

ORDINANCE NUMBER: 1612-X

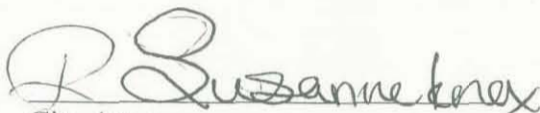
0-17

AN ORDINANCE TO AMEND ORDINANCE NUMBER 1552-X, THE 2000-2001 BUDGET
ORDINANCE, PROVIDING AN APPROPRIATION FOR THE 1999 LOCAL LAW
ENFORCEMENT BLOCK GRANT AND FOR POLICE ASSETS FORFEITURE FUNDS

BE IT ORDAINED, by the City Council of the City of Charlotte:

- Section 1. That the sum of \$1,966,414 is hereby estimated to be available from the following sources:
1999 Local Law Enforcement Block Grant - \$1,769,773
Assets Forfeiture Funds - \$196,641
- Section 2. That the sum of \$1,966,414 is hereby appropriated to the Police Department Grant Budget in fund 0413.
- Section 3. That the existence of this program may extend beyond the end of the fiscal year. Therefore, this ordinance will remain in effect for the duration of the program and funds are to be carried forward to subsequent fiscal years until all funds are expended.
- Section 4. It is the intent of this ordinance to be effective upon its adoption.

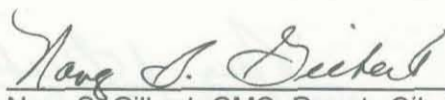
Approved as to form:


City Attorney

CERTIFICATION

I, Nancy S. Gilbert, Deputy City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 25th day of September, 2000, the reference having been made in Minute Book 115, and recorded in full in Ordinance Book 50, Page(s) 508.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 26th day of September, 2000.


Nancy S. Gilbert, CMC, Deputy City Clerk

ORDINANCE NUMBER: 1613-X

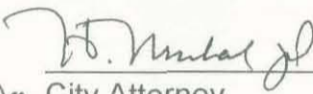
0-18

AN ORDINANCE TO AMEND ORDINANCE NUMBER 1552-X, THE 2000-2001 BUDGET ORDINANCE, PROVIDING A SUPPLEMENTAL APPROPRIATION FOR EXPANSION OF THE CATAWBA PUMP STATION.

BE IT ORDAINED, by the City Council of the City of Charlotte;

- Section 1. That the sum of \$640,000 is hereby estimated to be available from Prior General Obligation Water Bonds (2071;43710;4110).
- Section 2. That the sum of \$640,000 is hereby appropriated to the Water and Sewer Capital Project Fund 2071; 637.42 - Raw Water Pump Station Upgrades.
- Section 3. All ordinances in conflict with this ordinance are hereby repealed.
- Section 4. This ordinance shall be effective immediately.

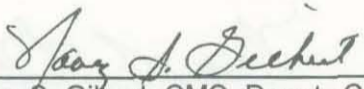
Approved as to Form:


Jr. Dep. City Attorney

CERTIFICATION

I, Nancy S. Gilbert, Deputy City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 25th day of September, 2000, the reference having been made in Minute Book 115, and recorded in full in Ordinance Book 50, Page(s) 509.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 26th day of September, 2000.


Nancy S. Gilbert, CMC, Deputy City Clerk

ORDINANCE NUMBER: 1614-X

0-19

AN ORDINANCE TO AMEND ORDINANCE NUMBER 1552-X, THE 2000-2001 BUDGET ORDINANCE, PROVIDING AN APPROPRIATION FOR A FEDERAL AVIATION ADMINISTRATION GRANT AND FOR TRANSFERRING DISCRETIONARY FUNDS

BE IT ORDAINED, by the City Council of the City of Charlotte:

Section 1. That the sum of \$5,657,159 is hereby estimated to be available from the following sources:

Federal Aviation Grant - \$5,045,175
Airport Discretionary Funds - \$611,984

Section 2. That the sum of \$5,657,159 is hereby appropriated to the Airports Capital Improvement Fund 2087 as follows

Grant
Center 52921 \$759,946
52922 \$1,076,006
52828 \$88,116
52829 \$3,121,107

Discretionary Funds

Center 52921 \$253,315
52922 \$358,669

Section 3. That the existence of this program may extend beyond the end of the fiscal year. Therefore, this ordinance will remain in effect for the duration of the program and funds are to be carried forward to subsequent fiscal years until all funds are expended.

Section 4. It is the intent of this ordinance to be effective upon its adoption.

Approved as to form:



City Attorney

CERTIFICATION

I, Nancy S. Gilbert, Deputy City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 25th day of September, 2000, the reference having been made in Minute Book 115, and recorded in full in Ordinance Book 50, Page(s) 510.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 26th day of September, 2000.



Nancy S. Gilbert, CMC, Deputy City Clerk

ORDINANCE NUMBER: 1615-X

0-20

AN ORDINANCE TO AMEND ORDINANCE NUMBER 1552-X, THE 2000-2001 BUDGET ORDINANCE, PROVIDING AN APPROPRIATION FOR SERIES 2000 SPECIAL FACILITY REVENUE BONDS

BE IT ORDAINED, by the City Council of the City of Charlotte:

Section 1. That the sum of \$31,543,901 is hereby estimated to be available Special Facility Revenue Bonds to purchase lease improvements from US Airways and then lease them back to US Airways.


Section 2. That the sum of \$31,543,901 is hereby appropriated to Airport Capital Improvement Fund 2086 as follows:

Center 52720	\$775,659
Center 52721	\$12,844,000
Center 52722	\$10,000,000
Center 52723	\$3,190,000
Center 52724	\$3,000,000
Center 52725	\$1,734,242

Section 3. That the existence of this program may extend beyond the end of the fiscal year. Therefore, this ordinance will remain in effect for the duration of the program and funds are to be carried forward to subsequent fiscal years until all funds are expended.

Section 4. It is the intent of this ordinance to be effective upon its adoption.


Approved as to form:


City Attorney

CERTIFICATION

I, Nancy S. Gilbert, Deputy City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 25th day of September, 2000, the reference having been made in Minute Book 115, and recorded in full in Ordinance Book 50, Page(s) 511.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 26th day of September, 2000.


Nancy S. Gilbert, CMC, Deputy City Clerk

ORDINANCE NUMBER: 1616-X

**ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO
CAROLINA BROADBAND, INC.**

Section 1. Pursuant to N.C. Gen. Stat. 160A-319, the City of Charlotte hereby grants Carolina BroadBand, Inc. a non-exclusive franchise to construct and operate a Cable Television system in accordance with the terms and conditions set forth in the attached Cable Television Franchise Agreement. The term of this franchise shall be fifteen (15) years, which term shall commence upon the adoption of this ordinance.

Section 2. This ordinance shall become effective upon acceptance and execution by Carolina BroadBand, Inc. of the Cable Television Franchise Agreement.

Approved as to Form:

Robert E. H.
S.A. Asst City Attorney

CERTIFICATION

I, Nancy S. Gilbert, Deputy City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 25th day of September, 2000, the reference having been made in Minute Book 115, and recorded in full in Ordinance Book 50, Page(s) 512-547.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 26th day of September, 2000.

Nancy S. Gilbert
Nancy S. Gilbert, CMC, Deputy City Clerk

ORDINANCE NO. 1018-1

ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO
CAROLINA BROADBAND, INC.

Section 1. Pursuant to Ordinance 1004-218, the City of Charlotte hereby grants Carolina Broadband, Inc. a non-exclusive franchise to construct and operate a Cable Television system in accordance with the terms and conditions set forth in the attached Cable Television Franchise Agreement. The term of this franchise shall be fifteen (15) years, which term shall commence upon the adoption of this ordinance.

Section 2. This ordinance shall become effective upon adoption and execution by Carolina Broadband, Inc. of the Franchise Agreement.

CITY OF CHARLOTTE
NORTH CAROLINA

Approved in a Public Hearing


Nancy S. Ghent, Mayor

CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN THE
CITY OF CHARLOTTE AND CAROLINA BROADBAND, INC.

I, Nancy S. Ghent, Mayor of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of September, 2000, the ordinance having been read in public at the City of Charlotte, North Carolina, on the 23rd day of September, 2000, and the same is set in Ordinance Book 50, Page 513-541.

September 2000

WITNESSED my hand and the corporate seal of the City of Charlotte, North Carolina, this 23rd day of September, 2000.


Nancy S. Ghent, Mayor

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to accept major institutional service is required in institutional markets and that the City Council has not found such to be in the public interest and other governmental purposes, and that the City Council has not found such to be in the public interest in this area.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CHARLOTTE AS FOLLOWS:

SECTION 1. DEFINITIONS.

All terms used in this Agreement that have the meanings ascribed to them by the Charlotte City Commission Regulatory Ordinance, specifically Section 5-27, entitled "Definitions," which section is incorporated herein by reference. Additionally, the following definitions shall apply to terms as used in this Agreement:

- A. "Acquired Person" shall be defined as a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person.
- B. "Administrator" shall be defined as that person designated by the City as the City's Cable Commission Administrator or otherwise assigned the duties and responsibilities of the administrator and enforcement of the Charlotte City Commission Regulatory Ordinance.
- C. "Applicant" or "service applicant" shall be defined as the franchisor's application submitted in response to the City's Request for Qualification.
- D. "Cable" shall mean Title VI of the Communications Act of 1934, as amended.

**STATE OF NORTH CAROLINA
CITY OF CHARLOTTE**

CABLE TELEVISION FRANCHISE AGREEMENT

THIS CABLE TELEVISION FRANCHISE AGREEMENT ("Agreement" or "Franchise Agreement") is made and entered into this ____ day of _____, 2000, by and between the City of Charlotte (hereinafter referred to as the "City") and Carolina Broadband, Inc. a Delaware corporation duly qualified to do business in the State of North Carolina, (hereinafter referred to as the "Franchisee").

WHEREAS, Article 16 of Chapter 160A of the North Carolina General Statutes empowers the City of Charlotte to grant upon reasonable terms a Franchise to contract for the operation of a cable television system to furnish services to the City and its citizens; and

WHEREAS, North Carolina General Statutes §160A-76 requires the City of Charlotte to grant any such Franchise by an ordinance adopted at two (2) regularly scheduled meetings of the City Council; and

WHEREAS, Section 6-55(b) of the Code of Charlotte, entitled "Charlotte Cable Communications Regulatory Ordinance," provides that in the event the City shall grant a Franchise, such Franchise shall be granted under the terms and conditions contained therein;

WHEREAS, the City has determined to award said nonexclusive Franchise subject to the provisions of the Cable Communications Regulatory Ordinance and to the execution by the City and Franchisee of this Franchise Agreement; and

WHEREAS, the City: is requiring the Franchisee to provide funds for facilities and equipment for the development of public, educational and government access; has considered the needs of the community for access and/or institutional network; is requiring an Institutional network for public safety applications and other governmental purposes; and that the City believes this will meet some of the future community needs in this area.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Charlotte as follows:

SECTION 1. DEFINITIONS

All terms used in this Agreement shall have the meanings attributed to them by the Charlotte Cable Communications Regulatory Ordinance, specifically Section 6-54, entitled "Definitions," which section is incorporated herein by reference. Additionally, the following definitions shall apply to terms as used in this Agreement:

- A. "**AFFILIATED PERSON**" shall be defined as a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person.
- B. "**ADMINISTRATOR**" shall be defined as that person designated by the City as the City's Cable Communications Administrator or otherwise assigned the duties and responsibilities of the administration and enforcement of the Charlotte Cable Communications Regulatory Ordinance.
- C. "**APPLICATION**" or "**INITIAL APPLICATION**" shall be defined as the Franchisee's application submitted in response to the City's Request for Qualifications.
- D. "**CABLE ACT**" shall mean Title VI of the Communications Act of 1934, as amended.

- E. "CABLE SERVICE" shall mean (1) the one-way transmission to subscribers of video programming or other programming service; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service
- F. "CITY" shall be defined as Charlotte, North Carolina.
- G. "EFFECTIVE DATE" shall be defined as the date on which this Agreement was executed by the City, which date first appears at the top of the first page of this Agreement.
- H. "EFFECTIVE COMPETITION." A cable system operator is subject to effective competition if more than fifty percent (50%) of the homes in the cable operator's franchise area have available to them service from another cable system operator.
- I. "FRANCHISE SERVICE AREA" shall be defined as the entire City of Charlotte.
- J. "INCUMBENT CABLE OPERATOR" means Time Warner Entertainment - Advance/Newhouse Partnership Company, or its successors in interest to the Franchises issued by the City to American Television and Communications Corporation on February 26, 1988, and subsequently transferred to Time Warner Entertainment - Advance/Newhouse Partnership Company and to Vision Cable of North Carolina, Inc. on May 5, 1982, reissued on June 28, 1991, and subsequently transferred to Time Warner Entertainment - Advance/Newhouse Partnership Company.
- K. "ORDINANCE" shall be defined as the Charlotte Cable Communications Regulatory Ordinance, *et. seq.* of the Code of Charlotte.
- L. "ELIGIBLE PUBLIC BUILDING" shall mean all buildings containing City or County offices, all police and fire stations and all public school buildings up through and including high schools which are located within a portion of the Franchise Service Area where Franchisee has extended its System pursuant to Subsection 8.1.3.
- M. "SUBSCRIBER" means any person, firm, corporation or other entity who elects to receive a Cable Service provided by the Franchisee from the operation of the System within any portion of the Franchise Service Area where the Franchisee has, pursuant to Section 8.1.3. below, constructed its System.
- N. "SYSTEM" means the cable television system of the Franchisee.

SECTION 2. GRANT OF FRANCHISE

2.1. GRANT.

Subject to the terms and conditions of the Ordinance of Charlotte and to the financial representations in the Carolina Broadband Response dated June 8, 2000 to the City of Charlotte Request for Qualifications #2000-410 which are incorporated herein fully by reference and made a part of this Agreement and further subject to the terms and conditions of this Agreement, Franchisee, is hereby granted, from and after the acceptance hereof, the right, privilege and Franchise to construct or cause to be constructed, to operate, and to maintain a cable television system within the franchise service area for the purpose of providing cable television service ("Cable Service") to the residents of Charlotte, and for that purpose, to erect, install, construct, repair, replace, reconstruct, and to maintain on, across, beneath, and along any street or road all cable and other equipment and facilities as may be necessary or appurtenant to the System. The fact that the System will be constructed so that it is technologically capable of providing telecommunications services shall not obligate Franchisee to obtain any separate franchise to use the public rights of way for telecommunications purposes prior to constructing the System. Notwithstanding the foregoing this grant does not authorize the provision of telecommunications services.

2.2. TERM.

The term of the Franchise shall commence upon the Effective Date, and shall expire fifteen (15) years from said date, unless sooner terminated as provided in the Ordinance, at which time it shall expire and be of no further force and effect.

2.3. NON-EXCLUSIVE FRANCHISE.

The Franchise herein granted shall be non-exclusive and Charlotte reserves the right to grant to any other person or entity, at any time, the right to use or occupy the streets or roads of the City for the construction and operation of any other cable television system within the City or for whatever purposes deemed appropriate by the City, provided that any grant of such rights to operate a cable television system shall be on substantially equivalent standards, terms and conditions.

2.4. NO WAIVER.

2.4.1. The failure of either party on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the other party, nor to excuse the other party from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.4.2. Waiver of a breach of this Agreement shall not be a waiver of any other breach, whether similar to or different from that waived. Neither the granting of the Franchise, nor any provision herein, nor any action by the City hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain.

2.5. NO RECOURSE.

The Franchisee shall have no recourse against the City for any loss, cost, expense, claim, liability or damage arising out of any action undertaken or not undertaken by the Franchisee pursuant to the Franchise, this Agreement or the Cable Ordinance, whether or not such action or non-action was required by the Franchise, the Agreement or the Ordinance, arising out of the enforcement or non-enforcement by the City of any provision or requirement of this Agreement or the Ordinance, or otherwise arising out of the Franchise, the Agreement or the Ordinance. The foregoing shall not bar Franchisee from seeking judicial enforcement of this Agreement.

2.6. FRANCHISE MODIFICATION.

The Franchisee may submit to the City applications for a modification to this Franchise pursuant to the Cable Act.

2.6.1. The City shall review the application within sixty (60) calendar days, or earliest meeting of the City Commissioners, whichever is later, and shall act on a request within one hundred and twenty (120) days.

2.7. FRANCHISE AGREEMENT SUBJECT TO EXERCISE OF POLICE POWERS.

All rights and privileges granted herein are subject to the police powers of the City and its rights to make laws and regulations, as further specified below in Section 2.8.

2.8. COMPLIANCE/CONFLICT WITH LAWS, ORDINANCES AND REGULATIONS.

2.8.1. The Franchisee shall comply with all federal, state and local laws, ordinances and regulations, as hereafter amended, including but not limited to those related to the use of public facilities, construction, maintenance and operation of cable television systems, and to land use.

2.8.2. Franchisee acknowledges that its rights hereunder are subject to the police powers of the City. Any conflict between the provisions of this Franchise Agreement and any present or future lawful exercise of the City's police powers shall be resolved in favor of the latter, except that a conflict between any such exercise that is not of general application throughout the jurisdiction, or that applies exclusively to Franchisee or to cable communications systems, shall be resolved in favor of this Franchise Agreement unless the City reasonably determines, and specifies in such exercise of the police power, that an emergency exists that constitutes a danger to health, safety, property or the general welfare and that such police power exercise is necessary to protect against such danger.

2.8.3. Notwithstanding Subsection 2.8.2, any conflict between Sections/Subsections 2.2, 2.10, 3, 8, 11, 13.1.1, 13.2 through 13.9, 14, 15, 16, 18, 19.1, 19.2, 19.3 or 19.5 of this Agreement and any of the laws, ordinances, and regulations of the City of Charlotte, including the Ordinance, shall be resolved in favor of this Agreement.

2.9. EFFECT OF ACCEPTANCE.

By accepting the Franchise and executing this Franchise Agreement, the Franchisee:

2.9.1. Accepts and agrees to comply with each provision of the Cable Ordinance and this Agreement, as may, subject to Section 2.8., hereafter be amended and all applicable federal, state, and local laws and regulations;

2.9.2. Acknowledges and accepts the City's legal right to grant the Franchise, to enter this Franchise Agreement, and, subject to Section 2.8., to enact and enforce ordinances and regulations related to the Franchise;

2.9.3. Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary, or allege in any claim or proceeding by the Franchisee against the City that any

provision, condition or term of this Ordinance or the Franchise Agreement at the time of the acceptance of the Franchise was unreasonable or arbitrary, or that at the time of the acceptance of the Franchise any such provision, condition or term was void or that the City had no power or authority to make or enforce any such provision, condition or term;

2.9.4. Agrees that it will not oppose intervention by the City in any proceeding affecting the Franchisee's System; and

2.9.5. Agrees to reimburse the City for all external costs incurred in: (1) the City's review and evaluation of Franchisee's proposals and qualifications and (2) negotiations involving this Agreement.

2.9.5.1. The City shall provide the Franchisee with an accounting of these expenses, such as consultant fees, and shall supply the Franchisee with invoices for said expenses.

2.9.5.2. Franchisee shall deliver payment to the City within thirty (30) days of receipt of said invoices. Such payments are in addition to the Franchise Fee.

2.9.5.3. Failure to make timely payment of said expenses, except for any expenses that are the subject of legitimate dispute, shall constitute a material violation of this Agreement.

2.10. INDEMNIFICATION.

Franchisee agrees to indemnify, defend and hold the City harmless from all claims against the City by third parties arising out of Franchisee's noncompliance with this Franchise Agreement or out of the construction, operations or other activities undertaken by Franchisee or its employees, agents and contractors. City shall notify Franchisee promptly after learning of the existence of any such claim or threatened claim, shall cooperate reasonably in the defense of such claim, and, provided that Franchisee has undertaken and is maintaining defense of such claim, shall not settle or compromise such claim without the prior written consent of Franchisee, which consent shall not be unreasonably withheld.

Franchisee waives any and all claims for damages or other relief which it may now or hereafter have against the City for interference with or damage to its facilities located within the City rights-of-way arising out of negligent act or omission, but excluding gross negligence and willful misconduct.

2.11. APPROVAL AND EFFECTIVE DATE.

This Franchise Agreement shall become effective upon its approval by the City of Charlotte City Council.

SECTION 3. TRANSFER OR RENEWAL OF FRANCHISE

3.1. The Franchise herein granted shall be subject to transfer and renewal pursuant to the provisions of the Ordinance and applicable state and federal laws provided however, that no change, transfer or acquisition of control, as defined in the Ordinance shall be permitted until such time as the system has been completed in accordance with the build-out provisions contained in Section 8 of this Agreement and such completion has been accepted by the City, and provided further that Franchisee shall not sell, transfer or assign its interest in the Franchise or the System to the Incumbent Cable Operator, until such time as the System has been completed in accordance with the build-out provisions contained in Section 8 of this Agreement. It is agreed that, in the event that a Franchisee or holder of an equity interest in the Franchisee sells one or more such interests to the same transferee that in the aggregate total not more than a fifteen percent (15%) equity interest in Franchisee, the rebuttable presumption specified in Section 6-58(b) of the Ordinance shall automatically be deemed rebutted if (a) following such sale at least fifty-one percent (51%) of the equity interests in Franchisee are held by individuals or entities that owned equity interests in Franchisee on the Effective Date and (b) actual control of Franchisee does not pass to any one or more of said equity interest purchasers. It is further agreed that, with not less than thirty (30) days notice to the City, but without any requirement for consent from the City: (a) Franchisee may assign this Agreement to a wholly owned subsidiary, provided that such assignment shall not release Franchisee from any liability hereunder and that such assignee shall, in a written assumption in form reasonably acceptable to the City, assume all obligations of Franchisee under this Agreement, and (b) the owners of all of the equity interests in Franchisee may transfer those interests to a newly created parent entity in which those owners hold materially the same ownership shares as they held in Franchisee immediately prior to such transfer.

SECTION 4. TERMINATION OF FRANCHISE

4.1. The Franchise granted herein shall be revoked or terminated only as authorized by the Ordinance, and upon written notice, given one hundred twenty (120) days in advance, delivered to either party by the other.

SECTION 5. REGULATION OF FEES AND CHARGES

5.1. Subject to Franchisee's rights under applicable local, state, and federal law including the Cable Act to be free of such regulation, the City reserves the right to regulate the rates, fees, charges, deposits and associated terms and conditions for any service provided pursuant to this Agreement to the fullest extent permitted by applicable law, and the City may establish rules and regulations in connection therewith from time to time. In connection with such regulation, the City shall comply with FCC rules.

SECTION 6. SERVICE, EXTENSION AND CONTINUITY

6.1. **AREA SERVED.**
The Franchisee shall provide cable service to all Subscribers located in the Franchise Service Area.

6.2. CONTINUITY OF SERVICE.

6.2.1. It is the right of all Subscribers in the portions of the Franchise Service Area then serviced by Franchisee's System to receive all available services from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied. The foregoing sentence shall not be deemed to prohibit Franchisee from adopting credit standards and performing credit checks on prospective customers, or from refusing service to applicants whose credit falls below the minimum standard, or from requiring deposits from applicants whose credit fails to meet a specified standard, provided that the foregoing standards and actions shall not be applied on the basis of race, national origin, religion or any other category that discriminates in violation of Section 6-86(a) of the Ordinance.

6.2.2. The Franchisee shall ensure that all Subscribers receive continuous uninterrupted service.

6.2.2.1. At the City's request, the Franchisee shall operate its System for a temporary period (the "Transition Period") following the termination, sale, or Transfer of its Franchise as necessary to maintain service to Subscribers, and shall cooperate with the City to assure an orderly transition from it to another Franchisee.

6.2.2.2. The Transition Period shall be no longer than the reasonable period required to ensure that Cable Service will be available to Subscribers, and shall not be longer than thirty-six (36) months, unless extended by the City for good cause.

6.2.2.3. During the Transition Period, the Franchisee will continue to be obligated to comply with the terms and conditions of this Agreement and applicable laws and regulations.

6.2.3. If the Franchisee abandons its System during the Franchise term, or fails to operate its System in accordance with the terms of this Agreement during any Transition Period, the City, at its option, may operate the System, designate another entity to operate the System temporarily until the Franchisee restores service under conditions acceptable to the City or until the Franchise is revoked and a new Franchisee selected by the City is providing service, or obtain an injunction requiring the Franchisee to continue operations.

6.2.3.1. If the City is required to operate or designate another entity to operate the System, the Franchisee shall reimburse the City or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the System.

6.2.4. The City shall be entitled to injunctive relief under the preceding paragraph if:

6.2.4.1. The Franchisee fails to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Service Area for ninety-six (96) consecutive hours, unless the City authorizes a longer interruption of service or the failure is due to force majeure as characterized in Section 23 herein; or

6.2.4.2. The Franchisee, for any period, willfully and without cause refuses to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Service Area in which Franchisee is then obligated pursuant to Subsection 8.1.3. to have extended its System.

SECTION 7. DISCRIMINATION PROHIBITED

- 7.1. To the extent required by federal law and FCC regulations, the Franchisee or any Affiliated Persons shall not discriminate or permit discrimination between or among any persons in the availability of Cable Services in the Franchise Service Area.
- 7.2. Further, the Franchisee and each Affiliated Person shall ensure that construction of the System as defined in Section 8.1.3. and access to any service is not denied to any group of potential Subscribers in the Franchise Service Area because of the income of the residents of the area in which the group resides.

SECTION 8. SYSTEM AND CAPACITY

8.1. SYSTEM

8.1.1. Initial System Specifications. The System that is to be constructed initially by the Franchisee shall be of a hybrid fiber optic/coaxial cable design that is capable of transmitting video programming, voice telephony and internet and other data services. The System shall have a minimum of 750 MHz capacity and shall have adequate two-way capability to support the foregoing types of services.

8.1.2. The Franchisee shall not discriminate against PEG Access Channels by using equipment or cable inferior in quality to that used for commercial channels on the same tier.

8.1.3. System Development.

8.1.3.1. Franchisee shall complete construction of the System within the Franchise Service Area in compliance with the terms of this Section 8.1.3., which the City and Franchisee have negotiated in the good faith belief that the number of dwelling units ("homes") to be passed thereby will be equivalent to those passed if Franchisee were to construct its System to serve homes that lie within contiguous route miles having a density of at least eighty (80) homes per cable mile. Within forty-eight (48) months after the Effective Date, Franchisee shall cause the System to be functional throughout sufficient portions of the Franchise Service Area that the System passes at least seventy percent (70%) (the "Construction Percentage") of the homes in the Franchise Service Area. The City and Franchisee agree that, as may be adjusted pursuant to subsection 8.1.3.3, for purposes of applying this Section 8.1.3. throughout the Franchise term, the number of homes in the Franchise Service Area shall be 242,221. If Franchisee seeks but can not obtain property owner permission under commercially reasonable terms to provide service to a multiple dwelling unit ("MDU"), that MDU shall be deemed to be passed by the System.

8.1.3.2. Franchisee has committed to the City that Franchisee will further extend the reach of the System if Franchisee achieves specified levels of success in the areas served by the System. For purposes of this subsection, "Market Penetration" shall be defined as a fraction: the numerator of which is the number of Franchisee's paying Cable Service Subscribers with non-delinquent accounts ("Current Subscribers"); and the denominator of which is the product of the Construction Percentage (as adjusted pursuant to this subsection 8.1.3.2 and subsection 8.1.3.4) multiplied by the number of homes in the Franchise Service Area (as specified in subsection 8.1.3.1, as may be adjusted pursuant to subsection 8.1.3.3).

If, at any time after completion of initial construction of the System, Franchisee achieves a Market Penetration for Cable Service of at least thirty-five percent (35%) throughout two consecutive calendar quarters, the then prevailing Construction Percentage shall be increased by three percentage points, and Franchisee shall within a reasonable time pass the adjusted Construction Percentage of homes in the Franchise Service Area, including any extensions as may be needed. [An illustrative example is as follows: If the number of homes in the Franchise Service Area is 242,221, and if the Construction Percentage is 70%, Franchisee's initial construction requirement would be to build the System to pass 169,555 homes (242,221 x .7). Franchisee would achieve the specified Market Penetration of 35% by having at least 59,344 Current Subscribers throughout two consecutive calendar quarters:

$$\begin{aligned} .35 &= \frac{X}{.7 \times 242,221} \\ X &= .35(.7 \times 242,221) \\ X &= 59,344 \end{aligned}$$

Upon such achievement of said Market Penetration, the Construction Percentage would be increased to 73% and the Franchisee would be required to pass at least 176,821 homes (242,221 x .73).]

If at any time thereafter, Franchisee achieves a Market Penetration for Cable Service of at least forty percent (40%) throughout two consecutive calendar quarters, the then prevailing Construction Percentage shall be increased by three percentage points, and Franchisee shall within a reasonable time pass the adjusted Construction Percentage of homes in the Franchise Service Area, including any extensions as may be needed.

If at any time thereafter, Franchisee achieves a Market Penetration for Cable Service of at least forty-five percent (45%) throughout two consecutive calendar quarters, the then prevailing Construction Percentage shall be increased by four percentage points, and Franchisee shall within a reasonable time pass the adjusted Construction Percentage of homes in the Franchise Service Area, including any extensions as may be needed.

If at any time thereafter, Franchisee achieves a Market Penetration for Cable Service of at least fifty percent (50%) throughout two consecutive calendar quarters, the then prevailing Construction Percentage shall be increased by five percentage points, and Franchisee shall within a reasonable time pass the adjusted Construction Percentage of homes in the Franchise Service Area, including any extensions as may be needed.

If at any time thereafter, Franchisee achieves a Market Penetration for Cable Service of at least fifty-five percent (55%) throughout two consecutive calendar quarters, the then prevailing Construction Percentage shall be increased by five percentage points, and Franchisee shall within a reasonable time pass the adjusted Construction Percentage of homes in the Franchise Service Area, including any extensions as may be needed.

If at any time thereafter, Franchisee achieves a Market Penetration for Cable Service of at least seventy-five percent (75%) throughout two

consecutive calendar quarters, within a reasonable time the System, including any extensions as may be needed, shall pass all homes located in contiguous areas of the Franchise Service Area having a density of at least thirty (30) homes per cable mile. "Homes per cable mile" is defined as a value determined by dividing (a) the number of incremental consecutive homes along a street that can be serviced by a standard one hundred fifty (150) foot RG-6 drop cable by (b) the total linear, unduplicated feet of new coaxial feeder cable that must be placed in the right of way to pass those homes, divided by 5,280. Homes in an MDU are only included in this calculation when Franchisee can obtain access to them on commercially reasonable terms.

8.1.3.3. Promptly after the Effective Date, Franchisee shall commence, and thereafter diligently pursue to completion, the strand mapping of the entire Franchise Service Area. If the number of homes charted on the strand maps is less than 242,221, Franchisee may demonstrate to the City that the number of homes in 8.1.3.1 should be adjusted, which request shall not be unreasonably denied by the City. Upon approval by the City, the number of homes in the Franchise Service Area specified above in subsection 8.1.3.1 shall be so adjusted.

8.1.3.4. Franchisee shall prepare plans and specifications for construction of its System throughout such areas within the Franchise Service Area that will cause the System to satisfy the Construction Percentage. If, in the course of the development of the System, Franchisee encounters excessive make ready, pole or conduit costs, Force Majeure Events (as defined below), or delays in the performance of utility or Incumbent Cable Operator make ready work, or is unable to obtain materials, labor or required legal rights or permits, that render it impossible or economically impractical to construct the System within an area to which Franchisee had planned to extend the System, the number of homes in that area shall be subtracted from the number of homes that must be passed by the System, and the Construction Percentage shall be reduced accordingly. Notwithstanding the foregoing, the Construction Percentage shall never be less than sixty percent (60%).

8.1.3.5. Completion of construction of the System to pass the Construction Percentage (as specified in subsection 8.1.3.1 and as may be modified pursuant to subsection 8.1.3.4) of homes in the Franchise Service Area (as specified in subsection 8.1.3.1 and as may be modified pursuant to subsection 8.1.3.3), shall constitute completion of construction of the System for purposes of release of the Construction Bond specified below in Section 11.1 and for purposes of applying the restriction against transfer specified above in Section 3.1, and shall constitute initial construction of the System for purposes of Subsection 8.1.3.2.

8.1.3.6. In the event that Franchisee buys or otherwise acquires the system of the Incumbent Cable Operator, Franchisee shall not decrease the geographic coverage then being provided by the Incumbent Cable Operator in the Franchise Service Area.

8.1.3.7. In the event that Franchisee is delayed in the construction of the System or any extension thereto by a Force Majeure Event or by any other cause

beyond the reasonable control of Franchisee, including but not limited to delays in the performance of utility or Incumbent Cable Operator make ready work, or the inability to obtain materials, labor or required legal rights or permits, or litigation or other action or inaction by the Incumbent Cable Operator or other third party, then the deadline for completion of construction may, upon the approval of the City, be postponed by the period of the delay so caused. The Franchisee must request City approval for the postponement in writing, describing fully the grounds on which it seeks such postponement. The City shall not unreasonably withhold its approval. Franchisee shall use commercially reasonable efforts to mitigate any such delay and shall from time to time communicate with the City regarding the existence and extent of any such delay and any steps being taken to mitigate the delay.

8.2. EMERGENCY ALERT.

8.2.1. The Franchisee shall provide an all-channel audio-only emergency alert system for use by the City. Emergency messages shall be able to be initiated by any designated City official from any touch-tone phone with an access code.

8.2.1.1. The Franchisee agrees to upgrade the emergency alert system throughout the term of the franchise in accord with FCC requirements.

8.2.1.2. The Franchisee shall periodically test the emergency alert system as the City may reasonably require.

8.2.1.3. The Franchisee shall periodically test the emergency alert system as required by Federal law.

8.3. STANDBY POWER

8.3.1. The Franchisee shall maintain equipment capable of providing standby power for a minimum of four (4) hours for the headend and two (2) hours for transportation and at all fiber optic nodes.

8.4. UNDERGROUND DROPS

8.4.1. When constructing the System in an area in which the existing telephone, cable television and electricity lines are underground (an "Underground Area"), Franchisee shall at its expense install the lines of its System underground. The foregoing shall not be construed to prohibit Franchisee from charging its normal installation fee in such areas.

8.4.2. When constructing the System outside of an Underground Area, Franchisee may at its option install the lines of its System completely or partially above ground or underground.

8.4.3. If a Subscriber whose premises is located in an area where Franchisee is installing its lines above ground requests that the drop to such premises be installed underground, Franchisee shall do so if the Subscriber agrees to pay the actual additional costs incurred to do so. Such cost will be calculated on a time and material charge basis, which may include appropriate allocations for the time and overhead of Franchisee's employees as well as out of pocket expenditures. Franchisee shall provide an estimate of such costs to the Subscriber and may require that the Subscriber pay a reasonable deposit prior to commencement of the work.

8.4.4. Drops served underground shall be buried within one (1) month or less of providing service to a Subscriber, weather permitting, or later at customer request.

8.4.5. Temporary drops will be buried within one (1) month of installation weather permitting, or later at customer request, providing they do not cross driveways or sidewalks creating a safety hazard to the property owner.

8.5. INTERCONNECTION

Franchisee shall at its expense cause its System to be interconnected with the source of the content to be carried on the Access Channels. Franchisee may satisfy this obligation by interconnecting its System with the cable-television system of the incumbent provider to obtain the Access Channel content. If requested the City shall provide reasonable assistance to Franchisee in obtaining the cooperation of the incumbent provider to effect such interconnection. Should the City wish to move one or more of the identified Access Channel programming locations, the City shall provide Franchisee reasonable notice of such intention and shall confer in good faith with Franchisee to discuss the details and options involved in such an action. Franchisee shall not be obligated to extend its facilities to such new location or accept programming there if doing so would be economically infeasible or materially inconsistent with Franchisee's network design or operations.

8.6. STATE-OF-THE-ART.

Unless the Franchisee is subject to Effective Competition as defined herein:

8.6.1. The Franchisee shall add digital technology, new services, associated equipment, and facilities to the System within one (1) year of when they are provided in any other similar-sized market owned by the Franchisee or parent company, or are provided in the Charlotte metropolitan area and/or provided on systems owned by other operators in the City, excluding experimental and pilot projects.

8.6.2. Franchisee will deploy advanced technology which enables Franchisee to add new services, not including particular programming services, as they are developed and which are considered the current state-of-the-art, defined as that level of technical performance and technical capability which has been implemented in a majority of the cable television systems of similar size in the State of North Carolina. Provided, however, that any improvement needed to met such level can be instituted through technology which has been demonstrated to be feasible for its intended purpose, in an operationally workable manner, and economically viable manner.

8.7. PARENTAL CONTROL DEVICES

Franchisee shall, upon a Subscriber's written request, provide to each Subscriber, one of the following devices by which the Subscriber can block completely the video and audio signals of a particular Cable Service consistent with the requirements of federal law during periods selected by that Subscriber:

8.7.1. a parental control device; or

8.7.2. a converter with a parental control feature, or within a reasonable time after the request, a filter, trap, or other method or device.

SECTION 9. CONSTRUCTION STAFFING

9.1. SUPERVISORY STAFF

During the Franchise term, the Franchisee shall have sufficient full-time supervisors on staff solely to supervise construction plans for initial, upgrade and rebuild construction, and the construction practices of subcontractors.

9.1.1. As a minimum standard, Franchisee shall provide at least one (1) full-time supervisor on staff for each four (4) crews engaged in construction within the City.

9.2. SUFFICIENT CREWS

The Franchisee shall have sufficient crews and supervisors to construct the system according to the construction reports submitted to the Administrator.

9.2.1. If the Franchisee does not meet its construction schedules, the Franchisee shall place a sufficient number of crews and supervisors on construction within Charlotte, or undertake such other remedial action appropriate for the situation, to satisfy the City's Cable Administrator that construction will proceed at a pace necessary to meet the construction schedules.

9.3. ENGINEERING STAFF

A qualified, registered professional engineer or an engineer with substantially equivalent training and experience shall be available for on-site review and oversight of the City system from the Franchisee's regional office.

SECTION 10. GENERAL REQUIREMENTS FOR WORK ON THE SYSTEM

10.1. ORDINANCE PREVAILS.

Subject to Section 2.8., the Franchisee shall comply with the terms set forth in the Ordinance in connection with all work involved in the construction, operation, maintenance, repair, upgrade, and removal of the System, in addition to any other requirements or procedures reasonably specified by the City.

10.2. SAFE ENVIRONMENT.

All work involved in the construction, operation, maintenance, repair, upgrade, and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality.

10.2.1. In the event that Franchisee refuses or neglects to protect, alter, or relocate all or part of the System, the City shall have the right to break through, remove, alter, or relocate all or any part of the System without any liability to the Franchisee and the Franchisee shall pay the City the costs incurred in connection with such breaking through, removal, alteration, or relocation.

10.3. REPAIR AND RESTORATION.

Franchisee agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition, in a mutually agreed upon manner, any street or any public structure involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Franchisee.

10.4. EMERGENCY SITUATIONS.

The City may, at any time, in case of fire, disaster, or other emergency, as determined by the City, in its sole discretion, cut or move any of the wires, cables, amplifiers, appliances or other parts of the system, in which event the City shall not incur any liability to the Franchisee.

10.4.1. Except in emergency situations, the Franchisee shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself.

- 10.4.2. All costs to repair or replace such wires, cables, amplifiers, appliances or other parts of the system shall be borne by the Franchisee.
- 10.5. CONSTRUCTION MANUAL.
Franchisee shall construct and extend the system in accordance with Franchisee's construction manual. Within twenty-four (24) hours after notice from the Administrator, a current copy of the manual shall be made available for inspection by the City during normal business hours.
- 10.6. EMPLOYEE IDENTIFICATION.
Franchisee shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public.
 - 10.6.1. Such documents shall include a telephone number that can be used to verify identification.
 - 10.6.2. In addition, Franchisee shall clearly identify all field personnel, vehicles, and other major equipment that are operating under the authority of Franchisee.
- 10.7. TREE TRIMMING.
Franchisee shall comply with local tree trimming ordinances, regulations, and rules.

SECTION 11. CONSTRUCTION BOND, INSURANCE AND LETTER OF CREDIT

- 11.1. CONSTRUCTION BOND REQUIRED.
The Franchisee shall furnish to the City a Construction Bond in the amount of three million dollars (\$3,000,000.) to guarantee the faithful performance by the Franchisee of its obligations under this Agreement.
 - 11.1.1. Upon completion of the initial phase of construction of the System as per the requirements of this Franchise Agreement and acceptance by the City, the City shall release this Construction Bond.
- 11.2. INSURANCE REQUIRED.
The franchisee shall obtain liability insurance that meets the requirements of Section 6-72 of the City's Ordinance.
- 11.3. LETTER OF CREDIT REQUIRED.
 - 11.3.1. Franchisee shall provide a Letter of Credit throughout the term of this Agreement in the amount of one hundred thousand dollars (\$100,000.00).
 - 11.3.2. The Letter of Credit shall be irrevocable, drawn on a local bank and shall be in a form and contain the terms of drawing prescribed and approved by the City Attorney's Office. The City may draw upon the Letter of Credit to obtain payment of sums due from Franchisee to the City under this Agreement, which sums were not timely paid and which remain unpaid at least ten (10) days after written notice to Franchisee.
 - 11.3.3. At all times during the term of this Agreement, Franchisee shall replenish the Letter of Credit to its full amount within thirty (30) days of receiving notice that some or all of the Letter of Credit has been drawn by the City.

SECTION 12. PROGRAMMING LINE-UPS, MIX, LEVEL, QUALITY AND QUANTITY

12.1. VARIETY.

The Franchisee shall offer to all Subscribers a variety of video programming and shall use its best efforts to ensure this variety of programming throughout the franchise term. The Franchisee shall provide to the City a list of programming at least thirty (30) days prior to the provision of Cable Services to Subscribers.

12.2. MIX, LEVEL, QUALITY.

Should the Franchisee decide to change the selection of programs or services offered on any of its tiers, it shall maintain the mix, quality and level of services provided based on availability and financial impact.

12.3. CITY/SUBSCRIBER INFORMED.

Franchisee shall, at all times, keep the City and City Subscribers informed of its programming lineups.

12.3.1. The City shall have the opportunity to review and comment on any information provided prior to any changes being implemented, except when circumstances beyond the Franchisee's control do not allow.

12.3.2. Any proposed changes in the programming lineup by the Franchisee shall be reported to the City at least thirty (30) days prior to the proposed implementation where Franchisee has been provided at least thirty (30) days notice.

12.4. CLOSED CAPTION SIGNALS

Franchisee shall pass through all closed-captioning signals received by the system for the hearing impaired to the extent required by FCC rules and regulations.

SECTION 13. FRANCHISE FEE

13.1. FEE AMOUNT.

Franchisee shall pay to the City an annual Franchise Fee, payable quarterly, in the amount of five percent (5%) of gross revenues, as determined in accordance with generally accepted accounting principles, derived from the operation of the System to provide Cable Services.

13.1.1. Gross revenues shall not include: deposits held by Franchisee that are subject to being refunded; bad debts or other uncollectable revenues (except to the extent subsequently collected); and taxes or fees other than franchise fees collected by Franchisee and remitted to a taxing or other authority. To the extent that gross revenues for Cable Services are included within a fixed price for which the Subscriber also receives services that are not Cable Services (i.e. the Cable Services and non-Cable Services are "bundled"), Franchisee shall appropriately allocate a portion of such revenues for inclusion in gross revenues that are subject to the foregoing fee. If the fixed price of the bundled services is lower than the aggregate of the prices of those services if purchased individually, then the amount of the revenue to be allocated to each service shall be proportional to the individual price of that service compared to the aggregate of the individual prices of those services when unbundled.

13.2. ANNEXATIONS MONIES.

Franchisee shall ensure that any additional monies due to the City as a result of City Council-approved annexations are incorporated into Franchise Fee payments in the first quarter such annexations take effect. Franchisee shall be responsible for contacting the City Planning Department to secure copies of official annexation maps.

13.3. FRANCHISE FEE REPORT.

Franchisee shall submit to the City a quarterly Franchise Fee Report, in a mutually agreed upon format, not later than thirty (30) days after the last day of each March, June, September, and December throughout the term of this Agreement.

13.4. ANNUAL FINANCIAL STATEMENTS.

On or before April 30th the Franchisee agrees to provide to the City independently audited annual financial statements for Franchisee as may be prepared for other purposes, and an independently certified detail of the gross revenues associated with the System serving the City. If the annual Franchise Fee Report indicates that the amount of the Franchise Fee paid for the preceding calendar year in accordance with the quarterly Franchise Fee Reports is less than the amount indicated on the annual Franchise Fee Report, Franchisee shall pay to the City the difference at the time Franchisee delivers the annual Franchise Fee Report. If the annual Franchise Fee Report indicates that the amount of the Franchise Fee paid for the preceding calendar year in accordance with the quarterly Franchise Fee Reports is more than the amount indicated on the annual Franchise Fee Report, Franchisee shall apply such overpayment as a credit against its next quarterly payment or, after the end of the term, the City shall promptly refund such amount.

13.5. PAYMENT AUDITS.

No acceptance of any Franchise Fee payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the City may have for further or additional sums payable under this Agreement, and all amounts paid shall be subject to audit as specified in the Ordinance. Franchisee shall make relevant books and records available to the City as further provided below in Section 19.

13.6. UNDERPAYMENT REMEDY.

If, as a result of such audit or other review, the City determines that the Franchisee has underpaid its fees in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants, and other consultants.

13.7. PAYMENTS NOT TAXES.

The parties agree that the compensation and other payments to be made pursuant to this Section of this Agreement, and any other provisions of this Agreement, are not a tax and are not in the nature of a tax and are in addition to any and all taxes of general applicability which the Franchisee shall be required to pay to the City.

13.8. INTEREST ON LATE PAYMENTS.

If any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement or by the City, the Franchisee shall pay interest thereon, from the due date to the date said payment is actually received by the City at a rate of one percent (1%) per month, compounded daily, for the period of delinquency.

13.9. CONTINUING OBLIGATION.

In the event the Franchisee continues to operate all or any part of the System as a cable system providing Cable Service after the term of this Agreement, then the Franchisee shall continue to comply with all applicable provisions of this Agreement, including without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal of or other extension of this Agreement or the Franchise.

SECTION 14. CONSUMER SERVICE REQUIREMENTS

Franchisee agrees to the following consumer service requirements and any other requirements established by federal or state governmental authorities, whichever are more stringent, within one year of the effective date of this Agreement or upon activation of service to one thousand Subscribers, whichever occurs first:

14.1. COMPLAINT RESPONSE.

The Franchisee shall respond to consumer complaints within seven (7) working days.

14.2. COMPLAINT RESOLUTION.

The Franchisee shall resolve all complaints within fifteen (15) days, and shall notify the City of those not resolved within fifteen (15) days.

14.3. SUBSCRIBER SERVICES/RATES INFORMATION.

The Franchisee shall provide all prospective Subscribers with complete, clear and concise information concerning all services and rates provided by the Franchisee. Such information shall include but not be limited to the following:

- 14.3.1. all services and rates;
- 14.3.2. deposits, if applicable;
- 14.3.3. installation costs;
- 14.3.4. additional set charges;
- 14.3.5. service upgrade and downgrade charges; and
- 14.3.6. stolen or lost converter charges.

14.4. SUBSCRIBER INSTALLATION INFORMATION.

Subscriber information shall be provided to each Subscriber upon installation and annually thereafter. This information should include but not be limited to the following:

- 14.4.1. on the connection of Subscriber's equipment;
- 14.4.2. regarding complaint, billing, and collection procedures;
- 14.4.3. methods of ordering changes, termination of services, refund policies;
- 14.4.4. the telephone number/address of appropriate City department to whom problems with complaint procedures can be addressed;
- 14.4.5. installation and service maintenance policies;
- 14.4.6. instructions on how to use the cable service;
- 14.4.7. channel positions of programming carried on the system;
- 14.4.8. concerning parental lock-out devices;
- 14.4.9. about use of the Franchisee's converters;
- 14.4.10. about adjusting the television set;
- 14.4.11. explaining the bill;
- 14.4.12. describing community programming;
- 14.4.13. regarding office hours and customer-related telephone numbers; and
- 14.4.14. regarding addresses for the Franchisee's offices.

- 14.5. OFFICE HOURS.
The Franchisee's office shall be opened weekdays from 9:00 AM to 6:00 PM and on Saturdays from 9:00 AM to 1:00 PM.
- 14.6. REPAIR CALL RESPONSE.
The Franchisee shall respond to repair calls, either by telephone contact with the Subscriber for an appointment, by a visit to the premises, or by a doorknob hanger if no one is at home, within 24 hours.
- 14.6.1. The Franchisee shall always notify the Subscriber if repair personnel will arrive during "AM" (8:00 a.m. to 12:00 Noon), "PM" (12 Noon to 5:00 p.m.), or "EVENING" (after 5:00 p.m.) hours.
- 14.7. ROUTINE MAINTENANCE NOTICE.
The Franchisee shall notify Subscribers of routine maintenance activities through methods such as notes in the monthly guide, bill inserts, and video or electronic messages.
- 14.7.1. Whenever possible, routine maintenance should be done by the Franchisee in the early morning so that the Subscribers are inconvenienced the least amount possible.
- 14.8. RESPONSE TIME.
Excluding conditions beyond the control of the Franchisee, the Franchisee will begin working on the loss of picture or sound on one or more channels promptly and in no event later than 24 hours after the interruption becomes known.
- 14.8.1. The Franchisee must begin actions to correct other service problems the next business day after notification of the service problem.
- 14.9. NEW INSTALLATION REQUESTS.
The Franchisee shall install Cable Service to new Subscribers and perform service changes to existing Subscribers within seven (7) business days of initial requests.
- 14.10. APPOINTMENTS.
Appointment window alternatives for installations, service calls and other installation activities will be either for a specific time or no more than a four (4) hour block of time during the business day.
- 14.10.1. Appointments cannot be canceled after the close of business the day before an appointment is scheduled.
- 14.10.2. Customers must be contacted and offered another time at their convenience if the company representative is running late and cannot keep the scheduled appointment.
- 14.10.3. The above standards must be met no less than ninety-five percent (95%) of the time, as measured on a quarterly basis.
- 14.11. TELEPHONE RESPONSE.
For consumer telephone calls, the Franchisee should answer eighty-five (85) percent of all calls handled (i.e. all calls which held more than thirty (30) seconds) within two (2) minutes.
- 14.11.1. No more than fifteen (15) percent of the total calls received and held for over thirty (30) seconds should be lost.
- 14.11.2. Busy signals cannot be received more than three percent (3%) of the time, under normal operating conditions.
- 14.11.3. The Franchisee shall provide information to the City annually or upon special request by the City, upon reasonable notice, regarding the number of active telephone lines, the time period in which telephone calls are answered, and the percent of calls lost.
- 14.11.4. Upon City's request, such back-up information as deemed necessary by the City which can be provided by the Franchisee's telephone management information system should be provided by the Franchisee, but no more than once quarterly.

14.12. CONSUMER EDUCATION.

The Franchisee shall provide ongoing consumer education programs regarding billing, which shall include at a minimum annual Subscriber notification of the billing process and cycles and thirty (30) days prior notification of changes to this process or the cycles.

14.13. CONSUMER RESEARCH.

The Franchisee, on an ongoing basis, shall research customer needs.

14.14. PERFORMANCE REVIEW INFORMATION.

The Franchisee shall provide information deemed necessary to the City for triennial performance reviews of the Franchisee's performance and to evaluate consumer service performance.

14.15. CONSUMER BILLING.

The Franchisee, at a maximum, shall bill Subscribers monthly, but this shall not preclude other payment arrangements expressly agreed upon by the Franchisee and the Subscriber.

14.15.1. All bills must be clear, concise and understandable.

14.15.2. Bills must be itemized, including itemization for basic and premium service charges, and equipment charges.

14.15.3. All activities during the billing period must be shown, including optional charges, rebates, and credits.

14.16. CONSUMER REFUNDS

The Franchisee must respond to written complaints from Subscribers regarding billing disputes within thirty (30) days. Refund checks must be issued promptly, but not later than:

14.16.1. The customer's next billing cycle following resolution of the customer's request, or thirty (30) days, whichever is earlier; or

14.16.2. Upon return of equipment supplied by Franchisee if service is terminated.

14.16.3. Credit is to be issued no later than the customer's next billing cycle following determination that credit is warranted.

14.17. CONSUMER NOTICES.

Customers must be notified of any changes in rates, programming services or channel positions in writing and by announcements on the cable system.

14.17.1. If the change is within the Franchisee's control, notice must be provided at least thirty (30) days in advance, unless otherwise provided by Federal law.

14.18. TELEPHONE ANSWERING SERVICES.

The Franchisee shall provide a 24-hour answering service or automated response system for repair calls.

14.18.1. The Franchisee, under normal operating conditions, shall resolve eighty (80) percent of cable service repair calls within forty-eight (48) hours.

14.19. ORDINANCE COMPLIANCE.

In addition to the above, the Franchisee shall comply with all service related procedures contained in the Ordinance.

14.20. ADMINISTRATOR AS MEDIATOR.

The Franchisee agrees that the Administrator may act in the capacity of a mediator with respect to all consumer disputes contained in this Section of this Agreement.

14.21. BUNDLED SERVICES.

If Franchisee provides or has committed to provide both Cable Services and non-Cable Services to a Subscriber, and if the technology utilized to provide such bundled services or the action or inaction of a third party provider of all or any essential element of such non-Cable Services results in or requires provisioning or repair times for the entire bundle of services that are longer than those specified herein for Cable Services alone, Franchisee shall not be deemed in breach of this Agreement provided that Franchisee is making good faith efforts to cause the provisioning or repair of the relevant service to be accomplished within then current normal and customary industry time frames for that particular service component. The City may adopt standards for such provisioning to the extent consistent with federal and state law. Nothing in this Agreement shall be interpreted to make the standards of this Section applicable to non-Cable Services.

14.22. Franchisee may make a written request to the City for specific relief from any of the provisions of this Section 14. If Franchisee demonstrates that the complained of provision is unduly burdensome or, during a period of rapid Subscriber growth, temporarily impractical, to the Franchisee, the City may grant the requested relief. During the three month period following the activation of each phase of System, the City shall not unreasonably refuse to grant such a request.

SECTION 15. CREDITS

As a result of Franchisee's failure to comply with customer service standards, Franchisee shall provide each affected Subscriber or potential Subscriber, as applicable, the credits set forth below or such lower level of credits that are provided for at that time in the City franchise of the Incumbent Cable Operator:

15.1. INSTALLATION - FAILURE TO ARRIVE.

For a failure of the Franchisee's crew to arrive at the Subscriber's premises within the promised period for any installation service, and upon the request of the Subscriber, a credit shall be provided, equal to free installation or comparable fee or services as determined by the Franchisee;

15.2. SERVICE INTERRUPTION.

For a service interruption involving the loss of picture or sound on one or more cable channels, or for any other service problem that remains un-repaired for more than forty-eight (48) hours after either the Franchisee receives from the Subscriber a request for repair service (provided that, to the extent access to the Subscriber's premises is required to effect such repair, the Subscriber has provided the Franchisee such access) or the Franchisee learns of such problem, upon Subscriber request a minimum credit in such amount equal to one-thirtieth (1/30) times the total bill for cable services of such Subscriber for the preceding billing period, for each forty-eight (48) hour period during which such reception problem persists for at least twenty-four (24) hours;

15.3. REPAIR - FAILURE TO ARRIVE.

For failure of the Franchisee's crew to arrive to correct any outage or make any repair during the stated time period (except where such failure is excused or except where such crew is no longer required due to a repair effected in a nearby portion of the system, in which case the Subscriber shall be notified by telephone that a visit to such Subscriber's residence is no longer necessary), a credit in an amount equal to the total number of days such Subscriber does not have service; and

15.4. IMPROPER TERMINATION.

For the improper termination of service to a Subscriber, free reconnection and a credit in an amount equal to all charges billed to such Subscriber for the period such Subscriber does not have service.

SECTION 16. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ('PEG') ACCESS CHANNELS

16.1. PEG ON LOWEST TIER.

The Franchisee shall make all public, educational and government access channels available for viewing on the lowest tier of service offered to Subscribers.

16.2. NUMBER OF PEG CHANNELS.

Franchisee shall reserve six (6) channels for PEG Access to be shared between Charlotte and the City of Charlotte and to be allocated in the following manner:

<u>Type:</u>	<u>Allocated to:</u>	<u>Channels:</u>
Government Access	City of Charlotte-Mecklenburg County	1 channel
Public Access	Charlotte-Mecklenburg	1 channel
Educational Access	Charlotte-Mecklenburg Schools	1 channel
Educational Access	Central Piedmont Community College	1 channel
Educational Access	University of North Carolina at Charlotte	1 channel
Future Access	Reserved for future use	1 channel

16.3. CHANNEL FOR "FUTURE USE".

The Access channel designated above for "Future Use" may be placed on any Cable Programming Service Tier (CPST) above the Basic Service Tier (BST), or its equivalent.

16.3.1. The City may request activation of this reserved channel capacity when the initial five channels are utilized with non-duplicated, locally produced full-motion video programming at least 70% of the time between 9:00 A.M. and 11:00 P.M. for a period of six (6) consecutive months.

16.3.2. This Access channel may be utilized by the Franchisee for other programming until the City requests reserved channel capacity under the terms stipulated in Section 16.3.1.

16.4. PUBLIC BUILDINGS.

Franchisee shall, in compliance with the schedule set forth below in Subsection 16.4.6., install and maintain, at no charge, one (1) standard service drop to all Eligible Public Buildings within the Franchise Service Area which are located 300 feet or closer to the Franchisee's System and shall terminate the drop at a site within the building at or near the telephone closet or other minimum point of entry.

16.4.1. For non-standard installations or drops in excess of 300 feet, the Franchisee shall construct the drop at the request of the City or appropriate agency provided that the City or appropriate agency shall pay the incremental costs of such non-standard installation or extension beyond 300 feet, calculated on a time and materials basis and including an allocated portion of the wages and overhead of Franchisee's employees as well as actual cost of outside labor.

16.4.2. On request from the appropriate official, and if the City or appropriate agency is willing to pay the costs of material and labor for running the specified cable that exceed the costs that would have been incurred for the standard drop cable,, the Franchisee will run cable other than a standard RG-6 coaxial drop cable to a public building which plans to amplify the signal for internal distribution.

- 16.4.3. Franchisee shall provide full Basic Service and CPST or equivalent service to such buildings free of charge, and Franchisee to provide one (1) basic converter per building which permits the reception of such tiers free of charge.
- 16.4.4. Franchisee shall be obligated to extend drops and provide Cable Service to one Eligible Public Building for every two hundred fifty (250) Subscribers then receiving Cable Service from Franchisee. Notwithstanding the foregoing, the first two-hundred (200) Eligible Public Buildings shall be served without regard to the foregoing formula, provided that any additional Eligible Public Buildings shall be served only if Franchisee is obligated to do so by application of the foregoing formula with the first two hundred buildings being included in the formula.
- 16.4.5. For purposes of this Section, the term "standard drop" shall mean placement of an RG-6 coaxial cable from the System to the point of termination that does not involve any of the following: (a) a cable distance greater than three hundred (300) feet; (b) making a new penetration point in a building wall; (c) placement of cable underground outside of an Underground Area; (d) placement of cable underground in the Central Business District; or (e) any other unusual site conditions or requirements that would cause the cost of installing the drop to be more than fifty percent (50%) greater than the average cost of Franchisee's installation of other standard drops throughout the System
- 16.4.6. The City may request the installation of a drop to an Eligible Public Building at any time. If the request is made after completion of construction of the phase of the System that contains the cable from which the drop will be wired, Franchisee shall install a standard drop promptly but in no event more than four (4) months after such request. A non-standard drop from a completed portion of the System shall be installed within ninety (90) days after the City has approved the work-order for the installation. If the request is made prior to completion of construction of the relevant portion of the System, Franchisee shall make good faith efforts to improve upon the aforesaid delivery time periods if it can do so by integrating such work into the schedule along with other similar work in the neighborhood, provided that Franchisee shall not be obligated to defer connections to Subscribers in order to achieve such acceleration.

16.5. PEG CHANNEL TECHNICAL STANDARD.

Franchisee shall assure that the access channel delivery systems from the origination points specified herein meet the same technical standards as the remainder of the system as set forth herein.

SECTION 17. SUPPORT FOR ACCESS

Franchisee's annual contribution to the City for Access Support shall be provided pursuant to the following terms and conditions:

17.1. SUPPORT AMOUNT.

Franchisee's Access Support contribution shall be \$.20 per Charlotte Subscriber per month, which shall be paid in quarterly payments, with the quarterly payments due the last day of the month immediately following the end of each quarter (i.e. Access Support fees for the quarterly period beginning July 1 and ending September 30 shall be due to the City by no later than the 31st day of the following October).

17.1.1. The Franchisee will be permitted incorporate this \$.20 per month Access Support Fee as a separate line item on each City of Charlotte cable television Subscriber's bill.

17.2. QUARTERLY PAYMENTS.

The Access Support payment shall be payable quarterly to the Charlotte Mecklenburg Public Access Corporation (hereinafter "CMPAC"). A copy of the quarterly check shall be forwarded to the City's Office of Cable TV & Contracts Monitoring for record purposes only.

17.3. CPI ADJUSTMENT.

January 1st of each year, the per Subscriber Access Support charges shall be adjusted by the Franchisee per changes in the Revised Consumer Price Index (Atlanta, Georgia, "All Items" Column as published by the Bureau of Vital Statistics of the U.S. Department of Labor) rounded up to the nearest \$.01.

17.4. ANNEXATION SUBSCRIBERS.

Upon annexation, Franchisee agrees to add this Access Support contribution for each annexed Subscriber as of the effective date of the annexation, which information shall be made available to Franchisee per the terms of this Agreement and the Cable Communications Regulatory Ordinance.

17.5. LINE EXTENSION SUBSCRIBERS.

The Franchisee agrees to include the Access Support contribution per Subscriber for all line extensions by the Franchisee into areas within the Franchise Service Area previously not serviced by the Franchisee.

17.6. PAYMENT STATEMENTS.

The CMPAC shall be furnished a statement of said Access Support payments by the Franchisee, reflecting the total amount collected and computations for the period covered by the payment. A copy of this quarterly statement shall be forwarded to the City's Office of Cable TV & Contracts Monitoring for record purposes only.

17.7. PAYMENT IN ADDITION TO OTHER PAYMENTS OWED.

This Access Support payment shall be in addition to any other tax or payment of general applicability owed to the City or other taxing jurisdiction by the Franchisee.

17.8. ACCEPTANCE NOT RELEASE.

No acceptance of any Access Support payment by the CMPAC shall be construed as a release or as an accord and satisfaction that the Access Support payment is correct.

17.9. DISPUTED PAYMENTS.

In the event that any undisputed Access Support payment is not made on or before the dates specified herein, the Franchisee shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate in effect upon the due date.

17.10. RIGHT TO INSPECT.

The City shall have the right upon reasonable notice to inspect the Franchisee's Subscriber count records, as they pertain to enforcing these Access Support requirements, and the right at the City's expense to audit and to re-compute any amounts determined to be payable under this article.

17.11. PAYMENT OF DISPUTED AMOUNTS.

Any undisputed additional amount due to the City or CMPAC as a result of the audit shall be paid within thirty (30) days following written notice to the Franchisee by the City, which notice shall include a copy of the audit report; provided, that the Franchisee shall not be required to pay an interest charge in accordance with Subsection 17.8 herein in such an event."

17.12. ACCESS SUPPORT CESSATION.

Should the City, at a future date, determine that funding to the City or CMPAC for Access Support is to cease, the Franchisee will, as of the effective date of such action, immediately cease charging the Access Support Fee on City of Charlotte cable television Subscribers' bills, and will not then, nor in the future, add this charge in any other manner to such billing, unless so directed by the City.

17.13. FUNDING OBLIGATIONS.

The City agrees that the funding obligations imposed on Franchisee under this Section 17 shall not be materially more onerous than the terms enforced on all cable television franchisees and/or video programmers over which the City has jurisdiction.

SECTION 18. INSTITUTIONAL NETWORK

18.1. During the course of construction of the System, Franchisee shall construct an Institutional Network for the City as described in this Section.

18.2. The mandatory portion of the Institutional Network shall consist of two fiber optic strands connecting public buildings that are passed by fiber optic cables of the System. The aggregate length of those two fiber optic strands shall not exceed two and one-half (2.5) miles. The City shall select the public buildings to be connected by said strands, provided that such selection shall be made in cooperation with Franchisee and in proper phasing with the project so that the manufacturer can insert the additional strands into the relevant cables without delaying the project or causing Franchisee to incur any additional cost, including but not limited to expediting or change order premiums. Franchisee shall be responsible for payment of the cost of purchasing and installing the aforesaid fiber optic cables.

18.3. The optional portion of the Institutional Network shall consist of such additional fiber optic strands connecting public buildings as shall be selected by the City in its discretion, provided that: (a) fiber optic cable is available from Franchisee's standard vendors without delay; (b) such selection shall be made in cooperation with Franchisee and in proper phasing with the project so that the manufacturer can insert the additional strands into the relevant cables without delaying the project or causing Franchisee to incur any additional cost, including but not limited to expediting or change order premiums, (c) the City shall pay the incremental cost of inserting the additional fibers into the cables, and (d) in any segment in which the City orders more than four (4) fibers, Franchisee shall have the sole and absolute discretion to decline to install more than four (4) fibers. Franchisee shall be responsible for payment of the cost of installing the aforesaid fiber optic cables.

18.4. The Franchisee shall permit the City to purchase transport capacity on Franchisee's SONET backbone network between public buildings served by that network at a price equal to the lowest price then paid by a customer for such service for a comparable term and volume commitment.

18.5. Fibers installed for the Institutional Network shall be made available to the City at an aerial splice point or underground junction near each public building. Franchisee and the City shall cooperate to minimize the distance from the System to the buildings, while maintaining the integrity of Franchisee's System engineering standards and avoiding inefficient or abnormally costly installation designs or practices. The City shall be responsible for installation of any cables from such splice points into the buildings to be served, and for the cost of the splicing of those additional City cables to the fibers provided hereunder.

- 18.6. Upon completion of installation of each Institutional Network fiber strand, Franchisee shall conduct optical time domain reflectometer tests on each City fiber strand to demonstrate that the transmission of light along such fibers (as measured for continuity, individual splice losses, and end to end power loss) meets or exceeds the minimum transmission standards that Franchisee applies to its own fibers in the System, and shall deliver a copy of such test results to the City. The City shall have a period of thirty (30) days in which to deliver written notice of disapproval of the test results, in which event the City shall within thirty (30) days after said notice, at a mutually acceptable time and in the company of a Franchisee representative, cause the testing of the subject fibers to be repeated by a qualified third party retained by the City. If those test results demonstrate that light transmission on the fibers satisfies Franchisee's standards, then the City shall pay for such testing and shall be deemed to have accepted the fibers. If those test results demonstrate that light transmission on the fibers does not satisfy Franchisee's standards, then Franchisee shall pay for such third party testing and shall take such steps as are necessary to cause the fibers to meet said standards, as demonstrated by retesting at the expense of Franchisee, a copy of which results shall be delivered to the City. If the City fails timely to deliver notice of disapproval of test results, it shall be deemed to have accepted the fibers. Upon acceptance of the fibers by the City, the City shall be deemed to have received an irrevocable right of use of such fibers for the term of the Franchise.
- 18.7. Franchisee shall at its expense provide routine maintenance for all System cables containing Institutional Network fibers. In the event of a fiber cut or other emergency, Franchisee shall at its expense respond appropriately, and shall not discriminate against the Institutional Network fibers in the prioritization of splicing or other repair work. The City shall not attempt to perform any maintenance or repair work on the System cables. Franchisee shall give the City at least seven (7) days notice of any planned cutting and resplicing or other maintenance or non-emergency repair work that would interfere with the use of the Institutional Network fibers.
- 18.8. The City shall have access to the Institutional Network fiber strands at the designated aerial splice cases or underground junctions. The City shall only access such splice cases and underground junctions in the presence of a Franchisee representative and at a mutually acceptable time. All splicing or other work to be performed on the Institutional Network Fibers shall be performed by Franchisee's personnel or by a contractor approved by Franchisee, and the cost thereof shall be borne by the City. The City shall within thirty (30) days after receipt of a reasonably itemized invoice reimburse Franchisee for the allocated salary and overhead of the Franchisee personnel, the actual and reasonable cost of the contractor and the actual and reasonable cost of materials, supplies and equipment utilized.
- 18.9. If the City fails timely to pay sums due to Franchisee under the terms of this Agreement, Franchisee may subtract such amounts from the next Franchise Fee payment due hereunder.
- 18.10. The City shall be solely responsible for the purchase, installation, operation and maintenance of any and all equipment that the City chooses to deploy to make use of the Institutional Network fibers. The City shall ensure that such equipment does not cause any interference with Franchisee's use of the remaining fibers in the cables containing the Institutional Network fibers. If such interference exists and is not eliminated by the City within forty-eight (48) hours, Franchisee may at the City's expense disconnect all relevant Institutional Network fibers until such interference is eliminated. Franchisee shall not be liable for liquidated damages, Subscriber credits or any violation of customer service standards arising out of any System nonperformance caused by the aforesaid interference by City facilities.

- 18.11. The City shall be solely responsible for the content to be transmitted over the Institutional Network fibers and the City shall indemnify, defend and hold Franchisee harmless from any and all claims arising out of the transmission of such content, including but not limited to claims of copyright infringement, libel, slander, defamation, patent infringement or invasion of privacy.
- 18.12. The Institutional Network fibers shall be used only for non-commercial governmental or educational purposes. The City shall not sell, lease, license or otherwise permit the use of the Institutional Network fibers or any capacity or services transmitted over them to any third party, except under the terms of a bona fide outsourcing contract in which the City retains a third party to operate the Institutional Network for the City.
- 18.13. The City hereby releases Franchisee from any and all claims that the City might have against the Franchisee, and agrees to indemnify, defend and hold Franchisee harmless against any claims that might be raised by any third party, which claims arise from the malfunctioning, disconnection, damage, severing or other interference with the operation or use of the Institutional Network fibers, but excluding gross negligence and willful misconduct of Franchisee.

SECTION 19. BOOKS AND RECORDS, REPORTS

19.1. LOCAL OFFICE AND NUMBER.

The Franchisee shall maintain a local office and a local telephone number within the Charlotte Metropolitan Area.

19.2. COMPLETE AND ACCURATE BOOKS.

Throughout the term of this Agreement, Franchisee shall make available to the City complete and accurate books of account and record regarding the Franchisee's ownership and operation of the system and the provision of services over the system, in a manner reasonably acceptable to the City when necessary for the City to reasonably determine Franchisee's compliance with the terms and conditions of the Ordinance and this Franchise Agreement. Franchisee shall maintain all relevant books and records for a period of at least seven (7) years following the calendar year to which the books and records pertain.

19.3. RIGHT TO INSPECT.

The City shall have the right to inspect upon five (5) days written notice via the US mail, other mail carriers, or electronic mail, at any time during normal business hours, books, records, maps, plans, service complaint logs, performance test results and other like materials of the Franchisee which relate to the operation of the system and when necessary for the City to reasonably determine Franchisee's compliance with the terms and conditions of the Ordinance and this Franchise Agreement.

19.4. PUBLIC INSPECTION FILE.

Franchisee will also maintain a file for public inspection as specified pursuant to the FCC's rules and regulations.

19.5. REPORTS.

The Franchisee shall provide the following reports to the City as required below:

- 19.5.1. Annual financial statement, certified by an officer, five (5) months after the close of the Franchisee's fiscal year;
- 19.5.2. Copies of the audited financials of the parent company, if any;
- 19.5.3. Copies of annual notice to Subscribers;
- 19.5.4. Copies of service area maps annually;
- 19.5.5. Copies of the System's proof of performance;
- 19.5.6. Copies of the System's EEO and rate filings;
- 19.5.7. A schedule of other FCC filings regarding the System annually;

- 19.5.8. Copies of any FCC filings regarding the System;
- 19.5.9. As built strand maps in Franchisee's standard electronic format;
- 19.5.10. Standard billing inserts regarding changes in rates and services;
- 19.5.11. An annual report of channels and plant added to the System .

19.6. CONFIDENTIAL INFORMATION.

- 19.6.1. If Franchisee considers any of the reports provided to the City to be proprietary information, these reports will be clearly labeled "Confidential Information."
 - 19.6.1.1. The term "Confidential Information" shall mean any information, not generally known in the relevant trade or industry, obtained in connection with this Agreement from the City or the Franchisee or any of their respective vendors or licensors which falls within any of the following general categories:
 - 19.6.1.2. Information relating to trade secrets of the City or the Franchisee or any of their respective vendors or licensors, including but not limited to the Franchisee's questionnaires and any information the City learns about the Franchisee's business methods;
 - 19.6.1.3. Information relating to existing or contemplated products, services, technology, designs, processes, formulae, computer systems, computer software, algorithms and research or developments of the City or the Franchisee or any of their respective vendors or licensors;
 - 19.6.1.4. Information relating to the business of the City or the Franchisee or that of any of their respective vendors or licensors, including but not limited to, business forms, handbooks, policies, documents, business plans, business processes and procedures, sales or marketing methods, methods of doing business, customer lists, customer usages and/or requirements, and supplier information of the City or the Franchisee or any of their respective vendors or licensors;
 - 19.6.1.5. Information relating to the City's employees; or
 - 19.6.1.6. Information marked "Confidential" or "Proprietary."

- 19.6.2. Except as otherwise provided in this Agreement, for the term of this Agreement and for three (3) years following termination thereof, each party agrees to keep the Confidential Information in the strictest confidence, in the manner set forth below:
 - 19.6.2.1. Neither party shall copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information;
 - 19.6.2.2. Neither party shall, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Franchisee or the City, other than an employee or agent of the Franchisee, the City or an Affiliate having a need to know such Confidential Information and who has executed a confidentiality agreement incorporating substantially the form of this Section of the Agreement;
 - 19.6.2.3. Neither party shall use any Confidential Information of the other or the ideas or concepts therein for its own benefit or for the benefit of a third party except to the extent such use is authorized by this Agreement or the License Agreement or is for the purpose for which such Confidential Information is being disclosed.
 - 19.6.2.4. Neither party shall remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
 - 19.6.2.5. Each party shall use its reasonable efforts to enforce the proprietary rights of the other party and the other party's vendors, licensors and suppliers

- (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Agreement.
- 19.6.2.6. Any materials which constitute or reveal Confidential Information, shall be kept confidential to the extent disclosure would reveal Confidential Information, and, unless otherwise agreed to herein, all such materials shall be returned to the disclosing party or destroyed upon satisfaction of the purpose of the disclosure of such information.
- 19.6.2.7. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the party upon which the demand is made shall assert this Agreement as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 19.6.3. The disclosing party to this Agreement agrees that the receiving party ("Recipient") shall have no obligation with respect to any information which the Recipient can establish:
- 19.6.3.1. Was already known to Recipient;
- 19.6.3.2. Was or becomes publicly known through no wrongful act of Recipient;
- 19.6.3.3. Was rightfully obtained by Recipient from a third party without similar restriction and without breach hereof;
- 19.6.3.4. Was used or disclosed by Recipient with the prior written authorization of the other party;
- 19.6.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Recipient shall first give to the other party notice of such requirement or request;
- 19.6.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Recipient shall take reasonable steps to obtain an agreement or protective order that, to the greatest possible extent possible, this Agreement will be applicable to all disclosures under the court order or subpoena; or.
- 19.6.3.7. Was independently developed by Recipient without the use of discloser's confidential information.
- 19.6.4. Notwithstanding anything contained herein in the contrary, in the event that a party is unintentionally exposed to any Confidential Information of the other party, the unintended recipient agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.
- 19.6.5. Notwithstanding anything contained herein to the contrary, the parties recognize and acknowledge that the City is a subdivision of the State of North Carolina and is, therefore, subject to the North Carolina Public Records Act (the "Act") at N.C. GEN. STAT. 132-1 et seq.
- 19.6.5.1. The parties further acknowledge that any Confidential Information that is a public record under North Carolina law may be released and disclosed by the City pursuant to the Act, and that any such release or disclosure shall not in any way constitute a breach of this Agreement, nor shall the City be liable to the Franchisee for such release or disclosure.
- 19.6.5.2. In the event the City receives a request for disclosure of Confidential Information which the Franchisee has specifically marked "Confidential" or

"Proprietary", the City shall give the Franchisee written notice of such request (the "Notice of Request for Disclosure").

19.6.5.3. In the event the Franchisee has a reasonable basis for contending that the disclosure of such Confidential Information is not required by the Act, the Franchisee shall, within ten (10) days after receipt of the Notice of Request for Disclosure, notify the City in writing of its objection to disclosure and the basis therefor.

19.6.5.4. The Franchisee shall indemnify, defend and hold harmless the City from or against all losses, damages, liabilities, costs, obligations and expenses (including reasonable attorneys' fees) incurred by the City in connection with any refusal by the City to disclose Confidential Information after receiving an objection to disclosure from the Franchisee.

19.6.5.5. If the City receives no written objection from the Franchisee within ten days after receipt of a Notice of Request for Disclosure, the City shall disclose the Confidential Information referenced in the Notice of Request for Disclosure.

19.6.6. Nothing in this section shall be read to require a Franchisee to violate the Cable Act, 47 U.S.C. § 551.

SECTION 20. PERFORMANCE EVALUATION

20.1. The City and the Franchisee shall hold a performance evaluation as specified in the Ordinance.

SECTION 21. NOTICES.

21.1. All notices, reports, or demands required to be given to or served on the City and/or Franchisee shall be in writing and shall be deemed to have been given when delivered personally to the persons designated below, or when seventy-two (72) hours have elapsed after being deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given. Either party may by notice to the other change its address for receipt of notices.

21.2. NOTICES SHALL BE DIRECTED AS FOLLOWS:

For the City:

Doris J. Boris
Cable Communications Administrator
BSS - Cable TV & Contracts Monitoring
600 East Fourth Street
Charlotte, NC 28202
Phone: 704-336-3064
Fax: 704-336-2258
E-Mail: DBORIS@CI.CHARLOTTE.NC.US

For the Franchisee:

Attn: General Manager
Carolina Broadband, Inc.
9201 H Southern Pines Blvd.
Charlotte, NC 28237
Phone: 704-665-8052
Fax: 704-665-8955
E-Mail: KDAVIS@CAROLINABROADBAND.COM

SECTION 22. LIQUIDATED DAMAGES

- 22.1. The willful violation of any provision contained in this Agreement or the Ordinance of the City shall subject the Franchisee to liquidated damages as set forth in the Charlotte Cable Communications Regulatory Ordinance.
- 22.2. In addition, the following violations shall subject the Franchisee to the following agreed upon liquidated damages:

<u>ISSUE:</u>	<u>LIQUIDATED DAMAGES:</u>
FAILURE TO RESOLVE MULTIPLE SIMILAR UNRESOLVED SERVICE ORIENTED COMPLAINTS CONSISTENT WITH THE REQUIREMENTS SET FORTH IN THIS AGREEMENT	\$50 PER DAY UP TO \$1,000 PER MONTH IN THE AGGREGATE, BEGINNING ONE WEEK FROM RECEIPT OF NOTICE FROM THE CITY
FAILURE TO PROVIDE ENGINEERING SURVEYS AND LINE EXTENSION COSTS TO SUBSCRIBERS ON A TIMELY BASIS	\$50 PER DAY FROM TIME DUE UNTIL INFORMATION IS PROVIDED TO SUBSCRIBERS
FAILURE TO COMPLY WITH THE TIME PERIODS CONTAINED IN THIS AGREEMENT FOR THE EXTENSION OF SERVICE	\$50 PER DAY UP TO \$1,000 PER MONTH IN THE AGGREGATE UNTIL COMPLIANCE

- 22.3. The notice provisions contained in the Ordinance shall apply when liquidated damages are assessed against the Franchisee pursuant to the provisions of this part.
- 22.4. Upon notification in writing to the Franchisee of the violation, the Franchisee shall be allowed thirty (30) days or such other greater amount of time as the City may specify, to correct such violation.

SECTION 23. MISCELLANEOUS

- 23.1. **NO LIABILITY TO FRANCHISEE.**
Except for acts of willful misconduct or gross negligence, neither the City nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any liability to the Franchisee for any liability as a result of or in connection with the protection, breaking through, movement, removal, alteration or relocation of any part of the cable system by or on behalf of the Franchisee or City in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any street, or the elimination, discontinuation, and closing of any street, as provided in this Agreement.
- 23.2. **COOPERATION.**
- 23.2.1. The parties recognize that it is within their mutual best interests for the cable television system to be operated as efficiently as possible in accordance with the requirements set forth in this Agreement and the Ordinance.
- 23.2.1.1. To achieve this, the parties agree to cooperate with each other in accordance with the terms and provisions of this Agreement and the Ordinance.
- 23.2.1.2. Should either party believe that the other is not acting timely or reasonably within the confines of applicable regulations and procedures in responding to a request for action, that party shall notify the agents designated for that purpose by the other.
- 23.2.1.3. The agent will use its best efforts to facilitate the particular action requested.

- 23.2.2. The City will fully and actively support Franchisee's anti-theft efforts by encouraging local prosecution, cooperating in anti-theft campaigns, and through other reasonable means.
- 23.3. PARENTAL GUARANTEE.
If the Franchise is transferred or assigned or the Franchisee is restructured in such a manner that the Franchisee will come under the control of a separate entity (a "Parent Company"), the Franchisee must provide the City with a signed Acceptance Agreement, providing that the Parent Company accepts, acknowledges, and agrees that it will guarantee all the commitments, duties, and obligations, present, continuing and future, of the Franchisee embodied in the Franchise Documents.
- 23.4. ENTIRE AGREEMENT.
This Agreement and all attachments hereto, represent the entire understanding and Agreement between the parties hereto with respect to the subject matter hereof, and can be amended, supplemented, modified, or changed only as provided in said Agreement.
- 23.5. FRANCHISE NOT A JOINT VENTURE.
NOTHING HEREIN SHALL BE DEEMED TO CREATE A JOINT VENTURE OR PRINCIPAL-AGENT RELATIONSHIP BETWEEN THE PARTIES, AND NEITHER PARTY IS AUTHORIZED TO, NOR SHALL EITHER PARTY ACT TOWARD THIRD PERSONS OR THE PUBLIC IN ANY MANNER THAT WOULD INDICATE ANY SUCH RELATIONSHIP WITH THE OTHER.
- 23.6. FORCE MAJEURE
- 23.6.1. The Franchisee shall be not liable for any failure or delay in the performance of its obligations pursuant to this Agreement and such failure or delay shall not be deemed a default of this Agreement or grounds for termination hereunder if any of the following conditions are satisfied:
- 23.6.1.1. If and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or court order.
- 23.6.2. Upon the occurrence of an event which satisfies any of the conditions set forth above (a "Force Majeure Event") the Franchisee shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event for as long as
- 23.6.2.1. Such Force Majeure Event continues and
- 23.6.2.2. The Franchisee continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 23.7. PRIVACY PROTECTION.
- 23.7.1. Franchisee shall protect all persons against invasions of privacy and shall comply with the Ordinance and applicable law, including, without limitation, Section 631 of the Cable Act and regulations adopted pursuant thereto.
- 23.7.2. The Franchisee shall cooperate with the City to ensure the City's ability to enforce the terms and conditions of this Agreement to the maximum extent permitted by applicable law.
- 23.8. FRANCHISE AS CONTRACT.
Upon its execution by the City and the Franchisee, this Agreement shall be deemed to constitute a contract by and between the Franchisee and the City.

23.9. MODIFICATION.

THIS AGREEMENT, INCLUDING ALL DOCUMENTS SPECIFICALLY INCORPORATED HEREIN, CANNOT BE CHANGED ORALLY, BUT ONLY BY AN AGREEMENT IN WRITING PROPERLY EXECUTED BY THE PARTIES.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed on the date first written above.

ATTEST:

CAROLINA BROADBAND, INC.

BY: _____

BY: _____

TITLE: _____

TITLE: _____

(CORPORATE SEAL)

ATTEST:

CITY OF CHARLOTTE

CITY CLERK

BY: _____
CITY MANAGER

(MUNICIPAL SEAL)

ORDINANCE NUMBER 5483

ORDINANCE AMENDING CHAPTER 15 OF THE CHARTER OF THE CITY OF CHARLOTTE TO ADDITIONAL PROVISIONS

Section 1. Chapter 15 of the Charlotte City Code is amended by adding a new subsection (a) to Sec. 15-68(a) to read as follows:

Sec. 15-68. Amplified text.

(a) It shall be amended to:

(b) Provide or allow the operation for personal use of any sound amplification equipment in the public parks (i) within a permit issued by the Charlotte-Blackhawk Police Department; or (ii) as to sound levels, to be the same as the sound level (75 dBA) for the time of 9:00 a.m. and 9:00 p.m. or any time in between the hours of 9:00 a.m. and 9:00 p.m. or any time in between the hours of 9:00 a.m. and 9:00 p.m.

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All applications for a permit pursuant to this subsection shall be submitted to the Charlotte-Blackhawk Police Department at least twenty-four hours but no more than seven days before the permit time requested; and (ii) shall specify the proposed location of the sound amplification equipment and the date and time that the permit application will begin and end. Permits will be issued on a first-come, first-served basis. A permit shall not be issued for a location that is within the lot of another location for which a permit has been issued for the same date.

The use of mobile sound amplification equipment shall be exempt from the permitting requirements of this subsection. Sound amplification equipment in conjunction with a city festival or parade activity shall be exempt from this entire subsection.

Section 2. This ordinance shall become effective upon adoption.

Approved by the Council:


City Manager

ORDINANCE NUMBER: 1617

AMENDING CHAPTER 15

**ORDINANCE AMENDING CHAPTER 15 OF THE CHARLOTTE CITY CODE
ENTITLED "OFFENSES AND MISCELLANEOUS PROVISIONS"**

Section 1. Chapter 15 of the Charlotte City Code is amended by adding a new subsection (6) to Sec. 15-69(a) to read as follows:

Sec. 15-69. Amplified sound.

(a) It shall be unlawful to:

...

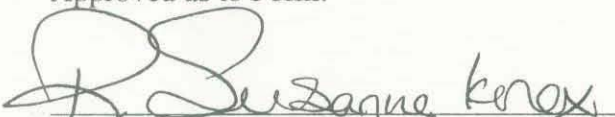
(6) Operate or allow the operation for personal use of any sound amplification equipment in the public right-of-way, including streets or sidewalks, or in the public parks: (i) without a permit issued by the Charlotte-Mecklenburg Police Department; or (ii) so as to produce sounds registering more than seventy five (75) db(A) ten (10) feet or more from any electromechanical speaker between the hours of 9:00 a.m. and 9:00 p.m., or sixty five (65) db(A) ten (10) feet or more from any electromechanical speaker between the hours of 9:00 p.m. and 9:00 a.m.

An application for a permit pursuant to this subsection shall: (i) be submitted to the Charlotte-Mecklenburg Police Department at least twenty-four hours but no more than seven days before the permit time requested; and (ii) shall specify the proposed location of the sound amplification equipment and the date and time that the sound amplification will begin and end. Permits will be issued on a first-come, first-served basis. A permit shall not be issued for a location that is within 100 feet of another location for which a permit has been issued for the same time.

The use of mobile sound amplification equipment shall be exempt from the permitting requirement of this subsection. Sound amplification produced in conjunction with a city festival or parade permit shall be exempt from this entire subsection.

Section 2. This ordinance shall become effective upon adoption.

Approved as to Form:


City Attorney

ORDINANCE NO. 1819

Chapter 15
TAXES

ARTICLE I
IN GENERAL

Sec 21-1 Short Title

This Chapter will be known and may be cited as the "Short Title Ordinance"

Sec 21-2 Purpose and Intent

It is the purpose of this Chapter to preserve, protect and promote the health, safety and general welfare of the public by providing for the regulation of the planning, construction and removal of trees located on residential, public and private property owned or controlled by the City of Charlotte and on new development and alterations to property development on future projects.

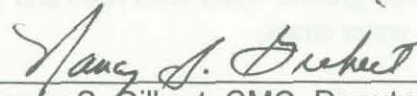
It is the intent of this Chapter to:

- (1) Preserve, protect and enhance the aesthetic qualities of the community to ensure the use remains clear and reduce property values;
- (2) Encourage the importance of trees and vegetation as both a visual and physical buffer;
- (3) Preserve clean air quality by reducing air pollution and carbon dioxide levels in the atmosphere, retaining tree oxygen in the atmosphere and increasing their density.

CERTIFICATION

I, Nancy S. Gilbert, Deputy City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 25th day of September, 2000, the reference having been made in Minute Book 115, and recorded in full in Ordinance Book 50, Page(s) 549-550.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 26th day of September, 2000.



Nancy S. Gilbert, CMC, Deputy City Clerk

**Chapter 21
TREES**

ORDINANCE NO, 1618

ARTICLE I. IN GENERAL

Sec. 21-1 Short Title

This Chapter will be known and may be cited as the "Charlotte Tree Ordinance."

Sec. 21-2 Purpose and Intent

It is the purpose of this Chapter to preserve, protect and promote the health, safety and general welfare of the public by providing for the regulation of the planting, maintenance and removal of trees located on roadways, parks and public areas owned or controlled by the City of Charlotte and on new developments and alterations to previous developments on private property.

It is the intent of this Chapter to:

- (1) Protect, facilitate and enhance the aesthetic qualities of the community to ensure that tree removal does not reduce property values;
- (2) Emphasize the importance of trees and vegetation as both a visual and physical buffer;
- (3) Promote clean air quality by reducing air pollution and carbon dioxide levels in the atmosphere, returning pure oxygen to the atmosphere and increasing dust filtration;
- (4) Reduce the harmful effects of wind and air turbulence, heat and noise, and the glare of motor vehicle lights;
- (5) Minimize increases in temperatures on lands with natural and planted tree cover;
- (6) Maintain moisture levels in the air of lands with natural tree cover;
- (7) Preserve underground water reservoirs and to permit the return of precipitation to the ground water strata;
- (8) Prevent soil erosion;
- (9) Provide shade;

- (10) Minimize the cost of construction and maintenance of drainage systems necessitated by the increased flow and diversion of surface waters by facilitating a natural drainage system and amelioration of storm water drainage problems;
- (11) Conserve natural resources including adequate air and water;
- (12) Require the preservation and planting of trees on site to maintain and enlarge the tree canopy cover across the City.

Sec. 21-3 Applicability and Exemptions

The provisions of this Chapter shall apply to all developers and/or owners of real property involved with the erection, repair, alteration or removal of any building or structure as well as the grading in anticipation of such development. The following are excluded from the provisions of Sec. 21-13 of this Chapter.

- (1) Homeowner of a single-family or duplex residence.
- (2) Property to be developed for single-family or duplex residential uses.
- (3) Property which as altered requires no addition of square footage or exterior wall modification to an existing structure on that property.

Sec. 21.4 Tree Advisory Commission

The City Council may establish a Tree Advisory Commission. This Commission may from time to time make recommendations relative to trees to the City Manager or his authorized representative and perform other duties as designated in this Chapter. The Tree Advisory Commission shall be composed of twelve (12) members, a majority of whom shall be residents of the City. Seven (7) of the members shall be appointed by the City Council and three (3) of the members shall be appointed by the Mayor. The remaining two (2) members shall be representatives of the City Engineering and Property Management Department and shall be ex officio members. Those members appointed by the Mayor and City Council shall serve three (3) years, and no member appointed by the Mayor and City Council shall be eligible to serve more than two (2) consecutive full terms. Member terms shall be appointed on a staggered basis so that no more than five (5) of the ten (10) appointed seats become vacant at one time. Any member who fails to attend the requisite number of meetings as set out in the Boards and Commissions Attendance Policy adopted by the City Council shall be automatically removed from said Commission. Vacancies resulting from a member's failure to attend the required number of meetings shall be filled as provided herein. The Chairman of the Commission will notify the proper appointing authority if a member is absent the requisite number of the meetings, and appointment will be made by the appointing authority to fill that vacancy.

ARTICLE II. ADMINISTRATION

Sec. 21-5 City Jurisdiction and Authority

- (A) The City shall have the jurisdiction, authority, control, supervision and direction over all trees planted or growing now or hereafter in the City of Charlotte, except where exempted in this Chapter.
- (B) The City shall prepare and publish guidelines and specifications for tree planting, care, maintenance, removal and landscape design in a document entitled "Tree Ordinance Guidelines" for reference and use by property owners, developers, consultants and the general public in furtherance of the requirements and intent of this Chapter. This document shall be reviewed periodically by the City's Engineering Department and the Tree Advisory Commission.
- (C) The City shall review all applications for permits for any planting, removal and/or trimming or cutting of trees subject to this Chapter and shall have the authority to grant or deny permits and to attach reasonable conditions to the granting of a permit.

ARTICLE III. DEFINITIONS

For the purposes of these regulations, certain words or terms used in this Chapter shall be defined as follows. Words and phrases used in this Chapter that are not specifically defined below shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

Caliper. Diameter measurement of the trunk taken six (6) inches above ground level for trees up to and including four-inch caliper size. Measurement shall be taken twelve (12) inches above the ground level for larger trees.

City. City Engineer, City Arborist or Senior Urban Forestry Specialist, or their designated agent or agents.

Commission. The Tree Advisory Commission of the City of Charlotte.

DBH. (diameter breast height). The diameter of a tree four and one-half (4 ½) feet above the average ground level.

Drip line. A vertical line running through the outermost portions of the tree crown extending to the ground.

Homeowner. A tenant or owner of an existing single-family or duplex residence.

Impervious cover. Buildings, structures and other paved, compacted gravel or compacted areas which by their dense nature do not allow the passage of sufficient oxygen and moisture to support and sustain healthy root growth.

Internal Planting Area. A planting area located on private property outside the public right of way.

Paved Area. Any ground surface covered with concrete, asphalt, stone, compacted gravel, brick, or other paving material.

Perimeter Planting Strip. A Planting Strip that abuts a public street or transportation right of way.

Person. A public or private individual, corporation, company, firm, association, trust, estate, commission, board, public or private institution, utility cooperative, or other legal entity.

Planting Strip or Area. Ground surface free of impervious cover and/or paved material which is reserved for landscaping purposes.

Renovation. Any construction activity to an existing structure which changes its square footage, footprint or modifies the exterior wall material excluding cosmetic maintenance and repairs.

Root Protection Zone. Generally, 18-24 inches deep and a distance from the trunk of a tree equal to one-half (½) its height or its drip line, whichever is greater.

Streetscape Plan. A plan that specifies planting strips, tree species, sidewalk locations, building setbacks and other design aspects for streets within Charlotte. Such plans are effective following approval by the City Council.

Suburban Zones. All zoning districts other than Urban Zones as defined herein.

Topping. Any pruning practice that results in more than 1/3 of the foliage and limbs being removed. This includes pruning that leads to the disfigurement of the normal shape of the tree.

Tree Evaluation Formula. A formula for determining the value of trees and shrubs as published by the International Society of Arboriculture.

Tree, Large Maturing. Any tree whose height is 35' or greater at maturity.

Tree, Large Maturing Shade. Any tree whose height is 35' or greater at maturity and has a limb spread of 30' or more at maturity.

Tree, Small Maturing. Any tree whose height is less than 35' at maturity.

Tree Ordinance Guidelines. The guidelines and specifications of tree planting as published by the City.

Tree Protection Zone. A distance equal to the designated zoning district setback or 40 feet from the front property line, whichever is less, or from side lot line on a corner lot. For Urban Zones the Tree Protection Zone shall be the same as the Planting Strip required for the associated zoning district or as designated in a Streetscape Plan.

Urban Zones. Zoning districts within the City of Charlotte as listed in the Guidelines and as may be amended from time to time.

ARTICLE IV. MAINTENANCE AND PROTECTION OF TREES

Sec. 21.6 Trees on Public Property

- (A) No person shall spray, fertilize, remove, destroy, cut, severely prune (including the root system), otherwise treat any tree or shrub having all or any portion of its trunk in or upon any public property without first obtaining a written permit from the City and without complying strictly with the provisions of the permit and provision of this Chapter.
- (B) No person shall plant any tree or shrub on any public street right-of-way or public property without first obtaining a permit from the City and without complying strictly with the provisions of the permit and the provisions of this Chapter.
- (C) No person shall damage, cut, carve, top or remove any tree or shrub having all or any portion of its trunk in or upon any public property; attach any object, including but not limited to rope, wire, nail, chain or sign, to any such tree or shrub, or attach any such object to the guard or stake intended for the protection of such tree.
- (D) No person shall place, store, deposit, or maintain upon the ground in any public street or public place, any compacted stone, cement, brick, sand or other materials which may impede or obstruct the free passage of air, water and fertilizer to the roots of any tree or shrub growing in any such street or place without written authorization from the City.
- (E) No person shall change natural drainage, excavate any ditches, tunnels, trenches or lay any drive within the root protection zone of any tree having all or any portion of its trunk in or upon any public property without obtaining a permit from the City.
- (F) No person shall perform, or contract with another, to perform excavation or construction work within the drip line of any tree having all or any portion of its trunk in or upon any public property without first installing a fence, frame or box in a manner and of a type and size satisfactory to the City to protect the tree during the excavation or

construction work. All building materials, equipment, dirt or other debris shall be kept outside the root protection zone. The tree protection fence, frame or box shall not be removed unless or until the City authorizes it to be removed.

(G) Liability for damages or injuries to any tree or shrub having all or any portion of its trunk in or upon public property resulting from a violation of the provisions of this Article shall be determined by the City in accordance with Section 21-17 of this Chapter. The person(s) performing the work and the person(s) contracting for the performance shall be jointly and severally liable for any penalties or other enforcement action imposed pursuant to this Chapter or other provisions of law on account of work performed in violation of this Article. However, no claims shall be made more than five (5) years after damage can be proven to have occurred.

Sec. 21.7 Trees on Private Property

(A) Any person owning or occupying real property bordering on any street where trees have branches, limbs, trunks, or other parts projecting into the public street or property, shall prune such trees or keep them trimmed in such a manner that they will not obstruct or shade the street lights, obstruct or interfere with the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct views of any street or alley intersection.

(B) Any person owning or occupying real property bordering on any street, park or other public property, on which there may be trees that are diseased or insect infested, shall remove, spray or treat any such trees in a manner that will not infect or damage nearby public vegetation or cause harm to the community or citizens therein.

(C) No tree equal to or larger than 8 inches DBH may be removed from the Tree Protection Zone without a permit. No grading, demolition, trenching, or other activity which may adversely affect trees in this zone may proceed prior to approval and issuance of necessary permits by the City.

(D) It shall be the duty of the property owner to maintain all trees planted pursuant to, or protected by, the provisions to this Chapter in a healthy condition in accordance with this Section and the Guidelines developed by the City.

(E) When trees that are subject to or protected by the provisions of this Chapter die, are missing, or are otherwise deemed unhealthy by the City, they shall be removed and replaced by the property owner to comply with any existing Streetscape Plan or as directed by the City (normally during the next planting season (November through March)). The City shall conduct regular inspections to verify compliance with this section. New owners of properties already in compliance must maintain that compliance. Trees of the same, approved species as those existing may be used to replace dead, missing or unhealthy trees. The property owner is encouraged to use large maturing shade trees as replacements when possible. Nothing in this Section is intended to impose

a requirement that the property owner maintain more trees than those required for the site even if he has voluntarily done so in the past.

(F) If the owner or occupant of such property does not perform the duties set out in paragraphs (A) and (E) of this Article, the City may order the pruning, removal or treatment of trees on private property that cause obstructions, present insect or disease problems or otherwise present a danger to public health or safety. The order shall be in writing to the owner or occupant responsible for such condition and shall be acted upon within thirty (30) days from the time of the receipt of the order. If, after thirty (30) days, the owner or occupant has not responded or acted to prune, remove or treat the trees, the City shall have the authority to enter upon the property to perform the work necessary to correct the condition, and bill the owner or occupant for the actual costs incurred. In situations deemed necessary to the public health, safety, or welfare, the City may act without prior notification to the property owner or occupant.

Sec. 21-8 Permits

(A) Persons requesting to do any planting, removal, trimming, cutting of trees subject to this Chapter, or any of the activities prohibited by this Article, shall secure a permit for tree work from the City Engineering and Property Management Department before the activities commence. For purposes of this requirement, a landscape plan approved by the City constitutes a permit.

(B) The City shall have the authority to review all requests for permits and to grant or deny permits or attach reasonable conditions to the permits.

(C) Individual permits will not be required for City and North Carolina Department of Transportation projects so long as tree preservation and protection requirements are included in the project plans.

Sec. 21-9 Utilities

Public and private utilities which install overhead and underground utilities (including CATV installations and water and sewer installations by or at the direction of the Charlotte-Mecklenburg Utility Department), shall be required to accomplish all work on property subject to this Article in accordance with the company's written pruning and trenching specifications, or as mutually agreeable to the property owner, the City and the utility.

Public and private utilities shall submit written specifications for pruning and trenching operations to the City for approval. Specifications shall be reviewed periodically by the City and the Tree Advisory Commission for necessary improvements and as required by modifications in this Chapter. Upon approval of its specifications, a utility shall not be required to obtain a permit for routine trenching and pruning operations affecting trees having all or any portion of its trunk in or upon any public property so long as such work is done in strict accordance with the approved

specifications. Requests for the removal of trees shall be handled on an individual permit basis. Failure to comply with the approved specifications is a violation of this Chapter.

Sec. 21-10 Tree Protection and/or planting required on public property

The provisions of Chapter 21 of the City Code shall apply to public entities and owners of public property and it shall be unlawful for said owners to fail to comply with all provisions of this Chapter unless specifically exempted therefrom.

ARTICLE V. GENERAL LAND DEVELOPMENT REQUIREMENTS

Sec. 21-11 Tree Survey

Applications for grading, building, demolition, land use, change of use or rezoning permits on all property except that which is excluded by Section 21-3, shall include a tree survey. The survey shall identify all trees of 8 inches DBH or greater within the Tree Protection Zone. The survey also shall identify all trees of 8" DBH or greater and all planted trees of 2" caliper or greater and 6' in height that grow partially or wholly within the City right-of-way.

Sec. 21-12 Tree Protection Plan.

All applications referenced in Section 21-11 shall include a tree protection plan. On sites where less than one (1) acre is being graded, tree protection is still required and may be incorporated in the tree planting plan submitted in accordance with Section 21-13. A tree protection plan shall include the following:

- (1) A tree and root protection zone plan for any existing trees having all or any portion of their trunks in or upon any public property, which are (i) trees of 8 inch DBH or larger and (ii) any planted trees of 2 inch caliper or larger.
- (2) A tree and root protection zone plan for (i) existing trees of 8 inches DBH and larger in the Tree Protection Zone and (ii) any trees of 2 inch caliper or larger being saved for credit toward planting requirements.

Sec. 21-13 Tree Planting Requirements

(A) Tree Planting Plan

All applications for building permits or land use permits shall include a tree planting plan. The tree planting plan shall be submitted in written/design form and conform with the following general provisions and all specifications set out in the applicable Guidelines as issued by the City.

(B) Tree and Soil Specifications.

All trees planted pursuant to this Article must be planted in amended soils as specified in the Guidelines. Said trees also must be from an approved list supplied by the City. Trees not on the list may be approved by staff on a case-by-case basis. Where trees are specified to be 2 inch caliper, the minimum height shall be 8 feet. If multi-stem trees are used they must have 3-5 stems and be 8-10 feet tall at time of planting. Where 3 inch caliper trees are specified, the minimum height shall be 10 feet tall and multi-stem trees shall be 10-12 feet tall. All trees must comply with the "American Standard for Nursery Stock" published by the American Association of Nurserymen.

(C) Perimeter Planting Requirements

(1) Suburban Zones. A continuous Perimeter Planting Strip, located on private property abutting the public right of way, with a minimum width of eight (8) feet shall be required. If large maturing trees are planted, each tree shall have a minimum of 2" caliper. One such tree shall be planted for every 40 feet of frontage or fraction thereof. If small maturing trees are planted, the same conditions apply, but the increment drops to 30 feet.

(2) Urban Zones. A continuous Perimeter Planting Strip, located between the street and sidewalk, with a minimum width of eight (8) feet shall be required. If large maturing trees are planted, each tree shall have a minimum of 3" caliper. One such tree shall be planted for every 40 feet of frontage or fraction thereof. If small maturing trees are planted, each tree shall have a minimum of 2" caliper. One such tree shall be planted for every 30 feet of frontage or fraction thereof.

(a) Urban Retail Sites The following options are available for urban retail developments.

(1) Relocation of Trees. The number of perimeter trees required in Section 21-13 (C) (2) may be reduced by up to 50 percent if the same quantity of trees reduced are planted elsewhere on the site and at least one perimeter tree is installed.

(2) Tree Pits. The perimeter trees required in Section 21-13 (C) (2) may be installed in tree pits with irrigation and sub-drainage as specified in the Guidelines in lieu of a continuous Perimeter Planting Strip. If large maturing trees are planted in the pits, each tree shall have a minimum of 3" caliper. One such tree shall be planted for every 40 feet of frontage or fraction thereof. If small maturing trees are planted in the pits, each tree shall have a minimum of 2" caliper. One such tree shall be planted for every

30 feet of frontage or fraction thereof and as long as at least one perimeter tree is installed.

(3) Renovated Sites. When a building permit is requested for renovation of a previously developed site where the required perimeter planting strip does not exist, trees are still required. However, in lieu of a minimum 8-foot wide planting strip, a pavement cutout equal to 200 square feet and with a minimum width of 5 feet may be substituted.

(4) Railroad or Utility Rights-Of-Way. When a railroad or utility right-of-way separates the Perimeter Planting Strip from a City right-of-way, the Perimeter Planting Strip and tree planting requirements must still be met.

(5) Large Shade Trees Required. In locations without overhead power distribution lines that obstruct normal growth, 75% of the trees required under sections (C) (1) and (2) above shall be large maturing shade trees.

(6) Streetscape Plans. In applicable cases where the Charlotte City Council has approved a Streetscape Plan, its provisions shall supercede those set forth in sections (C) (1), (2) and (5) above.

(D) Internal Planting Requirements.

(1) Planting Areas. Whenever the impervious cover exceeds 10,000 square feet, a Planting Area equal to 10% of the total impervious surface must be provided for landscape purposes and tree planting. Internal tree planting is required at the rate of one large maturing shade tree per 10,000 square feet of impervious cover or fraction thereof. This planting area must be located on private property, and in Urban Zones shall be in addition to any perimeter planting requirements. In the Mixed Use Development District (MUDD) and the Uptown Mixed Use District (UMUD) outside the I-277/I-77 loop, the planting area may equal 5% of the total impervious surface. The planting requirements for UMUD zoned sites within the I-277/I-77 expressway loop are set out in Section 9.906(4)(e) of the Zoning Ordinance.

(2) Parking Areas.

(a) Suburban Zones.

(1) Trees must be planted so that each parking space is no more than 60 feet from a tree trunk. 75% of the trees planted must be large maturing shade trees except as provided in (2) below. Minimum planting area per tree shall be 274 square feet with a minimum width of 8 feet. The entire planting area must contain amended on-site soil or a soil mix, as specified in the Guidelines, to a depth of 18 inches.

(2) Where small maturing shade trees are used, the minimum planting area shall be 200 square feet, with a minimum width of 8 feet. The entire planting area must contain amended on-site soil or a soil mix, as specified in the Guidelines, to a depth of 18 inches. Small maturing shade trees may be planted where overhead power distribution lines would interfere with normal growth. (Normally within 25 feet of overhead power distribution lines or within the Duke Power R.O.W. for overhead transmission lines.)

(b) Urban Zones.

(1) Trees must be planted so that each parking space is no more than 60 feet from a tree trunk. Trees planted must be large maturing shade trees except as provided in (2) below.

(a) Minimum planting area per large maturing shade tree shall be 274 square feet with a minimum dimension of 8 feet. The entire planting area must contain amended on-site soil, as specified in the Guidelines, to a depth of 18 inches.

(b) Minimum planting area per large maturing shade tree may be reduced to a minimum 200 square foot surface area, and a minimum dimension of 8 feet, if the entire planting area contains an approved soil mix, as specified in the Guidelines, to a depth of 18 inches.

(2) Small maturing trees may be planted where overhead power distribution lines would interfere with normal growth. Minimum planting area per small maturing tree shall be 200 square feet with a minimum dimension of 8 feet. The entire planting area must contain amended on-site soil, as specified in the Guidelines, to a depth of 18 inches.

(3) Renovated Sites. When a building permit is requested for the renovation of a site previously developed, internal tree planting is still required and the minimum planting area shall be 200 square feet per tree. However, only 5% of the total impervious cover must be set aside for landscape purposes.

(4) Existing Trees. In meeting these Internal Planting Requirements, credit may be given for existing trees if the following provisions are met: The property owner must include in the tree survey referenced in Sec. 21-11 all existing trees of 2 inch DBH or greater which he proposes to satisfy these planting requirements. Only healthy trees and those that have been protected during the entire development period, beginning prior to commencement of site work and continuing through to issuance of certificate of occupancy in accordance with

approved tree protection requirements, may satisfy these tree planting requirements. If the minimum protection standards are not met, or if trees are observed by the City to be injured or threatened, they may be deemed ineligible for meeting these requirements. The City shall have the authority to modify the planting requirements of this section to preserve existing trees.

ARTICLE VI MODIFICATION, INSPECTION, ENFORCEMENT, AND APPEAL

Sec. 21-14 Modifications

In the event that strict compliance with the standards of this Chapter conflict with existing federal or state statutory or regulatory requirements, or when planting is required by this Chapter and the site design, topography, natural vegetation, or other special considerations exist relative to the proposed development, the developer may submit a specific alternate plan for planting to the City for consideration. This plan must meet the purposes and standards of this Chapter, but may suggest measures other than those in Article V. In addition, if the developer seeks a modification of planting requirements based upon a contention that the planting required by this Chapter would pose a threat to health and safety due to a conflict with existing federal or state statutory or regulatory requirements, a modification will only be considered upon receipt of a written explanation of the alleged conflict created by the planting requirement and a copy of the statute or regulation that creates the conflict. The City shall review the alternate proposal and advise the applicant of the disposition of the request within 15 working days of submission by the applicant. Any appeals by the applicant shall be in accordance with Section 21-19.

Requests for a delay in complying with the Chapter due to poor weather conditions for planting will be considered following written request directed to the City's Engineering and Property Management Department. Certificates of Occupancy will be issued upon approval of a request for planting delay. Such request for a delay will not change the time frame during which the planting will be completed. Failure to comply will result in penalties provided for in Section 21-17 of this Chapter.

Sec. 21-15 Inspections and Investigations of sites

(A) Agents, officials or other qualified persons authorized by the City, are authorized to inspect the sites subject to the provisions of this Chapter to determine compliance with this Ordinance or rules or orders adopted or issued pursuant to this Chapter.

(B) No person shall refuse entry or access to any authorized representative or agent of the City who requests entry for the purpose of inspection, nor shall any person resist, delay, obstruct or interfere with such authorized representative while in the process of carrying out official duties.

(C) If, through inspection, it is determined that a property owner or person in control of the land has failed to comply or is no longer in compliance with the provisions of this Chapter or rules or orders issued pursuant to this Chapter, the City will serve a written notice of violation. The notice may be served by any means authorized under N.C.G.S. 1A-1, Rule 4, or any other means reasonably calculated to give actual notice, such as facsimile or hand delivery. A notice of violation shall identify the nature of the violation, and set forth the measures necessary to achieve compliance with the Ordinance. The notice shall inform the person whether a civil penalty will be assessed immediately or specify a date by which the person must comply with this Chapter. The notice shall advise that failure to correct the violation within the time specified will subject that person to the civil penalties provided in Section 21-17 of this Chapter or any other authorized enforcement action.

(D) The City shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Chapter, and for this purpose may enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites subject to the provisions of this Chapter.

Sec. 21-16 Emergencies

In the case of emergencies such as windstorms, ice storms, fire or other disasters, the requirements of this Chapter may be waived by the City during the emergency period so that the requirements of this Chapter will in no way hamper private or public work to restore order in the City. This shall not be interpreted to be a general waiver of the intent of this Chapter.

Sec. 21-17 Penalties

Any person who violates any of the provisions of this Chapter, or rules or orders adopted or issued pursuant to this Chapter, shall be subject to any one, all or a combination of the civil penalties prescribed by this section. Penalties assessed under this Chapter are in addition to and not in lieu of compliance with the requirements of this Chapter. The person(s) performing the work and person(s) contracting for the performance shall be jointly and severally liable for any penalties or other enforcement action imposed pursuant to this Chapter or other provisions of law on account of work performed in violation of this ordinance.

(A) **Civil Penalties.** Civil penalties for violations of this Chapter shall be assessed pursuant to the following:

1. Failure to plant original or replacement trees in accordance with Sections 21-7 and Section 21-13 shall be \$50.00 for each tree not planted. No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in Section 21-15 of this Chapter. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received. The

failure to plant each individual tree shall constitute a separate, daily and continuing violation.

2. Injury or damage to, or destruction of, trees and shrubs protected by the provisions of Sections 21-6 and 21-7 that result in the total loss of the tree or shrub shall be assessed in accordance with the Tree Evaluation Formula or other generally accepted industry evaluation methods. Provided, however, that the maximum civil penalty for each tree injured, damaged or destroyed shall not exceed \$20,000.00. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this section.

3. Injury or damage to, or destruction of, trees and shrubs protected by the provisions of Sections 21-6 and 21-7 that do not result in the total loss of said trees shall be assessed for each tree or shrub in accordance with the Tree Evaluation Formula or other generally accepted industry evaluation methods. Provided, however, that the maximum amount of said penalty shall not exceed \$1,000.00. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this section.

4. Failure to install or maintain required tree protection measures in accordance with Section 21-12 shall be \$1,000.00. No civil penalty shall be assessed until the person has been notified of the violation as provided in Section 21-15 of this Chapter. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received. The failure to install the required tree protection measures shall constitute a separate, daily and continuing violation. Injury or damage to, or destruction of, trees in the Tree Protection Zone resulting from inadequate or omitted tree protection measures constitutes a separate violation which may subject the violator to any other applicable penalty set forth in this section.

5. Any other action that constitutes a violation of this Ordinance may subject the violator to a civil penalty of \$50.00, and each day of continuing violation shall constitute a separate violation. Provided, however, that the maximum amount of said penalty shall not exceed \$1,000.00.

(B) A non-monetary penalty, in the form of increased or additional planting requirements may be assessed in addition to or in lieu of any monetary penalties prescribed under this Article.

(C) The City shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4 and shall direct the violator to either pay the assessment or contest the assessment as specified in Section 21-19. If payment of assessed penalties is not received within thirty (30) days after it is due, or if no request for a hearing has been

made as provided in Section 21-19, the assessment shall be considered a debt due and owing to the City and the matter shall be referred to the City Attorney for institution of a civil action to recover the amount of the debt. The civil action may be brought in Mecklenburg County Superior Court or in any other court of competent jurisdiction.

(D) A civil action must be filed within three (3) years of the date of the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(E) Civil penalties collected pursuant to this Ordinance shall be credited to the general fund as a non-tax revenue and shall be used to further the purposes, intent and requirements of this Chapter. The Tree Advisory Commission shall be consulted with regard to use of collected funds.

(F) Any person who knowingly or willfully violates any provision of this Chapter shall be guilty of a Class 2 misdemeanor and may, upon conviction thereof, be subject to punishment as provided in Section 1-7 of the City Code. This remedy is in addition to any civil penalties that may be assessed.

Sec. 21-18 Injunctive relief

(A) Whenever the City has reasonable cause to believe that any person, firm, corporation or other entity is violating or threatening to violate this Chapter or any rule or order adopted or issued pursuant to this Chapter, or any term, condition or provision of an approved permit, it may, either before or after the institution of any other action or proceeding authorized by this Chapter authorize the City Attorney to institute a civil action in the name of the City of Charlotte for injunctive relief to restrain the violation or threatened violation. The action shall be brought in Mecklenburg County Superior Court or any other Court of competent jurisdiction.

(B) Upon determination of a court that an alleged violation is occurring or is threatened, the Court shall enter such orders or judgments as are necessary to abate the violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violation of this Chapter.

Sec. 21-19 Hearings and Appeals

(A) Requests for a Variance.

1. The decision of the City Arborist or Senior Urban Forester to deny an application for a variance from the requirements of this Chapter shall entitle the person submitting the application ("Petitioner") to a public hearing before the Commission if such person submits a written request for a hearing to the Chairman of the Commission within ten (10) working

days of receipt of the decision denying the variance. As soon as possible after the receipt of said request, the Chairman of the Tree Advisory Commission will set a date, time and place for the hearing and notify the Petitioner of the same by mail. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Commission from the submission of the request, as soon thereafter as practical, or at a special meeting. The Chairman may appoint a three-member board selected from the appointed members of the Tree Advisory Commission to act as an appeal board and hear the request of the Petitioner. The hearing shall be conducted by the Commission in accordance with the provisions of Section 20-19(D) of this Chapter.

2. The Tree Advisory Commission or its designated appeal board may grant a variance from the requirements of this Chapter upon a finding that:

- (a) practical difficulties or unnecessary hardship would result if the strict letter of the law were followed; and,
- (b) the variance is in accordance with the general purpose and intent of the Ordinance.

(B) Appeals for Notices of Violation and Assessments of Civil Penalties.

1. The issuance of a notice of violation or assessment of a civil penalty by the City shall entitle the violator of the Ordinance (Petitioner) to a public hearing before the Commission if such person submits written request for a hearing to the Chairman of the Commission within ten (10) days of the receipt of the notice of violation or assessment of a civil penalty.

2. As soon as possible after the receipt of said request, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Commission from the submission of the request, as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to the provisions of Section 21-19(D) of this Ordinance.

(C) Any party aggrieved by the decision of the Commission with regard to the issuance of a variance, a notice of violation or an assessment of civil penalties shall have thirty (30) days from the receipt of the decision of the Commission to file a petition for review in the nature of certiorari in Superior Court with the Clerk of Mecklenburg County Superior Court.

(D) Hearing Procedure. The following provisions shall be applicable to any hearing conducted by the Commission pursuant to Section 21-19(A) or (B) above.

1. At the hearing Petitioner and the City shall have the right to be present and to be heard, to be represented by counsel, and to present evidence through witnesses and competent testimony relevant to the issue(s) before the Commission.
2. Rules of evidence shall not apply to a hearing conducted pursuant to this Chapter and the Commission may give probative effect to competent, substantial and material evidence.
3. At least seven (7) days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the Commission.
4. Witnesses shall testify under oath or affirmation to be administered by the Court Reporter or another duly authorized official.
5. The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. Both the representative for the City and for the Petitioner shall have the right to cross-examine witnesses.
6. At the conclusion of the hearing, the Commission shall render its decision on the evidence submitted at such hearing and not otherwise.
 - (a) If, after considering the evidence presented at the hearing, the Commission concludes by a preponderance of the evidence that the grounds for the City's actions with regard to issuing a notice of violation, assessing a civil penalty or ordering replanting are true and substantiated, the Commission shall, as it sees fit, uphold the action on the part of the City Engineer.
 - (b) If, after considering the evidence presented at the hearing, the Commission concludes by a preponderance of the evidence that the grounds for the City's actions are not true and substantiated, the Commission may, as it sees fit, reverse or modify any order, requirement, decision or determination of the City. The Commission Bylaws will determine the number of concurring votes needed to reverse any order, requirement, decision or determination of the City.
7. The Commission shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any

member to vote. The decision of the Commission shall be based on findings of fact and conclusions of law to support its decision.

8. The Commission shall send a copy of its findings and decision to the Petitioner and the City Engineer. If either party contemplates an appeal to a court of law, the party may request and obtain, at his own cost, a transcript of the proceedings.
9. The decision of the Commission shall constitute a final decision.

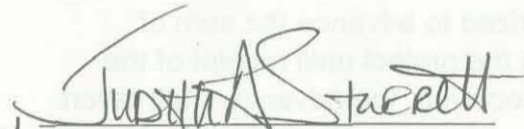
Sec. 21-20 Severability

If any section or sections of this Chapter is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

Sec. 21-21

This Chapter shall become effective upon adoption.

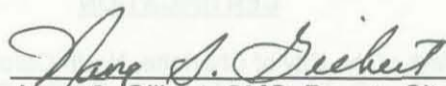
Approved as to form:


Asst. City Attorney

CERTIFICATION

I, Nancy S. Gilbert, Deputy City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 25th day of September, 2000, the reference having been made in Minute Book 115, and recorded in full in Ordinance Book 50, Page(s) 551-568.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 26th day of September, 2000.


Nancy S. Gilbert, CMC, Deputy City Clerk