

ORDINANCE NO. 4206

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CABLE FRANCHISING AND THE PROVISION OF CABLE SERVICES WITHIN THE CITY OF KIRKLAND.

The City Council of the City of Kirkland do ordain as follows:

Section 1. A new Title 30 of the Kirkland Municipal Code, entitled "Cable" is hereby adopted to read as follows:

Chapter 30.04
DEFINITIONS AND RULES OF CONSTRUCTION

Sections:

30.04.010 Rules of construction

30.04.020 Defined terms

30.04.010 Rules of construction

(a) For the purposes of this title, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended, and, if not defined therein, their common and ordinary meaning.

(b) When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; the masculine gender includes the feminine gender, and vice versa.

(c) The words "shall" and "will" are mandatory, and "may" is permissive.

30.04.020 Defined terms

(a) "Access channel" means any channel or portion thereof designated for access purposes or otherwise made available to transmit access programming.

(b) "City" means the city of Kirkland.

(c) "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, without limitation, damage to persons or property from natural consequences (such as storms and earthquakes), riots or wars.

(d) "Facility" means all appurtenances or tangible things owned, leased, operated, or licensed by an operator of a cable system.

(e) "FCC" means the Federal Communications Commission, its designee, or any successor governmental entity thereto.

(f) "Franchise" or "cable franchise" shall mean the initial authorization, or renewal thereof, issued by the franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of a cable system for the purpose of offering cable service to subscribers.

(g) "Franchise agreement" means the agreement entered into between the city and a cable operator that sets forth, subject to this title, the terms and conditions under which a franchise will be granted and exercised.

(h) "Franchise area" means the area of the city that a cable operator is authorized to serve by its franchise agreement.

(i) "Franchisee" means the person to whom or which a franchise is granted by the council under this chapter and the lawful successor, transferee or assignee of said person subject to such conditions as may be defined by city ordinance and the franchise agreement.

(j) "Gross revenues" shall have the meaning assigned to that term in a cable operator's franchise agreement. Franchise fees are not a tax and are included in gross revenues.

(k) "Person" means corporations, companies, associations, firms, partnerships, limited liability companies, government entities, other entities and individuals.

(l) "Rights-of-way" means land acquired or dedicated for public roads and streets. It does not include (a) state highways; (b) land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; (c) structures, including poles and conduits, located within the right of way; (d) federally granted trust lands or forest board trust lands; (e) lands owned or managed by the state parks and recreation commission; (f) federally granted railroad rights of way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use; or (g) parks or other public property not used as a public right-of-way.

(m) "Subscriber" means a person or entity or user of the cable system who lawfully receives cable services therefrom with franchisee's express permission.

(n) The term "written" shall include electronic documents.

Chapter 30.08 ***GRANT OF FRANCHISE***

Sections:

- 30.08.010 Franchise required
- 30.08.020 Application for cable franchise
- 30.08.030 Franchise agreement
- 30.08.040 Public hearing
- 30.08.050 City action on franchise application

30.08.060 Reimbursement of application costs

30.08.070 Franchise conditions

30.08.080 Termination on account of certain assignments or appointments

30.08.010 Franchise required

The city may grant multiple nonexclusive cable franchises. No person may construct or operate a cable system in the city without a franchise granted by the city. No person may be granted a franchise without entering into a franchise agreement with the city pursuant to this title.

30.08.020 Application for cable franchise

(a) An applicant for a franchise to construct, operate, and maintain a cable system within the city shall file an application in a form prescribed by the city, accompanied by a nonrefundable filing fee in the amount determined by the city.

(b) The city may at any time request, and the applicant shall provide, such additional information as the city reasonably deems relevant to the city's consideration of the application.

30.08.030 Franchise agreement

Within a reasonable time after submission of an application, the city shall enter into negotiations with the applicant as to the terms and conditions of a franchise agreement.

30.08.040 Public hearing

Prior to the granting of an initial franchise, the city council shall conduct a public hearing to receive information and comments on the following:

(a) That the public will be benefited by the granting of a franchise to the applicant;

(b) That the terms of the proposed franchise promotes the needs and interests of the city and its citizens;

(c) That the applicant has the requisite financial and technical resources and capabilities to build, operate and maintain a cable system in the franchise area;

(d) That the applicant will comply with all terms and conditions placed upon a franchisee by this title;

(e) That the applicant is capable of complying with all relevant federal, state, and local regulations pertaining to the construction, operation and maintenance of the facilities proposed in its application for a franchise;

(f) That there is sufficient capacity in the rights-of-way to accommodate the cable system;

(g) That the present and future use of the rights-of-way will be compatible and consistent with the use by the cable system;

(h) The potential disruption to existing users of the rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public;

(i) Any other conditions that the city may reasonably deem appropriate.

30.08.050 City action on franchise application

If the city denies a cable franchise application, it shall issue a written decision stating its reasons for the denial.

30.08.060 Reimbursement of application costs

To the extent allowed by law, after an initial franchise is granted, the applicant shall remit to the city the amount of any actual costs incurred by the city over and above the filing fee referred to in Section 30.08.020(a), within thirty days after receipt of an invoice from the city specifying such costs.

30.08.070 Franchise conditions

Every cable franchise granted pursuant to this title shall be subject to the following conditions:

(a) Any franchise granted hereunder by the city shall authorize a franchisee, subject to the provisions herein contained and the provisions of its franchise agreement:

(1) To engage in the business of operating and providing cable service and the distribution and sale of cable service to subscribers within the city; and

(2) For the sole purpose of providing cable service, to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any right-of-way, such amplifiers and appliances, lines, cables, fiber, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable system; and, in addition, so to use, operate and provide similar facilities or properties rented or leased from other persons including but not limited to any public utility or other franchisee franchised or permitted to do business in the city. No privilege or exemption shall be granted or conferred upon a franchisee by any franchise, except those specifically prescribed therein, and any use of any right-of-way shall be consistent with any prior lawful occupancy of the right-of-way or any subsequent improvement or installation therein.

(b) In accepting any franchise, a franchisee acknowledges that its rights are subject to the legitimate rights of the police power of the city to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and it agrees to comply with all applicable general laws enacted by the city pursuant to such power.

(c) In addition to the inherent powers of the city to regulate and control any franchise it issues, the authority granted to it by federal law, and those powers expressly reserved by the city, or agreed to and provided for in a franchise, the right and power is

hereby reserved by the city to promulgate such additional regulations as it may find necessary in the exercise of its lawful police powers.

(d) A cable franchise shall be subject to the right of the City to revoke the same for misuse, or failure to comply with any material provisions of this title, or any federal, state or local laws, ordinances, rules or regulations, or failure to comply with any material provision of the franchise agreement.

(e) If a cable franchise terminates, and the franchisee does not have authority independent of that franchise to maintain and operate its system in the city's rights-of-way, then, to the extent not inconsistent with 47 U.S.C. § 541(b)(3), the city may order the franchisee to remove its facilities from the franchise area within a reasonable period of time as determined by the city. In that case, any property owned by the franchisee and not removed from the rights-of-way within six (6) months from the date of the city's order shall be considered to have been abandoned by the franchisee and will become the property of the city to do with as it may choose. If a franchisee fails to remove its facilities as provided in this paragraph, the city may have the removal done at the franchisee's expense, and any cost incurred by the city in removing the franchisee's facilities from the city's rights-of-way or property will be a claim against the franchisee.

(f) The grant of a franchise by the city shall be non-exclusive. It shall not preclude the city from granting other or further franchises or permits, or preclude the city from using any rights-of-way or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the city to make such changes, as the city shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new rights-of-way and thoroughfares and other public properties.

(g) The grant of a franchise shall be for a term as provided in the franchise agreement, which shall not exceed ten (10) years; provided, however, that the city may grant a cable franchise that contains a base term with performance standards which, if met, would extend the term of the cable franchise for a defined period of time up to fifteen (15) years.

(h) A franchisee shall, where practicable, use existing towers, poles, conduits, lines, cables and other equipment and facilities. Copies of all agreements for the use of such equipment and facilities with public utilities operating within the city shall be placed on file with the city immediately upon their execution. Where such facilities are not reasonably available from public utilities, a franchisee shall have the right to erect and maintain its own poles, conduits and related facilities in the rights-of-way as may be necessary for the proper construction, installation, and maintenance of its cable system, subject to applicable law.

(i) Nothing in a franchise agreement shall be deemed to waive the requirements of the various codes, laws, and ordinances of the city regarding permits, zoning, fees to be paid, or right-of-way

management, or to take the place of any general license or permit required for the privilege of transacting or carrying on a business within the city as required by the ordinances and laws of the city, or for attaching devices to poles or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along the rights-of-way.

(j) No reference herein, or in any franchise agreement, to "rights-of-way" shall be deemed to be a representation or guarantee by the city that its interests or other right to control the use of such property is sufficient to permit its use for such purposes, and a franchisee shall be deemed to gain only those rights to use as are properly in the city and as the city may have the undisputed right and power to give.

30.08.080 Termination on account of certain assignments or appointments

(a) To the extent not prohibited by the U.S. Bankruptcy Code, any franchise shall be deemed revoked one hundred twenty calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of a franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding; provided, however, that a franchise may be reinstated *at the city's sole discretion* if, within that one hundred twenty-day period:

(1) Such assignment, receivership or trusteeship has been vacated; or

(2) Such assignee, receiver, or trustee has fully complied with the terms and conditions of this title and the applicable franchise agreement and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this title and the applicable franchise agreement, and such other conditions as may be established or as are required by applicable law.

(b) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a franchisee, the city may revoke the franchise, following a public hearing before city, by serving notice on the franchisee and the successful bidder, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate thirty calendar days after serving such notice, unless:

(1) The city has approved the transfer of the franchise to the successful bidder; and

(2) The successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions of the franchise agreement and this title, and such other conditions as may be established or as are required pursuant to this title or a franchise agreement.

Chapter 30.12
SYSTEM PERFORMANCE AND SERVICE

Sections:

- 30.12.010 System performance
- 30.12.020 Emergency override
- 30.12.030 Emergency power
- 30.12.040 Interconnection
- 30.12.050 Continuity of cable service
- 30.12.060 Programming

30.12.010 System performance

(a) A cable operator shall comply with all applicable technical standards regarding operation of the cable system, including but not limited to the technical standards set forth in 47 C.F.R. § 76.601.

(b) A cable operator shall develop, effect, and sustain a comprehensive routine preventive maintenance program to ensure adequate operating standards in conformance with FCC regulations.

30.12.020 Emergency override

At a minimum, a cable operator shall comply with federal laws and regulations requiring installation and maintenance of an emergency alert system (EAS).

30.12.030 Emergency power

The System shall have a backup power supply capable of operating and supplying standby emergency power for a period of at least four (4) hours in the event of a power loss.

30.12.040 Interconnection

(a) A cable operator shall design its cable system so that it may be interconnected with other cable systems or similar communications systems in the city and adjacent jurisdictions.

(b) Upon the request of the city, a franchisee shall initiate good-faith negotiations with any other franchisee or operator of a similar communications system to determine the practical economic feasibility of the establishment and operation of an interconnection link and how costs may be shared equally by such franchisees or operators for both construction and operation of such a link.

(c) The interconnection shall be made within sixty (60) days of an order by the city to proceed, unless for good cause shown by the franchisee, a reasonable time extension is granted by the city.

30.12.050 Continuity of cable service

If a franchisee transfers its cable system, the franchisee shall cooperate with the city and the transferee in maintaining continuity of service to all subscribers, such that, to the extent reasonably possible, subscribers receive continuous uninterrupted service.

If a cable franchise terminates, the franchisee shall cooperate with the city and any other providers of cable service in maintaining continuity of service to all subscribers, such that, to the extent reasonably possible, subscribers receive continuous uninterrupted service. This provision shall not be construed to require the franchisee to continue to provide cable service after the termination date.

30.12.060 Programming

Upon request, a franchisee shall file with the city a listing of its programming and the tiers in which it is placed. Subject to federal law, a franchisee shall be responsive to the city's suggestions of general program categories such as sports, weather, news, educational, music, comedy, family or others that may be found to be of interest to the citizens of the city of Kirkland as determined from time to time in residential questionnaire polls.

Chapter 30.16 ***RATE REGULATION***

Sections:

30.16.010 Rate regulation

30.16.010 Rate regulation

The city reserves the right to regulate all rates and charges except to the extent it is prohibited from doing so by law.

Chapter 30.20 ***FRANCHISE FEE***

Sections:

30.20.010 Payment of franchise fee

30.20.020 No accord or satisfaction

30.20.030 Late fees and interest

30.20.040 Discounts on bundled services

30.20.010 Payment of franchise fee

(a) During the term of any franchise granted pursuant to this title, the franchisee shall pay to city for the use of the rights-of-way, as well as the maintenance, improvements, and supervision thereof, a franchise fee as specified in the franchise agreement.

(b) Each payment shall be accompanied by supporting information, verified by an officer of the franchisee, containing a detailed, accurate statement of the franchisee's gross revenues and the computation of the payment amount, in the form and containing the information specified in the format attached to this title as Appendix A.

30.20.020 No accord or satisfaction

No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claims the city may have for further or additional sums due or payable as a franchise fee under the franchise agreement or for the performance of any other obligation of the franchisee hereunder, or as an acknowledgement that the amount paid is the correct amount due.

30.20.030 Late fees and interest

(a) Any unpaid fees shall be subject to interest charges computed from the due date, at the maximum allowed rate as provided under state law until the date the city receives the payment.

(b) If any franchise fee payment is not made on or before the required date, the franchisee shall pay a late payment charge of five percent of the amount originally due, as a cost incidental to the enforcing of the franchise, in addition to the interest charge specified in subsection (a) of this section. This charge shall be applicable only with respect to late payment of an undisputed amount. If it is later determined as a result of a dispute or audit that there was an underpayment on a payment that was timely made, the five percent charge shall not be applicable.

30.20.040 Discounts on bundled services

If a franchisee bundles cable service with non-cable service, the franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the franchise fee payments required under this ordinance and its franchise agreement. In the event that the franchisee or any affiliate shall bundle, tie, or combine cable services (which are subject to the franchise fee) with non-cable services (which are not subject to the franchise fee), so that subscribers pay a single fee for more than one class of service or receive a discount on cable services, a *pro rata* share of the revenue received for the bundled, tied, or combined services shall, to the extent reasonable, be allocated to gross revenues for purposes of computing the franchise fee. To the extent there are published charges and they are reasonable, the *pro rata* share shall be computed on the basis of the published charge for each of the bundled, tied, or combined services, when purchased separately. However, tariffed telecommunications services that cannot be discounted under state or federal law or regulations are excluded from the bundled allocation obligations in this Section.

Chapter 30.24 ***PERFORMANCE REVIEW***

Sections:

30.24.010 Periodic meetings

30.24.020 System evaluation

30.24.010 Periodic meetings

Upon request, a franchisee shall meet with designated city officials and/or designated representative(s) to review the performance of the franchisee. The franchisee shall designate an officer or employee who is knowledgeable about the cable system and has decision-making authority with regard to the areas of concern identified by the city. The subjects may include, but are not limited to, customer service, technical issues or problems, franchise compliance and other areas of concern to the city regarding those items covered in the periodic reports and performance tests.

30.24.020 System evaluation

(a) In addition to periodic meetings, the city may require reasonable routine system evaluation sessions at any time during the term of a franchise, but not to exceed one evaluation per year. The city shall provide a franchisee thirty days' prior written notice of a system evaluation. Notwithstanding the foregoing, in the case of recurring problems, the city may conduct as many evaluations as are necessary.

(b) To assist in the preliminary evaluation, the city may enlist independent consultants to analyze the cable system and its performance and to submit a report of such analysis to the city.

(c) During an evaluation session, a franchisee shall fully cooperate with the city and shall provide within a reasonable time, without cost, such reasonable information and documents as the city may request to perform the evaluation.

(d) If, as a result of the evaluation session, or at any other time, the city determines that reasonable evidence exists of inadequate cable system performance, it may require a more detailed technical evaluation and analyses directed toward such suspected inadequacies. The report of such evaluation and analyses shall include at least:

(1) A description of the technical problems in cable system performance which precipitated the special tests;

(2) A description of what cable system components were tested;

(3) A description of the equipment used and the procedures employed in testing;

(4) The method, if any, by which such cable system performance problem was resolved;

(5) Any other information pertinent to said tests and analyses that may be required by the city, or determined when the tests are performed.

(e) If the tests indicate that the cable system is not in compliance with FCC standards or the requirements of the franchise, a franchisee shall reimburse the city for any costs involved in conducting such tests, as well as associated consultant fees and other expenses. Such fees or expenses shall not exceed fifteen thousand dollars for

each evaluation. A franchisee shall have an opportunity to rebut any findings which illustrate noncompliance, and if the franchisee is found to be in compliance, then the city shall pay for the evaluation.

Chapter 30.28
REPORTS AND RECORDS

Sections:

- 30.28.010 Open books and records
- 30.28.020 Inspection of books and records
- 30.28.030 Rate schedule
- 30.28.040 Annual report
- 30.28.050 Communications with regulatory agencies
- 30.28.060 Confidentiality

30.28.010 Open books and records

(a) A franchisee shall manage all of its cable system operations in accordance with a policy of open books and records.

(b) The city shall retain throughout the life of any franchise the right to require such information pertaining to the operation of the franchise as it reasonably deems useful or necessary to ensure compliance with the terms of the franchise agreement and applicable law.

30.28.020 Inspection of books and records

(a) The city may inspect the records of a franchisee relating to the operation of the cable system in the franchise area during normal business hours. Such documents may include, but are not limited to, such information as financial records, subscriber records, and appropriate information and plans pertaining to a franchisee's operation in the city.

(b) Such inspections shall be conducted in a manner that will not unreasonably disrupt the franchisee's normal operations.

(c) If any books or records that relate to the cable system are not kept in the city, the franchisee shall pay all reasonable and necessary expenses incurred in making the inspection.

30.28.030 Rate schedule

Upon written request by the city, a franchisee shall submit a complete schedule of all present rates charged to all subscribers.

30.28.040 Annual report

A franchisee shall furnish an annual report of its activities as appropriate within ninety days of the end of its calendar year. Such report shall include:

- (a) The most recent annual report;
- (b) A copy of the 10-K Report, if required by the Securities and Exchange Commission;

- (c) The number of homes passed;
- (d) The number of subscribers with basic service;
- (e) The number of subscribers with cable programming service, as that term is defined in 47 U.S.C. § 543(l)(2);
- (f) The number of subscribers with premium services;
- (g) The number of installations in the period;
- (h) The number of disconnects in the period;
- (i) A summary of escalated or repeated complaints received by category, length of time taken to resolve and action taken to provide resolution;
- (j) A statement of its current billing practices and a sample copy of the bill format;
- (k) A current copy of its subscriber service contract; and
- (l) Such other reports as the city deems necessary.

30.28.050 Communications with regulatory agencies

(a) A franchisee shall file with the city all reports and materials submitted to or received from the following agencies by the franchisee or its affiliates that relate specifically to the cable system or could affect the franchisee's operations within the boundaries of the city: the FCC, the Security and Exchange Commission, and any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the franchisee's cable system.

(b) Materials filed with city pursuant to Section 30.28.050(a) shall be filed as follows: Materials submitted by the franchisee or an affiliate shall be filed with city at the time they are submitted to the receiving agency. Materials received by the franchisee shall be filed with city within thirty (30) days of the date they are received by the franchisee, except that if applicable law permits a response to such materials by the city and sets a deadline of sixty (60) or fewer days for the city's response, they shall be filed with city within five (5) days of the date they are received by the franchisee.

30.28.060 Confidentiality

(a) To the extent permitted by applicable law, the city shall maintain the confidentiality of any trade secrets or other proprietary information received from a franchisee, and such records shall be exempt from inspection under this section to the extent required by applicable law regarding subscriber privacy.

(b) If a franchisee clearly and appropriately identifies information as confidential or proprietary, then to the maximum extent permissible under applicable federal, state, and local laws related to public records, the city may not disclose that information to the public.

(c) If city determines that requested information is not clearly or appropriately identified, or that disclosure is otherwise required by law, city shall notify the franchisee that city intends to disclose the requested information unless ordered otherwise by a court.

**Chapter 30.32
ENFORCEMENT**

Sections:

30.32.010 Enforcement procedures and remedies

30.32.020 Fines

30.32.030 Revocation

30.32.040 Security fund

30.32.010 Enforcement procedures and remedies

(a) If the city determines that a cable operator has failed to perform any obligation under this title or has failed to perform in a timely manner, the city may make a written demand on the cable operator that it remedy the violation.

(b) If the violation is not remedied or in the process of being remedied to the satisfaction of the city within a reasonable time period following a written demand or order to cure, the city may:

(1) Enforce the provisions of this title through injunctive proceedings, an action for specific performance, or any other appropriate proceedings;

(2) Impose a fine upon the cable operator pursuant to Section 30.32.020;

(3) Assess against the cable operator any monetary damages provided for such violation in any agreement between the cable operator and the city;

(4) Assess and withdraw the amounts specified above from the cable operator's security fund or other applicable security instrument;

(5) Revoke the franchise pursuant to Section 30.32.030; or

(6) Pursue any legal or equitable remedy available under any applicable law or under any agreement between the cable operator and the city.

(c) Remedies available to the city for violations under this title and under a franchise agreement shall be construed, except as otherwise provided in this title, as cumulative and not alternative.

(d) A cable operator shall pay civil penalties or liquidated damages within 30 days after receipt of notice from the city.

(e) The filing of an appeal to any regulatory body or court shall not stay or release the obligations of a cable operator under applicable law or any agreements with the city.

(f) An assessment of liquidated damages or civil penalties does not constitute a waiver by the city of any other right or remedy it may have under applicable law or agreements, including the right to recover from the cable operator any additional damages, losses, costs, and expenses, including actual attorney fees, that were incurred by the city by reason of the violation. However, the city's election of liquidated damages under the franchise agreement shall take the place of any right to obtain actual damages over and above the payment of

any amounts otherwise due. This provision may not be construed to prevent the city from electing to seek actual damages for a continuing violation if it has imposed civil penalties or liquidated damages for an earlier partial time period for the same violation.

30.32.020 Fines

Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this title shall be guilty of a misdemeanor. Upon conviction any person violating any provision of this title shall be subject to a fine of up to one thousand dollars or by imprisonment for a period of up to ninety days, or both such fine and imprisonment. A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues.

30.32.030 Revocation

(a) The city may revoke a cable franchise as a master permit pursuant to the provisions of KMC 26.44.050.

(b) In addition to the reasons stated in KMC 26.44.050(a), a cable franchise may be revoked for the following reasons:

- (1) Failure to perform any material obligation under its franchise agreement or applicable law;
- (2) Willful failure for more than three (3) days to provide continuous cable service; or
- (3) Attempt to evade any material provision of the franchise agreement or applicable law, or to practice any fraud or deceit upon the city or subscribers.

30.32.040 Security fund

(a) Upon request by the city, each franchisee shall establish a permanent security fund with the city by depositing the amount of up to two hundred fifty thousand dollars (as specified in the franchise agreement) with the city in cash, a bond or other instrument acceptable to the city. This fund shall be maintained at the sole expense of the franchisee so long as it provides cable service in the city. This security fund shall be separate and distinct from any other bond, letter of credit, security or deposit required.

(b) This security fund may be utilized by the city for the following purposes: (1) reimbursement to the city by reason of a franchisee's failure to pay the city any sums due under the terms of this title or a franchise; (2) reimbursement to the city for reasonable costs and damages borne by the city to correct franchise violations not corrected by a franchisee after due notice; (3) monetary remedies or damages assessed against a franchisee due to default or violations of a franchise or this title; and (4) any other lawful purpose.

(c) If a franchisee is in default under this title or a franchise, or if a franchisee fails to pay the city any franchise fees, damages, or monetary sanctions, or if a franchisee fails to perform any of the

conditions lawfully imposed by the city, the city may withdraw from the security fund an amount sufficient to compensate the city's costs and damages, with interest at the maximum legal rate under state law, or twelve percent, whichever is less.

(d) Upon such withdrawal, the city shall notify the franchisee in writing, by certified mail, of the amount and date thereof. Within thirty days of mailing notice to a franchisee that the city has withdrawn funds from the security fund, a franchisee shall deposit such further bond or sum of money, or other security, as deemed sufficient to meet the requirements of this chapter.

Chapter 30.36 ***TRANSFERS***

Sections:

30.36.010 Transfers

30.36.010 Transfers

A franchisee shall comply with all provisions of its franchise agreement regarding transfers, ownership and control.

Chapter 30.40 ***ADMINISTRATION***

Sections:

30.40.010 Administration

30.40.010 Administration

The city council reserves the right to delegate its authority for franchise administration to a designated agent.

Chapter 30.44 ***MISCELLANEOUS PROVISIONS***

Sections:

30.44.010 Captions

30.44.020 Severability

30.44.030 Costs

30.44.040 Compliance with applicable law

30.44.050 No recourse

30.44.010 Captions

The captions to sections are inserted solely for information and shall not affect the meaning or interpretation of this title.

30.44.020 Severability

If any section, subsection, sentence, clause, phrase or portion of this title is for any reason held invalid or unenforceable by any court or

agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

30.44.030 Costs

Except where otherwise expressly stated herein, all costs incurred by a franchisee or cable operator in connection with any provision of this title shall be borne by the franchisee or cable operator.

30.44.040 Compliance with applicable law

A cable operator shall comply with all applicable federal, state and local laws, rules and regulations, ordinances and resolutions, including those governing the monitoring and tapping of cablecast signal privacy, and the penalties for violation thereof.

30.44.050 No recourse

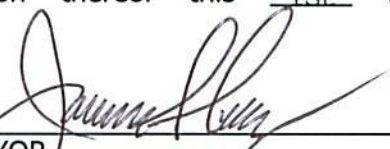
Without limiting the immunities that the city or other persons may have under applicable law, the franchisee shall have no recourse whatsoever against the city or its officers, officials, boards, commission, agents or employees for any loss, cost, expense or damage arising out of the exercise of its authority pursuant to any provisions or requirements of this title, the franchise agreement, or any franchise granted hereunder or because of its enforcement, except as may otherwise be provided herein.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 1st day of September, 2009.

Signed in authentication thereof this 1st day of September, 2009.



MAYOR

Attest:



City Clerk

Approved as to Form:



City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4206

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CABLE FRANCHISING AND THE PROVISION OF CABLE SERVICES WITHIN THE CITY OF KIRKLAND.

SECTION 1. Adopts a new Title 30 of the Kirkland Municipal Code relating to cable franchising and the provision of cable services within the City of Kirkland.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 1st day of September, 2009.

I certify that the foregoing is a summary of Ordinance 4206 approved by the Kirkland City Council for summary publication.



City Clerk