

ORDINANCE NUMBER. 1443

AN ORDINANCE OF THE CITY OF MILWAUKIE PROVIDING FOR THE REGULATION AND DEVELOPMENT OF A CABLE COMMUNICATIONS SYSTEM FOR THE CITY.

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Title. This ordinance shall be known as the Milwaukie Cable Communications Ordinance.

Section 2. Definitions.

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

B. Franchise. As used herein, the term "franchise" means the privilege conferred upon a person, firm or corporation ("franchise") by the city to operate a cable communications system.

Section 3. Declaration of Powers. The city, by and through its Council, recognizes, declares and establishes the authority to regulate the development and operation of a cable communications system (hereinafter "system") for the city and to exercise all powers necessary for that purpose, including, but not limited to, the following:

A. To grant by resolution or ordinance franchises for the development and operation of a system or systems;

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

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

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

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

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

F. To provide for the creation of a commission to oversee, administer and enforce the terms and provisions of this ordinance and any franchise awarded incident thereto.

Section 4. Grant of Franchise.

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

- (1) Information and instructions relating to the preparation and filing of bid proposals;
- (2) Requirements regarding the development, operation and regulation of a system;
- (3) Criteria to be used in evaluating applicant proposals.

B. Upon completion of the RFP, the Council may:

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

(2) Authorize the Manager to seek bids for a system pursuant to the RFP.

C. The Manager may employ the services of a technical consultant, as necessary, to assist in the analysis of any matter relative to the RFP and to the evaluation of any bid. The cost of these services may be charged to the applicants and the franchisee, if any.

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

E. The Council may award a franchise to an applicant only after a public hearing on the application and bid, notice of which shall be published in a local newspaper of general circulation in the city at least ten (10) days prior to the date of the hearing. All applicants shall be notified by mail of the public hearing; provided, however, that no defect in the notice or failure to notify shall invalidate the franchise awarded.

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

Section 5. Violation, Penalties and Remedies.

A. Violation and Penalties. Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating or causing the violation of any provision of this ordinance or performing any of the acts and functions itemized under Section 2(A) of this ordinance, which defines a cable communications system, without having been awarded a franchise to perform said acts or functions pursuant to the terms of this ordinance shall be subject to a fine of not to exceed \$1000. Each violation occurring on a separate day is considered a separate violation of this ordinance.

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

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

Section 6. Severability. The provisions of this ordinance are severable. If any provision, section or part of this ordinance is for any reason held to be invalid, superceded or otherwise determined to be of no force and effect, such decision shall not affect the validity or enforceability of the remainder of this ordinance.

Read the first time this 4th day of February, 1980 and moved to second reading by unanimous vote of the Council.

Read the second time and adopted by the Council this 4th day of February 1980.

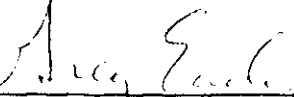
Signed by the Mayor this 4th day of February, 1980.


Allen Manuel, Mayor

ATTEST:


Dorothy E. Farrell, Recorder

APPROVED AS TO FORM:


Greg Eades, City Attorney