



CITY OF WAUWATOSA
MEMORIAL CIVIC CENTER
7725 WEST NORTH AVENUE
WAUWATOSA, WI 53213
Telephone: (414) 479-8917
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COMMON COUNCIL

Regular Meeting, Tuesday, November 16, 2004

PRESENT: Alds. Birschel, Casey, Grimm, Herzog, Jenkins, Kopischke, Krill, Krol, Maher, McCarthy, Stepaniak, Subotich, Sullivan, Treis, Bruderle-Baran, Becker -16

ALSO PRESENT: Mr. Wontorek, City Administrator; Mr. Braier, Finance Director; Mr. Kesner; City Attorney; Mr. Kappel, Dir. of Public Works; Ms. Welch, Community Development Director; Police Capt. Reit; Fire Chief Redman; Ms. Plass, Acct. Mgr.; Ms. Aldana, Asst. City Atty./Personnel Adm.; Ms. Ledesma, City Clerk; Ms. Williams, Deputy City Clerk

Mayor Estness in the Chair

The Mayor called the meeting to order at 7:30 p.m.

William Tarman-Ramcheck, Public Works Projects Analyst, was recognized for receiving the KGMB Government Award from Keep Greater Milwaukee Beautiful for the city's efforts in recycling.

City Clerk Carla Ledesma and Deputy City Clerk Bernadette Williams received a letter of commendation from the Common Council and a mayoral proclamation for the hard work and professionalism displayed by the Clerk's office staff during the November presidential election process.

It was moved by Ald. Grimm, seconded by Ald. Kopischke that the reading of the minutes of the last regular meeting be dispensed with and they be approved as printed. -16

PUBLIC HEARING

The first item of business was a public hearing to consider the following proposed ordinance:

ORDINANCE

AN ORDINANCE AMENDING CHAPTERS 24.23.015, 24.23.020, 24.24.015, 24.24.020, 24.26.020, 24.26.025, 24.27.015, 24.27.020, 24.34.020, 24.34.025, 24.36.020, 24.36.025, 24.38.020 to correct designations of special and conditional uses

The Common Council of the City of Wauwatosa do ordain as follows:

Part 1. The following special uses listed in Chapter 24.23.020 AA Business District are moved to Chapter 24.23.015 Conditional Uses:

- Amusement places
- Video tape rental and sales
- Drinking places
- Eating places
- Eating places (restricted to carry-out facilities)
- Groceries
- Motion picture theaters
- Secondhand merchandise
- Automobile leasing services
- Automobile repair or storage services
- Automobile wash services
- Gasoline service stations
- Hotels and motels
- Nursery schools and infant care
- Nursery schools and day care centers
- Physical fitness and health studios
- Professional schools
- Rapid rail transit and street railway right-of-way

The following uses listed in Chapter 24.24 AA Commercial District are moved from Section 020 Special Uses to Section 015 Conditional Uses:

- Hotels and motels
- Eating places
- Groceries

The following uses listed in Chapter 24.26 AA Professional Office District are moved from Section 025 Special Uses to Section 020 Conditional Uses:

- Eating places

The following uses listed in Chapter 24.27 Village Trade District are moved from Section 020 Special Uses to Section 015 Conditional Uses:

- Bed and Breakfast
- Drinking places
- Eating places
- Groceries
- Churches, synagogues, and temples
- Elementary schools-private
- Secondary schools-private
- Recreation centers-public
- Rapid rail transit and street railway right-of-way

The following uses listed in Chapter 24.34 AA Light Manufacturing District are moved from Section 025 Special Uses to Section 020 Conditional Uses:

Offices

Medical clinics when accessory to a permitted use

The following uses listed in Chapter 24.36 AA Industrial District are moved from Section 025 Special Uses to Section 020 Conditional Uses:

Offices

Medical clinics when accessory to a permitted use

Section 24.38.020 AA Institutions District Special Uses is now changed to Section 24.38.020 AA Institutions District Conditional Uses.

Part 2. This ordinance shall take effect and be in force from and after its passage and publication.

Proof of publication is in the file.

TO THE COMMON COUNCIL, CITY OF WAUWATOSA, WI,

The City Plan Commission, to whom was referred the request by staff to streamline planning and development functions, recommends to the Common Council that the proposed ordinance be adopted.

Dated this 28th day of August 2003.

Nancy L. Welch, Secretary
City Plan Commission

No one of the public present wished to be heard in favor of the proposed ordinance.

No one of the public present wished to be heard in opposition to the proposed ordinance.

No one of the public present wished to be heard either for or against the proposed ordinance or had any comments or questions.

The public hearing was declared closed.

Ordered held to the next Common Council meeting, December 7, 2004.

PUBLIC HEARING

The second item of business was a public hearing to consider the following proposed ordinance:

ORDINANCE

AN ORDINANCE AMENDING CHAPTER 24.24 BY ADDING MASSAGE THERAPY AS A CONDITIONAL USE IN THE AA COMMERCIAL DISTRICT

The Common Council of the City of Wauwatosa do ordain as follows:

Part 1. That Section 24.34.015 is amended to include the following as a conditional use:

Massage Therapy6518

Part II. This Ordinance shall take effect and be in force from and after its passage and publication.

Proof of publication is in the file.

TO THE COMMON COUNCIL, CITY OF WAUWATOSA, WI,

The City Plan Commission, to whom was referred the request by Mary J. Brill and Julie Mondroski for an amendment to the zoning code to allow massage therapy establishments as a Conditional Use in the AA Commercial District, recommends to the Common Council that the code be amended as requested.

Dated this 13th day of September 2004.

Nancy L. Welch, Secretary
City Plan Commission

No one of the public present wished to be heard in favor of the proposed ordinance.

No one of the public present wished to be heard in opposition to the proposed ordinance.

No one of the public present wished to be heard either for or against the proposed ordinance or had any comments or questions.

The public hearing was declared closed.

Ordered held to the next Common Council meeting, December 7, 2004.

OLD BUSINESS

The following item was held for two weeks at the November 2, 2004 meeting:

RESOLUTION R-04-247

WHEREAS, Justin Wichman, N46 W28635 Willow Brook Court, Hartland, WI, applied for an operator’s license in conjunction with his employment at The Cheesecake Factory, 2250 N. Mayfair Road, Wauwatosa, WI;

NOW, THEREFORE, BE IT RESOLVED THAT Justin Wichman is hereby issued an operator’s license for the period ending June 30, 2005;

BE IT FURTHER RESOLVED THAT the Wauwatosa Police Department is hereby directed to conduct a further review of the criminal records concerning Mr. Wichman six months from the date of this license issuance and is directed to report back to the Legislation, Licensing & Communications Committee if any new concerns regarding Mr. Wichman’s fitness for this operator’s license are found.

It was moved by Ald. Treis, seconded by Ald. Birschel to approve the foregoing resolution. - 16

OLD BUSINESS

The following item was held for two weeks following a public hearing on November 2, 2004:

RESOLUTION R-04-248

WHEREAS, a summary of the proposed budget for the year 2005 has been published in the official newspaper of the City on October 14, 2004, together with the notice of public hearing on the proposed budget to be held on November 2, 2004; and

WHEREAS, said public hearing was held at the time and place stated in said notice and opportunity given to everyone present who desired to be heard on the proposed 2005 budget;

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Wauwatosa THAT pursuant to said hearing as follows:

1. That the departmental balances, if any, in the general appropriations account shall, on December 31, 2004 revert to the Unappropriated General Fund Balance, except for the following:

<u>Account No.</u>	<u>Account Title</u>
113	Youth Commission
114	Historic Preservation Commission
211-5980-020	Police-Expenditures from Donations
211-5980-060	Federal Reimbursement Program
211-5980-061	Drug Prevention & Educ. Fund
211-5980-150	Drug Asset Forfeiture
221-5980-015	Fire Expenditures from Donations
223	Fire Equipment Reserve
522	July Fourth
551 & 561	Parks & Forestry

2. That there be and there is hereby appropriated for the various City purposes for the year 2004, the amounts as shown in the attached estimated 2004 budget and for the year 2005, the amounts shown in the attached proposed budget as amended by the Budget and Finance Committee.

3. That the revenues and expenditures for the Debt Service Fund, Special Revenue Funds, Capital Projects Fund, Proprietary Funds and Insurance Reserve Funds are also approved as amended.

4. That the position distribution be amended to reflect those positions created or abolished by the budget.

BE IT FURTHER RESOLVED THAT the sum of \$31,595,958 be and it is hereby levied and assessed upon all of the taxable property, both real and personal, in the City of Wauwatosa, assessed for taxation in said City for the year 2005 for City purposes.

It was moved by Ald. Bruderle-Baran, seconded by Ald. Casey to approve the foregoing resolution. –

It was moved by Ald. Bruderle-Baran, seconded by Ald. Sullivan to amend the 2005 budget by transferring \$20,000 from the police overtime account to the wages and salary account to fund the hiring of a school liaison/patrol officer with a start date of approximately July 1, 2005. Roll call vote, Ayes 16.

It was moved by Ald. Herzog, seconded by Ald. Stepaniak to amend the 2005 budget by restoring \$2,000 to the Common Council's printing and duplicating account. Roll call vote, Ayes 14, Noes 2 (Casey, Becker)

It was moved by Ald. Herzog, seconded by Ald. McCarthy to amend the 2005 budget by eliminating \$58,000 for the re-sodding of the softball diamond. Roll call vote, Ayes 7, Noes 9 (Casey, Grimm, Jenkins, Kopischke, Krill, Maher, Stepaniak, Sullivan, Bruderle-Baran). –Motion failed.

It was moved by Ald. Herzog, seconded by Ald. Maher to amend the 2005 budget by eliminating \$60,000 for flowers for boulevard flower beds. Roll call vote, Ayes 5 (Herzog, Maher, McCarthy, Subotich, Treis), Noes 11. --Motion failed.

It was moved by Ald. Grimm to amend the 2005 budget by approving the hiring of four individuals for the Forestry Department at a cost of approximately \$250,000 (including benefits) to perform in-house tree trimming , and by eliminating the \$75,000 out-sourced tree trimming contract. --Motion failed for lack of a second.

It was moved by Ald. Treis, seconded by Ald. Sullivan to amend the 2005 budget by restoring \$56,550 to the building maintenance accounts. Upon further discussion, the motion was withdrawn when it was determined that funds for this work had been previously restored.

Roll call vote on original motion, as amended, Ayes 15, Noes 1 (Herzog)

RECESS 8:55 P.M. – 9:00 P.M.

APPOINTMENTS BY THE MAYOR

Design Review Board B

Nick Loughrin, 2415 N. 82nd Street
(Term ends 12/31/06)

Civic Celebration Commission

Bill Berdan, 2049 N. 114th Street
(Term ends 12/31/08)

Board of Zoning Appeals Chair

James O'Connell

It was moved by Ald. Casey, seconded by Ald. McCarthy
to concur with the foregoing appointments. -16

APPLICATIONS, COMMUNICATIONS, ETC.

1. City of Wauwatosa Investment Summary as of October 31, 2004
Place on file
2. Wauwatosa Water Utility Statement of Receipts and Disbursements for month ended October 31, 2004
Place on file
3. Notice of Claim: Attorney Timothy J. Murphy for Melissa Murphy-Ustruck
City Attorney
4. Letter from Bev Greenberg, Time Warner Cable, advising of cable rate change effective December 1, 2004
Place on file
5. Letter and draft ordinance from Carl Templer, Wauwatosa Village Business Improvement District, regarding "hotel newspaper vending" in the Village
Committee on Community Development
6. Donation: Pre-owned office furniture from Greenbrier & Russell, Milwaukee
Place on file
7. Notice of Claim: Atty. Ronald Bornstein for Parminder Singh Khurana, 14125 W. Lisbon Road, Brookfield
City Attorney
8. Letter from the Wauwatosa Common Council commending the City Clerk's staff for their hard work and professionalism during the presidential election process.
City Clerk

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-04-249

WHEREAS, Nessah Jones, 9000 W. Fairmount Avenue, Milwaukee, WI, applied for an operator's license in conjunction with her employment at The Cheesecake Factory, 2350 N. Mayfair Road, Wauwatosa, WI; and

WHEREAS, Nessah Jones was requested twice to appear before the Committee on Legislation, Licensing & Communications in conjunction with that application; and

WHEREAS, Ms. Jones failed to appear on October 26, 2004, and November 9, 2004, said failures are conduct which is inconsistent with the activity of responsibly selling alcoholic beverages in the City of Wauwatosa pursuant to the regulations of alcoholic beverage sales by the City of Wauwatosa;

NOW, THEREFORE, BE IT RESOLVED THAT the operator license application for Nessah Jones is hereby denied.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-04-250

WHEREAS, Scott Olson, 4231 N. 104th Street, Milwaukee, WI, applied for an operator's license in conjunction with his employment at Biggs, Steak House, N. Mayfair Road, Wauwatosa, WI;

NOW, THEREFORE BE IT RESOLVED THAT Scott Olson is hereby issued an operator's license for the period ending June 30, 2005.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-04-251

WHEREAS, Mark Gernetzke, 511C Lake Bluff Road, Thiensville, WI, applied for an operator's license in conjunction with his employment at Biggs Roadhouse, N. Mayfair Road, Wauwatosa, WI; and

WHEREAS, Mark Gernetzke was requested twice to appear before the Committee on Legislation, Licensing & Communications in conjunction with that application; and

WHEREAS, Mr. Gernetzke failed to appear on October 26, 2004, and November 9, 2004, said failures are conduct which is inconsistent with the activity of responsibly selling alcoholic beverages in the City of Wauwatosa pursuant to the regulations of alcoholic beverage sales by the City of Wauwatosa;

NOW, THEREFORE, BE IT RESOLVED THAT the operator license application for Mark Gernetzke is hereby denied.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-04-252

WHEREAS, Kelsey McLenon, 5504 W. Lapham Street, Milwaukee, WI, applied for an operator's license in conjunction with her employment at The Cheesecake Factory, 2350 N. Mayfair Road, Wauwatosa, WI;

NOW, THEREFORE BE IT RESOLVED THAT Kelsey McLenon is hereby issued an operator's license for the period ending June 30, 2005.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-04-253

WHEREAS, Jennifer Elger, 2820 Valley Avenue, West Bend, WI, applied for an operator's license in conjunction with her employment at The Cheesecake Factory, 2350 N. Mayfair Road, Wauwatosa, WI;

NOW, THEREFORE, BE IT RESOLVED THAT Jennifer Elger is hereby issued an operator's license for the period ending June 30, 2005;

BE IT FURTHER RESOLVED THAT the Wauwatosa Police Department is hereby directed to conduct a further review of the criminal records concerning Ms. Elger six months from the date of this license issuance and is directed to report back to the Legislation, Licensing & Communications Committee if any new concerns regarding Ms. Elger's fitness for this operator's license are found.

It was moved by Ald. Treis, seconded by Ald. Maher to approve the five foregoing resolutions. -16

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

ORDINANCE O-04-28

AN ORDINANCE REPEALING AND RECREATING WAUWATOSA CODE TITLE 5 REGARDING CABLE TELEVISION

The Common Council of the City of Wauwatosa does hereby ordain as follows:

Part I: Title 5 of the Wauwatosa Code of Ordinances is hereby repealed in its entirety and recreated as follows:

Title 5 CABLE TELEVISION

Chapter 5.04 CABLE TELEVISION

- 5.04.010 Statement of Intent and Purpose.
- 5.04.020 Definitions.
- 5.04.022 Federal, State and City Jurisdiction.
- 5.04.026 Rights Reserved to City.
- 5.04.030 Rights and privileges of grantee.
- 5.04.040 Franchise Agreement.
- 5.04.050 Publication and Acceptance.
- 5.04.060 System Design and Upgrade.
- 5.04.070 Franchise renewal.
- 5.04.080 Police powers.

5.04.090	Cable television franchise required.
5.04.095	Services to Public Buildings.
5.04.100	Use of grantee facilities.
5.04.110	Initial franchise costs.
5.04.120	Notices.
5.04.130	Letter of credit/security deposit.
5.04.140	Construction bond.
5.04.150	Liability and insurance.
5.04.160	Indemnification.
5.04.170	Rights of individuals.
5.04.175	Mobility Limited Subscribers.
5.04.180	Public notice.
5.04.190	Service availability and record request.
5.04.195	Programming Decisions.
5.04.200	System construction.
5.04.210	Construction and technical standards.
5.04.220	Use of streets.
5.04.230	Operational standards.
5.04.240	Continuity of service mandatory.
5.04.250	Complaint procedure.
5.04.260	Grantee rules and regulations.
5.04.270	Franchise fee.
5.04.275	Payments Not Franchise Fees.
5.04.280	Transfer of control or controlling interest.
5.04.290	Availability of books and records.
5.04.300	Other petitions and applications.
5.04.310	Fiscal reports.
5.04.320	Removal of cable television system.
5.04.330	Required services and facilities.
5.04.340	Rules and regulations.
5.04.350	Periodic Review.
5.04.360	Rate change procedures.
5.04.370	Forfeiture and termination.
5.04.380	Foreclosure.
5.04.390	Right of acquisition by the city.
5.04.400	Receivership.
5.04.410	Compliance with state and federal laws.
5.04.420	Landlord/tenant.
5.04.430	Applicants' bids for initial franchise.
5.04.440	Financial, contractual, shareholder and system disclosure for initial franchises.
5.04.450	Theft of services and tampering.
5.04.460	Penalties.
5.04.470	Procedures.

5.04.010 Statement of Intent and Purpose.

A. The City, pursuant to applicable federal and State law, is authorized to grant one (1) or more non-exclusive Franchises to construct, operate, maintain, and reconstruct Cable Systems within the City.

B. The Common Council finds that the development of Cable Systems has the potential of having great benefit and impact upon all members of the City. The public and bus iness

community alike will benefit if served by cable channels and systems that are sufficient to meet the diverse needs of producers and distributors of program and other communications content services. At the same time, the Common Council recognizes that the cable industry is in a period of rapid growth and corporate consolidation and there is therefore a need for the development of regional service objectives and policies that will help to ensure that the industry remains responsive to local concerns and the public interest. Because of the complex and rapidly changing technology associated with cable television, the Common Council further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers that are vested in the City or such Persons as the Common Council designates. In this way the City will assure the development of Cable Systems with optimum technology and maximum penetration throughout the City as rapidly and as economically and technically feasible as possible in order to provide the full range of capabilities and valuable educational and public services that modern Cable Systems can provide. In adopting this Ordinance it is the intent of the Common Council to protect the public interest by setting standards for Cable Franchises to meet the community's cable needs, including assuring adequate dedicated capacity and channel availability to meet government and educational needs, and promoting program diversity and local expression.

C. In order to ensure that the City and its residents receive state of the art Cable Services and capabilities as this technology further evolves, all Franchises granted pursuant to this Ordinance will, to the extent not inconsistent with the terms of any such Franchise Agreement, be subject to periodic review and modifications to keep current with changing law, technology, and Services. It is the intent of this Ordinance to provide for and specify the means to attain the best possible Cable Service to Residents of the City and any Franchises issued pursuant to this Ordinance shall be deemed to include a finding that the Franchise meets the cable-related needs of the community.

5.04.020 Definitions.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein:

"Basic service" means any subscriber tier provided by the grantee which includes the delivery of local broadcast stations, and public, educational and governmental access channels. The basic service does not include optional program and satellite service tiers, a la carte services, per channel, per program, or auxiliary services for which a separate charge is made. However, grantee may include other satellite signals on the basic tier.

"Cable system" or "system" or "cable television system" means a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video, and other forms of electronic, electrical or optical signals, which includes cable television service and which is located in the city. The definition shall not include any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control or management, and which does not use city rights-of-way.

"City" means the city of Wauwatosa, Wisconsin.

"Class IV channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

"Control" and/or "controlling interest" means actual working control or ownership of a system in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or entity (except underwriters during the period in which they are offering securities to the public) of ten percent or more of a cable system or the franchise under which the system is operated. A change in the control or controlling interest of an Entity which has control or a controlling interest in a grantee shall constitute a change in the control or controlling interest of the system under the same

criteria. Control or controlling interest as used herein may be held simultaneously by more than one person or entity.

"Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view more than twelve channels delivered by the system at designated converter dial locations.

"FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

"Franchise" or "franchise agreement" means any agreement granting a grantee a franchise under Section 5.04.030.

"Grantee" means a person or entity to whom or which a franchise under this chapter is granted by the city, along with the lawful successors or assigns of such person or entity.

"Gross revenues" means all revenue collected directly or indirectly by the grantee, from the provision of cable service within the city including but not limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, franchise fees, leased channel fees, converter rentals, program guides, studio rental, production equipment personnel fees, late fees, downgrade fees, revenue from the sale, exchange, use or cable cast of any programming developed on the system for community or institutional use, advertising, and any value (at retail price levels) of any non-monetary remuneration received by grantee in consideration of the performance of advertising or any other service of the system; provided, however, that this shall not include any taxes on services furnished by the grantee herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the grantee on behalf of the governmental unit. Subject to applicable federal law, the term gross revenues includes revenues attributed to franchise fees and revenues collected directly or indirectly from other ancillary telecommunications services (such as but not limited to, point-to-point telecommunications, point-to-point multipoint telecommunications, data transmissions, voice-over-IP, etc.) but only to the extent that all other providers of such telecommunications services in the city are subject to the same compensation requirements of the city.

"Initial service area" means all areas in the city having at least twenty dwelling units per street mile.

"Installation" means the connection of the system from feeder cable to subscribers' terminals.

"May" is permissive.

"Monitoring" means observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided monitoring shall not include system wide, non individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for pay services.

"Normal business hours" as applied to the grantee, means those hours during which similar businesses in the city are open to serve customers. In all cases, "normal business hours" shall include some evening hours at least one night per week, and/or some weekend hours.

"Normal operating conditions" means those service conditions which are within the control of the grantee. Those conditions which are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

"Shall" is mandatory.

"Service interruption" and/or "outages" means the loss of either picture or sound or both for a single or multiple subscriber(s).

"Street" means the surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the city for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the city which shall, within their proper use and meaning entitle the grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a telecommunications system.

"Subscriber" means any person, firm, corporation, or association lawfully receiving basic and/or any additional service from grantee.

"User" means a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

5.04.022 Federal, State and City Jurisdiction

A. This Ordinance shall be construed in a manner consistent with all applicable federal and State laws.

B. In the event that the federal or State government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law, provided that such rules and/or regulations so adopted do not materially alter a Grantee's benefits or burdens agreed to in a Franchise Agreement. It is recognized that at the time this Ordinance was drafted there existed significant disagreement as to proper regulatory classification and scope of local franchising authority with respect to certain ancillary services capable of being provided over Cable Systems, including, but not limited, to Cable Internet service, and voice over the Internet protocol technologies. The City reserves the right to implement further requirements with respect to such matters at such time as their regulatory classification is authoritatively clarified and that such action shall not constitute a material change in any Franchise Agreement adopted pursuant to this Ordinance.

C. This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. If an existing Franchise Agreement granted prior to the effective date of this Ordinance provides for terms or conditions that materially differ from those of this Ordinance, the terms of this Ordinance shall automatically apply to such Grantee once a new agreement with the Grantee becomes effective, unless otherwise mutually agreed to in a Franchise Agreement.

D. Grantee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantee shall comply with all applicable general laws and ordinances lawfully enacted by the City pursuant to that power.

E. Grantee shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or a Franchise Agreement by reason of any failure of the City to enforce prompt compliance.

F. This Ordinance and all Franchise Agreements shall be construed and enforced in accordance with the substantive laws of the State of Wisconsin.

5.04.026 Rights Reserved to City

A. In addition to any rights specifically reserved to City by this Ordinance or a Franchise Agreement, City reserves to itself every right and power that is required to be reserved by a provision of any other ordinance or under any other Franchise.

B. The City reserves the right to enter into any interlocal agreements with other regional governmental authorities for the joint administration of Franchises granted under this Ordinance with respect to the administration and enforcement of a Franchise Agreement, Public, Educational and Governmental Access and Institutional Network connections and facilities.

C. City shall have the right to waive any provision of this Ordinance except those required by federal or State regulation, if the City determines that it is in the public interest to do so.

5.04.030 Rights and privileges of grantee.

Any franchise granted by the city pursuant to Wisconsin Statutes Section 66.082 shall grant to the grantee the right and privilege to erect, construct, operate and maintain in, upon, and along, across, above, over and under the streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a cable system.

5.04.040 Franchise Agreement.

A. Every Grantee shall agree to the terms and provisions of a Franchise Agreement as negotiated between the Grantee and the City. The franchise and the rights, privileges and authority granted shall take effect and be in force as set forth in the franchise agreement and shall continue in force and effect for a term of no longer than **five** years. *(subsequently amended to “fifteen”)

B. In addition to those matters required elsewhere in this Ordinance to be included in the Franchise Agreement, each new Franchise Agreement or Franchise Renewal Agreement must contain the following express representations by each Grantee:

(1) Unless otherwise set forth in the Franchise Agreement, Grantee accepts and agrees to all of the provisions of this Ordinance, and any supplementary specifications as to construction, operation, or maintenance of the System which the City may include in the Franchise Agreement.

(2) Grantee has examined all of the provisions of this Ordinance and, unless otherwise set forth in the Franchise Agreement, agrees to the terms and conditions herein.

(3) Grantee recognizes the right of the City to lawfully adopt additional regulations of general applicability as it shall find necessary in the exercise of its police power and in accordance with applicable law.

C. Unless a Franchise Agreement specifically states otherwise, every Franchise shall apply to the entire territorial area of the City and any area added thereto during the term of the franchise.

D. As a condition of use of the Rights-of-Way, every Grantee at its sole cost and expense, shall indemnify, protect, defend and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City approved a Franchise with the Grantee, the rights granted to Grantee, or the activities performed, or failed to be performed by Grantee under the terms of its Franchise or use of the Rights-of-Way, or otherwise, to the extent caused by the Grantee. This indemnification shall survive the expiration or termination of any Franchise or use of the Rights-of-Way for a period of two (2) years after the effective date of expiration or termination.

E. Every Grantee shall maintain throughout the term of this Ordinance, Section 5.04.150, Franchise liability insurance.

F. Every Franchise Agreement may contain such further conditions or provisions as may be included in a request for proposal and/or negotiated between the City and a Grantee, except that no such conditions or provisions shall be such as to conflict with any applicable provisions of state or federal law, this Ordinance, or limit the ability of the City to modify the Franchise Agreement requirements through the proper exercise of its police authority.

5.04.050 Publication and Acceptance

A. Publication. A Franchise shall be signed by the Mayor and attested by the City Clerk. A Franchise shall be published in accordance with the requirements of City and City Administrator and state law and shall take effect upon the Effective Date.

B. Acceptance and Governing Law.

(1) Prior to approval by the City, a Grantee shall sign a Franchise and provide in a written form approved by the City Attorney which shall include Grantee acceptance of this Ordinance and the

Franchise, Grantee's authority to do business in Wisconsin, a representation of Grantee's legal, technical, and financial qualifications to fully perform the obligations of this Ordinance and a Franchise, and the representations required in this Ordinance. Grantee shall also deliver a Guarantee, if required by the City, in a form acceptable to the City Attorney.

(2) Grantee shall also deliver to the City a certified resolution evidencing a Grantee's power and authority to accept a Franchise. Such documents shall also describe the officers authorized to accept on behalf of Grantee.

(3) In accordance with a Franchise, a Grantee will file with the City Clerk any security deposit, insurance certificate, and performance bonds required by this Ordinance and in a Franchise.

(4) Upon the Effective Date of a Franchise, a Grantee shall be bound by all the terms and conditions contained in this Ordinance and in a Franchise. Grantee shall provide all services and offerings specifically set forth in this Ordinance and in a Franchise, to provide cable services within the City.

(5) This Ordinance and a Franchise granted pursuant to it and every question arising thereunder shall be construed or determined according to the laws of the State of Wisconsin and applicable federal law.

5.04.060 System Design and Upgrade

A. Every Grantee whose Franchise Agreement is granted or renewed after the enactment of this Ordinance shall offer Service that meets the current and future cable-related needs of the City; such Service shall at a minimum be comparable to Services offered by existing providers in the City. The Franchise Agreement shall, in accordance with applicable law, include a complete description of Grantee's proposed System design, and how the System will meet current and future cable-related needs of the City.

B. All Cable Systems shall reflect the current state-of-the-art. Every new or renewed Franchise Agreement shall contain provisions for the Grantee to provide additional or new System facilities and equipment, expand channel capacity and otherwise upgrade or rebuild its System throughout the term of its Franchise, as required to incorporate improvements in technology to reasonably meet the needs and interests of the community in light of the costs thereof, including but not limited to capacity for new and developing programs and services, two-way interactive advanced communications, and a seamless migration to an all digital system on a System wide basis, including PEG Channels.

C. In furtherance of the general policy of maintaining a state-of-the-art System throughout the term of the Franchise Agreement, every Grantee will pursue a continuous policy of incorporating new technological developments into its System and will identify and respond to changing community interests and desires regarding video programming where economically and technically feasible. As part of any new or renewed Franchise Agreement, the City may require a technical upgrade of the Cable System where economically feasible upon one of the following showings:

(1) That at least thirty percent (30%) of the comparable cable systems owned or operated by the Grantee's affiliates in Wisconsin and adjoining states have upgraded their System capabilities to a material degree beyond that of the Grantee's Cable System; or

(2) That there is a material disparity between the level of services and capacity of a Grantee's cable System and that of a significant number of other comparable systems, and that there is a demonstrable need and public interest to be served by such an upgrade.

D. The City may conduct an inquiry to determine whether either showing can be made. Each Grantee shall cooperate with the City in any such inquiry and provide information, including, if reasonably available, estimated general cost figures, technical specifications, and equipment specifications that may assist such an undertaking.

E. The City's may consider information not provided by the Grantee if verifiable, and may commission third parties, as necessary, to ascertain facts in support of either showing. The public may also be invited to comment on the technical currency of a Grantee's System.

F. In the event the City's inquiry indicates that a technical upgrade is warranted under either showing, the Common Council may request an upgrade in accordance with the terms of an Ordinance adopted after a public hearing.

5.04.070 Franchise renewal.

A. Current federal statutory process:

1. The city may, on its own initiative, during the six-month period which begins with the thirty-sixth month before the franchise expiration, commence a proceeding which affords the public in the city appropriate notice and participation for the purpose of: (a) identifying the future cable-related community needs and interests; and (b) reviewing the performance of the grantee under the franchise. If the grantee submits, during such six-month period, a written renewal notice requesting the commencement of such proceeding, the city shall commence such proceeding not later than six months after the date such notice is submitted.

2. Upon completion of the proceeding under subsection (A)(1)(a) of this section, the grantee may, on its own initiative or at the request of the city, submit a proposal for renewal. The city may establish a date by which such proposal shall be submitted.

3. Upon submittal by the grantee of a proposal to the city for the renewal of the franchise, the city shall provide prompt, public notice of such proposal and renew the franchise or issue a preliminary assessment that the franchise should not be renewed, and at the request of the grantee or on its own initiative, commence an administrative proceeding, after providing prompt, public notice of such proceeding.

4. The city shall consider in any administrative proceeding whether: (a) the grantee has substantially complied with material terms of the existing franchise and with applicable law; (b) the quality of the grantee's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in the light of community needs; (c) the grantee has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the grantee's proposal; and (d) the grantee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the costs of meeting such needs and interests.

5. In any proceeding under subsection (A)(4) of this section, the grantee shall be afforded adequate notice and the grantee and the city, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceedings under subsection (A)(1) of this section) to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.

6. At the completion of a proceeding under subsection (A)(4) of this section, the city shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding and transmit a copy of such decision to the grantee. Such decision shall state the reasons therefor.

7. Any denial of a proposal for renewal that has been submitted in compliance with the procedures set forth above, shall be based on one or more adverse findings made with respect to the factors described in subsection (A)(4)(b) of this section pursuant to the record of the proceeding under said subsection. The city may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise or on events considered under subsection (A)(4) of this section unless the city has provided the grantee with notice and the opportunity to cure or in any case in which it is documented that the city has waived its right to object.

8. The grantee may appeal any final decision or failure of the city to act in accordance with the procedural requirements of this section. The court shall grant appropriate relief if the court finds that (a) any action of the city is not in compliance with the procedural requirements of this section; or (b) in the event of a final decision of the city denying the renewal proposal, the grantee has demonstrated that the adverse finding of the city with respect to each of the factors described in

subsection (A)(4) of this section on which the denial is based is not supported by a preponderance of the evidence, based on the record of the administrative proceeding.

B. Franchise renewal in the event of change in federal law:

A franchise may be renewed by the city upon application of the grantee pursuant to the procedure established in this section, and in accordance with the then applicable law.

1. At least twenty-four months prior to the expiration of the franchise, the grantee shall inform the city in writing of its intent to seek renewal of the franchise.

2. The grantee shall submit a proposal for renewal which demonstrates:

a. That it has been and continues to be in substantial compliance with the terms, conditions, and limitations of this chapter and its franchise;

b. That its system has been installed, constructed, maintained and operated in accordance with the accepted standards of the industry, and this chapter and its franchise;

c. That it has the legal, technical, financial, and other qualifications to continue to maintain and operate its system, and to extend the same as the state of the art progresses so as to assure its subscribers high quality service; and

d. That it has made a good faith effort to provide services and facilities which accommodate the demonstrated needs of the community as may be reasonably ascertained by the city.

3. After giving public notice, the city shall proceed to determine whether the grantee has satisfactorily performed its obligations under the franchise. To determine satisfactory performance, the city shall consider technical developments and performance of the system, programming other services offered, cost of services, and any other particular requirements set in this chapter; shall consider the grantee's reports made to the city and the Federal Communication Commission; may require the grantee to make available specified records, documents, and information for this purpose, and may inquire specifically whether the grantee will supply services sufficient to meet community needs and interests. Industry performance on a national basis shall also be considered. Provision shall be made for public comment.

4. The city shall then prepare any amendments to this chapter that it believes necessary.

5. If the city finds the grantee's performance satisfactory, and finds the grantee's technical, legal, and financial abilities acceptable, and finds the grantee's renewal proposal meets the future cable-related needs of the city, a new franchise shall be granted pursuant to this chapter as amended for a period to be determined.

6. If the grantee is determined by the city to have performed unsatisfactorily, new applicants may be sought and evaluated and a franchise award shall be made by the city according to franchising procedures adopted by the city.

5.04.080 Police powers.

A. In accepting this franchise, the grantee shall acknowledge that its rights hereunder are subject to the police power of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public; and shall agree to comply with all applicable general laws and ordinances enacted by the city pursuant to such power.

B. Any conflict between the provisions of this chapter and any other present or future lawful exercise of the city's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the grantee or cable television systems which contains provisions inconsistent with this franchise, shall prevail only if upon such exercise the city finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

5.04.090 Cable television franchise required.

No cable television system shall be allowed to occupy or use the streets. i.e. rights-of-way, for system installation and maintenance purposes, of the city, or be allowed to operate without a franchise.

5.04.095 Services to Public Buildings

A. The Grantee shall install and provide its most complete (highest) Cable Service, excluding Pay Television, to all non-residential public buildings designated by the City at no charge for either the initial installation or for monthly Cable Service provided at each location. Each of these installations shall include a signal drop, one outlet, and a converter, if necessary, to receive such services. The public buildings to be provided this service shall include the following:

- (1) All public and parochial schools.
- (2) The City fire stations.
- (3) The City Hall complex.
- (4) Wauwatosa public library.
- (5) The City police station.
- (6) Public works facility.
- (7) Any new or relocated non-residential public including located along existing cable plant.

B. There should be no limit on the number of television receivers an institution may operate from the connection referenced in paragraph A above, but the expenses of installation and maintaining an internal distribution system shall be the responsibility of the institution.

C. Any internal distribution system installed by an institution listed in this Section shall conform to all applicable federal, state, and City rules, regulations, and ordinances and shall be operated in such a manner so as not to interfere with the operator's system if such free cable service is to be maintained.

5.04.100 Use of grantee facilities.

The city shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the grantee any wire or pole fixtures that do not unreasonably interfere with the cable television system operations of the grantee. The city shall indemnify and hold harmless the grantee from any claim that might arise due to or as a result of the city's use.

5.04.110 Initial franchise costs.

Costs to be borne by the grantee shall include any requirements or charges incidental to the awarding or enforcing of the initial franchise, but shall not be limited to, all costs of publications of notices prior to any public meeting provided for pursuant to the franchise, and any costs not covered by application fees, incurred by the city in its study, preparation of proposal documents, evaluation of all applications, and examinations of the applicants' qualifications.

5.04.120 Notices.

All notices from the grantee to the city pursuant to this chapter shall be to the city manager's office. The grantee shall maintain with the city, throughout the term of this franchise, an address for service of notices by mail. The grantee shall maintain a central office to address any issues relating to operating under this chapter.

5.04.130 Letter of credit/security deposit.

A. Within sixty days after the award of the initial franchise, the grantee shall deposit with the city one of: (1) an irrevocable letter of credit from a financial institution; (2) a security deposit; or (3) a performance bond, in the amount of fifty thousand dollars (collectively, the "security"). The form and content of the security shall be approved by the city attorney. The security shall be used to insure the faithful performance of the grantee of all provisions of this franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the city having jurisdiction over its acts or defaults under this franchise, and the payment by the grantee of any claims, liens, and taxes due the city which arise by reason of the construction, operation or maintenance of the system.

B. The security shall be maintained at the amount established by the city for the entire term of this franchise, even if amounts have to be withdrawn pursuant to subsections (A) or (C) of this section.

C. If the grantee fails to pay to the city any compensation within the time fixed herein; or fails after sixty days' notice to pay to the city any taxes due and unpaid; or fails to repay the city within fifteen days, any damages, costs or expenses which the city is compelled to pay by reason of any act or default of the grantee in connection with this franchise, or fails, after sixty days' notice of such failure by the city to comply with any provision of this franchise which the city reasonably determines can be remedied by demand on the security, the city may immediately request payment of the amount thereof, with interest and any penalties, from the security. Upon such request for payment, the city shall notify the grantee of the amount and date thereof.

D. The rights reserved to the city with respect to the security are in addition to all other rights of the city, whether reserved by the franchise or authorized by law, and no action, proceeding or exercise of a right under this subsection with respect to the Security shall affect any other right the city may have.

E. The security shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit, performance bond or security deposit may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City, by registered mail, of a written notice of such intention to cancel or not to renew."

F. Receipt of the thirty-day notice shall be construed as a default granting the city the right to call on the security.

G. The city at any time during the term of the ordinance codified in this chapter, may waive grantee's requirement to maintain the security. The invitation to waive the requirement can be initiated by the city or grantee.

5.04.140 Construction bond.

A. Within thirty days after the award of this franchise, the grantee shall file with the city a construction bond in the amount of not less than fifty percent of costs to install the system contained in the new application in favor of the city. This bond shall be maintained throughout the construction period and until such time as determined by the city, unless otherwise specified in a franchise agreement.

B. If the grantee fails to comply with any law, ordinance or resolution governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, as it relates to the conditions relative to the construction of the system, including the franchise agreement which is incorporated herein by reference, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorney's fees, including the city's legal staff, and costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in Section 5.04.130.

C. The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City, by registered mail, a written notice of such intent to cancel and not to renew." Upon receipt of a thirty-day notice, this shall be construed as default granting the city the right to call in the bond.

5.04.150 Liability and insurance.

A. The grantee shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the city and the grantee in the minimum amount of:

1. One million dollars for property damage to any one person;
2. One million dollars for property damage to any one accident;
3. One million dollars for personal injury to any one person; and
4. One million dollars for personal injury in any one accident.

B. The certificate of insurance obtained by the grantee in compliance with this section must be approved by the city attorney and such certificate of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the city during the term of the franchise, and may be changed from time to time to reflect changing liability limits. The grantee shall immediately advise the city attorney of any litigation that may develop that would affect this insurance.

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

D. All insurance policies maintained pursuant to this franchise shall contain the following endorsement: "It is hereby understood and agreed that this insurance policy may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City, by registered mail, a written notice of such intention to cancel or not to renew."

5.04.160 Indemnification.

A. Disclaimer of Liability. The city shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of the grantee's system and due to the act or omission of any person or entity other than the city or those persons or entities for which the city is legally liable as a matter of law.

B. Indemnification. The grantee shall, at its sole cost and expense, indemnify and hold harmless the city, all associated, affiliated, allied and subsidiary entities of the city, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "indemnities"), from and against:

1. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the indemnities by reason of any act or omission of the grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of the system caused by grantee, its subcontractors or agents or the grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

2. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which is imposed upon, incurred by or asserted against the indemnities by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the system caused by grantee, its subcontractors or agents and, upon the written request of the commission shall cause such claim or lien to be discharged or bonded within fifteen days following such request.

3. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the indemnities by reason of any financing or securities offering by grantee or its affiliates for violations of the common law or any laws, statutes, or regulations of the state of Wisconsin or United States, including those of the Federal Securities and Exchange Commission, whether by the grantee or otherwise; excluding therefrom, however, claims which are solely based upon and shall arise solely

out of information supplied by the city to the grantee in writing and included in the offering materials with the express written approval of the city prior to the offering.

C. Assumption of Risk. The grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any city-owned or controlled property, including public rights-of-way, and the grantee hereby agrees to indemnify and hold harmless the indemnities against and from any claim asserted or liability imposed upon the indemnities for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the system or the grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

D. Defense of Indemnities. In the event any action or proceeding shall be brought against the indemnities by reason of any matter for which the indemnities are indemnified hereunder, the grantee shall, upon notice from any of the indemnities, at the grantee's sole cost and expense, resist and defend the same with legal counsel mutually acceptable to the city attorney and grantee provided further, however, that the grantee shall not admit liability in any such matter on behalf of the indemnities without the written consent of the city attorney or its designee.

E. Notice Cooperation and Expenses. The city shall give the grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the city from cooperating with grantee and participating in the defense of any litigation by the city's own counsel. The grantee shall pay all reasonable expenses incurred by the city in defending itself with regard to any such actions, suites or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by or on behalf of the city attorney if such service is determined necessary and appropriate by the city attorney and the actual expenses of the city's agents, employees or expert witnesses, and disbursements and liabilities assumed by the city in connection with such suits, actions or proceedings. No recovery by the city of any sum under the security shall be any limitation upon the liability of the grantee to the city under the terms of this section, except that any sum so received by the city shall be deducted from any recovery which the city might have against the grantee under the terms of this section.

F. Nonwaiver of Statutory Limits. Nothing in this agreement is intended to express or imply a waiver of the statutory provisions, of any kind or nature, as set forth in Wisconsin Statutes Section 893.80 et seq., including the limits of liability of the city as exists presently or may be increased from time to time by the legislature.

5.04.170 Rights of individuals.

A. The grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, income or sex. The grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.

B. The grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission, state and local regulations, and as amended from time to time.

C. The grantee shall, at all times, comply with the privacy requirements of state and federal law.

D. Grantee is required to make all services available to all residential dwellings throughout the initial service area.

5.04.175 Mobility Limited Subscribers.

Unless otherwise agreed in a Franchise Agreement, upon the request of mobility-limited Subscribers, a Grantee shall arrange for delivery, pickup or exchange or replacement of converters or other equipment at the Subscriber's address, or by the use of a satisfactory equivalent means such as provision of a pre-paid postage mailer.

5.04.180 Public notice.

Minimum public notice of any public meeting relating to this chapter shall be by publication at least once in a local newspaper of general circulation at least ten days prior to the meeting, by posting at City Municipal Center and by announcement on at least one channel of the grantee's system between the hours of seven p.m. and nine p.m., for five consecutive days prior to the meeting.

5.04.190 Service availability and record request.

The grantee shall provide cable communications service throughout the entire franchise area pursuant to the provisions of this franchise and shall keep a record for at least two years of all written requests for service received by the grantee. This record shall be available for public inspection at the local office of the grantee during regular office hours.

5.04.195 Programming Decisions.

A. In accordance with applicable law, each Grantee shall provide programming from each of the broad programming categories listed in this Ordinance and in accordance with the Franchise Agreement. All programming decisions remain within the sole discretion of each Grantee provided that each Grantee complies with federal law regarding notice to City and Subscribers prior to any Channel additions, deletions, or realignments, and further subject to the Grantee's signal carriage obligations pursuant to 47 U.S.C. §§ 531-536, as may be amended and subject to the City's rights pursuant to 47 U.S.C. § 545, as may be amended.

B. Programming.

(1) Grantee shall include in its Basic Cable Service at least programming provided on PEG channels and local off-air broadcast channels including all channels within the Wauwatosa area. Grantee shall provide at least the following broad categories of Programming, such broad categories are subject to periodic change by agreement between City and Grantee:

- (a) Education
- (b) News & information
- (c) Sports
- (d) Cultural and performing arts
- (e) Government affairs
- (f) Weather
- (g) Programming addressed to diverse ethnic and minority interests
- (h) Audio programming (including a selection of local FM radio stations)
- (i) Business news
- (j) General entertainment (including but not limited to movies)
- (k) Children's programming
- (l) Family programming
- (m) Science/documentary

(2) The requirements for each category of programming may be satisfied by providing a separate channel devoted substantially to the category or by programming from more than one channel which in the aggregate totals the equivalent of a channel devoted substantially to the category.

C. Ascertainment Process.

(1) At least annually, Grantee shall arrange and pay for a systematic ascertainment of the community's views regarding the nature and adequacy of Grantee's Cable Services, and of the cable-related needs and interests of the community and the preferences of Subscribers within the Grantee's Franchise Area, conducted by an independent non-affiliated entity approved by the city, using generally accepted market research techniques. A written summary of the findings, prepared by the independent entity and including a description of the methodology used, and a description of any actions Grantee intends to take, shall be provided to the City.

(2) Annually following the ascertainment process, Grantee shall make a good faith determination of whether adjustments to its broad programming categories or other cable services are reasonably necessary to accommodate the cable related community needs and interests in light of the cost of meeting those needs and interests, and, in the event such changes are determined in good faith by the Grantee to be necessary, shall implement them within a reasonable time.

D. Deletion or Reduction of Programming Categories. Grantee shall not delete or so limit as to effectively delete any broad category of Programming within its control for any group of subscribers without the City's consent, which shall not be unreasonably withheld, and shall provide at least thirty (30) days prior written notice to the City of Grantee's request to do so, including all proposed changes in bandwidth or channel allocation, and any assignments including any new equipment requirements that may occur as a result of these changes.

E. Parental Control Device. Upon request by any Subscriber, Grantee shall make available at Grantee's actual cost a parental control or lockout device compatible with the Subscriber's equipment that will enable the Subscriber to block access to any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of the original subscription and annually thereafter, and if requested by the Subscriber, shall provide the device at the time of the original installation.

F. Leased Access Channels. Leased access channels shall be provided in accordance with federal law.

5.04.200 System construction.

A. New Construction Timetable.

1. Within two years from the date of the award of the initial franchise, the grantee must make cable television service available to every dwelling unit within the initial service area.

a. The grantee must make cable television service available to at least twenty percent of the dwelling units within the initial service area within six months from the date of the award of the franchise.

b. The grantee must make cable television service available to at least fifty percent of the dwelling units within the initial service area within one year from the date of the award of the franchise.

2. The grantee, in its application if any, may propose a timetable of construction which will make cable tele vision service available in the initial service area sooner than the above minimum requirements, in which case the said schedule will be made part of the franchise agreement, and will be binding upon the grantee.

3. Any delay beyond the terms of this timetable, unless specifically approved by the~ city, will be considered a violation of this chapter for which the provisions of either Sections 5.04.370 or 5.04.460 shall apply, as determined by the city.

4. In special circumstances the city can waive one hundred percent completion within the two year time frame provided substantial completion is accomplished within allotted time frame, substantial completion construed to be not less than ninety-five percent and justification for less than one hundred percent must be submitted subject to the satisfaction of the city.

B. Line Extensions.

1. In areas of the franchise territory not included in the initial service areas, the grantee shall be required to extend its system pursuant to the following requirements:

a. No customer shall be refused service arbitrarily. Grantee is hereby authorized to extend the cable system as necessary within the city. To expedite the process of extending the cable system into a new subdivision, the city will forward to the grantee an approved engineering plan of each project. Subject to the density requirements, the grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the city that the first home in the project has been approved for building permit, the grantee shall have a maximum of three months to complete the construction/activation process within the project phase.

b. The grantee must extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least twenty dwelling units planned per street mile, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines.

c. The grantee must extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred seventy-five foot drop line.

2. Early Extension. In areas not meeting the requirements for mandatory extension of service, the grantee shall provide, upon the request of a potential subscriber desiring service, an estimate of the costs required to extend service to the subscriber. The grantee shall then extend service upon request of the potential subscriber. The grantee may require advance payment or assurance of payment satisfactory to the grantee. The amount paid by subscribers for early extensions shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension.

3. New Development. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee reasonable notice of such construction or development, and of the particular date on which open trenching will be available for the grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the grantee's expense. The grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if the grantee fails to install its conduit, pedestals and/or vaults, and laterals within five working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by the grantee. Except for the notice of the particular date on which trenching will be available to the grantee, any notice provided to the grantee by the city of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the grantee prior to approval of the preliminary plat request.

C. Special Agreements. Nothing herein shall be construed to prevent the grantee from serving areas not covered under this section upon agreement with developers, property owners, or residents provided that five percent of those gross revenues are paid to the city as franchise fees under Section 5.04.270.

1. The grantee, in its application, may propose a line extension policy which will result in serving more residents of the city than as required above, in which case the grantee's policy will be incorporated into the franchise agreement, and will be binding on the grantee.

2. The violation of this section shall be considered a breach of the terms of this chapter for which the provisions of either Sections 5.04.370 or 5.04.460 shall apply, as determined by the city.

5.04.210 Construction and technical standards.

A. Compliance with Construction and Technical Standards. The grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, the grantee shall provide the city, upon request, with a written report of the results of the grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.

B. Additional Specifications.

1. Construction, installation and maintenance of the cable television system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where

possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

2. The grantee shall at all times comply with:
 - a. National Electrical Safety Code (National Bureau of Standards);
 - b. National Electrical Code (National Bureau of Fire Underwriters);
 - c. Bell System Code of Pole Line Construction; and
 - d. Applicable FCC or other federal, state and local regulations.
3. In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the grantee may have equipment located.
4. Any antenna structure used in the system shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.
5. All working facilities and conditions used during construction, installation and maintenance of the cable television system shall comply with the standards of the Occupational Safety and Health Administration.
6. RF leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.
7. The grantee shall maintain equipment capable of providing standby power for headend and transport system for a minimum of two hours.
8. In all areas of the city where the cables, wires, and other like facilities of public utilities are placed underground, the grantee shall place its cables, wires, or other like facilities underground. When public utilities relocate their facilities from pole to underground, the grantee must concurrently do so.

5.04.220 Use of streets.

- A. Interference with Persons and Improvements. The grantee's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable convenience of property owners who adjoin any of the streets and public ways, or interfere with any improvements the city may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.
- B. Restoration to Prior Condition. In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing by the grantee, the grantee shall, at its own cost and expense and in a manner approved by the city, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, in as good condition as before the work was commenced and in accordance with standards for such work set by the city.
- C. Erection, Removal and Common Uses of Poles.
 1. No poles or other wire-holding structures shall be erected by the grantee without prior approval of the city with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the city determines that the public convenience would be enhanced thereby.
 2. Where poles or other wire-holding structures already existing for use in serving the city are available for use by the grantee, but it does not make arrangements for such use, the city may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.
 3. In the absence of any governing federal or state statute, where the city or a public utility serving the city desires to make use of the poles or other wire-holding structures of the grantee, but agreement thereof with the grantee cannot be reached, the city may require the grantee to permit such use for such consideration and upon such terms as the city shall determine to be just and

reasonable, if the city determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operations.

D. Relocation of the Facilities. If at any time during the period of this franchise the city shall lawfully elect to alter, or change the grade of any street, alley or other public ways, the grantee, upon reasonable notice by the city, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense unless the utilities are compensated, in which case the grantee shall be similarly compensated.

E. Cooperation with Building Movers. The grantee shall, on the request of any person holding a building-moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

F. Tree Trimming. Except in the case of an emergency, the grantee shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the city. The city shall have the right to do the trimming requested by the grantee at the cost of the grantee. Regardless of who performs the work requested by the grantee, the grantee shall be responsible, shall defend and hold the city harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.

5.04.230 Operational standards.

A. The grantee shall put, keep and maintain all parts of the system in good condition throughout the entire franchise period.

B. Upon the reasonable request for service by any person located within the initial service area, the grantee shall, within thirty days, furnish the requested service to such person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no trunk line installation capable of servicing that person's block has as yet been installed.

C. The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

D. The grantee shall not allow its cable or other operations to interfere with television reception of subscribers or persons not served by the grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the city nor shall other utilities interfere with the grantee's system.

E. The grantee shall have knowledgeable, qualified grantee representatives available to respond to customer telephone inquiries twenty-four hours per day and seven days per week.

F. Under normal operating conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed thirty seconds. This standard shall be met no less than ninety percent of the time as measured on an annual basis.

G. Under normal operating conditions, the customer will receive a busy signal less than three percent of the total time that the office is open for business.

H. Standard installations will be performed within seven business days after an order has been placed. A standard installation is one that is within one hundred seventy-five feet of the existing system.

I. Excluding those situations which are beyond its control, the grantee will respond to any service interruption promptly and in no event later than twenty-four hours from the time of initial notification. All other regular service requests will be responded to within thirty-six hours during the normal work week or that system. The appointment window alternatives for installations, service calls and other installation activities will be: "morning;" or "afternoon;" not to exceed a four-hour

"window" during normal business hours for the system, or at a time that is mutually acceptable. The grantee will schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

J. Customer service centers and bill payment locations will be open for walk-in customer transactions a minimum of eight hours a day Monday through Friday, unless there is a need to modify those hours because of the location or customers served. The grantee and city by mutual consent will establish supplemental hours on weekdays and weekends if it would fit the needs of the community.

K. Subscriber Credit for Outages. Upon service interruption and/or outages of subscriber's cable service, the following shall apply:

1. For service interruptions and/or outages of over four hours and up to seven days, the grantee shall provide, at the subscriber's written request, a credit of one-thirtieth of one month's fees for affected services for each twenty-four-hour period service is interrupted for four or more hours for any single subscriber, with the exception of subscribers disconnected because of nonpayment or excessive signal leakage.

2. For service interruptions and/or outages of seven days or more in one month, the grantee shall provide, at the subscriber's written request, a full month's credit for affected services for all affected subscribers.

L. The grantee will provide written information in each of the following areas at the time of installation and at any future time upon the request of a subscriber:

1. Product and services offered;
2. Prices and service options;
3. Installation and service policies;
4. How to use the cable services.

M. Bills will be clear, concise and understandable, with all cable services itemized.

N. Credits will be issued promptly, but no later than the subscriber's next billing cycle following the resolution of the request and the return of the equipment by the grantee if service has been terminated.

O. Subscribers will be notified a minimum of thirty days in advance of any rate or channel change, provided that the change is within the control of the grantee.

P. The grantee shall maintain and operate its network in accordance with the rules and regulations as are incorporated herein or may be promulgated by the Federal Communication Commissions, the United States Congress, or the state of Wisconsin.

Q. The grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this chapter. Should the city find, by resolution, that the grantee has failed to maintain these technical standards and quality of service, grantee shall be required to implement a plan for resolution. Failure to make such improvements within three months of such resolution will constitute a breach of a condition for which penalties contained in Section 5.04.460 are applicable.

R. The grantee shall keep a monthly service log which will indicate the nature of each service complaint for which a work order is generated or which is received in writing, received in the last twenty-four months, the date and time it was received, the disposition of said complaint, and the time and date thereof. This log shall be made available for periodic inspection by the city.

5.04.240 Continuity of service mandatory.

A. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the grantee are honored. If the grantee elects to over build, rebuild, modify or sell the system, or the city gives notice of intent to terminate or fails to renew this

franchise, the grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

B. If there is a change of franchise, or if a new operator acquires the system, the grantee shall cooperate with the city, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, the grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services until it no longer operates the system.

C. If the grantee fails to operate the system for seven consecutive days without prior approval of the city or without just cause, the city may, at its option, operate the system or designate an permanent operator is selected. If the city is required to fulfill this obligation for the grantee, the grantee shall reimburse the city for all reasonable costs or damages in excess of revenues from the system received by the city that are the result of the grantee's failure to perform.

5.04.250 Complaint procedure.

A. The city administrator or his or her designee shall have primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

B. During the terms of the franchise, and any renewal thereof, the grantee shall maintain a central office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call to receive complaints regarding quality of service, equipmental functions and similar matters. The grantee will use its good faith efforts to arrange for one or more payment locations in a central location where subscribers can pay bills or conduct other business activities.

C. As subscribers are connected or reconnected to the system, the grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed.

D. When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the city, casts doubt on the reliability or quality of cable service, the city shall have the right and authority to require the grantee to test, analyze and report on the performance of the system. The grantee shall fully cooperate with the city in performing such testing and shall prepare results and a report, if requested, within thirty days after notice. Such report shall include the following information:

1. The nature of the complaint or problem which precipitated the special tests;
2. What system component was tested;
3. The equipment used and procedures employed in testing;
4. The method, if any, in which such complaint or problem was resolved;
5. Any other information pertinent to the tests and analysis which may be required.

The city may require that tests be supervised, by an independent professional engineer or equivalent of the city's choice. The engineer should sign all records of special tests and forward to the city such records with a report interpreting the results of the tests and recommending actions to be taken. Should such a test prove that the grantee failed to meet the technical standard, the grantee shall bear the cost of the test. If the test should prove that the grantee met the technical standards, the city shall bear the cost of the test.

The city's right under this section shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the city has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

5.04.260 Grantee rules and regulations.

The grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the grantee to exercise its rights and perform its obligations under this franchise, and to assure an

uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

5.04.270 Franchise fee.

A. Since the streets of the city to be used by the grantee in the operation of its system within the boundaries of the city are valuable public properties acquired and maintained by the city at great expense to its taxpayers, and since the grant to the grantee to the streets is a valuable property right without which the grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the grantee shall pay to the city an amount up to five percent of the grantee's gross revenues from the operations of the grantee within the confines of the city or contract area, pursuant to the terms of the franchise agreement. If the statutory five percent limitation on franchise fees is raised or the federal statute deletes the franchise fee limitation entirely, then the franchise fee may be subject to renegotiation.

B. This payment shall be in addition to any other tax or payment owed to the city by the grantee. Specifically, the items defined in sec. 5.04.275, below, shall not be considered to be part of the franchise fee to be paid to the City.

C. The franchise fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the city within forty-five days after the end of each calendar quarter. The grantee shall file a complete and accurate verified statement of gross revenues in a format established by the city. Grantee shall directly transmit and deposit payment of franchise fees according to banking information provided by the City to Grantee.

D. The city shall have the right to inspect the grantee's books and records and the right to audit and to recompute any amounts determined to be payable under this chapter for any calendar year; provided, however, that any such audit shall take place within twenty-four months following the close of a particular calendar year. Any additional amount due to the city as a result of the audit shall be paid within thirty days following written notice to the grantee by the city which notice shall include a copy of the audit report.

E. If any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the legal maximum rate charged by the U.S. Internal Revenue service for late tax payments, and the grantee shall reimburse the city for any additional expenses and costs incurred by the city by reason of the delinquent payment(s).

5.04.275 Payments Not Franchise Fees

1. The Grantee expressly understands that except for the payments expressly required by Section 5.27 hereof, none of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided or performed by the Grantee at the direction of the City or otherwise pursuant to this Ordinance, or otherwise in connection with the construction, operation, maintenance, or upgrade of the System (including specifically, but not by way of limitation, such payments, contributions, services, equipment, facilities, support, resources, or other activities as described in or provided for in this Ordinance or a Franchise Agreement are franchise fees chargeable against the compensation payments to be paid to the City by the Grantee pursuant to Section 5.27 hereof.

2. The Grantee expressly acknowledges and agrees that, as applicable, except for the compensation payments expressly required by Section 5.27 hereof, each of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided by the Grantee, are within the exclusions from the term "franchise fee" set forth in Section 622(g)(2) of the Cable Act (47 U.S.C. §§ 542(g)(2)).

3. The Grantee expressly acknowledges and agrees that the compensation payments due from the Grantee to the City pursuant to Section 5.27 hereof, shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources, or other activities to be

paid or supplied by the Grantee pursuant to this Ordinance and the compensation and other payments to be made pursuant to this Section 5.27 of this Ordinance shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which the Grantee shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Grantee.

4. The Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made pursuant to this Ordinance from or against any City or other governmental taxes of general applicability or other fees or charges, including permit fees for excavation, which the Grantee is required to pay to the City or other governmental agencies.

5. The Grantee shall not apply or seek to apply all or any part of the amount of the compensation or other payments to be made pursuant to this Ordinance as a deduction or other credit from or against any City or other government taxes of general applicability which shall be deemed to be separate and distinct obligations of the Grantee.

6. The Grantee shall not apply or seek to apply all or any part of the amount of any City or other governmental taxes or other fees or charge, including permit fees for excavation, of general applicability as a deduction or other credit from or against any of the compensation or other payments to be made pursuant to this Ordinance, each of which shall be deemed to be separate and distinct obligations of the Grantee.

7. In the event the Grantee applies or seeks to apply all or any part of the amount of said compensation payments as a deduction or other credit from or against the City or other governmental taxes of general applicability or other fees or charges, or in the event that the Grantee applies or seeks to apply all or any part of the amount of such taxes or other fees or charges as a deduction or other credit from or against said compensation obligations, the city may terminate Grantee's franchise for cause due to a material breach of Section 5.27 hereof, without any liability or compensation to the Grantee.

5.04.280 Transfer of control or controlling interest.

A. Except as may be provided in a franchise agreement, a franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the city. The grantee may, however, transfer or assign the franchise to a wholly owned subsidiary of the grantee and such subsidiary may transfer or assign the franchise back to the grantee without such consent, providing that such assignment is without any release of liability of the grantee. The proposed assignee must show financial responsibility as determined by the city and must agree to comply with all provisions of the franchise. The city shall have one hundred twenty days to act upon any request for approval of such a sale or transfer submitted in writing that contains or is accompanied by such information as is required in accordance with FCC regulations and by the city. The city shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent is not communicated in writing to the grantee within one hundred twenty days following receipt of written notice and the necessary information as to the effect of the proposed transfer or assignment upon the public unless the requesting party and the city agree to an extension of time. The city shall not unreasonably withhold such consent to the proposed transfer.

B. Except as may be provided in a franchise agreement, the grantee shall promptly notify the city of any actual or proposed change in, or transfer of, or acquisition by any other party of, control or controlling interest of the grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten percent of the voting shares of the grantee. Every change, transfer or acquisition of control of the grantee shall make the franchise subject to cancellation unless

and until the city shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the city may inquire into the qualification of the prospective controlling party, and the grantee shall assist the city in such inquiry.

C. The consent or approval of the city to any transfer of the grantee shall not constitute a waiver or release of the rights of the city in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this franchise.

D. In the absence of extraordinary circumstances, the city will not approve any transfer or assignment of an initial franchise prior to substantial completion of construction of the proposed system.

E. In no event shall a transfer of ownership or control or an assignment of the franchise be approved without the successor in interest or the assignee becoming a signatory to the franchise agreement.

5.04.290 Availability of books and records.

A. The grantee shall fully cooperate in making available at reasonable times, and the city shall have the right to inspect, where reasonably necessary to the enforcement of the franchise, books, records, maps, plans and other like materials of the grantee applicable to the system, at any time during normal business hours; provided where volume and convenience necessitate, the grantee may require inspection to take place on the grantee premises.

B. The following records and/or reports are to be made available to the city upon request, but no more frequently than once on an annual basis unless mutually agreed upon by the grantee and the city:

1. A quarterly review and resolution or progress report submitted by the grantee to the city;
2. Periodic preventive maintenance reports;
3. Any copies of FCC Form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;
4. Subscriber inquiry/complaint resolution data and the right to review documentation concerning these inquiries and/or complaints periodically;
5. Periodic construction update reports, including where appropriate the submission of as-built maps.

5.04.300 Other petitions and applications.

Copies of all petitions, applications, communications and reports either submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the system authorized pursuant to the franchise or received from such agencies shall be provided to the city upon request.

5.04.310 Fiscal reports.

The grantee shall file annually with the city no later than one hundred twenty days after the end of the grantee's fiscal year, a copy of a gross revenues statement certified by an officer of the grantee.

5.04.320 Removal of cable television system.

At the expiration of the terms for which a franchise is granted and any renewal denied, or upon its termination as provided herein, the grantee shall forthwith, upon notice by the city, remove at its own expense all designated portions of the cable television system from all streets and public property within the city. If the grantee fails to do so, the city may perform the work at the grantee's expense. Upon such notice of removal, a bond shall be furnished by the grantee in an amount sufficient to cover this expense.

5.04.330 Required services and facilities.

A. The cable television system shall have a minimum channel capacity of seventy-seven channels and at least 750 MHz of bandwidth available for future use.

B. Such system shall maintain a plant having the technical capacity for "two-way" communications.

C. The grantee shall maintain the following:

1. At least one specially-designated, noncommercial public access channel available on a first-come, nondiscriminatory basis;

2. At least one specially-designated channel for use by local educational authorities;

3. At least one specially-designated channel for local governmental uses;

4. At least one specially-designated channel for leased access uses;

5. Provided, however, these uses may be combined on one or more channels until such time as additional channels become necessary in the opinion of the city. Financial and technical support, replacement and maintenance of equipment of this facility shall be separately incorporated into a franchise agreement; and

6. Grantees will provide wiring so as to allow return audio and video signals to a point for rebroadcast on the Cable System from the following facilities:

(1) City Hall

(2) Sports center

(3) Emergency operation center

(4) Public library

(5) High schools

(6) Police Department

(7) Colleges

7. An institutional network (I-net) of cable, optical, electrical or electronic equipment, used for the purpose of transmitting two-way telecommunications signals interconnecting designated entities as set forth in the franchise agreement and mutually agreed to by the grantee and the grantor. Such institutional network may be provided as needed by utilizing capacity on the system.

D. The grantee shall incorporate into the system the capacity which will permit the city, in times of local emergency, to override by remote control, the audio of all channels simultaneously which the grantee may lawfully override or to place a crawl on all such channels. The grantee shall provide emergency broadcast capacity pursuant to FCC rules. The grantee shall cooperate with the city in the use and operation of the emergency alert override system.

E. 1. The grantee may be required to interconnect its system with other adjacent cable television systems for the purpose of sharing public, educational, and governmental access programming. Such interconnection shall be made within a reasonable time limit to be established by the city.

2. Interconnection Procedure. Upon receiving the directive of the city to interconnect, the grantee shall immediately initiate negotiations with the other affected system or systems in order that all costs may be shared equally among cable companies for both construction and operation of the interconnection link.

3. Relief. The grantee may be granted reasonable extensions of time to interconnect or the city may rescind its order to interconnect upon petition by the grantee to the city. The city shall grant the request if it finds that the grantee has negotiated in good faith and has failed to obtain an approval from the operator or franchising authority of system to be interconnected, or the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.

4. Cooperation Required. The grantee shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state and federal regulatory agency

which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the city.

5. Initial technical requirements to assure future interconnection capability:

a. All systems receiving franchises to operate within the city shall use the standard frequency allocations for television signals.

b. All systems are required to use signal processors at the headend for each television signal.

c. The city also urges grantees to provide local origination equipment that is compatible throughout the area so that video cassettes or videotapes can be shared by various systems.

d. A grantee shall provide such additional services and facilities as are contained in its application, if any.

5.04.340 Rules and regulations.

A. In addition to the inherent powers of the city to regulate and control a cable television franchise, and those powers expressly reserved by the city, or agreed to and provided for herein, the right and power is hereby reserved by the city to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of this chapter; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

B. The city may also adopt such regulations at the request of grantee upon application.

5.04.350 Periodic Review

A. The field of Cable Television is rapidly changing one which may see many regulatory, technical and financial, marketing and legal changes during the term of a single Franchise. Therefore in order to provide for the maximum degree of flexibility in each Franchise, while continuously maintaining an advanced and modern Cable System every new and renewed Cable Franchise shall provide for a periodic evaluation and review.

B. Commencing in the third year of a Franchise, and any year thereafter, the City may request an evaluation and review session at any time during the term of a Franchise and the Grantee shall cooperate in such evaluation and review, provided, however, that the City shall conduct no more than one evaluation and review session during any given calendar year.

C. Topics which may be discussed at any evaluation and review session include, but are not limited to, changes in applicable laws, rates, channel capacity, System performance, programming, Cable Internet Service access, PEG access, node capacity, digital conversion, high definition television, local office, regional equity with other communities served by the headend), technology, trends in industry, changes in the multichannel video market, municipal uses of cable, Subscriber complaints, judicial rulings, FCC rulings and any other relevant topics that may arise.

D. During an evaluation and review session, the Grantee shall fully cooperate with the City and shall provide without cost such reasonable information and documents as the City may reasonably request to perform the evaluation and review.

(1) If at any time during the evaluation and review, the City reasonably believes there is evidence of inadequate technical performance of the Cable System, the City may require the Grantee, at Grantee's expense, to perform appropriate tests and analyses directed toward such suspected technical inadequacies. In making such request, the City shall describe and identify as specifically as possible the nature of the problem. The Grantee shall cooperate fully with the City in performing such tests and shall report to the City the results of the tests, which shall include at least:

(a) A description of the problem in System performance which precipitated the special tests.

(b) The System component tested.

(c) The equipment used and procedures employed in testing.

(d) The method, if any, by which the System performance problem was resolved.

(e) Any other information pertinent to said tests and analyses.

(2) If the problem(s) that have been subject to testing persist, the City may require sufficient retesting and work to resolve the problem.

E. As a result of an evaluation and review session, the Grantee and the City shall, in good faith, review the terms of any proposed change and any proposed amendment to the Franchise Agreement and seek to reach agreement on such change or amendment.

F. The City and Grantee shall act in good faith during such negotiations and shall be obligated to agree to the reasonable requests of the other party for changes in the System or amendment to the Franchise Agreement when the change or amendment: is not inconsistent with the other terms of the Franchise Agreement or with applicable law or regulations, and; is technically feasible and economically reasonable, and; will not result in a material alteration of the rights and duties of the parties under the Franchise Agreement.

5.04.360 Rate change procedures.

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, the city is currently certified to regulate the basic service rates charged by grantee. Under these rules, grantee is required to obtain approval from the city for a rate increase for any change to the rates for basic service. Should federal or state law permit further rate regulation beyond the basic service, the city shall assume such rate regulation and adopt appropriate procedures for such regulation.

5.04.370 Forfeiture and termination.

A. In addition to all other rights and powers retained by the city under this chapter or otherwise, the city reserves the right to forfeit and terminate the franchise and all rights and privileges of the grantee thereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the grantee shall include, but shall not be limited to the following:

1. Violation of any material provision of this chapter or the franchise or any material rule, order, regulation or determination of the city made pursuant to the franchise;

2. Attempt to evade any material provision of this chapter or the franchise or practice any fraud or deceit upon the city or its subscribers;

3. Failure to begin or complete system construction or system extension as provided under Section 5.04.200;

4. Failure to provide the services promised in the grantee's application if any as incorporated herein by Section 5.04.040;

5. Failure to restore service after ninety-six consecutive hours of interrupted service, except when approval of such interruption is obtained from the city; or

6. Material misrepresentation of fact in the application for or negotiation of the franchise.

B. The foregoing shall not constitute a substantial breach if the violation occurs but is without fault of the grantee or occurs as a result of circumstances beyond its control. The grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

C. The city may make a written demand that the grantee comply with any such provision, rule, order or determination under or pursuant to the franchise. If the violation by the grantee continues for a period of thirty days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the city may place the issue of termination of the franchise before the city board. The city shall cause to be served upon the grantee, at least twenty days prior to the date of such meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issue(s) which the board is to consider.

D. The city board shall hear and consider the issue(s) and shall hear any person interested therein and shall determine in its discretion whether or not any violation by the grantee has occurred.

E. If the city board shall determine the violation by the grantee was the fault of the grantee and within its control, the board may, by resolution declare that the franchise of the grantee shall be forfeited and terminated unless there is compliance within such period as the board may fix, such period shall not be less than sixty days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

F. The issue of forfeiture and termination shall automatically be placed upon the board agenda at the expiration of the time set by it for compliance. The board then may terminate the franchise forthwith upon finding that the grantee has failed to achieve compliance or may further extend the period, in its discretion.

5.04.380 Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the grantee shall notify the city of such fact, and such notification shall be treated as a notification that a change in control of the grantee has taken place, and the provisions of this chapter governing the consent of the city to such change in control of the grantee shall apply. 5.04.390 Right of acquisition by the city.

A. Federal regulations as per U.S.C. 537 shall apply to the right of acquisition by the city. In the event that the relevant federal regulations are repealed, the guidelines specified in subsection B of this section shall apply.

B. Upon the expiration of the term of the franchise and denial of any renewal or upon any other termination thereof as provided herein the city, at its election and upon the payment to the grantee of a price equal to the fair market value shall have the right to purchase and take over the system upon resolution by the city board. If the city has denied the grantee's petition for renewal of its franchise as provided by Section 5.04.070, the city must exercise its option to purchase the system within sixty days of the denial of renewal and at least six months prior to the end of the franchise. Nothing shall prohibit the grantee in the event of the election of the city to purchase the system from requesting the court to set a reasonable bond of the city to secure the purchase price. The grantee shall execute such warranty deeds and other instruments as may be necessary.

5.04.400 Receivership.

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

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

B. Such receiver or trustee, within the one hundred twenty days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the franchise granted to the grantee.

5.04.410 Compliance with state and federal laws.

A. Notwithstanding any other provisions of this chapter to the contrary, the grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the grantee to perform any service, or shall permit the grantee to perform any service, or shall prohibit the grantee from performing any service, in conflict with the terms of this franchise or of any law or regulation of the city, then as soon as possible following knowledge thereof, the grantee shall notify the city of the point of conflict believed to exist between such regulation or law and the laws or regulations of the city or this franchise.

B. If the city determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the city and the grantee shall negotiate to

modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement.

5.04.420 Landlord/tenant.

A. Interference with Cable Service Prohibited. Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable communication service, cable installation or maintenance from a grantee regulated by and lawfully operating under a valid and existing franchise issued by the city.

B. Gratuities and Payments to Permit Service Prohibited. Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable communication service to the dwelling unit occupied by a tenant or resident requesting service.

C. Penalties and Charges to Tenants for Service Prohibited. Neither the owner or any multiple-unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a grantee operating under a valid and existing franchise issued by the city.

D. Reselling Service Prohibited. No person shall resell, without the expressed, written consent of both the grantee and the city, any cable service, program or signal transmitted by a grantee under a franchise issued by the city.

E. Protection of Property Permitted. Nothing in this chapter shall prohibit a person from requiring that cable communication system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

F. Risks Assumed by Grantee. Nothing in this chapter shall prohibit a person from requiring a grantee from agreeing to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable communication facilities.

5.04.430 Applicants' bids for initial franchise.

A. All bids received by the city from the applicants for an initial franchise will become the sole property of the city.

B. The city reserves the right to reject any and all bids and waive informalities and/or technicalities where the best interest of the city may be served.

C. All questions regarding the meaning or intent of this chapter or application documents shall be submitted to the city in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the city as having received the application documents. The city reserves the right to make extensions of time for receiving bids as it deems necessary. Questions received less than fourteen days prior to the date for the opening of bids will not be answered. Only replies to questions by written addenda will be binding. All bids must contain an acknowledgment of receipt of all addenda.

D. Bids must be sealed, and submitted at the time and place indicated in the application documents for the public opening. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the applicant's bid must be executed. No bid shall be opened or inspected before the public opening.

E. Before submitting a bid, each applicant must:

1. Examine this chapter and the application documents thoroughly;
2. Familiarize himself/herself with local conditions that may in any manner affect performance under the franchise;

3. Familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise; and

4. Carefully correlate the bid with the requirements of this chapter and the application documents.

F. The city may make such investigations as it deems necessary to determine the ability of the applicant to perform under the franchise, and the applicant shall furnish to the city all such information and data for this purpose as the city may request. The city reserves the right to reject any bid if the evidence submitted by, or investigation of, such applicant fails to satisfy the city that such applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional bids will not be accepted.

G. All bids received shall be placed in a secure depository approved by the city and not opened nor inspected prior to the public opening.

5.04.440 Financial, contractual, shareholder and system disclosure for initial franchises.

A. No initial franchise will be granted to any applicant unless all requirements and demands of the city regarding financial, contractual, shareholder and system disclosure have been met.

B. Applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any person, firm, group, association or corporation with respect to a franchise and the proposed cable television system. The grantee shall disclose all other contracts to the city as the contracts are made. This section shall include, but not be limited to, any agreements between local applicants and national companies.

C. Applicants, including all shareholders and parties with any interest in the applicant, shall submit all requested information as provided by the terms of this chapter or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the applicant.

D. Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.

E. Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other cable systems in which they hold an interest of any nature, including, but not limited to, the following:

1. Locations of all other franchises and the dates of award for each location;

2. Estimated construction costs and estimated completion dates for each system;

3. Estimated number of miles of construction and number of miles completed in each system as of the date of this application; and

4. Date for completion of construction as promised in the application for each system.

F. Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding pending applications for other cable systems, including but not limited to, the following:

1. Location of other franchise applications and date of application for each system;

2. Estimated dates of franchise awards;

3. Estimated number of miles of construction; and

4. Estimated construction costs.

5.04.450 Theft of services and tampering.

A. No person may intentionally do any of the following:

1. Obtain or attempt to obtain cable television service from a grantee by trick, artifice, deception, use of an illegal device or illegal decoder or other fraudulent means with the intent to deprive that grantee of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the presence on the

property and in the actual possession of the defendant of a device not authorized by the grantee, the major purpose of which is to permit reception of cable television services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use.

2. Give technical assistance or instruction to any person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the grantee providing that service. This subsection does not apply if the defendant demonstrates that the technical assistance or instruction was given or the installation of the connection, descrambler or receiving device was for a legitimate use.

3. Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of distributing cable television service to any other dwelling unit without authority from a grantee.

4. Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of obtaining cable television service without payment of all lawful compensation to the grantee providing the service. The intent required for a violation of this subsection may be inferred from proof that the cable service to the defendant's residence or business was connected under a service agreement with the grantee and has been disconnected by the grantee and that thereafter there exists in fact a connection to the system at the defendant's residence or business.

5. Make or maintain any modification or alteration to any device installed with the authorization of a grantee for the purpose of intercepting or receiving any program or other service carried by that grantee which that person is not authorized by that grantee to receive. The intent required for a violation of this subsection may be inferred from proof that, as a matter of standard procedure, the grantee places written warning labels on its converters explaining the tampering with the device is a violation of law and the converter decoder is found to have been tampered with, altered or modified so as to allow the reception or interception of programming carried by the grantee without authority to do so. The trier of fact may also infer that a converter decoder has been altered or modified from proof that the grantee, as a matter of standard procedure, seals the converters or with a label or mechanical device, that the seal was shown to the customer upon delivery of the decoder and that the seal has been removed or broken. The inferences under this subsection are rebutted if the grantee cannot demonstrate that the intact seal was shown to the customer.

6. Possess without authority any device or printed circuit board designed to receive from a system any cable television programming or services offered for sale over that system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, or perform or facilitate the performance of any of the acts under subsections (A)(1) through (5) of this section with the intent that device or printed circuit be used to receive that grantee's services without payment. Intent to violate this subsection for direct or indirect commercial advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.

7. Manufacture, import into this state, distribute, publish, advertise, sell, lease or offer for sale or lease any device, printed circuit board or any plan or kit for a device or for a printed circuit board designed to receive the cable television programming or services offered for sale over a system from system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that the device, printed circuit, plan or kit be used for the reception of that grantee's services without payment. The intent required for a violation of this subsection may be inferred from proof that the defendant has sold, leased or offered for sale or lease any device, printed circuit board, plan or kit for a device or for a printed circuit board in violation of

this subsection and during the course of the transaction for sale or lease the defendant expressly states or implies to the buyer that the product will enable the buyer to obtain cable television service without charge.

B. Civil Liability for Theft of Telecommunications Service (Including Cable Television Service.)

1. Any person who incurs injury as a result of a violation of this section may bring a civil action against the person who committed the violation. Except as provided in subsection (b)(2) of this section, if the person who incurs the loss prevails, the court shall grant the prevailing party actual damages, costs and disbursement.

2. If the person who incurs the loss prevails against a person who committed the violation willfully and for the purpose of commercial advantage or prevails against a person who has committed more than one violation of this section, the court shall grant the prevailing party all the following:

a. Except as provided in subsections (B)(2)(e) and (f) of this section, not more than ten thousand dollars;

b. Actual damages;

c. Any profits of the violators that are attributable to the violation and that are not taken into account in determining the amount of actual damages under subsection (B)(2)(b) of this section;

d. Notwithstanding the limitations under Wisconsin Statutes 799.25 or 814.04, costs, disbursement and reasonable attorney fees;

e. If the court finds that the violation was committed willfully and for the purpose of commercial advantage, the court may increase the amount granted under subsection (B)(2)(a) of this section not to exceed fifty thousand dollars; and

f. If the court finds that the violator had no reason to believe that the violator's action constituted a violation of this section, the court may reduce the amount granted under subsection (B)(2)(a) of this section.

3. If damages under subsection (B)(2)(c) of this section are requested, the party who incurred the injury shall have the burden of proving the violator's gross revenue and the violator's deductible expenses and the elements of profit attributable to factors other than the violation.

4. In addition to other remedies available under this section, the courts may grant the injured party a temporary or permanent injunction.

5.04.460 Penalties.

For the violation of any of the following provisions of this franchise, penalties shall be chargeable to the security as applicable as follows and the city may determine the amount of the fine for other violations which are not specified in a sum not to exceed five hundred dollars for each violation, with each day constituting as separate violation.

A. Failure to furnish, maintain, or offer all cable services to any potential subscriber within the city upon order of the city: two hundred dollars per day, per violation, for each day that such failure occurs or continues;

B. Failure to obtain or file evidence of required insurance, construction bond, or security: two hundred dollars per day, per violation, for each day such failure occurs or continues;

C. Failure to provide access to data, documents, records, or reports to the city as required by Sections 5.04.190, 5.04.290, 5.04.300, 5.04.310 and 5.04.370: two hundred dollars per day, per violation, for each day such failure occurs or continues;

D. Failure to comply with applicable construction, operation, or maintenance standards: three hundred dollars per day, per violation.

E. Failure to comply with a rate decision or refund order: five hundred dollars per day, per violation, for each day such a violation occurs or continues. City may impose any or all of the above enumerated measures against grantee, which shall be in addition to any and all other legal or equitable remedies it has under the franchise or under any applicable law.

F. Any violations for noncompliance with the customer service standards of Sections 5.04.230 through 5.04.250: two hundred dollars per day for each day, or part thereof, that such noncompliance continues.

G. Any other violations of the franchise agreement to be determined by the city in a public hearing but not specifically noted in this section shall not exceed five hundred dollars per day, per violation.

5.04.470 Procedures.

A. Whenever the city believes that the grantee has violated one or more terms, conditions or provisions of this chapter or the franchise, and wishes to impose penalties, a written notice shall be given to the grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the grantee an opportunity to remedy the violation. The grantee shall have thirty days subsequent to receipt of the notice in which to correct the violation before the city may impose penalties unless the violation is of such a nature so as to require more than thirty days and the grantee proceeds diligently within the thirty days to correct the violation, or as promptly as possible thereafter to correct the violation. In any case where the violation is not cured within sixty days of notice from the city, or such other time as the grantee and the city may mutually agree to, the city may proceed to impose liquidated damages.

B. The grantee may, within ten days of receipt of notice, notify the city that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the grantee to the city shall specify with particularity the matters disputed by the grantee and shall stay the running of the thirty-day cure period pending the city's decision as required below. The city shall hear the grantee's dispute. grantee must be given at least five days written notice of the hearing. At the hearing, the grantee shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the city shall provide grantee a copy of its action, along with supporting documents. In the event the city upholds the finding of a violation, the grantee shall have thirty days subsequent, or such other time period as the grantee and the city mutually agree, to such determination to correct the alleged violation before penalties may be imposed.

C. The rights reserved to the city under this section are in addition to all other rights of the city whether reserved by this franchise or authorized by law or equity, and no action, proceeding or exercise of a right with respect to penalties shall affect any other right the city may have.

D. The city shall stay or waive the imposition of any penalty set forth above upon a finding that any failure or delay is a result of acts of nature or due to circumstances beyond the reasonable control of the grantee.

Part II. This ordinance shall be made available for public review in the office of the Wauwatosa City Clerk during regular business hours, and said changes shall become effective 14 days after the date of publication.

It was moved by Ald. Sullivan, seconded by Ald. Treis to adopt the foregoing ordinance. –

It was moved by Ald. Treis, seconded by Ald. Becker to amend 5.04.040 of the foregoing ordinance to allow for a franchise agreement to continue in force and be in effect for no longer than 15 years. Roll call vote, Ayes 13, Noes 3 (Grimm, Subotich, Sullivan)

Roll call vote on amended motion, Ayes 13, Noes 3 (Grimm, Subotich, Sullivan)

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

RESOLUTION R-04-254

BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin THAT permission be and the same is hereby granted to Dr. David R. Laste and Lynda Grunewald-Schmitz to combine the parcels located at 7106 W. North Avenue, Wauwatosa. These parcels are more particularly described as follows:

Certified Survey Map No. 3994, Parcel 2, and Ritter Oak Ridge Lot 15, Block 1, in the Southwest ¼ of Section 15, in Township 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin.

All in accordance with the application attached hereto and made a part of this resolution, and in compliance with Section 24.56.010 of the Code of the city of Wauwatosa and subject to the payment of all outstanding special assessments on the aforescribed property which is being combined.

It was moved by Ald. Kopischke, seconded by Ald. Krol to approve the foregoing resolution. -16

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

RESOLUTION R-04-255

WHEREAS, the Wauwatosa Village Business Improvement District (“BID”) has worked with City staff to identify appropriate locations for BID way finding signs outside the Business Improvement District itself; and

WHEREAS, those locations outside the BID but within the City of Wauwatosa are more particularly described in Attachment 7 to the Memorandum of the Director of Public Works, dated November 1, 2004; and

WHEREAS, the Board of Public Works has suggested that the Common Council approve the locations of way finding signs for the Village Business Improvement District at locations inside the City of Wauwatosa and under City control, but outside the BID;

NOW, THEREFORE, BE IT RESOLVED THAT placement of signs for that portion of the Wauwatosa Village Business Improvement District way finding signage proposal which is located outside the boundaries of the Business Improvement District, but within the City of Wauwatosa in locations under local control, as more particularly described in Attachment 7 to the November 1, 2004 Memorandum of the Director of Public Works, is hereby approved.

It was moved by Ald. Kopischke, seconded by Ald. Krol to approve the foregoing resolution. –

It was moved by Ald. Treis, seconded by Ald. Subotich to refer the matter back to committee for more information from the BID regarding the remote sign locations.

Roll call vote, Ayes 5 (McCarthy, Stepaniak, Subotich, Treis, Becker), Noes 11. –Motion failed.

Roll call vote on original motion, Ayes 13, Noes 3 (McCarthy, Subotich, Treis)

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-04-256

WHEREAS, certain expenditures in Public Works Equipment Accounts budgeted during 2003 were carried over and the budgeted items purchased in the year 2004, although the 2004 budget was not re-estimated to account for these expenditures; and

WHEREAS, sufficient dollars remain in the affected accounts in order to cover the expenses;

NOW, THEREFORE, BE IT RESOLVED THAT the 2004 readjusted budget amount of \$575,500.00 in the Public Works Equipment Account, 06-634-5970-000, is hereby adjusted to \$600,252.00;

BE IT FURTHER RESOLVED THAT the 2004 readjusted budget amount of \$144,471.00 in the Water Utility Equipment Account, 06-634-5980-000, is hereby adjusted to \$190,588.00.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-04-257

WHEREAS, the City of Wauwatosa recognizes that the remediation and redevelopment of brownfields is an important part of protecting Wisconsin's resources; and

WHEREAS, in this action the City of Wauwatosa Common Council has declared its intent to complete the Brownfield Site Assessment Grant activities described in the application if awarded funds; and

WHEREAS, the City of Wauwatosa will maintain records documenting all expenditures made during the Brownfield Site Assessment Grant period; and

WHEREAS, the City of Wauwatosa will allow employees from the Department of Natural Resources access to inspect the grant site or facility and grant records; and

WHEREAS, the City of Wauwatosa will submit a final report to the Department which will accompany the final payment request.

IT IS, THEREFORE RESOLVED THAT, the Common Council of the City of Wauwatosa requests funds and assistance available from the Wisconsin Department of Natural Resources under the Brownfield Site Assessment Grant Program and will comply with state rules for the program; and IT IS FURTHER RESOLVED THAT the Director of Public Works is authorized to act on the behalf of the City of Wauwatosa to submit an application to the State of Wisconsin for financial aid for

Brownfield Site Assessment Grant purposes, sign documents, and take necessary action to undertake, direct, and complete approved grant activities.

It was moved by Ald. Bruderle-Baran, seconded by Ald. Maher to approve the two foregoing resolutions. -16

FROM THE COMMITTEE ON BUDGET AND FINANCE

BILLS AND CLAIMS FOR THE PERIOD 11/03/04 – 11/16/04 --

The Committee on Budget and Finance hereby reports to the Common Council that it has examined the accounts of bills and claims and hereby certifies the same as correct and recommends that each of said accounts be allowed and paid.

Total bills and claims for 11/03/04 – 11/16/04: \$1,244,027.91

It was moved by Ald. Casey, seconded by Ald. Bruderle-Baran that each and every one of the accounts of bills and claims be allowed and ordered paid. Upon roll call vote, the vote was Ayes 16.

FROM THE COMM. ON BUDGET AND FINANCE & THE BOARD OF PUBLIC WORKS

RESOLUTION R-04-258

BE IT RESOLVED by the Common Council of the City of Wauwatosa that the proper city officials be and they are hereby authorized and directed to enter into a contract with Pieper Electric, Inc., Milwaukee, Wisconsin, for the work of Street Lighting Cable Replacement – W. North Avenue, and work incidental thereto under Contract 04-10 including the “base bid,” Alternate Bid “A” and Alternate Bid “B” at and for their bid price of \$94,440.00, this being the lowest and best bid.

BE IT FURTHER RESOLVED that a change of purpose and fund transfer in the amount of \$22,000 from Contract 03-28 to the budget for Contract 04-10 be approved.

BE IT FURTHER RESOLVED since a substantial portion of this work will be completed in 2005, that the 2005 budget be amended to include a carryover of the 04-10 budget, including any amendments.

BE IT FURTHER RESOLVED that the surety deposits, if any, be returned to the unsuccessful bidders.

It was moved by Ald. Bruderle-Baran, seconded by Ald. Stepaniak to approve the foregoing resolution. -16

There being no further business, the meeting adjourned at 9:38 p.m.

cal

Carla A. Ledesma, CMC, City Clerk