

## **CHAPTER 113: CABLE TELEVISION**

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## ***GENERAL PROVISIONS***

### **§ 113.01 TITLE.**

This chapter shall be known and may be cited as the “Community Antenna Television Systems Licensing Ordinance.”  
(Ord. 104, passed 11-9-88)

### **§ 113.02 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***CABLE ACT.*** The Cable Communications Policy Act of 1984, Pub. L. 98-549, 98 Stat. 2779 (October 30, 1984) codified at 47 USC §§ 521 et seq.

***CATV SYSTEM.*** A mnemonic referring to “community antenna television system.”

***CLERK.*** The City Clerk.

***COUNCIL.*** The City Council of the city.

***FCC.*** The Federal Communications Commission.

***LICENSEE.*** A person to whom a license has been issued pursuant to provisions of this chapter.  
(Ord. 104, passed 11-9-88)

### **§ 113.03 POLICE POWER OF CITY; AUTHORITY TO REGULATE.**

Any person duly licensed to operate a CATV system shall at all times be subject to all lawful exercise of the police power by the city and to such reasonable regulations as the city shall hereby, by resolution or ordinance, provide.  
(Ord. 104, passed 11-9-88)

### **§ 113.10 LICENSE REQUIRED.**

No person shall own or operate a community antenna television system (CATV) in the city except by license pursuant to this chapter.

(Ord. 104, passed 11-9-88)

### **§ 113.11 APPLICATION REQUIREMENTS.**

(A) *Application generally.* Every person desiring to install, erect, construct, operate, and maintain a community television antenna plant within the city shall make application in writing, signed by the applicant or the applicant's duly authorized agent, to the City Clerk. Said application shall be accompanied by a general plan of the system, showing the location of the antenna, and shall also be accompanied by a financial statement of the applicant.

(B) *Application to contain indemnification agreements.*

(1) Each applicant shall, in the application, agree to save the city harmless from all loss sustained by the city on account of any suit, judgment, execution, claim, or demand whatsoever resulting from negligence on the part of the licensee in construction, operation or maintenance of a CATV system in the city. The city shall notify any licensee within ten days after the presentation of any claim or demand, either by suit or otherwise, made against the city on account of any negligence as aforesaid on the part of such licensee.

(2) Each applicant in its application agrees to save the city harmless from all loss sustained by the city on account of any suit, judgment, execution, claim or demand whatsoever resulting from a dispute over programming. The city shall notify any licensee within ten days after the presentation of any claim or demand, either by any suit or otherwise, made against the city on account of any allegedly improper or illegal program origination or transmission.

(C) *Applicant's insurance.* Each applicant shall in the application demonstrate by certificate of insurance, which certificate shall include the city as named insured, that the applicant is protected by liability insurance issued by an insurance company authorized to do business in the state against claims for property damage in the amount of \$1,000,000 for any one accident and for personal injuries in the amount of \$1,000,000 for a personal injury to any one person, and \$3,000,000 for all personal injuries resulting from any one accident.

(D) *Default and noncompliance; when excused.* The licensee shall not be held in default or noncompliance with the provisions of this chapter, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, refusals, acts of God, power outages, or other events reasonably beyond its ability to control.

(Ord. 104, passed 11-9-88)

### **§ 113.12 ISSUANCE OF LICENSE.**

The City Clerk shall issue a license required by this chapter only upon receipt of an application which complies with all of the requirements of this chapter, and upon approval by the Council of the applicant's legal, character, financial, technical and other qualifications, as well as

the adequacy and feasibility of the applicant's construction arrangements, after a full proceeding affording due process.

(Ord. 104, passed 11-9-88)

### **§ 113.13 FEE.**

(A) The licensee shall pay to the city, for the privilege of operating a CATV system under this chapter, a sum equivalent to 5% of the annual gross operating revenues taken in and received by the licensee on all retail sales of television signals within the city, for all service installations and reconnects.

(B) The licensee shall pay to the City Treasurer the license fee within 30 days after each half of the licensee's fiscal year following the inception of service to subscribers located in the city. At the same time the licensee shall file with the City Clerk a summary report of the revenues upon which the license fee is based.

(Ord. 104, passed 11-9-88)

### **§ 113.14 TERM OF LICENSE.**

A license issued under this chapter shall authorize the operation of a CATV system within the city, subject to the provisions of this chapter, for a period to be determined by the Council, but in no event less than 15 years from the date of issuance hereunder. Renewals, unless revoked for cause, shall remain in force and effect for periods of at least 15 years.

(Ord. 104, passed 11-9-88)

### **§ 113.15 RENEWAL OF LICENSE.**

(A) Any proceedings undertaken by the city that relate to the renewal of the licensee's license shall be governed by and comply with the provisions of Section 626 of the Cable Act (codified at 47 USC 546) as such existed as of the effective date of the Cable Act), unless the provisions set forth therein shall have been rendered inoperable by the provisions of subsequent law.

(B) In addition to the procedures set forth in said Section 626(a) (47 USC 546(a)), the city shall notify the licensee of the city's preliminary assessment regarding the identity of future cable-related community needs and interests as well as the past performance of the licensee under the then-current license term. The city's preliminary assessment shall be provided to the licensee prior to the time that the four-month period referred to in Section 626(c) (47 USC 546(c)) is considered to begin. Notwithstanding anything to the contrary set forth in this section and consistent with Section 626(h) of the Cable Act (47 USC 546(h)), at any time during the term of the then-current license, the city and licensee may undertake and finalize negotiations regarding renewal or extension of the then-current license and the city may grant a renewal or extension thereof. The terms set forth in this section shall be considered consistent with and subject to the express provisions of said Section 626 of the Cable Act (47 USC 546). A reproduction of Section 626 of the Cable Act (47 USC 546) as such existed as of the effective date of the Cable Act is on file and available for inspection in the office of the City Clerk and is

incorporated herein by this reference. The above notwithstanding, the city may grant extensions to the then-existing license term to the extent appropriate under the circumstances, so long as such extensions are not in lieu of licensee's ultimate right to be considered for renewal hereunder, and are consistent with applicable law.  
(Ord. 104, passed 11-9-88)

#### **§ 113.16 TRANSFER OF LICENSE OR CONTROL OF LICENSEE COMPANY.**

No sale, lease, sublease, assignment or other transfer of a license issued under this chapter shall be made unless and until approved by resolution of the City Council, after receipt of a written application for such transfer containing the same information as would be required of an original application for a license. Nor shall a transfer of a majority interest in the stock of the licensee, if the licensee is a corporation, or the addition or deletion of a general partner or partners of the licensee, if the licensee is a partnership, which in the aggregate would exceed 50% of the partnership interest be made unless and until approved by resolution by the City Council. Approval of such sale, assignment, lease, sublease or other transfer shall not be unreasonably withheld.  
(Ord. 104, passed 11-9-88)

#### **§ 113.17 REVOCATION.**

Failure by the licensee to substantially perform any of the material provisions of this chapter or the failure to substantially perform any of the material conditions or terms thereof shall be cause for the revocation of its license and all rights thereunder. The Clerk shall report such noncompliance in writing to the City Council, which, upon due notice to the licensee and after reasonable opportunity to place itself in compliance and to be heard on the charge of noncompliance, may revoke such license, provided, however, that any revocation proceeding hereunder shall be governed by the franchise compliance standards and procedures set forth in Section 626 of the Cable Act (47 USC 546), on file and available for inspection in the office of the City Clerk.  
(Ord. 104, passed 11-9-88)

### ***CONSTRUCTION AND EQUIPMENT***

#### **§ 113.30 CONSTRUCTION SCHEDULE.**

Within one year from the issuance of its license hereunder, the licensee shall have accomplished significant construction of its system. Thereafter, the licensee shall equitably and reasonably extend its energized trunk cable to include an additional 20% of its licensed area in the city each year. This section shall not apply to renewal licensees.  
(Ord. 104, passed 11-9-88)

#### **§ 113.31 MASTER ANTENNA CONSTRUCTION STANDARDS.**

The licensee shall agree to construct the master antenna network in accordance with the building and electrical codes of this city.

(Ord. 104, passed 11-9-88)

**§ 113.32 PLACEMENT OF WIRES, CABLES, POLES, AND THE LIKE; USE OF STREETS.**

Any licensee shall have the right, so long as its license is in force and effect, to utilize the streets of the city for the transmission of television signals as herein authorized from its antenna location or locations to the premises of subscribers. Licensee may erect all necessary wires, cables and appurtenances in the said streets, provided that any such distribution system shall comply with all applicable laws and regulations and ordinances and all of licensee's wires and cables suspended from poles in the streets shall comply with the minimum clearances above ground required for telephone lines, cables, wires and conduits. The placement of any necessary poles shall be subject to the approval of the City Engineer. Licensee, may at its option, authorize the installation of such wires, cables, conduits, poles and appurtenances by others for licensee's use and all such wires, cables, conduits, poles and appurtenances placed or installed by others for the use of licensee shall be subject to the same regulations as if the licensee installed them, and they shall exist and continue to exist solely by authority of the permission granted to said licensee.

(Ord. 104, passed 11-9-88)

**§ 113.33 MINIMUM INTERFERENCE; UTILIZATION OF EXISTING POLES.**

All transmission and distribution structures, lines and equipment erected by the Licensee or on its behalf within the city shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of said streets, and existing poles for electric and communication purposes shall be utilized, wherever possible and practicable; provided however, that this provision shall not grant any licensee the right to install all the necessary poles to operate its system if such licensee is, for any reason, unable to use such existing poles for electric or communication purposes.

(Ord. 104, passed 11-9-88)

**§ 113.34 DUTY TO RESTORE DISTURBED SURFACING.**

In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the licensee shall, at the licensee's own cost and expense and in a manner approved by the City Engineer, replace and restore all pavement, sidewalk, driveway or other surfacing disturbed in as good a condition as before said work was commenced.

(Ord. 104, passed 11-9-88)

**§ 113.35 DUTY TO REMOVE APPURTENANCES UPON NOTICE.**

In the event that, at any time during the existence of a license granted hereunder, the city shall lawfully widen, realign or otherwise alter the street right-of-way, or construct, reconstruct, realign, change the grade of or otherwise alter pavement or any water main, fire hydrant, sewer or appurtenance belonging to the city, the licensee or anyone acting on the licensee's behalf in connection with the use of streets, upon reasonable notice by the city, and to the extent

necessary, shall remove, relay and relocate its wires, cables, poles, underground conduits, and other appurtenances at the licensee's own expense.

(Ord. 104, passed 11-9-88)

### **§ 113.36 UNDERGROUND INSTALLATION OF CABLES AND LINES REQUIRED OR PREFERRED.**

In conduit districts now or hereafter established by ordinances of the city, and as hereafter amended or altered, and in such other areas of the city in which telephone lines and electric utility lines are underground, all of licensee's lines, cables, and wire shall be underground. It is the policy of the city that underground installation, even where not required, is preferable to the addition of poles.

(Ord. 104, passed 11-9-88)

## ***SERVICE REGULATIONS***

### **§ 113.45 RULES AND REGULATIONS PROMULGATED BY LICENSEE.**

The licensee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the licensee to exercise its rights and perform its obligations under this chapter and to assure an uninterrupted service to each and all of its customers, provided, however, that such rules, regulations, terms, and conditions shall not be in conflict with the provisions hereof, or the rules of any state or federal regulatory agency, or the laws of the state.

(Ord. 104, passed 11-9-88)

### **§ 113.46 DUTY TO PROVIDE FACILITIES; BUSINESS OFFICE.**

Subject to the existence of suitably situated, available public rights-of-way and public utility easements, the licensee shall supply the facilities to all residents of the city who may request the licensee's service who reside in any territory within the city's boundaries that has a population density of at least 25 homes per strand mile from the trunk line existing at the time of such request. The licensee shall maintain a business office in Muskegon County open at all reasonable business hours to all such persons in the city who desire the services of the licensee.

(Ord. 104, passed 11-9-88)

### **§ 113.47 LIMITATION ON SERVICES PROVIDED BY LICENSEE.**

The services performed pursuant to licenses issued hereunder shall not include the performance of repairing, servicing, or selling television sets, or television antennas, nor shall the licensee recommend service by others except as directly related to cable installation and/or connections, provided, however, that no limitation is placed upon licensee in complying with the FCC's input selector switch requirements set forth in FCC regulations, and, provided further, that no limitation is placed upon the licensee in the business of providing other communications services permitted by the FCC with respect to cable systems, or from distributing programming to home satellite dishes or other reception technology than broadcast television.

(Ord. 104, passed 11-9-88)

**§ 113.48 RATE REGULATION.**

The licensee's rates for the provision of cable service and other service, including, but not limited to, ancillary charges relating thereto, shall not be regulated except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC rules and regulations relating thereto. Licensee's rates and charges for the provision of any service or equipment, including but not limited to basic service, pay service, second outlets, remote control units, converters, and the like, are not established under Ordinance 104, passed 11-9-88, and are not regulated thereunder.

(Ord. 104, passed 11-9-88)

**§ 113.49 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED; EXCEPTIONS.**

The licensee shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided, however, that nothing in this chapter shall be deemed to prohibit the licensee's discretion to establish discounts for senior citizens or shut-ins or the hearing-impaired or to establish free-of-charge service to public or private educational institutions, hospitals, eleemosynary institutions, and, to the extent not otherwise required hereunder, to such public buildings as fire stations, police stations, or City Hall.

(Ord. 104, passed 11-9-88)

**§ 113.50 INTERRUPTION OF SERVICE FOR REPAIRS AND THE LIKE.**

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the licensee shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.

(Ord. 104, passed 11-9-88)

**§ 113.51 BOOKS AND RECORDS; RECORD INSPECTIONS; PROTECTION OF CONFIDENTIAL INFORMATION.**

The city may review such of the licensee's books and records, during normal business hours and on a non-disruptive basis, as are reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, records required to be kept by the licensee pursuant to the rules and regulations of the FCC, and financial information underlying the summary report pertaining to the license fee in § 113.13. Notwithstanding anything to the contrary set forth herein, licensee is not required to disclose personally identifiable subscriber information without the subscriber's consent in recognition of Section 631 of the Cable Act, 47 U.S.C. § 551, regarding the protection of subscriber privacy; nor shall licensee be required to disclose its income tax returns or information underlying the preparation of any such returns. To the extent permitted by law, the city agrees to treat on a confidential basis any information

disclosed by the licensee to it under this section. In so according confidential treatment, disclosure of licensee's records by the city shall be limited to only those of its employees, representatives and agents that have a need to know, and that are in a confidential relationship with the city.

(Ord. 104, passed 11-9-88)

### ***BASIC CABLE SERVICE RATES***

#### **§ 113.60 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. All other words and phrases used in this subchapter shall have the same meaning as defined in the Act and FCC Rules, as defined below.

***ACT.*** The Cable Communications Act of 1934, being 47 USC 521 et seq., as amended (and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385), and as may be amended from time to time.

***ASSOCIATED EQUIPMENT.*** All equipment and services subject to regulation pursuant to 47 CFR 76.923.

***BASIC CABLE SERVICE.*** “Basic service” as defined in the FCC Rules, and any other cable television service which is subject to rate regulation by the city pursuant to the Act and the FCC Rules.

***FCC.*** The Federal Communications Commission.

***FCC RULES.*** All rules of the FCC promulgated from time to time pursuant to the Act.

***INCREASE.*** As applied to rates shall mean an increase in rates or a decrease in programming or customer services.

(Ord. 132, passed 9-20-93)

#### **§ 113.61 PURPOSE; INTERPRETATION; CONFLICTS.**

(A) *Purpose; interpretation.* The purpose of this subchapter is to: (1) adopt regulations consistent with the Act and the FCC Rules with respect to basic cable service rate regulation; and (2) prescribe procedures to provide a reasonable opportunity for consideration of the views of interested parties in connection with basic cable service rate regulation by the city. This subchapter shall be implemented and interpreted consistent with the Act and FCC Rules.

(B) *Conflicting provisions.* In the event of any conflict between this subchapter and the provisions of any prior ordinance or any franchise, permit, consent agreement or other agreement with a cable operator, then the provisions of this subchapter shall control.

(Ord. 132, passed 9-20-93)

**§ 113.62 FCC RULES APPLICABLE.**

In connection with the regulation of rates for basic cable service and associated equipment, the city shall follow all FCC Rules.

(Ord. 132, passed 9-20-93)

**§ 113.63 POWERS AND REGULATORY AUTHORITY OF CITY COUNCIL.**

(A) *Powers.* The city shall possess all powers conferred by the Act, the FCC Rules, the cable operator's franchise, and all other applicable law. The powers exercised pursuant to the Act, the FCC Rules, and this subchapter shall be in addition to powers conferred by law or otherwise. The city may take any action not prohibited by the Act and the FCC Rules to protect the public interest in connection with basic cable service rate regulation.

(B) *Regulatory authority.* In addition to rules promulgated pursuant to § 113.65, the City Council may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the Act and the FCC Rules.

(C) *Additional hearings.* In addition to the requirements of this subchapter, the City Council may hold additional public hearings upon such reasonable notice as the City Council, in its sole discretion, shall prescribe.

(Ord. 132, passed 9-20-93)

**§ 113.64 FAILURE TO GIVE NOTICE; EFFECT THEREOF.**

The failure of the City Clerk to give the notices or to mail copies of reports as required by this subchapter shall not invalidate the decisions or proceedings of the City Council.

(Ord. 132, passed 9-20-93)

**§ 113.65 RATE SCHEDULE SUBMISSION; ADDITIONAL INFORMATION; BURDEN OF PROOF.**

(A) A cable operator shall submit a schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the Act and the FCC Rules. The cable operator shall include as part of the submission such information as is necessary to show that the schedule of rates or the proposed increase in rates complies with the Act and the FCC Rules. The cable operator shall file ten copies of the schedule or proposed increase with the City Clerk. For purposes of this chapter, the filing of the cable operator shall be deemed to have been made when at least ten copies have been received by the City Clerk. The City Council may, by resolution or otherwise, adopt rules and regulations prescribing the information, data and calculations which must be included as part of the cable operator's filing of the schedule of rates or a proposed increase.

(B) In addition to information and data required by rules and regulations of the city pursuant

to subsection (A) above, a cable operator shall provide all information requested by the City Manager in connection with the city's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The City Manager may establish deadlines for submission of the requested information and the cable operator shall comply with such deadlines.

(C) A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the Act and the FCC Rules including, without limitation, 47 USC 543 and 47 CFR 76.922 and 76.923.  
(Ord. 132, passed 9-20-93)

### **§ 113.66 PROTECTION OF PROPRIETARY INFORMATION.**

(A) If this subchapter, any rules or regulations adopted by the city pursuant to § 113.65(A), or any request for information pursuant to § 113.65(B) requires the production of proprietary information, the cable operator shall produce the information. However, at the time the allegedly proprietary information is submitted, a cable operator may request that specific, identified portions of the cable operator's response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that support those reasons. The request for confidentiality will be granted if the city determines that the preponderance of the evidence shows that non-disclosure is consistent with the provisions of the Freedom of Information Act, 5 USC 552. The City shall place in a public file for inspection any decision that results in information being withheld. If the cable operator requests confidentiality and the request is denied, (1) where the cable operator is proposing a rate increase, the cable operator may withdraw the proposal, in which case the allegedly proprietary information will be returned to the cable operator; or (2) the cable operator may seek review within five working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

(B) Any interested party may file a request to inspect material withheld as proprietary with the city. The city shall weigh the policy considerations favoring non-disclosure against the reasons cited for permitting inspection in light of the facts of the particular case. It will then promptly notify the requesting entity and the cable operator that submitted the information as to the disposition of the request. It may grant, deny or condition a request. The requesting party or the cable operator may seek review of the decision by filing an appeal with any appropriate forum. Disclosure will be stayed pending resolution of any appeal.

(C) The procedures set forth in this section shall be construed as analogous to and consistent with the rules of the FCC regarding requests for confidentiality including, without limitation, 47 CFR 76.938.  
(Ord. 132, passed 9-20-93)

### **§ 113.67 NOTICE AND COMMENTS; NOTICE TO OPERATOR; PRELIMINARY REPORT ON RATES.**

Upon the filing of ten copies of the schedule of rates or the proposed increase in rates pursuant to § 113.65(A) above, the City Clerk shall publish a public notice in a newspaper of general circulation in the city which shall state that: (1) the filing has been received by the City Clerk and (except those parts which may be withheld as proprietary) is available for public inspection and copying, and (2) interested parties are encouraged to submit written comments on the filing to the City Clerk not later than seven days after the public notice is published. The City Clerk shall give notice to the cable operator of the date, time, and place of the meeting at which the City Council shall first consider the schedule of rates or the proposed increase. This notice shall be mailed by first-class mail at least three days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the City Council, then the City Clerk shall mail a copy of the report by first-class mail to the cable operator at least three days before the meeting at which the City Council shall first consider the schedule of rates or the proposed increase.  
(Ord. 132, passed 9-20-93)

### **§ 113.68 EFFECTIVE DATE OF RATES; TOLLING ORDER.**

After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect, or the proposed increase in rates will become effective after 30 days from the date of filing under § 113.65(A) above unless the City Council (or other properly authorized body or official) tolls the 30-day deadline pursuant to 47 CFR 76.933 by issuing a brief written order, by resolution or otherwise, within 30 days of the date of filing. The City Council may toll the 30-day deadline for an additional 90 days in cases not involving cost-of-service showings and for an additional 150 days in cases involving cost-of-service showings.  
(Ord. 132, passed 9-20-93)

### **§ 113.69 HEARING FOLLOWING TOLLING ORDER; NOTICE.**

If a written order has been issued pursuant to § 113.68 and 47 CFR 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit to the city any additional information required or requested pursuant to § 113.65 of this subchapter. In addition, the City Council shall hold a public hearing to consider the comments of interested parties within the additional 90-day or 150-day period, as the case may be. The City Clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the city which shall state: (1) the date, time, and place at which the hearing shall be held, (2) that interested parties may appear in person, by agent, or by letter at such hearing to submit comments on or objections to the existing rates or the proposed increase in rates, and (3) that copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the office of the Clerk. The public notice shall be published not less than 15 days before the hearing. In addition, the City Clerk shall mail by first-class mail a copy of the public notice to the cable operator not less than 15 days before the hearing.  
(Ord. 132, passed 9-20-93)

### **§ 113.70 REPORT OF CITY MANAGER; CABLE OPERATOR'S RESPONSE.**

Following the public hearing, the City Manager shall cause a report to be prepared for the City Council which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or a consultant's review, and other appropriate information) include a recommendation for the decision of the City Council pursuant to § 113.71. The City Clerk shall mail a copy of the report to the cable operator by first-class mail not less than 20 days before the City Council acts under § 113.71. The cable operator may file a written response to the report with the City Clerk. If at least ten copies of the response are filed by the cable operator with the City Clerk within ten days after the report is mailed to the cable operator, the City Clerk shall forward it to the City Council. (Ord. 132, passed 9-20-93)

### **§ 113.71 DECISIONS AND ORDERS OF CITY COUNCIL; NOTICE.**

(A) *Rate decisions and orders.* The City Council shall issue a written order, by resolution or otherwise, which in whole or in part approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund, or orders other appropriate relief, in accordance with the FCC Rules. If the City Council issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR 76.933. The order specified in this section shall be issued within 90 days of the tolling order under § 113.68 in all cases not involving a cost-of-service showing. The order shall be issued within 150 days after the tolling order under § 113.65 in all cases involving a cost-of-service showing.

(B) *Refund orders; notice.* The City Council may order a refund to subscribers as provided in 47 CFR 76.942. Before the City Council orders any refund to subscribers, the City Clerk shall give at least seven days written notice to the cable operator by first-class mail of the date, time and place at which the City Council shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent or by letter at such time for the purpose of submitting comments to the City Council.

(C) *Written decisions; public notice.* Any order of the City Council pursuant to subsections (A) or (B) shall be in writing, shall be effective upon adoption by the City Council, and shall be deemed released to the public upon adoption. The Clerk shall publish a public notice of any such written order in a newspaper of general circulation within the city which shall: (1) summarize the written decision, and (2) state that copies of the text of the written decision are available for inspection or copying from the office of the Clerk. In addition, the City Clerk shall mail a copy of the text of the written decision to the cable operator by first-class mail. (Ord. 132, passed 9-20-93)

### **§ 113.72 NONCOMPLIANCE OF CABLE OPERATOR.**

The city may pursue any and all legal and equitable remedies against the cable operator

(including, without limitation, all remedies provided under a cable operator's franchise with the city) for failure to comply with the Act, the FCC rules, any orders or determinations of the city pursuant to this subchapter, any requirements of this subchapter, or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC Rules, any orders or determinations of the city pursuant to this subchapter, any requirements of this subchapter, or any rules and regulations promulgated hereunder shall also be sufficient grounds for revocation or denial of renewal of a cable operator's franchise.

(Ord. 132, passed 9-20-93)