

ORDINANCE NO. 28-98 N.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF RICHMOND
AMENDING CHAPTER 7.94 OF THE RICHMOND MUNICIPAL CODE.
THIS ORDINANCE AMENDS THE RICHMOND TELECOMMUNICATIONS
ORDINANCE

The Council of the City of Richmond ordains as follows:

Section I. Chapter 7.94 of the Richmond Municipal Code is hereby
amended to read as follows:

Chapter 7.94

RICHMOND TELECOMMUNICATIONS

Sections:

- 7.94.010 Intent.**
- 7.94.020 Short title.**
- 7.94.030 Definitions.**
- 7.94.040 Police powers.**
- 7.94.041 Application.**
- 7.94.042 Registration.**
- 7.94.050 Grant of franchise.**
- 7.94.060 Franchise Required.**
- 7.94.070 Franchise Application.**
- 7.94.080 Grant procedure.**
- 7.94.090 Characteristics of franchises.**
- 7.94.100 Franchise Duration.**
- 7.94.110 Franchise Establishment of requirements.**
- 7.94.120 Cable Service Minimum requirements.**
- 7.94.130 Franchise Fee.**
- 7.94.140 Remedies.**

7.94.010 Intent.

The city finds that the development of telecommunications systems has the potential of having great benefit and impact upon the residents of Richmond. Because of the complex and rapidly changing technology associated with telecommunications, the city further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the city or such persons as the city shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

7.94.020 Short title.

This chapter shall be known and may be cited as the Richmond Telecommunications Ordinance.

7.94.030 Definitions.

For the purposes of this chapter, the following terms, phrases, words, abbreviations, and their derivations shall have the following meanings:

(1) City means the City of Richmond, California, and any board, bureau, authority, agency, commission, department or any other entity of or acting on behalf of the city, or any officer, official, employee or agent thereof, or any successor thereto.

(2) Cable Service means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection of such video programming or other programming services.

(3) Cable television system means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the franchise area, but such term does not include: (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act of 1934 (47 USC 201 et seq.), except that such facility shall be considered a cable television system to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems.

(4) Franchise means the right granted through a contractual agreement between the city and any such person(s) by which the city authorizes such person(s) to erect, construct, expand, upgrade, rebuild, operate, dismantle, test, use and maintain a telecommunications system in the city. Any franchise awarded by an agreement in accordance herewith shall be a nonexclusive franchise.

(5) Franchise agreement means an agreement entitled Nonexclusive Franchise Agreement entered into between the city and any franchisee which is enforceable by city and the franchisee and which sets forth the rights and obligations between city and franchisee arising out of the franchise.

(6) Franchise area means the city of Richmond, California, and all the territory within its present and future boundaries and including any area over which the city exercises jurisdiction.

(7) Franchisee means any person(s) with whom the city has entered into a franchise agreement pursuant to this chapter.

(8) Person means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

(9) Service area means the area defined in any franchise agreement as the area to which the franchisee is obligated to provide telecommunications services pursuant to the franchise agreement.

(10) Subscriber means any person who legally receives any one or more of the services provided by a telecommunications system.

(11) Public Right-of-Way means the surface of and the space above and

below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, drive or public easement now or hereafter existing as such within the franchise area.

(12) Telecommunications Facilities or System means facilities within the City used or related to the provision of Telecommunications Services including, but not limited to, wires, optical fiber, antenna and equipment.

(13) Telecommunications Services means the transmission of voice, video, data or other information between two or more points along wires, optical fibers or other transmission media, or using radio waves or other wireless media, including but not limited to cable television services, telephone services, cellular telephone services, personnel communications services, internet services, open video system services and other similar services.

(14) Telecommunications Service Provider means any Person providing any Telecommunications Services within the City.

7.94.040 Police powers.

Nothing in this chapter or in any agreement awarding a franchise in accordance herewith shall be construed as an abrogation by the city of any of its police powers.

7.94.041 Application.

All Telecommunications Service providers shall comply with all provisions of Section Sec. 7.94.042 below and all other applicable provisions of this Code. In addition, all Cable Operators shall comply with Section 7.94.120 below.

7.94.042 Registration.

Prior to offering any Telecommunications Service within the City or utilizing any Telecommunications Facilities within the City, all Telecommunications Service Providers who own or lease any Telecommunications Facilities located within the Public Right-of-Way shall register with the City on forms provided by the City. These forms shall include, but not limited to, the following:

1. The name and legal status of the registrant, including any affiliates who are required to register pursuant to this section;
2. The name, address and telephone number of an officer, agent or employee who will serve as the contact point for the registrant;
3. A description of the registrant's existing or proposed Telecommunications Facilities that are owned or will be used within the City, together with a list of any other Telecommunications Operators who will be using those Telecommunications Facilities;
4. A description of the Telecommunications Services that the registrant is or will be offering using Telecommunications Facilities within the City;
5. A description of the extent to which the registrant believes it is exempt under State or Federal law from any of the requirements of this Code;
6. A copy of the registrant's applicable Certificate of Public

Convenience and Necessity, if any, issued by the California Public Utilities Commission.

7. A registration fee in the amount established by the City Council.

Any Telecommunications Service Provider which is offering Telecommunications Services within the City or utilizing any Telecommunications Facilities within the City on the effective date of this ordinance shall comply with this section within six (6) months following the effective date of this ordinance.

7.94.050 Grant of franchise.

The City Council may, by authorizing ordinance, grant, expand or renew a franchise for all or any portion of the franchise area by entering into a franchise agreement.

7.94.060 Franchise Required.

All Telecommunications Service Providers shall obtain a franchise from the City unless such providers are exempt from franchising requirements pursuant to state or federal law. A Telecommunications Service Provider shall not be deemed exempt from this franchise requirement unless and until it provides documentation of such exemption to the satisfaction of the City.

7.94.070 Franchise Application.

Applicants for a franchise, an expanded franchise or the renewal of a franchise shall submit to the city written applications utilizing the standardized format provided by the city, at the time and place designated by the city for accepting application and such applications shall include, at a minimum:

(1) A clear description of the identity of the applicant, including but not limited to the name of the applicant, the address of the applicant, the nature of the business entity, the names of the owners of the business entity, and evidence of the compliance of the business entity with all applicable laws.

(2) A map or maps showing the precise geographic area for which applicant seeks a franchise;

(3) Detailed plans and specifications for the telecommunications system which is proposed by the applicant, including plans for access channels, interconnection with other cable television systems and other matters set forth in Sections 7.94.120 and 7.94.130 of this chapter as minimum system requirements.

(4) A nonrefundable application fee in an amount to be set by Council resolution which shall take into account the size of the proposed service area;; and

(5) Such information pertaining to and evidence of the applicant's legal, financial and technical ability to carry out its proposal as may be requested by the City.

7.94.080 Grant procedure.

All applications for a franchise, an expanded franchise or the renewal of a franchise when complete and properly filed shall be available for public inspection at places designated by the city. No later than one hundred twenty

(120) days after the date of such filing, one or more public hearings shall be held on each application filed. A decision shall be made by the city not later than one hundred twenty (120) days after the conclusion of all such public hearings based upon an evaluation of the application, the hearings, and other information that the city may deem relevant. The city may grant, expand or renew one or more franchises, or may decline to grant, expand or renew any franchise, subject to applicable federal and state law.

7.94.090 Characteristics of franchises.

All franchises granted, expanded or renewed pursuant to this chapter shall have the following characteristics:

(1) The franchise shall be a nonexclusive franchise to construct, operate, maintain, and reconstruct a telecommunications system within the service area and shall constitute both a right and an obligation to provide telecommunications services as required by the provisions of this chapter and the franchise agreement. The city specifically reserves the right to grant, at any time, such additional franchises for a telecommunications system or systems as it deems appropriate; provided, however, that such additional grants shall not operate to materially modify, revoke or terminate any contractual rights granted to any franchisee.

(2) The franchise agreement shall include those provisions of the franchisee's application that are finally negotiated and accepted by the city and the franchisee.

(3) Any franchise granted under the terms and conditions contained herein shall be consistent with federal laws and regulations and state general laws and regulations. In the event of conflict between the terms and conditions of the franchise agreement and the terms and conditions on which the city can grant a franchise, the general law and/or statutory requirements shall, without exception, control.

(4) Any franchise granted is subject to the general ordinance provisions now in effect or hereafter made effective. Nothing in the franchise shall be deemed to waive the requirements of the other codes and ordinances of the city regarding permits, fees to be paid or manner of construction.

7.94.100 Franchise Duration.

The terms of any new franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall be as established in the franchise agreement.

7.94.110 Franchise Establishment of requirements.

The City Council may establish appropriate requirements for new franchises, expanded franchises or franchise renewals, and may modify these requirements from time to time to reflect changing conditions and state-of-the-art technology in the telecommunications industry. Such requirements shall not be retroactive to franchises then in effect, except as set forth in Section 7.94.040 (Police power), but shall become applicable when and if any such a franchise is expanded or renewed.

7.94.120 Cable Service Minimum requirements.

Each cable television system franchised pursuant to this chapter shall, at a minimum:

(1) Relay to subscriber terminals those broadcast signals required by the FCC;

(2) Distribute in color all television signals which it receives in color;

(3) Make available at a reasonable price upon request by any subscriber receiving channels showing premium services and pay-per-view events a lockout device which prevents the unauthorized viewing of such channels;

(4) Make available at a reasonable price upon request by any subscriber, an RF switch (an A-B switch) permitting conversion from cable to antenna reception;

(5) Have a minimum present, activated capacity of four hundred fifty (450) megahertz with all amplifier cascades designed and spaced to accommodate conversion to five hundred fifty (55) megahertz capacity;

(6) If requested by the city, include equipment capable of providing automatic standby powering for headend, transportation and truck amplifiers for a minimum of two (2) hours;

(7) Include an emergency override capability which will permit the city, in times of emergency, to override all channels simultaneously;

(8) Be interconnected with other cable television systems within the franchise area and be capable of being interconnected with other cable television systems beyond the franchise area but within the nine-county Bay area so as to enable each cable television system to carry and cablecast the public, educational, and governmental access programming of the other systems; and

(9) Be constructed, installed and maintained in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements and technical standards equivalent to those established by the FCC.

(10) (a) Every cable television system franchised pursuant to the provisions of this chapter shall provide not less than the following for public, educational and governmental access pursuant to the provisions of the Cable Communications Policy Act of 1984, Section 611 (47 USC 531);

(i) Six (6) downstream video channels; and

(ii) Two (2) upstream video channels.

(b) Nothing contained in this chapter shall be construed to limit the authority of any franchisee to make payments in support of the use of public, educational and/or governmental access. However, such payments are expressly not a requirement of any franchise granted hereunder and shall in no event be considered in the calculation of franchise fees pursuant to this chapter.

(c) Franchisees hereunder shall make all reasonable efforts to coordinate the cablecasting of public, educational and/or governmental access programming at the same time and at the same channel numbers such programming is cablecast on other cable television systems within the franchise area.

7.94.130 Franchise Fee.

For the use of the streets during the term of each franchise, each franchisee

hereunder shall pay to the city an amount of 5% of the franchisee's annual gross revenues.

7.94.140 Remedies.

No provision of this chapter shall be deemed to bar the right of the city to seek or obtain judicial relief from a violation of any provision of any franchise agreement or any rule, regulation, requirement or directive promulgated thereunder.

Section II. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section III. Effective Date.

This ordinance becomes effective after its final passage and adoption.

First read at a regular meeting of the Council of the City of Richmond, California, held _____, and finally passed and adopted at a regular meeting thereof held _____, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

Mayor

Approved as to form:

City Attorney
(July 16, 1998)