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

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

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

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

1. In order to promote and protect the public health, safety, welfare and convenience of its citizens, businesses and visitors, the City and County of San Francisco ("City") has a substantial interest in adopting and enforcing such laws and regulations as may be necessary to manage private use of the public rights of way and to govern the companies that use the public rights of way to provide services to the public.

2. The public rights of way of San Francisco are a valuable public asset belonging to all the citizens of San Francisco.

3. The City is charged with the obligation to manage the public rights of way in trust for its citizens.

4. The City manages the public rights of way by, among other things, requiring those companies who construct, install, operate, or provide services using facilities laid within or along the public rights of way to obtain a franchise which sets forth the terms and conditions governing such use and governing the companies' services to the public.

5. Pursuant to the authority granted to the City by Sections 3, 4, 5, 7 and 9 of Article XI of the California Constitution, the City has adopted a Charter which, in Section 16.111, sets forth

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

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

6. City franchises set forth the terms and conditions for use of the public rights of way, require a franchise grantee to pay fair and reasonable compensation for the use of the public rights of way, and set forth such other conditions as may be necessary to govern the services provided to the public.

7. Chapter 11 of the San Francisco Administrative Code ("Chapter 11"), addressing franchises, was originally adopted in part in 1939 and in part in 1974. It has been amended occasionally since 1974 to address specific issues.

8. Many of the industries required to obtain a franchise under Chapter 11, such as the electric, gas, and cable industries, have evolved dramatically since the time Chapter 11 was adopted and then revised, primarily due to technological innovations and changes in the state and federal regulatory frameworks governing these industries.

9. Many of the laws regarding the regulation and franchising of the industries covered by Chapter 11 have changed significantly.

10. The convergence of the telecommunications and cable industries has created confusion and left many unanswered questions regarding the scope of the City's franchising authority over providers of cable television, telecommunications and other related services, especially where such services are provided using the same facilities.
11. This evolution has rendered the current version of Chapter 11 outdated, unclear, and administratively difficult to implement.

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

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

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

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

16. Unless and until California law is changed, it is the City's intent to specifically exclude the provision of telecommunications services from the City's franchise requirements because state law has been interpreted to prohibit local governments from franchising the provision...
of telecommunications services; however, to the extent that a person providing
telecommunications services is also providing other services, it is the City's intent that they
shall obtain a franchise to provide those services.

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

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

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

20. It is to the benefit of the public health, safety and welfare to administer the City's
franchises in a consistent and efficient manner, and to require franchise grantees to
comply with certain minimum standards regarding their use and occupation of the public rights of way and provision of services to the public. Consequently, it is the City's intent to apply the provisions of this Chapter 11 to all franchises, including those existing prior to adoption of this Chapter, to the extent permitted by law, recognizing that the Contracts Clauses of both the federal and state constitutions limit the ability of a government to substantially and significantly impair a contractual right unless it is acting through its police powers authority.

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

CHAPTER 11
FRANCHISES
ARTICLE I
FRANCHISE PROCEDURE
SEC. 11.1 DEFINITIONS. For purposes of Articles I through VIII of this Chapter, and for any Franchise granted pursuant to this Chapter, the following terms, phrases, words, abbreviations their derivations, and other similar terms, when capitalized, shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number. The words "shall" and "will" are mandatory. "May" is permissive. However, as applied to official action, the words "shall" and "will" shall be directory in effect. Unless otherwise expressly stated, words not defined herein shall be given their common and ordinary meaning. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. Unless otherwise expressly stated, if specific provisions of law referred to herein are renumbered or amended, then the reference shall be read to refer to the renumbered or amended provision.

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

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

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

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

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

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

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

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

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

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

(l) "Department," in reference to a Cable System Franchise or any other communications-related Franchise, means the Department of Telecommunications and Information Services. In reference to any gas, electric, or steam Franchise, "Department" means the San Francisco Public Utilities Commission. In reference to any other type of Franchise, "Department" means...
the City department assigned by the Board to process the Proposal or administer the Franchise.

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

(n) “FCC” means the Federal Communications Commission.

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

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

(q) "Franchise Area" means the geographic area of the City in which a Franchise authorizes a Grantee to construct, install, or operate Facilities or to provide Services.
(r) "Franchise Fee" means a payment made to the City in accordance with SEC. 11.21 below. In the case of a UVPP, "Franchise Fee" shall mean a fee in lieu of a franchise fee, pursuant to 47 U.S.C. Section 573(c)(2)(B).

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

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

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

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

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

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

(y) "Person" means any individual, group, company, partnership, association, joint stock company, trust, corporation, society, syndicate, club, business, or governmental entity. Person shall not include the City.
(z) "Proposal" means any application, proposal, submission or request filed pursuant to the requirements of this Chapter to (1) obtain a new Franchise; (2) Transfer a Franchise; (3) extend a Franchise; or (4) otherwise modify a Franchise. A Proposal includes an Applicant's initial proposal, submission or request, as well as any and all amendments or supplements to the Proposal and relevant correspondence.

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

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

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

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

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

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

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

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

(ii) "Transfer" means any transaction in which: (1) all or a portion of any Facilities or any
rights to use or operate Facilities located in the Public Rights-of-Way are sold, conveyed,
transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part,
directly or indirectly, by one or more transactions to another Person, whether voluntarily or by
operation of law or otherwise; or (2) there is any change, acquisition, or transfer in the identity
of the Person in Control of the Grantee, or any Person that controls Grantee, including,
without limitation, forced or voluntary sale, merger, consolidation, or receivership; or (3) the
rights or obligations under the Franchise are sold, conveyed, transferred, assigned,
encumbered (except as set forth herein) or leased, in whole or in part, directly or indirectly, by
one or more transactions to another Person, whether voluntarily or by operation of law or
otherwise. It will be presumed, for purposes of clause (2) above, that any transfer or
cumulative transfer of a voting interest by a Person or group of Persons acting in concert of
twenty five percent (25%) or more of Grantee, or Person that Controls Grantee, or any change
in the managing general partners of a Grantee is a change of Control. "Transfer" does not
include: (1) a lease to a UVPP pursuant to 47 U.S.C. Sections 532 or 573; (2) the
transmission of a commodity or electronic signal using Facilities on a common carrier basis;
(3) a lease or other right to use Facilities mandated pursuant to 47 U.S.C. Section 224.
California Public Utilities Code Section 767.5, or by an order of the CPUC; or (4) a pledge in trust, mortgage or other encumbrance against the Facilities, or any portion thereof, given to a Bona Fide Institutional Lender in connection with a loan or other financing required to secure the construction, operation, or repair of the Facilities ("Loan") provided that such Loan is subject to the rights and powers of the City pursuant to the Franchise and Applicable Law, including, without limitation, the right of the City to approve any Transfer pursuant to SEC. 11.14 below upon foreclosure. "Transferring" and "Transferee" shall have correlative meanings.

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

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

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

SEC. 11.3 FRANCHISE REQUIRED. Except as provided in SEC. 11.4 below, no Person may construct, install, or operate Facilities in the Public Rights-of-Way, or provide Service using any Facilities installed in the Public Rights-of-Way, without a Franchise that authorizes each and every Service provided. Any Person using Facilities owned by another Person to
provide Service, whether by lease or other arrangement, shall be required to obtain a
Franchise pursuant to this Chapter. A Grantee may, at any time and pursuant to this Chapter,
apply to expand the scope of its Franchise, subject to appropriate conditions, or apply for a
separate Franchise to provide other Services. The fact that a Person uses Facilities to
provide Service not requiring a Franchise does not obviate the need to obtain a Franchise
where the Facilities are also used to provide other Services.

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

(a) The City;

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

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

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

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

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

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

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

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

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

SEC. 11.7 CONTINUED USE AFTER EXPIRATION OF FRANCHISE. So long as a Grantee is seeking in good faith to renew a Franchise, upon expiration of a Franchise, the continued use by a Grantee of the Public Rights-of-Way shall continue on a month-to-month basis, for a maximum of twelve (12) months, under the same terms and conditions, and for
the same consideration, as provided in the expired Franchise, unless the Franchise has been Revoked or unless otherwise determined by ordinance of the Board.

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

SEC. 11.9 UTILITY CONDITIONS PERMIT.

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

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

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

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

SEC. 11.10 FILING OF PROPOSAL. Any Person seeking to (1) obtain a Franchise; (2) Transfer a Franchise; (3) extend the term of an existing Franchise; (4) renew a Franchise; or (5) modify an existing Franchise to add new Services that are required to be authorized by a Franchise pursuant to this Chapter, shall submit a signed original of its Proposal and eleven (11) copies to the Clerk of the Board and nine (9) copies to the Department. The Clerk of the Board shall make a Proposal available for public inspection. The Proposal must conform to all of the requirements of this Chapter. Requests for other types of Franchise modifications may be processed by the Department without a Proposal, and submitted to the Board for approval. However, nothing herein shall prevent the Department from requiring a Proposal in the event the Department determines, based on the nature of the requested modification, that the public interest would best be served by the submission of a Proposal pursuant to this Article.
SEC. 11.11 PROPOSAL FEE.

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

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

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

(d) Deposit/Offset. The Proposal Fee shall be deposited with the Controller. Within twenty (20) City business days of final action on a Proposal or an Applicant’s formal acceptance or rejection of a Franchise, whichever is later, the Controller shall provide an account of the City’s actual Proposal processing costs to the Applicant. The Controller may offset the Proposal processing costs from the Proposal Fee deposit consistent with the provisions of Administrative Code Sections 10.27-1 through 10.27-7. Where the City’s actual costs are determined by the Controller to fall below the amount of the Proposal Fee deposit, the difference shall be refunded to the Applicant. Where the City’s actual costs exceed the amount of the Proposal Fee deposit the Applicant shall be required to pay the difference to the Controller within twenty (20) City business days of notice.
(e) **Exceptions.** Where required by controlling Applicable Law a Proposal Fee paid pursuant to this Section shall be credited against any other charge, including Franchise Fees, required to be paid to the City.

**SEC. 11.12 PROPOSAL CONTENTS.** Each Department shall adopt regulations setting forth the information that each type of Proposal must contain, and make such regulations available immediately upon request. A Proposal shall include all information required by the Department unless the Department determines, in its discretion, that a substitute reasonably satisfies the purpose of the regulations. At a minimum, regulations shall require Applicants to provide information required by Applicable Law and sufficient for the City to consider the Proposal pursuant to SEC. 11.13(g) and, where applicable, SEC. 11.13(h) below. Regulations shall also, where appropriate, distinguish among the requirements applicable to Proposals for initial Franchises, Transfer Proposals, Renewal Proposals, and Proposals to modify an existing Franchise. Regulations may require, without limitation:

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

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

(c) **Proposed Franchise.** The text of Applicant's proposed Franchise complying with Applicable Law, including, without limitation, a statement of the type of Service proposed to be provided. In the case of a Cable System Franchise: (1) the Applicant must specify whether it seeks an OVS Franchise or a Cable System Franchise that is not an OVS; and (2) a proposed Franchise shall not be required to be submitted with a renewal Proposal for a Cable System.
Franchise that is not an OVS if the Grantee is exercising its renewal rights pursuant to 47
U.S.C. Section 546.

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

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

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

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

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

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

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

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

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

SEC. 11.13 PROPOSAL REVIEW PROCEDURE.

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

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

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

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

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

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

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

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

(1) Whether the Applicant’s Proposal is sufficient to meet current and future community needs and interests, taking into account the cost to the Applicant of meeting such needs and interests:
(2) The positive and negative impacts to the City and consumers of approving the Proposal;

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

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

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

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

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

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

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

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

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

(12) Such other additional matters, both procedural and substantive, the City determines are relevant.
(h) **Cable System Proposal Considerations.** If the Proposal involves a Cable System Franchise, the City shall, in addition to the considerations set forth in subsection (g) above, also consider, to the extent applicable:

1. Whether the Applicant has provided adequate assurance that it will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support;
2. Whether the proposed Franchise reasonably meets current and future community cable-related needs and interests, taking into account the cost to the Applicant of meeting such needs and interests; and
3. The issues identified in California Government Code § 53066.3 and other Applicable Law.

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

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

**SEC. 11.14 TRANSFER PROPOSALS.**

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

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

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

(d) Proposal Submission. For purposes of this Section, the Applicant shall be the
proposed Transferee. At least one hundred twenty (120) calendar days prior to the
contemplated effective date of a Transfer, the Applicant shall submit a Transfer Proposal to the Board for approval of the Transfer.

(e) Exceptions.

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

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

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

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

(b) The proposed Transferee (1) has demonstrated to the City’s reasonable satisfaction that it is reputable and capable, financially and otherwise, of performing each of the Grantee’s obligations under the Franchise and any other documents to be assigned; and (2) is not forbidden by Applicable Law from transacting business or entering into contracts.
with the City; and (3) is subject to the jurisdiction of the courts of the State of California; and
(4) is not in default with respect to any obligations that it has to City; and
(c) Any Person guaranteeing the performance of the Grantee under the Franchise (or any other Person approved by the Department and the City Attorney), guarantees in a substantially similar manner the performance of the proposed Transferee; and
(d) The Transfer Parties warrant that the Transfer is being made for a legitimate business purpose and not to deprive the City of the benefits of the Franchise, any other documents proposed to be Transferred, or other Applicable Law; and
(e) The proposed Transferee warrants that it has read, accepts, and agrees to be bound by each and every term of the Franchise, any other documents to be Transferred, and other Applicable Law then in effect; and
(f) The proposed Transferee agrees to assume all responsibility for all liabilities, acts, and omissions know and unknown of each of its predecessor Grantees for all purposes, including renewal of the Franchise, and to cure all defects; and
(g) The proposed Transferee agrees that the Transfer will not permit it to take any position or exercise any right which could not have been exercised by the Grantee; and
(h) The Transfer Parties warrant that the Transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the proposed Transferee (the warranty to be based upon comparing the burdens upon and resources that will be available to the proposed Transferee compared to the Grantee), or otherwise adversely affect the ability of the proposed Transferee to perform its commitments under the Franchise; and
(i) The Transfer Parties warrant that the Transfer will not in any manner adversely affect the City or Subscribers (including by increasing rates); and
The proposed Transferee agrees that the Transfer does not affect any evaluation of its legal, financial, or technical qualifications that may arise under the Franchise or other Applicable Law after the Transfer, and does not directly or indirectly authorize any additional Transfers.

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

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

SEC. 11.15 CABLE SYSTEM RENEWAL PROPOSALS.

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

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

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

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

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

(e) Administrative Proceeding. In the event the Board adopts a resolution making a preliminary assessment that the Franchise should not be renewed pending the results of an
administrative proceeding pursuant to 47 U.S.C. Section 546(c), the Director of the Department shall designate a hearing officer(s) and the Department shall administer the hearing consistent with the requirements of that Section. Within forty-five (45) City business days of the conclusion of the hearing, the hearing officer(s) shall issue a proposed recommendation to grant or deny the Renewal Proposal. The proposed recommendation shall be based upon the record of the proceeding and include a summary of the issues, the evidence presented, and findings and conclusions. It shall also include a proposed ordinance or resolution for the Board's consideration. Copies of the proposed recommendation shall be served upon the parties to the hearing by certified mail. A notice that a copy of the proposed recommendation is available for inspection during normal business hours shall be posted at the office of the Director of the Department. The proposed recommendation shall be a recommendation to the Director, and the Director shall adopt, modify, or deny such recommendation and prepare a final recommendation on the matter based upon the record of the proceeding. Such final recommendation shall be served upon the parties to the hearing and posted in the same manner as provided for the proposed recommendation herein.

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

(g) Suspension Of Hearing. Nothing herein shall preclude the Director from suspending the proceeding in the event the Department and the Cable System Operator reach agreement regarding proposed renewal of the Franchise. In the event the Board does not approve such
proposal, the Director may resume the proceeding. Board approval of the proposal shall constitute termination of the proceeding.

**SEC. 11.16 FRANCHISE REVOCATION.**

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

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

(c) Board Proceeding Regarding Revocation.

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

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

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

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

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

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

ARTICLE II

FRANCHISE FEES

SEC. 11.21 AMOUNT.

(a) Grantee Fees. In consideration of the grant and exercise of a Franchise to construct, install, operate, or provide Services using, Facilities in the Public Rights-of-Way, a Grantee shall pay to the City a Franchise Fee expressed as a percentage of Gross Revenues or some
other measure. The Franchise shall specify the fee to be paid, and the Gross Revenues to be included in the fee calculation. If a Franchise granted pursuant to this Chapter specifies a Franchise Fee established as the result of limiting Applicable Law, the City shall have the option to renegotiate the amount of the Franchise Fee upon a change in Applicable Law pursuant to the process set forth in SEC. 11.70 below. In considering changes to the Franchise Fee amount, the City shall consider the impact on consumers of any pass through that may be permitted. Nothing herein requires a Person to pay amounts in excess of any limits that may be established by state or federal law.

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

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

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

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

SEC. 11.25 ACCEPTANCE OF PAYMENT NOT A RELEASE. No acceptance by the City of any Franchise Fee payment shall be construed as an accord that the amount paid is in fact
the correct amount owed, nor shall such acceptance of such Franchise Fee payment be
construed as a release of any claim the City may have for additional sums payable.

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

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

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

ARTICLE III

PERMITS AND CONSTRUCTION

SEC. 11.29 COMPLIANCE WITH LAWS.

(a) Applicable Laws. All work performed in the geographic boundaries of the City by a
Grantee, including work not involving excavation and including work performed on both public
and private property, shall be performed in compliance with this Chapter, the Franchise, and
other Applicable Law, including, but not limited to, the City’s Municipal Code, (including the
Public Works Code), and CPUC General Orders 95, 112, and 128. Grantee shall, at its sole
expense, procure and maintain in force at all times during the term of its Franchise any and all
business and other licenses or approvals necessary to construct Facilities and provide any
Services in the City. Grantee shall obtain any necessary approvals regarding the impact that
its Facilities may have upon the environment. Nothing in this Chapter or in any Franchise is
intended to imply that such approvals will be issued.

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

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

SEC. 11.31 PLACEMENT OF FACILITIES. All privileges prescribed by a Franchise shall be
subordinate to any prior lawful occupancy in the Public Rights-of-Way, and the City reserves
the authority to designate where a Grantee's Facilities may be placed. A Grantee may not
place Facilities inconsistent with the City’s Public Works Code or the rules, regulations, or
orders of the Department of Public Works or other Applicable Law, or in such a way as to
interfere with public use of the Public Rights-of-Way.

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

(a) Grantee Must Remove, Relocate, Adjust, And/OR Support Facilities To

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

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

SEC. 11.33 ABANDONMENT.
(a) **Notice of Abandonment.** Within three (3) months of the effective date of this Section, all Grantees shall provide a map to the Department of Public Works, in a form approved by the City, showing the location of those Facilities located in the Public Rights-of-Way that have been abandoned by Grantee. The map shall include street names and shall show the size and type of the abandoned facilities. Thereafter, Grantees shall provide updated maps to the Department of Public Works at the end of each calendar quarter showing those Facilities in the Public Rights-of-Way abandoned by Grantee during the calendar quarter. For purposes of this Section, “abandon” and other similar terms means that Facilities are no longer used by Grantee for any purpose authorized by a Franchise or by Section 7901 of the California Public Utilities Code.

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

(c) **Treatment of Abandoned Facilities.** In the event Grantee has notified the Department that it has abandoned any part of its Facilities, or the City’s determination that Facilities have been abandoned has not been appealed pursuant to SEC. 11.81 below, at City’s option, Grantee shall: (1) convey all or a portion of the abandoned Facilities to City at no
cost; (2) leave all or a portion of the abandoned Facilities in place; or (3) promptly remove all
or a portion of the abandoned Facilities and restore City property as required by City,
consistent with SEC. 11.18 above. In the event the City elects to have all or a portion of the
Facilities conveyed to it, Grantee shall execute such documents of title in a form acceptable to
the City Attorney as will convey to the City free and clear of liens and/or adverse claims of title
all right, title, and interest in the abandoned Facilities, or any part thereof.

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

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

(f) Expedited Abandonment Determination.

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

(2) Abandonment Order. If demonstrated to be necessary to preserve the public
health, safety and welfare, or for the public convenience and necessity, the Director of the
Department of Public Works may issue an expedited abandonment determination in the form
of a departmental order ("Order") and shall serve a copy of the Order by certified mail on the
owner of the Facilities, or provide notice as set forth in subsection (4) below, if the owner is
unknown. The Order shall set forth the City's proposed disposition of the Facilities.

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

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

ARTICLE IV
REPORTING REQUIREMENTS

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

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

(b) Annual Statement Of Gross Revenues. Within sixty (60) City business days of the
end of its fiscal year, a statement setting forth the computation of Gross Revenues used to
calculate the Franchise Fee for the preceding year and a detailed explanation of the method of computation showing (i) Gross Revenues by category; and (ii) what, if any, deductions were made from Gross Revenues in calculating the Franchise Fee (e.g., bad debt, credits and refunds), and the amount of each deduction. The statement shall be certified by a certified public accountant, the chief financial officer of the Person liable for the fee, or such other Person who is authorized and qualified to make representations on behalf of the Person owing the Franchise Fees regarding its revenues.

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

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

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

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

(b) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Grantee or any Affiliate; and
(c) Any pledge in trust, mortgage or other encumbrance which has been recorded against or attached to the Grantee's Facilities, whether by act of the Grantee or otherwise.

ARTICLE V

RECORD REVIEW, RETENTION, AND ACCESS RIGHTS

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

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

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

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

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

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

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

SEC. 11.44 FRANCHISE COMPLIANCE REPORTS.
(a) Controller’s Report. No less than every two (2) years, the Controller shall file a report with the Board analyzing whether each Person owing a Franchise Fee is complying with the audit, reporting requirements, and payment obligations contained in this Chapter and any Franchise.

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

ARTICLE VI
CABLE SYSTEM REQUIREMENTS

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

SEC. 11.46 CUSTOMER SERVICE REQUIREMENTS.

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

(b) Inside Wiring. The obligation to provide Cable Service includes the obligation to provide the inside wiring required to deliver the Cable Service to the customer premises equipment used to receive the Cable Service, at no more than the standard installation rate.
so long as the Grantee can obtain any necessary consent to access the premises. However, a Grantee or UVPP may not require a Subscriber or the City to use inside wiring provided by Grantee as a condition of receiving Service.

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

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

(e) Disconnection/Downgrades. A Cable System Grantee or UVPP shall promptly disconnect from the Cable System or downgrade any Subscriber who so requests. No period of notice prior to voluntary termination or downgrade of Service may be required of Subscribers by any Grantee or UVPP. A Subscriber shall not be liable for any penalty, termination charge, or charge for Service after the date of any voluntary disconnection unless all of the following apply: (1) the Subscriber took Service pursuant to a bona fide promotional offering that offered the Subscriber reduced rates or increased Service if Service was taken for a designated period; and (2) the Service offering required the Subscriber to pay for disconnection if Service was terminated before the end of the Service period; and (3) the disconnection fee does not exceed the difference between the price paid by the Subscriber for
Service already received and the price the Subscriber would have paid if Service had been purchased at the standard price available to Subscribers; and (4) the disconnection fee was prominently displayed, and agreed to in writing by the Subscriber.

SEC. 11.47 TECHNICAL REQUIREMENTS.

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

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

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

SEC. 11.49 SUBSCRIBER PRIVACY. Every Cable System Grantee or UVPP shall at all times protect the privacy of all Subscribers by implementing and complying with the provisions of 47 U.S.C. Section 551. A Grantee or UVPP shall not condition the provision of Service on the Subscriber’s grant of permission to disclose information which, pursuant to Applicable Law, cannot be disclosed without the Subscriber’s explicit consent. Any notice provided to a Subscriber pursuant to subsection (a) of 47 U.S.C. Section 551 shall inform the Subscriber, in
type of equal size and prominence to the rest of the notice: (1) that the Subscriber cannot be

denied Service for failure to grant permission to disclose information requiring the

Subscriber's consent; and (2) that the Subscriber shall have the right to prevent disclosure of

his or her name and address.

SEC. 11.50 TYPE OF FRANCHISE. A person holding a Cable System Franchise that is not

for an OVS may not acquire an OVS Franchise for the same Facilities unless the Person

applies for an OVS Franchise. Similarly, a Person holding an OVS Franchise may not acquire

a Cable System Franchise that is not for an OVS unless the Person applies for an appropriate

Franchise. In either case, the Person’s acceptance of a new Franchise pursuant to SEC.

11.13(j) above shall not be effective unless it includes an instrument in a form approved by the

City Attorney surrendering the pre-existing Franchise.

SEC. 11.51 COMPLIANCE WITH CUSTOMER SERVICE STANDARDS AND CONSUMER

PROTECTION LAWS. A Cable System Grantee or UVPP shall, at all times, comply with all

applicable customer service standards and consumer protection laws established by

Applicable Law, including, without limitation, those established by the FCC at 47 C.F.R.

76.309. A Cable System Grantee or UVPP shall also comply with any additional customer

service standards established by the City from time to time that exceed or address matters not

addressed by the standards established by other Applicable Law and any consumer

protection laws enacted by the City from time to time that are not specifically preempted by

other Applicable Law.

SEC. 11.52 PUBLIC SERVICE ANNOUNCEMENTS IN THE EVENT OF AN EMERGENCY.

Every Cable System Grantee shall install and maintain an emergency alert system that can

override audio and video on all channels to provide an emergency alert to Subscribers. Such

an emergency alert system must be designed and maintained so that local officials

designated by the City can activate the system remotely without the Grantee's assistance.
SEC. 11.53 INTERCONNECTION. To the extent financially and technically possible and when requested by the City, a Cable System shall interconnect with another Cable System within or adjacent to the City and with any City-owned communications network for which the City requests interconnection, on fair, reasonable, and non-discriminatory terms for purposes of ensuring the full availability of access to public, educational, and government access signals. Such interconnection shall not give any Person the right to use or distribute another Person's proprietary, commercial programming.

ARTICLE VII

MISCELLANEOUS PROVISIONS

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

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

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

SEC. 11.57 ACTS AT GRANTEE'S EXPENSE. Any act that a Grantee or UVPP is or may be required to perform under this Chapter, a Franchise, or other Applicable Law shall be performed at the Grantee or UVPP's expense, unless expressly provided to the contrary in this Chapter, the Franchise, or other Applicable Law.
SEC. 11.58 NO RECOURSE FOR GRANTEE’S DAMAGES. No Person shall have recourse against the City for any loss, cost, expense, or damage arising out of the enforcement of any provision or requirement of this Chapter, a Franchise, or other Applicable Law. Notwithstanding the foregoing, nothing herein precludes a Person from seeking and obtaining any injunctive relief against the City.

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

SEC. 11.60 SECURITY.

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

(b) Amount of Security Required. The City’s Risk Manager shall determine the amount and type of security required pursuant to subsection (a) above. Notwithstanding the foregoing, the Franchise may contain terms permitting the value of the cash deposit and other security instrument(s) to be reduced upon completion of a substantial portion of any
construction obligation contained in a Franchise. At a minimum, the Franchise shall establish procedures whereby the City may unilaterally withdraw money from the cash deposit and security instrument(s) to pay monies owed by a Grantee to the City, and shall require a Grantee to replenish the cash deposit and security instrument(s) when such withdrawals are made. Within twenty (20) City business days of a Grantee’s submission of its Annual Statement of Gross Revenues, the City shall pay interest to the Grantee on any cash deposit held by the City pursuant to this Section at the rate of the City’s pooled funds.

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

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

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

SEC. 11.64 INSTALLATION OF CITY-OWNED COMMUNICATIONS FACILITIES. Unless precluded by Applicable Law, at a City department’s timely request consistent with the excavation coordination process set forth in Section 2.4.11 of the City’s Public Works Code, a
Grantee excavating in the Public Rights-of-Way or on other City property shall install City-owned communications Facilities, including, without limitation, conduit, fiber, and/or hand holds, in the excavation site at a charge to the City of the incremental costs incurred for such installation, including without limitation, any additional design costs necessary to install the City-owned communications Facilities.

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

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

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

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

SEC. 11.69 NO REPRESENTATIONS. No reference herein, or in any Franchise, to a "Public Rights-of-Way" shall be deemed to be a representation or guarantee by the City that
its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a Grantee shall be deemed to gain only those rights to use as are vested in the City.

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

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

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

ARTICLE VIII

VIOLATIONS OF THIS CHAPTER, A FRANCHISE, OR A UTILITY CONDITIONS PERMIT

SEC. 11.73 DUTY TO IDENTIFY POTENTIAL VIOLATIONS. The Department of Public Works and the Department shall identify potential violations of this Chapter, a Franchise, or a
UCP. In consultation with the City Attorney’s Office, the Department shall take appropriate action to resolve violations of this Chapter, a Franchise, or a UCP.

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

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

(1) The name and address of the complainant;

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

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

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

(5) The specific action which complainant requests.

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

**SEC. 11.75 NOTICE OF VIOLATION.** If the Department believes a violation of this Chapter, a Franchise, or a UCP has occurred, either as the result of a complaint filed pursuant to
Section SEC. 11.74 above, or through any other means independent of that process, which, after consultation with the City Attorney, the Department determines does not warrant Franchise revocation pursuant to SEC. 11.16 above, or action pursuant to SEC. 11.5 above, the Department shall serve a written notice of violation upon the Person responsible for the violation. The notice of violation shall contain specific allegations, setting forth the violations of this Chapter, a Franchise, or a UCP, shall specify the manner in which the violation must be remedied, and shall state whether the Department intends to seek suspension of excavation permits pursuant to SEC. 11.83 below. The responsible Person shall have ten (10) City business days to correct or otherwise remedy the violation. The responsible Person may contact the Department, if necessary, to discuss the violation. For violations that create an imminent danger to public health, safety, or welfare, the Department shall have the authority to: (1) remedy the violation and charge the costs of such remedy to the responsible Person; or (2) notify the responsible Person to immediately remedy the violation.

SEC. 11.76 NOTICE IMPOSING ADMINISTRATIVE PENALTIES AND ENFORCEMENT COSTS. If a Person fails to remedy a violation within the time specified in a notice of violation issued pursuant to SEC. 11.75 above, the Department shall provide written notice to the responsible Person if the Department intends to impose administrative penalties or enforcement costs. This notice shall include the amount of the penalties and an estimate of the enforcement costs that will be due, and declare that such penalties and costs are due and payable to the City Treasurer within twenty (20) City business days. The notice also shall state that the violator has the right, pursuant to SEC. 11.81 below, to request administrative review of the Department’s determination.

SEC. 11.77 AMOUNT OF ADMINISTRATIVE PENALTIES. Any Person who fails to comply with a notice of violation issued pursuant to Section SEC. 11.75 above for violation of this Chapter may be liable for an administrative penalty consistent with the procedure set forth in
SEC. 11.76 above. The imposition of administrative penalties is within the discretion of the Department. The Department may assess an administrative penalty of up to one thousand dollars ($1,000.00) per day, per violation. In assessing the amount of the administrative penalty, the Department may consider any one or more of the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the responsible Person's misconduct, and the responsible Person's assets, liabilities, and net worth.

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

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

SEC. 11.80 FINALITY OF THE DEPARTMENT'S DETERMINATION AND COLLECTION OF ASSESSED PENALTIES AND COSTS. If no request for administrative review is filed pursuant to SEC. 11.81 below, the Department's determination shall be final. Thereafter, if the penalties and costs are not paid within the time specified in the notice, the Department may pursue any method of collection of such penalties and costs authorized by Applicable
Law, including, but not limited to deductions from any deposit or other security instrument held by the City, and any civil action.

**SEC. 11.81 ADMINISTRATIVE REVIEW.**

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

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

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

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

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

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

SEC. 11.83 SUSPENSION OF ACTION ON PERMIT APPLICATIONS. For good cause to protect the public health, safety and welfare, the Director of the Department may request the Director of the Department of Public Works to suspend issuance of excavation permits to a
Person who is determined, after notice and a hearing, to be in violation of this Chapter or a Franchise.

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

ARTICLE ((III)) IX

DEPARTMENT OF TELECOMMUNICATIONS AND INFORMATION SERVICES/TELECOMMUNICATIONS COMMISSION

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

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

(b) Within the limits of preemptive federal and/or State law, the City should do everything possible to promote open and fair competition among telecommunications providers within the City; to ensure that new telecommunications services are made available to San Francisco
residents and businesses on a fair and nondiscriminatory basis; to ensure that the principle of
universal access to telecommunications services is upheld within the City; to ensure that
public, educational and municipal access to video programming channels is preserved; to
promote the safe and efficient use of the streets by telecommunications providers; to ensure
that new telecommunications technologies do not interfere with the City's emergency
communications systems; to ensure that the public receives fair compensation for the use of
the Public Rights-of-Way and the costs of approving and, if necessary, monitoring, the various
devices sought to be installed by telecommunications providers; and to ensure that the City
itself has access to telecommunications services which improve public safety, public access
to government and the efficient delivery of public information and services.

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

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

(a) "Article" means Article (III) IX of Chapter 11 of the San Francisco Administrative
Code.
(b) "Board" means the San Francisco Board of Supervisors
(c) "Charter" means the Charter of the City and County of San Francisco
(d) "City" means the City and County of San Francisco
(e) "Commission" means the Telecommunications Commission created by this Article.
(f) "Department" means the Department of Telecommunications and Information Services
created by this Article.
(g) "Telecommunications" means the one- or two-way transmission of messages, information, and/or programming by electronic means, including the provision of facilities for the generation, transmission, switching, signaling, control and/or reception of messages, information and/or programming; provided however that "telecommunications" shall not mean broadcasting as defined in 47 U.S.C. Section 153(o).

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

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

(b) The Department shall assume responsibility for:

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

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

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

4. (iv) Negotiating and recommending to the Board cable television franchises;

5. (v) Providing staff support to the Telecommunications Commission; and

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

SEC. 11.87 ((SEC. 11.53.)) ESTABLISHMENT OF COMMISSION.
(a) **Establishment of Commission.** A Telecommunications Commission for the City and County of San Francisco is hereby created consisting of five voting members.

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

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

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

(e) **Resignation by Operation of Law/Removal of Commissioners.** Any member whom the Commission certifies to have missed three regularly scheduled meetings of the Commission in any 12-month period without prior authorization of the Commission shall be deemed to have resigned from the Commission effective on the date of the written certification from the Commission.
(f) **Compensation.** Members shall receive $25 for each meeting of the Commission actually attended; provided, however, that no member shall be paid for attending more than three Commission meetings in any one calendar month.

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

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

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

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

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

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

(2) Customer service by cable television operators,

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

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

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

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

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

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

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By: 

Traci Bone
Deputy City Attorney

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

February 28, 2000  Board of Supervisors — SUBSTITUTED

March 20, 2000  Board of Supervisors — PASSED, ON FIRST READING
   Ayes: 10 - Ammiano, Becerril, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee
   Absent:  1 - Bierman

March 27, 2000  Board of Supervisors — FINALLY PASSED
   Ayes: 9 - Ammiano, Becerril, Brown, Kaufman, Leno, Newsom, Teng, Yaki, Yee
   Absent:  2 - Bierman, Katz
I hereby certify that the foregoing Ordinance was FINALLY PASSED on March 27, 2000 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

APR - 7 2000
Date Approved

Mayor Willie L. Brown Jr.