0700-ORD

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5532

AN ORDINANCE repealing Ordinance Nos. 1859 and 2023 and Chapter 14.20 (formerly Chapter 10.32) of the Bellevue City Code and adopting a new Chapter 14.20 relating to franchise terms and conditions.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 14.20 of the Bellevue City Code is hereby repealed.

Section 2. A new Chapter 14.20 of the Bellevue City Code is hereby adopted as follows:

Chapter 14.20
FRANCHISE TERMS AND CONDITIONS

Sections:

14.20.010 Scope of chapter.
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14.20.030 Franchise term.
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14.20.300 Force majeure.

14.20.010 Scope of chapter.

The following terms and conditions shall apply and shall be deemed to be terms and conditions of any franchise to use the right of way or other public property of the city hereafter granted by the city to any municipal or private corporation engaged in the public service or utility business, unless and except to the extent that such ordinance or resolution granting such franchise expressly provides terms or conditions contrary to those herein contained.

14.20.020 Franchise as a contract.

A franchise issued pursuant to the provisions of this chapter shall be deemed to constitute a contract between a grantee and the city. In the event of a conflict between the provisions of this chapter and a franchise issued pursuant hereto, the provisions of this chapter shall govern unless the franchise clearly states the parties' intent to have the provisions of the franchise control over the provisions of this chapter. Each party shall be deemed to have contractually committed itself to comply with the terms, conditions and provisions of a franchise, and a grantee shall further comply with all written rules, orders and regulations applicable to and not inconsistent with a franchise, which rules, orders and regulations are issued, promulgated or made pursuant to the provisions of this chapter or other lawful authority.

14.20.030 Franchise term.

The term of a franchise shall be specified in a franchise agreement, but it shall not exceed 10 years.

14.20.040 Franchise not exclusive.

Such grant or privilege pursuant to the provisions of this chapter shall not be deemed or held to be an exclusive franchise. It shall in no manner prohibit the city from granting other franchises of a like nature or franchises for other public or private utilities over, along, across, under and upon any right of way or other public property and shall in no way prevent or prohibit the city using any of said right of way or other public property, or effect its jurisdiction over them or any part of them, with full power to make all necessary changes, relocations, repairs, maintenance, etc., of same as they deem fit.

14.20.050 Subject to authority.

A grantee shall, at all times during the term of a franchise, be subject to all lawful exercise of the police power by the city and to such lawful regulations as the city shall hereafter enact. A grantee shall construct, operate and maintain all equipment, facilities or other improvements in full compliance with all other applicable rules and regulations now in effect or hereafter adopted by the United States, the state of Washington, the city or any agency of said governments with jurisdiction over said activities.

14.20.060 Franchise applications - contents.

All applications to construct, operate, or maintain necessary equipment, facilities and other improvements shall be filed with the director of transportation or his or her designee. An application for the grant of an initial franchise may be filed pursuant to a request for proposals issued by the city or on an unsolicited basis. To be acceptable for filing, an original and two (2) copies of the application must be submitted and be accompanied by the application filing fee where required.

At a minimum, each application for an initial franchise shall set forth the following information. The city may waive the requirement for submitting some or all of this information when the application is for the renewal of an existing franchise.

A. The name, address and telephone number of the applicant.

B. A detailed statement of the corporate or other business organization of the applicant.

C. A detailed and complete financial statement of the applicant, prepared by a certified public accountant, for the five (5) fiscal years immediately preceding the date of the application. If the corporate or business entity organization of the applicant has not been in existence for a full five (5) years, applicant shall submit a certified financial statement for the period of its existence.

D. A detailed description of all previous experience of the applicant in providing the intended service which includes a statement identifying, by place and date, all other franchises awarded to the applicant, its parent or subsidiary; the status of the franchises with respect to completion; the total cost of completion of such systems; and the amount of applicant's and its parent's or subsidiary's resources committed to such systems.

E. An indication of whether the applicant, or any person or entity controlling the applicant, or any officer or major stockholder of the applicant, has been adjudged bankrupt, had a franchise revoked, or been found guilty by any court or administrative agency of a violation of a security or antitrust law, federal or state safety laws or regulations, any felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances.

F. A detailed description of the proposed plan of operation of the applicant, which shall include, but not be limited to, the following:

1. A detailed map indicating: a proposed time schedule for the installation of all equipment, facilities and other improvements necessary to become operational, a description of the construction of the proposed system including an estimate of the above and below ground mileage and the projected total cost for construction of the system.

2. A detailed statement describing the physical facility proposed, technical design, the actual equipment, and the operational and technical standards proposed by the applicant.

G. Any other information reasonably requested by the city which is deemed necessary to evaluate the applicant or which could materially affect the granting of the franchise.

H. The city at its discretion may decide to accept less than the documentation above if it can establish through other sources that the applicant can meet the technical, financial and legal qualifications to meet all of the terms and conditions of a franchise and that the applicant is a competent operator of such systems.

14.20.070 Application fee.

A. Unless prohibited by applicable law, each application for new franchise; the renewal of an existing franchise; any sale, assignment, merger, transfer or change of control; or any request for modification of or any other relief from the duties and obligations of a franchise shall be accompanied by a non-refundable minimum filing fee of $5,000.

B. Unless prohibited by applicable law, where the city's actual out-of-pocket costs in considering the application exceed the $5,000 minimum application filing fee, such costs shall be paid by the applicant. The city will bill for out-of pocket costs on a quarterly basis with payment terms of thirty (30) calendar days. If invoices are not paid within the thirty (30) days, the applicant shall be charged and shall pay interest at the rate of twelve percent (12%) per annum of the amount of the unpaid or underpaid costs provided, however, that such rate does not exceed the maximum amount allowed under applicable law. The invoice will provide the method of calculation, documentation and total amounts due less the original credit of the $5,000 filing fee. The city will submit the final invoice within thirty (30) calendar days from the date of the approval or denial of the franchise by the city council.

14.20.080 Consideration of applications.

A. The city will consider each application for a new or renewed franchise where the application is found to be acceptable for filing and in substantial

compliance with the requirements of this chapter and any applicable request for proposals (RFP). In evaluating an application the city will consider, among other things, the applicant's past service and safety record in the city and in other communities, the nature of the proposed facilities and services, proposed area of service, proposed rates, and whether the proposal would adequately serve the public needs and the overall interests of the citizens of the city.

B. If the city determines that an applicant's proposal for a new franchise would serve the public interest, it may grant a franchise to the applicant, subject to terms and conditions as agreed upon between the applicant and the city. No franchise shall be deemed granted unless and until a franchise agreement acceptable to the parties has been executed. Any such franchise must be approved by resolution or ordinance of the city council in accordance with applicable law.

C. Where the application is for a renewed franchise, the city shall consider whether:

1. The applicant has substantially complied with the material terms of the existing franchise and with applicable law;

2. The quality of the applicant's service, where applicable, has been reasonable in light of community needs;

3. The applicant's use or occupation of the right of way presents an unreasonable or unacceptable risk to public health, safety or welfare and whether the applicant's construction, installation, operation or maintenance practices for the cable communications system are or have been conducted in an unsafe or dangerous manner;

4. The applicant has the ability to provide the services, facilities and equipment as set forth in the application; and

D. In the course of considering an application for a renewed franchise, the city council shall adhere to all requirements of applicable law. In the event the city makes a preliminary assessment that the franchise should not be renewed, the city or the city's hearing body shall hold a public hearing or hearings, in which the grantee seeking renewal shall be afforded a fair opportunity for full participation, including the right to testify, to require the production of and to introduce evidence, and to question witnesses. Notice of any such public hearing shall, at least 10 days before the date of the hearing, be published in a local newspaper of general circulation in the city and be sent by certified mail to each applicant to be considered. A transcript shall be made of such hearing. Within a reasonable time following the conclusion of such hearing, the council shall issue a written decision granting or denying the proposal for renewal based on the record of such proceeding and stating the reasons therefor. The city shall transmit a copy of said decision to the applicant. If the proposal is granted, the parties shall proceed to negotiate the terms and conditions of a renewed franchise, based on said proposal. Any denial of an application for a renewed franchise shall be based on one or more adverse

findings made with respect to the factors described in subsection A, above, pursuant to the requirements of applicable law. Neither grantee nor the city shall be deemed to have waived any right it may have under federal or state law by participating in a proceeding pursuant to this paragraph.

14.20.090 Franchise acceptance.

A franchise and its terms and conditions shall be accepted by written instrument, in a form acceptable to the city clerk, and shall be executed and filed with the city within 30 days after the granting of the franchise by the city. In its acceptance, a grantee shall declare that it has carefully read the terms and conditions of this chapter and the franchise and accepts all of the terms and conditions of this chapter and the franchise and agrees to abide by same. In accepting a franchise a grantee shall indicate that it has relied upon its own investigation of all relevant facts, that it had the assistance of counsel, that it was not induced to accept a franchise, and that it accepts all reasonable risks related to the interpretation of the franchise.

14.20.100 Franchise performance bond.

The grantee shall within thirty (30) days of the effective date of any franchise granted under this chapter or within thirty (30) days of the granting of a renewal or the transfer of a franchise, furnish to the city a franchise performance bond. The franchise performance bond shall be used to guarantee compliance with the terms and conditions of the franchise and payment of all sums which may become due to the city under this chapter or franchise issued pursuant hereto. The franchise performance bond shall be maintained in the full amount specified in the franchise, throughout the term of the franchise and for one (1) year after the franchise expires or is terminated, without reduction or allowances for any amounts which are withdrawn or paid pursuant to this chapter. This section in no way impairs the city's ability to require bonds in accordance with BCC 14.30, as from time to time amended.

14.20.110 Legal acquisition by purchase or condemnation.

The granting of a franchise shall not preclude the city from acquiring by purchase or condemnation any or all of the equipment, facilities or other improvements installed by the grantee within the right of way or other public property within the city by such legal means as would have been available to such municipality if no such franchise had been granted.

14.20.120 Rights of grantee.

The grantee shall have the right and authority, to the extent expressed in the franchise, to enter upon the right of way and other public property designated by said franchise for the purpose of constructing, maintaining and operating necessary equipment, facilities and other improvements within such property, in conformity with local, state and federal statutes and regulations now in force or hereinafter enacted governing such utilities.

14.20.130 Construction approval and inspection.

The grantee shall construct, install, operate and maintain its equipment, facilities and other improvements in the right of way or other public property pursuant to plans and specifications approved by the transportation department and under the supervision and inspection of a supervisor or inspector provided by the city at the expense of such grantee.

14.20.140 Time for start and completion of construction – termination of franchise.

The grantee, its successors or assigns, shall commence system construction within the time stated within the franchise, and shall complete and have in operation such portion of the system as may be specified in the franchise or the franchise shall be voidable by the city and the rights therein conferred upon the grantee may cease and terminate.

14.20.150 Relocation.

A. Whenever the city causes the construction of any project within the franchise area or on public grounds and such construction necessitates the relocation of grantees facilities from their existing location within the franchise area or on such public grounds and places, such relocation will be at no cost to the city.

B. In the event an emergency posing a threat to public safety or welfare requires the relocation of grantee's facilities, the city shall give notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the city, grantee shall endeavor to respond as soon as reasonably practicable to relocate the affected facilities.

C. Whenever any third party requires the relocation of grantee's facilities to accommodate work of such third party within the franchise area or on such public grounds then the grantee shall have the right as a condition of any such relocation to require payment to grantee, at a time and upon terms acceptable to grantee, for any and all costs and expenses incurred by grantee in the relocation of their facilities. Provided, however, in the event the city reasonably determines and notifies grantee that the primary purpose of the third party requiring relocation is to facilitate the construction of a city project consistent with the city's Capital Investment Plan, Transportation Improvement Program, or the Transportation Facilities Program, then only those costs and expenses incurred by grantee in reconnecting such relocated facilities with other facilities shall be paid to grantee by such third party.

D. As to any relocation of grantee facilities whereby the cost and expense thereof is to be borne by grantee, grantee may submit in writing to the city alternatives to relocation of its facilities. Upon the city's receipt from grantee of such written alternatives, the city shall evaluate such alternatives and shall advise grantee in writing if one or more of such alternatives is suitable. In evaluating such

alternatives, the city shall give each alternative proposed by grantee full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. No alternative proposed by grantee shall be evaluated by the city in an arbitrary or capricious manner. In the event the city reasonably determines that such alternatives are not appropriate, grantee shall relocate its facilities as originally requested.

E. If the city requires the subsequent relocation of any facilities within five (5) years from the date of relocation of such facilities, the city shall bear the entire cost of such subsequent relocation.

14.20.160 Transfer of ownership or control.

A franchise issued pursuant to this chapter thereto shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, or otherwise hypothecated in any manner, nor shall title thereto, either legal or equitable, control thereof, or any right, interest, or property therein pass to or vest in any person or entity, nor shall the controlling interest in any corporation holding a franchise hereunder be changed in a manner reasonably anticipated to diminish substantially grantee's ability or likelihood of performing its obligations under the franchise, without the prior consent of the council, such consent not to be unreasonably withheld, or only under such conditions as may be required by the council; provided, however, such transfer of control shall not include transfer to a parent, subsidiary, or affiliate of a grantee, except when such transfer is intended to avoid application of this section. Every type of sale, assignment change, transfer, or acquisition of control of a franchise issued pursuant to this chapter thereto shall make a franchise subject to cancellation unless and until the city shall have consented. Such consent shall not be unreasonably withheld.

14.20.170 Successors to grantee.

All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns and independent contractors of the grantee and all privileges of the grantee shall inure to successors, assigns and such contractors equally as if they were specifically mentioned wherever the grantee is mentioned.

14.20.180 Forfeiture of rights.

If the grantee, its successors or assigns, willfully violate or fail to comply with any of the provisions of such grant, fail to make timely payment of the franchise fee, annual charge or charge for additional actual costs and expenses incurred by the city over and above the annual charge, or through willful or unreasonable neglect fail to heed or comply with any notice given the grantee under the provisions of such grant, then the said grantee, its successors or assigns shall forfeit all rights conferred thereunder and such franchise may be revoked or annulled by the city council.

14.20.190 Assumption of liability.

A. The grantee shall save and hold the city harmless from any and all liability whatsoever arising out of the use or occupation of any part of the right of way or other public property by grantee under the terms of any franchise. This paragraph shall be construed to mean that the grantee accepts such franchise and any rights conferred thereunder for the use and occupation of any portion of the right-of-way or other public property, at its own risk.

B. The grantee, by its acceptance of the franchise, specifically agrees that it will pay all damages and penalties which the city may legally be required to pay as a result of granting the franchise including any reasonable attorney's fee.

14.20.200 Insurance.

The franchisee shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain, throughout the term of the franchise liability insurance in such amounts and under such conditions as specified in the franchise.

14.20.210 Grantee to indemnify city.

The grantee, its successors or assigns, shall protect and save harmless the city from all claims, actions or damages of every kind and description which may accrue to be suffered by any person or persons, corporation or property by reason of any faulty construction, defective material or equipment, or maintenance, or by the improper occupation of said right of way by the said grantee or by reason of the negligent, improper or faulty manner of safeguarding any excavation, temporary turnouts or inefficient operation by the grantee of its pipe lines over said streets, avenues, alleys, roads and public places as hereinbefore designated, and in case that suit or action is brought against the city for damages arising out of or by reason of any of the abovementioned causes, the grantee, its successors or assigns, will, upon notice to it or them of the commencement of said action, defend the same at its or their sole cost and expense and in case judgment shall be rendered against the city in suit or action, will fully satisfy said judgment within 90 days after the said suit or action shall have been finally determined, if determined adversely to the city; provided, that the grantee therein, its successors or assigns shall have the right to employ its own counsel in any cause or action and be given the management of the defense thereof.

14.20.220 Extent of grantee's obligations.

The obligations imposed upon the grantee by the express terms of the franchise, or implied by the terms of this chapter or any other ordinance affecting the same, shall be deemed to include every employee, nominee or independent contractor of the grantee performing work in the city streets, or other city property, under contract direction, request or authority of the grantee under this franchise, and the grantee, its agent, employee or independent contractor, severally, shall be responsible to the city for any injury or damage to city property or the expense incurred or suffered by

the city in correcting defects in work replacing city streets or other improvements damaged by the acts or neglect of such servants, agents or independent contractors of grantee.

14.20.230 Franchise fee.

To the extent authorized by applicable law, there may be imposed as a condition of the grant of a franchise and in consideration therefor, a franchise fee. Amount of such fee shall be established by the city council and shall be consistent for all franchises granted to businesses falling within the same specific business classification.

A. Any payment that may be due shall be due thirty (30) days past the close of the grantee's calendar or tax quarter for which revenue was received or thirty (30) days past the invoice date received from the city.

B. In the event that any franchise payment is not received by the city on or before the applicable date due, interest shall be charged from such date at the rate of twelve percent (12%) per annum, or the statutory rate for judgments, whichever is less.

C. In addition, if any payment due is not paid by the due date, the city shall add a penalty of five percent (5%) of the amount due; and if the payment is not received on or before the last day of the month following the due date, the city shall add a total penalty of ten percent (10%) of the amount due; and if the payment is not received on or before the last day of the second month following the due date, the city shall add a total penalty of twenty percent (20%) of the amount due.

D. In the event a franchise is revoked or otherwise terminated prior to its expiration date, a grantee shall file with the city, within ninety (90) days of the date of revocation or termination, all payments due.

E. Nothing in this chapter shall limit the city's authority to tax a grantee, or to collect any fee or charge permitted by law, and no immunity from any such obligations shall attach to a grantee by virtue of this chapter.

No acceptance of any payment by the city shall be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable as a franchise fee, if applicable, or for the performance of any other obligation of the grantee.

14.20.240 Charge for administrative costs.

There may be imposed, in addition to a franchise fee, an annual charge for the administrative costs and expenses incurred by the city in supervision, inspection and examination of such work granted by the permit and done by the grantee or by an independent contractor under the franchise of the grantee. Should actual costs and expenses exceed the amount of such annual fee, the grantee shall be required to

reimburse the city for such additional actual costs and expenses incurred by the city over and above the annual charge. Such annual charge shall be due and payable on or before the last day of the year of each successive year of the term of the franchise. Such charge shall be prorated on the number of months of the calendar year during which period the franchise is in effect.

14.20.250 Liquidated damages.

Because a grantee's failure to comply with the provisions of this chapter and its franchise will result in damage to the city and because it will be impractical to determine the actual amount of such damages, the city and any grantee may agree upon and specify in a franchise certain amounts which represent both parties' best estimate of the damages.

14.20.260 Civil penalties and additional relief.

A. Any person, and the officers, directors, managing agents, or partners of any grantee violating or failing to comply with any of the provisions of this title or any franchise issued pursuant thereto shall be subject to a civil penalty in the manner and to the extent provided for in Chapter 1.18 BCC. A monetary penalty in an amount not less than $100 nor more than $1,000 per day for each day of violation may be assessed and abatement required as provided therein.

B. In addition to any penalty which may be imposed by the city, any person violating or failing to comply with any of the provisions of this title or any franchise issued pursuant thereto shall be liable for any and all damage to city property or rights of way arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.

C. Notwithstanding any other provision in this title, the city may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this title or any franchise issued pursuant thereto when civil or criminal penalties are inadequate to effect compliance.

D. In addition to the penalties set forth in this section, violation of any provision of this title or any franchise issued pursuant thereto may also result in the revocation and termination of any franchise, permit, or other agreement or authorization.

14.20.270 Revocation and termination.

A. In addition to all other rights and powers retained by the city under this chapter and any franchise issued pursuant thereto, the city council reserves the right to revoke and terminate a franchise and all rights and privileges of a grantee in the event of a substantial violation or breach of its terms and conditions. A substantial violation or breach by a grantee shall include, but shall not be limited to, any of the following acts or omissions:

1. An uncured substantial violation of any material provision of this chapter or an uncured breach of any material provision of a franchise issued hereunder, or any material rule, order or regulation of the city made pursuant to its power to protect the public health, safety and welfare;

2. Any default in the performance of any of grantee's material obligations under any other documents, agreements and other terms and provisions entered into by and between the city and the grantee;

3. An intentional evasion or knowing attempt to evade any material provision of a franchise or practice of any fraud or deceit upon the subscribers or upon the city;

4. Failure to begin or substantially complete any system construction or system extension as set forth in a franchise;

5. Failure to provide the services promised in the application or specified in a franchise, or a reasonable substitute therefor;

6. Any use or occupation of the right of way that presents a risk to public health or safety or the construction, installation, operation or maintenance of a system in an unsafe or dangerous manner;

7. The willful violation of any orders or rulings of any regulatory body having jurisdiction over grantee relative to the franchise;

8. Misrepresentation of material fact in the application for, or during negotiations relating to, a franchise;

9. A continuous and willful pattern of inadequate service or failure to respond to legitimate subscriber complaints;

10. Failure to provide insurance, bonds, letter of credit, or indemnity as required by a franchise or this chapter;

11. An uncured failure to pay franchise fees as required by the franchise agreement.

B. None of the foregoing shall constitute a substantial violation or breach if the grantee is without fault or if the violation or breach occurs as a result of circumstances beyond a grantee's reasonable control. A grantee shall bear the burden of proof in establishing the existence of such circumstances. However, a grantee's substantial violation or breach shall not be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, employees, agents or contractors.

14.20.280 Procedures for termination.

A. Any franchise issued pursuant to this chapter may be terminated in accordance with the following procedures:

1. The city manager, or other person designated by the city manager, shall notify the grantee in writing of the exact nature of the alleged substantial violation or breach constituting a ground for termination. Said notice shall provide that the grantee shall have sixty (60) days from the date of receipt of notice to correct and cure such alleged substantial violation or breach or to present facts and argument in refutation of the alleged substantial violation or breach. A copy of said notice of substantial violation or breach shall be mailed to the surety on any performance bond.

2. If a grantee corrects any alleged substantial violation or breach within the sixty (60) day cure period, then in no event shall the violation be weighed against such grantee in any subsequent review of franchise performance.

3. If a grantee does not correct and cure the alleged substantial violation or breach within the sixty (60) day cure period then the city council shall, within forty-five (45) days of the last day of the sixty (60) day cure period, designate the hearing examiner as the hearing officer to conduct a public hearing to determine if the revocation and termination of the franchise is warranted and to make a recommendation to the city council. That recommendation shall be transmitted to the city council for final action on a closed record. The city council shall act as the final decisionmaker.

4. At least twenty (20) days prior to the public hearing, the city clerk shall issue a public hearing notice and order that shall: establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the city shall hear any persons interested therein; and provide that the grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

5. The hearing examiner shall hear testimony, take evidence, hear oral argument and receive written briefs. The hearing examiner shall create for the city council a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording.

6. The grantee carries the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that there is not an uncured substantial violation or breach or that the substantial violation or breach is a result of circumstances beyond a grantee's reasonable control.

7. Within ten (10) working days after the close of the record the hearing examiner shall issue a written decision that shall include the recommendation of the hearing examiner on the revocation and termination of the

grantee's franchise, a findings of facts upon which the recommendation is based and the conclusions derived from those facts.

B. The city council shall, at a public meeting, consider and take final action on the recommendation of the hearing examiner. The city council shall not accept new information, written or oral, but shall consider the complete record developed before the hearing examiner and the recommendation of the hearing examiner.

C. At the public meeting the city council shall either:

1. Accept the recommendation of the hearing examiner; or

2. Reject the recommendation of the hearing examiner; or;

3. Remand the decision to the hearing examiner and the director for an additional hearing limited to specific issues identified by the council.

D. The city council shall adopt an ordinance which accepts or rejects the recommendation of the hearing examiner by a majority vote of the membership of the council. If the action by the city council will result in the revocation and termination of a grantee's franchise then the ordinance shall declare that the franchise of such grantee shall be revoked and terminated, any security fund or bonds are forfeited, and shall include findings of fact and conclusions derived from those facts which support the decision of the council. The city council may by reference adopt some or all of the findings and conclusions of the hearing examiner.

14.20.290 Changes in provisions.

The city reserves for itself the right at any time upon a 48-hour written notice to the grantee to so change, amend, modify or amplify any of the provisions or conditions herein enumerated to conform to any state statute or city regulation relating to the public welfare, health, safety or highway regulation as may hereinafter be enacted, amended, adopted, changed, etc., and such franchise may be terminated at any time if same is not operated or maintained in accordance with its provisions, or at all.

14.20.300 Force majeure.

In the event the grantee's performance of any of the terms and conditions or obligations required by this chapter is prevented by a cause or event not within the grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof; provided, however, that shall not relieve a grantee from its general obligations required when interruptions in service occur. For the purpose of this section, causes or events not within the control of the grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires, but shall not include financial inability of the

grantee to perform or failure of the grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the grantee, or the failure of the grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable communications system where the grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

Section 3. This ordinance shall take effect and be in force thirty (30) days after passage and legal publication.

Passed by the City Council this 21st day of June, 2004, and signed in authentication of its passage this 21st day of June, 2004.

(SEAL)

Connie B. Marshall

Connie B. Marshall, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Lori M. Riordan

Lori M. Riordan, Deputy City Attorney

Attest:

Myrna L. Basich

Myrna L. Basich, City Clerk

Published June 25, 2004