

ORDINANCE NO. 2405

AN ORDINANCE to amend and reordain Section 7B-19, Article IV, subsection (d) and (f), Section 7B-62, Article XII, Chapter 7B of The Code of the City of Alexandria, Virginia, 1963, as amended; which Chapter 7B relates to CABLE TELEVISION REGULATION, which Article IV relates to TRANSFER OR ASSIGNMENT OF A FRANCHISE, which Section 7B-19 relates to NOTICE OF TRANSFER OR ASSIGNMENT, which Article XII relates to GENERAL FINANCIAL AND INSURANCE PROVISIONS, which Section 7B-62 relates to LIABILITY AND INDEMNIFICATION, which subsection (d) relates to PERFORMANCE BOND and which subsection (f) relates to CONSTRUCTION SECURITY DEPOSIT.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 7B-19, Article IV, Chapter 7B of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

Sec. 7B-19. Notice of transfer or assignment.

The franchisee shall promptly notify the city manager and council of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the franchisee or the affiliate of a franchisee. "The affiliate of a franchisee" means any person who controls, or is under common control with a franchisee. A person "controls" a franchisee if the person (1) is a general partner, officer or director of the franchisee; (2) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest of the franchisee; (3) controls in any manner the elections of a majority of the directors of the franchisee; or (4) has contributed more than twenty percent (20%) of the capital of any given form of indebtedness, stock or other form of security, including, but not limited to common stock, preferred stock, straight subordinated notes, convertible notes, or straight bank loan, of the franchisee. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the council may inquire into the qualifications of the prospective controlling party, and the franchisee shall assist the council in any such inquiry. In the event that the council adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the council may cancel the franchise unless control of the franchisee is restored to its status prior to the change or to a status acceptable to the council. Any mortgage, pledge or lease shall be subject and subordinate to the rights of the city under this chapter or other applicable law.

Section 2. That subsection (d), Section 7B-62, Article XII, Chapter 7B of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

(d) Franchisees shall maintain, and upon acceptance of a franchise specifically agree to maintain, throughout the term of its franchise, a cash escrow or its equivalent in the sum of one hundred thousand dollars (\$100,000.00) conditioned that the franchisee shall well and truly observe, fulfill and perform each term and condition of this chapter and its franchise, and that in

case of any breach of condition, the amount thereof shall be recoverable from said escrow by the city for all damages and penalties proximately resulting from the failure of the franchisee to well and faithfully observe and perform any provision of this chapter and its franchise. The franchisee may also comply with the requirements of this subsection by maintaining a faithful performance bond running to the city, executed by a surety company authorized to do business as surety in the State of Virginia, said bond to be in the penal sum of one hundred thousand dollars (\$100,000.00) and conditioned as above stated.

Section 3. That subsection (f), Section 7B-62, Article XII, Chapter 7B of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

(f) Within thirty (30) days after the acceptance of its franchise, the franchisee shall deposit to the account of the city's department of finance, in an interest-bearing escrow account in a bank in the city, and maintain on deposit until construction of the cable television system is completed to the extent that basic service may be provided to every city dwelling unit within sixty (60) days of application for service as provided in section 7B-31(b) of this chapter, a security fund in the sum of twenty thousand dollars (\$20,000.00) in cash or negotiable securities as security for the faithful performance by it of all the provisions of this chapter and of its franchise relating to construction and compliance with all orders, permits and directions of any agency of the city having jurisdiction over its acts or defaults relating to construction and the payment by a franchisee of any claims, liens, penalties or taxes due the city which arise by reason of the construction of the system. Within thirty (30) days after notice to it that any amount has been withdrawn from the security fund deposited as provided herein, the franchisee shall deposit in such account a sum of money sufficient to restore such security fund to the original amount of twenty thousand dollars (\$20,000.00).

If a franchisee fails to pay the city any compensation within the time fixed herein; or fails, after ten (10) days' notice to pay to the city any taxes due and unpaid; or fails to repay to the city within such ten (10) days, any damages, penalties, costs or expenses which the city shall be compelled to pay by reason of any act or default of a franchisee in connection with construction, or, fails, after three (3) days' notice by the administrator of such failure to comply with any provision of this chapter which the administrator reasonably determines can be remedied by an expenditure of the security fund, the director of finance (director) may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the director shall notify the franchisee of the amount and date thereof. The security fund, performance bond and insurance policy may be drawn upon in that order of priority to pay the city for any compensation, damages, penalties, costs or expenses owing under this chapter. In the event the security fund is insufficient to provide the amount due, the insurance policy and the performance bond may be drawn upon by application of the director for any amount due the city above the amount in the security fund.

Section 4. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing

the time and place for a public hearing. The city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

CHARLES E. BEATLEY, JR.
Mayor

Introduction:	9/26/79	Public Hearing:	10/13/79
First Reading:	9/26/79	Second Reading:	11/13/79
Publication:	9/29/79	Final Passage:	11/13/79

* * * * *