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# Ripon City Council

## Special Meeting Notice and Agenda

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JANUARY 25, 2016

**TO:** Honorable City Council  
**SUBJECT:** Notice of Special Council Meeting

Mayor Parks has directed this office to issue this notice as required by California State Law, of a special City Council meeting as follows:

**DATE:** JANUARY 25, 2016  
**TIME:** 6:00 P.M.  
**PLACE:** City Hall  
259 North Wilma  
Ripon, California 95366

**ROLL CALL:** Council Members Leo Zuber, Michael Restuccia, Mark Winchell, Vice Mayor Dean Uecker, Mayor Jacob Parks.

**PUBLIC DISCUSSION:** This time is provided to the public to address the City Council on items not on the agenda.

Mayor Parks has directed this meeting called for the following specific item on the agenda:

**IN THE MATTER OF:**

**1. ORDINANCES**

*First Reading and Introduction*

A. ORDINANCE NO. \_\_

CABLE COMMUNICATION FRANCHISE  
PROCEDURES

This ordinance repeals Chapter 5.28 of the Ripon Municipal Code and introduces a new Chapter 5.28, title "Cable Communication Franchise Procedures."

PLEASE NOTE: This letter was received by the undersigned on

January \_\_\_\_\_, 2016 at \_\_\_ AM \_\_\_ PM

\_\_\_\_\_  
COUNCIL MEMBER

This office respectfully requests that you bring this notice to the meeting for proper filing.

MAYOR JACOB PARKS  
VICE MAYOR DEAN UECKER  
COUNCIL MEMBER MICHAEL RESTUCCIA  
COUNCIL MEMBER MARK WINCHELL  
COUNCIL MEMBER LEO ZUBER  
CITY ATTORNEY TOM TERPSTRA

  
\_\_\_\_\_  
KEVIN WERNER, City Administrator

ORDINANCE NO. \_\_\_\_\_

CABLE COMMUNICATION FRANCHISE PROCEDURES

THE CITY COUNCIL OF THE CITY OF RIPON DOES ORDAIN AS FOLLOWS:

**SECTION 1.**

Chapter 5.28 of the Ripon Municipal Code is hereby repealed, and a new Chapter 5.28 is hereby enacted as set forth below.

Sections:

- 5.28.010 State video service franchises.**
- 5.28.020 Conditions of street occupancy.**
- 5.28.030 Protection of City and enforcement - Liability insurance.**
- 5.28.040 Protection of City and enforcement - Performance bond.**
- 5.28.050 Protection of City and enforcement - Security fund.**
- 5.28.060 Indemnification.**
- 5.28.070 Termination.**

**5.28.010 STATE VIDEO SERVICE FRANCHISES.**

**A. General Provisions.**

1. **Purpose.** This Chapter is intended to be applicable to state franchise holders who have been awarded a state video franchise under the California Public Utilities Code Section 5800 et seq. (the Digital Infrastructure and Video Competition Act of 2006 (DIVCA)), to serve any location(s) within the incorporated boundaries of the City. It is the purpose of this section to implement within the incorporated boundaries of the City the provisions of DIVCA and the rules of the California Public Utilities Commission promulgated thereunder that are applicable to a "local franchising entity" or a "local entity" as defined in DIVCA.
2. **Rights Reserved.**
  - a) The rights reserved to the City under this section are in addition to all other rights of the City, whether reserved by this section or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.
  - b) Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:

- (i) Compliance with generally applicable requirements for the privilege of transacting and carrying on a business within the City, including, but not limited to, compliance with the conditions that the City may establish before facilities may be constructed for, or providing, nonvideo services;
  - (ii) Any permit or authorization required in connection with operations on or in public rights-of-way or public property, including, but not limited to encroachment permits, street work permits and pole attachment permits; and
  - (iii) Any permit, agreement or authorization for occupying any other property of the City or any private person to which access is not specifically granted by the state franchise.
- c) Except as otherwise provided in DIVCA, a state franchise shall not relieve a state franchisee of its duty to comply with all laws, including the ordinances, resolutions, rules, regulations, and other laws of the City, and every state franchisee shall comply with the same. Nothing contained in this section shall ever be construed so as to exempt a state franchise holder from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are consistent with this section or California Public Utilities Code Section 5800 et seq.

**B. Definitions Generally - Interpretation of Language.** For purposes of this section, the following terms, phrases, words, and their derivations shall have the meaning given in this subsection. Unless otherwise expressly stated, words not defined in this section shall be given the meaning set forth in DIVCA. Words not defined in this subsection shall have the same meaning as established in (1) DIVCA, and if not defined therein, (2) Commission rules implementing DIVCA, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47 U.S.C. Section 521 et seq. and, if not defined therein, (4) their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and "including" and "include" are not limiting. The words "shall" and "will" are always mandatory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

1. "Access," "PEG access," "PEG use," or "PEG" means the availability of a cable or state franchise holder's system for public, educational, or governmental use by various , agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to acquire, create, and distribute programming not under a state franchise holder's editorial control.

2. "Gross revenues" means all revenues actually received by the holder of a state franchise that are derived from the operation of the holder's network to provide cable service or video service within the incorporated areas of the City, subject to the specifications of California Public Utilities Code Section 5860.
3. "State franchise holder" or "state franchisee" means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code Section 5830, within any portion of the incorporated limits of the City.

C. **Franchise Fees.**

1. **State Franchise Fees.** Any state franchise holder operating within the incorporated areas of the City shall pay to the City a state franchise fee equal to five percent of gross revenues.
2. **Payment of Franchise Fees.** The state franchise fee required pursuant to this subsection (c) shall each be paid quarterly, in a manner consistent with California Public Utilities Code Section 5860. The state franchise holder shall deliver to the City, by check or other means, which shall be agreed to by the City, a separate payment for the state franchise fee not later than 45 days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the City.
3. **Audits.** The City may audit the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code Section 5860(i).
4. **Late Payments.** In the event a state franchise holder fails to make payments required by this section on or before the due dates specified in this section, the City shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent.
5. **Lease of City-Owned Network.** In the event a state franchise holder leases access to a network owned by the City, the City may set a franchise fee for access to the City-owned network separate and apart from the franchise fee charged to state franchise

D. **Customer Service.**

1. **Customer Service Standards.** A state franchise holder shall comply with Sections 53055, 53055.2 and 53088.2 of the California Government Code; the FCC customer service and notice standards set forth in Sections 76.309, 76.1602, 76.1603, and 76.1619 of Title 47 of the Code of Federal Regulations; Section

637.5 of the California Penal Code; the privacy standards of Section 551 of Title 47 of the United States Code; and all other applicable state and federal customer service and consumer protection standards pertaining to the provision of cable service or video service, including any such standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this subsection shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

2. **Penalties for Violations of Standards.** The City shall enforce the compliance of state franchisees with respect to the state and federal customer service and consumer protection standards set forth in subsection (d)(1) of this section. The City will provide a state franchisee with a written notice of any material breaches of applicable customer service or consumer protection standards, and will allow the state franchisee 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following penalties to be imposed by the City:
  - a) For the first occurrence of a material breach, a fine of \$500.00 may be imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation.
  - b) For a second material breach of the same nature within 12 months, a fine of \$1,000 may be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.
  - c) For a third material breach of the same nature within 12 months, a fine of \$2,500 may be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.
3. **Manner of Imposition.** Any penalties imposed by the City shall be imposed in a manner consistent with California Public Utilities Code Section 5900.

E. **Permits and Construction.**

1. **Applicability.** The provisions of this Chapter and the applicable provisions of the Ripon Municipal Code shall apply to all work performed by or on behalf of a state franchise holder on any City public rights-of-way, public property, or public utility easement as those terms are defined in this chapter.
2. **Encroachment Permit.** Prior to commencing any work within or upon any City rights of way, public property, public utility easements (including work within a joint trench) a state franchise holder shall apply for and obtain an encroachment permit from the City in accordance with this section, and shall comply with all other applicable laws and regulations, including but not limited to all applicable requirements of Division 13 of the California Public Resources Code, Section

21000 et seq. (the California Environmental Quality Act). The franchise holder shall make application for an encroachment permit, supplying such information as is necessary as determined by the City Administrator, including, but not limited to, sufficient information to allow the Environmental Review Officer to complete the environmental review process pursuant to the California Environmental Quality Act. The application for encroachment permit shall be determined complete when all necessary information, as set forth herein, has been provided, and City staff notifies the applicant that the application is complete.

3. **Mitigation of Impacts.** In order to mitigate adverse visual impacts, the City Administrator may impose reasonable conditions of approval in connection with the approval of an encroachment permit, including, but not limited to, a requirement that any above-ground cable facilities or equipment be appropriately screened from public view through the use of landscaping and/or decorative enclosures.
4. **Action on Permit.** The City Administrator or their designee shall either approve or deny a state franchise holder's application for an encroachment permit within 60 days of receiving a completed permit application from the state franchise holder.
5. **Explanation of Denial.** If the City Administrator or their designee denies a state franchise holder's application for an encroachment permit, the City Administrator or their designee shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.
6. **Appeals.** A state franchise holder that has been denied a permit by final decision of the City Administrator or their designee may appeal the denial to the City Council. Upon receiving a notice of appeal, the City Council shall take one of the following actions:
  - a) Affirm the action of the City Administrator or their designee without any further hearing; or
  - b) Refer the matter back to the City Administrator or their designee for further review with or without instructions; or
  - c) Set the matter for a de novo hearing before the City Council.
7. **Scope of Review.** In rendering its decision on the appeal, the City Council shall not hear or consider any argument or evidence of any kind other than the record of the matter received from the City Administrator or their designee unless the City Council is itself conducting a public hearing on the matter.
8. **Notification.** Prior to any construction, rebuild, or upgrade of a cable or video system, a state franchise holder shall establish procedures to notify City residents

in the impacted area of construction schedules and activities. Notices must be provided to those persons who work and/or reside in the impacted area. The notices shall be provided to the City Administrator or their designee for review and approval no later than 20 days before commencement of construction, rebuild, or upgrade activities.

9. **Form of Notice.** At a minimum, the notice required in subsection (e)(7) of this section shall be provided by the state franchise holder to impacted residents and occupants in the construction area not less than 72 hours prior to the planned construction. The state franchise holder shall provide additional notice to the persons described in subsection (e)(7) of this section on the day of construction. The notice may be in the form of door hangers that indicate, at a minimum, the dates and times of construction and the name and telephone number of a state franchise holder contact.
10. **Entry onto Property.** The state franchise holder shall provide notice at least 20 days prior to entering private property or public ways or public easements adjacent to or on such private property, public ways, or public easements, and provide a second notice three days prior to entering such property.
  - a) Should there be aboveground or underground installations (excluding aerial cable lines utilizing existing poles and cable paths) which will affect the private property, such notice shall be in writing and shall contain specific information regarding any aboveground or underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths) which shall affect the private property.
  - b) To the extent practicable, aboveground or underground equipment placed on private property shall be placed at the location requested by the property owner. A state franchise holder shall provide the private property owner with at least 20 days' advance written notice of its plans to install such equipment, and shall obtain express written consent, in the form of a recorded easement agreement, from the private property owner before installing its appurtenances. The state franchise holder shall notify the property owner, in writing, that the property owner is not obligated to agree to the placement on their property or to enter into an easement agreement with the state franchise holder. Should the property owner notify the state franchise holder of objection to placement of any such aboveground or underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), the state franchise holder shall confer with the City public works department regarding appropriate location and placement of such appurtenances.
11. **Personal Notification.** In addition to any other notice of proposed entry required under this subsection (e), a state franchise holder's personnel shall make a reasonable attempt to give personal notice to residents immediately preceding

entry on private property or public ways or public easements adjacent to or on such private property.

12. **Identification Required.** A state franchise holder, its employees, agents, contractors, and subcontractors shall be properly identified as agents of the state franchise holder prior to and during entry on private and public property. Identification shall include the name and telephone number of the state franchise holder on all trucks and vehicles used by installation personnel.
13. **Restoration of Private and Public Property.** After performance of work, the state franchise holder shall restore such private and public property to a condition equal to or better than its condition prior to construction. Any disturbance of landscaping, fencing, or other improvements upon private or public property shall, at the sole expense of the state franchise holder, be promptly repaired or restored (including replacement of such valuables as shrubbery and fencing) to the reasonable satisfaction of the property owner, in addition to the furnishing of camouflage plants on public property.

F. **Emergency Alert.**

1. **Emergency Alert Systems.** Each state franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the state franchise holder's network.
2. **City Use.** To the extent consistent with California Public Utilities Code Section 5880, each state franchisee shall provide the system capability to transmit an emergency alert signal to all participating subscribers, in the form of an emergency override capability, to permit the City to interrupt and cablecast an audio message on all channels simultaneously in the event of a disaster or public emergency. Each state franchisee shall be exempt from all liability for the use of the emergency alert, and the City shall indemnify and hold each state franchisee harmless from any claims and damages arising out of any such use.

G. **Public, Educational, and Government Access Channel Capacity, Interconnection, Signal Carriage and Support.**

1. **PEG Channel Capacity.**
  - a) A state franchisee that has been authorized by the California Public Utilities Commission to provide video service in the City shall designate and activate three PEG channels within three months from the date that the City requests that the state franchisee designate and activate these PEG channels. However, this three month period shall be tolled for such a period, and only for such a period, during which the state franchisee's ability to designate or provide such PEG capacity is technically infeasible,

as set forth in Sections 5870(a), 5870(c) and 5870(h) of the California Public Utilities Code.

- b) A state franchisee shall provide an additional PEG channel when the standards set forth in Section 5870(d) of the California Public Utilities Code are satisfied by the City or any entity designated by the City to manage one or more of the PEG channels.

2. **PEG Support.**

- a) Any state franchise holder operating within the City shall pay to the City, or if directed by the City, pay to the City's designated PEG provider, a PEG support fee equal to one percent of gross revenues.
- b) The PEG support fee shall be used for PEG purposes that are consistent with state and federal law.
- c) A state franchisee shall remit the PEG support fee to the City, or if directed by the City, to the City's designated PEG provider on a quarterly basis, within 45 days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the PEG support fee was calculated.
- d) If a state franchisee fails to pay the PEG support fee when due, or underpays the proper amount due, the state franchisee shall pay a late payment charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent, to the extent that such a late payment charge is deemed to be consistent with OIVCA.

3. **PEG Carriage and Interconnection.**

- a) As set forth in Sections 5870(b) and 5870(g)(3) of the California Public Utilities Code, state franchisees shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchisee shall be of similar quality and functionality to that offered by commercial channels, shall be capable of carrying a National Television System Committee (NTSC) quality television signal, and shall be carried on the state franchisee's lowest cost tier of service. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the lowest cost tier of service and the channel numbers for the PEG channels shall be the same channel numbers used by any incumbent cable operator, unless prohibited by federal law. After the initial designation of the PEG channel

numbers, the channel numbers shall not be changed without the agreement of the City unless federal law requires the change.

- b) As set forth in Section 5870(h) of the California Public Utilities Code, the holder of a state franchise and an incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. If a state franchisee and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the City shall require the incumbent cable operator to allow the state franchisee to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchisee's network as identified by the state franchisee. If no technically feasible point of interconnection is available, the state franchisee shall make interconnection available to each PEG channel originator programming a channel in the City and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state franchisee requesting the interconnection unless otherwise agreed to by the parties.

H. **Notices.**

1. Each state franchise holder or applicant for a state franchise shall file with the City a copy of all applications or notices that the state franchise holder or applicant is required to file with the California Public Utilities Commission.
2. Unless otherwise specified in this section, all notices or other documentation that a state franchise holder is required to provide to the City under this section or the California Public Utilities Code shall be provided to both the City Administrator and the City staff person in charge of cable and telecommunications, or their successors or designees.

**5.28.020 CONDITIONS OF STREET OCCUPANCY.**

A. **Installation - Location.** The cable system shall be placed in public utility easements unless otherwise designated by the City.

B. **Installation - Timing.** A grantee shall begin the installation, upgrade, or rebuild of its cable system within a reasonable length of time after the effective date of its franchise, which date shall be specified in the franchise agreement. A grantee shall be obligated to complete the construction of its cable system promptly and within a time specified in the franchise agreement, which time shall be reasonable in light of the nature of the construction required to build the cable system proposed by the grantee. A grantee is obligated to obtain all permits, licenses, approvals, and contracts required in order for it to begin and complete its cable system in accordance with its franchise agreement.

C. **General Construction and Operational Practice.**

1. The construction, operation, and repair of every cable system in the City and all parts thereof shall be performed in an orderly and workmanlike manner. To this end, each person who constructs, operates, or repairs a cable system shall do so in accordance with all applicable federal, state, local, and industry codes now or hereafter in effect. Without limiting the foregoing, the installation of any cable system shall be in accordance with the requirements of the National Electrical Safety Code (or any superseding code) of the American Insurance Association (or successor organization) and all applicable laws affecting electrical installations and buildings, now or hereafter in effect. A franchise agreement may identify specific construction codes that a grantee must satisfy in addition to this general requirement. In the event of a conflict among codes and standards, the most stringent code requirement or standard shall apply. The City may adopt reasonable additional standards as required to ensure that work continues to be performed in an orderly and workmanlike manner, or to reflect changes in standards which may occur over the term of a franchise, after consultation with each affected grantee.
2. The construction, operation, and repair of the cable system shall be performed by experienced personnel who shall keep the cable system in a safe and suitable condition and in good order and repair. All installations shall be durable and use equipment of good quality.
3. Each grantee shall construct, operate, and repair its cable system so as not to endanger or unduly interfere with the property of the City; any gas, electric, or telephone fixture or other public utility property, including any water or sewer lines or fixtures; or the lives or property of persons; or to unnecessarily hinder or obstruct the use of streets. A grantee shall protect (at its expense) public property and private property from damage caused by the construction, operation, and repair of its cable system, and promptly repair damage the grantee causes or compensate the owner of the property for damage the grantee causes. It shall repair damaged property or pay compensation within no later than 10 days of the date of the damage. Each grantee shall construct, operate, and maintain its cable system with due care for the safety and integrity of persons and property, and shall use appropriate safety devices, warning signs, barricades, and lights to prevent harm to persons or property.
4. A grantee shall notify any person whose property is damaged by that grantee within four hours of the time the damage is discovered. At a minimum, this section requires a grantee to place a prominent notice in a prominent place on the damaged property, and to make diligent efforts to contact the property owner or resident directly.
5. All excavation shall be performed so as to create the least inconvenience to the public, and in accordance with permits issued by the City. The City shall have the right to supervise all excavation.

6. If a grantee disturbs any street, public property, or private property during the course of constructing, operating, or repairing its cable system, that grantee shall, at its expense, replace and restore the street or property to as good condition as before said work was commenced as is possible to the reasonable satisfaction of the City (in the case of streets or public property) or the owner (in the case of private property). Each grantee shall at all times comply with the requirements of 47 U.S.C. Section 541(a)(2)(A) through (C). If any utility property is affected, including gas, electric, telephone, water, sewer, or storm drain, the owner shall be notified immediately and repairs shall immediately be made under the direction of the affected utility. The streets, public property, or private property affected shall be replaced or restored promptly, no later than within 10 days of the date of the disturbance.
7. In any area where any electric or telephone systems are underground, a grantee shall install its cable system underground. If, after a grantee installs its cable system, electric or telephone systems are relocated so that any electric or telephone systems in an area are underground, the grantee shall place its cable system in that area underground. Between a street and a subscriber's residence, if both electric and telephone utility wiring is aerial, a grantee may install aerial cable except where a property owner or resident requests underground installation and agrees to bear the additional cost of such installation over and above the cost of aerial installation.
8. A grantee shall maintain records of the location of its cable system for both underground and aerial cables. A grantee shall provide information regarding the location of its cable system upon request of the City or any authorized governmental body for engineering design purposes. Location information shall be provided within 30 days of request.
9. Notwithstanding any requirements of underground service alert, grantee shall pothole underground facilities at its expense upon request of the City or any authorized governmental body for engineering design purposes to ascertain the vertical and horizontal location of said facilities. Potholes shall be provided within 30 days of request. Requester shall be notified 48 hours in advance of the potholing operation, and when the underground facility is exposed for measurement. After requester obtains measurements, grantee shall fill, compact, and pave pothole to the satisfaction of the City.
10. Grantee shall perform all tasks of an "operator" under California Government Code Section 4216 (Underground Service Alert) and shall be a member of Underground Service Alert of Northern California and Nevada.
11. A grantee shall initially provide to the City an electronic map in AUTOCAD format of the grantee's cable system within the public right-of-way. This

electronic map shall be compatible with the City's system, shall be updated semiannually, and shall at all times be provided at no cost to the City.

D. **Relocation of Facilities.**

1. **For Governmental Bodies.** A grantee is required to remove, relay, and relocate its cable system at its expense whenever the City (on its own behalf or on behalf of an assessment district) or any authorized governmental body requires it to do so for reasons of traffic conditions; public health and safety, and protection of property; or because the City or authorized governmental body elects to change or alter the grade, align or widen a street, or sell or vacate any street or public property, to move any building or structure, or to construct, operate, or repair any water pipes, lines, or mains, sanitary and storm sewers, watercourses, drainage ditches, conduits, playgrounds, power lines, tracks, traffic control devices, or other public improvement, public utility, public structure or facility, which change, alteration, sale, vacation, movement, construction, operation, or repair will be aided by removal, relaying, or relocation of a grantee's cable system. An affected grantee shall be given written notice requesting the removal, relaying, or relocation of its cable system at least 15 days in advance of the date removal, relaying, or relocation of the cable system must be completed.
2. **For Other Authorized Entities.** If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another person which is authorized to use the streets or public properly, a grantee shall, after at least 15 days advanced written notice, take action to implement the necessary changes requested by the responsible entity. The City may resolve disputes as to responsibility for costs associated with removal, relaying, or relocation of facilities among entities authorized to install facilities in the streets or on public properly if such entities are unable to do so themselves.
3. **For Third Persons.** A grantee shall, upon the request of any person holding a building moving permit issued by the City, temporarily raise, lower, relay, relocate, or remove its wires, cables, and other facilities to accommodate the moving of the building, 'as the grantee shall determine. The expense of such temporary raising or lowering, relaying, relocation, or removal of a grantee's facilities shall be paid by the person requesting the same, and the grantee shall have the authority to establish the reasonable cost of such changes and require such payment in advance. A grantee shall temporarily move its cable system as required under this subsection if required payments are made and the grantee is given at least 48 hours advance written notice to arrange for such temporary changes.

E. **Failure to Remove, Replace, or Restore.** If a grantee fails to remove, relay or relocate its cable system as required or within the time period specified in subsection (d) of this section; or if a grantee fails to restore, repair, or replace streets or public properly as required and within the time period specified in subsection (c) of this section; the City may perform the work itself or

hire someone to perform the work, and the grantee shall compensate the City for all reasonable expenses it incurs. In the event a grantee fails to restore, replace, or repair private property as required and within the time period specified by subsection (c) of this section, the owner may perform the work itself or hire someone to perform the work, and the grantee shall compensate the owner for all reasonable expenses incurred. If a grantee fails to protect streets or public property as required by its franchise, the City may do so, and the grantee shall compensate the City for all reasonable expenses incurred thereby. The grantee shall pay expenses incurred by the City or properly owner within 10 days of receipt of an itemized account of such expenses.

F. **Removal or Relocation in Event of Emergency.** In event of emergency, or where a cable system creates or is contributing to an imminent danger to health, safety, or property, the City may remove, relocate, or relay that cable system without prior notice at grantee's expense.

G. **Authority to Trim Trees.** A grantee shall comply with the City tree ordinance if and when it trims trees and shrubbery upon and overhanging streets and other public property. If the City requests it, trimming shall be done under the supervision and direction of the City.

H. **No Guarantee of Accuracy of Maps.** The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing structures. In streets, where necessary, the location shall be verified by excavation by grantee at its expense.

I. **Licenses.** All contractors or subcontractors shall be properly licensed, and each contractor or subcontractor shall have the same obligations with respect to its work as a grantee would have under its franchise and applicable laws if the work were performed by the grantee. Each grantee shall be responsible for ensuring that the work of its contractors and subcontractors is performed consistent with the franchise and applicable law, shall be fully responsible for all acts or omissions of its contractors or subcontractors, and shall be responsible for promptly correcting acts or omissions by any of its contractors or subcontractors.

#### **5.28.030 PROTECTION OF CITY - LIABILITY INSURANCE.**

A. Unless otherwise provided in the franchise, the following will prevail:

B. **Public Liability and Property Damage Insurance.** A grantee shall, during the continuance of this chapter and at no expense to the City, maintain public liability and property damage insurance, including products liability and completed operations, and contractual liability coverage, in the amount of \$1,000,000 per occurrence on account of bodily or personal injuries, including death, or on account of property damage, arising from, or caused, directly or indirectly, by the performance under this chapter. This insurance shall be a per occurrence policy.

C. **Business Automobile Insurance.** A grantee shall during the continuance of this chapter and at no expense to the City, maintain business automobile insurance, in the amount of \$1,000,000 per occurrence on account of bodily or personal injuries, including death, or on account of property damage arising from or cause, directly or indirectly, by the performance under this chapter. This insurance shall be a per occurrence policy.

D. **Additional Insured.** Under the public liability, property damage and automobile liability insurance required in subsections (b) and (c) of this section, the City, its officers, agents and employees shall be named as additional insured by endorsement and as to such additional insured, the insurance herein required shall be primary and the policies shall contain by endorsement (signed by an authorized representative of the insurance provider) a cross liability clause .

E. **Workers' Compensation Insurance.** A grantee shall during the continuance of this chapter and at no expense to the City, maintain workers' compensation insurance, as required by law, for all grantee's officers and employees.

F. **Certificates of Insurance.**

1. The insurance required by subsections (b), (c) and (d) of this section shall be evidenced by certificate or certificates submitted to the City which shall be executed by the insurance company or companies involved and which shall state that the insurance evidenced thereby may not be terminated without 30 days' prior written notice thereof being received by the City. The certificate(s) shall be submitted to the City before or at the time a grantee executes a franchise agreement and shall be resubmitted annually to the City on the anniversary of the initial filing.
2. Grantee shall file certificates of insurance which shall certify the total limits of coverage in effect. If such limits are higher than the limits required by the City herein, the higher limits shall be certified and shall apply to the coverage afforded to the City

G. **Additional Insurance.** A grantee, in addition to all other insurance requirements herein, shall maintain insurance in the type and amount as may be required in any license, permit or agreement obtained in connection with the construction, operation, or repair of its cable system and which is necessary to complete any construction, operation, or repair (e.q., highway permit, railroad crossing agreement, corps of engineers permit), regardless of who secured the license, permit, or agreement.

#### **5.28.040 PROTECTION OF CITY - PERFORMANCE BOND.**

A. **Performance Bond.** Within 90 days of the effective date of any new franchise or at a time specified in a franchise, a grantee shall establish in the City's favor a performance bond in an amount not less than 10 percent of the estimated cost of constructing, upgrading, or rebuilding the cable system required by the franchise agreement.

B. **Recovery.** In the event a grantee subject to such a performance bond fails to complete the cable system construction, upgrade, or other work in the public rights-of-way in a safe, timely, and competent manner in accord with the provisions of a franchise agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss

suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee, or the cost of completing or repairing the cable system construction, upgrade, or other work in the public rights-of-way, plus a reasonable allowance for attorney's fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against the security fund where such amount exceeds that available under the security fund.

C. **Elimination of Bond.** Upon completion of the cable system construction, upgrade, or other work in the public rights-of-way and payment of all construction obligations of the cable system to the satisfaction of the City, the City shall eliminate the bond or reduce its amount after a time appropriate to determine whether the work performed was satisfactory, which time shall be established considering the nature of the work performed. The City may subsequently require a new bond or an increase in the bond amount for any subsequent construction, upgrade, or other work in the public rights-of-way.

D. **Bond Rating.** The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the City; and shall contain the following endorsement:

**This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.**

#### **5.28.050 PROTECTION OF CITY - SECURITY FUND.**

An applicant for a grant of a new cable franchise, franchise renewal, franchise modification, or franchise transfer shall, prior to the City's execution of the aforementioned, provide the City either a cash security deposit or an irrevocable letter of credit. The cash security deposit or irrevocable letter of credit shall be in an amount to be determined by the City Administrator, but not less than \$100,000 and shall be from a financial institution in a form satisfactory to the City Administrator. The amount of the deposit shall be based on the scope of the applicant's existing and proposed cable operations in the City, the applicant's technical and financial qualifications, and the applicant's history of compliance with its franchise agreements in the City and elsewhere. The security deposit or letter of credit shall be used to ensure the faithful performance of the franchise agreement; compliance with this chapter; applicable federal, state, and local law; all orders and permits; and the payment of any claims, liens, fees, or taxes due the City that arise by reason of the construction, operations, repair or maintenance of the cable system. The City may withdraw funds from the security deposit or make demand for payment upon the letter of credit for the monetary amount of any remedy imposed pursuant to this chapter or the franchise agreement.

#### **5.28.060 Indemnification.**

A. **General Indemnity.** A grantee shall agree to accept responsibility for loss or damage to any person or entity, and to defend with counsel of the City's choice, indemnify, hold harmless and release the City, its officers, and employees, from actions, claims, damages, disability or the

cost of litigation that are asserted by any person or entity to the extent arising out of the negligent acts or omissions or willful misconduct in the performance by the grantee under a franchise, whether or not there is concurrent negligence or willful misconduct of the City but excluding liability due to the sole active negligence or misconduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the grantee or its agents, under workers' compensation acts, disability benefits acts or other employees' benefits acts.

B. **City Property.** A grantee shall be liable to the City for any loss of or damage to City property arising from the grantee's actions, negligence, or willful misconduct.

#### **5.28.070 TERMINATION.**

A. **Removal of Cable System.** Upon revocation or cancellation of a grantee's franchise, or upon any other termination of a franchise by passage of time or otherwise, the City shall have the right to require the grantee to remove, at the grantee's expense, its cable system from streets, public property, and any private property occupied pursuant to the revoked, canceled, or terminated franchise. The City shall notify the grantee in writing that the cable system should be removed, and identify any period during which the grantee will be required to continue to operate the cable system as provided in the franchise. In removing its cable system, a grantee shall refill and compact, at its expense, any excavation that shall be made and shall leave all streets, public property, and private property in as good a condition as that prevailing prior to the grantee's removal of the cable system. The insurance, indemnity, and damage provisions of the grantee's franchise shall remain in full force and effect until the cable system is removed.

B. **City's Right to Purchase System.** Upon revocation or cancellation of a franchise, or upon any other termination of a franchise by passage of time or otherwise, the City shall have the alternative right to buy the grantee's cable system. If the franchise is terminated for cause, the City may purchase the cable system at an equitable price, within the meaning of the Cable Act; otherwise, the cable system may be purchased at fair market value, less the value of the franchise, within the meaning of the Cable Act. The grantee shall sell its cable system Subject to such warranties and terms as are appropriate under the circumstances.

C. **Transfer or Abandonment.** If the City does not purchase a grantee's cable system as provided in subsection (b) of this section, and the grantee has failed to commence removal of its cable system within 90 days after termination of the franchise, or such other date specified by the City under the franchise, or if the grantee has failed to complete such removal within six months after removal is required to have begun, the City may:

1. Declare all right, title, and interest to the grantee's cable system to be in the City or its designee with all right of ownership including, but not limited to, the right to operate the cable system or transfer the cable system to another for operation by it (upon such declaration by the City, the grantee shall be entitled to receive an equitable price from the City, within the meaning of the Cable Act, for the value of the cable system, less any costs and damages suffered by the City as a result of the delay in removal); or

2. Declare the cable system abandoned and cause the cable system, or such part thereof as the City shall designate, to be removed at no cost to the City.

### **SECTION 3.**

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases be declared, invalid or unconstitutional.

### **SECTION 4.**

The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

### **SECTION 5. SEVERABILITY.**

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

### **SECTION 6. EFFECTIVE DATE.**

Pursuant to Government Code Section 36937, this ordinance shall become effective immediately after its final passage. This ordinance, or a summary thereof, shall be published at least once within fifteen (15) days of its effective date in the Ripon Bulletin, the official newspaper of the City of Ripon.

The foregoing ordinance was introduced and the title thereof read at the regular meeting of the City Council of the City of Ripon held on the 25<sup>th</sup> day of January, 2016, and by majority vote of the Council members present, further reading was waived.

On a motion by Councilperson \_\_\_\_\_, seconded by Councilperson \_\_\_\_\_, the foregoing ordinance was duly passed and adopted by the City Council of the City of Ripon at a regular meeting thereof held on this \_\_\_\_ day of January, 2016, by the following vote, TO WIT:

- AYES:
- NOES:
- ABSENT:
- ABSTAINING:

THE CITY OF RIPON,  
A Municipal Corporation

By: \_\_\_\_\_  
JACOB PARKS, Mayor

ATTEST:

\_\_\_\_\_  
LISA ROOS, City Clerk