

CODIFIED ORDINANCES OF PERRY

PART EIGHT - BUSINESS REGULATION AND TAXATION CODE

Chap. 808. Cable Communications.

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2006 Replacement



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PART EIGHT - BUSINESS REGULATION AND TAXATION CODE

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CHAPTER 808  
Cable Communications

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#### CROSS REFERENCES

- Franchises - see CHTR. Secs. 5.13 et seq.
- Public utilities - see CHTR. Ch. 7
- Construction and maintenance of facilities - see M.C.L.A. Secs. 247.183 et seq.
- Television and radio generally - see M.C.L.A. Secs. 484.301 et seq., 750.507 et seq.
- Cables improperly located; insurance - see M.C.L.A. Sec. 500.3123

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#### IN GENERAL

##### **1 808.0 SHORT TITLE.**

This chapter shall be known as the "City of Perry Cable Communications Ordinance" and may be cited as such, and will be referred to herein as "this chapter." (Ord. 175. Passed 7-21-81.)

##### **2 808.0 PURPOSES.**

The purposes of this chapter are to provide fair regulation of cable communications service in the City in the interest of the public; to promote and encourage adequate, economical and efficient cable communications service to the residents of the City; to promote and encourage harmony between cable communications companies and their subscribers; and to provide for the furnishing of cable communications system service to the residents of the City without unjust discrimination, undue preference or advantages. (Ord. 175. Passed 7-21-81.)

**3 808.0 DEFINITIONS.**

As used in this chapter, unless the context clearly indicates a different meaning:

- (a) "Cable Communications Commission" means a five member Commission established by the City to serve the City in the implementation and discharge of any designated functions the City might delegate pursuant to this chapter.  
(Ord. 184. Passed 3-1-83.)
- (b) "Cable communications company" means any person who owns, controls, operates or manages a cable communications system for the purpose of providing cable communications service to members of the public located in the City. "Cable communications company" shall not include:
  - (1) A telephone, telegraph or electric utility in a case where it merely leases or rents to a cable communications company utility pole contact space for the placing thereon of wire or cable facilities used in the distribution of television or other signals to the subscribers of such cable communications company; or
  - (2) A telephone or telegraph utility regulated by the State Public Service Commission or the Federal Communications Commission in a case where it merely provides communication channel service under published tariffs to a cable communications company for the distribution of television signals to the subscribers of such company.





- (c) "Cable communications service" means the business, in whole or in part, of receiving, directly or indirectly, over the air, and amplifying or otherwise modifying, signals, transmitting programs broadcast by one or more signals, sound signals, pictures, visual images, digital signals, telemetry or any other type of closed circuit transmission by means of electrical or light impulses, whether or not directed to originating signals or receiving signals off the air, and redistributing such signals by wire, cable or other means to members of the public located in the City who pay for such service.
- (d) "Cable communications system," "cable system," "cable television system," "CATV" or "system" means a system of coaxial cables or other conductors, antennae, transmitters, fixtures, converters, a distribution network, studios and other equipment used or to be used to originate or receive television or radio signals directly or indirectly off the air and to transmit them via cable to subscribers for a fixed or variable fee, including the origination, receipt, transmission and distribution of voices, sound signals, pictures, visual images, digital signals, telemetry or any other type of closed circuit transmission by means of electrical or light impulses, whether or not directed to originating signals or receiving signals off the air. However, such definition shall not include any separate system which serves only the residents of one or more apartment dwellings under common ownership, control or management, and commercial establishments located on the premises of such dwellings, upon approval of the City Engineer.
- (e) "Franchisee" means a person to whom a license has been issued pursuant to this chapter.
- (f) "Local gross revenues" means all gross revenues of the franchisee derived from cable services in the City, including installation fees, disconnect and reconnect fees, fees for transmission of broadcast signals and access and origination channels and revenue derived from per-program or per-channel charges, leased channel charges and advertising revenues.
- (g) "Local gross subscriber revenues" means all gross revenues of the franchisee derived from subscribers as computed in subsection (f) hereof, but does not include revenues from such sources as, but not limited to, advertising studio and equipment rental and engineering services not connected with subscriber service.
- (Ord. 175. Passed 7-21-81.)



**4 808.0 FRANCHISE REQUIRED.**

(a) No person shall construct, install, maintain or operate a cable communications system in the City or provide a cable communications service or acquire ownership or control of a cable communications company in the City without first obtaining a franchise therefor from the City. Such franchise shall be in the form of a franchise agreement between the City and the franchisee and shall include, at a minimum, compliance with this chapter.

(b) No person shall use, occupy or traverse City streets, alleys, lanes, avenues, boulevards, sidewalks, bridges, viaducts, right of ways or other public places or ways, or any extensions thereof or additions thereto, whether on, above or under the surface of the ground, for the purposes of installing, constructing, maintaining or operating a cable communications system or facilities therefor, or for the purpose of furnishing a cable communications service, without first obtaining a franchise therefor from the City. Such franchise shall be in the form of franchise agreement between the City and the franchisee and shall include, at a minimum, compliance with this chapter.

(c) The specifications required by this chapter are minimum requirements of a franchise agreement. Additional requirements, including, but not limited to, rates, charges, deposits, specifications regarding required interconnections, studios or other signal origination facilities, number of channels to be equipped and available for immediate use upon initial construction of the system, use of channels by the City, schools and other educational institutions, quality of community access, availability of equipment to users, required establishment and expansion of the service area, other use of channels and other specifications or requirements of a cable communications franchisee or system may be established in the franchise agreement.

(Ord. 175. Passed 7-21-81.)

**5 808.0 FRANCHISE APPLICATION; CONTENTS; FEES; ISSUANCE; TRANSFERS.**

(a) The application for a franchise to install, construct, maintain or operate a cable communications system in the City, or to furnish a cable communications service therein, shall be made in writing to Council in such form as may be prescribed; shall include a description and map of the territory in the City within which the cable communications system is to be installed, constructed, maintained or operated or the cable communications service is to be provided; shall be accompanied by a showing of the applicant's legal, financial, technical and other qualifications to be franchisee hereunder; and shall contain:

- (1) In establishing legal qualifications, if other than a single individual, a certified copy of the partnership agreement, articles of association or articles of incorporation, as the case may be, and if a foreign corporation, a certified copy of its authorization to do business in the State;
- (2) In establishing financial qualifications, a copy of applicant's current balance sheet as of a date not more than sixty days prior to the date of the application; if a loan or other credit arrangement is to be consummated to finance the establishment and operation of the proposed facilities, full particulars relative thereto, including the identity of the creditor;
- (3) In establishing technical qualifications, a statement of the arrangements to ensure the rendition of good service, including the type and kind of facilities to be employed, the technical standards to be followed, the maintenance and repair facilities to be used, the number and description of technical personnel, including copies of any contracts, agreements or arrangements relating to any of the matters set forth in this paragraph;
- (4) A statement as to the location of any antenna site and the location of the applicant's place of business in the City;
- (5) A statement as to any affiliated corporations or business organizations engaged in providing cable communications service or interlocking directorships or ownerships held by owners, officers or directors of the applicant with any other business engaged in providing cable communications service;
- (6) A detailed statement as to the arrangements and time table by which the applicant proposes to construct the cable communications facilities and system;
- (7) Information as to the following programming services and public services which it proposes to provide:
  - A. The off air signals to be carried initially;
  - B. The number of channels offered and the potential for diversified services to local government, educational institutions, community groups, householders and local commercial interests; and
  - C. Projected development of customer and community services, indicating priorities in development and estimated time schedules therefor;
- (8)

Cost estimates of development, installation and maintenance of the system, which items shall be deemed to include, but not be limited to, the proposed cost of acquisition of the system where approval of a transfer of the franchise has been requested;

- (9) Revenue forecasts for the next five years of service;
- (10) A proposed schedule of rates for installation charges. monthly service fees and relocation charges; and
- (11) Such other information as the City may request.

The application shall be accompanied by a fee of one thousand five hundred dollars (\$1,500), which fee shall be refunded if the applicant is not granted a franchise.

(b) Upon the filing of such an application and the payment of the fee as prescribed, Council shall consider the application and may request such additional information as it deems necessary to establish the legal, financial, technical and other qualifications of the applicant to provide a cable communications service in the City.

(c) If Council determines that the applicant possesses the necessary qualifications, legal, financial, technical and otherwise, to reasonably ensure the applicant's ability to satisfactorily install, construct, maintain or operate a cable communications system or to furnish a cable communications service to the public in the City, Council may issue to the applicant a nonexclusive franchise therefor. However, no franchise shall be issued until the franchise application has been on file in the office of the City Clerk and until Council has held a public hearing on such application, after due notice of the time and place of such hearing has been given the public.

(d) In determining whether or not such a franchise shall be issued, Council shall take into consideration, among other things, the technical qualifications of the applicant; the financial responsibility of the applicant; the ability of the applicant to perform efficiently the service for which the franchise is requested, including the prior experience, if any, of the applicant in providing cable communications systems or in furnishing cable communications service; the proposed rate schedule; the nature and scope of the applicant's proposed system; and the time table for development of the applicant's proposed system.

(e) No franchise granted under this chapter may be sold, transferred or assigned unless such transaction is first approved by the City, after receipt of a written application therefor containing the same information as to the transferee as would be required of an original applicant. Prior approval of the City shall be required where ownership or control of more than twenty-five percent of the right of control of the franchisee is acquired by a person or group of persons acting in concert, none of whom already owns or controls twenty-five percent or more of such right of control, singularly or collectively.

(f) No franchise granted under this chapter may be sold, transferred or assigned and not more than twenty-five percent of the right of control of the franchisee shall be transferred to a person or group of persons acting in concert, none of whom already owns or controls twenty-five percent or more of such right of control, singularly or collectively, until such sale, transfer or assignment of franchise or transfer of right of control has been offered to the City or to a person approved by the City. Such offer shall be made at a price not greater than, and on terms equivalent to, that made to the offeror by a bona fide bidder for such franchise or right of control. The City or the person approved by the City shall accept or reject the offer within ninety days. This provision shall not be deemed to restrict the transfer by bequest or descent of stock of the franchisee. (Ord. 175. Passed 7-21-81.)

#### **6 808.0 NONEXCLUSIVE FRANCHISE; TERM; FORM.**

Any franchise issued pursuant to this chapter shall be a nonexclusive franchise for a term of years, not to exceed fifteen years, as the City may approve, and shall be issued in such form as shall be determined by the City. (Ord. 175. Passed 7-21-81.)

#### **7 808.0 FRANCHISE FEES; RECORDS.**

(a) During the term of any franchise granted pursuant to this chapter, the person granted such franchise shall pay to the City, for the use of its streets, public places and other facilities; for the maintenance, improvement and supervision thereof; and for the regulation of activities required by virtue of the franchise, an annual franchise fee of three percent of all local gross subscriber revenues. The City shall be furnished a statement with each payment, certified as correct by the franchisee, which statement shall be filed with the City not later than March 15 of each calendar year. Such statement shall be for the entire prior calendar year, prepared by a certified public accountant, indicating the annual local gross revenues and local gross subscriber revenues. All statements shall reflect the total amount of local gross revenues and the charges, deductions and computations for the period covered by the statement.

(b) Such franchise fee shall be paid annually on or before the last day of the third month following the close of each calendar year, at the office of the City Treasurer during regular business hours. If the City Treasurer's office is closed on such day, then payment shall be made during regular business hours on the next business day.

(Ord. 199. Passed 6-2-87.)

## **8 808.0 CONSTRUCTION OF FACILITIES.**

(a) A franchise granted pursuant to this chapter shall confer upon the grantee named therein the nonexclusive right to erect, install, construct, reconstruct, replace, remove, repair, maintain and operate in, upon, under, above and across the streets, avenues, highways, sidewalks, bridges, other public ways, easements and right of ways, as existing as of the date of the grant of such franchise and all subsequent extensions thereof and additions thereto, in and belonging to the City, all necessary towers, poles, wires, cables, coaxial cables, transformers, amplifiers, underground conduits, manholes and other television and/or radio conductors, equipment and fixtures for the installation, construction, maintenance and operation of a cable communications system (including audio, video and radio signals) or for the furnishing of a cable communications service.

(b) Prior to the erection or installation of towers, poles, guys, anchors, underground conduits, manholes or fixtures for use in connection with the installation, construction, maintenance or operation of a cable communications system under a franchise granted pursuant to this chapter, the grantee of a franchise desiring to erect or install such facilities for use in connection with its cable communications system shall first submit to the City, for review and approval, a concise description of the facilities proposed to be erected or installed, including engineering drawings, if requested or required, together with a map indicating the proposed location of such facilities. No erection or installation of any tower, pole, guy, anchor, underground conduit, manhole or fixture for use in a cable communications system shall be commenced by any person until approval therefor has been received from the City. Such approval shall not be unreasonably withheld.

(c) Any person accepting a franchise pursuant to this chapter and erecting or installing towers or poles shall, upon written request by the City, grant the City reasonable attachment space upon such towers or poles without a rental charge for the attachment of wire or cable owned and used by the City. However, the City shall pay any costs incurred by such person in providing attachment space to the City, including all necessary costs of rearrangement of such person's wires, cables or equipment and tower or pole replacement cost for a larger tower or pole, if required.

(d) Upon expiration, termination or revocation of any such franchise, or if any person wishes to otherwise dispose of any tower or pole erected or installed for use in connection with a cable communications system, the City retains the first right and option to purchase in place such towers or poles as it may require for their fair value based upon reproduction costs less observed depreciation. Further, upon the expiration, termination or revocation of any such franchise, title to all underground conduits and manholes erected or installed and an automatic assignment of all easements related thereto obtained for use in a cable communications system under the rights conferred in this chapter shall pass to the City under its control over its streets, alleys and public right of ways to protect them from things injurious and dangerous to the public.

(e) In areas or portions of the City where transmission or distribution facilities of public utilities providing telephone service and electric service are underground, or may be placed underground when installed, any person granted a franchise pursuant to this chapter shall likewise install, construct, maintain and operate its transmission and distribution facilities underground to the maximum extent feasible and permitted by existing technology and conditions, subject to the approval of the City as provided in subsection (b) hereof.

(f) All construction, installations, maintenance and operation of any cable communications system or of any facilities employed in connection therewith shall be in compliance with the National Electrical Safety Code, as prepared by the National Bureau of Standards, the National Electrical Code of the National Fire Protection Association, the Shiawassee Telephone Company's Code of Pole Line Construction or some other comparable code of pole line construction, standards issued by the Federal Communications Commission or other Federal or State regulatory agencies in relation thereto and applicable regulations of public utilities operating in the City. Every cable communications system installed, constructed, maintained or operated in the City shall be so designed, constructed, installed, maintained and operated so as not to endanger or interfere with the safety of persons or property in the City.

(g) Any opening or obstruction in, disturbance of or damage to the streets, alleys, public right of ways or public places by any person in the exercise of any right granted pursuant to this chapter shall be properly guarded by adequate barriers, lights, signals and warnings so as to prevent danger to any person or vehicle using such streets, alleys, public right of ways or public places, and shall be properly and promptly repaired in a manner specified and approved by the City, at such person's expense.

(h) Any person owning or maintaining a cable communications system or facilities therefor in or on the streets, alleys, public right of ways or public places in the City shall, at his or her expense and without reimbursement from the City, upon request of the City, protect, support, temporarily disconnect, relocate or remove from the street, alley, public right of way or public place any property of such person when required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines or tracks, the construction or change of the transmission of distribution facilities of any telephone or electric public utility or other public improvements. Any such person shall also, at the request of any private party holding an appropriate permit issued by the City, temporarily raise or lower its cable communication transmission or distribution wires or cables to permit the moving of any building or other structure, provided that the actual expense of such temporary raising or lowering shall be paid in full by the party requesting the same.

(i) If any person fails to commence, pursue or complete any work required by law or by this chapter to be done in any street, alley, public right of way or public place as designated by the City, the City may cause such work to be done, and such person shall pay to the City the cost thereof within thirty days of the receipt of an itemized statement of such cost.

(j) The grantee shall secure, by fee or by easement, necessary right of ways not under City jurisdiction.  
(Ord. 175. Passed 7-21-81.)

## **9 808.0 STANDARDS OF SERVICE.**

(a) Any cable television company granted a franchise pursuant to this chapter shall furnish reasonably adequate service and facilities to the public, and its cable television system shall be installed, constructed, maintained and operated in accordance with the accepted standards of the industry, in conformity with the state of the art and any standards of operation or maintenance for a cable television system which may be established or issued by the Federal Communications Commission. It is the intention of the Cable Communications Commission that any person granted a franchise to furnish a cable television service to the public in the City shall possess the financial and technical qualifications necessary to provide a cable television system which will ensure its subscribers high quality service.

(b) Every cable television system franchised under this chapter shall have at least 300 MHZ of bandwidth (the equivalent of thirty-five television broadcast channels) available for immediate or potential use for the totality of cable services to be offered. However, a minimum of twelve such channels shall be equipped and available for immediate use on the initial construction of the system. Six or more additional available channels shall be available at the option of the subscriber. Such system shall possess the capability for the reception and distribution of quality FM broadcasts. A minimum of twenty such channels shall be equipped for use at such time as the system commences service to 1,000 or more subscribers.

(c) Every such cable television system shall maintain a plant having technical capacity for return communications, nonvoice and voice, on all parts of the system.

(d) Every such cable television system shall maintain and make available without charge such public access channels, education access channels, local government access channels and leased access channels as may from time to time be designated, established, required or regulated by the rules and regulations of the Federal Communications Commission, including the expansion of access capacity as may be required to fulfill the needs for such access channels pursuant to the rules and regulations of the Federal Communications Commission, and shall comply with all applicable rules, standards or requirements of the Federal Communications Commission or other Federal or State agencies or commissions which may have jurisdiction over the grantee.

(e) Every such cable television system shall maintain such capacity, capability and technical standards as will enable it to interconnect with any other cable television system located in any adjacent community.

(Ord. 175. Passed 7-21-81.)

**10 808. DETERMINATION OF RATES AND CHARGES.**

(a) No cable communications company shall make any unjust or unreasonable discrimination in rates, charges, classifications, promotions, practices, regulations, facilities or services for or in connection with like services. No cable communications company shall subject any person to any prejudice or disadvantage in any respect whatsoever. However, this shall not be deemed to prohibit the establishment of a graded scale of charges and classification of rates to which any subscriber coming within such classification shall be entitled.

(b) No rate or charge for installation or basic cable communications service provided in the City shall be effective, nor shall any cable communications company advertise, collect or receive any rate or charge for its services, until it has filed a complete schedule of rates and charges as provided in Sections 808.22 et seq. and until such initial rates and charges have been approved as provided in Sections 808.22 et seq. The charges made for services of the franchisee hereunder shall be fair, reasonable and not higher than necessary to meet all costs of the service (assuming efficient and economical management), and shall provide a fair return to the franchisee. The franchisee shall receive no consideration whatsoever for its service other than in accordance with this section, Sections 808.22 et seq. or the franchise agreement, without the approval of Council. The applicant for a franchise shall include in its application its proposed rates, charges and deposits.

(c) No cable communications company may increase any rate or charge for cable communications service contained in its filed schedule, or alter any classification, contract, rule, regulation or practice as to result in any increase in its schedule of rates or charges for such service, without first filing such new increased rate or charge or alteration in its classification, contract, rule, regulation or practice with the City Clerk, as provided for in Sections 808.22 et seq., at least thirty days before such proposed increase is proposed to become effective, accompanied by a notice and proof of publication thereof for at least one insertion in a newspaper of general circulation in the City, which notice shall state the increase proposed. Whenever a cable communications company files with the City Clerk a schedule or notice increasing any rate or charge then in effect, Council shall proceed as provided for in Sections 808.22 et seq. The cost of such publication and public hearing shall be borne by the franchisee. The cable communications company shall have the burden of proof to establish the reasonableness and lawfulness of the proposed increase in its rates and charges. (Ord. 175. Passed 7-21-81; Ord. 227. Passed 9-22-93.)

**11 808. FREE SERVICE TO CITY BUILDINGS AND LIBRARIES;  
EMERGENCIES.**

(a) Every cable communications company furnishing service in the City shall, without charge for installation or service, provide one installation of its cable communication service to each department of the City and to each fire and police station in the City, and shall, without charge, provide cable communications service to each public educational building and public library (including any constructed after the grant of the franchise) within the franchisee's current service area.

(b) Every cable communications company providing service in the City shall make its cable system available without charge to the City, the County, the State, the United States and emergency operations agencies for the prompt and simultaneous communication to subscribers and the public of any information resulting from or required by war, threat of war, natural catastrophe, riot or insurrection, necessary to save or protect life or property.

(Ord. 175. Passed 7-21-81.)

**12 808. BOND; INSURANCE; NONLIABILITY OF CITY.**

(a) Every cable communications company shall, within thirty days of the grant of a franchise to it pursuant to this chapter, file with the City Clerk, and at all times thereafter maintain in full force and effect for the term of the franchise, at its expense, a corporate surety bond or such other surety arrangement as the City may approve in the amount of twenty-five thousand dollars (\$25,000), conditioned upon the faithful performance by such cable communications company of its obligations under its franchise as herein set forth, and upon the further condition that if such cable communications company fails to comply with any of the provisions of this chapter, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the City as a result thereof, including the full amount of any compensation, indemnification or cost of removal of any property of such cable communications company as provided in this chapter, plus attorney's fees and costs, up to the full amount of the bond. Such condition shall be a continuing obligation for the duration of any franchise granted under this chapter and any renewal thereof, and thereafter until such cable communications company has liquidated all of its obligations to the City which may have arisen under the

franchise or from the exercise of any privilege or right granted thereby. Any bond provided under this section shall provide that at least thirty days prior notice of any intention to not renew, to cancel or to make a material change therein shall be filed with the City. Nothing herein shall be construed to excuse faithful performance by any cable communications company or in any way to limit its liability for damages or otherwise. The bond required hereunder may be reduced by Council in face amount to ten thousand dollars (\$10,000) at such time as the franchise is actively providing cable communications service to 500 or more subscribers in the City. Such reduction shall not be deemed a material change in the bond.

(b) Any cable communications company, within thirty days of the grant of a franchise pursuant to this chapter, shall file with the City Clerk, in addition to the bond as set forth in subsection (a) hereof:

- (1) Proof of a general comprehensive liability insurance policy and an automobile liability insurance policy issued by companies licensed to do business in the State, protecting the City and its officers, boards, commissions, agents and employees against liability for loss or damage for personal injury, death and property damage occasioned by the installation, construction, maintenance or operation of a cable

communications system in the City, with minimum liability limits of five hundred thousand dollars (\$500,000) for personal injury or death of any one person and one million dollars (\$1,000,000) for personal injury or death of two or more persons in any one occurrence, and five hundred thousand dollars (\$500,000) for damages to property resulting from any one occurrence. Such policy shall contain a provision that written notice of cancellation or material change or reduction in coverage shall be given the City Clerk at least thirty days in advance of the effective date thereof.

- (2) Proof of adequate insurance as required by the State Worker's Compensation Law applicable to it.

(c) No franchise hereunder shall be effective until the provisions of subsections (a) and (b) hereof have been fully complied with. Failure to file the bond, proof of general comprehensive liability insurance, proof of automobile liability insurance, and proof of adequate worker's compensation insurance, or any of them, as required by subsections (a) and (b) hereof, with the City Clerk within thirty days after the grant of a franchise, shall render the franchise null and void without notice or further proceedings.

(d) The franchisee shall indemnify and hold harmless the City at all times during the term of the franchise granted hereby and shall specifically pay all damages and penalties which the City may be legally required to pay as a result of granting the franchise. Such damages and penalties shall include, but not be limited to, damages arising out of the installation, operation or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by the franchise, and the cost of repair or replacement of streets, alleys, bridges and other public places and ways as shall arise from the construction or maintenance of the CATV system. If suit shall be filed against the City, either independently or jointly with the franchisee, to recover for any claim or damages, the franchisee, upon notice to it by the City, shall defend the City against the action. In the event of a final judgment being obtained against the City, either independently or jointly with the franchisee, solely by reason of the acts of the franchisee, the franchisee will pay the judgment and all costs and shall hold the City harmless therefrom.

(Ord. 175. Passed 7-21-81.)

**13 808. EXPIRATION, REVOCATION, TERMINATION OR SURRENDER OF FRANCHISE.**

(a) Any franchise granted pursuant to this chapter shall expire without further proceedings one year after its effective date if the person granted such franchise has not commenced construction of a cable communications system within such period.

(b) If any person granted a franchise pursuant to this chapter fails to provide cable communications service within and throughout the franchise area as required under the franchise agreement, such franchise shall, on the anniversary of the effective date of such franchise next following the twelve-month period during which cable communications service has not been extended as required under the franchise agreement, be deemed revoked without the necessity of Council action, unless prior to such date, such person shall have applied to Council and Council shall have, for good cause shown, granted an extension of the construction or service periods set forth in the franchise agreement.

(c) Any franchise granted pursuant to this chapter shall be terminated and cancelled without further proceedings 120 days after the appointment of a receiver or trustee to take over and conduct the business of a cable communications company, whether in receivership, reorganization, bankruptcy or other action or proceedings, unless such receivership or trusteeship shall have been vacated prior to the expiration of such period. However, such receiver or trustee may apply for a transfer or assignment of such franchise, as provided in Section 808.05(e), within sixty days of the appointment of such receiver or trustee, if duly approved by the court having jurisdiction in the premises. In case of a foreclosure or other judicial sale of the plant, property or facilities of a cable communications company, with or without the appointment of a receiver or trustee, including or excluding the franchise granted under this chapter, such franchise as granted will be terminated and cancelled without further proceedings upon thirty days written notice of termination served upon the cable communications company and the purchaser thereof, unless within such thirty days the purchaser applies to the City for a transfer or assignment to it of the same as provided in Section 808.05(e).

(d) Any franchise granted pursuant to this chapter is revocable by the City prior to its expiration where the cable communications company has become insolvent or has failed substantially to comply with any provision or requirement of State or Federal law or this chapter, the representations made in its franchise application or the provisions of its franchise agreement, or has failed to apply to the Federal Communications Commission for a certificate of compliance with sufficient promptness to avoid interruption or delay in service required by the franchise agreement. The City may give a written notice containing full particulars as to the provision or requirement with which compliance is claimed deficient and may allow such cable communications company sixty days to comply. At the expiration of such sixty days, such franchise will be deemed terminated and revoked unless such cable communications company shall request a hearing before Council upon its alleged failure to substantially comply with this chapter. Such hearing shall be public with the cable communications company being permitted to fully participate therein, including the right to introduce testimony and exhibits and to examine and cross-examine witnesses. The hearing shall be recorded, and at the conclusion thereof, Council, if it finds that the cable communications company has not substantially complied with this chapter, may terminate and revoke the franchise. Such cable communications company shall have the same rights of an appeal from an adverse decision as are granted by the statutes of the State for appeals from the actions of administrative agencies.

(e) Any person granted a franchise pursuant to this chapter may surrender it upon written notice of intent to surrender its franchise filed with the City Clerk not less than sixty days prior to the surrender date. On the surrender date specified in such notice, all rights, privileges and authority under such franchise shall terminate, provided that such person shall have six months thereafter to remove its towers, poles, wires, cables, fixtures or other facilities from the streets, alleys, public right of ways or public places, subject to the rights of the City as set forth in Section 808.08(d). At the expiration of such six months, any property not removed by such person shall become the property of the City to do with as it may choose. Any cost to the City in removing such property from its streets, alleys, public right of ways or public places shall be claimed against such person under the performance bond required under Section 808.12(a). (Ord. 175. Passed 7-21-81.)

**14 808. TIME LIMIT FOR CONSTRUCTION.**

(a) Any person granted a franchise pursuant to this chapter shall commence construction or installation of its cable communications system within sixty days after issuance of a certificate of compliance by the Federal Communications Commission, if such a certificate is required, otherwise within sixty days after execution of the franchise agreement. Construction or installation of such cable communications system shall be completed within eighteen months after the execution of the franchise agreement or after the issuance of a certificate of compliance by the Federal Communications Commission, if such certificate is required.

(b) Any person granted such a franchise shall complete construction within such areas and within such periods as are designated in the franchise agreement. Any such person who is unable to construct according to this section for good cause shall notify Council, in writing, within thirty days of the occurrence of any delay or interruption of construction of more than fifteen working days duration, which interruption or delay would affect its inability to construct according to schedule. (Ord. 175. Passed 7-21-81.)

**15 808. COMPLAINTS; HEARINGS; BUSINESS OFFICE.**

(a) Council or any person, department or commission designated by it may, upon its own motion or upon complaint of any person or subscriber of a cable communications company, hear and determine all complaints concerning the rates, charges, rules, regulations, practices, quality of service rendered or refused to be rendered, equipment furnished or refused to be furnished or any other matter relating to the service or operation of the cable communications system or any person franchised under this chapter.

(b) Upon the filing of any complaint against any person pursuant to subsection (a) hereof, at least twenty days notice of the time and place of a hearing shall be given such person upon the matters alleged in the complaint. Council or its designee may order such changes in the rates, charges, rules, regulations, services, equipment or other matters relating to the service or operation of the cable communications company as in its judgment, based upon the record of the hearing and findings of fact made thereon, appear to be just, reasonable and lawful.

(c) Every person granted a franchise pursuant to this chapter shall have a business office located in the City, suitably staffed, for the purpose, among others, of receiving and investigating complaints, dealing with it subscribers, receiving payment for service and otherwise conducting business, unless otherwise provided in the franchise agreement. The requirement that the franchise shall locate a business office in the City may be waived by Council in the franchise agreement. (Ord. 175. Passed 7-21-81.)

**16 808. INTERPRETATION OF FRANCHISE.**

Any right or privilege granted to any person under this chapter to use or occupy any street, alley, public right of way or public place shall be subordinate to any prior lawful occupancy of such property. Nothing in this chapter shall be construed as limiting the City in any way in the lawful exercise of its police power. The grant of a franchise to any person as provided in this chapter shall confer no right, privilege or exemption not specifically presented therein. (Ord. 175. Passed 7-21-81.)

**17 808. SURRENDER OF OTHER FRANCHISES.**

By the application for and acceptance of a franchise pursuant to this chapter, a cable communications company agrees that upon subsequent additions of areas to the City, either by annexation, consolidation or otherwise, all franchises and/or licenses held by it to provide a cable communications service or to install, construct, maintain or operate a cable communications system in such areas shall be surrendered. Any rights or privileges in streets, alleys, public right of ways or public places to install, construct, maintain or operate a cable communications system or to furnish a cable communications service in such areas as may subsequently be added to the City by annexation, consolidation or otherwise shall thereafter be subject to and authorized by this chapter. (Ord. 175. Passed 7-21-81.)

**18 808. REPORTS; MAPS.**

Every cable communications company shall file annually with the City a current map showing the exact location of the transmission and distribution facilities and equipment in the City used by it in providing cable communications service. Such company shall prepare and furnish the City, on written request therefor, at such times and in such form as may be prescribed, such reports as to its operations, finances, facilities and activities as may be reasonably necessary to enable the City to perform its obligations, functions and duties under this chapter. (Ord. 175. Passed 7-21-81.)

**19 808. RIGHTS OF CITY.**

Any franchise granted under this chapter is made subject to all applicable provisions of law relating to the City and ordinances thereof, and specifically subject to the rights and powers of the City and limitations upon the cable communications company holding such franchise as are set forth in the statutes of the State pertaining to local government, which statutes are herein incorporated by reference. Such cable communications company shall abide by and be bound by such rights, powers and limitations.

(Ord. 175. Passed 7-21-81.)

**20 808. LIABILITY FOR DAMAGES.**

Any person granted a franchise pursuant to this chapter shall have no recourse whatsoever against the City or its officers, boards, commissions, agents or employees for any loss, cost, expense or damage arising out of any requirement of this chapter or the enforcement thereof.

(Ord. 175. Passed 7-21-81.)

**21 808. CABLE COMMUNICATIONS COMMISSION.**

There is hereby established in and for the City a Cable Communications Commission.

The Commission shall consist of five residents of the City, appointed by the Mayor or the City Manager, with the approval of Council. Each member shall serve a term of three years, provided that for the first Commission, two members shall be appointed for three years, two members for two years and one member for one year. Any vacancy in the office shall be filled by appointment for the remainder of the term. No employee of or person with ownership interest in a cable television franchise granted pursuant to this chapter shall be eligible for membership on the Commission. Members of the Commission shall serve without pay.

The Commission, in addition to the functions and responsibilities that Council, the Mayor or the City Manager may delegate from time to time by resolution, shall review plans and suggest and assist in the development of locally originated programs. (Ord. 184. Passed 3-1-83.)

### **RATE REGULATION**

#### **22 808. DEFINITIONS.**

For purposes of Sections 808.22 et seq.:

- (a) "Act" means the Communications Act of 1934, as amended (and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385), and as may be amended from time to time.
- (b) "Associated equipment" means all equipment and services subject to regulation pursuant to 47 CFR 76.923.
- (c) "Basic cable service" means "basic service," as defined in the FCC Rules, and any other cable television service which is subject to rate regulation by the City pursuant to the Act and the FCC Rules.
- (d) "FCC" means the Federal Communications Commission.
- (e) "FCC Rules" means all rules of the FCC promulgated from time to time pursuant to the Act.
- (f) "Increase in rates" means an increase in rates or a decrease in programming or customer services.

All other words and phrases used in Sections 808.22 et seq. shall have the same meanings given in the Act and the FCC Rules.

(Ord. 227. Passed 9-22-93.)

#### **23 808. PURPOSE; IMPLEMENTATION AND INTERPRETATION.**

The purpose of Sections 808.22 et seq. is to:

- (a) Adopt regulations consistent with the Act and the FCC Rules with respect to basic cable service rate regulation; and
- (b) Prescribe procedures to provide a reasonable opportunity for consideration of the views of interested parties in connection with basic cable service rate regulation by the City.

This chapter shall be implemented and interpreted consistent with the Act and the FCC Rules.

(Ord. 227. Passed 9-22-93.)

#### **24 808. COMPLIANCE WITH FCC RULES.**

In connection with the regulation of rates for basic cable service and associated equipment, the City shall follow all FCC Rules.

(Ord. 227. Passed 9-22-93.)

**25 808. FILING OF RATE SCHEDULES OR INCREASES BY OPERATORS; PROMULGATION OF RULES AND REGULATIONS BY COUNCIL; ADDITIONAL INFORMATION; PROOF OF COMPLIANCE WITH LAW.**

(a) A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the Act and the FCC Rules. The cable operator shall include, as part of its submission, such information as is necessary to show that its schedule of rates or its proposed increase in rates complies with the Act and the FCC Rules. The cable operator shall file ten copies of the schedule of rates or proposed increase in such rates with the City Clerk. For purposes of this chapter, the filing of the cable operator shall be deemed to have been made when at least ten copies have been received by the City Clerk. Council may, by resolution or otherwise, adopt rules and regulations prescribing the information, data and calculations which must be included as part of the cable operator's filing of the schedule of rates or proposed increase in such rates.

(b) In addition to information and data required by rules and regulations of the City adopted pursuant to subsection (a) hereof, a cable operator shall provide all information requested by the Mayor in connection with the City's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in such rates. The Mayor may establish deadlines for submission of the requested information, and the cable operator shall comply with such deadlines.

(c) A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the Act and the FCC Rules, including, without limitation, 47 USC 543 and 47 CFR 76.922 and 76.923.

(Ord. 227. Passed 9-22-93.)

**26 808. SUBMISSION OF PROPRIETARY INFORMATION; CONFIDENTIALITY.**

(a) If this chapter, any rules or regulations adopted by the City pursuant to Section 808.25(a), or any request for information pursuant to Section 808.25(b), requires the production of proprietary information, the cable operator shall produce the information. However, at the time the allegedly proprietary information is submitted, a cable operator may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be

treated as proprietary and the facts that support such reason. The request for confidentiality will be granted if the City determines that the preponderance of the evidence shows that nondisclosure is consistent with the provisions of the Freedom of Information Act, 5 USC 552. The City shall place in a public file for inspection any decision that results in information being withheld. If the cable operator requests confidentiality and the request is denied:

- (1) Where the cable operator is proposing a rate increase, it may withdraw the proposal, in which case the allegedly proprietary information will be returned to it; or
- (2) The cable operator may seek review within five working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

(b) Any interested party may file a request to inspect material withheld as proprietary with the City. The City shall weigh the policy considerations favoring nondisclosure against the reasons cited for permitting inspection in light of the facts of the particular case. It will then promptly notify the requesting entity and the cable operator that submitted the information as to the disposition of the request. It may grant, deny or condition a request. The requesting party or the cable operator may seek review of the decision by filing an appeal with any appropriate forum. Disclosure will be stayed pending resolution of any appeal.

(c) The procedures set forth in this section shall be construed as analogous to, and consistent with, the rules of the FCC regarding requests for confidentiality, including, without limitation, 47 CFR 0.459.

(Ord. 227. Passed 9-22-93.)

**27 808. PUBLIC NOTICE OF RATE SCHEDULES OR INCREASES;  
NOTICE TO OPERATORS OF INITIAL REVIEW BY COUNCIL.**

Upon the filing of ten copies of the schedule of rates or the proposed increase in rates pursuant to Section 808.25(a), the City Clerk shall publish a public notice in a newspaper of general circulation in the City which shall state that:

- (a) The filing has been received by the City Clerk and (except for those parts which may be withheld as proprietary) is available for public inspection and copying; and
- (b) Interested parties are encouraged to submit written comments on the filing to the City Clerk not later than seven days after the public notice is published.

The City Clerk shall give notice to the cable operator of the date, time and place of the meeting at which the City Council shall first consider the schedule of rates or the proposed increase of such rates. This notice shall be mailed by first-class mail at least three days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase of such rates is prepared for consideration of the City Council, then the City Clerk shall mail a copy of the report by first-class mail to the cable operator at least three days before the meeting at which the City Council shall first consider the schedule of rates or the proposed increase of such rates.

(Ord. 227. Passed 9-22-93.)

**28 808. EFFECTIVE DATE OF RATES; ISSUANCE OF TOLLING ORDERS BY COUNCIL; SUBMISSION OF ADDITIONAL INFORMATION BY OPERATORS; PUBLIC HEARINGS; NOTICE.**

(a) After a cable operator has filed its existing schedule of rates or a proposed increase in such rates, the existing schedule of rates will remain in effect or the proposed increase in such rates will become effective after thirty days from the date of filing under Section 808.25(a), unless the City Council (or another properly authorized body or official) tolls the thirty-day deadline pursuant to 47 CFR 76.933 by issuing a brief written order, by resolution or otherwise, within thirty days of the date of filing. The City Council may toll the thirty-day deadline for an additional ninety days in cases not involving cost-of-service showings and for an additional 150 days in cases involving cost-of-service showings.

(b) If a written order has been issued pursuant to subsection (a) hereof and 47 CFR 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in such rates, the cable operator shall submit to the City any additional information required or requested pursuant to Section 808.25(b). In addition, the City Council shall hold a public hearing to consider the comments of interested parties within the additional ninety-day or 150-day period, as the case may be. The City Clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the City which shall state:

- (1) The date, time and place at which the hearing shall be held;
- (2) That interested parties may appear in person, by agent or by letter at such hearing to submit comments on, or objections to, the existing rates or the proposed increase in such rates; and

- (3) That copies of the schedule of rates or the proposed increase in such rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the office of the City Clerk.

The public notice shall be published not less than fifteen days before the hearing. In addition, the City Clerk shall mail, by first-class mail, a copy of the public notice to the cable operator not less than fifteen days before the hearing. (Ord. 227. Passed 9-22-93.)

**29 808. REPORTS TO COUNCIL; WRITTEN RESPONSES BY OPERATORS.**

Following the public hearing provided for in Section 808.28, the Mayor shall cause a report to be prepared for the City Council which shall include (based on the filing of the cable operator, the comments or objections of interested parties, the information requested from the cable operator and its response, the staff or consultant's review and other appropriate information) a recommendation for the decision of the City Council provided for in Section 808.30. The City Clerk shall mail a copy of the report to the cable operator by first-class mail not less than twenty days before the City Council acts under Section 808.30. The cable operator may file a written response to the report with the City Clerk. If at least ten copies of the response are filed by the cable operator with the City Clerk within ten days after the report is mailed to the cable operator, the City Clerk shall forward it to Council.

(Ord. 227. Passed 9-22-93.)

**30 808. ISSUANCE OF ORDERS BY COUNCIL.**

The City Council shall issue a written order, by resolution or otherwise, which, in whole or in part, approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase in such rates, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase in such rates to become effective subject to refund, or orders other appropriate relief, in accordance with the FCC Rules. If the City Council issues an order allowing the existing rates or proposed increase in such rates to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR 76.933. The order specified in this section shall be issued within ninety days of the tolling order provided for in Section 808.28(a) in all cases not involving a cost-of-service showing. The order shall be issued within 150 days after the tolling order provided for in Section 808.28(a) in all cases involving a cost-of-service showing.

(Ord. 227. Passed 9-22-93.)

**31 808. REFUNDS TO SUBSCRIBERS; NOTICE.**

The City Council may order a refund to subscribers as provided in 47 CFR 76.942. Before the City Council orders any refund to subscribers, the City Clerk shall give at least seven days written notice to the cable operator by first-class mail of the date, time and place at which the City Council shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent or by letter, at such time for the purpose of submitting comments to Council.  
(Ord. 227. Passed 9-22-93.)

**32 808. WRITTEN DECISIONS OF COUNCIL; EFFECTIVE DATE; NOTICE; MAILING OF COPY TO CABLE OPERATOR.**

Any order made by the City Council pursuant to Section 808.30 or 808.31 shall be in writing, shall be effective upon adoption by the City Council and shall be deemed released to the public upon adoption. The City Clerk shall publish a public notice of any such written order in a newspaper of general circulation within the City, which shall:

- (a) Summarize the written decision; and
- (b) State that copies of the text of the written decision are available for inspection or copying from the office of the City Clerk.

In addition, the City Clerk shall mail a copy of the text of the written decision to the cable operator by first-class mail.  
(Ord. 227. Passed 9-22-93.)

**33 808. PROMULGATION OF ADDITIONAL RULES AND REGULATIONS BY COUNCIL.**

In addition to rules promulgated pursuant to Section 808.25, the City Council may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the Act and the FCC Rules.  
(Ord. 227. Passed 9-22-93.)

**34 808. FAILURE TO GIVE NOTICE OR TO MAIL COPIES OF REPORTS.**

The failure of the City Clerk to give the notices or to mail copies of reports as required by this chapter shall not invalidate the decisions or proceedings of the City Council.  
(Ord. 227. Passed 9-22-93.)

**35 808. ADDITIONAL PUBLIC HEARINGS.**

In addition to the requirements of this chapter, the City Council may hold additional public hearings upon such reasonable notice as the City Council, in its sole discretion, shall prescribe.

(Ord. 227. Passed 9-22-93.)

**36 808. ADDITIONAL POWERS OF CITY.**

The City shall possess all powers conferred by the Act, the FCC Rules, the cable operator's franchise and all other applicable laws. The powers exercised pursuant to the Act, the FCC Rules and this chapter shall be in addition to powers conferred by law or otherwise. The City may take any action not prohibited by the Act and the FCC Rules to protect the public interest in connection with the basic cable service rate regulation.

(Ord. 227. Passed 9-22-93.)

**37 808. FAILURE TO COMPLY; REMEDIES; REVOCATION OR DENIAL OF RENEWAL OF CONSENT AGREEMENTS.**

The City may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided under a cable operator's consent agreement with the City) for failure to comply with the Act, the FCC Rules, any orders or determinations of the City pursuant to this chapter, any requirements of this chapter or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC Rules, any orders or determinations of the City pursuant to this chapter, any requirements of this chapter, or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of renewal of a cable operator's consent agreement.

(Ord. 227. Passed 9-22-93.)

**38 808. CONFLICT OF LAWS.**

In the event of any conflict between a provision of this chapter and a provision of any prior ordinance or any franchise, permit, consent agreement or other agreement with a cable operator, the provision of this chapter shall control. (Ord. 227. Passed 9-22-93.)

**808.99 PENALTY.**

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)