

shall not be required to provide notice of violation or a 30 day opportunity to cure prior to imposition of a fine.

(b) If the city concludes that a grantee is liable for fines pursuant to this section, the city shall issue to the grantee by certified mail a notice of intention to assess fines and the amount thereof. The notice shall set forth the basis for the assessment and shall inform the grantee that fines will be assessed from the date set forth in the notice unless the assessment notice is appealed for hearing before the city commission and the city commission rules (i) that the violation has been timely corrected, if applicable, or (ii) that an extension of time or other relief should be granted. A grantee desiring a hearing before the city commission shall send a written notice of appeal by certified mail to the city within 15 days of the date on which the city sent the notice of intention to assess fines. The hearing on the grantee's appeal shall be within 30 days of the date on which the grantee sent the notice of appeal. Unless the city commission indicates to the contrary, fines shall be assessed beginning with the date set forth in the notice of the intention to assess fines and continuing thereafter until such time as the violation ceases, as determined by the city.

(c) The remedies contained in this section 71-46 are in addition to any civil or criminal fines, penalties, fees, or other remedies which may be imposed against the grantee for the violation of this chapter, the franchise agreement or any other ordinance, rule or regulation of the city. (Ord. No. 02-03, Art. II(16), 2-28-02)

Sec. 71-47. Limit on grantee's recourse.

(a) To the extent provided in state and federal law, a grantee shall have no recourse against the city for any loss, expense or damage resulting from the terms and conditions of this chapter or any franchise agreement because of the city's enforcement thereof nor for the city's failure to have the authority to grant the franchise. The grantee expressly agrees that upon the grantee's acceptance of a franchise the grantee does so relying upon the grantee's own investigation and understanding of the power and authority of the city to grant the franchise.

(b) A grantee, by accepting a franchise, acknowledges that the grantee has not been induced to accept the franchise by any promise verbal or written, by or on behalf of the city or by any third person regarding the franchise not expressed therein. A grantee by accepting a franchise further acknowledges that no promise or inducement, oral or written, has been made to any city employee or official regarding receipt of the cable television franchise.

(c) A grantee further acknowledges by acceptance of a franchise that the grantee has carefully read the terms and conditions of this chapter and any franchise agreement and accepts without reservation the obligations imposed by the terms and conditions in this chapter and in any franchise agreement.

(d) The decision of the city commission concerning grantee selection and awarding of a franchise shall be final, subject to any challenge to or appeal of such decision in a court of competent jurisdiction, which challenge or appeal is permitted by applicable law.

(e) A grantee shall not apply for any waivers, exceptions or declaratory rulings from the Federal Communications Commission or any other federal or state regulatory agency with respect to the terms and conditions of its franchise without contemporaneous written notice to the city. (Ord. No. 02-03, Art. II(17), 2-28-02)

Sec. 71-48. Limitations.

Notwithstanding the grant to use the streets of the city, no street shall be used by a grantee if the city in its sole discretion determines that such use is inconsistent with the terms, conditions, and provisions by which the street was created or dedicated or is being used. Any and all rights expressly granted to a grantee under this chapter or any franchise agreement executed in connection herewith shall be exercised at the grantee's sole cost and expense, and shall be subject to the prior and continuing right of the city under applicable laws to use any and all parts of the streets exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title of

record which may affect the rights-of-way. Except as may be expressly provided by state or federal law, nothing in this chapter or in any franchise agreement executed in connection herewith shall be deemed to grant, convey, create or vest in a grantee a real property interest in any land, including any fee, leasehold interest or easement. (Ord. No. 02-03, Art. II(18), 2-28-02)

Secs. 71-49—71-75. Reserved.

ARTICLE III. FRANCHISE FEES

Sec. 71-76. Fees.

City and each grantee by acceptance of a franchise acknowledge that the State of Florida enacted "An act relating to communications services; creating F.S. ch. 202, the Communications Services Tax Simplification Law" which act pre-empts the city's ability to impose and collect franchise fees from a grantee at the municipal level. Upon any modification of the laws of the State of Florida subsequent to October 1, 2001, permitting the payment of new or additional sums to a municipality related to the provision of cable services or the use of a municipality's rights-of-way, the city reserves the right to amend and modify this article III and any then existing franchise to impose such additional franchise fees, taxes, rent, or equivalent charges, that a municipality shall then be permitted to charge by law; provided that in the event of a change in Florida law so that a grantee is no longer required to pay the Florida Simplified Communications Tax or similar replacement tax, a grantee shall pay to the city a franchise fee in an amount determined by the city up to the amount established as a maximum franchise fee under state or federal law. In the event that neither state nor federal law establishes a maximum franchise fee that may be charged by the city, each grantee shall pay to the city a franchise fee at the higher of (i) the rate last paid under the Florida Simplified Communications Tax (or successor replacement tax), (ii) five percent of grantee's gross revenues derived from the operation of its system within the city, or (iii) the highest rate paid by grantee to any municipality or county within the central Florida area and shall diligently negotiate

with the city thereafter to establish a mutually agreeable franchise fee for the remainder of grantee's franchise. For purposes of this agreement, the central Florida area shall be deemed to include Brevard County, Lake County, Orange County, Osceola County, Seminole County, and Volusia County. (Ord. No. 02-03, Art. III, 2-28-02)

Secs. 71-77—71-100. Reserved.

ARTICLE IV. OPERATIONAL RULES

Sec. 71-101. Compliance with state and federal law.

A cable communications franchise grantee shall, at all times, comply with all laws of the state and federal government and the rules and regulations of any federal or state administrative agency. If during the term of any franchise, regulatory authorities permit regulation of cable communication systems or services not permitted to the city on the effective date of any franchise granted hereunder, the city shall negotiate in good faith with a grantee to engage in any such additional regulation as may then be permissible, whether or not contemplated by this chapter or any franchise granted hereunder, including without limitation, regulation respecting rates charged to subscribers, consumer protection or any other similar or dissimilar matter. In the event that any actions of the state or federal government or any agency thereof or any court of competent jurisdiction upon final adjudication substantially reduces in any way the power or authority of the city under this chapter or a franchise granted hereunder, or if in compliance with any local, state or federal law or regulation a grantee finds direct and specific conflict with the terms of this chapter or any franchise granted hereunder, or any law or regulation of the city, then as soon as possible following knowledge thereof, the grantee shall notify the city in writing of the point of conflict believed to exist between such law or regulation and the laws or regulations of the city, this chapter and the franchise. The city, at its option, may notify the grantee that it wishes to negotiate those provisions which are affected in any way by such modification and regulations or statutory

authority. Thereafter, the grantee shall negotiate in good faith with the city in the development of alternative provisions which shall fairly restore the city to the maximum level of authority and power permitted by law. The city shall have the right to modify any of the provisions to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter or any franchise granted hereunder.

(Ord. No. 02-03, Art. IV(1), 2-28-02)

Sec. 71-102. Authority for use of streets.

(a) For the purposes of operating and maintaining a cable communications system in the city, a cable communications franchise grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the streets within the city such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the cable system, provided that all applicable permits are applied for and granted, all fees paid and all other city codes and ordinances are otherwise complied with.

(b) Notwithstanding any provision of this chapter to the contrary, a grantee shall file any generally required right-of-way utilization permit application with the city engineer or other proper department as determined by the city and pay all applicable fees, if any, prior to the construction, installation, repair or maintenance of all or any portion of its communications system and shall receive permit approval prior to commencement of any construction, installation, repair or maintenance of its communications system in the public street, which approval shall not be unreasonably withheld or unreasonably delayed. Said application for a permit shall set out the place, date and time where the conduits, cables or pull lines, or other form of construction are to be installed, or removed, or the construction is to be conducted. To the extent generally required by other users of the city's rights-of-way for similar work, all permit applications submitted by a grantee shall contain plans showing existing and proposed utility facilities and specifications prepared and approved by a qualified professional

engineer registered in Florida and letters of no conflict provided by other utilities having facilities located in the area or areas that the grantee desires to place conduits, cable, pull lines and/or other facilities or to begin construction. All permit applications shall indicate that a grantee has complied with the requirements of the Florida one call system. Any type of construction proposed by a grantee shall be subject to the City Code and other rules, resolutions, regulations, policies and approvals required by the city engineer and public works director. Any contractor proposed for work or construction, installation, operation, maintenance and repair of system equipment must be properly licensed under the laws of the State of Florida, and all applicable local ordinances.

(c) A grantee shall construct and maintain its cable communications system so as not to interfere with other uses and users of streets. A grantee shall make use of existing poles and other facilities which are available to the grantee on reasonable terms and conditions. A grantee shall use its best efforts to notify all residents affected by proposed construction prior to the commencement of that work. Such notification shall not be required for emergencies necessitating immediate repairs.

(d) Notwithstanding the grant to use streets, no street shall be used by a grantee if the city, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which the street was created or dedicated or is being used.

(Ord. No. 02-03, Art. IV(2), 2-28-02)

Sec. 71-103. Construction reporting requirements.

(a) For initial construction of a cable system and any later material expansions, a grantee shall provide the city with written progress reports detailing work completed to date and a schedule for completion of construction. Such report shall include a description of the progress in applying for any necessary agreements, licenses, or certifications and any other information the city may deem necessary. The content and format of the report will be determined by the city and shall include detailed as built survey drawings for

each segment of construction of the cable system showing the location and depth of all underground lines and the location of all overhead facilities.

(b) Upon commencement of such construction or rebuild, such written report shall be submitted to the city on a bi-monthly basis throughout the entire construction or rebuild process. The city may require more frequent reporting if it determines it is necessary to better monitor a grantee's progress.

(Ord. No. 02-03, Art. IV(3), 2-28-02)

Sec. 71-104. Conditions on street occupancy.

(a) All transmission and distribution structures, lines and equipment erected by the cable communications franchise grantee within the city shall be so located to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and appearance and reasonable convenience of property owners who own property adjoining any such streets, alleys or other public ways and places. A grantee in the performance and exercise of its rights and obligations under this chapter shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, rights of adjoining property owners, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable laws or this chapter. A grantee shall be liable to the city or to the third party owner, as the case may be, for the cost of any repairs made necessary by any displacement, damage, or destruction of city or third party property to the extent caused by the grantee and shall pay such costs upon written demand within 30 days of receipt of such demand.

(b) For disturbance of any street, sidewalk, alley, public way or paved area, a grantee shall, at the grantee's own cost and expense and in a manner approved by the director of public works or his designee, replace and restore such street,

sidewalk, alley, public way or paved area in as good condition as before the work involving such disturbance was done.

(c) A grantee shall remove, replace or modify, at the grantee's own expense, the installation of any of the grantee's facilities as may be deemed necessary by the city or other appropriate governmental authority; provided, however, that if the movement, replacement, or modification was solely for the benefit of a non-governmental entity, the grantee shall be entitled to payment from the benefitting non-governmental entity in an amount equal to the reasonable actual costs incurred by the grantee. Regardless of who bears the costs or when payment, if any, is received by a grantee, a grantee shall take action to remove or relocate the grantee's facilities at such times as are directed by the city or other governmental authority. Reasonable advance written notice shall be mailed to a grantee advising the grantee of the date removal or relocation is to be undertaken. For purposes of clarification and example and not limitation of the preceding sentence, a grantee, at its own cost and expense, shall relocate, in cooperation with the city commission and public works department, its facilities and equipment or any part thereof installed, used and maintained under this chapter if and when the city determines that the relocation is needed for any of the following purposes:

- (1) If required for the construction, completion, repair, relocation, or maintenance of a city project or public improvement; provided that if such project or improvement is for the purpose of providing cable, telecommunication, or information services which compete with cable, telecommunication, or information services provided on the grantee's system the party for whose benefit the relocation is required shall bear the costs of the relocation.
- (2) If grantee's equipment or any part is unreasonably interfering with the convenient, safe, or continuous use, or the maintenance, improvement, extension, redevelopment, or expansion, of any right-of-way;

- (3) If grantee's equipment is interfering with or adversely affecting proper operation of city-owned light poles, traffic signals, traffic conditions, or other municipal facilities or the facilities and operation of any other pre-existing user of a right-of-way, including but not limited to an entity providing utility service within the city;
- (4) If required for the repair, maintenance, or removal of sewers, drains, water pipes, utility and communication lines, transportation facilities, tracks, or any general program under which the city shall undertake to cause any such properties to be located beneath the surface of the ground and any other improvements by governmental agencies whether acting in a governmental or a proprietary capacity; or
- (5) If the relocation is necessary to protect or preserve the public health or safety.

If a grantee shall fail to relocate any portion of its facilities and equipment as requested by the city within a reasonable time under the circumstances in accordance with the foregoing provision, the city shall be entitled to relocate such portion of grantee's facilities and equipment at grantee's sole cost and expense, without further notice to grantee and grantee shall pay to the city such costs and expenses within 45 days after receipt of a demand by the city. Such costs include but are not limited to actual costs incurred by the city and the costs associated with city personnel for the time expended related to grantee's failure. Action taken pursuant to this section shall not be deemed a taking of the property of a grantee.

(d) Whenever, in case of fire or other disaster, it becomes necessary, in the judgment of the city, to remove or damage any of a grantee's facilities, no charge shall be made by the grantee against the city for restoration and repair. The city shall endeavor to avoid or limit damage to the extent necessary under the circumstances. The city shall make such efforts as are reasonable in the circumstances to notify a grantee prior to any such action.

(e) A grantee shall be responsible for damage to city street pavements, existing utilities, curbs, gutters, landscaping and sidewalks due to the grantee's installation, maintenance, repair or removal of its facilities and equipment. In case of any disturbance of pavement, sidewalks, driveways, or other surfacing, the grantee shall at its own expense and in a manner approved by the city, replace or restore such places so disturbed in as good or better condition as before said work was commenced, and shall maintain the restoration in a condition for the full period of one year, and if the grantee fails to do so upon ten days prior written notice from the city (except in the event of threat to the public safety in which case no notice need be provided), the city may undertake such restoration at the expense of the grantee.

(f) If at any time, due to an emergency situation in the city, it shall become necessary in the reasonable judgment of the city to move any part of a grantee's facilities or equipment, the city shall immediately notify the grantee at the emergency notification number provided to the city for such purpose and the grantee shall respond with all possible dispatch to alleviate or remedy the situation. If at any time, the city should determine, in city's sole discretion, that a grantee is failing to act with reasonable dispatch to alleviate an emergency situation or that the public safety requires city to act to alleviate a dangerous condition without waiting for grantee action, city may at grantee's sole expense take such action as city, in city's sole discretion, deems necessary to alleviate the situation and secure the public safety.

(g) The city shall not be required to assume any responsibility for securing any rights-of-way or easements, nor shall the city be responsible for securing any permits or agreements with other parties or utilities for the construction, installation, or maintenance of a grantee's cable system.

(h) All installations in streets shall be performed in accordance with the state department of transportation's manual of uniform minimum standards for design, construction, or maintenance for streets and highways. In addition, a grantee shall comply with all applicable laws, regulations and codes promulgated for the protection of the public, including but not limited to the

National Electric Code, the national Electric Safety Code, the Florida Department of Transportation's Utility Accommodation Guide, and such other design and regulatory manuals that regulate the installation of structures within public rights-of-way. The construction, installation, maintenance and removal of the grantee's facilities and communications system shall be accomplished without cost or expense to the city in such manner so as not to endanger persons or property or unreasonably interfere with the traveling public or other users of the public rights-of-way. (Ord. No. 02-03, Art. IV(4), 2-28-02)

Sec. 71-105. Erection of poles.

(a) No cable communications franchise shall be deemed to expressly or impliedly authorize the grantee to construct or install poles or wire-holding structures within a street for the purpose of placing cables, wires, lines or otherwise, without the written consent of the city for the street within which the poles or structures are situated which consent shall not be unreasonably withheld. Such consent shall be given upon such terms and conditions as the city, in its sole discretion, may prescribe, which shall include a requirement that a grantee perform, at the grantee's sole expense, all tree trimming required to maintain grantee's facilities clear of obstructions. The lowest wire on any pole placed in any right-of-way used by vehicular traffic shall not be less than 18 feet from the ground. All overhead wires shall be maintained in accordance with the National Electric Code, the National Electric Safety Code, and the safety rules for the installation and maintenance of electrical supply and communication lines established by the Department of Commerce, Bureau of Standards of the United States.

(b) With respect to any poles or wire-holding structures which a grantee is authorized to construct and install within streets, a public utility or public utility district serving the city may, if denied the privilege of utilizing such poles or wireholding structures by the grantee, apply for such permission to the city commission. If the city commission finds that such use would enhance the public convenience and would not unduly interfere with the grantee's operations, the city commission may authorize such use subject to

such reasonable terms and conditions as the city commission deems appropriate. Such authorization shall include the condition that the public utility pay to the grantee any and all actual and necessary costs incurred by the grantee in permitting such use, together with a reasonable return thereon, consistent with applicable governmental regulations.

(c) No location of any pole of a grantee shall be a vested right and such poles may be removed, relocated or modified by the grantee, at its own expense, whenever the city determines the public convenience would be enhanced thereby. Grantees shall utilize existing poles and conduits where possible and available on reasonable terms and conditions. The city shall have the right, during the life of a franchise, to install and maintain free of charge upon the poles owned by a grantee, any wire and pole fixtures that do not unreasonably interfere with the cable system operations of the grantee.

(Ord. No. 02-03, Art. IV(5), 2-28-02)

Sec. 71-106. Undergrounding.

(a) Except as provided in this article, in all areas of the city where all cables, wires and other like facilities of public utilities are placed underground, each cable communications franchise grantee shall construct and install the grantee's cables, wires and other facilities underground. Amplifier boxes and pedestal-mounted terminal boxes may be placed aboveground, if technology reasonably requires, but shall be of such size and design and shall be so located to provide an installation as aesthetically acceptable and as safe as possible under such technology.

(b) With respect to any cables, wires and other like facilities constructed and installed by a grantee aboveground, the grantee shall reconstruct and reinstall such cables, wires or other facilities underground pursuant to any project under which the cables, wires or other like facilities of such utilities are placed underground within an area.

(c) Cable shall be a minimum of 36 inches deep in rights-of-way.

(Ord. No. 02-03, Art. IV(6), 2-28-02)

Sec. 71-107. Movement of buildings.

Each cable communications franchise grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the city, temporarily remove, raise or lower the grantee's wire to permit the movement of buildings. The expense of such removing, raising or lowering shall be paid by the person requesting the removing, raising or lowering, and a grantee shall be authorized to require such payment in advance. A grantee shall be given not less than five working days oral or written notice to arrange for such temporary wire changes.

(Ord. No. 02-03, Art. IV(7), 2-28-02)

Sec. 71-108. Traffic obstruction.

In the event that any work to be conducted by a grantee requires streets or traffic lanes to be closed or obstructed, the grantee shall, pursuant to the requirements of existing or subsequently enacted city ordinances, obtain all permits from and pay all fees therefore to the city, and shall obtain approval of its maintenance of traffic plan from the city's police and public works departments prior to commencing such work.

(Ord. No. 02-03, Art. IV(8), 2-28-02)

Sec. 71-109. Tree trimming.

In the event a grantee or the city deems the trimming and removal of any trees reasonably necessary to construct any portion of its communications system or to maintain the integrity and safety of the system, the grantee shall pursuant to the requirements of existing and subsequently enacted city ordinances, obtain all necessary approvals and applicable permits from the city prior to such trimming or removal. All tree trimming shall be done in accord with the standards of the Florida Urban Forestry Council and the American Society of Landscape Architects, except where following such standards would violate applicable federal, state, or city safety or tree trimming codes or regulations. Where such standards conflict, grantee shall follow the standards allowing the least trimming and pruning of trees.

(Ord. No. 02-03, Art. IV(9), 2-28-02)

Sec. 71-110. Inspection.

The city shall have the right to inspect at all times and in a reasonable manner, the installation, construction, and maintenance of the cable communications system of a grantee in the rights-of-way to ensure conformance with the terms of this chapter.

(Ord. No. 02-03, Art. IV(10), 2-28-02)

Sec. 71-111. Completion.

(a) The initial construction of a grantee's cable communications system shall be completed by the grantee within 90 days of the estimated completion date provided in the grantee's franchise application unless extended with the consent of the city. The initial construction of the system shall be deemed complete upon the issuance of a final order of completion issued by the city. A grantee who asserts completion shall file a written notice of completion with the city clerk. Neither the notice of completion nor the statements, assertions or certifications contained therein shall be deemed to be binding upon the city. A final order of completion for initial construction of the cable communications system shall be issued by the city when:

- (1) Construction of the cable communications system described in the application for a franchise has been completed within the entirety of franchise area granted in compliance with construction standards and the design and other requirements of this chapter;
- (2) Any and all studio facilities, equipment, channels and other services, resources or benefits required for governmental access purposes pursuant to the provisions of this chapter or in any franchise agreement between the city and grantee have been completed and made available;
- (3) Complete and accurate as-built survey drawings detailing all equipment and facilities in the streets and rights-of-way of the city, including but not limited to the location and depth of all underground lines and the location of all overhead facilities, have been filed by the grantee with the city; and

- (4) A notice of completion has been filed by the grantee as provided in this section.

(b) During the period of construction of the cable communications system and during the 60-day period following filing of the notice of completion, all elements and components thereof and all equipment and studio facilities required by the franchise documents shall be subject to inspection by city employees or authorized agents or representatives thereof, for the purpose of determining whether the system and related facilities comply with the franchise and the provisions of this chapter. The grantee shall authorize such inspection and provide such information and cooperation as is required in order to permit an adequate investigation to determine the existence or nonexistence of such compliance.

(c) After a final order of completion has been issued, a grantee shall provide city with supplemental survey drawings meeting the criteria contained in section 71-42(a)(3) above for any relocations or new lines and facilities. Thereafter, not more frequently than every two years, upon request of the city, a grantee shall supply city with updated accurate as-built survey drawings detailing all equipment and facilities in the streets and rights-of-way of the city, including but not limited to the location and depth of all underground lines and the location of all overhead facilities.

(Ord. No. 02-03, Art. IV(11), 2-28-02)

Sec. 71-112. System expansion.

- (a) *System expansion, isolated subscribers.*

- (1) A grantee shall extend cable television services to any isolated residence located within the area of the grantee's franchise at the standard rate if:
 - a. The resident requests the service extension, and
 - b. The service connection to the isolated residence would require no more than a standard 125 foot drop line.
- (2) A grantee shall extend cable television services to any isolated residence requiring more than a standard 125 foot drop line at a premium installation rate if such service has been requested by the resi-

dent. The premium installation rate charged shall be the actual cost for the installation less the cost of installing a subscriber by means of a standard 125 foot drop line. A grantee may require advance payment for such installation. A grantee's installation charges and rates inside the city shall at no time be greater than the rates to be charged outside the city in West Orange County.

- (b) *System expansion new or existing developments—Overhead cable construction.*

- (1) A grantee shall extend its distribution facilities and cable television services to any area within the area of its franchise where there exists 20 dwelling units which have received a certificate of occupancy from the city for each strand mile of cable extension required or portion thereof. A grantee shall have six months from the issuance of the certificates of occupancy for new dwelling units to substantially complete construction and provide service to the new dwelling units. Notwithstanding the preceding provisions of this subsection (1), a grantee's obligation to extend its distribution facilities and cable television services is contingent upon at least 20 residences or group of residences to be serviced for each strand mile of cable extension required having requested service in writing who meet the requirements for new subscribers provided in subsection (c) hereof.
- (2) Any development or group of residences not meeting any or all of the above requirements may be served at a grantee's discretion.
- (3) It shall be the responsibility of a grantee to obtain written permits and approvals from the city and all other governmental agencies and easement holders prior to beginning any installation. It shall be the responsibility of the grantee to coordinate the proposed installation with all governmental agencies, easement holders and beneficiaries, and any persons holding an interest in the property where the instal-