

TITLE 2
MUNICIPAL FINANCES

Subject	Chapter
Procedures for Collecting Fees	1
City Funds	2
Purchasing Procedures	3
Sales and Use Taxes	4
Documentary Transfer Tax	5
Franchises	6
General	6A
Cable Television Franchise	6B
Franchises for Utilities	6C
Business License Tax	7
Utility User Taxes	8
Motion Picture, Television and Photographic Productions	9
Telecommunications Regulations	10
General Provisions	10A
Cable Television Systems	10B
Open Video Systems	10C
Other Telecommunications Services and Systems	10D
Definitions	10E
Violations, Severability	10F

CHAPTER 1

PROCEDURE FOR COLLECTING FEES

SECTION:

- 2-1-1: Establishment of Procedures
- 2-1-2: Delinquencies
- 2-1-3: Fraud
- 2-1-4: Costs Incurred
- 2-1-5: Additional Interest
- 2-1-6: Application of Payments Owing

2-1-1: ESTABLISHMENT OF PROCEDURES:

A. In any instance when the City is authorized to and has undertaken to collect fees, charges or payments of any kind due and owing to it (collectively referred to herein as "fees"), the following procedures are established.

B. Whatever procedures are set forth in the legislation authorizing the fees shall apply to the extent not inconsistent herewith. (Ord. 246, 9-23-91)

2-1-2: DELINQUENCIES:

A. Original Delinquency: Any person who fails to remit any fee when it is due and owing shall pay a penalty of ten percent (10%) of the amount of the fee in addition to the amount of the fee.

B. Continued Delinquency: Any person who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the fee in addition to the amount of the fee and the ten percent (10%) penalty first imposed. (Ord. 246, 9-23-91)

2-1-3: FRAUD: If the City Clerk determines that the nonpayment of any remittance due and owing is due to fraud, a penalty of twenty five percent (25%) of the amount of the fee shall be added thereto in addition to the penalties stated in Section 2-1-2 of this Chapter. (Ord. 246, 9-23-91)

2-1-4: COSTS INCURRED:

- A. Costs incurred by the City in connection with collection of delinquent fees, including costs and fees of consultants, staff and attorneys, shall be charged in addition to the delinquent fees and penalties thereon.
- B. All penalties, costs and interest charged in connection with unpaid fees are to compensate the City for actual pecuniary loss. (Ord. 246, 9-23-91)

2-1-5: ADDITIONAL INTEREST: In addition to the penalties and charges imposed by Sections 2-1-2, 2-1-3 and 2-1-4 of this Chapter, any person who fails to remit any fee that is due and owing shall pay interest at the rate of one-half percent ($\frac{1}{2}\%$) per month for each month or portion of a month that the fee shall be delinquent on the amount of the fee, exclusive of penalties and costs charged thereon, from the date on which the fee first became delinquent until paid. The interest shall be computed on a monthly basis and shall not be subject to proration for any portion of a month. (Ord. 246, 9-23-91)

2-1-6: APPLICATION OF PAYMENTS OWING: All penalties, costs and interest charged in connection with unpaid fees shall become a part of the fees due and owing. For accounting purposes, the City shall maintain separate balances owing for the fees, penalties, costs and interest charged. Payments by the person owing the fees shall be applied as follows:

- A. First, to satisfy the unpaid fees, commencing with the reporting period most recently completed prior to the payment and then for each prior reporting period in reverse chronological order until the total fees due and owing are completely liquidated;
- B. Second, to satisfy the penalties charged pursuant to Sections 2-1-2 and 2-1-3 of this Chapter, commencing with the reporting period most recently completed prior to payment, and then for each prior reporting period in reverse chronological order until the total penalties due and owing are completely liquidated;
- C. Third, to satisfy the costs charged pursuant to Section 2-1-4 of this Chapter, commencing with the reporting period most recently completed prior to payment and then for each prior reporting period in reverse chronological order until the total costs due and owing are completely liquidated; and
- D. Fourth, to satisfy the interest charged pursuant to Section

2-1-5 of this Chapter, commencing with the reporting period most recently completed prior to payment and then for each prior reporting period in reverse chronological order until the total interest due and owing is completely liquidated. (Ord. 246, 9-23-91)

CHAPTER 2

CITY FUNDS

SECTION:

- 2-2-1: Claims and Demands
- 2-2-2: City Funds Established

2-2-1: CLAIMS AND DEMANDS:

- A. Itemization Required: The City Council shall not hear, consider, allow or approve any claim, bill or demand against the City unless the same be itemized giving names, dates and particular services rendered, distance traveled, character of work done, number of days engaged, materials and supplies furnished, when and to whom, in what quantity furnished, the price therefor and any other pertinent details as the case may be.
- B. Method of Approval: Each claim or demand presented for payment shall be presented to the City Manager who shall prepare a register of demands. Each claim or demand arising as the result of the purchase of supplies or equipment, from projects under construction, or from contracts and agreements shall be presented to the City Manager, for his written approval, and each claim or demand shall thereafter be presented to the City Manager for his written approval. The City Manager shall inform the City Council in writing of any claims or demands presented against the City which shall fail to obtain the approval of the City Manager. All such claims and demands, whether approved or not, shall be forwarded by the City Manager to the City Council for audit. The City Council shall audit said claims and demands as required by law.
- C. Register of Demands: Except as is provided in the following subsection, a register of all claims against the City shall be submitted to the City Council prior to payment. Such register shall have attached thereto the affidavit of the City Manager certifying as to the accuracy of the demands and the availability of funds for payment thereof.

D. Payroll and Budgeted Demands: Payroll checks for officers and employees whose compensation has been previously fixed by the City Council need not be audited by the City Council.

Checks drawn in payment of demands certified or approved by the City Manager as conforming to a budget approved by resolution of the City Council need not be audited by the City Council prior to payment. However, demands paid by check prior to an audit by the City Council shall be so stated on the Register of Demands separately from unpaid demands, and shall be presented to the City Council for ratification and approval at the first meeting following delivery of the warrants.

E. Disposition of Claims: If the City Council finds that any claim or demand is not a proper charge against the City, it shall be rejected by resolution or minute action and the fact of the rejection shall be plainly endorsed upon the claim by the City Clerk or his authorized representative. If any disputed claim or demand is determined to be a proper charge against the City, the same shall be allowed only by resolution setting forth as to each claim the name of the claimant, a brief statement of the claim and the amount allowed. Any claim may be allowed in part and rejected in part by the City Council.

F. Approval of Claims: When a claim or demand is approved and allowed by the City Council, the City Clerk shall endorse upon the duplicate of each such claim the words "allowed by the City Council of Hidden Hills", and the signature of the City Clerk.

G. Signatures: For every claim or demand approved and allowed by the City Council, the Mayor or other Council person designated by the Council shall draw a check upon the City Treasury for the same, which check shall be counter-signed by the City Manager. Every check shall specify for what purpose it is drawn and the fund from which it is to be paid. The signatures of the Mayor or other person designated by the Council and the City Manager or Finance Director shall be by manual signature.

H. Sufficient Money in Treasury: Except as otherwise provided, no checks shall be drawn or evidence of indebtedness issued unless there be at the same time sufficient money in the Treasury legally applicable to the payment of the same. (1994 Code)

2-2-2: CITY FUNDS ESTABLISHED:

A. General Fund: There is herewith established a fund to be known as the *General Fund* for the purpose of depositing therein all monies that are unrestricted in their use. All monies received by the City, regardless of their source, shall be placed in this Fund; provided, that the use of such monies is not restricted by law to a particular use.

B. Petty Cash Fund: There is hereby established a petty cash fund to be maintained in cash by the City Manager. Said fund shall not exceed the sum of two hundred and fifty dollars (\$250.00) at any one time. Disbursements may be made therefrom in amount not to exceed fifty dollars (\$50.00) for any one item. The City Manager shall obtain and keep receipts for all disbursements therefrom. Transfer of funds to such petty cash account shall be provided for in the Register of Demands, and all disbursements therefrom subsequent to the last transfer of funds to such petty cash account shall be audited by the City Council upon acting upon such Register of Demands.

C. Traffic Safety Fund: There is herewith established a fund to be known as the *Traffic Safety Fund*. In accordance with Vehicle Code section 42200, this Fund shall be used for the deposit of all monies received as a result of arrests for Vehicle Code misdemeanor violations by an officer employed by the City. Expenditures made from this Fund shall be made only for traffic-control devices and the maintenance thereof, equipment and supplies for traffic law enforcement and traffic accident prevention, and the maintenance, improvement or construction of public streets, bridges and culverts within the City. Fund monies shall not be used to pay the compensation of traffic or other police officers, but may be used to pay the compensation of school crossing guards. Expenditures from the Traffic Safety Fund shall be in the form of an interfund transfer to the General Fund and shall be in accordance with all budget procedures and regulations approved by Council.

D. Local Transit Fund: There is herewith established a fund to be known as the *Local Transit Fund*. Into this Fund shall be deposited all monies to be used for the purposes authorized by the Los Angeles County Transportation Commission. All monies received pursuant to the guidelines established by the Los Angeles County Transportation Commission shall be placed in this Fund. Expenditures from this Fund shall be made only for the purposes authorized by the Los Angeles County Transportation Commission. Before any expenditures are made from this Fund, all such expenditures shall first be budgeted in the manner

prescribed by ordinance.

E. Special Gas Tax Street Improvement Fund:

1. To comply with the provisions of Section 2113 of the Streets and Highways Code and to avail itself on its benefits of Sections 2106 and 2107 thereof, to comply with the provisions of Article 5 of Chapter 1 of Division 1 of the Streets and Highways Code, with particular reference to the amendments thereto, there is hereby created in the City Treasury a special fund to be known as the *Special Gas Tax Street Improvement Fund*.

2. All monies received by the City from the State under the provisions of the Streets and Highways Code for the acquisition of real property or interest therein, research, planning, construction, improvements, maintenance and operation of streets or highways (and their related public facilities for nonmotorized traffic), other than State highways, including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the administrative costs necessarily incurred in the foregoing purposes, and shall be paid into said Fund.

3. All monies in said Fund shall be expended exclusively for the purposes authorized by and subject to the provisions of the Streets and Highways Code. All interest earned on monies in this Trust Fund account shall be allocated to the Trust Fund account in accordance with generally accepted accounting principles. (Ord. 190, 3-2-87; 1994 Code)

F. Air Quality Improvement Trust Fund:

1. Trust Established:

a. In accordance with California Health and Safety Code Section 44243(b)(1), the City does hereby express its support for the imposition by the South Coast Air Quality Management District of a motor vehicle registration fee increase as authorized by Health and Safety Code Section(s) 44223 (and 44225), for the purpose of using the fees so generated to reduce air pollution from motor vehicles pursuant to the requirements of the California Clean Air Act of 1988 or the Air Quality Management Plan for the South Coast Air Quality Management District, prepared and adopted pursuant to Health and Safety Code Sections 40460 through 40470. (Ord. 241, 6-24-91)

b. The Fee Administrator shall establish a separate account in the City Treasury to be known as the *Air Quality Improvement Trust Fund*. All funds received by the City pursuant to Health and Safety Code Sections 44243 and 44244, along with any other funds designated by the City Council, shall be credited to this account and shall be used for the

sole purpose of financing mobile source air pollution reduction programs. The Fee Administrator shall be responsible for crediting funds to the Air Quality Improvement Trust Fund. All interest earned on monies in this Trust Fund account shall be allocated to the Trust Fund account in accordance with generally accepted accounting principles. (Ord. 249, 1-13-92)

2. Definitions: For the purposes of this Section, the following definitions shall apply: (Ord. 241, 6-24-91)

FEE ADMINISTRATOR: The City Manager or his designee. (Ord. 249, 1-13-92; 1994 Code)

MOBILE SOURCE AIR POLLUTION REDUCTION PROGRAM: Any program or project implemented by the City to reduce air pollution emitted from motor vehicles pursuant to the California Clean Air Act of 1988 or the Air Quality Management Plan for the South Coast Air Quality Management District prepared and adopted in accordance with the provisions of Health and Safety Code Sections 40460 through 40470.

3. Interpretation and Purpose: It is the intent of the City Council that the provisions of this Section and the interpretation of the term "mobile source air pollution reduction programs" shall be liberally construed to effectively carry out the purposes of this Section, which are hereby found and declared to be to further public health, safety, welfare and convenience, in accordance with the requirements and limitations of Health and Safety Code Sections 44243 and 44244.

4. Audits: The City hereby consents to audits, at least once every two (2) years, of all programs and projects funded by vehicle registration fees provided by Health and Safety Code Section 44243; provided, that such audit shall be conducted by an independent auditor selected by the South Coast Air Quality Management District. Audit costs shall be funded as provided in Health and Safety Code Section 44244.1. (Ord. 241, 6-24-91)

CHAPTER 3

PURCHASING PROCEDURES

SECTION:

- 2-3-1: Purpose and Scope; Short Title
- 2-3-2: Purchases Amounting to Two Hundred Fifty Dollars or Less
- 2-3-3: Purchases Amounting to More Than Two Hundred Fifty Dollars But Not More Than Five Hundred Dollars
- 2-3-4: Purchases Amounting to More Than Five Hundred Dollars But Not More Than Five Thousand Dollars
- 2-3-5: Purchases Amounting to Five Thousand Dollars or More
- 2-3-6: Emergency Purchases
- 2-3-7: Documentation
- 2-3-8: Exceptions to Bidding
- 2-3-9: Prohibitions

2-3-1: PURPOSE AND SCOPE; SHORT TITLE: This Chapter establishes regulations for the purchasing of materials, supplies and equipment for the City. This Chapter may be referred to as the City's *PURCHASING REGULATIONS*. (Ord. 177, 8-19-85; 1994 Code)

2-3-2: PURCHASES AMOUNTING TO TWO HUNDRED FIFTY DOLLARS OR LESS: The City Manager may purchase materials, supplies and equipment in the amount of two hundred fifty dollars (\$250.00) or less without prior approval of the Council and without solicitation of formal or informal bids. Such expenditures shall be drawn from a petty cash account of the General Fund. Monies shall be transferred to the petty cash account only upon the order of the Council. (Ord. 177, 8-19-85; 1994 Code)

2-3-3: PURCHASES AMOUNTING TO MORE THAN TWO HUNDRED FIFTY DOLLARS BUT NOT MORE THAN FIVE HUNDRED DOLLARS: The City Manager may purchase materials, supplies and equipment amounting to more than two hundred fifty dollars (\$250.00) but not more than five hundred dollars (\$500.00) with Council approval based upon an oral or written bid submitted by the potential vendor. (Ord. 177, 8-19-85; 1994 Code)

2-3-4: PURCHASES AMOUNTING TO MORE THAN FIVE HUNDRED DOLLARS BUT NOT MORE THAN FIVE THOUSAND DOLLARS:

- A. The City Manager may purchase materials, supplies, equipment and/or labor amounting to more than five hundred dollars (\$500.00) but not more than five thousand dollars (\$5,000.00) with Council approval based upon informal, written bids solicited from three (3) or more potential vendors. Written bids may be received in person, by mail, or by facsimile. Bids shall be kept confidential until a recommendation for the award of the contract is forwarded to the City Council for its action.
- B. If three (3) or more potential vendors are not available to submit informal written bids, then the City Clerk shall attest to such fact when presenting the bids to the Council for action. As used herein, an "informal bid" consists of a purchase order or other written offer to supply materials, supplies and equipment to the City upon stated terms and conditions. (Ord. 177, 8-19-85; 1994 Code)

2-3-5: PURCHASES AMOUNTING TO FIVE THOUSAND DOLLARS OR MORE:

- A. The City Manager may purchase materials, supplies and equipment amounting to five thousand dollars (\$5,000.00) or more with Council approval based upon formal, sealed, written bids solicited from potential vendors.
- B. As used herein "formal written bid" consists of bidding and contract documents prepared or reviewed by the City Attorney for compliance with law. (Ord. 177, 8-19-85; 1994 Code)

2-3-6: EMERGENCY PURCHASES:

- A. The City Manager, the Mayor or Mayor Pro Tempore may purchase materials, supplies and equipment amounting to five thousand dollars (\$5,000.00) or less without prior Council approval and without soliciting formal or informal bids if an emergency mandates the purchase.
- B. In the absence of the City Manager, the City Clerk and the Mayor may so act; in the absence of the City Clerk and the Mayor, the Mayor Pro Tempore may so act; in the absence of the City Clerk, Mayor and Mayor Pro Tempore, any Councilmember may so act.
- C. As used herein, an "emergency" consists of a condition which imminently threatens the health, safety or welfare of person or property caused by a condition of City property. The City Manager shall report on all

emergency purchases at the Council meeting next following the purchase. (Ord. 177, 8-19-85; 1994 Code)

2-3-7: DOCUMENTATION:

- A. A permanent record of all formal and informal bids shall maintained and be open to public inspection. In the case of oral bids, a contemporaneous record of the bid shall be made by the person receiving the bid. In the case of written bids, all written bid documents shall be retained.
- B. All purchases must be evidenced by original invoices or receipts before payment or reimbursement is made therefore. The original invoices or receipts shall be retained as part of the City's official records and be open to public inspection. (1994 Code)

2-3-8: EXCEPTIONS TO BIDDING: Purchases of materials, supplies and equipment shall be exempt from the provisions of this chapter under the following circumstances:

- A. When the City Council finds that it is to the City's advantage to combine its purchases with those of another governmental entity; or
- B. When the City Council finds that negotiation of the purchases will best serve the interests of the City due to the nature of the materials, supplies or equipment to be purchased or the market conditions for such materials, supplies or equipment. (1994 Code)

2-3-9: PROHIBITIONS:

- A. No officer or employee of the City shall directly or indirectly accept any tangible gifts or cash rebates from any person, company, firm, or corporation in consideration for selling materials, supplies or equipment to the City under this Chapter, except where the gifts or rebates are given for the use and benefit of the City.
- B. Any purchase order or contract governed by the Chapter in which any agent, officer, or employee is directly or indirectly financially interested is void, except that before execution of a purchase order or contract the City Council may waive compliance with this section when it finds such action to be in the best interests of the City and not otherwise proscribed by state or federal law. (1994 Code)

CHAPTER 4

SALES AND USE TAXES

SECTION:

- 2-4-1: Short Title
- 2-4-2: Purpose and Interpretation
- 2-4-3: Taxes Imposed; Operative Date
- 2-4-4: Place of Sale
- 2-4-5: State Law Provisions Adopted; Limitations
- 2-4-6: Contract With State
- 2-4-7: Seller's Permit
- 2-4-8: Exclusions and Exemptions from Provisions
- 2-4-9: Enjoining Collection Prohibited
- 2-4-10: Violation and Penalties

2-4-1: SHORT TITLE: This Chapter shall be known as the *UNIFORM LOCAL SALES AND USE TAX ORDINANCE*. (Ord. 177, 8-19-85)

2-4-2: PURPOSE AND INTERPRETATION: The City Council hereby declares that this Chapter is adopted to achieve the following, among other, purposes and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A.To adopt a sales and use tax ordinance which complies with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code;

B.To adopt a sales and use tax ordinance which incorporates provisions identical to those of the Sales and Use Tax Law of the State insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code;

C.To adopt a sales and use tax ordinance which imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State

sales and use taxes;

D.To adopt a sales and use tax ordinance which can be administered in a manner that will be, to the degree possible, consistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting City sales and use taxes and, at the same time, minimize the burden of recordkeeping upon persons subject to taxation under the provisions of this Chapter. (Ord. 177, 8-19-85)

2-4-3: TAXES IMPOSED; OPERATIVE DATE:

A.Rate Established: The rate of sales tax and use tax imposed by this Chapter shall be one percent (1%).

B.Operative Date: "Operative date" means the first day of the first calendar quarter following the adoption of Ordinance 25, a copy of which is on file in the office of the City Clerk.

C.Sales Tax Imposed: For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the City at the rate stated in subsection A of this Section of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in this City on and after the operative date.

D.Use Tax Imposed: An excise tax is hereby imposed on the storage, use or other consumption in this City of tangible personal property purchased from any retailer on and after the operative date for storage, use or other consumption in this City at the rate stated in subsection A of this Section of the sales price of the property. The sales price shall include delivery charges when such charges are subject to State sales or use tax regardless of the place to which delivery is made. (Ord. 177, 8-19-85)

2-4-4: PLACE OF SALE: For the purposes of this Chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-State destination or to a common carrier for delivery to an out-of-State destination. The gross receipts from such sales shall include delivery charges when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the places at which the retail sales are consummated shall be determined under rules and regulations to be

prescribed and adopted by the State Board of Equalization. (Ord. 177, 8-19-85).

2-4-5: STATE LAW PROVISIONS ADOPTED; LIMITATIONS:

A. Except as otherwise provided in this Chapter and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this Chapter as though fully set forth herein.

B. All subsequent amendments of the Revenue and Taxation Code which relate to the sales and use tax and which are not inconsistent with Part 1.5 of Division 2 of the Revenue and Taxation Code which relate to the sales and use tax and which are not inconsistent with Part 1.5 of Division 2 of the Revenue and Taxation Code shall automatically become a part of this Chapter.

C. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, wherever the State is named or referred to as the taxing agency, the name of this City shall be substituted therefor. The substitution, however, shall not be made when the word "State" is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, the State Treasury or the Constitution of the State; the substitution shall not be made when the result of that substitution would require action to be taken by or against the City or any agency thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Chapter; the substitution shall not be made in those sections, including but not necessarily limited to sections referring to the exterior boundaries of the State, where the result of the substitution would be to provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code or to impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the said provisions of that Code; the substitution shall not be made in Section 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code, and the substitution

shall not be made for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 or in the definition of that phrase in Section 6203. (Ord. 177, 8-19-85)

2-4-6: CONTRACT WITH STATE: Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this sales and use tax Chapter; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract, and in such a case, the operative date shall be the first day of the first calendar quarter following the execution of such a contract rather than the first day of the first calendar quarter following the adoption of Ordinance 25, a copy of which is on file in the office of the City Clerk. (Ord. 177, 8-19-85)

2-4-7: SELLER'S PERMIT: If a seller's permit has been issued to a retailer under Section 6068 of the Revenue and Taxation Code, an additional seller's permit shall not be required by this Chapter. (Ord. 177, 8-19-85)

2-4-8: EXCLUSIONS AND EXEMPTIONS FROM PROVISIONS:

A. There shall be excluded from the measure of tax:

1. The amount of any sales or use tax imposed by the State upon a retailer or consumer.
2. The storage, use or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to sales tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county or city in this State.
3. The gross receipts from sales to, and the storage, use or other consumption of property purchased by, operators of common carrier and waterborne vessels to be used or consumed in the operation of such common carriers or waterborne vessels principally outside this City.
4. The storage or use of tangible personal property in the transportation or transmission of persons, property or communications or in the generation, transmission or distribution of electricity or in the manufacture, transmission or distribution of gas in intrastate, interstate or foreign commerce by public utilities which are regulated by the Public Utilities Commission of the State.

- B. The amount subject to tax shall not include any sales or use tax imposed by the State upon a retailer or consumer.
- C. The storage, use or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county or city in this State shall be exempt from the tax due under this Chapter.
- D. There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the City in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States or any foreign government.
- E. In addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code, the storage, use or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States or any foreign government is exempted from the use tax. (Ord. 177, 8-19-85)

2-4-9: ENJOINING COLLECTION PROHIBITED: No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or this City or against any officer of the State or this City to prevent or enjoin the collection under this Chapter or Part 1.5 of Division 2 of the Revenue and Taxation Code of any tax or any amount of tax required to be collected. (Ord. 177, 8-19-85)

2-4-10: VIOLATION AND PENALTIES: Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punishable as set forth in Title 1, Chapter 5 of this Code. (Ord. 177, 8-19-85; 1994 Code)

CHAPTER 5

DOCUMENTARY TRANSFER TAX

SECTION:

- 2-5-1: Short Title
- 2-5-2: Tax Imposed
- 2-5-3: Liability for Tax
- 2-5-4: Exceptions from Provisions
- 2-5-5: Administration of Provisions
- 2-5-6: Refunds

2-5-1: SHORT TITLE: This Chapter shall be known as the *REAL PROPERTY TRANSFER TAX ORDINANCE OF THE CITY OF HIDDEN HILLS*. It is adopted pursuant to the authority contained in Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code of the State. (Ord. 177, 8-19-85)

2-5-2: TAX IMPOSED: There is hereby imposed on each deed, instrument or writing by which any lands, tenements or other realty sold within the City shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or any other person by his direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrances remaining thereon at the time of sale) in excess one hundred dollars (\$100.00), a tax at the rate of twenty seven and one-half cents (\$0.275) for each five hundred dollars (\$500.00) or fractional part thereof. (Ord. 177, 8-19-85)

2-5-3: LIABILITY FOR TAX: Any tax imposed pursuant to Section 2-5-2 hereof shall be paid by any person who makes, signs or issues any document or instrument subject to the tax or for whose use or benefit the same is made, signed or issued. (Ord. 177, 8-19-85)

2-5-4: EXCEPTIONS FROM PROVISIONS:

A. Instruments to Secure a Debt: Any tax imposed pursuant to this Chapter shall not apply to any instrument, in writing, given to secure a debt.

B. Public Agency Transactions: The United States or any agency or instrumentality thereof, any state or territory or political subdivision thereof or the District of

Columbia shall not be liable for any tax imposed pursuant to this Chapter with respect to any deed, instrument or writing to which it is a party, but the tax may be collected by assessment from any other party liable therefor.

C. Bankruptcy Transactions:

1. Any tax imposed pursuant to this Chapter shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization or adjustment:

a. Confirmed under the Federal Bankruptcy Act;

b. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code;

c. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code; or

d. Whereby a mere change in identity, form or place of organization is effected.

2. Subsections C1a to C1d, inclusive, of this subsection shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five (5) years from the date of such confirmation, approval or change.

D. Securities and Exchange Commission Orders: Any tax imposed pursuant to this Chapter shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954 but only if:

1. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility

Holding Company Act of 1935;

2. Such conveyance is made in obedience to such order.

E. Partnership Transactions:

1. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this Chapter by reason of any transfer of an interest in a partnership or otherwise if:

a. Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and

b. Such continuing partnership continues to hold the realty concerned.

2. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this Chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.

3. Not more than one tax shall be imposed pursuant to this Chapter by reason of a termination described in subsection E2 of this Section, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination. (Ord. 177, 8-19-85)

2-5-5: ADMINISTRATION OF PROVISIONS: The County Recorder shall administer this Chapter in conformity with the provisions of Part 6.7 of Division 2 of the Revenue and Taxation Code and the provisions of any County ordinance adopted pursuant thereto. (Ord. 177, 8-19-85)

2-5-6: REFUNDS: Claims for refund of taxes imposed pursuant to this Chapter shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code of the State. (Ord. 177, 8-19-85)

CHAPTER 6

FRANCHISES

ARTICLE A. GENERAL

SECTION:

- 2-6A-1: Purpose and Scope; Short Title
- 2-6A-2: Definitions
- 2-6A-3: Application for Franchise; Review Procedures
- 2-6A-4: Granting and Acceptance of Franchise; Term and Renewal
- 2-6A-5: Conditions of Franchise
- 2-6A-6: Rights Reserved by the City
- 2-6A-7: Jurisdiction of Council; Settlement of Disputes

2-6A-1: PURPOSE AND SCOPE; SHORT TITLE: This Chapter regulates the granting of franchises by the City for the purposes enumerated herein. This Chapter may be referred to as the City's *FRANCHISE REGULATIONS*. (Ord. 177, 8-19-85)

2-6A-2: DEFINITIONS: The following terms are defined for the purposes of this Chapter:

BUILDING OFFICIAL: The Building Official of the City of Hidden Hills.

CITY: The City of Hidden Hills.

COUNCIL: The City Council of the City of Hidden Hills.

CUSTOMER: Any person or entity within the City receiving service from the grantee.

GRANTEE: The person, firm or corporation to whom or to which a franchise is granted by the Council pursuant to the provisions of this Chapter and the lawful successor, transferee or assignee of such person, firm or corporation.

SUBSCRIBER: A person who obtains services from a grantee under a franchise. (Ord. 177, 8-19-85; 1994 Code)

2-6A-3: APPLICATION FOR FRANCHISE; REVIEW PROCEDURES:

A. Any persons desiring to obtain a franchise under this Chapter shall make application upon forms provided by

- the City Clerk.
- B. The Building Official shall review the application and present a report with recommendations to the Council.
 - C. The Council shall conduct a public hearing to consider the Building Official's report and recommendations and shall approve, deny or conditionally approve the application. The decision of the Council shall be final. (Ord. 177, 8-19-85)

2-6A-4: GRANTING AND ACCEPTANCE OF FRANCHISE; TERM AND RENEWAL:

- A. Ordinance or Resolution Required; Conditions of Effectiveness: No franchise shall become effective until an ordinance or resolution granting the franchise has become effective and all things required in this Chapter are completed. In the event any of such things are not completed in the time and manner required, the Council may declare the franchise null and void. (Ord. 177, 8-19-85; 1994 Code)
- B. File Acceptance of Franchise: Within twenty (20) days after the effective date of the ordinance awarding a franchise or within such extended period of time as the Council, in its discretion, may authorize, the grantee shall file with the City Clerk a written acceptance of the franchise, in a form satisfactory to the City Attorney, together with the other documents required by this Chapter and an agreement to be bound by and to do all things required by the provisions of this Chapter and the franchise. Such acceptance and agreement shall be acknowledged by the grantee before a notary public and shall be in form and content satisfactory to and approved by the City Attorney.
- C. Term: No franchise granted by the Council shall be for a term longer than thirty (30) years following the date of acceptance of the franchise by the grantee.
- D. Renewal: Franchises shall be renewable at the application of the grantee, in the same manner and upon the same terms and conditions as required by the provisions of this Chapter for obtaining the original franchise, except those which are by their terms expressly inapplicable; provided, however, the Council, at its option, may waive compliance with any or all of the requirements of an ordinance granting the franchise. (Ord. 177, 8-19-85)

2-6A-5: CONDITIONS OF FRANCHISE:

- A. Nonexclusive: Any franchise granted pursuant to the provisions of this Chapter shall be nonexclusive.
- B. No Implied Privileges: No privilege or exemption shall be granted or conferred by any franchise except as specifically prescribed in this Chapter.
- C. Subordinate Privileges: Any privilege claimed under any franchise by the grantee in any street or public property shall be subordinate to any prior lawful occupancy of the streets or public property.
- D. Transfer of Franchise Restricted: Any franchise shall be a privilege to be held in personal trust by the original grantee. Such franchise cannot, in any event, be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale or by voluntary sale, merger, consolidation or otherwise without the prior consent of the Council, expressed by resolution, and then only under such conditions as may therein be prescribed. Any such transfer or assignment shall be made only by an instrument, in writing, a duly executed copy of which shall be filed in the office of the City Clerk within thirty (30) days after any such transfer or assignment. The consent of the Council may not be arbitrarily refused; provided, however, the proposed assignee shall show financial responsibility and shall agree to comply with all of the provisions of this Chapter, and provided, further, no such consent shall be required for a transfer in trust, mortgage or other hypothecation, as a whole, to secure an indebtedness.
- E. Time of Essence: Time shall be of the essence of any franchise. The grantee shall not be relieved of his obligation to comply promptly with any of the provisions of this Chapter or by any failure of the City to enforce prompt compliance.
- F. Rights and Powers of City: Any right or power in, or duty impressed upon, any officer, employee, department or board of the City shall be subject to transfer by the City to any other officer, employee, department or board of the City.
- G. Recourse for Loss or Damage: The grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any provision or requirement of this Chapter or of any franchise or because of the enforcement of the provisions of this Chapter.

- H. City Laws to Govern: The grantee shall be subject to all City laws, rules, regulations and specifications heretofore or hereafter enacted or established.
- I. Refusal of Service: No person in the existing service area of the grantee shall be arbitrarily refused service; provided, however, the grantee shall not be required to provide service to any customer who does not pay the applicable fee or monthly service charge.
- J. Additional Terms and Conditions: The Council shall impose additional terms and conditions for the granting of a franchise as are necessary to implement the provisions of this Chapter, including but not limited to provisions concerning the facilities of the grantee and operational standards. These additional terms and conditions shall be set forth in the ordinance or resolution granting the franchise. (Ord. 177, 8-19-85; 1994 Code)

2-6A-6: RIGHTS RESERVED BY THE CITY:

- A. Nothing contained in this Chapter shall be deemed or construed to impair or affect, in any way, to any extent, the right of the City to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, and nothing contained in this Chapter shall, in any way, modify or abridge the City's right of eminent domain.
- B. There is hereby reserved to the City every right and power which is required to be reserved or provided by the provisions of this Chapter or by any law of the City, and the grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirement of the City in its exercise of such rights or powers heretofore or hereafter enacted or established.
- C. Neither the granting of any franchise nor any of the provisions contained in this Chapter shall be construed to prevent the City from granting any identical or similar franchise to any other person within all or any portion of the City.
- D. Neither the granting of any franchise nor any provision of this Chapter shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

- E. No provision of this Chapter shall be deemed or construed so as to require the granting of a franchise when, in the opinion of the Council, it is in the public interest to restrict the number of grantees. (Ord. 177, 8-19-85; 1994 Code)

2-6A-7: JURISDICTION OF COUNCIL; SETTLEMENT OF DISPUTES:

- A. The Council may do all things which are necessary and convenient in the exercise of its jurisdiction under the provisions of this Chapter and may determine any question of fact which may arise during the existence of any franchise.
- B. The City Manager is hereby authorized and empowered to adjust, settle or compromise any controversy or charge arising from the operations of any grantee under the provisions of this Chapter, either on behalf of the City, the grantee or any subscriber, in the best interests of the public. Either the grantee or any member of the public who may be dissatisfied with the decision of the City Manager may appeal the matter to the Council for hearing and determination. The Council may accept, reject or modify the decision of the City Manager, and the Council may adjust, settle or compromise any controversy or cancel any charge arising from the operations of any grantee or from any provision of this Chapter. (Ord. 177, 8-19-85; 1994 Code)

CHAPTER 6

FRANCHISES

ARTICLE B. CABLE TELEVISION FRANCHISE

SECTION:

- 2-6B-1: Definitions
- 2-6B-2: Franchise Required
- 2-6B-3: Requirements for CATV Franchise
- 2-6B-4: Gross Receipts Fees; Reports to
City
- 2-6B-5: Conditions of Franchise

2-6B-1: DEFINITIONS: The following definitions apply to this Article. However, in the event of inconsistencies with definitions found in federal laws and regulations, the federal laws and regulations control.

BASIC SUBSCRIBER SERVICES or BASIC SERVICE: The simultaneous delivery by the grantee to all subscribers within the confines of the area of:

- A. All signals of over-the-air television broadcast required by the FCC to be carried by a community antenna television system as defined by the FCC or all those local Los Angeles area VHF and UHF stations which are received by the community without the aid of a cable television system or similar apparatus; and
- B. A channel designated for special purposes by the Association, such as educational, medical, local government, local origination and lease access channel programming; and
- C. Additional service as proposed by the grantee in its proposal or as it may hereafter provide. However, pay or subscription television, as defined by the FCC, and radio services supplied by the grantee shall not be considered part of the basic service.

COMMUNITY ANTENNA TELEVISION SYSTEM or CATV: A system of antennas, coaxial cables, wires, fibers, wave guides or other conductors, equipment or facilities designed, constructed or used for the purpose of providing television or FM radio service by cable or through its facilities as contemplated in this Chapter.

FRANCHISE or CATV FRANCHISE: Any authorization granted

pursuant to the provisions of this Article in terms of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a CATV system in the City. Any such authorization, in whatever term granted, shall not mean nor include any license or permit required for the privilege of transacting and carrying on a business within the City in accordance with the City business license regulations.¹

GROSS ANNUAL RECEIPTS or GROSS REVENUES: Any and all compensation and other consideration in any form whatsoever, and any contributing grant or subsidy received, directly or indirectly, by the grantee from a) subscribers or users in payment for television or FM radio signals, reception or service received within the territorial limits of the City whether said signals, reception or service is included within the term "basic subscriber service" or if an additional or premium charge is collected for said signals, reception or services, but not including installation and line extension charges; and b) any fees or income received by the grantee for carrying advertising or commercial messages over the CATV facilities. "Gross revenues" or "gross annual receipts" shall not include any converter deposits or any installation fees which do not exceed the actual cost of installation or any reimbursements of capital outlays for undergrounding or any taxes on services furnished by grantee imposed directly on any subscriber or user by any city, state or other governmental unit and collected by grantee for such governmental unit.

PROPERTY OF THE GRANTEE: All property owned, installed or used by a grantee in the conduct of CATV business in the City under the authority of a franchise granted pursuant to the provisions of this Article.

QUARTER: A calendar quarter.

SUBSCRIBER: Any person or entity receiving for any purpose and paying for the cable television service of the grantee. (Ord. 177, 8-19-85; 1994 Code)

2-6B-2: FRANCHISE REQUIRED: No person shall operate a community antenna television system within the City without first securing a franchise as required by this Article. (Ord. 177, 8-19-85)

2-6B-3: REQUIREMENTS FOR CATV FRANCHISE:

A. Who can Obtain a Franchise: A nonexclusive franchise to construct, operate and maintain a CATV system within all

¹ See Chapter 7 of this Title.

or any portion of the City may be granted by the Council to any person, whether operating under an existing franchise or not, who offers to furnish and provide such system under and pursuant to the terms and provisions of this Chapter.

- B. Use of Telephone Company Facilities: If the grantee of any CATV franchise constructs, operates and maintains a CATV system through telephone company facilities, such grantee shall be required to comply with all of the provisions of this Article as a "licensee", and in such event, whenever the term "grantee" is used in this Article, it shall be deemed to mean and include "licensee".
- C. Use of Public Utility Poles and Facilities: When any portion of the CATV system is to be installed on public utility poles and facilities, certified copies of the agreements for such joint use of poles and facilities shall be filed with the City Clerk. (Ord. 177, 8-19-85)

2-6B-4: GROSS RECEIPTS FEES; REPORTS TO CITY:

- A. Fees Established: Any grantee granted a CATV franchise shall pay to the City, during the life of such franchise, a sum equal to five percent (5%) of the gross annual receipts of the grantee. Such payment by the grantee to the City shall be made annually, or as otherwise provided in the grantee's franchise, by delivery of the same to the City Treasurer. (Ord. 177, 8-19-85; 1994 Code)
- B. Report to be Filed: The grantee shall file with the City, within thirty (30) days after the expiration of any calendar year, or portion thereof, during which such franchise is in force, a financial statement prepared by a certified public accountant or person otherwise satisfactory to the Council showing, in detail, the gross annual receipts of the grantee during the preceding calendar year, or portion thereof.
- C. Payment of Fee: It shall be the duty of the grantee to pay to the City, within fifteen (15) days after the time for filing such statements, the sum set forth in this Section, or any unpaid balance thereof, for the calendar year, or portion thereof, covered by such statements.
- D. Inspection of Records: The City shall have the right to inspect the grantee's records showing the gross receipts from which its franchise payments are computed and the right of audit and recomputation of any and all amounts paid under the provisions of this Chapter. No acceptance of any payment shall be construed as a

release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under the provisions of this Article or for the performance of any other obligation hereunder.

- E. Fee for Receipts After Termination of Franchise: In the event of any holding over after the expiration or other termination of any CATV franchise without the consent of the City, the grantee shall pay to the City reasonable compensation and damages of not less than one hundred percent (100%) of the grantee's total gross profits during such period.
- F. Credit to Business License Fee:² Fees paid by the grantee pursuant to this Chapter shall be credited against any business license fee imposed by the City on the grantee's activities. (Ord. 177, 8-19-85)

2-6B-5: CONDITIONS OF FRANCHISE:

- A. Any CATV franchise shall not relieve the grantee of any obligation involved in obtaining pole space from any department of the City, from any utility company or from others maintaining poles in streets.
- B. Any CATV franchise shall be in lieu of any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled or exercisable by the grantee or any successor to any interest of the grantee of or pertaining to the construction, operation or maintenance of any CATV system in the City, and the acceptance of any CATV franchise shall operate, as between the grantee and the City, as an abandonment of any and all such rights, privileges, powers, immunities and authorities within the City to the effect that, as between the grantee and the City, any and all construction, operation and maintenance by any grantee of any CATV system in the City shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to such franchise and not under or pursuant to any other right. (Ord. 177, 8-19-85)

² See Chapter 7 of this Title.

CHAPTER 6

FRANCHISES

ARTICLE C. FRANCHISES FOR UTILITIES

SECTION:

- 2-6C-1: Definitions
- 2-6C-2: Franchise Required
- 2-6C-3: General Franchise Provisions
- 2-6C-4: Franchise Fees

2-6C-1: DEFINITIONS: For the purposes of this Article, unless otherwise apparent from context, words and phrases used in this Article are defined as follows:

CUSTOMER: Any person or entity receiving service from a franchise at a location within the City.

FRANCHISE or UTILITY FRANCHISE: The authorization granted under this Article a) to construct and use poles, wires, conduits and appurtenances transmitting and distributing electricity; b) to use or to lay and use pipes and appurtenances for transmitting and distributing gas; or c) to use or to lay and use pipes and appurtenances for transmitting and distributing oil and to lay and use pipes.

FRANCHISE ACT: The Franchise Act of 1937 as set forth in Division 3, Chapter 2, Article 1 (commencing with Section 6201) of the Public Utilities Code.

UTILITY: A person authorized to engage in the transmission and distribution of oil, electricity, gas or water, other than a public agency. (Ord. 189, 2-2-87)

2-6C-2: FRANCHISE REQUIRED: No utility shall operate within a public street of the City without first securing a franchise as required by this Article. (Ord. 189, 2-2-87)

2-6C-3: GENERAL FRANCHISE PROVISIONS:

A. A nonexclusive utility franchise to serve customers within all or any portion of the City may be granted by the City Council by ordinance pursuant to the provisions of this Article.

B. Any franchise granted pursuant to this Article shall be

granted in accordance with the procedures of the Franchise Act.

- C. The terms and conditions of any franchise granted under this Article shall also be consistent with the terms and conditions of the Franchise Act. (Ord. 189, 2-2-87)

2-6C-4: FRANCHISE FEES: Any grantee of a utility franchise shall pay to the City a franchise fee based on the gross annual receipts of the grantee in the maximum amount permitted under the Franchise Act. Such payment shall be made by the grantee at such times and in such manner as is set forth in the ordinance granting the franchise. (Ord. 189, 2-2-87; 1994 Code)

CHAPTER 7

BUSINESS LICENSE TAX

SECTION:

- 2-7-1: Definitions
- 2-7-2: Business License Required; Exceptions
- 2-7-3: Application for License
- 2-7-4: Review of Application; Denial or Issuance
- 2-7-5: License Fees
- 2-7-6: Conditions of License; Term
- 2-7-7: Suspension, Revocation or Cancellation of License; Appeals
- 2-7-8: Enforcement of Provisions
- 2-7-9: Violation and Penalties

2-7-1: DEFINITIONS: For the purposes of this Chapter, unless otherwise apparent from context, certain words and phrases used in this Chapter are defined as follows:

BUSINESS: That which occupies time, attention and labor for the purpose of livelihood or profit of a person.

CITY: The City of Hidden Hills.

DOING BUSINESS: The exercise of some of the functions of business or the carrying on of business by the performance of an act giving rise to some legal obligations. "Doing business" shall also include acts which are compensated or remunerated for, in whole or in part, by donations or contributions in due course where they are the chief source of such livelihood or profit.

GROSS RECEIPTS: The total amounts actually received or receivable from the transfer of title, possession or the furnishing of any tangible real or personal property, the total amounts actually received or receivable for the performance of any act or service of whatever nature it may be for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of any materials, goods, wares or merchandise and the value of any other consideration received of any kind or nature whatsoever, without any deduction therefrom on account of the costs of the property sold, the cost of the materials, labor or services, interest paid or payable or losses or

expenses whatsoever.

PERSON: Any person, firm or corporation, including a person doing business under a fictitious name, associations of individuals, partnerships, clubs, syndicates, joint stock corporations, business or common law trusts or societies. (Ord. 177, 8-19-85)

2-7-2: BUSINESS LICENSE REQUIRED: It shall be unlawful for any person to maintain, conduct, carry on or commence to maintain, conduct or carry on any business within the City without first having obtained a license to do so as provided in this Chapter. (Ord. 177, 8-19-85; 1994 Code)

2-7-3: APPLICATION FOR LICENSE: Any person required to have a license under this Chapter shall make an application, in writing, for such license with the City Manager. Such application shall contain the following information:

- A. The name of the applicant, if a natural person, or the name and type of entity of the applicant, if a firm or corporation;
- B. The exact location of the particular place and premises which the applicant proposes to establish, open, maintain or conduct such business if the business is to be conducted in a fixed place. If the business is not to be conducted in a fixed place, the routes of territory to be covered or service area;
- C. The nature and kind of business the applicant proposes to conduct;
- D. A statement that the applicant is the only person interested in conducting or carrying on the business;
- E. A statement as to whether any license or order authorizing a license formerly issued to such applicant or to any of his agents or to any person interested in such business has ever been cancelled or revoked by the City;
- F. A statement of the anticipated annual gross receipts of the business within the City. To the extent authorized by law, the information required by this subparagraph shall be maintained as a trade secret and confidential; and
- G. A verification by affirmation or oath by the applicant if a natural person or by the oath of one of the officers of the firm or corporation that the information

provided in the application is true and correct.
(Ord. 177, 8-19-85; 1994 Code)

2-7-4: REVIEW OF APPLICATION; DENIAL OR ISSUANCE:

A. Power of City Manager: Upon the filing of an application for any license required by this Chapter, the City Manager may make such investigation of the application as deemed appropriate. Thereafter, the City Manager may grant or deny the application.

B. Denial of License; Appeal: If the application for a license required by this Chapter is denied, the City Manager shall so inform the applicant, in writing, setting forth the basis of the denial. The applicant may appeal the decision of the City Manager denying the application by requesting a hearing before the City Council; provided, such request is filed, in writing, with the City Manager within fifteen (15) days after the mailing of the City Manager's notice of denial. If the denial of the application is appealed, the City Council shall conduct a public hearing to determine whether facts found by the City Manager as a basis for denial are true and whether such facts constitute a sufficient basis for denial of the application. Such hearing shall be conducted, so far as practicable, in accordance with the provisions of the California Administrative Procedures Act.¹

C. Issuance of License:

1. If the City Manager grants the application, then the City Manager shall issue a license to the applicant upon the deposit of the required fees.

2. A license issued pursuant to this Chapter shall distinctly specify that it is subject to cancellation by the licensee or suspension or revocation by the Council and shall distinctly show its date of issuance. The license shall also state that it is valid until June 30 of the fiscal year issued and that it shall be automatically renewed, subject to continued payment of the required fees, unless cancelled, suspended or revoked. (Ord. 177, 8-19-85; 1994 Code)

2-7-5: LICENSE FEES:

A. Rate: The license fee for all businesses is one percent (1%)

¹ Gov. Code §11370 et seq.

of all gross receipts. (Ord. 177, 8-19-85)

B. Exemptions from Fees: The following persons are exempt from the payment of license fees:

1. Any business exempt by virtue of the Constitution or applicable statutes of the United States or of the State from the payment of such fees.
2. Persons who are employed by or who are direct representatives of a licensee shall not be required to pay a license fee for doing any part of the work of the licensee.
3. Businesses with annual gross receipts less than fifteen thousand dollars (\$15,000.00).
4. Persons doing business with the City but only as to such business.
5. The owner of any franchise from the City who pays the franchise fees to the City under an obligation imposed by the franchise.² (Ord. 191, 3-2-87; 1994 Code)

C. Quarterly Payment of Fees; Delinquency:

1. On October 10, January 10, April 10 and July 10 of each year, the licensee shall submit a sworn statement setting forth the licensee's gross receipts for the prior quarter ending October 1, January 1, April 1 and July 1, respectively. The sworn statement shall be accompanied by the business license fee for the quarterly period so reported.
2. All licenses issued pursuant to the provisions of this Chapter shall be delinquent if the fee thereof is not paid on the date when the fee is due. The City Manager shall assess a penalty of five percent (5%) for each month of delinquency or fraction thereof until paid; provided, in no event shall the amount of penalty exceed one hundred percent (100%) of the license fee due. (Ord. 177, 8-19-85; 1994 Code)
3. Notwithstanding Section 2-7-8 of this Chapter, no penalty or forfeiture shall be assessed or levied against a person who has failed to make timely payment of business license fees as of the effective date hereof if payment of the business license fees are received on or before September 30, 1987. (Ord. 194, 7-6-87)

D. Apportionment of Fees for Undue Burden or Violation of

² See Chapter 6 of this Title.

Constitution: None of the license fees provided for by this Chapter shall be applied so as to occasion an undue burden upon interstate commerce or be violative of equal protection or due process clauses of the Constitutions of the United States and the State.

1. Application for Adjustment of Tax: If the licensee or applicant believes that the license fee places an undue burden on interstate commerce or violates such constitutional clauses, he may apply to the City Manager for an adjustment of tax. Such application shall be made at or within six (6) months after payment of the license fee. The applicant shall, by sworn statement and supporting testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the City Manager may deem necessary in order to determine the extent, if any, of such undue burden or violation.

2. Investigation of Request: The City Manager shall then conduct an investigation and determine the validity of the request and shall then fix the license fee for the applicant at an amount that is reasonable and nondiscriminatory or, if the license fee has already been paid, shall order a refund of the amount over and above the license fee so fixed.

3. Power of Manager to Fix Fee: In fixing the license fee to be charged, the City Manager shall have the power to base the license fee upon a percentage of gross receipts or any other measure which will assure that the license fee assessed shall be uniform with that assessed on businesses of a like nature, so long as the amount assessed does not exceed the license fee prescribed by this Chapter. Should the City Clerk determine that the gross receipts measure of license fee to be proper basis, he may require the applicant to submit, either at the time of termination of the applicant's business in the City or at the end of each three (3) month period, a sworn statement of gross receipts and pay the amount of license tax therefor; provided, that no additional license fee during any calendar year shall be required after the licensee shall have paid an amount equal to the annual license fee as prescribed by this Chapter. (Ord. 177, 8-19-85; 1994 Code)

2-7-6: CONDITIONS OF LICENSE; TERM:

A. Initial Term: The initial term of a license issued pursuant to this Chapter shall commence on the date of issuance and terminate on June 30 next following the date of issuance. After the initial term of the license, the license shall be automatically renewed for the period from July 1 to June 30 of each fiscal year thereafter

subject to payment of the required fees, unless the license is cancelled, suspended or revoked as herein set forth.

B. **Exhibition of License:** Any person conducting a business required to be licensed by the provisions of this Chapter shall post the license in a conspicuous place at the place of business and keep the license posted until its date of expiration and then remove it. It shall be unlawful for any licensee to conduct any business within the City without exhibiting the license or facsimile thereof.

C. **Transferability:** No license issued pursuant to this Chapter shall be transferred; provided, however, where a license is issued authorizing a person to transact and carry on a business at a particular place, such licensee may, upon application therefor, have the license amended to authorize the transacting and carrying on of such business under the license at some other location to which the business has been moved or is to be moved. (Ord. 177, 8-19-85; 1994 Code)

2-7-7: SUSPENSION, REVOCATION OR CANCELLATION OF LICENSE; APPEALS:

A. **Suspension or Revocation:**

1. In addition to the violation of any other provision of this Chapter, the following constitutes grounds for suspension or revocation of a license:

a. Wilfully performing any act not authorized by such license;

b. Not keeping, conducting, maintaining or carrying on in a decent, orderly, quiet and lawful manner the business described in the license;

c. Wilfully and knowingly committing violations of City, County, State or Federal laws;

d. Using fraud or misrepresentation in obtaining the license;

e. Failing to deposit or pay all applicable rates, fees and charges established by this Chapter in a timely manner; or

f. Failure to reasonably estimate the amount of the license fee.

2. The City Manager shall suspend or revoke the license of any licensee who fails to comply with the terms and conditions of this Chapter. At least fifteen (15) days prior to the effective date of the suspension or revocation, the City Clerk shall:

a. Provide the licensee with a written statement of the facts upon which such suspension or revocation is based;

b. Inform the licensee of the licensee's right to appeal the decision to the City Council; and

c. Notify the licensee that the licensee will be unable to conduct business within the City when the license is suspended or revoked.

B.Cancellation: Licensee may cancel any license issued pursuant to this Chapter by filing a written statement of intent to cancel with the City Manager. Such cancellation shall be effective as of the date the statement is received by the City Manager.

C.Licenses; Effect of Cancellation, Suspension or Revocation: If a license is suspended pursuant to the provisions of this Chapter, the period of suspension shall be for such time as the Council may direct. If a license is revoked pursuant to the provisions of this Chapter, no further license shall be issued or granted to such person within one calendar year. If a license is cancelled pursuant to the provisions of this Chapter, then a new license shall be issued only when a new application is submitted; provided, however, if a license is cancelled after the City Manager has notified the licensee that the license will be suspended or revoked, then no new license shall be issued during the period of the proposed suspension or for one calendar year in the case of proposed revocation.

It shall be unlawful for any person to conduct or assist in the conducting of business within the City after the cancellation, suspension or revocation of the license without first having procured a license to do so as provided herein.

D.Council Hearing for Suspension or Revocation:

1. If the licensee files a written request with the City Manager requesting a hearing before the City Council within fifteen (15) days after the City Manager's notice of suspension or revocation, then the Council shall conduct such a public hearing concerning such suspension or revocation.

2. The Council shall determine whether the facts alleged by

the City Manager as grounds for the suspension or revocation are true and whether such facts constitute sufficient grounds for suspension or revocation. Such hearing shall be conducted so far as practicable in accordance with the California Administrative Procedures Act.³ (Ord. 177, 8-19-85; 1994 Code)

2-7-8: ENFORCEMENT OF PROVISIONS: The City Manager and Sheriff shall enforce the provisions of this Chapter. The City Manager, in the exercise of such enforcement duties, shall examine or cause to be examined all places of business in the City to ascertain whether the provisions of this Chapter have been complied with. (Ord. 177, 8-19-85)

2-7-9: VIOLATION AND PENALTIES:

A. Misdemeanor Declared: Any person having such license in his possession or under his control who wilfully fails to exhibit such license on demand shall be guilty of a misdemeanor.

B. Unpaid or Delinquent Fees:⁴ Any unpaid license fee or delinquency assessment shall be recoverable in a civil action brought by the City for such purpose. If the City files a legal action to enforce collection of the license fee or penalties, the delinquent party shall be liable to pay reasonable attorneys' fees as set by the court in addition to the fee and penalties due.

C. All remedies prescribed herein are cumulative, and the use of one or more remedies shall not bar the use of any other remedy. (Ord. 177, 8-19-85)

³ Gov. Code §11370 et seq.

⁴ See also Section 2-7-5(C) (3) of this Chapter.

CHAPTER 8

UTILITY USER TAXES

SECTION:

- 2-8-1: Short Title
- 2-8-2: Purpose
- 2-8-3: Definitions
- 2-8-4: Taxes Imposed
- 2-8-5: Exemptions from Provisions
- 2-8-6: Records to be Kept
- 2-8-7: Collection Procedures
- 2-8-8: Refunds
- 2-8-9: Additional Powers and Duties of Tax Administrator;
Enforcement of Provisions
- 2-8-10: Interest and Penalties
- 2-8-11: Termination or Suspension of Utility User Tax
- 2-8-12: When Tax Applicable

2-8-1: SHORT TITLE: This Chapter shall be known as the *UTILITY USER TAX ORDINANCE*. (Ord. 247, 12-9-91, eff. 1-8-92)

2-8-2: PURPOSE: This Chapter is enacted solely to raise revenue for the general governmental purposes of the City. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's General Fund and used for the usual current expenses of the City. (Ord. 247, 12-9-91, eff. 1-8-92)

2-8-3: DEFINITIONS: The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

CITY: The City of Hidden Hills.

COGENERATOR: Any corporation or person employing cogeneration technology for producing power from other than a conventional power source for the generation of electricity for self use or sale to others.

ELECTRICAL CORPORATION, GAS CORPORATION, TELEPHONE CORPORATION and WATER CORPORATION: Have the same meanings as defined in

Sections 218, 222, 234 and 241, respectively, of the Public Utilities Code of the State of California, as said sections existed on January 1, 1975. "Electrical Corporation", "Water Corporation" and "Gas Corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power or water to a service user.

FUEL: Natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

MONTH: A calendar month.

NONUTILITY SUPPLIER:

A.A service supplier, other than an electrical corporation serving within the City, which generates electrical energy in capacities of at least fifty (50) kilowatts for its own use or for sale to others; or

B.A gas supplier, other than a gas corporation, that sells or supplies gas to users within the City.

PERSON: Any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society or individual.

SERVICE SUPPLIER: Any entity required to collect or self impose and remit a tax as imposed by this Chapter.

SERVICE USER: A person required to pay a tax imposed by this Chapter.

TAX ADMINISTRATOR: The City Clerk or her designee.

TELEPHONE SERVICES: Services which provide the privilege of telephone communication with substantially all persons having telephone stations which are part of such telephone system. (Ord. 247, 12-9-91, eff. 1-8-92)

2-8-4: TAXES IMPOSED: There is established and imposed, as of February 1, 1992, or as soon thereafter as may be feasible, a utility user tax in the manner and at the rates set forth in this Chapter.

A.Telephone User Tax:

1. Tax Imposed; Rate: There is hereby imposed a tax on every person using intrastate, interstate and international telephone services in the City. The tax imposed by this subsection shall be at the rate of eight percent (8%) of the charges made for such services and shall be paid by the person paying for such services. Said tax shall apply to all charges billed to a telephone account having a situs in the City, irrespective of whether a particular telephone service originates and/or terminates within the City.

2. Exclusions and Exemptions from Provisions; Definitions:

a. As used in this subsection, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones; except, that where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due, nor shall the term "charges" include charges for any type of service or equipment furnished by a service supplier subject to public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation. The term "telephone communication services" includes cellular telephone services but does not include other forms of land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations. The term "telephone communication services" refers to that service which provides access to a telephone system and the privilege of telephone quality communication with substantially all persons having telephone stations which are part of such telephone system. The telephone user tax is intended to, and does, apply to all charges billed to a telephone account having a situs in the City, irrespective of whether a particular communication service originates or terminates within the City.

b. Notwithstanding the provisions of subsection A1 hereof, the tax imposed under this subsection shall not be imposed upon any person for using telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Section 4251 of the Internal Revenue Code.

3. Collection of Tax: The tax imposed by this subsection shall be collected from the service user by the person providing the telephone services or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted to the Tax Administrator on or before the last day of the following month unless the due date occurs on a weekend or a holiday, in which case the due date is the first business day following. Taxes shall be

deemed remitted on the date received by the Tax Administrator or on the date postmarked if remitted by first class United States mail with postage fully prepaid. With prior written approval of the Tax Administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers or, at the option of the person required to collect and remit the tax, an estimated amount of tax collected, measured by the tax bill in the previous month.

B. Electricity User Tax:

1. Tax Imposed; Rate: There is hereby imposed a tax on every person using electrical energy in the City. The tax imposed by this subsection shall be at the rate of eight percent (8%) of the charges made for such energy and shall be paid by the person paying for such energy. The tax applicable to electrical energy provided by a nonutility supplier shall be determined by applying the tax rate to the equivalent charge the service user would have incurred if the energy used had been provided by the electrical corporation franchised by the City. Rate schedules for this purpose shall be available from the City. Nonutility suppliers shall install, maintain and use an appropriate utility-type metering system which will enable compliance with this subsection. "Charges", as used in this subsection, shall include charges made for metered energy and charges for service, including customer charges, service charges, standby charges, charges for temporary services, demand charges, annual and monthly charges and any other charge authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

2. Exclusions from Provisions; Definitions: As used in this subsection, the term "using electrical energy" shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries, nor shall the term include the mere receiving of such energy by an electric public utility or governmental agency at a point within the City for resale, nor shall the term include the use of such energy in the production or distribution of water by a public utility or a governmental agency, nor shall the term include electricity used and consumed by an electric utility supplier in the conduct of its business, nor shall the term include the use of electricity generated by a cogenerator or a fuel cell for its own use or for resale.

3. Collection of Tax: The tax imposed in this subsection

shall be collected from the service user by the service supplier or nonutility supplier. The tax imposed in this subsection on use supplied by self-generation or from a nonutility supplier not subject to the jurisdiction of this Chapter shall be collected and remitted to the Tax Administrator in the manner set forth in subsection D of this Section. The amount of tax collected by a service supplier or a nonutility supplier in one month shall be remitted by U.S. mail to the Tax Administrator, postmarked on or before the last day of the following month, or at the option of the person required to collect and remit the tax, an estimated amount of tax measured by the tax billed in the previous month or, upon the payment pattern of the customers of the service supplier, shall be remitted by U.S. mail to the Tax Administrator, postmarked on or before the last day of each month.

C. Fuel User Tax:

1. Tax Imposed; Rate: There is hereby imposed a tax upon every person in the City, other than a gas corporation or electrical corporation, using, in the City, fuel which is transported through the gas pipeline distribution system or by mobile transport. The tax imposed by this subsection shall be at the rate of eight percent (8%) of the amount that will be paid by the person using the fuel. The tax applicable to fuel provided by nonutility suppliers shall be determined by applying the tax rate to the actual charges the service user incurred. "Charges", as used in this subsection, shall include:

a. That billed for fuel which is delivered through a gas pipeline distribution system or mobile transport;

b. Fuel transportation charges; and

c. Demand charges, service charges, customer charges, minimum charges, annual and monthly charges and any other charge authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission. Notwithstanding any other part of this subsection, the tax applied to fuel used by a cogenerator or fuel cell shall only apply to that amount of fuel attributable to the generation of electricity used on site.

2. Exemptions from Tax: The tax otherwise imposed by this subsection is not applicable to: a) charges made for fuel which is to be resold and delivered through mains and pipes; b) charges made for natural gas used and consumed by a public utility or governmental agency in the conduct of its business; c) charges made by a natural gas public utility for gas used and consumed in the course of its public utility business; d) charges made for natural gas used in

the propulsion of a motor vehicle, as authorized in the Vehicle Code of the State, utilizing natural gas and other natural gas clean-air technologies; e) nor shall the term include the use of such energy in the production or distribution of water by a water utility or a governmental agency.

3. Collection of Tax: The tax imposed in this subsection shall be collected from the person using the fuel by the person selling or transporting the fuel. A person selling or providing transportation services of natural gas to a user for delivery through mains or pipes shall collect the tax from the user based upon the cost of transporting the fuel. The person selling or transporting the fuel shall, on or before the twentieth of each calendar month, commencing on the twentieth day of the calendar month after the effective date hereof, make a return to the Tax Administrator stating the amount of taxes billed during the preceding calendar month. At the time such returns are filed, the person selling or transporting the gas shall remit tax payments to the Tax Administrator in accordance with schedules established or approved by the Tax Administrator. The tax imposed in this subsection on use supplied by self-production or a nonutility supplier not subject to the jurisdiction of this Chapter, shall be collected and remitted to the Tax Administrator in the manner set forth in subsection D of this Section.

D. Service Users Receiving Direct Purchase of Fuel or Electricity:

1. Report of Use: Notwithstanding any other provision of this Chapter, a service user receiving fuel or electricity directly from a nonutility supplier not under the jurisdiction of this Chapter or otherwise not having the full tax due on the use of fuel or electricity in the City directly billed and collected by the service supplier shall report said fact to the Tax Administrator within thirty (30) days of said use and shall directly remit to the City the amount of tax due.

2. Evidence and Documentation of Use: The Tax Administrator may require said service user to provide, subject to audit, filed tax returns or other satisfactory evidence documenting the quantity of fuel or electricity used and the (actual) price thereof.

E. Water Users Tax:

1. Tax Imposed; Rate: There is hereby imposed a tax upon every person in the City using water which is delivered through the mains or pipes. The tax imposed by this subsection shall be at the rate of eight percent (8%) of the

charges made for such water and shall be paid by the person paying for such water.

2. Exclusion from Tax: There shall be excluded from the base on which the tax imposed in this subsection is computed charges made for water which is to be resold and delivered through mains or pipes and charges made by a municipal water department, public utility or a city or municipal water department, utility or district.

3. Collection of Tax: The tax imposed in this subsection shall be collected from the service user by the person supplying the water. The amount collected in one month shall be remitted to the Tax Administrator on or before the last day of the following month. (Ord. 247, 12-9-91, eff. 1-8-92; 1994 Code; Ord. 284, 7-28-97)

2-8-5: EXEMPTIONS FROM PROVISIONS:

A.Nothing in this Chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or the Constitution of the State of California or any California statute.

B.The City Council may, by order or resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this Chapter and provide that such classes of persons or service shall be exempt, in whole or in part, from such tax.

C.The Tax Administrator shall prepare a list of the persons exempt from the provisions of this Chapter by virtue of this Section and furnish a copy thereof to each service supplier. (Ord. 247, 12-9-91, eff. 1-8-92)

2-8-6: RECORDS TO BE KEPT: It shall be the duty of every person required to collect and remit to the City any tax imposed by this Chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at all reasonable times. (Ord. 247, 12-9-91, eff. 1-8-92)

2-8-7: COLLECTION PROCEDURES:

A.Procedures: The duty to collect and remit the taxes imposed by this Chapter shall be performed as follows:

1. Notwithstanding the provisions of subsection 2-8-4D of this Chapter, the tax shall be collected, insofar as practicable, at the same time as, and along with, the collection of charges made in accordance with the regular billing practices of the service supplier. Except in those cases where a service user pays the full amount of said charges but does not pay any portion of a tax imposed by this Chapter, or where a service user has notified a service supplier that he is refusing to pay a tax imposed by this Chapter which said service supplier is required to collect, if the amount paid by a service user is less than the full amount of the charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the utility charge first. Any remaining balance shall be applied to taxes due. In those cases where a service user has notified the service supplier of his refusal to pay the tax imposed on said energy charges, subsection 2-8-9D of this Chapter will apply.

2. The duty to collect tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where charges are subject to the provisions of this Chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

B. Nonpayment Procedures:

1. The Tax Administrator may assess the service user for taxes not paid to the service supplier.

2. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by such users from the amounts remitted to a person required to collect the tax or that a service user has refused to pay the amount of tax to such person, or whenever the Tax Administrator deems it in the best interest of the City, she may relieve such person of the obligation to collect taxes due under this Chapter from certain named service users for specified billing periods.

3. The service supplier shall provide the City with amounts refused, along with the names, addresses and reasons of the service users refusing to pay the tax imposed under provisions of this Chapter. Whenever the service user has failed to pay the amount of tax for a period of two (2) or more billing periods, the Tax Administrator may relieve the service supplier of the obligation to collect taxes due.

4. The Tax Administrator shall notify the service user that

she has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax or, should the service user have changed his address, to his last known address. If a service user fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty five percent (25%) of the amount of the tax set forth in the notice shall be imposed but not less than five dollars (\$5.00). The penalty shall become part of the tax herein required to be paid.

C. Debt: Any tax required to be paid by a service user under the provisions of this Chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit the tax. Any person owing money to the City under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such amount. (Ord. 247, 12-9-91, eff. 1-8-92)

2-8-8: REFUNDS:

A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, it may be refunded as provided in this Section.

B. Notwithstanding the provisions of subsection A of this Section, a service supplier may, with prior written approval from the Tax Administrator, claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established that the service user from whom the tax has been collected did not owe the tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit.

C. No refund shall be paid under the provisions of this Section

unless the claimant establishes his right thereto by written records showing entitlement thereto, and complies with Section 1-9-3 of this Code.

D. Notwithstanding other provisions of this Section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this Chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier may, with prior written approval of the Tax Administrator, take a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this Chapter is repealed, the amounts of any refundable taxes will be borne by the City.

E. A service supplier may refund the taxes collected to the service user in accordance with this Section or by the service supplier's customary practice. (Ord. 247, 12-9-91; Ord. 278, 4-22-96)

2-8-9: ADDITIONAL POWERS AND DUTIES OF TAX ADMINISTRATOR;
ENFORCEMENT OF PROVISIONS:

A. The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Chapter.

B. The Tax Administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this Chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such rules and regulations shall be on file in the Tax Administrator's office.

C. The Tax Administrator may make administrative agreements to vary the strict requirements of this Chapter so that collection of any tax imposed here may be made in conformance with the billing procedures of a particular service supplier so long as said agreements result in collection of the tax in conformance with the general purpose and scope of this Chapter. A copy of each such agreement shall be on file in the Tax Administrator's office.

D. The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this Chapter. The Tax Administrator shall provide the service supplier with the name of any

person who the Tax Administrator determines is exempt from the tax imposed hereby, together with the address and account number to which service is supplied to any such exempt person. The Tax Administrator shall notify the service supplier of the termination of any person's right to exemption hereunder or the change of any address to which service is supplied to any exempt person.

E.The Tax Administrator shall provide notice to all service suppliers at least ninety (90) days prior to any annexation, incorporation or other change in the City's boundaries. Said notice shall set forth the revised boundaries by street and address along with a copy of the final annexation order from LAFCO. (Ord. 247, 12-9-91, eff. 1-8-92)

2-8-10: INTEREST AND PENALTIES:

- A. Payment by Due Date: Taxes collected from a service user which are not remitted to the Tax Administrator on or before the due dates provided in this Chapter are delinquent and are subject to penalties and interest. Should the due date occur on a weekend or legal holiday, the return may be postmarked on the next regular working day.
- B. Late Payment Penalty: Any person who fails to remit taxes collected in the time required by this Chapter shall pay a penalty of five percent (5%) of the amount of the tax, and if not remitted within two (2) working days after the date of delinquency, shall pay a total penalty of twenty percent (20%) of the amount of tax owed. Such penalty shall attach to the amount of tax due and shall be paid by the person required to collect and remit the tax.
- C. Additional Penalties: When fraud or gross negligence in reporting and remitting tax collections is discovered, the Tax Administrator shall have power to impose additional penalties of twenty percent (20%) of taxes owed upon persons required to collect and remit taxes under the provisions of this Chapter.
- D. Interest on Unpaid Taxes: Any person required to remit to the Tax Administrator delinquent taxes as required in this Section shall pay interest at the rate of one and one-half percent (1.5%) per month, or portion thereof, on the amount of tax owed, exclusive of penalties, from the date on which the tax first became delinquent until paid.
- E. Exceptions to Penalties and Interest: Notwithstanding the provisions of subsections B and D of this Section, no penalty or interest shall be applied if delinquencies are the result of natural disasters or other phenomena beyond the control of the person charged with collecting and remitting the tax, provided the person being delinquent notifies the Tax Administrator as soon as normal communications permit. (Ord. 247, 12-9-91, eff. 1-8-92)

2-8-11: TERMINATION OR SUSPENSION OF UTILITY USER TAX: The service supplier shall, upon notification, terminate or suspend any utility user tax commencing with the first full billing period which occurs after the effective day of such action by the City Council. (Ord. 247, 12-9-91, eff. 1-8-92)

2-8-12: WHEN TAX APPLICABLE: The tax imposed under this Chapter shall apply to services furnished from the beginning of the first regular billing period commencing on or after January 1, 1992, or as soon thereafter as the respective utilities are physically and mechanically able to get "on line" for the imposition of charges (not less than 60 days). (Ord. 247, 12-9-91, eff. 1-8-92)

CHAPTER 9

MOTION PICTURE, TELEVISION AND PHOTOGRAPHIC PRODUCTIONS

SECTION:

- 2-9-1: Short Title
- 2-9-2: Definition
- 2-9-3: Permit Required
- 2-9-4: Application for Permit
- 2-9-5: Permit Fees
- 2-9-6: Permit Criteria; Issuance
- 2-9-7: Cost of Additional Services
- 2-9-8: Liability Insurance
- 2-9-9: Additional Conditions of Permit
- 2-9-10: Exemptions from Provisions
- 2-9-11: Administrative Regulations

2-9-1: SHORT TITLE: This Chapter shall be known as the *MOTION PICTURE, TELEVISION AND PHOTOGRAPHIC PRODUCTION ORDINANCE OF THE CITY*. (Ord. 245, 9-9-91)

2-9-2: DEFINITION: As used in this Chapter, "motion picture, television and photographic production" shall mean all activity attendant to staging or shooting (video taping or filming) commercial motion pictures, television shows, programs or commercials, and to the taking of a single or multiple photographs for sale or use for a commercial or industrial purpose where the photographer sets up stationary equipment on public or private property in any one location for longer than five (5) consecutive minutes. (Ord. 245, 9-9-91)

2-9-3: PERMIT REQUIRED: No person shall use any public or private property, facility or residence for the purpose of producing, taking or making any commercial motion picture, television or photographic production, as defined in Section 2-9-2 of this Chapter, without a permit issued pursuant to the provisions of this Chapter. (Ord. 245, 9-9-91)

2-9-4: APPLICATION FOR PERMIT: Any person desiring a permit under the provisions of this Chapter shall make application on appropriate form provided by the City. The completed application shall be submitted at least two (2) working days

prior to the date on which such person desires to conduct an activity for which a permit is required. (Ord. 245, 9-9-91)

2-9-5: PERMIT FEES: Each application shall be accompanied by:

- A. A processing fee in an amount established by resolution of the City Council. The processing fee shall be waived for charitable and nonprofit organizations which qualify under Section 501(c)(3) of the United States Internal Revenue Code.
- B. A daily administrative reimbursement fee and property use fee in an amount established by resolution of the City Council to reimburse the City for the staff time required to evaluate the application and establish conditions of approval and to monitor the activity, as well as to compensate the City, where applicable, for the use of public property, including for parking and its unavailability for ordinary and usual purposes resulting from the filming activity. (Ord. 245, 9-9-91)

2-9-6: PERMIT CRITERIA; ISSUANCE: The Building Official shall issue a permit as provided in this Chapter when, from a consideration of the application and from such other information as may be otherwise obtained, it finds that:

- A. The conduct of such activity will not unduly interfere with traffic or pedestrian movement or endanger public safety and that no streets will be completely closed to traffic for an unreasonable period of time. Seventy two (72) hours' notice of any street closure shall be given by the placement of temporary signs prohibiting the operation, stopping, standing or parking of vehicles during such street closure.
- B. The conduct of such activity will not unduly interfere with normal governmental or City operations, 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.
- C. At the determination of the Building Official as well as the Los Angeles County Sheriff's Department and Los Angeles County Fire Department, that the condition of such activity will not constitute a fire hazard or any other type of hazard and all proper safety precautions will be taken as determined by the heads of the aforementioned departments or their designees.
- D. The decision of the Building Official to issue,

conditionally issue or not issue a permit shall be final unless appealed, in writing, within five (5) working days of the decision by requesting a hearing of the City Council at the next available meeting. (Ord. 245, 9-9-91; 1994 Code)

2-9-7: COST OF ADDITIONAL SERVICES: If deemed necessary by the Building Official, additional Sheriff, code enforcement, fire and other City services shall be provided for the purpose of protecting, assisting and regulating the proposed activity. The cost of providing such additional services shall be paid in advance to the City by the applicant. Any additional City services will be provided/coordinated through the City Building Official. (Ord. 245, 9-9-91; 1994 Code)

2-9-8: LIABILITY INSURANCE: The City shall require, as a condition of issuing such a permit, that the applicant furnish insurance in the amount of one million dollars (\$1,000,000.00) to protect the City against claims of third persons for personal injury, wrongful death and property damage and to indemnify the City for damage to City property arising out of the permittee's activities. An additional five million dollars (\$5,000,000.00) of such general liability insurance coverage shall be required in the event aircraft or helicopters are used in the activity. A copy of the policy will remain on file with the application. The City and its officers and employees shall be named as additional insureds under the policy, which shall not be subject to cancellation without thirty (30) days' written notice to the City. Applicant shall also submit verification that adequate Worker's Compensation Insurance coverage is maintained. (Ord. 245, 9-9-91)

2-9-9: ADDITIONAL CONDITIONS OF PERMIT:

- A. Hold Harmless Agreement: The applicant shall execute a hold harmless agreement as provided by the City prior to the issuance of any permit.
- B. Conditions and Restrictions: The applicant shall comply with any conditions or restrictions the City may impose as a condition to issuing a permit. No changes shall be made without first obtaining the approval of the Building Official.
- C. Cleanup and Restoration: The applicant shall conduct operations in an orderly fashion with continuous attention to the storage of equipment not in use and the cleanup of trash and debris. The area used shall be cleaned of trash and debris to the City's satisfaction within such time as determined by

administrative regulation. 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 Building Official shall have the necessary restoration and/or repair performed, and applicant shall pay the cost of such repair, restoration or cleanup to the City within ten (10) days of completing filming. Applicant shall also pay to the City, within this time, the cost of any charges for the use or restoration of any utilities, services, equipment, facilities or required standby employees which was not charged in advance. (Ord. 245, 9-9-91; 1994 Code)

2-9-10: EXEMPTIONS FROM PROVISIONS: The provisions of this Chapter shall not apply to the following:

- A. News Productions: Current news productions, which includes reporters, photographers or cameramen in the employment of a newspaper, news service, broadcasting station or similar entity engaged in the broadcasting of news events.
- B. Cable Television Franchises: Productions which are conducted by the City's cable television franchise.
- C. Established Studios: Productions which are conducted within legally established commercial motion picture/television/still photography studios. (Ord. 245, 9-9-91)

2-9-11: ADMINISTRATIVE REGULATIONS: The Building Official is hereby authorized to promulgate and enforce administrative regulations in the implementation and enforcement of this Chapter. (Ord. 245, 9-9-91; 1994 Code)

CHAPTER 10

TELECOMMUNICATIONS REGULATIONS

ARTICLE A. GENERAL PROVISIONS

SECTION:

- 2-10A-1: Title
- 2-10A-2: Purpose and Intent
- 2-10A-3: Defined Terms and Phrases

2-10A-1: TITLE: This chapter may be cited as the Telecommunications Regulations of the City of Hidden Hills.

2-10A-2: PURPOSE AND INTENT:

- A. The City Council finds and determines as follows:
 - 1. The development of cable television and other telecommunications systems may provide significant benefits for, and have substantial impacts upon, the residents of the City.
 - 2. Because of the complex and rapidly changing technology associated with telecommunications services and systems, the public convenience, safety, and general welfare can best be served by establishing regulatory powers to be exercised by the City.
 - 3. This chapter is intended to establish regulatory provisions that authorize the City to regulate 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.
- B. The purpose and intent of this chapter is to provide for the attainment of the following objectives:
 - 1. To enable the City to discharge its public trust in a manner consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

2. To authorize and to manage reasonable access to the City's public rights-of-way and public property for telecommunications purposes on a competitively neutral and nondiscriminatory basis.

3. To obtain fair and reasonable compensation for the City and its residents for authorizing the private use of the public rights-of-way and public property.

4. To promote competition in telecommunications services, minimize unnecessary local regulation of telecommunications service providers, and encourage the delivery of advanced and competitive telecommunications services on the broadest possible basis to local government and to the businesses, institutions, and residents of the City.

5. To establish clear local guidelines, standards, and time frames for the exercise of local authority with respect to the regulation of telecommunications service providers.

6. To encourage the profitable deployment of advanced telecommunications infrastructures that satisfy local needs, deliver enhanced government services, and provide informed consumer choices in an evolving telecommunications market.

2-10A-3: DEFINED TERMS AND PHRASES: Various terms and phrases used in this chapter are defined below in Article E, Section 2-10E-1. (Ord. 290, 1-12-97)

CHAPTER 10. TELECOMMUNICATIONS REGULATIONS

ARTICLE B. CABLE TELEVISION SYSTEMS

SECTION:

- 2-10B-1: Authority and Findings
- 2-10B-2: Franchise Terms and Conditions
- 2-10B-3: Franchise Applications and Renewal
- 2-10B-4: Contents of Cable Television Franchise Agreements

2-10B-1: AUTHORITY AND FINDINGS:

- A. In accordance with applicable federal and state law, the City is authorized to grant one or more nonexclusive franchises to construct, reconstruct, operate, and maintain cable television systems within the City limits.
- B. The City Council finds that the development of cable television and related telecommunications services may provide significant benefits for, and substantial impacts upon, the residents of the City. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers to be exercised by the City. This Article B is intended to specify the means for providing to the public the best possible cable television and related telecommunications services, and every franchise issued in accordance with this Article B is intended to achieve this primary objective. It is the further intent of this Article B to adopt regulatory provisions that will enable the City to regulate cable television and related telecommunications services to the maximum extent authorized by federal and state law.

2-10B-2: FRANCHISE TERMS AND CONDITIONS:

- A. Franchise Purposes: A franchise granted by the City under the provisions of this article 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 article.

C. Term of the Franchise:

1. A franchise granted under this article will be for the term specified in the franchise agreement, commencing upon the effective date of the ordinance or resolution adopted by the City Council that authorizes the franchise.

2. A franchise granted under this article may be renewed upon application by the Grantee in accordance with the then-applicable provisions of state and federal law and of this article.

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 in the ordinance or resolution granting the franchise or in the franchise agreement.

E. Federal or State Jurisdiction: This article 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 article, to the extent authorized by applicable law.

F. Franchise Non-Transferable:

1. 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 subsection.

2. The requirements of subsection 1 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 corporation, prior authorization of the City Council is required where ownership or control of more than ten percent of the voting stock of Grantee is acquired by a person or a group of persons acting in concert, none of whom, singularly or collectively, owns or controls the voting stock of the Grantee as of the effective date of the franchise.

3. 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 of 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.

4. 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 transferee, 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 satisfactory, the City will consent to the transfer of the franchise. The consent of the City to that transfer will not be unreasonably denied or delayed.

5. 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 one year 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.

6. 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 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. No reimbursement may be offset against any franchise fee payable to the City during the term of the franchise.

G. Geographical Coverage:

1. Grantee must design, construct, and maintain the cable television system so as to have the capability to pass every dwelling unit in the City, subject to any service-area line extension requirements of the franchise agreement.

2. After service has been established by activating trunk or distribution cables for any service area, Grantee must provide service to any requesting subscriber in that 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 an additional franchise is proposed to be granted to a subsequent Grantee, a noticed public hearing must first be held in accordance with the provisions of Government Code Section 53066.3.

I. Multiple Franchises:

1. 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:

a. 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.

b. The benefits that may accrue to subscribers as a result of cable system competition, such as lower rates and improved service.

c. 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.

2. 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.

2-10B-3: FRANCHISE APPLICATIONS AND RENEWAL:

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 in an amount established by resolution of the City Council must accompany the application. That application fee will cover all costs associated with reviewing and processing the application, including without limitation costs of administrative review, financial, legal, and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by those experts), notice and publication requirements, and document preparation expenses. If those costs exceed the application fee, the applicant must pay the difference to the City within thirty (30) days

following receipt of an itemized statement of those costs.

- B. Applications - 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 corporation, each owner of ten percent or more 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.
 8. Any additional information that the City deems to be reasonably necessary.

C. Consideration of Initial Applications:

1. Upon receipt of an application for an initial franchise, the City Manager or the City Manager's designee must prepare a report and make recommendations to the City Council concerning that application.
2. 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 or more

franchises, or may decline to grant any franchise.

- D. Franchise Renewal: Franchise renewals will be processed in accordance with then-applicable law. The City and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

2-10B-4: CONTENTS OF CABLE TELEVISION FRANCHISE AGREEMENTS:

- A. 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 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 governmental 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 recordkeeping, 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.
- B. If there is any conflict or inconsistency between the provisions of a franchise agreement authorized by the City Council and provisions of this Article B, the provisions of the franchise agreement will control.
(Ord. 290, 1-12-97)

CHAPTER 10. TELECOMMUNICATIONS REGULATIONS

ARTICLE C. OPEN VIDEO SYSTEMS

SECTION:

- 2-10C-1: Applicability
- 2-10C-2: Application Required
- 2-10C-3: Review of the Application
- 2-10C-4: Agreement Required

2-10C-1: APPLICABILITY: The provisions of this Article C are applicable to an open video system operator, as defined below in Article E, that intends to deliver video programming to consumers in the City over an open video system.

2-10C-2: APPLICATION REQUIRED:

- A. 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:
 - 1. The identity of the applicant, including all affiliates of the applicant.
 - 2. 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.
 - 3. The area or areas of the City that the applicant desires to serve.
 - 4. A description of the open video system services that will be offered by the applicant over its existing or proposed facilities.
 - 5. A description of the transmission medium that will be used by the applicant to deliver the open video system services.
 - 6. 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.

7. Financial statements prepared in accordance with generally accepted accounting principles that demonstrate the applicant's financial ability to:

- a. Construct, operate, maintain and remove any new physical plant that is proposed to be constructed in the City.
- b. Comply with the City's public, educational, and governmental access requirements as specified below in Section 2-10C-4(B) (4).
- c. Comply with the City's requirement that gross revenue fees be paid in the sum of five percent, as specified below in Section 2-10C-4(B) (2).

8. 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.

9. If the applicant's operation of the open video system will require the construction of new physical plant in the City, the following additional information must be provided:

- a. A preliminary construction schedule and completion dates.
- b. Preliminary engineering plans, specifications, and a network map of any new facilities to be constructed in the City, in sufficient detail to identify:
 - (i) The location and route requested for the applicant's proposed facilities.
 - (ii) The locations, if any, for interconnection with the facilities of other telecommunications service providers.
 - (iii) The specific structures, improvements, facilities, and obstructions, if any, that the applicant proposes to remove or relocate on a temporary or permanent basis.
- c. 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.

10. The information and documentation that is required to be submitted to the City by a video provider, as specified below in Section 2-10D-2(B).

11. Such additional information as may be requested by the City Manager.

12. A nonrefundable filing fee in an amount established by resolution of the City Council.

- B. If any item of information specified above in paragraph A 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.

2-10C-3: REVIEW OF THE APPLICATION: Within 30 days after receipt of an application filed under Section 2-10C-2 that is deemed to be 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.

2-10C-4: AGREEMENT REQUIRED:

A. 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.

B. 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 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 (i) 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 (ii) 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 recordkeeping, 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 B(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.

(ii) The City will impose upon the open video system operator the same rules and procedures that it imposes upon the franchised cable operator with regard to the open video system operator's use of channel capacity designated for public, educational, and governmental access use when that capacity is not being used for such purposes.

e. The City's franchised cable operator is required under federal law to permit the open video system operator to connect with its public, educational, and governmental access channel feeds. The open video system operator and the franchised cable operator may decide how to accomplish this connection, taking into consideration the physical and technical characteristics of the cable and the open video systems involved. If the franchised cable operator and the open video system operator cannot agree on how to accomplish the connection, the City has the right

to decide. The City may require that the connection occur on City-owned property or on public rights-of-way.

f. All costs of connection to the franchised cable operator's public, educational, and governmental access channel feed must be borne by the open video system operator. These costs will be counted towards the open video system operator's matching financial contributions set forth above in subparagraph (d)(i).

g. The City will not impose upon the open video system operator any public, educational, or governmental access obligations that are greater than those imposed upon the franchised cable operator.

h. If there is no existing franchised cable operator, the provisions of 47 CFR 76.1505(d)(6) will be applicable in determining the obligations of the open video system operator.

i. The open video system operator must adjust its system to comply with new public, educational, and access obligations imposed on the City's franchised cable operator following a renewal of the cable television franchise; provided, however, that the open video system operator will not be required to displace other programmers using its open video system to accommodate public, educational, and governmental access channels. The open video system operator must comply with such new public, educational, and governmental access obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or to decreased demand for channel capacity.

5. If the City and the open video system operator cannot agree as to the application of the FCC's rules regarding the open video system operator's obligations to provide public, educational, and governmental access under the provisions of subsection 4 set forth above, then either party may file a complaint with the FCC in accordance with the dispute resolution procedures set forth in 47 CFR 76.1514. No agreement will be executed by the City until the dispute has been finally resolved.

6. If the open video system operator intends to maintain an institutional network, as defined in Section 611(f) of the Communications Act, the City will require that educational and governmental access channels be designated on that institutional network to the same extent that those channels are designated on the institutional network of the City's franchised cable operator.

7. The authority of an open video system provider to exercise editorial control over any 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 Section 53054, *et seq.*), and the Video Customer Service Act (Government Code Section 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. (Ord. 290, 1-12-97)

CHAPTER 10. TELECOMMUNICATIONS REGULATIONS

ARTICLE D. OTHER TELECOMMUNICATIONS SERVICES AND SYSTEMS

SECTION:

- 2-10D-1: Other Multichannel Video Programming Distributors
- 2-10D-2: Video Providers - Registration; Customer Service Standards
- 2-10D-3: Telecommunications Service Provided by Telephone Corporations

2-10D-1: OTHER MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTORS:

The term "cable system," as defined in federal law and as set forth in Article E below, does not include a facility that serves subscribers without using any public rights-of-way. Consequently, the categories of multichannel 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.

- A. Multichannel 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.
- B. 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.
- C. 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 further proscribed by the following federal statutory provisions:
 - 1. 47 U.S.C. Section 303(v) confers upon the FCC exclusive jurisdiction to regulate the provision of direct-

to-home satellite services.

2. 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.

2-10D-2: VIDEO PROVIDERS - REGISTRATION; CUSTOMER SERVICE STANDARDS:

A. Unless the customer protection and customer service obligations of a video provider, as that term is defined in Article E, are specified in a franchise, license, lease, or similar written agreement with the City, a video provider must comply with all applicable provisions of the following state statutes:

1. The Cable Television and Video Customer Service and Information Act (Government Code Section 53054, *et seq.*)

2. The Video Customer Service Act (Government Code Section 53088, *et seq.*)

B. 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. The registration form must include or be accompanied by the following:

1. The video provider's name, address, and local telephone numbers.

2. The names of the officers of the video provider.

3. 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 Section 53054, *et seq.* These customer service standards must include, without limitation, standards regarding the following:

a. Installation, disconnection, service and repair obligations, employee identification, and service call response time and scheduling.

- b. Customer telephone and office hours.
- c. Procedures for billing, charges, refunds, and credits.
- d. Procedures for termination of service.
- e. Notice of the deletion of a programming service, the changing of channel assignments, or an increase in rates.
- f. Complaint procedures and procedures for bill dispute resolution.
- g. 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 in subparagraphs (a) through (f). 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 Section 53055.2.

4. 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.

5. In addition to the registration fee specified above in subsection 4, 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 Section 53088.2(o).

C. The City Council may establish by ordinance a schedule of monetary penalties for the material breach by a video provider of its obligations under subparagraphs (a) through (n) of Government Code Section 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 Section 53088.2. The provisions of that ordinance must be consistent with the provisions of Government Code Section 53088.2. The schedule of monetary penalties may also impose a penalty, as authorized by Government Code Section 53056(a), for the failure of a video provider to distribute the annual notice required by Government Code Section 53055.1, which penalty may not exceed \$500 for

each year in which the notice is not distributed as required by state statute.

2-10D-3: TELECOMMUNICATIONS SERVICE PROVIDED BY TELEPHONE CORPORATIONS:

- A. The City Council finds and determines as follows:
1. The federal Telecommunications Act of 1996 preempts and declares invalid all state rules that restrict entry 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 the facilities or services provided by other authorized telephone corporations.
 3. Section 234(a) of the 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 Public Utilities Code provides that a telephone corporation "may condemn any property necessary for the construction and maintenance of its telephone line."
 5. Section 2902 of the Public Utilities Code authorizes municipal corporations to retain their powers of control 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.
 6. Section 7901 of the Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to 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.

7. Section 7901.1 of the Public Utilities Code confirms the right of municipalities 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, and may involve the imposition of fees.

8. Section 50030 of the Government Code provides that any permit fee imposed by a 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.

B. In recognition of and in compliance with the statutory authorizations and requirements set forth above in paragraph A, the following regulatory provisions are applicable to 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:

1. The telephone corporation must apply for and obtain, as may be applicable, an excavation permit, an encroachment permit, or a building permit ("ministerial permit.")

2. 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:

a. 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.

b. 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:

(i) 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.

(ii) 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.

(iii) 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."

C. 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:

1. 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.

2. 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 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.

- D. Chapter 7 of Title 4 of this Code sets forth the City's regulatory requirements that apply to the installation and operation of burglar alarm devices within the City. (Ord. 290, 1-12-97)

CHAPTER 10. TELECOMMUNICATIONS REGULATIONS

ARTICLE E. DEFINITIONS

SECTION:

2-10E-1: Defined Terms and Phrases

2-10E-1: DEFINED TERMS AND PHRASES:

- A. For the purposes of this chapter, the words, terms, phrases, and their derivations set forth in this Article E have the meanings set forth below. Words used in the present tense include the future tense, and words in the singular include the plural number.

"Affiliate" means, when used in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person. For purposes of this definition, the term "own" means to own an equity interest, or its equivalent, of ten percent or more.

"Cable service" means the one-way transmission to subscribers of video programming, or other programming services, and subscriber interaction, if any, that is required for the selection or use of that video programming or other programming service. For the purposes of this definition, "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and "other programming service" means information that a cable system operator makes available to all subscribers generally.

"Cable system," or "cable communications system" or "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 that includes video programming and that is provided to multiple subscribers within a community. The term "cable system" does not include:

- (i) a facility that services only to retransmit the television signals of one or more television broadcast stations;
- (ii) a facility that services subscribers

without using any public right-of-way;

(iii) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Telecommunications Act of 1996, except that such facility will be considered a cable system (other than for purposes specified in Section 621(c) of the 1984 Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(iv) an open video system that complies with Section 653 of Title VI of the Telecommunications Act of 1996; or

(v) any facilities of an electric utility that are used solely for operating its electric utility system.

"Cable system operator" means any person or group of persons:

(i) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in that cable system; or

(ii) who otherwise controls or is responsible for, through any arrangement, the management and operation of that cable system.

"City" means the City of Hidden Hills as represented by its City Council or by any delegate acting within the scope of its delegated authority.

"CFR" means the Code of Federal Regulations. Thus, the citation of "47 CFR 80.1" refers to Title 47, Part 80, Section 80.1, of the Code of Federal Regulations.

"Communications Act" means the Communications Act of 1934 (47 U.S.C. Section 153, *et seq.*), as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996.

"FCC" or "Federal Communications Commission" means the federal administrative agency, or any lawful successor, that is authorized to regulate telecommunications services and telecommunications service providers on a national level.

"Franchise" means an initial authorization, or the renewal of an initial authorization, issued by the City Council, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable system.

"Franchise fee" means any fee or assessment of any kind that is authorized by state or federal law to be imposed by the City on a Grantee as compensation in the nature of rent for the Grantee's use of the public rights-of-way. The term "franchise fee" does not include:

(i) Any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services);

(ii) Capital costs that are required by the franchise to be incurred by Grantee for public, educational, or governmental access facilities;

(iii) Costs or charges that are incidental to the award or enforcement of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(iv) Any fee imposed under Title 17, United States Code.

"Franchise service area" or "service area" means the entire geographic area of the City as it is now constituted, or may in the future be constituted, unless otherwise specified in the ordinance or resolution granting a franchise, or in an franchise agreement.

"Grantee" means any person that is awarded a franchise in accordance with this chapter, and that person's lawful successor, transferee, or assignee.

"Gross annual cable service revenues" means the annual gross revenues received by a Grantee from all operations of its cable television system within the City, excluding uncollected bad debt, refundable deposits, rebates or credits, and further excluding any sales, excise, or other taxes or charges that are required to be collected for direct pass-through to the local, state or federal government. Revenues identified and collected from subscribers as franchise fees may not be excluded from a Grantee's gross annual cable service revenues.

"Gross annual telecommunications service revenues"

means the annual revenues received by a Grantee from the operation of a cable system to provide telecommunications services other than video programming services.

"Multichannel video programming distributor" or "video programming distributor" means a person such as, but not limited to, a cable system operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available multiple channels of video programming for purchase by subscribers or customers.

"Open video system" means a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service, including video programming, and that is provided to multiple subscribers within the City, provided that the FCC has certified that such system complies with 47 CFR 1500 et seq., entitled "Open Video Systems."

"Open video system operator" means any person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in that open video system, or otherwise controls or is responsible for the management and operation of that open video system.

"Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

"Public, educational or government access facilities" or "PEG access facilities," means the total of the following:

- (i) Channel capacity designated for noncommercial public, educational, or government use; and
- (ii) Facilities and equipment for the use of that channel capacity.

"Subscriber" or "customer" or "consumer" means any person who, for any purpose, subscribes to the services provided by a multichannel video programming distributor and who pays the charges for those services.

"Street" or "public way" means each of the following that has been dedicated to the public and maintained under public authority or by others and is located within the City limits: streets, roadways, highways, avenues, lanes,

alleys, sidewalks, easements, rights-of-way, and similar public property that the City from time to time authorizes to be included within the definition of a street.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications equipment" means equipment, other than customer premises equipment, used by a telecommunications service provider to provide telecommunications service, including software that is integral to that equipment.

"Telecommunications service" means the offering of telecommunications directly to the public for a fee, or to such classes of users as to be effectively available directly to the public, regardless of the equipment or facilities that are used.

"Telecommunications service provider" means any provider of telecommunications service.

"U.S.C." means the United States Code. Thus, the citation of "47 U.S.C. Section 153" refers to Title 47, Section 153, of the United States Code.

"Video programming provider" means any person or group of persons who has the right under the federal copyright laws to select and to contract for the carriage of specific video programming on an open video system.

"Video provider" means any person, company, or service that provides one or more channels of video programming to a residence, including a home, condominium, apartment, or mobilehome, where some fee is paid for that service, whether directly or as included in dues or rental charges, and whether or not public rights-of-way are used in the delivery of that video programming. A "video provider" includes, without limitation, providers of cable television service, master antenna television, satellite master antenna television, direct broadcast satellite, multipoint distribution services, and other providers of video programming, whatever their technology.

- B. Unless otherwise expressly stated, words, terms, and phrases not defined in this Article E will be given their meaning as used in Title 47 of the United States Code, as amended, and, if not defined in that Code, their meaning as used in Title 47 of the Code of Federal Regulations. (Ord. 290, 1-12-97)

CHAPTER 10. TELECOMMUNICATIONS REGULATIONS

ARTICLE F. VIOLATIONS; SEVERABILITY

SECTION:

2-10F-1: Violations; Enforcement
2-10F-2: Severability

2-10F-1: VIOLATIONS; ENFORCEMENT:

- A. Any person who willfully violates any provision of this chapter is guilty of a misdemeanor and is punishable as provided for in Chapter 5 of Title 1 of this Code.
- B. The misdemeanor penalty specified above in paragraph A 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 multichannel video programming distributor or other telecommunications service provider.
- C. The City may initiate a civil action in any court of competent jurisdiction to enjoin any violation of this chapter.

2-10F-2: SEVERABILITY: If any provision of this chapter 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 chapter, 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 chapter 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. (Ord. 290,

1-12-97)