

GARIBALDI ORDINANCE

ORDINANCE NO. 211

AN ORDINANCE ESTABLISHING THE REGIONAL CABLE TELEVISION COMMISSION.

RECITALS:

- A. Under the sponsorship of Lane County, a Regional Cable Television Commission has been established to address common problems the cities and County are experiencing with the providers of cable television programs and services.
- B. Federal legislation has empowered local franchising authorities to regulate how cable television operators provide certain cable television services.
- C. If local franchising authorities do not exercise the powers given them in the Federal Act (defined below), local cable television subscribers will lack protection and legal remedies to address their concerns and grievances.
- D. Because the cable television operator holding a non-exclusive franchise to serve the community and its environs, is also the franchisee in a number of other communities within the state, it is in the public interest that the local franchising authorities join together to administer the franchises, negotiate with the cable television operator, and provide consumer protection and rate regulations on a uniform basis.
- E. Current staff resources are limited and undertaking cable regulation would take away from other essential public services. By joining with other local franchising authorities, each local franchising authority will have available through a regional commission the necessary technical, accounting, and legal expertise to conduct the necessary rate setting and regulation.

THE CITY OF GARIBALDI ORDAINS AS FOLLOWS:

Section 1. Definitions.

For purposes of this ordinance, the following words and phrases shall have the meanings ascribed to them by this section:

Commission. The Commission established by Section 2 of this ordinance.

Federal Act. The sections of the Communications Act of 1934 dealing with cable television as amended by the Cable Communications Policy Act of 1984, Public Law 98-549, (1984) and by the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102-385, 106 Stat. 1460, (1992).

Franchising Authority. Any local government with authority to grant a franchise to a cable operator.

## Section 2. Creation of Regional Commission

1. The Regional Cable Television Commission is hereby created. It shall consist of a public elected or appointed official from each Franchising Authority enacting an ordinance similar to this Ordinance empowering the Commission as herein provided.

2. A majority of the public officials designated under subsection 2.1 of this Ordinance or five of them, whichever is less, shall constitute a quorum and, except as provided in this subsection, all actions of the Commission shall be determined by a majority of the officials present. When a matter before the Commission only affects cable customers in one city, the public official representing that city on the Commission must vote with the prevailing side for the Commission to take action.

3. The Franchising Authority's representative on the Commission shall be an appointed or elected official of the Franchising Authority, nominated by the Mayor or other chief executive and approved by the Council or governing body. The representative shall serve at the pleasure of the Council or governing body. When unable to attend Commission meetings, the representative may designate an alternate who shall be another appointed or elected official of the Franchising Authority and who may act in the representative's stead on matters before the Commission.

## Section 3. Commission Duties and Powers

1. Duties: The duties of the Commission shall be:

A. To administer the existing cable television franchise issued by the Franchising Authority and any future franchise enacted by the Franchising Authority;

B. To establish by resolution within the Franchise territories where the Commission has been empowered, all necessary regulations of cable television operators, including, but not limited to rate regulations, rate setting procedures, procedures to insure only properly established rates are being charged customers, consumer protection regulations, and such other regulations as the Commission deems necessary to perform its duties;

C. Within the limitations of this Ordinance, to establish and impose such penalties for violation of the Commission's regulations;

- D. To establish procedures for hearing and disposing of all complaints concerning cable television service within the Franchising Authority.
- E. Except for powers expressly reserved to the Franchising Authority in this Ordinance, to perform within the geographic jurisdiction of the Franchising Authority all functions now or hereafter granted to local franchising authorities under the Federal Act and FCC regulations; and
- F. To perform such other duties delegated to the Commission by a member Franchising Authority.

2. Delegation. Except as expressly reserved to the Franchising Authority in this ordinance, all powers of the Franchising Authority under state and federal law and under the Franchising Authority's existing cable television franchise are hereby delegated to the Commission.

3. Powers. To enable it to perform its duties but subject to the limitations in this Ordinance, the Commission shall have the following powers:

- A. By resolution of the Commission, to adopt by-laws, rules of procedure, and other regulations, including the determination of penalties within the jurisdictional limits of the Franchising Authority for violation of its rules and regulations;
- B. To contract and enforce its contracts and regulations in administrative and judicial forums of the state and federal governments.
- C. Negotiate and recommend to the Franchising Authority for enactment amendments to existing cable television franchises and new franchises;
- D. To sue and be sued in the name of the Commission;
- E. To employ staff by contracting with Lane Council of Governments or with a local franchising authority that is a member of the Commission; and
- F. To impose dues upon member Franchising Authorities to cover the cost of performing its responsibilities under this Ordinance when the fees and charges collected from the cable operator are insufficient to meet the expenses of the Commission and its staff, and to deny participation of any member Franchising Authority's representatives and to refuse to consider matters which only affect a Franchising Authority that is delinquent in payment of its dues until the delinquency is corrected.

- G. To designate Lane Council of Governments or another member Franchising Authority to budget the Commissions revenues and expenditures and, to the degree necessary, comply with the state local government budget law.
  
- H. To take any action necessary or convenient to perform its duties.

Section 4. Procedure for Adopting Regulations.

1. Permanent Regulations. Except as provided in subsection 4.2 of this ordinance, all resolutions which impose a penalty, or which concern consumer protection regulations or rate making regulations, shall be adopted by the Commission only after published notice of the proposal and an opportunity for public comment. Such notice shall contain a brief summary of the proposed regulation, identify where copies of the full text of the regulation may be obtained, and specify the date, time and location where the Commission will receive public comment. the notice shall be published twice; the first publication not less than ten days and second publication not less than three days before the time of receiving comments. Such notice shall be in a newspaper of general circulation within the community or communities affected by the proposed regulation.

2. Temporary Regulations. When the Commission determines that it lacks adequate regulations to fulfill its duties, that if such regulation is not enacted the Commission's ability to perform its duties will be impaired, and that it is acting in a manner that is not prohibited by the Federal Act or regulations propounded thereunder, it may summarily adopt regulations which will remain in effect until permanent regulations may be enacted, provided the temporary regulation shall expire upon enactment of the regulation under subsection 4.1 above or six months, whichever first occurs.


Section 5. Reservation of Powers. The Franchising Authority hereby reserves to itself the power:

- 1. To enact cable television service franchises after receiving the Commission's recommendation;
  
- 2. To appear in any proceeding before the Commission or its designee and to appeal any decision of the Commission or its designee; and
  
- 3. To regulate the cable operator's use of the public way and public property over which the operator has been given a right of use and to enforce local land development laws; and


4. To withdraw from the Commission by repealing this ordinance after giving ninety (90) day's prior written notice of its intent to withdraw to the Commission.

Section 6. Emergency Clause. The City Council deems an emergency to exist, therefore this ordinance shall be in effect upon its passage.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR THIS 8th DAY OF AUGUST, 1994.

  
Donald G. Ernst, Mayor

Attest:

  
Sandra L. Jones, City Recorder