

ORDINANCE 3836

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CABLE FRANCHISES AND SERVICES AND REPEALING AND REPLACING CHAPTER 26.20 OF THE KIRKLAND MUNICIPAL CODE

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

Section 1. Chapter 26.20 of the Kirkland Municipal Code is hereby repealed.

Section 2. A new Chapter 26.20 of the Kirkland Municipal Code is hereby adopted to read as follows:

**26.20.005 Purpose, effect and applicability.**

No cable communications company may utilize City right-of-way, streets, ways or facilities without first being granted a Franchise pursuant to this chapter. This chapter sets forth the procedures and terms applicable to all Franchises (including renewals of existing Franchises) to be granted by the City for Cable Services.

**26.20.010 Definitions.**

In addition to the definitions contained in Section 26.04.020 of this Code, in construing the provisions of this Chapter and any Franchise entered into pursuant to this Chapter, the following definitions shall apply:

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

(b) "Applicant" means any provider or any person, partnership, or company who files an application for any permit necessary to install, maintain, or remove Cable Services.

(c) "Basic Service" is the lowest service Tier that includes the retransmission of local broadcast television signals.

(d) "Bi-directional" means that the Cable System is capable of providing both upstream and downstream transmissions.

(e) "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

(f) "Cable Act" means Title VI of the Communications Act of 1934, as amended, 47 U.S.C. §§ 521 et. seq.

(g) "Cable Communications 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 and other communications services to Subscribers.

(h) "Cable Internet Service" means any service offered by a Franchisee whereby Persons receive access to the Internet through the Cable System.

(i) "Cable Services" means (1) the one-way transmission to Subscribers of video programming or other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use by the Subscriber of such video programming or other programming service, or as defined in the Cable Act.

(j) "Channel" means a portion of the frequency band capable of carrying a video programming service or combination of video programming services whether by analog or digital signal.

(k) "Downstream" means carrying a transmission from the Head-end to remote points on the Cable Communications System or to interconnection points on the Cable Communications System.

(l) "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, earthquakes, riots or wars.

(m) "Expanded Basic Service" means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Service.

(n) "Facilities" means the component parts of the Cable System, including but not limited to coaxial cable, Fiber Optic cable, amplifiers, taps, connectors, power supplies, electronics, towers, antennas, satellite dishes and optronics.

(o) "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated optronics and equipment, capable of carrying Cable Service by means of electric light-wave impulses.

(p) "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 Communications System for the purpose of offering Cable Service or other service to Subscribers.

(q) "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed or otherwise added to the City during the terms of a Franchise.

(r) "Franchise Fee" means the fee or assessment imposed by the City on the Franchisee or Subscriber, or both, as provided in Section 622 of the Cable Act. Franchise Fees shall not include any tax, fee or assessment of general applicability, capital costs required by a Franchise to be incurred by the Franchisee for public, educational or governmental access facilities and equipment, or requirements or charges incidental to the awarding or enforcing of the franchise including payments for bonds, insurance, indemnification, penalties or liquidated damages.

(s) "Franchisee" means the person, firm or corporation to whom or which a Franchise is granted by the Council under this chapter and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined by City ordinance.

(t) "Gross Revenues" means any and all receipts and revenues derived directly or indirectly from all sources related to the operation of the Cable Communications System in the Franchise Area, other than transactions related to real property receipts by a Franchisee and not including any taxes on services furnished by a Franchisee, imposed on any subscriber or user by any governmental unit, agency or instrumentality and collected by a Franchisee for such entity; provided also that net uncollectable debts are not considered as revenue in this definition.

(u) "Head-end" means a Franchisee's primary facility for signal reception and dissemination on its Cable System, including cables, antennas, wires, satellite dishes, monitors, lasers, switchers, modulators, processors for Broadcast Signals, and all other related equipment and facilities.

(v) "Institutional Networks (I-Nets)" means a private network designated principally for the provision of non-entertainment services to schools and public agencies separate and distinct from the Cable Communications System.

(w) "Node" means that portion of the Cable System where Fiber Optic cables and coaxial cables meet. The Node consists of an enclosure housing optronics and electronics that convert light into radio frequency ("RF") signals and RF signals into light necessary for the delivery of Bi-directional Cable Services to Subscribers over a hybrid fiber-coaxial cable ("HFC") Cable System.

(x) "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

(y) "Public, Education and Government (PEG) Access Channels" means: Channel capacity designated for public, educational, government use.

(z) "Rights-of-Way" includes the surface of and space above and below any real property in the City in which the City has a regulatory interest, or interest as a trustee for the public, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the City, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for public utility purposes; provided, however, this shall not include public parks for which a separate authorization and agreement to utilize any part of same shall be required from the City.

(aa) "Subscriber" means a person or entity or user of the Cable Communications System who lawfully receives Cable Services or other service therefrom with Franchisee's express permission.

(bb) "Tier" means a group of Channels for which a single periodic subscription fee is charged.

(cc) "Upstream" means carrying a transmission to the Head-end from remote points on the Cable System or from Interconnection points on the Cable System.

#### **26.20.020 Terms of Franchise.**

(a) Authority to Grant Franchises for Cable Communications Systems. It is unlawful to engage in or commence construction, operation, or maintenance of a Cable Communications System without a Franchise issued under this chapter. The City Council may, by ordinance, award a non-exclusive Franchise to construct, operate and maintain a Cable Communications System, which complies with the terms and conditions of this chapter.

Any Franchise granted pursuant to this chapter shall be non-exclusive and shall not preclude the City from granting other or further Franchises or permits or preclude the City from using any Rights-of-Ways 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. However,

any such changes shall not materially or substantially impair the rights granted a Franchisee pursuant to this chapter. All Franchises granted subsequent to the effective date of this ordinance shall be granted consistent with the terms and conditions of this chapter.

(b) Incorporation by Reference. The provisions of this chapter shall be incorporated by reference in any Franchise ordinances approved hereunder. However, in the event of any conflict between this chapter and the Franchise, the Franchise shall be the prevailing document.

(c) Nature and Extent of the Franchise. Any Franchise granted hereunder by the City shall authorize a Franchisee, subject to the provisions herein contained:

(1) To engage in the business of operating and providing Cable Service and other services and the distribution and sale of such service to Subscribers within the City; and

(2) 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 Communications System; and, in addition, so to use, operate and provide similar facilities, or properties rented or leased from other persons, firms or corporations, 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 street shall be consistent with any prior lawful occupancy of the street or any subsequent improvement or installation therein.

(d) Term of the Franchise. Unless otherwise specified in a Cable Franchise, a Franchise shall be valid for a term of not more than ten years; provided, 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.

#### **26.20.030 Application.**

An Applicant for a Franchise to construct, operate, and maintain a Cable Communications System within the City shall file an application in a form prescribed by the City, accompanied by a non-refundable filing fee in the amount determined by the City.

**26.20.040 Franchise fee.**

A Franchisee shall pay to the City quarterly, a sum equal to five percent (5%) or greater of Gross Revenues, as defined in this chapter for the preceding three calendar months.

**26.20.050 Franchise issuance.**

Prior to the granting of a Franchise, the City Council shall conduct a public hearing to determine the following:

## (a) Initial Franchise.

- (1) That the public will be benefited by the granting of a Franchise to the Applicant;
- (2) That the Applicant has requisite financial and technical resources and capabilities to build, operate and maintain a Cable Communications System in the area;
- (3) That the Applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the City;
- (4) That the Applicant will comply with all terms and conditions placed upon a Franchisee by this chapter;
- (5) 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 and systems incorporated in its application for a Franchise;
- (6) That there is sufficient capacity in the public Rights-of-Way to accommodate the Cable Communications System;
- (7) That the present and future use of the public Rights-of-Way will be compatible and consistent with the use by the Cable Communications System;
- (8) The potential disruption to existing users of the public Rights-of-Way to be used by the Cable Communications System and the resultant inconvenience which may occur to the public; and
- (9) Any other conditions that the City may deem appropriate.

## (b) Renewal Franchise--Federal Requirements:

- (1) A Franchisee has substantially complied with the material terms of the existing Franchise and with applicable law;
- (2) The quality of a Franchisee's service has been reasonable in light of community needs;
- (3) A Franchisee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in a Franchisee's proposal;
- (4) A Franchisee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of

meeting such needs and interests.

**26.20.060 Police power.**

In accepting any Franchise, a Franchisee acknowledges that its rights hereunder 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.

**26.20.070 Rules and regulations by the city.**

(a) In addition to the inherent powers of the City to regulate and control any Franchise it issues, the authority granted to it by the Cable Act, 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.

(b) The City Council reserves the right to delegate its authority for Franchise administration to a designated agent.

**26.20.080 Technical standards.**

(a) Subject to Federal, State and local law, a Franchisee shall comply with FCC rules, Part 76, Subpart K, Section 76.601 through 76.610 as amended, hereafter, and, at the minimum, the following:

- (1) Applicable City, County, State and National/Federal Codes and Ordinances;
- (2) Applicable Utility Joint Attachment Practices;
- (3) The National Electric Safety Code;
- (4) City Public Works Policies and Standards
- (5) Local Rights-of-Way Procedures; and
- (6) Bell System Code of Pole Line Construction.

(b) A comprehensive routine preventive maintenance program shall be developed, effected, and sustained to ensure adequate operating standards in conformance with FCC Regulations Part 76 or as may be amended.

(c) Subject to Federal, State and local law, the City may impose more stringent technical standards on a Franchisee as deemed necessary by the City.

**26.20.090 Parental control devices.**

In accordance with the Cable Act, a Franchisee will make available at the

cost specified by the FCC a device by which a Subscriber can prohibit viewing of a particular Cable Service during periods selected by that Subscriber.

**26.20.100 Conditions of grant of cable franchise and construction standards.**

All Franchisees shall comply with the provisions of Chapter 26.24 of this Code entitled "Conditions of Grant of License, Franchise or Cable Franchise," and the provisions of Chapter 26.28 of this Code entitled "Construction."

**26.20.110 Undergrounding.**

In those areas and portions of the City where the transmission or distribution facilities of the public utility providing telephone service and those of the facility providing electric service are underground or hereafter may be placed underground, then a Franchisee shall likewise construct, operate and maintain all of its transmission and distribution Facilities in the same area underground upon City approval. Such activities shall be made in concurrence and cooperation with the other affected utilities. Amplifiers and associated equipment in a Franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground.

**26.20.120 Emergency override.**

At a minimum, a Franchisee shall be in compliance with FCC Regulations requiring installation of an Emergency Alert System (EAS) and provide an audio interrupt on all channels and video message on at least one channel during an Emergency. In addition, a Franchisee shall provide text banner messages on the video portion of all of all television signals so that the City may provide Emergency warning messages and Emergency services public information to City residents.

**26.20.130 Rates.**

Within thirty (30) days after the grant of any Franchise hereunder, a Franchisee shall file with the City a complete schedule of all present rates charged to all Subscribers.

Prior to implementation of any change in rates or charges for any service or equipment provided by a Franchisee, a Franchisee shall provide the City a minimum of thirty (30) days and all subscribers a minimum of thirty (30) days prior written notice of such change.

Subject to the Cable Act and resultant FCC regulations, the City may regulate the rates or charges for providing Cable Service and other equipment



and will establish rate regulation review procedures as delegated by Federal law. The City will monitor those other rates within the benchmarks provided by the FCC.

**26.20.140 Cable availability.**

Cable Service shall not be denied to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides.

**26.20.150 Customer service.**

A Franchisee shall at all times be in compliance with FCC Customer Service Standards 76.309, Subpart II as may be amended, which standards are incorporated into this chapter by reference ("FCC Customer Service Standards"). In addition, a Franchisee shall comply with the following standards:

(a) Telephone Response.

A Franchisee shall maintain an adequate force of customer service representatives as well as incoming trunk lines so that telephone inquiries are met promptly and responsively. A Franchisee shall have in place procedures for utilization of other manpower and/or recording devices for handling the flow of telephone calls at peak periods of large outages or other major causes of Subscriber concern. A copy of such procedures and/or policies shall be made available to the City.

In order that the City may be informed of a Franchisee's success in achieving satisfactory customer service in its telephone answering functions, the Franchisee shall, within thirty (30) days of the end of each calendar month, provide a summary report of calls handled at their Customer Sales and Service Center facility taking calls from City customers. This report will provide the following:

- (1) Percentage of calls answered within 30 seconds;
- (2) Number of calls received;
- (3) Average handle time;
- (4) Number of calls abandoned by the caller;
- (5) Average speed of answer; and
- (6) Percentage of time all lines are busy.

This data will be compared to minimum customer service standards of the FCC or the City in effect at the time.

(b) Additional Regulations. The City reserves the right to enact and enforce any customer protection law or regulation containing more stringent standards, to the extent not specifically preempted by applicable law.

(c) Failure to Improve Customer Service. In the event the Franchisee fails to meet the minimum customer service standards, the City or its designee may review telephone response and customer service information with the Franchisee and discuss how to improve the Franchisee's performance. It is assumed that improvements will be made by a Franchisee in any areas of non-compliance from the last reporting period. Failure to do so may result in imposition of penalties in accordance with Section 26.20.250 of this Chapter or further enforcement action. In addition, the City Council may call a public hearing for the purpose of examining the reasons, if any, why the Franchisee has not complied with the minimum customer service standards. The City may make a transcript of any such hearings part of an exhibit under section 626(c)(1)(A) and (B) of the Cable Act alleging that such practices have failed to conform to renewal requirements as stated therein.

(d) Refunds for Service Interruptions. Upon request by the Subscriber, no charge for the period of an outage shall be made to any Subscriber if the Subscriber was without service for a period exceeding twelve (12) hours.

(e) Service Logs. A log of all service interruptions shall be maintained and kept on file by a Franchisee. The City, during normal business hours and after forty-eight (48) hours' notice, may inspect such logs.

#### **26.20.160 Emergency power**

In the event of a power failure, a Franchisee shall provide standby power generating capacity at the Head-end and its hubs, capable of providing at least four (4) hours of Emergency operation. The Franchisee shall also maintain standby power supply systems, rated for at least two (2) hours duration, throughout all of the trunk and distribution networks.

#### **26.20.170 System evaluation.**

In addition to periodic meetings, the City may require reasonable routine evaluation sessions at any time during the term of a Franchise, but not to exceed one (1) evaluation per year. However in the case of reoccurring problems the City may conduct as many evaluations as are necessary.

To assist in the preliminary evaluation, the City may enlist an independent consultant to conduct an analysis of the Cable Communications System and its performance and to submit a report of such analysis to the City. It is intended that such evaluations cover areas such as customer service, response to the community's cable-related needs, and a Franchisee's performance under and

compliance with the terms of a Franchise.

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 evaluations.

If, as a result of the evaluation session, or at any other time, the City determines that reasonable evidence exists of inadequate Cable Communications System performance, it may require a more detailed technical evaluation and analyses directed toward such suspected inadequacies. The report prepared by the consultant shall include at least:

- (a) A description of the technical problems in Cable Communications System performance which precipitated the special tests;
- (b) A description of what Cable Communications System components were tested;
- (c) A description of the equipment used and the procedures employed in testing;
- (d) The method, if any, by which such Cable Communications System performance problem was resolved;
- (e) Any other information pertinent to said tests and analyses, which may be required by the City, or determined when the tests are performed.

If the tests indicate that the Cable Communications 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 \$2,500 for each evaluation. A Franchisee shall have an opportunity to refute findings, and if Franchisee is found to be in compliance, then the City shall pay for the evaluation.

#### **26.20.180 Periodic meetings.**

Upon request, a Franchisee shall meet with designated City officials and/or designated representative(s) to review the performance of a Franchisee. The Franchisee shall designate an officer or employee who is knowledgeable about the Cable Communications 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.

#### **26.20.190 Record inspection.**

The City may inspect the records of a Franchisee relating to the operation of the Cable Communications System in the Franchise Area during normal

business hours. The City shall maintain the confidentiality of any trade secrets or other proprietary or confidential information in the possession of a Franchisee. Such documents shall include, but is not limited to, such information as financial records, subscriber records, appropriate information and plans pertaining to a franchisee's operation in the City to the extent allowed by law.

#### **26.20.200 Annual reports.**

A Franchisee shall furnish an annual report of its activities as appropriate within 120 days of the end of its fiscal calendar year. Such report shall include:

- (a) 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 Premium Services;
- (f) The number of hook-ups in period;
- (g) The number of disconnects in period;
- (h) Total number of miles of cable in City;
- (i) Summary of 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.

#### **26.20.210 Programming.**

A Franchisee shall file with the City a listing of its programming and the Tiers in which they are 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. The results of any surveys will be appended to the respective Franchise ordinances if appropriate.

#### **26.20.220 Non-discrimination.**

In connection with rates, charges, Facilities, rules, regulations and in all Franchisee's services, programs or activities, and all Franchisee's hiring and employment made possible by or resulting from this Franchise, there shall be no discrimination by the Franchisee or by Franchisee's employees, agents,

subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, creed, national origin, sexual orientation, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall include, but not be limited to the following practices: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Franchisee shall not violate any applicable federal, state or local law or regulation regarding non-discrimination.

Any material violation of this provision shall be grounds for termination of a Franchise by the City and, in the case of the Franchisee's breach, may result in ineligibility for further City agreements; provided, that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any Subscriber coming within such classification would be entitled, and provided further that connection and/or service charges may be waived or modified during promotional campaigns of a Franchisee. The Franchisee will not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which the group resides.

#### **26.20.230 Continuity of service.**

A Franchisee shall continue to provide service to all Subscribers so long as their financial and other obligations to a Franchisee are fulfilled.

(a) In this regard a Franchisee shall act so far as it is within its control to ensure that all Subscribers receive continuous uninterrupted service during the term of the franchise.

(b) In the event a Franchisee fails to operate a Cable Communication System for seventy-two (72) continuous and consecutive hours without prior notification to and approval of the City Council or without just cause such as an impossibility to operate the Cable Communication System because of the occurrence of an act of God or other circumstances reasonably beyond a Franchisee's control, the City may, after notice and an opportunity for a Franchisee to commence operations at its option, operate the Cable Communication System or designate someone to operate the Cable Communication System until such time as a Franchisee restores service to conditions acceptable to the City Council or a replacement Franchisee is selected. If the City is required to fulfill this obligation for a Franchisee, a franchisee shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City that are the result of a Franchisee's failure to perform.

**26.20.240 Transfer of ownership.**

Any Franchise awarded by the City shall be based upon an evaluation by the City of each application, the qualifications, and other criteria as such pertain to each particular Applicant. A Franchise shall not be sold, transferred, leased, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, unless approval is granted by the City Council. The City shall not unreasonably withhold its approval. The City shall provide written notice of its approval or disapproval of assignment within sixty (60) days of receiving written notice of the Franchisee's intent to assign the Franchise.

A transfer of control of a Franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

A Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee's company. Every change, transfer, or acquisition of control of a Franchisee's company shall cause a review of the proposed transfer. In the event that the City adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel the Franchise. Approval shall not be required for mortgaging purposes or if said transfer is from a Franchisee to another person or entity controlling, controlled by, or under common control with the Franchisee. Further the City will monitor the limitations or ownership, control, utilization and restrictions on sale of systems in accordance with the Cable Act.

**26.20.250 Violations, penalties and revocation**

Any Franchise granted by the City may be terminated for failure by a Franchisee to comply with the material provisions of this chapter and/or the Franchise. In addition to termination, the City may impose lesser sanctions, including but not limited to monetary penalties for violation of this Chapter and/or the Franchise.

(a) Procedures. Unless a Franchisee requests termination of its Franchise, the following procedures shall be followed by the City and the Franchisee with respect to violations, penalties and franchise termination:

(1) The City shall provide the Franchisee with a written violation notice, by certified mail, detailing the violation and the time period within which the violation must be cured (referred to in this Section as the "Violation Notice"). Within thirty (30) days thereafter, the Franchisee shall respond in writing, by

certified mail, by demonstrating that no violation occurred or that the violation has been corrected.

(2) The Franchisee may, in writing, by certified mail, request an extension of time to cure an alleged violation with an explanation of why the Franchisee believes an extension is necessary. The amount of additional time, if any, shall be determined by the City.

(3) If the Franchisee's response to the violation notice is not satisfactory to the City, the City may declare the Franchisee to be in default, with written notice, by certified mail, to the Franchisee (referred to in this Section as the "Default Notice"). Within ten (10) business days thereafter, the Franchisee may deliver to the City, in writing, by certified mail, a request for a hearing before the City Council. If no such request is received, the City may declare the Franchise terminated for cause or impose lesser sanctions.

(4) If the Franchisee files a timely written request for a hearing, such hearing shall be held within forty-five (45) days after the City's receipt of the hearing request. The hearing shall be open to the public and the Franchisee, the City and other interested parties may offer written or oral evidence relevant to the alleged violation and suitable penalties for alleged violations. In addition, the Franchisee may offer evidence explaining or mitigating the alleged violation. Within thirty (30) days after the hearing, the City Council, on the basis of the record, shall make the determination as to whether there is a violation, whether there is cause for termination, whether the Franchise will be terminated or whether lesser sanctions shall be imposed. The City Council may, in its discretion, fix an additional time period for the Franchisee to cure violations. If the violation has not been cured at the expiration of any additional time period or if the City Council does not grant any additional time period, the City Council, may, by ordinance, declare the Franchise to be terminated and forfeited. In the alternative, the City Council may impose lesser sanctions.

(b) In the event that the City determines that there is a violation and imposes monetary penalties on a Franchisee, the penalty shall be \$200.00 per day, per violation the first time there are violations found pursuant to this Section; \$500.00 per day, per violation the second time there are violations found pursuant to this Section; and \$1,000.00 per day, per violation the third time (or more) there are violations found pursuant to this Section. It shall be the responsibility of the Franchisee to contact the City for the purpose of demonstrating that a violation has been cured.

(c) Unless the City Council finds that the Franchisee has been non-responsive in correcting a violation or that a violation is flagrant, penalties shall be assessed for each day beyond fifteen days from the Violation Notice until the violations have been cured. If the Franchisee has been non-responsive or the violation is flagrant, then penalties may be assessed from the Violation Notice

date.

(d) If payment of any penalty is delinquent by three (3) months or more, the City may: (1) require partial or total forfeiture of the performance bond or other surety posted by the Franchisee; (2) terminate the Franchise; or (3) commence a civil action in a court of competent jurisdiction to collect the penalty.

**26.20.260 Effect of termination for non-compliance.**

Subject to State and Federal law, if any Franchise is terminated by the City by reason of a Franchisee's non-compliance, that part of the Cable Communications System under such Franchise located in the streets and public property, shall, at the election of the City, become the property of the City at a cost consistent with the provisions of the Cable Act if it is not acquired by or transferred to a third party in accordance with Section 26.20.240 of this chapter. If the City, or a third party, does not purchase the system within twelve (12) months a Franchisee shall, upon order of the City Council, remove the system as provided under Section 26.24.080 of this title. The City may at its discretion extend the period of time for the Cable Communications System to be purchased beyond the initial twelve (12) month period.

**26.20.270 Equalization of civic contributions**

In the event the City grants multiple Franchises, the City shall require that subsequent Franchisees make an equitable contribution to the City comparable to those costs contributed by the original Franchisee. These costs may include but are not limited to such features as Access and Institutional Network costs, services to municipal buildings and any other costs that may have been incurred as a result of the Franchise.

**26.20.280 Security fund.**

Each Franchisee shall establish a permanent security fund with the City by depositing the amount of up to two hundred fifty thousand dollars (\$250,000) with the City in cash, an unconditional letter of credit or other instrument acceptable to the City, which fund shall be maintained at the sole expense of Franchisee so long as any of Franchisee's Facilities are located within the Rights-of-Way. This security fund shall be separate and distinct from any other bond or deposit required.

This security fund may be utilized by the City for the following purposes: (1) reimbursement of the city by reason of a Franchisee's failure to pay the City any sums due under the terms of this chapter or a Franchise; (2) reimbursement of 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 chapter; and (4) any other lawful purpose. If a Franchisee has been declared to be in default by the City under



Section 26.20.250 of this chapter, or if a Franchisee fails to pay the City any Franchise fees, penalties, 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 (12%), whichever is greater. Upon such withdrawal, the City shall notify the Franchisee in writing, by certified mail of the amount and date thereof. Within thirty (30) 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.

**26.20.290 Inconsistency.**

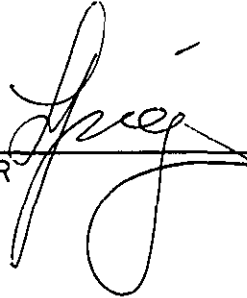
If any portion of this chapter should be inconsistent or conflict with any rule or regulation now or hereafter adopted by Federal or State laws, then to the extent of the inconsistency or conflict, the rule or regulation of the Federal or State law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect. The remaining provisions of chapter shall not be affected thereby.

Section 3. 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 4. 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 1.08.107, 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 16th day of April, 2002.

Signed in authentication thereof this 16th day of April, 2002.

  
\_\_\_\_\_  
MAYOR

Attest:

  
\_\_\_\_\_  
City Clerk

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

PUBLICATION SUMMARY  
OF ORDINANCE NO. 3836

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CABLE FRANCHISES AND SERVICES AND REPEALING AND REPLACING CHAPTER 26.20 OF THE KIRKLAND MUNICIPAL CODE.

SECTIONS 1. Repeals Chapter 26.20 of the Kirkland Municipal Code.

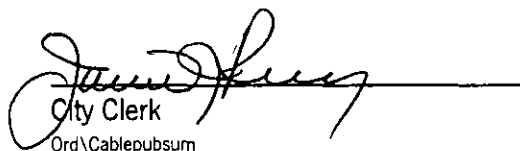
SECTION 2. Adopts a new Chapter 26.20 of the Kirkland Municipal Code relating to cable franchises and services.

SECTION 3. Provides a severability clause.

SECTION 4. 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 16th day of April, 2002.

I certify that the foregoing is a summary of Ordinance 3836 approved by the Kirkland City Council for summary publication.

  
City Clerk  
Ord\Cablepubsum