (10) City  
19 business days of receipt of the accounting, or such penalties and costs will continue to accrue  
20 from the date the accounting was received.

21 **SEC. 11.80 FINALITY OF THE DEPARTMENT'S DETERMINATION AND COLLECTION**  
22 **OF ASSESSED PENALTIES AND COSTS.** If no request for administrative review is filed  
23 pursuant to SEC. 11.81 below, the Department's determination shall be final. Thereafter, if  
24 the penalties and costs are not paid within the time specified in the notice, the Department  
25 may pursue any method of collection of such penalties and costs authorized by Applicable

1 Law, including, but not limited to deductions from any deposit or other security instrument held  
2 by the City, and any civil action.

3 **SEC. 11.81 ADMINISTRATIVE REVIEW.**

4 **(a) Request For Administrative Review.** Any Person that is designated as the party  
5 responsible for a violation may seek administrative review of the matter within ten (10) City  
6 business days of the date of the notice imposing administrative penalties, or if no notice  
7 imposing administrative penalties is issued, within twenty (20) City business days of a notice  
8 of violation. Administrative review shall be initiated by filing with the Director of the  
9 Department a request for review that specifies in detail the basis for contesting the notice of  
10 violation, the designation of the responsible party, or the assessment of the administrative  
11 penalties or enforcement costs.

12 **(b) Notice For And Scheduling Of Administrative Review Hearing.** Whenever  
13 administrative review is requested pursuant to subsection (a) above, the Department, within  
14 ten (10) City business days of receipt of the request, shall notify the affected parties of the  
15 date, time, and place of the administrative review hearing by certified mail. Such hearing shall  
16 be held no later than thirty (30) City business days after the Director of the Department  
17 receives the request for administrative review, unless time is extended by mutual agreement  
18 of the affected parties.

19 **(c) Submittals For The Administrative Review Hearing.** The Department shall appoint  
20 a hearing officer for the administrative review hearing. At least three (3) City business days  
21 prior to the hearing, the parties to the hearing shall submit written information to the hearing  
22 officer including, but not limited to, the following: a statement of the issues to be determined  
23 by the hearing officer, a statement of the evidence to be offered at the hearing, and the  
24 identity of any witnesses to appear at the hearing.

1 (d) Conduct Of The Administrative Review Hearing. The administrative review hearing  
2 shall be open to the public, shall be published at least seventy-two (72) hours in advance, and  
3 shall be tape-recorded. Any party to the hearing may, at its own expense, cause the hearing  
4 to be recorded by a certified court reporter. During the hearing, evidence and testimony may  
5 be presented to the hearing officer.

6 (e) Proposed Decision. The hearing officer shall issue a proposed decision including a  
7 summary of the issues and the evidence presented, and findings and conclusions, within ten  
8 (10) City business days of the conclusion of the administrative review hearing. Copies of the  
9 proposed decision shall be served upon the parties to the hearing by certified mail. A notice  
10 that a copy of the proposed decision is available for inspection during normal business hours  
11 shall be posted at the office of the Director of the Department. The proposed decision shall  
12 be a recommendation to the Director, and the Director shall adopt, modify, or deny such  
13 recommendation and prepare a final decision on the matter. Such final decision shall be  
14 served upon the parties to the hearing and posted in the same manner as provided for the  
15 proposed decision herein. The Director's decision shall be a final administrative determination  
16 following five (5) City business days of notice to the parties. Grantee may appeal such  
17 decision pursuant to California Code of Civil Procedure Section 1094.5.

18 **SEC. 11.82 DEPOSIT OF PENALTIES.** Any penalties assessed and recovered in an action  
19 brought pursuant to this Article shall be deposited in a special account, to be known as the  
20 Subscriber Service Account, to be used for the purpose of promoting the interests of  
21 Subscribers in the City.

22 **SEC. 11.83 SUSPENSION OF ACTION ON PERMIT APPLICATIONS.** For good cause to  
23 protect the public health, safety and welfare, the Director of the Department may request the  
24 Director of the Department of Public Works to suspend issuance of excavation permits to a  
25



1 Person who is determined, after notice and a hearing, to be in violation of this Chapter or a  
2 Franchise.

3 Section 3. Article III, Chapter 11 of the San Francisco Administrative Code is hereby  
4 amended by amending Sections 11.50 through 11.55 to read as follows:

5 **ARTICLE ((III)) IX**

6 **DEPARTMENT OF TELECOMMUNICATIONS AND INFORMATION**

7 **SERVICES/TELECOMMUNICATIONS COMMISSION**

8 **SEC. 11.84 ((SEC. 11.50.)) FINDINGS AND PURPOSE.**

9 (a) Technological innovations are making a variety of new audio, video and data transfer  
10 telecommunications technologies available. Many existing and new telecommunications  
11 systems require the placement of facilities under, on, and over the City streets and on both  
12 private and public structures to provide telecommunications services to subscribers and  
13 users. Substantial public concern has been raised as to the appropriateness of the City's  
14 approval process for these requests. The increased number of telecommunications suppliers  
15 seeking to locate these facilities in the streets increases burdens on the physical infrastructure  
16 of the streets, as well as increasing the administrative work load of various City agencies in  
17 evaluating the impact of these facilities. In order to manage these increased burdens, the City  
18 must expand its planning for the use of the streets, foster public-private cooperation, ensure  
19 that the public receives fair compensation for ongoing and comprehensive use of public  
20 property by private entities, and ensure that the City's regulations regarding the use of the  
21 streets are adequate to protect the health, safety and welfare of City residents and that  
22 administrative costs are covered.

23 (b) Within the limits of preemptive federal and/or State law, the City should do everything  
24 possible to promote open and fair competition among telecommunications providers within the  
25 City; to ensure that new telecommunications services are made available to San Francisco

1 residents and businesses on a fair and nondiscriminatory basis; to ensure that the principle of  
2 universal access to telecommunications services is upheld within the City; to ensure that  
3 public, educational and municipal access to video programming channels is preserved; to  
4 promote the safe and efficient use of the streets by telecommunications providers; to ensure  
5 that new telecommunications technologies do not interfere with the City's emergency  
6 communications systems; to ensure that the public receives fair compensation for the use of  
7 the Public Rights-of-Way and the costs of approving and, if necessary, monitoring, the various  
8 devices sought to be installed by telecommunications providers; and to ensure that the City  
9 itself has access to telecommunications services which improve public safety, public access  
10 to government and the efficient delivery of public information and services.

11 (c) In light of the developments and circumstances described above, the Board finds it  
12 necessary and appropriate to promote the public health, safety and general welfare by  
13 creating a Department of Telecommunications and Information Services and to create a  
14 Telecommunications Commission.

15 **SEC. 11.85** ((SEC. 11.51.)) **DEFINITIONS.** For purpose only of this Article IX, the following  
16 words shall have the meanings given herein:

17 (a) "Article" means Article ((III)) IX of Chapter 11 of the San Francisco Administrative  
18 Code.

19 (b) "Board" means the San Francisco Board of Supervisors

20 (c) "Charter" means the Charter of the City and County of San Francisco

21 (d) "City" means the City and County of San Francisco

22 (e) "Commission" means the Telecommunications Commission created by this Article.

23 (f) "Department" means the Department of Telecommunications and Information Services  
24 created by this Article.

1 (g) "Telecommunications" means the one- or two-way transmission of messages,  
2 information, and/or programming by electronic means, including the provision of facilities for  
3 the generation, transmission, switching, signaling, control and/or reception of messages,  
4 information and/or programming; provided however that "telecommunications" shall not mean  
5 broadcasting as defined in 47 U.S.C. Section 153(o).

6 **SEC. 11.86** ((SEC. 11.52.)) **ESTABLISHMENT OF DEPARTMENT; POWERS AND**  
7 **DUTIES.**

8 (a) There is hereby created a Department of Telecommunications and Information  
9 Services within the executive branch which shall consist of a Director and such officers and  
10 employees as are authorized pursuant to the budgetary and fiscal provisions of the Charter.  
11 The Director shall serve as appointing officer for the Department.

12 (b) The Department shall assume responsibility for:

13 (1) (((i))) All functions previously performed by the Department of Electricity and  
14 Telecommunications, including all functions assigned by Chapters 22 and 22B of the  
15 Administrative Code;

16 (2) (((ii))) All functions previously performed by the Information Services Division of the  
17 Controller's office;

18 (((iii)) All functions previously assigned to the Chief Administrative Officer pursuant to  
19 Article II of Chapter 11 of the Administrative Code;))

20 (3) (((iv))) Negotiating and recommending to the Board cable television franchises;

21 (4) (((v))) Providing staff support to the Telecommunications Commission; and

22 (5) (((vi))) All additional functions assigned by the Mayor pursuant to Section 4.132 of  
23 the Charter.

24 **SEC. 11.87** ((SEC. 11.53.)) **ESTABLISHMENT OF COMMISSION.**  
25

1       (a) **Establishment of Commission.** A Telecommunications Commission for the City and  
2 County of San Francisco is hereby created consisting of five voting members.

3       (b) **Appointment of Commissioners.** Commission members shall be appointed by the  
4 Mayor, subject to approval or rejection by Resolution of the Board. Members may be  
5 removed by the Mayor. No person shall be eligible to serve as a member who is a  
6 telecommunications provider or is employed by a telecommunications provider within the City  
7 that may have business before the Commission.

8       (c) **Composition of Commission.** Appointments, qualifications and composition of the  
9 Commission shall be consistent with the requirements of Section 4.101 of the Charter. At  
10 least one member of the Commission shall be drawn from among people with expertise in  
11 fields related to the Commission's work, including, but not limited to telecommunications  
12 management and telecommunications engineering. At least one member of the Commission  
13 shall represent the public, educational and government access to telecommunications and  
14 information services technologies. At least two members shall represent the interests of  
15 consumers and the general public.

16       (d) **Terms of Office.** The Mayor shall designate one member who is first appointed to  
17 serve a term of one year, two of the members who are first appointed to serve for terms of two  
18 years and two of the members who are first appointed to serve for terms of three years.  
19 Thereafter, members shall serve for terms of three years. At its first meeting, and annually  
20 thereafter, the Commission shall elect a chair from among its members for a term of one year.

21       (e) **Resignation by Operation of Law/Removal of Commissioners.** Any member  
22 whom the Commission certifies to have missed three regularly scheduled meetings of the  
23 Commission in any 12-month period without prior authorization of the Commission shall be  
24 deemed to have resigned from the Commission effective on the date of the written certification  
25 from the Commission.

1 (f) **Compensation.** Members shall receive \$25 for each meeting of the Commission  
2 actually attended; provided, however, that no member shall be paid for attending more than  
3 three Commission meetings in any one calendar month.

4 **SEC. 11.88** ((SEC. 11.54.)) **COMMISSION POWERS AND DUTIES.** The Commission's  
5 powers and duties shall include:

6 (a) Advising the Director of the Department of Telecommunications and Information  
7 Services in all matters related to the discharge of his or her duties;

8 (b) Monitoring and advising the Mayor, the Board of Supervisors and other City  
9 departments about advances in the field of telecommunications and the impact of such  
10 advances on the City;

11 (c) Establishing policies regarding the use and occupation of the Public Rights-of-Way for  
12 installation of telecommunications facilities;

13 (d) Within the limits of preemptive federal and/or State law, and consistent with Section  
14 4.104 of the Charter, adopting rules and procedures governing:

15 (1) Regulation of rates for the basic cable television service tier,

16 (2) Customer service by cable television operators,

17 (3) The use and operation of the cable television public, educational or governmental  
18 access channels, and

19 (4) Any additional rules and regulations necessary for the conduct of its business;

20 (e) Issuing orders to adjust, settle or compromise any controversy between any cable  
21 operator, as defined in 47 U.S.C. Section 522 or any successor statute, and any subscriber  
22 regarding the subscriber's bill, signal, services, or any other matter within the City's  
23 jurisdiction;

24 (f) In addition to the functions prescribed in (a) through (e) above, the Commission shall  
25 evaluate City policies and procedures affecting the provision of telecommunications services


1 and the installation of telecommunications facilities within the City and develop a City  
2 Telecommunications Plan. The Telecommunications Plan should propose City policies and  
3 procedures to guide the installation of telecommunications facilities in the City. These policies  
4 should facilitate the deployment of new technologies within the City, maximize the availability  
5 of telecommunications services to City residents, businesses and departments, preserve City  
6 property and resources, and protect the health, safety and welfare of City residents. The  
7 Telecommunications Plan should be developed with maximum public participation including  
8 residents, independent experts, Telecommunications Providers and City departments. The  
9 Plan shall be submitted to the Mayor and the Board for adoption as the City's  
10 Telecommunications Plan(( within 18 months of the effective date of this ordinance)). It shall  
11 be updated, after public participation and hearings, and if necessary, amended, every 24  
12 months.

13 **SEC. 11.89** ((SEC. 11.55.)) **COMMISSION MEETINGS.** The Commission shall meet at  
14 least once each month. The Director of the Department shall attend Commission meetings.  
15 The Directors of the Departments of Public Works, City Planning and Public Health, or their  
16 designees, shall attend Commission meetings upon request and shall fully cooperate with the  
17 Commission and the Department in fulfilling the provisions and purposes of this Article.

18 APPROVED AS TO FORM:

19 LOUISE H. RENNE, City Attorney

20  
21 By:



22 Traci Bone  
23 Deputy City Attorney  
24  
25



# City and County of San Francisco

## Tails

### Ordinance

---

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 000198

**Date Passed:**

Ordinance amending Chapter 11 of the San Francisco Administrative Code by replacing Articles I, II, and IV in their entirety with new Articles I through VII and making minor amendments to Article III and renumbering Article III to become Article IX.

---

February 28, 2000 Board of Supervisors — SUBSTITUTED

March 20, 2000 Board of Supervisors — PASSED, ON FIRST READING

Ayes: 10 - Ammiano, Becerril, Brown, Katz, Kaufman, Leno, Newsom, Teng,  
Yaki, Yee

Absent: 1 - Bierman

March 27, 2000 Board of Supervisors — FINALLY PASSED

Ayes: 9 - Ammiano, Becerril, Brown, Kaufman, Leno, Newsom, Teng, Yaki, Yee

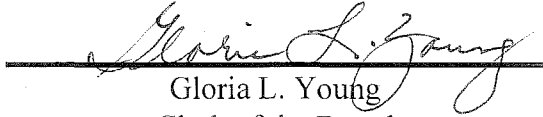
Absent: 2 - Bierman, Katz

File No. 000198

I hereby certify that the foregoing Ordinance  
was **FINALLY PASSED** on March 27, 2000  
by the Board of Supervisors of the City and  
County of San Francisco.

APR - 7 2000

Date Approved

  
Gloria L. Young  
Clerk of the Board

  
Mayor Willie L. Brown Jr.