

ARTICLE 1  
FRANCHISES

Section	Subject Matter
11-1.00	FRANCHISE REQUIRED
11-1.01	MATTERS SUBJECT TO FRANCHISE
11-1.02	FRANCHISES. AUTHORITY OF COUNCIL
11-1.03	FRANCHISE TERMS AND CONSIDERATIONS
11-1.10	FRANCHISE APPLICATION
11-1.11	APPLICATION FEE
11-1.12	FRANCHISE. CALL FOR BIDS DISCRETIONARY
11-1.13	APPLICATION - REFERRAL
11-1.14	FRANCHISE. NOTICE OF HEARING
11-1.15	HEARING
11-1.20	FRANCHISE BOND
11-1.30	TRANSPORTATION FRANCHISE
11-1.40	ACCEPTANCE OF FRANCHISE
11-1.50	FRANCHISE. OBLIGATION OF GRANTEE
11-1.60	FRANCHISE ASSIGNMENT
11-1.70	SPECIAL PERMITS
11-1.71	APPLICATION FOR SPECIAL PERMIT
11-1.72	SPECIAL PERMITS. GRANTING
11-1.73	SPECIAL PERMITS. BOND

Section	Subject Matter
11-1.100	GENERAL PROVISIONS
11-1.200	DEFINITIONS
11-1.300	FRANCHISE FEES
11-1.400	CUSTOMER SERVICE
11-1.500	PERMITS AND CONSTRUCTION
11-1.600	EMERGENCY ALERT SYSTEMS
11-1.700	PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS CHANNEL CAPACITY, SUPPORT, INTERCONNECTION, AND SIGNAL CARRIAGE
11-1.800	NOTICES

## ARTICLE 1

### FRANCHISES

SEC. 11-1.00 FRANCHISE REQUIRED. No person shall exercise any franchise, permit or privilege mentioned herein except insofar as he may be entitled to do so by direct authority of the Constitution of the State of California or the Constitution or laws of the United States, in, upon, over, under or along any public place in the City of Hayward, unless he or it shall have obtained a grant therefor in accordance with the provisions hereof and of the applicable provisions of the Charter. Nothing herein contained shall be construed to invalidate any lawful franchise heretofore granted, nor to necessitate the obtaining of a new franchise for a use for which a franchise holder shall have a valid unexpired franchise.

SEC. 11-1.01 MATTERS SUBJECT TO FRANCHISE. Except insofar as he may be entitled to do so by direct authority of the Constitution of California, or of the Constitution or laws of the United States, no person shall exercise any privilege enumerated in this Section unless he shall have been granted an appropriate franchise therefor by the City of Hayward, namely:

1. Construct, maintain or operate, a street, interurban, underground, or elevated, steam or commercial railroad, or other system for transporting or conveying passengers or freight (including any appurtenances which are a part of the system) over a fixed route, along, upon, over, in, under or across any public place in the City of Hayward.
2. Construct, maintain or operate pipes, tubes or conduits along, upon, over, in, under or across any public place in the City of Hayward for the purpose of transmitting or distributing water, gas, steam, oil, air or other substance or utility.
3. Erect, construct, lay, maintain or operate poles, pipes, conduits, wires, cables, or appurtenances, upon, over, under, in, across or along any public place in the City of Hayward for the purpose of transmitting or distributing power, heat, electricity or electric energy, or for a communication by telephone, telegraph, or other system.
4. Construct, maintain or operate any other plants or system necessary or convenient for furnishing the City and its inhabitants with transportation, communication, water, light, power or other public utility service.

The term "public place" as used herein shall be deemed to include any street, lane, alley, court or other public place in the City.

Nothing in this Section shall be construed as applying to spur or side tracks, nor to require motor, contract or other carriers of freight or passengers not operating over a fixed route to obtain franchises for use of any public place of the City.

SEC. 11-1.02 FRANCHISES. AUTHORITY OF COUNCIL. Pursuant to its constitutional, charter and statutory authority, the City Council may grant franchises and privileges for all of the purposes enumerated herein to persons whether operating under any

existing franchise or not, upon such terms and conditions as are in the applicable provisions of the Charter, and any ordinances adopted pursuant thereto, and may in such franchises impose such other and additional terms and conditions not in conflict with said Charter or ordinances, whether governmental or contractual in character, as in the judgment of said Council are in the public interest.

SEC. 11-1.03 FRANCHISE TERMS AND CONSIDERATIONS. No franchise shall be granted without reserving to the City adequate consideration for the privilege conferred.

Franchises may be granted either for a fixed or an indeterminate period.

SEC. 11-1.10 FRANCHISE APPLICATION. An applicant for any franchise above mentioned, shall file with the City Council a verified application which shall state (a) the name of the applicant, (b) the purpose and term, whether definite or indeterminate, for which the franchise shall be desired, (c) the amounts and/or percentages, if any, applicant if granted the franchise, will pay to the City during the life of such franchise, (d) any limitations as to time, place or type of services proposed by applicant, and (e) any other terms or conditions that applicant may desire, including surrender of existing franchises, or parts thereof, or claims to such franchises, or proposals to settle any litigation or controversies between the applicant and the City.

Franchise applications shall set forth such other information as the City Council may require.

SEC. 11-1.11 APPLICATION FEE. Every application for a franchise, permit or privilege shall be accompanied by a cash deposit of not less than Five Hundred Dollars (\$500.00), or by a certified check for said amount, payable to the City, as a fund out of which to pay all expenses connected with such application. The deposit of the applicant shall be retained until the acceptance of the franchise and the filing of any bond or other security required or until the Council determines not to grant the franchise. Thereupon the remainder, if any, of the Five Hundred Dollars (\$500.00) after the payment therefrom of all such expenses incurred by the City shall be returned to applicant.

SEC. 11-1.12 FRANCHISE. CALL FOR BIDS DISCRETIONARY. The Council may grant a franchise without calling for bids or may, in its discretion, advertise for bids for the sale of a franchise after notice inviting bids therefor upon a basis, not in conflict with the provisions of the Charter, to be set out in advertisements for bids and notice of sale, provided that no bidding shall be had or required upon any renewal of a franchise, surrender of existing franchise or parts thereof, or in settlement of litigation between the grantee and the City.

SEC. 11-1.13 APPLICATION - REFERRAL. Every application made to the Council for a franchise, privilege or permit mentioned herein shall, before any action is taken thereon, be referred by the Council to the City Manager and City Attorney for their respective recommendations.

Before making his recommendations to the Council, the City Manager shall obtain the recommendations of the Director of Public Works, the Planning Director and the Traffic Engineer.

SEC. 11-1.14 FRANCHISE. NOTICE OF HEARING. Upon receipt of the City Manager's recommendation, the Council may pass a resolution declaring its intention to grant the

franchise, stating the character of the same, setting forth a notice of the day, hour and place when and where any and all persons having any objection to the granting thereof may appear before the Council and be heard thereon, and directing the City Clerk to publish said notice at least once within fifteen (15) days after the passage of said resolution. The time fixed for such hearing shall be not less than twenty (20), nor more than sixty (60) days after the date of the passage of said resolution.

Such notice shall state the name of the applicant, the character of the franchise, its term, whether definite or indeterminate, the amounts and/or percentages, if any, grantee shall pay to the City during the life of such franchise, any limitations as to time, place or type of service proposed, the amount and character of any bond or other security required, together with an outline of the other major provisions of the proposed franchise.

SEC. 11-1.15 HEARING. At any time not later than the hour set for the hearing of objections, any person interested may make written protest stating objections against the granting of such franchise. Such protest must be signed by the protestant and be delivered to the City Clerk. At the time set for hearing objections the Council shall proceed to hear and pass upon all protests so made and its decision shall be final and conclusive. The Council may adjourn said hearing from time to time.

If no protest in writing shall have been delivered to the Clerk up to the hour set for hearing, or such other protests as shall have been filed shall have been heard and determined by the Council to be insufficient, or shall have been overruled or denied, the Council may grant such franchise. Such franchise shall be granted by ordinance adopted in the manner prescribed by the Charter.

SEC. 11-1.20 FRANCHISE BOND. The Council may require the grantee of any franchise to provide such bond or other security as it deems the public interest requires.

SEC. 11-1.30 TRANSPORTATION FRANCHISE. Every franchise granted a transportation company shall specify the area in which the grantee shall operate, the public places or routes to be followed by the tracks or vehicles of the grantee which area, public places and routes shall be subject to the lawful orders of the Public Utilities Commission of the State of California.

SEC. 11-1.40 ACCEPTANCE OF FRANCHISE. The grantee of any franchise granted hereunder shall within ten (10) days after the franchise is granted, file with the City Clerk a written acceptance of the terms and conditions thereof and any bond or other security required by the Council.

SEC. 11-1.50 FRANCHISE. OBLIGATION OF GRANTEE. The grantee of any franchise granted pursuant hereto shall (a) construct, install and maintain all tracks, pipes, tubes, conduits, poles, wires, instrumentalities and appurtenances in accordance and in conformity with all of the lawful ordinances, rules and regulations theretofore or thereafter adopted by said City in the exercise of its police powers, and, as to State Highways, subject to the provisions of general laws relating to the location and maintenance of such facilities therein, (b) pay to the City on demand the cost of all repairs to public property made necessary by any operations of the grantee under such franchise, (c) indemnify and hold harmless the City and its officers and employees from any and all liability for damages proximately resulting from any operations under such franchise, and (d) make such reports and permit such examinations of its records as the franchise may require.

SEC. 11-1.60 FRANCHISE ASSIGNMENT. No franchise, permit or privilege granted by the City shall be in whole or in part, leased, assigned or otherwise disposed of, or transferred without the express consent of the City, provided that nothing herein shall be construed to prevent the grantee from the City of such franchise, permit or privilege from including it in a mortgage or trust deed without such express consent.

SEC. 11-1.70 SPECIAL PERMITS. When the Council shall find that an emergency exists and that public convenience and necessity require it, a special permit may be granted to any applicant for a franchise to permit such applicant to proceed with the relocation, extension, alteration or other change in existing facilities, except repairs or maintenance changes, which relocation, extension, alteration or other change in existing facilities by reason of such emergency should be made before the securing of a franchise is possible.

Such special permit shall only be granted to an applicant for a franchise, and after the filing of the application for a franchise as provided herein.

SEC. 11-1.71 APPLICATION FOR SPECIAL PERMIT. An application for a special permit shall be filed in writing with the Council setting forth such information as will permit action thereon. Reference in said application may be made to the application for a franchise for a description of the proposed extension, alteration or other change in existing facilities.

Applications for special permits shall be referred to the City Attorney and the City Manager in the manner provided for applications for franchises.

SEC. 11-1.72 SPECIAL PERMITS. GRANTING. All such special Permits shall be granted under the express condition that if a franchise under this Article is not granted and accepted, all work done under such special permit shall be removed immediately at applicant's expense and the streets or alleys or other public places affected by such work shall be placed in as good condition as before such work was done, all to the satisfaction of the Director of Public Works.

SEC. 11-1.73 SPECIAL PERMITS. BOND. The Council may require, as a condition to the granting of such special permits, that a bond of a kind and in an amount determined by it shall be furnished by applicant conditioned upon the faithful performance of the terms and conditions of the permit and further conditioned that applicant shall prosecute diligently to completion all work thereunder including removal work as hereinbefore provided.

SEC. 11-1.100 GENERAL PROVISIONS.

1. Purpose and Title. This Section is intended to be applicable to state franchise holders who have been awarded a state video franchise under the California Public Utilities Code section 5800, et seq. (the Digital Infrastructure and Video Competition Act of 2006 ["DIVCA"]), to serve any location(s) within the incorporated boundaries of the City. These provisions shall be known and may be cited as the "State Video Service Franchises Ordinance." It is the purpose of this Ordinance to implement within the incorporated boundaries of the City the provisions of DIVCA and the rules of the California Public Utilities Commission promulgated there under that are applicable to a "local franchising entity" or a "local entity" as defined in DIVCA.
2. Rights Reserved.

- (a) The rights reserved to the City under this Ordinance are in addition to all other rights of the City, whether reserved by this Ordinance or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.
- (b) Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:
  - (1) compliance with generally applicable requirements for the privilege of transacting and carrying on a business within the City, including, but not limited to, compliance with the conditions that the City may establish before facilities may be constructed for, or providing, non-video services;
  - (2) any permit or authorization required in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits and street cut permits; and
  - (3) any permit, agreement or authorization for occupying any other property of the City or any private person to which access is not specifically granted by the state franchise.
- (c) Except as otherwise provided in DIVCA, a state franchise shall not relieve a state franchise holder of its duty to comply with all laws, including the ordinances, resolutions, rules, regulations, and other laws of the City, and every state franchise holder shall comply with the same.
- (d) No permit issued by the City to a state franchise holder is itself a franchise, nor shall any permit create a vested right that would prohibit the City from revoking or amending the permit.

3. Compliance with Ordinances, Rules, and Regulations. Nothing contained in this Ordinance shall ever be construed so as to exempt a state franchise holder from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are consistent with this Section or California Public Utilities Code section 5800 et seq.

#### SEC. 11-1-200 DEFINITIONS

- 1. Definitions Generally -- Interpretation of Language. For purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given in this section. Unless otherwise expressly stated, words not defined in this Ordinance shall be given the meaning set forth in the City of Hayward Ordinance No. 87-003 C.S. as may be amended from time to time, unless the context indicates otherwise. Words not defined in this Section 2 or Ordinance No. 87-003 C.S. shall have the same meaning as established in (1) DIVCA, and if not defined therein, (2) Commission rules implementing DIVCA, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47USC § 521 et. seq., and if not defined therein (4) their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular

number include the plural number, and “including” and “include” are not limiting. The word “shall” and “will” are always mandatory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

- (a) “Access,” “PEG access,” “PEG use,” or “PEG” means the availability of a cable or state franchise holder’s system for public, educational, or governmental use by various agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to acquire, create, and distribute programming not under a state franchise holder's editorial control.
  - (1) “Public access” or “Public use” means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their communications;
  - (2) “Education access” or “Education use” means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their communications;
  - (3) “Government access” or “Government use” means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their communications.
- (b) “Gross revenues” means all revenues actually received by the holder of a state franchise that are derived from the operation of the holder's network to provide cable service or video service within the incorporated areas of the City, subject to the specifications of California Public Utilities Code section 5860.
- (c) “State franchise holder” means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the incorporated limits of the City.

#### SEC. 11-1.300 FRANCHISE FEES

1. State Franchise Fees. Any state franchise holder operating within the incorporated areas of the City shall pay to the City a state franchise fee equal to five percent (5%) of gross revenues.
2. Payment of Franchise Fees. The state franchise fee required pursuant to this Section shall each be paid quarterly, in a manner consistent with California Public Utilities Code section 5860. The state franchise holder shall deliver to the City, by check or

other means, which shall be agreed to by the City, a separate payment for the state franchise fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the City.

3. Examination of Business Records. The City may examine the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code section 5860(i).
4. Late Payments. In the event a state franchise holder fails to make payments required by this section on or before the due dates specified in this section, the City shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).
5. Lease of City-Owned Network. In the event a state franchise holder leases access to a network owned by the City, the City may set a franchise fee for access to the City-owned network separate and apart from the franchise fee charged to state franchise holders pursuant to this Section, which fee shall otherwise be payable in accordance with the procedures established by this section.

#### SEC. 11-1.400 CUSTOMER SERVICE.

1. Customer Service Standards. A state franchise holder shall comply with Sections 53055, 53055.2, 53055.2 and 53088.2 of the California Government Code; the FCC customer service and notice standards set forth in Sections 76.309, 76.1602, 76.1603, and 76.1619 of Title 47 of the Code of Federal Regulations; Section 637.5 of the California Penal Code; the privacy standards of Section 551 of Title 47 of the United States Code; and all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video service, include any such standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this paragraph shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.
2. Penalties for Violations of Standards. The City shall enforce the compliance of state franchise holders with respect to the state and federal customer service and consumer protection standards set forth in subsection 1. The City will provide a state franchise holder with a written notice of any material breaches of applicable customer service or consumer protection standards, and will allow the state franchise holder 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following penalties to be imposed by the City:
  - (a) For the first occurrence of a material breach, a fine of \$500 may be imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation.
  - (b) For a second material breach of the same nature within 12 months, a fine of \$1,000 may be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.

- (c) For a third material breach of the same nature within 12 months, a fine of \$2,500 may be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.
3. Any penalties imposed by the City shall be imposed in a manner consistent with California Public Utilities Code section 5900.

SEC. 11-1.500 PERMITS AND CONSTRUCTION.

1. Except as expressly provided in this Ordinance or as otherwise provided by DIVCA, all provisions of the City of Hayward Ordinance No. 87-003 C.S. Section 6 (“General Financial and Insurance Provisions”), and Section 7 (“Design and Construction Provisions”) shall apply to all work performed by or on behalf of a state franchise holder on any City public rights-of-way, public property, or City easement.
2. Permits. Prior to commencing any work for which a permit is required by subsection 1, a state franchise holder shall apply for and obtain a permit in accordance with the provisions of said subsection and shall comply with all other applicable laws and regulations, including but not limited to all applicable requirements of Division 13 of the California Public Resources Code, section 21000, *et seq.* (the California Environmental Quality Act).
3. The Director of Community and Economic Development shall either approve or deny a state franchise holder's application for any permit required under subsection 1 within sixty (60) days of receiving a completed permit application from the state franchise holder.
4. If the Director of Community and Economic Development denies a state franchise holder's application for a permit, the Director of Community and Economic Development shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.
5. A state franchise holder that has been denied a permit by final decision of the Director of Community and Economic Development may appeal the denial to the City Council. Upon receiving a notice of appeal, the City Council shall take one of the following actions:
  - (a) Affirm the action of the Director of Community and Economic Development without any further hearing; or
  - (b) Refer the matter back to the Director of Community and Economic Development for further review with or without instructions; or
  - (c) Set the matter for a de novo hearing before the City Council.
6. In rendering its decision on the appeal, the City Council shall not hear or consider any argument or evidence of any kind other than the record of the matter received from the Director of Community and Economic Development unless the City Council is itself conducting a public hearing on the matter.

SEC. 11-1.600 EMERGENCY ALERT SYSTEMS. Each state franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the state franchise holder's network.

SEC. 11-1.700 PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS CHANNEL CAPACITY, SUPPORT, INTERCONNECTION, AND SIGNAL CARRIAGE.

1. PEG Channel Capacity.

- (a) A State franchise holder shall designate a sufficient amount of capacity on its network to allow the provision of at least three (3) PEG channels to satisfy the requirement of state law, within the time limits specified by state law.
- (b) A state franchise holder shall provide an additional PEG channel when the standards set forth in Section 5870(d) of the California Public Utilities Code are satisfied by the City or any entity designated by the City to manage one or more of the PEG channels.

2. PEG Support.

- (a) Amount of PEG Support Fee. Any state franchise holder shall pay to the City -- or if directed by the City, to the City's designated PEG provider -- a PEG fee equal to one percent (1%) of gross revenues.
- (b) The PEG support fee shall be used for PEG purposes that are consistent with state and federal law.
- (c) A state franchise holder shall remit the PEG support fee quarterly, within forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a summary, detailing how the PEG support fee was calculated.
- (d) If a state franchise holder fails to pay the PEG support fee when due, or underpays the proper amount due, the state franchise holder shall pay interest at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%), or the maximum rate specified by state law.

3. PEG Carriage and Interconnection.

- (a) As set forth in Sections 5870(b) and 5870(g)(3) of the California Public Utilities Code, state franchise holders shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchise holder shall be of similar quality and functionality to that offered by commercial channels (unless the PEG signal is provided to the state franchise holder at a lower quality or with less functionality), shall be capable of carrying a National Television System

Committee (NTSC) television signal, and shall be carried on the state franchise holder's lowest cost tier of service. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the lowest cost tier of service and the channel numbers for the PEG channels shall be the same channel numbers used by any incumbent cable operator, unless prohibited by federal law. After the initial designation of the PEG channel numbers, the channel numbers shall not be changed without the agreement of the City unless federal law requires the change.

- (b) As set forth in Section 5870(h) of the California Public Utilities Code, the holder of a state franchise and an incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. If a state franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the City shall require the incumbent cable operator to allow the state franchise holder to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchise holder's network as identified by the state franchise holder. If no technically feasible point of interconnection is available, the state franchise holder shall make interconnection available to each PEG channel originator programming a channel in the City and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state franchise holder requesting the interconnection unless otherwise agreed to by the parties.

#### SEC. 11-1.800 NOTICES.

1. Each state franchise holder or applicant for a state franchise shall file with the City a copy of all applications or notices that the state franchise holder or applicant is required to file with the California Public Utilities Commission.
2. Unless otherwise specified in this section, all notices or other documentation that a state franchise holder is required to provide to the City under this Section or the California Public Utilities Code shall be provided to both the City Manager and the City staff person in charge of cable and telecommunications, or their successors or designees.