

**ARTICLE VIII. FRANCHISE ENFORCEMENT; CONTINUITY
OF SERVICE**

Sec. 7.5-90. Remedies for franchise violations

If Grantee fails to perform in a timely or satisfactory manner any obligation required by this Chapter or by a franchise granted hereunder, Grantor, after giving Grantee notice and any opportunity to cure such nonperformance in accordance with the provisions of Section 7.5-92, or pursuant to Section 7.5-62(f), may at its option and in its sole discretion:

(a) Cure the violation and recover the actual cost thereof from the security fund established herein, if such violation is not cured within thirty (30) days after written notice to the Grantee of Grantor's intention to cure and draw upon the security fund.

(b) Assess against Grantee liquidated damages in an amount set forth in the Franchise Agreement for any such violation(s), if such violation is not cured, or if Grantee has not commenced a cure, on a schedule acceptable to Grantor, within thirty (30) days after written notice to the Grantee of Grantor's intention to assess liquidated damages. By acceptance of a franchise granted hereunder, a Grantee agrees that Grantor may draw upon the security fund as herein provided. A draw upon the security fund shall not constitute a waiver by Grantor of any other right or remedy it may have under the franchise or under applicable law, including without limitation, its right to recover from Grantee such additional damages, losses, costs and expenses, including actual attorneys' fees, as may have been suffered or incurred by Grantor by reason of or arising out of such breach of the franchise.

(c) Order and direct Grantee to issue rebates or credits to subscribers for violations of the consumer service standards of this ordinance or a franchise which have materially degraded the quality of service in an amount determined by Grantor to provide monetary relief substantially equal to the reduced quality of service resulting from Grantee's failure to perform.

(Ord. No. 1408, §1)

Sec. 7.5-91. Grantor's power to revoke

Grantor, after following the procedures set forth in Section 7.5-90, may revoke any franchise granted pursuant to this Chapter and rescind all rights and privileges associated with it in the following circumstances, each of which represents an incident of default by Grantee and a material breach of the franchise:

(a) If Grantee fails to perform its material obligations under this Chapter or the franchise agreement and continues such default after notice and a reasonable opportunity to cure the default.

(b) If Grantee fails to provide or maintain in full force and affect the insurance coverage or security fund as required herein after notice and reasonable opportunity to cure the default.

(c) If Grantee violates any order or ruling of any regulatory body having jurisdiction over the Grantee which relates to the Grantee's franchise, unless such order or ruling is being contested by Grantee by appropriate proceedings conducted in good faith.

(d) If Grantee practices any fraud or deceit upon Grantor.

(e) If Grantee repeatedly fails to remedy defaults for which lesser penalties have previously been imposed.

(f) If Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt.

The termination and forfeiture of the Grantee's franchise shall in no way affect any right of Grantor to pursue any remedy under the franchise or any provision of law.

(Ord. No. 1408, §1)

Sec. 7.5-92. Procedure for remedying franchise violations

Except as otherwise provided in Section 7.5-62(f), prior to imposing any remedy against Grantee specified in Section 7.5-90 or Section 7.5-91, Grantor shall give Grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:

(a) Grantor shall notify Grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than five (5) days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Chapter or the Grantee's franchise and not less than thirty (30) days in all other cases. Within ten (10) days after receipt of a written notice of violation from Grantor, Grantee may request a hearing before the director of general services in a proceeding affording due process. Such hearing shall be held within thirty (30) days of receipt of the request. Grantee may appeal the decision of the director of general services to the board of supervisors.

(b) If the Grantee fails to request a hearing before the director of general services and does not correct the violation or commence correction of the violation within the time prescribed and diligently proceed to remedy such violation or if the Grantee appeals the decision of the director of general services, the Grantor shall then give written notice of not less than twenty (20) days of a public hearing to be held before the board of supervisors. Said notice shall specify the violations alleged to have occurred. At the public hearing, the board shall hear and consider all relevant evidence and, thereafter, render findings and its decision.

(c) In the event the board of supervisors finds that Grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from grantor and is diligently proceeding to fully remedy such violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

(d) In the event the board of supervisors finds that the alleged violations exist and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation after notice thereof from Grantor, and is not diligently proceeding to fully remedy such violation, the board of supervisors may impose one (1) or more of the remedies specified in Section 7.5-90 or may revoke the franchise as provided in Section 7.5-91 as it, in its discretion, deems appropriate under the circumstances.

(Ord. No. 1408, §1)

Sec. 7.5-93. Force Majeure; grantee's inability to perform

In the event Grantee's performance of any of the terms, conditions or obligations required by this Chapter or a franchise granted hereunder is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof; provided, however, that such inability to perform shall not relieve a Grantee from any obligation to issue rebates or credits for interruption of service which may be imposed pursuant to Section 7.5-90(c). For the purpose of this Section, causes or events not within the control of Grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires, but shall not include financial inability of the Grantee to perform or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Grantee, or the failure of the Grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable communications system where the Grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

(Ord. No. 1408, §1)

Sec. 7.5-94. Extended operation and continuity of services

Upon either expiration or revocation of the franchise, the Grantor shall have discretion to permit Grantee to continue to operate the cable television system for an extended period of time, not to exceed twelve (12) months from the date of such expiration or revocation, or as extended by resolution of Grantor. Grantee shall, as trustee for its successor-in-interest, continue to operate the system under the terms and conditions of this Chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. It shall be the right of all subscribers to continue to receive all available services provided their financial and

other obligations to Grantee are honored. The Grantee shall use reasonable efforts to provide continuous, uninterrupted service to its subscribers, including operation of the system during transitional periods following franchise expiration or termination.

(Ord. No. 1408, §1)