



Article 10

Regulation of Businesses and Franchises

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Chapter 10.1 Introduction to Article 10

10.1.10 Purpose of this Article

The purpose of this Article is to outline procedures related to the regulation of certain businesses and franchises in the City of La Habra Heights.



Chapter 10.2 Regulation and Business Licensing

10.2.10 Purpose of this Chapter

The purpose of this Chapter is to establish regulations that govern Business Licenses in the City of La Habra Heights.

10.2.20 Business License Requirements

The following Business License requirements are applicable in the City of La Habra Heights:

1. No person as principal, agent, employee, officer or otherwise, shall commence or carry on any *business* within the City, without having first:
 - A. Applied for and received a business license specifying such *business*;
 - B. Paid all applicable application and license fees;
 - C. Obtained any permit required by the City; and
 - D. Paid any permit fee required.
2. In particular, the following businesses are considered to be regulated *businesses* and must obtain a Business License from the City of La Habra Heights:
 - a. Home security services (including alarm installation services).
 - b. Animal grooming and other related activities that conduct on-site services.
 - c. Landscaping contractors and maintenance services.
 - d. Architects and designers, engineers, landscape architects or designers and other persons involved in design of development.
 - e. Contractors including building, plumbing, electrical, heating, and other similar service providers.
 - f. Handyman and household repair service providers.
 - g. Any business that requires a Home Occupation Permit.
2. It is unlawful for any person, other than an employee of a person possessing a valid Business License from the City, to engage in *business* in the City without having first procured a Business License from the City.
3. It is unlawful for any person required to obtain a Business License from the City to retain the services of an independent contractor unless the independent contractor shall have first procured a Business License from the City.
4. The City Manager shall approve or deny an Application for a Business License.



10.2.30 Separate License Required for Each Location

For each *business* operating from a fixed location, a separate license certificate shall be obtained for each separate branch, establishment or location of the *business*. Each license certificate shall authorize the licensee to engage only in the *business* licensed at the location and in the manner designated on the Business License.

10.2.40 Denial of Business Application

The City Manager shall deny an application for a license certificate for the calendar year in which the application is made if it is found that the person or *business* submitting the application has violated other sections of this Code in addition to having failed to obtain a license certificate prior to the start of the *business* activity. The Applicant has the right of appeal pursuant to Article 8 of this Municipal Code.

10.2.50 Exempt Activities

The provisions of this Chapter shall not be deemed or construed to require a Business License or the payment of a license fee for the following:

- A. **Charitable Activities.** The conducting, managing or carrying on of any *business*, occupation or activity for charitable or educational purposes by any organization that presents proof of its designation as a tax-exempt organization for charitable purposes in a form which is satisfactory to the City Manager.
- B. **Minor Students.** The conducting of a *business*, otherwise permitted by City ordinance, by youth, under the age of eighteen (18) years, and living in the City.
- C. **Homeowners association.** Any bona fide homeowners association.

The following *businesses* and organizations shall be required to obtain a Business License and any necessary permits, but shall not be required to pay a Business License fee:

- A. **Auctioneers.** Any person arranging, managing, sponsoring or carrying out of an auction sale of goods, wares, merchandise or any real or personal property, provided that such person be licensed with the State of California.
- B. **City Contractors.** Any individual whose only *business* within the City is contracting with the City to perform personal services, including, but not limited to, teaching classes, providing temporary support services or maintenance services.

10.2.60 Transfer and Assignment

No Business License shall, in any manner, be transferred or assigned, nor shall it authorize any person other than the licensee or the licensee's employees therein named to engage in *business*.

10.2.70 Display of Business License

Every person having a Business License but not having a fixed place of *business* in the City shall carry such license at all times when engaged in the *business* for which the license has been granted. In addition, the following requirements apply:



1. Every person operating any wheeled vehicle in connection with activity requiring a Business License must procure a vehicle sticker. The vehicle sticker shall identify the license plate number of the vehicle to which it is assigned and a permit number to be assigned by the City.
2. The vehicle sticker shall be attached in a conspicuous location on the rear of the vehicle to which it is assigned in such manner that the sticker shall be plainly visible at all times.
3. Vehicle stickers shall not remain on a vehicle after the expiration date of said sticker.
4. It shall be unlawful for any person, other than the licensee, his/her authorized agent or an officer of the City, to remove any vehicle sticker required pursuant to this Section from a vehicle to which it has been attached.
5. Delivery vehicles and vehicles associated with a legitimate, licensed *business* enterprise shall not be required to exhibit the City's vehicle sticker when operating within the City, provided that each and every vehicle operating in the City shall bear the name of the responsible person or *business* in a location plainly visible to the public.

10.2.80 Exhibition of Business License

Every person having a City Business License shall present the license whenever, in the course of *business*, it is requested by any police officer, firefighter, or other authorized City official.

10.2.90 Revocation or Suspension of Business License

This Section provides for revocation or suspension of a Business License and the procedures that are to be followed thereto.

- A. **Grounds for Suspension or Revocation.** Any Business License issued pursuant to this Chapter may be revoked or suspended by the City Manager if any of the following circumstances occur:
 1. The licensee is conducting a business not permitted by the Business License.
 2. The licensee is engaged in an activity prohibited by State or Federal law.
 3. The licensee is conducting the business in a manner that threatens the health or public safety of City residents.
 4. The licensee has refused to comply with a legal requirement of the City.
- B. **Grounds for Suspension or Revocation Provided to Licensee.** The City Manager may revoke or suspend a license certificate or permit only after the grounds have been presented to the licensee and the licensee has been provided an opportunity to respond.
- C. **Revocation or Suspension Subject to Appeal.** The revocation or suspension of any license may be appealed or called for review pursuant to the procedures set forth in Article 8.
- D. **Surrender of License or Permit.** In the event that a Business License is revoked or suspended, the certificate or vehicle sticker shall be surrendered to the City. No refund shall be provided for any fee or portion thereof paid for the license or sticker. The surrender of a license or sticker shall not constitute a waiver of any requirement for the licensee to pay any penalties due.



10.2.100 No Authorization of Illegal Business

No license issued hereunder shall be construed as authorizing the conduct of or continuance of any illegal or unlawful business.

10.2.110 Violation Punishable as Misdemeanor

Any person or entity that violates any provision of this Chapter of the City of La Habra Heights Municipal Code is guilty of a misdemeanor punishable pursuant to the provisions of Article 8.



Chapter 10.3 Motion Picture, Television, and Photographic Production

10.3.10 Purpose of this Chapter

The purpose of this Chapter is to establish regulations applicable to motion picture, video production and other forms and types of media production. This Chapter shall be known as the Motion Picture, Television and Photographic Production Ordinance. This Chapter applies to all activity that is attendant to the staging or shooting (videotaping or filming) commercial or noncommercial motion pictures, television shows, programs or commercials and to the taking of single or multiple photographs for sale or use for a commercial purpose.

10.3.20 Permit Required

No person shall use any public right-of-way or any public or private property, facility or residence for the purpose of producing, taking or making any commercial or noncommercial motion picture, television or photographic production without a permit issued pursuant to the provisions of this Chapter.

10.3.30 Permit Exemptions

The requirements of this Chapter shall not apply to current news productions which include reporters, photographers or cameramen in the employment of a newspaper, news service, broadcasting station or similar entity engaged in the broadcasting of news events. Neither shall the requirements of this Chapter apply to productions that are created or conducted by the City.

10.3.40 Permit Application Process

Any person desiring a permit under the provisions of this Chapter shall make application on the appropriate form provided by the City. The following application requirements apply:

1. The application form must be signed and accompanied by all fees and deposits, and any hold harmless agreement or insurance certificate required by this Chapter before it will be processed.
2. The application shall be submitted at least five (5) working days prior to the date on which it is desired to conduct the activity for which a permit is required.
3. If such activity can be expected to interfere with traffic, the application shall be submitted at least two (2) weeks in advance.
4. If the application satisfies the criteria of this Chapter, the permit shall be issued within five (5) working days of submittal, or within seven (7) days of submittal if the activity requires traffic control in excess of fifteen (15) minutes or includes stunts or special effects, or within ten (10) days of submittal if activities require road closures.

10.3.50 Permit Fees and Deposits

Each permit application shall be accompanied by payment of the following fees and deposits:

1. A permit processing fee in an amount established by the City Council. The processing fee shall be waived for charitable and nonprofit organizations that qualify under Section 501(c)(3) of the United States Internal Revenue Code.



2. A daily services fee in an amount established by the City Council. The daily services fee shall be waived for charitable and nonprofit organizations that qualify under Section 501(c)(3) of the United States Internal Revenue Code.
3. A deposit in the amount of the estimated cost of providing additional services as described in Section 10.3.60.

10.3.60 Additional Services

If deemed necessary by the City Manager, additional law enforcement, traffic control, code enforcement, fire, or other City services shall be provided for the purpose of protecting, assisting, and regulating the proposed activity. Any additional City services required will be provided and coordinated at the discretion of the City Manager. In the event the City's actual cost for providing additional services exceeds the estimated cost, the Applicant will pay the difference to the City. Failure of the Applicant to pay the difference will constitute a basis for the City to revoke outstanding permits and to deny future permits. If the City's actual cost for providing additional services is less than the estimated cost, the City will refund the difference to the Applicant.

10.3.70 Permit Issuance Conditions

The City Manager shall issue a permit as provided for in this Chapter when, from consideration of the application and such other information as may be otherwise obtained, it is found that:

1. The conduct of such activity will not unduly interfere with traffic or pedestrian movement or endanger public safety and no streets will be restricted or closed to traffic for an unreasonable period of time. Seventy-two (72) hours' notice of any street closure shall be given.
2. The conduct of such activity will not unduly interfere with normal governmental or City operations or previously scheduled City events or services, threaten to result in damage or detriment to public property or result in the City incurring costs or expenditures in either money or personnel not reimbursed in advance by the Applicant.
3. The condition of such activity will not constitute a fire hazard or any other type of hazard to public property or public safety and all property safety precautions will be taken as determined by the City. The decision of the City Manager to issue, conditionally issue, or deny a permit shall be final unless appealed in writing within five (5) working days of the decision by requesting a hearing before the City Council.

10.3.80 Insurance

As a condition of issuing such a permit, the Applicant shall furnish insurance in the amount to be determined by the City Manager, but in no event less than one million (\$1,000,000.00) dollars, to protect the City against claims for personal injury, wrongful death and property damage and to indemnify the City for damage to City property arising out of the activities. An additional minimum of five million (\$5,000,000.00) dollars of general liability insurance coverage shall be required in the event aircraft are used in the activity. A copy of the insurance policy shall remain on file with the application. The City shall be named as an additional insured under a policy that shall not be subject to cancellation until after thirty (30) days' written notice to the City. The Applicant shall also submit verification that adequate Worker's Compensation insurance coverage is maintained.

10.3.90 Hold Harmless Agreement



The Applicant shall execute a hold harmless agreement in a form provided by the City prior to the issuance of any permit to indemnify, defend and protect the City against any and all claims arising out of or relating to, activities conducted by the permittee or any damage to City property arising out of or relating to, activities conducted by the permittee.

10.3.100 Conditions-Restrictions

The Applicant shall maintain a copy of the permit on site at all times. No production may be conducted between the hours of 7:00 p.m. and 7:00 a.m. The Applicant shall also comply with any and all conditions or restrictions the City may impose in issuing a permit. No changes in conditions or restrictions shall be made without first obtaining the written approval of the City Manager. Changes to the permit may be approved by the City Manager prior to completion of filming in the form of a written attachment to the permit.

10.3.110 Cleanup/Restoration

The Applicant shall conduct operations in an orderly fashion with continuous attention to the storage of equipment not in use, maintenance of the area and the cleanup of trash and debris. The area used shall be cleaned of trash and debris to the City's satisfaction within two (2) hours of the completion of the activity or within such other time established in the permit. The Applicant shall be responsible for restoring any area damaged or disrupted before leaving the site. If the site is not repaired or restored to the City's satisfaction, the City Manager shall have the necessary restoration and/or repairs performed and Applicant shall reimburse City for such work within ten (10) days of completing filming. In the event Applicant fails to so reimburse City, City may secure its reimbursement from either a cash or surety bond that will be posted with the City to ensure faithful performance of such restoration. Such faithful performance bond shall be filed at the time of the application in an amount of five hundred (\$500.00) dollars or in any higher amount determined by the City Manager to be reasonably required under the circumstances. The amount of the bond shall in no way limit the Applicant's liability or responsibility for the costs of repairs or restoration in the event these costs exceed the bond amount.

10.3.120 Violation

Violation of the provisions of this Chapter is hereby declared to be a misdemeanor punishable as provided in Article 8.



Chapter 10.4 Pipeline Franchises

10.4.10 Purpose of this Chapter

The purpose of this Chapter is to establish regulations governing pipeline *franchises*. This Chapter may be cited as the La Habra Heights Pipeline Franchise Ordinance.

10.4.20 General Conditions

Every pipeline franchise granted by the City is subject to the requirements of this Chapter provided, however, that if the agreement granting a franchise specifies provisions that augment, *modify*, or waive the requirements of this Chapter, then such provisions will control. A franchise granted under this Chapter also authorizes service connections required for the operation of pipes or pipelines, including power supply, *conduits*, cathodic protection devices, wires, cables and other appurtenances that are necessary or convenient for the exercise of the franchisee's business.

10.4.30 Specific Conditions

This Section identifies specific requirements applicable to pipeline franchises. The provisions of this Chapter apply to every franchise to lay or construct pipes and pipelines, and to maintain, operate, renew, repair, change the size of, remove, or abandon in place *pipes* and pipelines in, under, along, or across streets or public or private property within the City. Pipes and pipelines may be authorized, together with manholes, valves and appurtenances, for the collection, transportation, or distribution of oil, gas, and other substances.

- A. **Pole Lines.** Nothing in this Chapter or in any agreement granting a franchise may be construed to permit the franchisee to install new poles or other facilities above ground.
- B. **Term.** The agreement granting the franchise may establish the term of the franchise, but no franchise may be for a term in excess of ten (10) years.
- C. **Acceptance of Franchise.** Within thirty (30) days after the City Council's adoption of an agreement granting a franchise, the franchisee must file with the City Clerk its written acceptance of that agreement.
- D. **Nonexclusive Franchise.** The grant of a franchise does not preclude the City from granting an identical or similar franchise to another person.
- E. **Change in Status.** After being awarded a franchise, if a nonpublic utility franchisee qualifies with the California Public Utilities Commission as a public utility, that franchisee may not, unless otherwise authorized by State law, continue to operate under the franchise unless it obtains the consent of the City Council. If the franchisee is the operator of a non-public utility pipeline transmitting oil or products of oil, or other liquids or gases, that consent may be granted only upon the franchisee's compliance with the provisions of this Code.
- F. **Maps.** Within ninety (90) days after the date on which any facilities or appurtenances have been laid, removed or abandoned under the franchise, the franchisee must file with the Community Development Department a map or maps accurately showing the "as built" location, depth, and size of those facilities or appurtenances.
- G. **Insurance.** On or before commencement of any franchise operations, the franchisee must provide satisfactory evidence of having obtained policies of comprehensive general liability



and workers' compensation insurance from companies authorized to transact business as insurers in the State of California. The following insurance requirements shall apply:

1. The policy of comprehensive general liability insurance must be issued to the franchisee and name the City, its officers, agents, and employees as additional insured's.
2. The insurance policy must indemnify the City against all liability for personal and bodily injury, death, and damage to property arising from activities conducted pursuant to the franchise and provide for the following:
 - a. Coverage for acts or omissions of the franchisee, its agents, servants and employees, committed in the conduct of franchise operations;
 - b. A combined single-limit liability insurance coverage in the amount of ten million (\$10,000,000.00) dollars.
 - c. No cancellation or modification without thirty (30) days' prior written notice to the City.
3. The policy of workers' compensation insurance must:
 - a. Be in a form and substance previously approved by the California Insurance Commissioner.
 - b. Cover all employees of franchisee who will be employed or do work related to the franchise operations.
 - c. Provide for benefits and payments as required by Division 4 of the California Labor Code, including vocational rehabilitation and death benefits.
 - d. Be non-cancelable and non-modifiable without thirty (30) days' prior written notice to the Community Development Director.
4. Franchisee must file with the Community Development Director, prior to commencement of any franchise operations, either certified copies of the required insurance policies, or a certificate of insurance for each of the required policies, executed by the insurer issuing the policy, and containing the following information with respect to each policy:
 - a. The policy number.
 - b. The effective date of the policy, and its expiration date.
 - c. The name of the insured and of any additional insureds.
 - d. The type and limits of coverage provided by the policy.
 - e. A description of all endorsements that form a part of the policy.
5. No franchise operations may commence until franchisee has complied with the provisions of this section. All franchise operations will be suspended during any period that franchisee fails to keep in effect the required insurance policies.

H. Faithful Performance Bond. On or before the effective date of the ordinance granting the



franchise, franchisee must file with the Community Development Director a corporate surety bond, approved as to form by the City Attorney, in the penal sum of one hundred thousand (\$100,000.00) dollars or such larger sum as may hereafter be established by the City Council. This bond must be issued by an admitted surety insurer approved by the Director and the City Attorney, and provide that franchisee will perform each condition of the franchise and that, upon any breach of condition of the bond, the whole amount of the penal sum will be deemed to be liquidated damages and will be recoverable from the principal and sureties on the bond. If this bond is not filed before the effective date of the ordinance granting the franchise, the award of the franchise may be set aside and the ordinance granting the franchise may be repealed. If these actions are taken by the City Council, any money paid in consideration for the award of the franchise will be forfeited. After it has been filed, if the bond becomes insufficient at any time during the term of the franchise, the franchisee must obtain a new bond, in a form approved by the City Attorney, within ten (10) days after written notice is given by the Director.

- I. **Alternate Security.** In lieu of the bond required under Subsection H of this Section, the franchisee may provide alternate security in such form as approved by the Director and the City Attorney.
- J. **Forfeiture.** The franchisee must comply with all conditions contained in the ordinance granting the franchise, including those conditions contained in this Chapter that are not augmented, modified or waived by that ordinance. Any failure by the franchisee to comply with any conditions of the franchise will constitute grounds for its suspension or forfeiture. Before any suspension or forfeiture of the franchise, the City must give to the franchisee not less than thirty (30) days' written notice of any default. Within the noticed period, if the franchisee does not commence the work of compliance or, after commencing, does not prosecute the work with due diligence to completion, the City Council may hold a hearing. Notice of the hearing must be given to the franchisee by certified mail not less than five (5) days before the hearing. At that hearing the franchisee has the right to appear and be heard. The City Council may then determine whether the conditions are material to the operation of the franchise and whether the franchisee is in default of those conditions. The City Council may, in its discretion, declare the franchise suspended or forfeited.
- K. **Value of Franchise.** If a franchise is awarded to a grantee that is a public utility, the grantee, by accepting its terms and conditions, agrees that in any proceeding to adjust the rates of the grantee, no greater value may be placed upon the franchise than the actual amount paid for it by the grantee.
- L. **State Highway.** If any street or portion of a street becomes a State highway, the State will succeed to all rights reserved to the City by the franchise, except for the right to continue to collect franchise payments and such other rights as by law may remain with the City. This section applies to any street or portion of a street that becomes a State highway and in which the franchisee maintains its facilities under the authorization of the franchise at the time that street or portion of it becomes a State highway.
- M. **Eminent Domain.** No franchise granted by the City affects the right of the City or any successor in authority to acquire the property of the franchisee by purchase or condemnation, and nothing contained in the franchise may be construed to contract away, modify, or abridge, either for a term or in perpetuity, the City's right of eminent domain in respect to any public or nonpublic utility.
- N. **Publication Costs.** Within thirty (30) days after receiving an itemized statement, the franchisee must pay to the City all advertising and publication costs that are incurred in granting the franchise.



- O. **Assignment.** The franchisee may not transfer or assign the franchise, or any part of it, except with the consent of the City Council. A transfer or assignment may be made only after filing with the City Council a copy of the executed instrument of transfer or assignment and a written request for the consent of the City Council to that transfer or assignment. If that executed instrument and written request are not filed with the City Council within thirty (30) days prior to the effective date of the proposed transfer or assignment, then the franchise is subject to forfeiture and the City Council may, without notice, adopt an ordinance repealing the franchise. In consenting to the proposed transfer or assignment, the City Council may impose any additional terms and conditions upon the franchise, and upon the transferee or assignee, that the City Council deems to be in the public interest. The franchisee has no right to transfer or assign the franchise, in whole or in part, except in the manner specified by City Council terms and conditions. This section applies to any assignment, whether by operation of law, by voluntary act of the franchisee, or otherwise.
- P. **Prior Franchises.** All facilities erected, constructed, laid, operated, or maintained by the franchisee in the streets or other areas described in the agreement granting the franchise, whether or not originally installed by the franchisee, and which are in existence prior to the effective date of the agreement, are subject to all terms and conditions of the agreement upon its effective date. This section does not apply to facilities that have been constructed, laid, operated, or maintained under a prior right that did not involve the issuance of a franchise.
- Q. **Delegation of Duties.** Wherever in this ordinance a power is granted to or a duty is imposed upon a public officer or employee, the power may be exercised or the duty may be performed by a deputy of that officer or employee or by a person otherwise duly authorized by statute or by ordinance.
- R. **Hold Harmless.** The franchisee will indemnify, defend (with counsel acceptable to the City), and hold harmless the City, its officers, agents, and employees, from and against all damages and liability arising from the use, operation, or possession of the franchise, and from the use, operation, and maintenance of all facilities erected, constructed, laid, operated or maintained under the franchise. This indemnification also applies to pipelines that are to be abandoned under the provisions of this Chapter.
- S. **Standards.** All facilities erected, constructed, laid, operated, or maintained under the provisions of the franchise must comply with all ordinances, rules and regulations now existing or hereafter adopted by the City and consistent with the best practices in the industry.
- T. **Conflicting Improvements.** If the City or any other authorized public entity constructs or maintains any storm drain, sewer structure, reclaimed or potable water line, or other facility or improvement under or across any facility of the franchisee that is maintained in accordance with the ordinance, the franchisee must provide, at no expense to the City or other public entity, such support as is reasonably required for the support, maintenance and protection of that facility or improvement.

10.4.40 Relocation

In connection with any work of improvement specified in this Chapter, if the franchisee, after reasonable notice, fails or refuses to relocate, permanently or temporarily, its facilities that are located in, on, upon, along, under, over, across, or above any street, or to pave, surface, grade, repave, resurface or re-grade a street as required under any provision of the franchise, then the City may cause that work to be done. The City must keep an itemized account of the entire cost of that work, and the franchisee must reimburse the City for that cost within thirty (30) days after its receipt of an



itemized account of that cost. The franchisee is obligated to indemnify, defend, and hold harmless the City, its officers, agents, and employees, from any liability that arises or is claimed to arise, from the moving, cutting, or alteration of any of the franchisee's facilities, or the turning on or off of water, oil, or other liquid, or of gas or electricity.

10.4.50 Damage Caused By Defective Facilities

If any portion of a street is damaged as a result of defective facilities laid or constructed under the franchise, the franchisee must, at its sole expense, repair that damage and restore the street to the condition existing before the damage was incurred, all to the satisfaction of the City. If the franchisee, within ten (10) days after receipt of written notice from the City instructing it to repair the damage, fails to commence compliance with those instructions, or, after commencing compliance, fails to prosecute diligently the work to completion, then the City may immediately undertake whatever work is necessary to carry out those instructions. That work will be at the cost and expense of the franchisee. By the acceptance of the franchise, the franchisee agrees to pay that cost and expense upon demand. If the damage creates an immediate danger to the public health or safety requiring immediate repair, the City may repair that damage without notice, and the franchisee must pay the reasonable cost of that repair upon demand.

10.4.60 Hazardous Substances

Prior to the issuance of an excavation permit for the construction or installation of a new pipeline for the transportation of a hazardous substance in a gaseous state, or for the transportation of hazardous liquid substances or highly volatile liquid substances, the following conditions must be satisfied, as applicable:

1. Approval must be first obtained from the Fire Chief for the installation of pipelines for the transportation of a hazardous substance in a gaseous state. This approval will be based upon a determination that no undue fire hazard will threaten life or property in any areas of the City where the proposed pipeline will be located. In making this determination, the Fire Chief must consider and report upon the following:
 - a. The type of substance in a gaseous state that is to be transported in the pipeline.
 - b. The density of population or structural development in the areas of the City where the pipeline will be located.
 - c. The adequacy of water supplies for fire suppression purposes.
 - d. The availability of public fire protection facilities.
 - e. The number and location of shut-off valves in the pipeline.
2. With regard to pipelines for the transportation of hazardous liquid substances or highly volatile substances, including hydrocarbon substances, the franchisee must, unless preempted by paramount State or Federal law, submit to the Community Development Director, copies of documents previously submitted to the State Fire Marshal that provides evidence for the following:
 - a. That the new pipeline is designed to accommodate the passage of instrumented inspection devices and that the operator has leak mitigation and emergency response plans and equipment required by the State Fire Marshal, as provided for in the California Government Code.



- b. That the newly constructed pipeline will be tested in accordance with Subpart E (commencing with Section 195.300) of Part 195 of Title 49 of the Code of Federal Regulations, as provided for in the California Government Code.
- c. That the franchisee will notify the State Fire Marshal and the City Fire Department at least three (3) working days prior to conducting a hydrostatic test required by the Elder California Pipeline Safety Act of 1981 (Government Code Section 51010 et seq.), as provided for in the California Government Code.
- d. That the franchisee will provide to the City Fire Department a map or suitable diagram showing the location of the pipeline, a description of all products to be transported within the pipeline, and a contingency plan for pipeline emergencies that includes, without limitation, any reasonable information that the State Fire Marshal may require, as provided for in the California Government Code.
- e. That the franchisee will be available to meet with the City Fire Department at least once each calendar year to discuss and review contingency plans for pipeline emergencies, as provided for in the California Government Code.
- f. That, with regard to any portion of the proposed pipeline that is within five hundred (500) feet of any rail line in the City, the franchisee will be in compliance with all applicable regulations adopted by the State Fire Marshal governing the construction, testing, operations, periodic inspection, and emergency operations of intrastate hazardous liquid pipelines, as provided for in the California Government Code.
- g. That the franchisee will comply with all applicable regulations of the State Fire Marshal that establish procedures for maintaining, testing, and inspecting mainline valves and check valves on the intrastate hazardous liquid pipeline, as provided for in the California Government Code.
- h. That the franchisee will be in compliance with all applicable guidelines and regulations of the State Fire Marshal relating to the spacing of valves on new pipelines so as to limit spillage as provided for in the California Government Code.
- i. That the franchisee will immediately report to the City Fire Department, as well as the Office of Emergency Services, every rupture, explosion, or fire involving the pipeline, including the testing of such pipeline, as provided for in the California Government Code.

10.4.70 City Council Approval of Location of Facilities

A franchisee may not install or operate any facilities in any public street, highway, road, alley or other public place without first obtaining the prior approval of the City Council. The City Council may approve the location of the facilities as requested by the franchisee in its application for a franchise, which approval may be adopted concurrently with the adoption of an agreement granting the franchise. The locations of additional facilities, if any, must be approved by subsequent approvals of the City Council.

10.4.80 Damage to Public Property

Any damage caused directly or indirectly to any public property by the franchisee, while exercising any right, power, or privilege under a franchise, or while performing any duty under the provisions of this section, must be promptly reported by franchisee to the Community Development Director. At the



direction of the Community Development Director, such damage shall be promptly repaired at the franchisee's sole cost and expense to specifications reasonably established by the Community Development Director or by the authorized representative of any non-City public entity which owns or controls the property in issue.

10.4.90 Costs of Litigation

If a legal action is instituted to enforce any terms and conditions of a franchise granted under Chapters 10.4 through 10.8, or to recover damages attributable to an alleged breach of the terms and conditions of that franchise, the prevailing party is entitled to recover from the losing party all reasonable costs and expenses incurred in that litigation and such amount as the court may determine to be reasonable attorney's fees for the representation of the prevailing party in that action.



Chapter 10.5 Compensation to the City

10.5.10 Purpose of this Chapter

The purpose of this Chapter is to regulate the pipeline franchise fees that must be paid to the City of La Habra Heights.

10.5.20 Compensation from Public Utilities Transmitting Oil or Products of Oil

As consideration for the award of any franchise to a public utility for a pipeline system transmitting oil or products of oil, including the extension, renewal, or continuation of a previously granted franchise, the franchisee must pay to the City the following fees:

- A. **Base Annual Fee.** During the term of the franchise, a base annual fee must be paid within thirty (30) days after the end of each calendar year, including the year in which the franchise is granted. The base annual fee is determined by multiplying the pipe length expressed in feet by the applicable base rate, as follows:

Pipe Size (Internal) Diameter	Base Rate Per Lineal Foot
0-4-inches	\$0.088
6-inches	\$0.132
8-inches	\$0.176
10-inches	\$0.220
12-inches	\$0.264
14-inches	\$0.308
16-inches	\$0.352
18-inches	\$0.396
20-inches	\$0.440
22-inches	\$0.484
24-inches	\$0.528
26-inches	\$0.572
28-inches	\$0.616
30-inches	\$0.660

For pipelines with an internal diameter not listed above, the fees will be in the same proportion to the fees for a twelve (12) inch-diameter pipe as the diameter of the unlisted pipe is to twelve (12) inches. The formula used in computing the annual fee also applies to any replacement, modification or extension of the pipeline.

- B. **Adjustments.** The base annual fee provided for in Subsection A of this section will be adjusted at the time payment is due by multiplying the base annual fee by the Consumer Price Index, All Urban Consumers, for the Los Angeles-Anaheim-Riverside Area as published by the United States Department of Labor, Office of Information, for the month of September immediately preceding the month in which payment is due, and divided by the Consumer Price Index for June 30, 1989 (June 30, 1989 = 100.0). The multiplying factor may not be less than one (1). In no event will a base annual fee be charged that is less than the amount of the base annual fee established by Subsection A of this Chapter. The indices specified herein are calculated and published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau discontinues the calculation or publication of the Consumer Price Index, All Urban Consumers, for the Los Angeles-Anaheim-Riverside Area, and no transposition table is available to convert to another index, then the amount of each annual adjustment in base fees will be computed by using a comparable governmental index.



- C. **Conversion of Nonpublic Utility to Public Utility.** Upon the expiration of a franchise issued to the operator of a nonpublic utility pipeline transmitting oil or products of oil, if that operator has converted or seeks to convert to public utility status, all of the following must be established to the satisfaction of the City Council in accordance with Public Utilities Code Section 6231.5(f):
1. Its property is dedicated to the service of the public.
 2. Its rates for transportation are established in accordance with tariffs filed with the California Public Utilities Commission ("Commission").
 3. Its accounts and records are established in accordance with rules and regulations adopted by the Commission.
 4. It has filed an appropriate annual report with the Commission.
 5. Its rates for transportation are just, reasonable, and nondiscriminatory, as evidenced either by an order of the Commission approving those rates, or an application for approval of its rates that is pending with the Commission.

10.5.30 Compensation from Public Utilities Transmitting Substances Other than Oil or Products of Oil

As consideration for the award of any franchise to a public utility for a pipeline system transmitting substances other than oil or products of oil, including the extension, renewal, or continuation of a previously granted franchise, the franchisee must pay to the City the following fees:

- A. **Base Annual Fee.** As provided in Section 6231(c) of the California Public Utilities Code, the franchisee must pay to the City during the term of the franchise two (2%) percent of the gross annual receipts of the franchisee arising from the use, operation or possession of the franchise; but this annual payment may not be less than one (1%) percent of the gross annual receipts of the franchise derived from the sale within the boundaries of the City of the utility service for which the franchise is awarded.
- B. **Adjustments.** The City reserves the right to change the fees imposed by this section at three (3) year intervals from the effective date of the agreement granting the franchise, if, following a public hearing, that action is not in conflict with the law of the State of California.

10.5.40 Compensation from Nonpublic Utilities

The franchisee of any franchise awarded to any entity other than a public utility, as consideration for that franchise, including the extension, renewal, or continuation of a previously granted franchise, must pay to the City the following fees:

- A. **Base Granting Fee.** Upon the initial grant of a franchise, or a franchise that extends, renews, or continues a previously granted franchise, a base granting fee must be paid in accordance with the following provisions, whichever is applicable:
1. For pipelines with a total length of one-quarter (1/4) mile or more, the base granting fee will be seven thousand five hundred (\$7,500.00) dollars.
 2. For pipelines with a total length of less than one-quarter (1/4) mile, the base granting fee will be the sum of one thousand six hundred (\$1,600.00) dollars. If, at any time during the first five (5) years following the grant of a franchise, additional pipeline is



added that results in a total length of pipeline of one-quarter (1/4) mile or more, payment of the base granting fee as determined above will be required at the same time that footage is added.

The base granting fee must be paid within thirty (30) days the City Council adopts the agreement granting the franchise and before the franchisee files its written acceptance of the agreement.

- B. **Base Franchise Fee.** The franchisee must pay to the City a base franchise fee for the area occupied by the pipeline at an annual rate of one dollar and sixty-eight (\$1.68) cents per cubic foot. The base franchise fee is payable annually during the term of the franchise, at the end of each "franchise payment period" as defined in this Code, including the year of granting the franchise. The base franchise fee accrues at the end of each franchise payment period for the area occupied by the greatest number of feet of pipeline during that period. For purposes of this paragraph, the area occupied by a pipeline or conduit, including protective covering, pipe connections, cathodic protection facilities, pipe casings, and other minor appurtenances, is equivalent to the volume occupied by a cylinder of equal length having a diameter that is one (1) inch (for metal pipe) or two (2) inches (for plastic pipe) greater than the nominal internal diameter of the pipe or conduit, but in no case with an equivalent cylinder diameter less than four (4) inches. The applicable payment rate must be computed to the nearest tenth of a cent per lineal foot of pipe. The area occupied by any appurtenances, such as manholes or vaults, must be computed from the outside dimensions of the structure. The annual base franchise fee must be paid no later than January 15 after the end of each calendar year. A penalty will be imposed at the rate of ten (10%) percent per month, or fraction thereof, for any delinquent payment that is made thirty (30) days or more after the payment due date. The City reserves the right to adjust the base franchise fee specified above at any time after the effective date of the agreement granting a franchise, but the base franchise fee applicable to anyone (1) franchise may be changed only three (3) times during the life of that particular franchise.
- C. **Base Construction Charges.** Upon commencement of the installation, relocation, or replacement of any pipeline or other facility covered by the franchise, the franchisee must pay a base construction charge of three thousand three hundred eighty-four (\$3,384.00) dollars for each one-half (1/2) mile of trench or fractional part thereof that is installed on major streets, and two thousand two hundred thirty-two (\$2,232.00) dollars for each one-half (1/2) mile of trench or fractional part thereof that is installed on minor streets. In either case, the actual costs of inspection may be charged if they exceed the base construction charge. The City reserves the right to change these base construction charges at any time after the effective date of the agreement granting a franchise, but the base construction charges applicable to anyone (1) franchise may be changed only three (3) times during the life of that particular franchise.
- D. **Adjustments.** Base fees specified in the Section will be adjusted as follows.
1. At the time payment is due, the amount of each base fee will be adjusted by the percentage change in the Consumer Price Index, All Urban Consumers, for the Los Angeles-Anaheim-Riverside Area (1982-84 = 100), for the period July 1, 1998, to the date that is sixty (60) days prior to the due date of the fee.
 2. No base fee will be charged that is less than the amount of the base fee specified in paragraphs B and C of this section.
 3. The indices specified above are calculated and published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau discontinues the calculation or publication of the Consumer Price Index, All Urban Consumers, for the



Los Angeles-Anaheim-Riverside Area (1982-84 = 100), and no transposition table is available to convert to another index, then the amount of each annual adjustment in base fees will be computed by using a comparable governmental index.

10.5.50 Proration of Payments

If facilities are abandoned by the franchisee with the approval of the City as elsewhere provided in this Article, or if facilities are removed by the franchisee, or if a franchise is granted that has an initial franchise payment period of less than six (6) months, the annual base franchise fee will be prorated for that calendar year, as of the end of the calendar month in which that abandonment, removal or grant occurs.

10.5.60 Records and Inspections

Franchisee must preserve for a period of five (5) years all records necessary to determine the amount of any fee that is payable to the City under the provisions of this Chapter. At all reasonable times, the franchisee must permit the City to inspect all property of the franchisee that is erected, constructed, laid, operated or maintained under the franchise, and to examine and make copies of all books, accounts, papers, maps, and other records maintained by the franchisee, or under its control, that concern the operations, transactions, property, or financial condition of the franchisee. These records must be made available to the City at a location in either Los Angeles County or Orange County.



Chapter 10.6 Construction of Pipelines

10.6.10 Purpose of this Chapter

The purpose of this Chapter is to regulate the construction of pipelines in the City of La Habra Heights.

10.6.20 General Requirements

Pipelines and appurtenances must be constructed and maintained in a good and workmanlike manner and in conformity with all applicable laws, ordinances, rules, regulations and standards. The installation or replacement of pipelines, appurtenances, and all other facilities necessary for the operation, maintenance, and safety of pipelines and conduits must be in accordance with permits issued by the Community Development Department. All proposed installations or replacements must be reviewed and approved by the Community Development Director as to their proposed location and depth. The Director's decision will be final and binding on the franchisee.

- A. **Permits.** Where the provisions of any ordinance, rule, or regulation require the issuance of an excavation, encroachment or similar type of permit, the franchisee may not commence any excavation or encroachment work under the franchise until it has obtained that permit from the City. Excepted from this requirement are emergencies affecting the public health, safety or welfare, or the preservation of life or property, in which case the franchisee must apply for a permit not later than the next business day after work commenced. The franchisee's application for the permit must include a map showing the length, depth, and proposed location of the pipeline or appurtenances and such other information as the Community Development Director may require. The franchisee must pay to the Community Development Director all permit inspection fees.
- B. **Work on and Restoration of Streets.** The work of constructing, laying, replacing, maintaining, repairing or removing those pipelines and appurtenances authorized under the provisions of this Article in, over, under, along or across any street must be conducted so as to cause the least possible interference with pedestrian and vehicular travel on the street. As soon as the work is completed, all portions of the street that have been excavated or otherwise damaged must be promptly repaired, replaced or restored and placed in substantially the condition that existed before the commencement of the work. The restoration, repair or replacement work may, as determined by the Community Development Director, require the resurfacing, slurry-sealing or other treatment of a street to a minimum of one (1) driving lane, and all work must be done to the satisfaction of the Community Development Director and at the expense of the franchisee. If a franchisee fails or neglects to undertake or complete the repair, replacement, or restoration work on any street, then ten (10) days after written notice has been given to franchisee by the Director, the City may repair, replace or restore that street at the expense of the franchisee; provided, however, that a shorter period of notice, as determined by the Director, will apply where there is an immediate threat to the public health, welfare, and safety. Franchisee must pay to the City all costs incurred in performing that work. The amount chargeable is the direct cost of that work, plus the current rate of overhead then charged by the City for reimbursable work.
- C. **Failure to Timely Comply.** If the franchisee fails to complete any work within the time specified in a permit, the City may require the franchisee to pay to the City not more than two hundred (\$200.00) dollars per day as liquidated damages for each day that construction extends beyond the time specified in the permit. If the franchisee fails to complete any work required by the terms and conditions of the franchise, or any related permits, within the



required time limits, the City may complete or cause to be completed that work at the expense of the franchisee. The franchisee must pay to the City the cost of performing that work. The amount chargeable to franchisee is the direct cost of that work, plus the current rate of overhead then charged by the City for reimbursable work.

- D. **Completion Statement.** Upon the completion of the construction of any pipelines or appurtenances authorized by the franchise, the franchisee must submit to the Community Development Director a statement that identifies the permit or permits issued by the Community Development Department and by any other permitting authorities, the total length of pipeline authorized to be constructed under the permit or permits and the total length of pipelines or appurtenances actually laid. The franchisee must also file with the Community Development Director "as built" maps.
- E. **Appurtenances.** The franchisee has the right to construct, maintain and repair all manholes, conduits, valves, appliances, attachments and appurtenances (collectively referred to as "appurtenances") as may be necessary for the proper maintenance and operation of the pipelines. Appurtenances must conform to all ordinances, rules and regulations of the City, and to all permits issued by the Community Development Department and must not interfere with the use of the street for travel. The franchisee has the right, subject to the City's ordinances, rules, and regulations, to make necessary excavations in the streets for the construction, maintenance and repair of those appurtenances, but the franchisee must first obtain an Encroachment Permit from the Department to undertake that work.
- F. **Ordinary Repair.** The franchisee may excavate in the street for pipeline repair for the number of days agreed upon by the franchisee and the Community Development Department but the franchisee must first obtain an Encroachment Permit from the Department to undertake that work.
- G. **Relocation of Pipelines and Appurtenances.** Pursuant to Section 6297 of the California Public Utilities Code, the City reserves the right to change the grade, alignment, or width of any public street, way, alley or place over which the franchise is granted, including the construction of any subway or viaduct. If any pipelines, facilities or appurtenances constructed, installed or maintained by the franchisee are located in a manner that prevents or interferes with the change of grade, traffic needs, operation, maintenance, improvements, repair, construction, reconstruction, widening, alteration or relocation of a street, the franchisee must relocate that facility, at no expense to the City, upon receipt of a written request from the Director. The franchisee must commence that work on or before the date specified in the written request, which date may be not less than thirty (30) days from receipt of the written request. Franchisee must then diligently prosecute that work to completion. The City reserves the right for itself, and all other public entities that are now or may later be so authorized, to lay, construct, repair, alter, relocate and maintain subsurface or other facilities or improvements of any type or description within the streets over which the franchise is granted. If the City or other public entity determines that the location or relocation of those facilities or improvements conflicts with the facilities laid, constructed, or maintained under the franchise, whether those facilities were laid before or after the facilities of the City or other public entity were laid, the franchisee must relocate those facilities or improvements, at no expense to the City or other public entity. The franchisee must, on or before the date specified in a written request from the Director, which date may not be less than thirty (30) days after receipt of the notice and request, commence work to relocate all facilities that conflict with those improvements to another location approved by the Director. Franchisee must then diligently prosecute the work to completion. If the street is later designated as a State highway, the rights of the State of California will be as provided in Section 680 of the Streets and Highways Code while it remains a State highway.



- H. **Breaks or Leaks.** If any portion of a street is damaged by reason of breaks or leaks in any pipeline, conduit, or appurtenance constructed or maintained under the franchise, the franchisee must, at its sole expense, promptly repair that damage and put the street in substantially the condition that existed before that damage or leak, all to the satisfaction of the Community Development Department. The franchisee must obtain an Encroachment Permit from the Community Development Department to undertake that work within 24-hours or by the end of the next business day.

- I. **Emergency Equipment.** At all times during the term of the franchise, the franchisee must maintain or arrange for an emergency telephone number on a twenty-four (24) hour basis. Adequate emergency equipment, and a properly trained emergency crew, must be available within a radius of twenty-five (25) miles from any facilities installed or maintained under the franchise. The emergency crew must be capable of shutting off the pressure and the flow of substances in those facilities in the event of an emergency resulting from an earthquake, act of war, civil disturbance, fire, flood, or any other cause.

- J. **Removal or Abandonment of Facilities.** The following requirements apply to the abandonment and/or removal of facilities owned by a franchise:
 - 1. Upon the expiration, revocation or termination of the franchise, or upon the permanent discontinuance of the use of all or a portion of its facilities, the franchisee must, within the following thirty (30) days, make written application to the Community Development Director for authority, as determined by the franchisee, either to abandon all or a portion of those facilities in place or to remove all or a portion of those facilities. The application must describe the proposed facilities to be abandoned or removed by reference to the map or maps required by this Chapter and must describe with reasonable accuracy the physical condition of those facilities.
 - 2. The Community Development Director must determine whether the abandonment or removal proposed by the franchisee may be effected without detriment to the public interest and under what conditions the proposed abandonment or removal may be safely effected. Those conditions may include, without limitation, a requirement that pipelines or mains be purged and filled with an inert gas prior to abandonment. The franchisee must be notified of the Community Development Director's determination. The franchisee must pay to the City the cost of all tests and studies required to determine the disposition of the application for abandonment or removal.
 - 3. Within thirty (30) days after receipt of the notice, the franchisee must apply for a permit from the Community Development Department to abandon or remove all or any portion of the facilities and must pay all applicable fees and costs. The permit must set forth any conditions of abandonment or removal that may be prescribed by the Community Development Director. Any abandonment of the facilities must be conditioned, in part, upon franchisee's future compliance with the provisions of this Chapter.
 - 4. Within ninety (90) days after obtaining the permit, the franchisee must commence and diligently prosecute to completion the work authorized by the permit.
 - 5. If the franchisee applies for authority to abandon in place all or a portion of its facilities, and the Community Development Director determines that abandonment in place may be effected without detriment to the public interest, the franchisee must pay to the City a fee to be computed as follows:

Pipelines with an Internal Diameter of	Amount Per Lineal Foot
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0-12 inches	\$15.00
14-18 inches	\$22.00
20-30 inches	\$28.00

For pipelines with an internal diameter not listed above, the amount per lineal foot will be in the same proportion to the fees for a twelve (12) inch diameter pipe as the diameter of the unlisted pipe is to twelve (12) inches.

- K. **Failure to Comply.** If any facilities proposed to be abandoned "in place" and subject to prescribed conditions are not abandoned in accordance with those conditions, the Director may issue additional orders, including an order that the franchisee remove any or all of those facilities. The franchisee must comply with these additional orders. If the franchisee fails to comply with the terms and conditions of abandonment or removal as required by this Chapter and within the time prescribed by the Director, then the City may remove or cause to be removed those facilities at the franchisee's expense. Failure to comply with the provisions of this Chapter shall constitute a misdemeanor. The franchisee must pay to the City the cost of that work, plus the current rate of overhead then charged by the City for reimbursable work. Upon the expiration, revocation or termination of the franchise, or after the permanent discontinuance of the use of all or a portion of its facilities, if the franchisee fails or refuses within thirty (30) days to make written application for the authority referenced above, the Director will make the determination as to whether the facilities are to be abandoned in place or removed. The Director must then notify the franchisee of that determination. The franchisee must then comply with the applicable provisions of Subsection J.

- L. **Abandonment "In Place" Conditions.** Facilities abandoned "in place" are subject to the condition that, if at any time after the effective date of the abandonment, the Community Development Director determines that any facility interferes with a public project, the franchisee or its successor-in-interest must remove that facility at its expense when requested to do so by the City, or pay the City for the cost of that removal.



Chapter 10.7 Special Provision for Oil Pipeline Franchises

10.7.10 Purpose of this Chapter

The purpose of this Chapter is to indicate special regulations governing oil pipeline franchises.

10.7.20 Rights Granted

A franchisee that is granted an oil pipeline franchise has the right, during the term of that franchise, to transport oil, gas, gasoline, petroleum, wet gas, hydrocarbon substances, water, waste water, mud and other liquid substances through the pipelines maintained under the franchise.

10.7.30 Materials Used

All pipelines used for the transportation of oil, gas, gasoline, petroleum, wet gas, hydrocarbon substances, or other flammable liquids, must be of standard material and in conformity with American Petroleum Institute pipeline specifications.

10.7.40 Approvals

No permit for a pipeline to be constructed or installed in accordance with the franchise may be issued unless the franchisee has complied with all applicable provisions of this Article relating to pipelines for the transportation of hazardous liquid substances or highly volatile liquid substances. This requirement does not apply to emergency situations, such as those involving the mitigation of pipeline ruptures, spills, or leaks.

10.7.50 Required Reports

During the term of the franchise, and within thirty (30) days after the expiration of each franchise payment period, the franchisee must file with the Community Development Director two (2) copies of a report, verified under penalty of perjury by a duly authorized representative of the franchisee, showing for the immediately preceding franchise payment period (i) the length of all lines in streets; (ii) the internal diameter of those lines; (iii) the rate per foot per year; and (iv) the total amount due the City. In addition, the franchisee must file a report in triplicate, showing the number of each permit obtained for the installation of new mains during the immediately preceding franchise payment period, together with the length and size of those mains. The franchisee must show on this report any change in pipeline footage since the last franchise payment period, segregating that footage as to new mains laid, old mains removed, old mains abandoned in place, and the footage of mains in any territory annexed or incorporated since the last franchise payment period.

10.7.60 Payments Due

Except for pipelines lawfully constructed and maintained other than by the authority granted by a City franchise, the franchisee's payments accrue from the date of installation, whether before or after the effective date of the agreement granting the franchise.

10.7.70 Non-applicability

Sections 10.7.50 and 10.7.60 of this Chapter do not apply to public utility pipelines that transmit oil or products of oil.



Chapter 10.8 Special Provisions for Natural Gas and Other Public Utility Pipeline Franchises

10.8.10 Purpose of this Chapter

The purpose of this Chapter is to establish regulations governing water, natural gas and other public utility pipeline franchises.

10.8.20 Rights Granted

The franchisee that provides water service or natural gas service has the right, during the term covered by the franchise and subject to its provisions, to make service connections with all property that adjoins public streets and to distribute water or gas for any purpose through its pipelines to all territory in the City adjacent to those pipelines.

10.8.30 Plan Approval

All new pipelines, replacements, and extensions for the transmission of water or gas must be constructed, laid, and designed according to plans approved by the Community Development Director and by all other regulatory agencies that have jurisdiction.

10.8.40 Condition of Approval

The Fire Chief must also approve the plans if pipelines for the transmission of water to be laid, extended or replaced are designed to operate in conjunction with related facilities, such as fire hydrants. The location of fire hydrants must take into consideration required domestic demand and meet water pressure standards specified by the Board of Fire Underwriters. As further consideration for the granting of a water pipeline franchise, the franchisee must, at the request of the City Fire Department, install fire hydrants at no cost to the City (except a reasonable monthly rental) designed to specifications reasonably established by the Fire Chief in consultation with the Director. Fire hydrants must be of a size and type acceptable to the Fire Chief and must be installed at those locations along the franchisee's water mains that are designated by the Fire Chief.

10.8.50 Gas Pipelines

On all pipelines carrying gas heavier than air that are laid in accordance with the franchise, the Director must approve the placement and method of installation of flush-valve connections in the pipeline. The availability of adequate water supplies, the commodities transmitted in the line, and the location of control valves will be considered when making that determination.

10.8.60 Report of Gross Receipts

The franchisee of any franchise awarded to a mutual water company, or to a public utility (other than a public utility operating a pipeline system transmitting oil or products thereof), must file a report with the Director for each franchise payment period. Within thirty (30) days after each franchise payment period, the franchisee must file two (2) copies of a report, verified by a responsible officer, showing the total gross receipts of the franchisee received or accrued during the franchise payment period in connection with the furnishing of the commodity or service and arising from the use or operation of the franchise. The franchisee must also submit any additional data that may be required by the Director to calculate or verify the calculation of the base annual fee required by this Chapter (or the pro rata portion of that fee for the first franchise payment period if less than six (6) months). Payment



of the base annual fee is to be made concurrently with the filing of the statement. If the amount paid is incorrect, in the judgment of the City, it may order the payment of any additional sum that it may find due and, if not paid, or if paid under protest, the same may be determined by suit.

10.8.70 Report of Pipeline Footage

Within thirty (30) days after the expiration of each franchise report period, the franchisee must file with the Community Development Director a report in triplicate, showing the number of each permit obtained for the installation of new mains during the immediately preceding franchise report period, together with the length and size of those mains. The franchisee must also report any change in pipeline footage since the last franchise report period, segregating that footage as to new mains laid, old mains removed, old mains abandoned in place, and the footage of mains in territory annexed or incorporated since the last franchise payment period.



Chapter 10.9 Telecommunications Regulatory Ordinance

10.9.10 Purpose of this Chapter

The purpose of this Chapter is to specify regulations governing telecommunications facilities. This Chapter is known and may be cited as the Telecommunications Regulatory Ordinance of the City of La Habra Heights. This Chapter is intended to establish regulatory provisions that authorize the City to regulate cable television and telecommunications services and systems to the extent authorized by Federal and State law including, but not limited to, the Federal Cable Communications Policy Act of 1984, the Federal Cable Television Consumer and Competition Act of 1992, the Federal Telecommunications Act of 1996, applicable regulations of the Federal Communications Commission and applicable California statutes and regulations.

10.9.20 Cable Television Systems

In accordance with applicable Federal and State law, the City is authorized to grant one (1) or more nonexclusive franchises to construct, reconstruct, operate, and maintain cable television systems within the City limits.

- A. **Franchise Purposes.** A franchise granted by the City under the provisions of this Chapter may authorize the grantee to do the following:
1. To engage in the business of providing cable service and such other telecommunications services as may be authorized by law and which grantee elects to provide to its subscribers within the designated franchise service area.
 2. To erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the cable system in, on, over, under, upon, along and across streets or other public places within the designated franchise service area.
 3. To maintain and operate the franchise properties for the origination, reception, transmission, amplification, and distribution of television and radio signals, and for the delivery of cable services and such other services as may be authorized by law.
- B. **Franchise Required.** It is unlawful for any person to construct, install, or operate a cable television system within any street or public way in the City without first obtaining a franchise under the provisions of this Chapter.
- C. **Term of the Franchise.** A franchise granted under this Chapter will be for the term specified in the franchise agreement, commencing upon the effective date of agreement adopted by the City Council that authorizes the franchise. A franchise granted under this Chapter may be renewed upon application by the grantee in accordance with the then-applicable provisions of State and Federal law and of this Chapter.
- D. **Franchise Territory.** A franchise is effective within the territorial limits of the City and within any area added to the City during the term of the franchise unless otherwise specified.
- E. **Federal or State Jurisdiction.** This Chapter will be construed in a manner consistent with all applicable Federal and State laws, and it applies to all franchises granted or renewed after the effective date of this Chapter, to the extent authorized by applicable law.



- F. **Franchise Nontransferable.** The Grantee may not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation, or otherwise, the franchise or any of the rights or privileges therein granted, without the prior consent of the City Council and then only upon such terms and conditions as may be prescribed by the City Council, which consent may not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign, or otherwise dispose of the franchise without the consent of the City Council is null and void. The granting of a security interest in any assets of the grantee, or any mortgage or other hypothecation, will not be deemed a transfer for the purposes of this section.

The following requirements apply to any change in control of grantee. The word "control" as used herein is not limited to the ownership of major stockholder or partnership interests, but includes actual working control in whatever manner exercised. If grantee is a partnership or a corporation, prior authorization of the City Council is required where ownership or control of twenty-five (25%) percent more of the partnership interests or the voting stock of grantee, or any company in the tier of companies controlling the grantee, whether directly or indirectly, is acquired by a person or a group of persons acting in concert, none of whom, singularly or collectively, owns or controls those partnership interests or that voting stock of the grantee, or of grantee's upper tier controlling companies, as of the effective date of the franchise.

Grantee must notify the City in writing of any foreclosure or judicial sale of all or a substantial part of the grantee's franchise property, or upon the termination of any lease or other interest covering all or a substantial part of that franchise property. That notification will be considered by the City as notice that a change in control or ownership of the franchise has taken place, and the provisions of this paragraph that require the prior consent of the City Council to that change in control of ownership will apply.

For the purpose of determining whether it will consent to an acquisition, transfer, or change in control, the City may inquire as to the qualifications of the prospective transferee or controlling party, and grantee must assist the City in that inquiry. In seeking the City's consent to any change of ownership or control, grantee or the proposed transfer or both, must complete Federal Communications Commission Form 394 or its equivalent. This application must be submitted to the City not less than one hundred twenty (120) days prior to the proposed date of transfer. The transferee must establish that it possesses the legal, financial, and technical capability to operate and maintain the cable system and to comply with all franchise requirements during the remaining term of the franchise. If the legal, financial, and technical qualifications of the Applicant are determined to be satisfactory, then the City will consent to the transfer of the franchise.

Any financial institution holding a pledge of the grantee's assets to secure the advance of money for the construction or operation of the franchise property has the right to notify the City that it, or a designee satisfactory to the City, will take control of and operate the cable television system upon grantee's default in its financial obligations. Further, that financial institution must also submit a plan for such operation within ninety (90) days after assuming control. The plan must insure continued service and compliance with all franchise requirements during the period that the financial institution will exercise control over the system. The financial institution may not exercise control over the system for a period exceeding eighteen (18) months unless authorized by the City, in its sole discretion, and during that period of time it will have the right to petition the City to transfer the franchise to another grantee.

Grantee must reimburse the City for the City's reasonable review and processing expenses incurred in connection with any transfer or change in control of the franchise. These



expenses may include, without limitation, costs of administrative review, financial, legal, and technical evaluation of the proposed transferee, consultants (including technical and legal experts and all costs incurred by these experts), notice and publication costs, and document preparation expenses. The total amount of these reimbursable expenses may be subject to maximum limits that are specified in the franchise agreement between the City and the grantee. No reimbursement may be offset against any franchise fee payable to the City during the term of the franchise.

- G. **Geographical Coverage.** The Grantee must design, construct, and maintain the cable television system so as to have the capability to pass every dwelling unit in the franchise service area, subject to any service-area line extension requirements or territorial restrictions set forth in the franchise agreement. After service has been established within all or any part of the franchise service area by activating trunk or distribution cables, grantee must provide service to any requesting subscriber within that activated part of the service area within thirty (30) days from the date of request, provided that the grantee is able to secure on reasonable terms and conditions all rights-of-way necessary to extend service to that subscriber within that thirty (30) day period.
- H. **Nonexclusive Franchise.** Every franchise granted is nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a cable television system, or any component thereof, as it deems appropriate, subject to applicable State and Federal law. If addition of another franchisee is proposed, a noticed public hearing must first be held in accordance with the provisions of Government Code Section 53066.3.
- I. **Multiple Franchises.** The City may grant any number of franchises, subject to applicable State and Federal law. The City may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:
1. The capacity of the public rights-of-way to accommodate multiple cables in addition to the cables, conduits, and pipes of the existing utility systems, such as electrical power, telephone, gas, and sewerage.
 2. The benefits that may accrue to subscribers as a result of cable system competition, such as lower rates and improved service.
 3. The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations within the public rights-of-way.
- J. **Undergrounding.** The City may require that any new grantee be responsible for its own underground trenching and the associated costs if, in the City's opinion, the rights-of way in any particular area cannot reasonably accommodate additional cables.

10.9.30 Franchise Applications and Renewal

The application for franchises and renewals thereof must conform to the following provisions:

- A. **Filing of Applications.** Any person desiring an initial franchise for a cable television system must file an application with the City. A reasonable nonrefundable application fee deposit in an amount established by the City Council must accompany the application. That application fee deposit will cover all anticipated costs associated with reviewing and processing the application, including without limitation costs of administrative review, financial, legal, and technical evaluation of the applicant, consultants, notice and publication requirements, and



document preparation expenses. If those costs exceed the application fee deposit, the applicant must pay the difference to the City within thirty (3) days following receipt of an itemized statement of those costs.

- B. **Application Contents.** An application for an initial franchise for a cable television system must contain, as applicable:
1. A statement as to the proposed franchise service area.
 2. A resume of the Applicant's prior history, including the experience and expertise of the Applicant in the cable television and telecommunications industry.
 3. A list of the partners, general and limited, of the Applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a closely-held corporation. If the Applicant is a publicly owned partnership or corporation, each owner of ten (10%) percent or more of the partnership interests, or of the issued and outstanding capital stock, must be identified.
 4. A list of officers, directors, and managing employees of the Applicant, together with a description of the background of each such person.
 5. The names and addresses of any parent or subsidiary of the Applicant, or any other business entity owning or controlling Applicant in whole or in part, or that is owned or controlled in whole or in part by the Applicant.
 6. A current financial statement of the Applicant verified by a certified public accountant or otherwise certified to be true, complete, and correct to the reasonable satisfaction of the City.
 7. The proposed construction and service schedule, the proposed rate structure for cable services, and the proposed commitment to provide public, educational, and governmental access capacity, services, facilities, and equipment.
 8. Any additional information that the City deems to be reasonably necessary.
- C. **Consideration of Initial Applications.** Upon receipt of an application for an initial franchise, the City Manager will prepare a report and make recommendations to the City Council concerning that application. A public hearing will be noticed prior to any initial franchise grant, at a time and date approved by the City Council. Within thirty (30) days after the close of the hearing, the City Council will make a decision based upon the evidence received at the hearing as to whether the franchise should be granted, and, if granted, subject to what conditions. The City Council may grant one (1) or more franchises, or may decline to grant any franchise.
- D. **Franchise Renewal.** Franchise renewals will be processed in accordance with then-applicable law and with the renewal terms, if any, of the franchise agreement. The City and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

10.9.40 Contents of Cable Television Franchise Agreements

The terms and provisions of a franchise agreement for the operation of a cable television or related telecommunications services may relate to or include, without limitation, the following subject matters:



1. The nature, scope, geographical area, and duration of the franchise.
2. The applicable franchise fee to be paid to the City, including the percentage amount, the method of computation, and the time for payment.
3. Requirements relating to compliance with and implementation of State and Federal laws and regulations pertaining to the operation of the cable television system.
4. Requirements relating to the construction, upgrade, or rebuild of the cable television system, as well as the provision of special services, such as outlets for public buildings, emergency alert capability, and parental control devices.
5. Requirements relating to the maintenance of a performance bond, a security fund, a letter of credit, or similar assurances to secure the performance of the grantee's obligations under the franchise agreement.
6. Requirements relating to comprehensive liability insurance, workers' compensation insurance, and indemnification.
7. Requirements relating to consumer protection and customer service standards, including the resolution of subscriber complaints and disputes and the protection of subscribers' privacy rights.
8. Requirements relating to the grantee's support of local cable usage, including the provision of public, educational, and governmental access channels, the coverage of public meetings and special events, and financial support for the required access channels.
9. Requirements relating to construction, operation, and maintenance of the cable television system within the public rights-of-way, including compliance with all applicable building codes and permit requirements of the City, the abandonment, removal, or relocation of facilities, and compliance with FCC technical standards.
10. Requirements relating to record keeping, accounting procedures, reporting, periodic audits, and performance reviews, and the inspection of grantee's books and records.
11. Acts or omissions constituting material breaches of or defaults under the franchise agreement, and the applicable penalties or remedies for such breaches or defaults, including fines, penalties, liquidated damages, suspension, revocation, and termination.
12. Requirements relating to the sale, assignment, or other transfer or change in control of the franchise.
13. The grantee's obligation to maintain continuity of service and to authorize, under certain specified circumstances, the City's operation and management of the cable system.
14. Such additional requirements, conditions, policies, and procedures as may be mutually agreed upon by the parties to the franchise agreement and that will, in the judgment of City staff and the City Council, best serve the public interest and protect the public health, welfare, and safety.
15. If there is any conflict or inconsistency between the provisions of a franchise agreement authorized by the City Council and provisions of this Chapter, the provisions of the franchise agreement will control.



10.9.500 Open Video Systems

The provisions of this Chapter are applicable to an *open video system operator* that intends to deliver video programming to consumers in the City over an open video system.

- A. **Application Contents.** The application for an Open Video System will include, but not be limited to, the following.
1. Before commencing the delivery of video programming services to consumers in the City over an open video system, the open video system operator must file an application with the City. That application must include or be accompanied by the following, as applicable:
 - a. The identity of the Applicant, including all affiliates of the Applicant.
 - b. Copies of FCC Form 1275, all "Notices of Intent" filed under 47 CFR § 76.1503(b)(1), and the Order of the FCC, all of which relate to certification of the Applicant to operate an open video system in accordance with Section 653 (a)(1) of the Communications Act and the FCC's rules.
 - c. The area or areas of the City that the Applicant desires to serve.
 - d. A description of the open video system services that will be offered by the Applicant over its existing or proposed facilities.
 - e. A description of the transmission medium that will be used by the Applicant to deliver the open video system services.
 - f. Information in sufficient detail to establish the Applicant's technical qualifications, experience, and expertise regarding the ownership and operation of the open video system described in the application.
 - g. Financial statements prepared in accordance with generally accepted accounting principles that demonstrate the Applicant's financial ability to:
 - i. Construct, operate, maintain and remove any new physical plant that is proposed to be constructed in the City.
 - ii. Comply with the City's public, educational, and governmental access requirements as specified below.
 - iii. Comply with the City's requirement that gross revenue fees be paid in the sum of five (5%) percent, as specified below.
 - h. An accurate map showing the location of any existing telecommunications facilities in the City that the Applicant intends to use, to purchase, or to lease.
 - i. If the Applicant's operation of the open video system will require the construction of new physical plant and facilities in the City, the following additional information must be provided:
 - i. A preliminary construction schedule and completion dates.
 - ii. Preliminary engineering plans, specifications, and a network map of any new facilities to be constructed in the City, in sufficient detail to identify:



- (a) The location and route of all facilities requested.
 - (b) The locations, if any, for interconnection with the facilities of other telecommunications service providers.
 - (c) The specific structures, improvements, facilities, and obstructions, if any, that the Applicant proposes to remove or relocate on a temporary or permanent basis.
 - iii. The Applicant's statement that, in constructing any new physical plant, the Applicant will comply with all applicable ordinances, rules, and regulations of the City, including the payment of all required permit and processing fees.
 - j. The information and documentation that is required to be submitted to the City by a video provider, as specified below.
 - k. Such additional information as may be requested by the City Manager.
 - l. A non-refundable filing fee in an amount established by the City Council.
 2. If any item of information specified above is determined under paramount Federal or State law to be unlawful, the City Manager is authorized to waive the requirement that such information be included in the application.
- B. Review of the Application.** Within thirty (30) days after receipt of an application that is deemed complete, the City Manager will give written notice to the Applicant of the City's intent to negotiate an agreement setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the City. The commencement of those negotiations will be on a date that is mutually acceptable to the City and to the Applicant.
- C. Agreement Required.** No video programming services may be provided in the City by an open video system operator unless the operator and the City have executed a written agreement setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the City. The agreement between the City and the open video system operator may contain terms and conditions that relate to the following subject matters, to the extent that such terms, conditions, and subject matters are not preempted by Federal statute or regulations:
 1. The nature, scope, and duration of the agreement, including provisions for its renewal or extension.
 2. The obligation of the open video system operator to pay to the City, at specified times, fees on the gross revenues received by the operator, as authorized by 47 CFR § 76.1511, in accordance with the following standards and procedures:
 - a. The amount of the fees on the gross revenues will be five (5%) percent, and will be paid in lieu of the franchise fees permitted under Section 622 of the Communications Act.
 - b. The term "gross revenues" means (1) all gross revenues received by an open video system operator or its affiliates, including all revenues received from subscribers and all carriage revenues received from unaffiliated video programming providers; and (2) all advertising revenues received by the



operator or its affiliates in connection with the provision of video programming, where such revenues are included in the calculation of the cable franchise fee paid to the City by the franchised cable operator. The term "gross revenues" does not include revenues, such as subscriber or advertising revenues, collected by unaffiliated video programming providers.

3. The obligation of the open video system operator to comply with requirements relating to information collection and record keeping, accounting procedures, reporting, periodic audits, and inspection of records in order to ensure the accuracy of the fees on the gross revenues that are required to be paid as specified above in paragraph c.2.
4. The obligation of the open video system operator to meet the City's requirements with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment, as provided for in 47 CFR § 76.1505. In this regard, the following standards and procedures are applicable:
 - a. The open video system operator is subject to the same public, educational, and governmental access requirements that apply within the cable television franchise service area with which its system overlaps.
 - b. The open video system operator must ensure that all subscribers receive all public, educational, and governmental access channels within the franchise service area in which the City's subscribers are located.
 - c. The open video system operator may negotiate with the City to establish the operator's obligations with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment. These negotiations may include the City's franchised cable operator if the City, the open video system operator, and the franchised cable operator so desire.
 - d. If the open video system operator and the City are unable to reach an agreement regarding the operator's obligations with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment within the City's jurisdiction, then the following obligations will be imposed:
 - i. The open video system operator must satisfy the same public, educational, and governmental access obligations as the City's franchised cable operator by providing the same amount of channel capacity for public, educational, and governmental access and by matching the City's franchised cable operator's annual financial contributions in support of public, educational, and governmental access services, facilities, and equipment that are actually used by the City. For in-kind contributions, such as cameras or production studios, the open video system operator may satisfy its statutory obligation by negotiating mutually agreeable terms with the City's franchised cable operator, so that public, educational, and governmental access services to the City are improved or increased. If such terms cannot be agreed upon, the open video system operator must pay to the City the monetary equivalent of the franchised cable operator's depreciated in-kind contribution, or, in the case of facilities, the annual amortization value. Any matching contributions provided by the open video system operator must be used to fund activities arising under Section 611 of the Communications Act.



public, educational, or governmental use of channel capacity will be restricted in accordance with the provisions of 47 CFR § 76. 1505(f).

8. The obligation of the open video system operator to comply with all applicable Federal and State statutes and regulations relating to customer service standards, including the Cable Television and Video Customer Service and Information Act (Government Code §§ 53054, et seq.), and the Video Customer Service Act (Government Code §§ 53088, et seq.)
9. If new physical plant is proposed to be constructed within the City, the obligation of the open video system operator to comply with the following rights-of-way use and management responsibilities that are also imposed by the City upon other telecommunications service providers in a nondiscriminatory and competitively neutral manner:
 - a. Compliance with all applicable City building and zoning codes, including applications for excavation, encroachment, and construction permits and the payment of all required permit and inspection fees.
 - b. The coordination of construction requirements.
 - c. Compliance with established standards and procedures for constructing lines across private property.
 - d. Compliance with all applicable insurance and indemnification requirements.
 - e. The repair and resurfacing of construction-damaged streets.
 - f. Compliance with all public safety requirements that are applicable to telecommunications service providers using public property or public rights-of-way.
10. Acts or omissions constituting breaches or defaults of the agreement, and the applicable penalties, liquidated damages, and other remedies, including fines or the suspension, revocation, or termination of the agreement.
11. Requirements relating to the sale, assignment, or transfer of the open video system.
12. Requirements relating to the open video system operator's compliance with and implementation of State and Federal laws, rules, and regulations pertaining to the operation of the open video system.
13. Such additional requirements, conditions, terms, policies, and procedures as may be mutually agreed upon by the City and the open video system operator and that will, in the judgment of the City Council, best serve the public interest and protect the public health, welfare, and safety.

10.9.60 Other Multi-channel/Video Programming Distributors

The term "cable system," as defined in Federal law and as set forth in this Code does not include a facility that serves subscribers without using any public rights-of-way. Consequently, the categories of multi-channel video programming distributors identified below are not deemed to be "cable systems" and are therefore exempt from the City's franchise requirements and from certain other local regulatory provisions authorized by Federal law, provided that their distribution or transmission



facilities do not involve the use of the City's public rights-of-way.

1. Multi-channel multipoint distribution service ("MMDS"), also known as "wireless cable," which typically involves the transmission by an FCC-licensed operator of numerous broadcast stations from a central location using line-of-sight technology.
2. Local multipoint distribution service ("LMDS"), another form of over-the-air wireless video service for which licenses are auctioned by the FCC, and which offers video programming, telephony, and data networking services.
3. Direct broadcast satellite ("DBS"), also referred to as "direct-to-home satellite services," which involves the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite. Local regulation of direct to home satellite services is proscribed by the following Federal statutory provisions:
 - a. 47 U.S.C. § 303(v) confers upon the FCC exclusive jurisdiction to regulate the provision of direct-to-home satellite services.
 - b. Section 602 of the Communications Act states that a provider of direct-to-home satellite service is exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service. The terms "tax" and "fee" are defined by Federal statute to mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a local taxing jurisdiction.
4. Video Providers-Registration and Customer Service Standards must comply with all applicable provisions of the following State statutes unless the customer protection and customer service obligations of a video provider are specified in a franchise, license, lease, or similar written agreement with the City:
 - a. The Cable Television and Video Customer Service and Information Act (Government Code §§ 53054, et seq.).
 - b. The Video Customer Service Act (Government Code §§ 53088, et seq.).
5. All video providers that are operating in the City on the effective date of this Chapter, or that intend to operate in the City after the effective date of this Chapter, must register with the City, provided, however, that this registration requirement is not applicable to any video provider that has executed a franchise, license, lease or similar written agreement with the City. The registration form must include or be accompanied by the following:
 - a. The video provider's name, address, and local telephone numbers.
 - b. The names of the officers of the video provider.
 - c. A copy of the video provider's written policies and procedures relating to customer service standards and the handling of customer complaints, as required by Government Code §§ 53054, et seq. These customer service standards must include, without limitation, standards regarding the following:
 - i. Installation, disconnection, service and repair obligations, employee



- identification, and service call response time and scheduling.
 - ii. Customer telephone and office hours.
 - iii. Procedures for billing, charges, refunds, and credits.
 - iv. Procedures for termination of service.
 - v. Notice of the deletion of a programming service, the changing of channel assignments, or an increase in rates.
 - vi. Complaint procedures and procedures for bill dispute resolution.
 - vii. The video provider's written commitment to distribute annually to the City, and to its employees and customers, a notice describing the customer service standards specified above. This annual notice must include the report of the video provider on its performance in meeting its customer service standards, as required by Government Code § 53055.2.
- d. Unless a video provider is exempt under Federal law from its payment, a registration fee in an amount established by resolution of the City Council to cover the reasonable costs incurred by the City in reviewing and processing the registration form.
- e. In addition to the registration fee specified above, the written commitment of the video provider to pay to the City, when due, all costs and expenses reasonably incurred by the City in resolving any disputes between the video provider and its subscribers, which dispute resolution is mandated by Government Code § 53088.2(r) through (t).
- f. The City Council may establish a schedule of monetary penalties for the material breach by a video provider of its obligations under subparagraphs (a) through (p) of Government Code § 53088.2. As used herein, the term "material breach" means any substantial and repeated failure to comply with the consumer service standards set forth in Government Code § 53088.2. The provisions of that ordinance must be consistent with the provisions of Government Code § 53088.2. The schedule of monetary penalties may also impose a penalty, as authorized by Government Code § 53056(a), for the failure of a video provider to distribute the annual notice required by Government Code § 53055.1, which penalty may not exceed five hundred (\$500.00) dollars for each year in which the notice is not distributed as required by State statute.

10.9.70 Antennas for Telecommunications Services

The City's Zoning Code sets forth the regulatory requirements that apply to the siting and construction of various categories of antennas that are commonly used in transmitting or receiving telecommunications services.

- A. Telecommunications Service Provided By Telephone.** The City Council finds and determines as follows:
- 1. The Federal Telecommunications Act of 1996 preempts and declares invalid all State rules that restrict or limit competition in both local and long-distance telephone service.
 - 2. The California Public Utilities Commission ("CPUC") is primarily responsible for the implementation of local telephone competition, and it issues certificates of public



convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service, whether using their own facilities or services provided by other authorized telephone corporations.

3. Section 234(a) of the California Public Utilities Code defines a “telephone corporation” as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this State.”
 4. Section 616 of the California Public Utilities Code provides that a telephone corporation “may condemn any property necessary for the construction and maintenance of its telephone line.”
 5. The City maintains the power to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets, pursuant to CPUC section 2902.
 6. Telephone and telegraph corporations are authorized to construct telephone or telegraph lines along and upon any public road or highway and erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters, pursuant to CPUC section 7901.
 7. The City maintains its authority to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, pursuant to CPUC section 7901.1. Section 7901.1 does not add to or subtract from any existing authority regarding the imposition of fees by the City.
 8. Any permit fee imposed by the City for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes, pursuant to Government Code section 50030.
- B. **Local Requirements.** A telephone corporation that desires to provide telecommunications service by means of facilities that are proposed to be constructed within the City's public rights-of-way must apply for and obtain, as may be applicable, an excavation, encroachment or building permit.

10.9.80 Application Requirements

In addition to the information required by this Code in connection with an application for a ministerial permit, a telephone corporation must submit to the City the following supplemental information:

1. A copy of the certificate of public convenience and necessity issued by the CPUC to the Applicant, and a copy of the CPUC decision that authorizes the Applicant to provide the telecommunications service for which the facilities are proposed to be constructed in the City's public rights-of-way.



2. If the Applicant has obtained from the CPUC a certificate of public convenience to operate as a "competitive local carrier," the following additional requirements are applicable:
 - a. As required by Decision No. 95-12-057 of the CPUC, the Applicant must establish that it has timely filed with the City a quarterly report that describes the type of construction and the location of each construction project proposed to be undertaken in the City during the calendar quarter in which the application is filed, which information is sufficient to enable the City to coordinate multiple projects, as may be necessary.
 - b. If the Applicant's proposed construction project will extend beyond the utility rights-of-way into undisturbed areas or other rights-of-way, the Applicant must establish that it has filed a petition with the CPUC to amend its certificate of public convenience and necessity and that the proposed construction project has been subjected to a full-scale environmental analysis by the CPUC, as required by Decision No. 95-12-057 of the CPUC.
 - c. The Applicant must inform the City whether its proposed construction project will be subject to any of the mitigation measures specified in the Negative Declaration ["Competitive Local Carriers (CLCs) Projects for Local Exchange Communication Service throughout California"] or to the Mitigation Monitoring Plan adopted in connection with Decision No. 95-12-057 of the CPUC. The City's issuance of a ministerial permit will be conditioned upon the Applicant's compliance with all applicable mitigation measures and monitoring requirements imposed by the CPUC upon telephone corporations that are designated as "competitive local carriers."
3. In recognition of the fact that numerous excavations in the public rights-of-way diminish the useful life of the surface pavement, and for the purpose of mitigating the adverse impacts of numerous excavations on the quality and longevity of public street maintenance within the City, the following policies and procedures are adopted:
 - a. The City Manager is directed to ensure that all public utilities, including telephone corporations, comply with all local design, construction, maintenance and safety standards that are contained within, or are related to, a ministerial permit that authorizes the construction of facilities within the public rights-of-way.
 - b. The City Manager is directed to coordinate the construction and installation of facilities by public utilities, including telephone corporations, in order to minimize the number of excavations in the public rights-of-way. In this regard, based upon projected plans for street construction or renovation projects, the City Manager is authorized to establish on a quarterly basis one (1) or more construction time periods or "windows" for the installation of facilities within the public rights-of-way. Telephone corporations and other public utilities that submit applications for ministerial permits to construct facilities after a predetermined date may be required to delay such construction until the next quarterly "window" that is established by the City.
4. The City reserves all rights that it now possesses or may later acquire with respect to the regulation of any cable or telecommunications service that is provided, or proposed to be provided, by a telephone corporation. These reserved rights may relate, without limitation, to the imposition of reasonable conditions in addition to or different from those set forth in this Chapter, the exaction of a fee or other form of consideration or compensation for use of public rights-of-way, and related matters; provided, however, that such regulatory rights and authority must be consistent with Federal and State law that is applicable to cable or



telecommunications services provided by telephone corporations.

10.9.90 Violations; Enforcement

Any person who willfully violates any provision of this title is guilty of a misdemeanor and is punishable as provided for in Article 8 of this Code. The misdemeanor penalty is not applicable to a violation of any provision of this Chapter for which another sanction or penalty may be imposed under any franchise, license, lease, or similar written agreement between the City and a multi-channel video programming distributor or other telecommunications service provider. The City may initiate a civil action in any court of competent jurisdiction to enjoin any violation of this Article.

10.9.100 Severability

If any provision of this Article is determined by any court of competent jurisdiction, or by any Federal or State agency having jurisdiction over its subject matter, to be invalid and in conflict with any paramount Federal or State law or regulation now or hereafter in effect, or is determined by that court or agency to require modification in order to conform to the requirements of that paramount law or regulation, then that provision will be deemed a separate, distinct, and independent part of this Article, and such determination will not affect the validity and enforceability of any other provisions. If that paramount Federal or State law or regulation is subsequently repealed or amended so that the provision of this Article determined to be invalid or subject to modification is no longer in conflict with that law or regulation, then that provision will again become effective and will thereafter be binding on the City and any affected telecommunications service provider; provided, however, that the City must give the affected telecommunications service provider thirty (30) days written notice of that change before requiring compliance with that provision, or such longer period of time as may be reasonably required for the telecommunications service provider to comply with that provision.