

ORDINANCE NO. 331-D

AN ORDINANCE PROVIDING FOR THE REGULATION OR DEVELOPMENT OF A CABLE COMMUNICATIONS SYSTEM FOR TROUTDALE, PROVIDING PROCEDURES FOR GRANTING FRANCHISES, CREATING A COMMISSION, AND PROVIDING FOR ENFORCEMENT AND PENALTIES.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Short Title:

This ordinance shall be known and referred to as the TROUTDALE CABLE COMMUNICATIONS ORDINANCE.

Section 2. Definitions:

A. "Cable Communications System" or "System" shall mean a system of antennas, cables, amplifiers, towers, microwave links, cablecasting studios, and any other conductor, converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electronic or electrical signals.

B. "Franchise" shall mean the privilege conferred upon a person, firm or corporation (franchisee) by the City of Troutdale to operate a Cable Communications System under the terms and provisions of this ordinance.

Section 3. Declaration of Powers:

The City, by and through its Council, recognizes, declares and establishes the authority to regulate the development and operation of a Cable Communications System (hereinafter "System") for the City of Troutdale and to exercise all powers necessary for that purpose, including, but not limited to, the following:

A. To grant by Resolution exclusive or non-exclusive franchises for the development and operation of a System or Systems;

B. To contract, jointly agree or otherwise provide with other local or regional governments, counties or special districts for the development, operation, and/or regulation of a System, or franchises therefore, notwithstanding the fact that the System extends beyond the boundaries of the City;

C. To create local improvement districts for the development or extension of a System and/or to provide for the undergrounding of the System as a local improvement, as that term is now or hereafter defined by Oregon Revised Statutes, Chapter 223, or City ordinances;

D. To purchase, hire, construct, own, maintain and operate or lease a System and to acquire property necessary for any such purpose;

E. To regulate and supervise all facets of a System, including but not limited to:

- (1) Consumer complaints;
- (2) Disputes among the City, franchisees, and consumers;
- (3) Fair employment practices;
- (4) The development, management and control of a government access channel as well as development of other access channels;
- (5) Rates and review of finances for rate adjustments;
- (6) Construction timetables and standards;
- (7) Modernization of technical aspects;
- (8) Ensuring adherence to federal and state regulations;
- (9) Franchise transfer and transfer of control of ownership;
- (10) Franchise renewal and/or franchise revocation;
- (11) Enforcement of buy-back, lease back or option to purchase provisions; and
- (12) Receivership and foreclosure procedures.

Section 4. Selection of Franchise:

A. In the event that the Council finds it in the best interests of the City to grant a franchise for a System, the procedures set forth herein shall be followed. On motion of the Council, the City Administrator or his designate shall be directed to prepare a request for proposal (hereafter referred to as an "RFP") containing at least the following:

- (1) Information and instructions relating to the preparation and filing of bid proposals;
- (2) Requirements regarding the development, operation and regulation of a System, including but not limited to the following:

(a) the length, renewal and transfer or assignment of the franchise, including foreclosure, receivership, and revocation provisions;

(b) a description of the franchise territory and the extension of service;

(c) the system design, including, but not limited to, channel capacity, channel uses, access programming facilities, specialized services, point to point service, two-way provisions, subscriber privacy, interconnection of systems, and underground and aboveground installation requirements.

(d) technical performance standards;

(e) records and reporting;

(f) indemnification, insurance, liability for damages, and performance bonds and/or security funds; and

(g) provision of an option for the City to acquire the System upon revocation or expiration of the franchise;

(3) Criteria to be used in evaluating applicant proposals.

B. The Council, by Resolution, may:

(1) Approve the RFP as proposed, or modify or otherwise make amendments thereto as it deems necessary; or

(2) Authorize the City Administrator to seek bids for a System pursuant to the RFP.

C. The City Administrator may employ the services of a technical consultant, as necessary, to assist in the analysis of any matter relative to the RFP and to the evaluation of any bid.

D. The City Administrator or his designate shall prepare an evaluation of the bids received, and shall submit the evaluation to the Council together with any recommendations. The evaluation shall be made available to the public for inspection.

E. The Council may award a franchise to an applicant only after a public hearing on the application and bid, notice of which

shall be published in a local newspaper of general circulation in the City at least ten (10) days prior to the date of the hearing. All applicants shall be notified by mail of the public hearing; provided, however, that no defect in the notice or failure to notify shall invalidate the franchise awarded.

F. No franchise or award thereof shall be deemed final until passage of a Resolution containing the terms and conditions thereof. The franchisee shall bear the costs of all publications and notices given in connection with the award of the franchise;

Section 5. Troutdale Cable Communications Commission:

A. Commission Established. There is hereby established a Commission, to be known as the Troutdale Cable Communications Commission, (hereafter Commission), to oversee, administer and enforce the terms and provisions of this ordinance and any franchise awarded incident thereto.

B. Commission Composition. The Commission shall consist of three persons appointed by the Mayor with the concurrence of a majority of the City Council. Each member shall serve a term of three years and at the pleasure of the Mayor; provided, however, that appointments to the first Commission shall be for one, two, and three year terms respectively. Any vacancy in the office shall be filled in the same manner as the original appointment to serve the remainder of the term. No person with ownership interest in a cable television franchise granted pursuant to this ordinance or any employee of said person shall be eligible for membership on the Commission. The City Attorney or his designate, shall serve as an ex-officio member of the Commission, but shall not have voting power.

C. Commission Powers and Functions. The Commission is hereby delegated the power(s) to carry out any or all of the following functions:

- (1) Advise the Council on applications for franchises;
- (2) Advise the Council on matters which might constitute grounds for revocation or termination of a franchise pursuant to its terms;
- (3) Resolve disagreements among franchisees and public and private users of the System; such decisions of the Commission to be reviewable by the City Council;

- (4) Act as the initial hearing board for all requests for rate settings or adjustments; subject to the limitation that all such decisions of the Commission shall be reviewed and ratified by the City Council;
- (5) Coordinate the franchisee's consultant services to facilitate government, educational, community group and individual use of the public channels;
- (6) Determine general policy relating to the service provided subscribers and the operation and use of access channels, with a view to maximizing the diversity of programs and services to subscribers. The use of access channels shall be allocated on a first come, first served basis, subject to limitations on monopolization of System time, or prime time(s);
- (7) Encourage use of access channels among the widest range of institutions, groups and individuals within the City;
- (8) Submit an annual report to the City Council, which contains, at a minimum, the total number of hours of utilization of access channels, a review of any plans submitted during the year by a franchise for development of new services, and hourly subtotals for various programming categories. The annual report shall include the following programming categories:
 - (a) Local educational uses including library, public and private schools;
 - (b) Public Access for local programming under public control;
 - (c) Local Government access (such as fire, police, burglar alarms, and public announcements);
 - (d) Channel time use for lease for pay television;
 - (e) Channel time use for lease for business or municipal uses, including telemetry of information, and
 - (f) Information retrieval and professional communication;
- (9) Act on behalf of and as the designee of the City Council in intergovernmental matters relating to Systems,

- (9) Act on behalf of and as the designee of the City Council in intergovernmental matters relating to Systems, cooperate with other Systems, and supervise interconnection of Systems;
- (10) Submit budget request(s) to the Budget Committee for requested appropriation of funds to carry out its functions;
- (11) Audit all franchisee records required by the franchise and, in the Commission's discretion, require the preparation and filing of information additional to that required by the franchise;
- (12) Conduct evaluations of the System at least every three (3) years with the franchisee, and pursuant thereto, make recommendation to the Council for amendments to this ordinance or the franchise agreement;
- (13) Employ, with the approval of the Council, the services of a technical consultant, to assist in the analysis of any matter relative to any franchise under this ordinance;
- (14) Propose regulations and procedures necessary to enforce franchises and to clarify terms thereof; provided, however, that said regulations and procedures shall be without force and effect until approved by the City Council;
- (15) Develop a rules and procedures manual to define the Commission's functions and responsibilities, and to adopt rules and procedures in relation thereto; provided, however, that said manual, and any amendments thereto, shall be without force and effect until approved by the City Council; and
- (16) Exercise any other power or perform any other function authorized by the City Council.

Section 6. Severability:

The provisions of this ordinance are severable. If any provision, section or part of this ordinance is for any reason held to be invalid, superseded or otherwise determined to be of no force

and effect, such decision shall not affect the validity or enforceability of the remainder of this ordinance.

Section 7. Violation, Penalties and Remedies:

A. Violation and Penalties. Any person, firm, or corporation, whether as principal, agent, employee or otherwise, violating or causing the violation of any provision of this ordinance or performing any of the acts and/or functions itemized under Section 2A of this ordinance, which defines a Cable Communications System, without having been awarded a franchise to perform said acts or functions pursuant to the terms of this ordinance, shall be deemed to have committed a misdemeanor. Such infraction shall be punishable upon conviction by a fine of not more than \$1,000. Each violation occurring on a separate day is considered a separate violation of this ordinance.

B. Cumulative Remedies. The rights, remedies and penalties provided in this section are cumulative and not mutually exclusive and are in addition to any other rights, remedies and penalties available to the City under any other ordinance or law.


C. Injunctive Relief. Upon request of the Mayor, the City Attorney may institute a suit in equity in the Circuit Court of the State of Oregon or other appropriate Court to enjoin the continued violation of any provision of this ordinance.

PASSED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE THIS 13th

DAY OF May, 1980

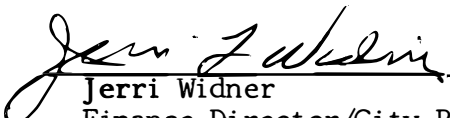
YEAS: 5

NAYS: 0



R. M. Sturges, Mayor

ATTEST:



Jerri Widner
Finance Director/City Recorder