

HBP-2 2022

A local law to adopt a new Chapter 133A of the Code of the Village of Hewlett Bay Park, entitled "Telecommunications Licenses and Franchises", providing for the regulation of telecommunications within the public ways.

Section one. A new Chapter 133A is hereby adopted, to read as follows:

Chapter 133A

TELECOMMUNICATIONS LICENSES AND FRANCHISES

ARTICLE I

GENERAL PROVISIONS

§ 133A-1. Purpose.

The purpose and intent of this Chapter is to:

- A. Establish a local policy concerning telecommunications providers and services consistent with federal, state and local laws, statutes and regulations applicable to the permitted use of public ways.
- B. Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and services.
- C. Promote competition in telecommunications.
- D. Minimize unnecessary local regulation of telecommunications providers and services.
- E. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the Village.
- F. Permit and manage reasonable access to the public ways of the Village for telecommunications purposes on a competitively neutral basis.
- G. Conserve the limited physical capacity of the public ways held in public trust by the Village.
- H. Assure that the Village's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs, in a manner consistent with existing federal, state and local laws, statutes and regulations.
- I. Secure fair and reasonable compensation to the Village and the residents of the Village for permitting private use of the public ways.
- J. Assure that all telecommunications carriers providing facilities or services within the

Village comply with the laws, rules and regulations of the Village.

- K. Assure that the Village can continue to fairly and responsibly protect the public health, safety and welfare.
- L. Enable the Village to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

§ 133A-2. Definitions.

For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

AFFILIATE

A person that (directly or indirectly) owns or controls, is owned or controlled by or is under common ownership or control with another person.

CABLE ACT

The Cable Franchise Policy and Communications Act of 1984, 47 U.S.C. 532 et seq., as now and hereafter amended, and the Telecommunications Act of 1996.

CABLE OPERATOR

A telecommunications carrier providing or offering to provide cable service within the Village as the term is defined in the Cable Act.

CABLE SERVICE

For the purpose of this Chapter shall have the same meaning provided by the Cable Act.

CORPORATE AUTHORITIES

The Mayor and Board of Trustees of the Village. Notwithstanding the foregoing, the Village may, where permitted by law, delegate to another person or entity, including an entity established by the Village in cooperation with one or more other municipalities, some or all of the authority vested in the Village as to one or more subjects which are encompassed by this chapter.

EXCESS CAPACITY

The volume or capacity in any existing or future duct, conduit, manhole or other utility facility within the public way that is or will be available for use for additional telecommunications facilities.

FEDERAL COMMUNICATIONS COMMISSION (FCC)

The federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

OTHER WAYS

The highways, streets, utility easements or other rights-of-way within the Village, but under the jurisdiction and control of a governmental entity other than the Village.

OVERHEAD FACILITIES

Utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

PERSON

Includes corporations, companies, associations, joint-stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

PUBLIC SERVICE COMMISSION (PSC)

The New York State Public Service Commission or any lawful successor state administrative agency authorized to regulate and oversee telecommunications carriers, services and providers in the State of New York.

PUBLIC STREET

Any highway, street, roadway or other public right-of-way for motor vehicle travel under the jurisdiction and control of the Village which has been acquired, established, dedicated or devoted to highway purposes not inconsistent with telecommunications facilities.

PUBLIC WAY

Includes all public streets and utility easements, as those terms are defined herein, now or hereafter owned or under the control or jurisdiction of the Village, but only to the extent of the Village's right, title, interest or authority to grant a license or franchise to occupy and use such streets and easements for telecommunications facilities.

STATE

The State of New York

SURPLUS SPACE

That portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the New York Public Service Commission, to allow its use by a telecommunications carrier for a pole attachment.

TELECOMMUNICATIONS CARRIER

Includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the Village, used or to be used for the purpose of offering telecommunications service.

TELECOMMUNICATIONS FACILITIES

The plant, equipment and property, including but not limited to cables, wires, conduits, ducts, pedestals, antennas, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.

TELECOMMUNICATIONS PROVIDER

Includes every person who provides telecommunications service over tele-communications facilities without any ownership or management control of the facilities.

TELECOMMUNICATIONS SERVICE

The providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

TELECOMMUNICATIONS SYSTEM

See "telecommunications facilities."

UNDERGROUND FACILITIES

Utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

USABLE SPACE

The total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders, rules and regulations of the New York Public Service Commission.

UTILITY EASEMENT

Any easement owned by the Village and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

UTILITY FACILITIES

The plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the public ways of the Village and used or to be used for the purpose of providing utility or telecommunications services.

VILLAGE

The Village of Hewlett Bay Park.

VILLAGE PROPERTY

Includes all real property owned by the Village, other than public streets and utility easements as those terms are defined herein, and all property held in a proprietary capacity by the Village, which is not subject to right-of-way licensing and franchising as provided in this chapter.

§ 133A-3. Registration.

Except as otherwise provided herein, all telecommunications carriers and providers engaged in the business of transmitting, supplying or furnishing of telecommunications services originating or terminating in the Village shall register with the Village pursuant to Article II of this Chapter. The requirement for registration shall not apply with respect to any activities which, by reason of applicable federal or state law, are not subject to regulation by the Village or are not subject to the jurisdiction of the Village.

§ 133A-4. Telecommunications license.

Except as otherwise provided herein, no telecommunications carrier shall construct, install, operate, maintain or otherwise locate telecommunications facilities in, under, over or across any public way in the Village for the purpose of providing telecommunications service solely to persons and areas outside the Village without first obtaining a license from the Village pursuant to Article III of this Chapter. This section shall not be applicable to such activities of any telecommunications carrier for which, by reason of applicable federal or state law, no license is required from the Village.

§ 133A-5. Telecommunications franchise.

Except as otherwise provided herein, any telecommunications carriers who desire to construct, install, operate, maintain or otherwise locate telecommunications facilities in, under, over or across any public way of the Village, and to also provide telecommunications service to persons or areas in the Village, shall first obtain a franchise granting the use of such public ways from the Village pursuant to Article IV of this chapter. This section shall not be applicable to the activities of any telecommunications carrier for which, by reason of applicable federal or state law, no franchise is required from the Village.

§ 133A-6. Cable television franchise.

Except as otherwise provided herein, any telecommunications carrier that desires to construct, install, operate, maintain or locate telecommunications facilities in any public way in the Village for the purpose of providing cable television service to persons in the Village shall first obtain a cable franchise from the Village as provided in Article V of this chapter.

§ 133A-7. Application to existing franchises.

This Chapter shall not be applicable to any telecommunications service for which a franchise or license from the Village is in effect at the effective date of this law until:

- A. The expiration of said franchise agreement; or
- B. An amendment to an unexpired franchise agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

§ 133A-8. Penalties for offenses.

Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be punished as provided in §1-17 of this Code. A separate and distinct offense shall be deemed committed each day on which

a violation occurs or continues.

§ 133A-9. Other remedies.

Nothing in this Chapter shall be construed as limiting any other remedies that the Village may have, at law or in equity, for enforcement of this Chapter.

ARTICLE II

REGISTRATION OF TELECOMMUNICATIONS CARRIERS AND PROVIDERS

§ 133A-10. Registration required.

Each telecommunications carrier and provider which offers or provides any telecommunications service for a fee directly to the public, either within the Village or outside the corporate limits from telecommunications facilities within the Village, shall register with the Village by providing the following information to the Village Clerk:

- A. The identity and legal status of the registrant, including any affiliates.
- B. The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.
- C. A description of the registrant's existing or proposed telecommunications facilities within the Village.
- D. A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the Village.
- E. Information sufficient to determine whether the registrant is subject to public way licensing or franchising under this chapter.
- F. Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any municipal telecommunications tax, utility receipts tax or other occupation tax imposed by the Village.
- G. Information sufficient to determine that the applicant has applied for and received any certificate of authority required by the New York State Public Service Commission to provide telecommunications services or facilities within the Village.
- H. Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission to provide telecommunications services or facilities within the Village.

- I. Such other information as the Village Clerk may reasonably require.

§ 133A-11. Registration fee.

Each application for registration as a telecommunications carrier or provider shall be accompanied by a fee in an amount established from time to time by resolution of the Board of Trustees.

§ 133A-12. Purpose of registration.

The purpose of registration under this Article II is to:

- A. Provide the Village with accurate and current information concerning the telecommunications carriers and providers that offer or provide telecommunications services within the Village, or that own or operate telecommunication facilities within the Village.
- B. Assist the Village in assuring compliance with the requirements of this Chapter.
- C. Assist the Village in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due the Village.
- D. Assist the Village in monitoring compliance with local, state and federal laws.

ARTICLE III

TELECOMMUNICATIONS LICENSE

§ 133A-13. License required.

A telecommunications license shall be required of any telecommunications carrier that desires to occupy specific public ways in the Village for the sole purpose of providing telecommunications services to persons or areas outside the Village.

§ 133A-14. License application.

An application for a telecommunications license shall include the following information:

- A. The identity of the license applicant, including all affiliates of the applicant.
- B. A description of the telecommunications services that are or will be offered or provided by the licensee over its telecommunications facilities.
- C. A description of the transmission medium that will be used by the licensee to offer or provide such telecommunications services.
- D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the Village, all in sufficient detail to identify:

- (1) The location and route requested for the applicant's proposed telecommunications facilities.
 - (2) The location of all overhead and underground public utility, telecommunications, cable, water, sewer, drainage and other facilities in the public way along the proposed route.
 - (3) The location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers.
 - (4) The specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.
- E. If the applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.
- F. If the applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:
- (1) The excess capacity currently available in such ducts or conduits before installation of the applicant's telecommunications facilities.
 - (2) The excess capacity, if any, that will exist in such ducts or conduits after installation of the applicant's telecommunications facilities.
- G. If the applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:
- (1) The location proposed for the new ducts or conduits.
 - (2) The excess capacity that will exist in such ducts or conduits after installation of the applicant's telecommunications facilities.
- H. A preliminary construction schedule and completion date.
- I. A preliminary traffic control plan during the construction period.
- J. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.
- K. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.
- L. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services.
- M. Payment of all fees, deposits or charges required pursuant to Article VI of this Chapter.

N. Such other and further information as may be required by the Village.

§ 133A-15. Determination by Village.

Within a reasonable time after receiving a complete application for a telecommunications license or within such time as required to do so by federal law or regulation, the corporate authorities shall issue a written determination granting or denying the application, in whole or in part, applying the following standards, and, if the application is denied, the written determination shall include the reasons for denial:

- A. The financial and technical ability of the applicant.
- B. The legal capacity of the applicant.
- C. The capacity of the public ways to accommodate the applicant's proposed facilities.
- D. The capacity of the public ways to accommodate additional utility and telecommunications facilities if the license is granted.
- E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the license is granted.
- F. The public interest in minimizing the cost and disruption of construction within the public ways.
- G. The service that the applicant will provide to the community and region.
- H. The effect, if any, on public health, safety and welfare if the license is granted.
- I. The availability of alternate routes and/or locations for the proposed facilities.
- K. Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

§ 133A-16. Agreement.

No license granted hereunder shall be effective until the applicant and the Village have executed a written agreement setting forth the particular terms and provisions under which the license to occupy and use public ways in the Village will be exercised, and a hearing is held by the Board of Trustees in connection with the license agreement.

§ 133A-17. Nonexclusive grant.

No license granted hereunder shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways in the Village for delivery of telecommunications services or any other purposes.

§ 133A-18. Rights granted.

No license granted under this chapter shall convey any right, title or interest in the public ways, but shall be deemed a license only to use and occupy the public ways for the limited

purposes and term stated in the grant. Further, no license shall be construed as any warranty of title.

§ 133A-19. Construction permits.

All licensees are required to obtain construction permits for telecommunications facilities as required in Article VII of this Chapter; provided, however, that nothing in this section shall prohibit the Village and a licensee from agreeing to alternative plan review, permit and construction procedures in a license agreement, provided that such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

§ 133A-20. Compensation to Village.

Subject to then applicable laws and regulations, each telecommunications license shall be subject to the Village's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the property rights granted to the licensee, provided that nothing in this section shall prohibit the Village and a licensee from agreeing to the compensation to be paid.

§ 133A-21. Amendment of grant.

An amendment to an existing telecommunications license shall be required before any telecommunications carrier may extend or locate its telecommunications facilities in public ways in the Village which are not included in a license previously granted under this Chapter.

§ 133A-22. Renewal determinations.

Within a reasonable time after receiving a complete application for renewal of a telecommunications license, the corporate authorities shall issue a written determination granting or denying the renewal application, in whole or in part, applying the following standards, and, if the renewal application is denied, the written determination shall include the reasons for nonrenewal:

- A. The financial and technical ability of the applicant.
- B. The legal capacity of the applicant.
- C. The continuing capacity of the public ways to accommodate the applicant's existing facilities.
- D. The applicant's compliance with the requirements of this Chapter and the license agreement.
- E. Applicable federal, state and local telecommunications laws, rules and policies.
- F. Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

§ 133A-23. Obligation to cure as condition of renewal.

No telecommunications license shall be renewed until any existing violations or defaults

in the licensee's performance of the license agreement, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the Village.

ARTICLE IV

TELECOMMUNICATIONS FRANCHISE

§ 133A-24. Franchise required.

A telecommunications franchise shall be required of any telecommunications carrier that desires to occupy public ways in the Village and to provide telecommunications services to any person or area in the Village.

§ 133A-25. Franchise application.

Any person who desires a telecommunications franchise pursuant to this Article IV shall file an application with the Village, which shall include the following information:

- A. The identity of the franchise applicant, including all affiliates of the applicant.
- B. A description of the telecommunications services that are or will be offered or provided by the franchise applicant over its existing or proposed facilities.
- C. A description of the transmission medium that will be used by the franchisee to offer or provide such telecommunications services.
- D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the Village, all in sufficient detail to identify:
 - (1) The location and route requested for the applicant's proposed telecommunications facilities.
 - (2) The location of all overhead and underground public utility, telecommunications, cable, water, sewer drainage, and other facilities in the public way along the proposed route.
 - (3) The location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers.
 - (4) The specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.
- E. If the applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.
- F. If the applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

- (1) The excess capacity currently available in such ducts or conduits before installations of the applicant's telecommunications facilities.
 - (2) The excess capacity, if any, that will exist in such ducts or conduits after installation of the applicant's telecommunications facilities.
- G. If the applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:
- (1) The location proposed for the new ducts or conduits.
 - (2) The excess capacity that will exist in such ducts or conduits after installation of the applicant's telecommunications facilities.
- H. A preliminary construction schedule and completion dates.
- I. A preliminary traffic control plan during the construction period.
- J. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.
- K. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.
- L. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services. This shall include copies of documentation from the public service commission evidencing the applicant's authorization to operate as a telecommunications franchise.
- M. Whether the applicant intends to provide cable service, video dial tone service or other video programming service and sufficient information to determine whether such service is subject to cable franchising.
- N. An accurate map showing the location of any existing telecommunications facilities in the Village that the applicant intends to use or lease.
- O. A description of the services or facilities that the applicant will offer or make available to the Village and other public, educational and governmental institutions.
- P. A description of the applicant's access and line extension policies.
- Q. The area or areas of the Village the applicant desires to serve and a schedule for build-out to the entire franchise area.
- R. Payment of all fees, deposits or charges required pursuant to Article VI of this chapter.
- S. Engineer's certification evidencing that facilities will comply with FCC requirements and that the facilities pose no risk of explosion, fire or other danger to life.
- T. Long environmental assessment form, together with a visual assessment (assessment

to be provided only if the facility involves a pole or other structure in excess of 10 feet in height or 30 square feet in width.

- U. Authorization from owner of utility pole(s).
- V. Proximity to nearest park, recreation area, or historic or landmark structure.
- W. Identify alternatives considered by the applicant, including co-location, and reasons why such alternative is not feasible.
- X. Agreement to co-locate additional franchise facilities utilizing applicant's structures, where appropriate.
- Y. Such other and further information as may be requested by the Village.

§ 133A-26. Determination by Village.

Within a reasonable period of time after receiving a complete application for a telecommunications franchise, the corporate authorities shall issue a written determination granting or denying the application, in whole or in part, applying the following standards, and, if the application is denied, the written determination shall include the reasons for denial:

- A. The financial and technical ability of the applicant.
- B. The legal capacity of the applicant.
- C. The capacity of the public ways to accommodate the applicant's proposed facilities.
- D. The capacity of the public ways to accommodate additional utility and telecommunications facilities if the franchise is granted.
- E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted.
- F. The public interest in minimizing the cost and disruption of construction within the public ways.
- G. The service that the applicant will provide to the community and region.
- H. The effect, if any, on public health, safety and welfare if the franchise requested is granted.
- I. The availability of alternate routes and/or locations for the proposed facilities.
- J. Applicable federal and state telecommunications laws, regulations and policies.
- K. Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

§ 133A-27. Agreement.

No telecommunications franchise shall be granted unless the applicant and the Village have executed a written agreement setting forth the particular terms and provisions under which the franchise to occupy and use public ways of the Village will be exercised and a hearing is held by the Board of Trustees in connection with the franchise agreement.

§ 133A-28. Nonexclusive grant.

No telecommunications franchise shall convey any right, title or interest in the public ways. Any such franchise shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title.

§ 133A-29. Rights granted.

No telecommunications franchise shall convey any right, title or interest in the public ways. Any such franchise shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title.

§ 133A-30. Construction permits.

All franchisees are required to obtain construction permits for telecommunications facilities as required in Article VII of this chapter; provided, however, that nothing shall prohibit the Village and a franchisee from agreeing to alternative plan review, permit and construction procedures that provide substantially equivalent safeguards for responsible construction practices.

§ 133A-31. Compensation to Village.

Each telecommunication franchise shall be subject to the Village's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the property rights granted to the franchisee, provided that nothing shall prohibit the Village and a franchisee from agreeing to the compensation to be paid, and further provided that the Village shall not fix an amount of compensation which is contrary to the provision of any such franchise agreement.

§ 133A-32. Nondiscrimination.

A telecommunications franchisee shall make all of its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for the grantee's services; provided, however, that nothing in this section shall prohibit a franchisee from making any reasonable classification among differently situated customers.

§ 133A-33. Service to Village.

A franchisee shall make its telecommunications services available to the Village at its most favorable rate for similarly situated users, unless otherwise provided in a license or franchise agreement.

§ 133A-34. Amendment of grant.

An amendment to a franchise shall be required of any telecommunications carrier that

desires to extend its franchise territory or to locate its telecommunications facilities in public ways in the Village which are not included in a franchise previously granted under this chapter.

§ 133A-35. Renewal applications.

Unless otherwise provided by law, an application for renewal of a telecommunications franchise shall be filed not more than 240 days nor less than 150 days before expiration of the current franchise and shall include the following information:

- A. The information required pursuant to § 133A-25 of this Chapter.
- B. Any information required pursuant to the franchise agreement between the Village and the grantee.
- C. The continuing capacity of the public ways to accommodate the applicant's existing facilities and the continuing authorization of the grantee to operate a telecommunications franchise.
- D. The applicant's compliance with the requirements of this chapter and the franchise agreement.
- E. Compliance with applicable federal, state and local telecommunications laws, rules and policies.
- F. Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

§ 133A-36. Obligation to cure as condition of renewal.

No telecommunications franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the franchise agreement, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the Village.

ARTICLE V

CABLE FRANCHISE

§ 133A-37. Additional requirements; conflicts.

In addition to the provisions outlined in Article IV regarding franchise application, grant and authority, the approval of a cable franchise is also subject to the provisions and requirements outlined in this Article V:

- A. Cable franchisee is subject to this Chapter, the Cable Act and such other federal and state statutes, rules and regulations as may be applicable.
- B. If a conflict arises between the language in Article V and any other part of this Chapter, the provisions of this Article V shall prevail.

§ 133A-38. Description of system.

The minimum capacity for a cable system shall be 450 MHz with at least 77 downstream channels. Each cable franchise agreement shall require the franchisee to provide the Village with a written description of the cable system within the Village, including technical characteristics, channel capacity, channel carriage and a strand map. The franchisee shall provide the Village with an updated description upon request by the Village, or whenever substantial changes in the system are made.

§ 133A-39. Channel allocation.

The franchisee shall, to the maximum extent possible, assign, as dial or station locations for local broadcast television stations carried on the system, numbers, accessible by either a cable-ready television or a converter, which correspond to their respective FCC-assigned television station call numbers.

§ 133A-40. Access channels.

- A. The franchisee shall provide access channels on the subscriber network for the exclusive use of designated institutions.
- B. The number and use of said channels will be prescribed in the franchise agreements, and such channels shall be available on the lowest tier of basic service, without additional charge.
- C. The franchisee shall make every reasonable effort to assign PEG (public, educational, government) channels to the same channels assigned to equivalent such channels by other providers within the Village and in contiguous municipalities in which the franchisee also provides such channels.

§ 133A-41. Renewal.

To the extent applicable, renewal shall be governed by the Cable Act.

§ 133A-42. Service to Village.

Applications for franchises shall include proposals for the provision of public, educational and governmental access to the telecommunications system.

ARTICLE VI

FEES AND COMPENSATION

§ 133A-43. Purpose.

It is the purpose of this article to provide for the payment and recovery of certain direct and indirect costs and expenses of the Village related to the enforcement and administration of this chapter.

§ 133A-44. Application review fee.

Each applicant for a telecommunications license or franchise pursuant to Article III or IV of this Chapter, or an amendment or renewal thereof, shall pay an application review fee as set forth in Chapter A148. No application review fee shall be required of any applicant for a license or franchise pursuant to Article V of this chapter.

§ 133A-45. Reimbursement of other Village costs.

In addition to any application fee required by this Chapter, each person to whom a telecommunications license or franchise or cable franchise is granted pursuant to Article III, IV, or V of this Chapter shall, within 30 days after written demand therefor by the Village, reimburse the Village for all direct or indirect costs or expenses, including professional fees, but not including salaries or overhead for Village employees, incurred by the Village in connection with any application for a telecommunications license, franchise or cable franchise or a modification, amendment, renewal or transfer thereof. Where the Village's authority with respect to such application has been exercised in whole or in part by an entity to whom the Village has delegated such authority, the Village's direct and indirect costs and expenses, as provided in this section, shall include the Village's share of such expenses incurred by the such entity.

§ 133A-46. Compensation for public ways.

In addition to any fees or reimbursements provided for in this article, the Village may annually fix a fair and reasonable compensation to be paid for the property rights granted to a telecommunications license or franchise or cable franchise grantee. Nothing in this section shall prohibit the Village and a grantee from agreeing to the compensation to be paid for the granted property rights. Where a franchise or license agreement contains provision for such compensation, no further compensation for public ways shall be required pursuant to this section.

§ 133A-47. Compensation for Village property.

If a right is granted, by lease, license, franchise or other manner, to use and occupy Village property for the installation of telecommunications facilities, the compensation to be paid shall be fixed by the Village, unless otherwise agreed upon in the license or franchise agreement, in addition to any other fee or reimbursement provided for in this article.

§ 133A-48. Construction permit fee.

Whenever a permit is required for any construction proposed by a telecommunications licensee or franchisee, or cable television franchisee, pursuant to any other law, rule or regulation, payment of any fee required for such permit shall be required, unless otherwise agreed upon in the license or franchise agreement.

§ 133A-49. Annual fees.

Unless otherwise agreed in a license or franchise grant agreement, each license or franchise grantee shall pay an annual license fee to the Village equal to 5% of the gross revenues received by the licensee or franchisee pursuant to said license or franchise. Such annual fee may be used by the Village for payment or reimbursement of costs incurred in connection with reviewing, inspecting and supervising the use and occupancy of the public ways in behalf of the public and existing or future users, and the administration and supervision of

ARTICLE VII

CONDITIONS OF GRANT

§ 133A-50. Location of facilities.

All facilities shall be constructed, installed, located, used and operated in accordance with the terms and conditions contained in a license or franchise agreement.

§ 133A-51. Construction permits.

All license or franchise grantees are required to obtain construction permits for telecommunications facilities as required in Article VII of this chapter. However, nothing in this chapter shall prohibit the Village and a grantee from agreeing to alternative plan review, permit and construction procedures in a license or franchise agreement, provided that such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

§ 133A-52. Interference with public ways.

No licensee or franchisee may locate or maintain telecommunications facilities so as to unreasonably interfere with the use of the public ways by the Village, by the general or by other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the franchisee or licensee, temporarily or permanently, as determined by the Village Engineer, at the sole cost and expense of the franchisee or licensee.

§ 133A-53. Damage to property.

No franchisee or licensee, nor any person acting on their behalf, shall take any action or permit any action to be done which may impair or damage any Village property, public way or the Village, other ways or other property located in, on or adjacent thereto.

§ 133A-54. Notice of work.

Unless otherwise provided in a license or franchise agreement, no franchisee or licensee, nor any person acting on the grantee's behalf, shall commence any nonemergency work in or about the public ways in the Village or other ways without 10 working days' advance notice written to the Village.

§ 133A-55. Repair and emergency work.

In the event of an unexpected repair or emergency, a franchisee or licensee may commence such repair and emergency response work as required under the circumstances, provided that notification is given the Village as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

§ 133A-56. Maintenance of facilities.

Each franchisee and licensee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

§ 133A-57. Relocation or removal of facilities.

Within 30 days following written notice from the Village, a license or franchise grantee shall, at its own expense, temporarily or permanently, remove, relocate, change or alter the position of any telecommunications facilities within the public ways, at the franchisee or licensee's sole cost and expense, whenever the corporate authorities shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- A. The construction, repair, maintenance or installation of any Village or other public improvement in or upon the public ways.
- B. The operations of the Village or other governmental entity in or upon the public ways.

§ 133A-58. Removal of unauthorized facilities.

- A. No later than 30 days following written notice from the Village, any franchisee, licensee, telecommunications carrier or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public ways in the Village shall, at its own expense, remove such facilities or appurtenances from the public ways in the Village.
- B. A telecommunications system or facility is unauthorized and its facilities subject to removal in the following circumstances:
 - (1) Upon expiration or termination of the grantee's telecommunications license or franchise.
 - (2) Upon abandonment of a facility within the public ways in the Village.
 - (3) If the system or facility was constructed or installed without the prior grant of a telecommunications license or franchise.
 - (4) If the system or facility was constructed or installed without the prior issuance of a required construction permit.
 - (5) If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications license or franchise.

§ 133A-59. Emergency removal or relocation of facilities.

The Village retains the right and privilege to cut or move any telecommunications facilities located within the public ways of the Village, as the Village may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

§ 133A-60. Facilities maps.

Each registrant, franchisee and licensee shall provide the Village with an accurate map or maps certifying the location of all telecommunications facilities within the public ways and shall provide updated maps annually.

§ 133A-61. Duty to provide information.

Within 10 days of a written request from the Village, each franchisee and licensee shall:

- A. Furnish the Village with information sufficient to demonstrate that the franchisee or licensee has complied with all requirements of this chapter and that all municipal sales, message and/or telecommunications or other taxes due the Village in connection with the telecommunications services and facilities provided by the franchisee or licensee have been properly collected and paid.
- B. Make all books, records, maps and other documents, maintained by the franchisee or licensee with respect to its facilities within the public ways, available for inspection by the Village at reasonable times and intervals.

§ 133A-62. Grantee insurance.

A. Unless otherwise provided in a license or franchise agreement, each franchisee and licensee shall, as a condition of the franchise or license, secure and maintain the following insurance policies, and shall provide the Village with appropriate endorsements demonstrating, with respect to all liability insurance policies, that the Village and its elected and appointed officers, officials, agents and employees are named as principal, or additional insured:

- (1) Comprehensive general liability insurance with limits not less than:
 - (a) For bodily injury or death to each person: \$5,000,000.
 - (b) For property damage resulting from any one accident: \$5,000,000.
 - (c) For all other types of liability: \$5,000,000.
- (2) Automobile liability for owned, no owned and hired vehicles with a limit of \$3,000,000 for each person and \$3,000,000 for each accident.
- (3) Workers' compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
- (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.

B. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications license or franchise and such other period of time during which the grantee is operating without a franchise or license hereunder or is engaged in the removal of its telecommunications facilities. Unless otherwise agreed by the Village, each such insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 30 days after the receipt by the Village, by registered or certified mail, of a written notice addressed to the Village of such intent to cancel or not to renew."

C. If the Village receives notice of such cancellation or intention not to renew, within 20 days after receipt of said notice, and in no event later than 10 days prior to said cancellation, the franchisee or licensee shall obtain and furnish to the Village documentation of replacement insurance policies meeting the requirements of this section.

§ 133A-63. General indemnification.

Each licensee or franchisee shall, to the extent permitted by law, defend, indemnify and hold the Village and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Chapter or by a grant agreement made or entered into pursuant to this Chapter.

§ 133A-64. Security fund.

A. Where the license or franchise agreement provides for a security fund to be used for payments of penalties, if any, imposed for violation or breach of the conditions of any such agreement or license, such fund shall serve as security for the full and complete performance of the terms and condition of the license or franchise agreement and the requirements of this chapter, including any costs, expenses, damages or loss the Village pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the village.

B. Before any sums are withdrawn from the security fund, the Village shall give written notice to the grantee:

- (1) Describing the act, default or failure to be remedied or the damages, cost or expenses which the Village has incurred by reason of the grantee's act or default.
- (2) Providing a reasonable opportunity for the grantee to first remedy the existing or ongoing default or failure, if applicable.
- (3) Providing a reasonable opportunity for the grantee to pay any moneys due the Village before the Village withdraws the amount thereof from the security fund, if applicable.
- (4) Providing that the grantee will be given an opportunity to review the act, default or failure described in the notice.

C. The licensee or franchisee shall replenish the required security fund within 14 days after written notice from the Village that there is a deficiency in the amount of the fund.

§ 133A-65. Assignments or transfers of grant.

A. Ownership or control of a telecommunications system, license or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the Village, which consent shall not be unreasonably withheld or delayed, as expressed by resolution, and then only on such reasonable conditions as may be prescribed therein.

- B. No grant shall be assigned or transferred in any manner within 12 months after the initial grant of the license or franchise, unless otherwise provided in a license or franchise agreement.
- C. Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the telecommunications system has been completed.
- D. The franchisee or licensee, and the proposed assignee or transferee of the franchise, license, system or facility, shall provide and certify the following information to the Village not less than 150 days prior to the proposed date of transfer:
 - (1) Complete information setting forth the nature, terms, and conditions of the proposed transfer or assignment.
 - (2) All information required of a license or franchise applicant pursuant to Article III, IV, or V of this chapter with respect to the proposed transferee or assignee.
 - (3) Any other information reasonably required by the Village.
- E. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this chapter.
- F. Unless otherwise provided in a license or franchise agreement, the grantee shall reimburse the Village for all direct and indirect fees, costs and expenses reasonably incurred by the Village in considering a request to transfer or assign a telecommunications license or franchise.
- G. Any transfer or assignment of a telecommunications grant, system or integral part of a system without prior approval of the Village under this section or pursuant to a license or franchise agreement shall be void and is cause for revocation of the grant.

§ 133A-66. Transactions affecting control of grant.

Any transactions which singularly or collectively result in a change of 10% or more of the ownership or working control of the grantee, of the ownership or working control of a telecommunications license or franchise, of the ownership or working control of affiliated entities having ownership or working control of the grantee or of a telecommunications system, or of control of the capacity or bandwidth of the grantee's telecommunications system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring Village approval pursuant to § 133A-65 hereof.

§ 133A-67. Revocation or termination of grant.

A license or franchise granted by the Village to use or occupy public ways of the Village may be revoked for any of the following reasons:

- A. Construction or operation in the Village or in the public ways in the Village without a license or franchise grant of authorization.

- B. Construction or operation at an unauthorized location.
- C. Unauthorized substantial transfer of control of the grantee.
- D. Unauthorized assignment of a license or franchise.
- E. Unauthorized sale, assignment or transfer of the grantee's franchise or license assets or a substantial interest therein.
- F. Misrepresentation or lack of candor by or on behalf of a grantee in any application to the Village.
- G. Abandonment of telecommunications facilities in the public ways.
- H. Failure to relocate or remove facilities as required in this chapter.
- I. Failure to pay taxes, compensation, fees or costs when and as due the Village.
- J. Insolvency or bankruptcy of the grantee.
- K. Violation of material provisions of this chapter.
- L. Violation of the material terms of a license or franchise agreement.

§ 133A-68. Notice and duty to cure.

Unless otherwise provided in the license or franchise agreement, in the event that the Village believes that grounds exist for revocation of a license or franchise, it shall give the licensee or franchisee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time, not exceeding 30 days, to furnish evidence:

- A. That corrective action has been or is being actively and expeditiously pursued to remedy the violation or noncompliance.
- B. That rebuts the alleged violation or noncompliance.
- C. That it would be in the public interest to impose some penalty or sanction less than revocation.

§ 133A-69. Hearing.

The Village Board of Trustees, or a person designated by the Board of Trustees for such purpose, shall consider the apparent violation or noncompliance in a public meeting, with respect to which the corporate authorities shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

§ 133A-70. Standards for revocation or lesser sanctions.

If persuaded that the grantee has violated or failed to comply with material provisions of this chapter, or of a franchise or license agreement, the corporate authorities shall determine whether to revoke the license or franchise, or to establish some lesser sanction and cure,

considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- A. Whether the misconduct was egregious.
- B. Whether substantial harm resulted.
- C. Whether the violation was intentional.
- D. Whether there is a history of prior violations of the same or other requirements.
- E. Whether the franchisee or licensee has a history of overall compliance.
- F. Whether the violation was voluntarily disclosed, admitted or cured.

Section two. Any local law or provision of the Code of the Village of Hewlett Bay Park in conflict with this local law is hereby repealed to the extent of such conflict, except that such repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of such local law, ordinance or resolution prior to the effective date of this local law.

Section three. If any clause, sentence, paragraph, section, article, or part of this local law shall be adjudged to be invalid by any court of competent jurisdiction, such judgment shall not affect, impair or invalidate any other part of this local law, or the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, article, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section four. This local law shall take effect immediately upon adoption and filing pursuant to the Municipal Home Rule Law.