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April 3, 2015

Commissioner Nick Fish

Commissioner Nick Fish
City of Portland
1221 SW Fourth Avenue
Portland, OR 97204

Dear Commissioner Fish:

I am writing to provide you with Comcast's comments regarding the proposed cable franchise that was negotiated between the Mt. Hood Cable Regulatory Commission (MHCRC) staff and CenturyLink. Thank you, in advance, for considering this input.

Comcast welcomes a fair and robust competitive marketplace made up of responsible competitors, and we do not oppose the granting of an equitable cable franchise to CenturyLink. Consumers can choose from numerous video options today, including Comcast, DirectTV, DISH Network, and "over the top" – services like Netflix, Amazon, Apple TV and Hulu. This fiercely competitive landscape is challenging but it brings out the best in each company – at least when competitors face a level playing field that treats similar providers in a similar manner.

Of the many franchise obligations that MHCRC has imposed on Comcast in our existing franchise (and on our predecessor companies in previous franchise agreements), one of the most material and impactful to Portland residents is the "build out" or "service requirement" provision, which requires Comcast to offer equivalent video service to all parts of our community (that meet a minimum density threshold). The public policy underlying that obligation is clear: private companies gaining access to valuable rights of way must make their video services available to all residents, and not cherry-pick based on a neighborhood's age, ethnicity, affluence, market potential or any other factor.

But today, that obligation means much more. Because broadband is delivered over that same video infrastructure, and because broadband speeds accelerate as those facilities are upgraded, the service requirement in our franchise ensures that every resident in Portland having access to our services has precisely the same access to the industry-leading broadband speeds (currently up to 150 Mbps for residential services, and multi-Gig for commercial services) that we offer today. So, when we invested tens of millions of dollars over the last several years in Portland and surrounding communities to increase the capacity of our community's broadband network, every resident having access to our services benefitted. And every time we increased our residential broadband speeds in Portland, which we have done 12 times in the last 12 years, every single resident having access to our services benefitted, equally.

Simply put, when Comcast and its predecessors entered these communities, it did so with full understanding of the investment necessary to build out (over time, and subject to reasonable time and density thresholds) to serve the entire community. There are no cable "haves" and "have nots" in the Portland – and in fact, there is total consumer equity when it comes to the products and services we offer. And we all know what discrimination in access or inconsistent access means. Today's fast broadband connection has become a critical link to a world of educational and economic opportunities. Those who are connected have instant access to

online learning tools, they can more easily find jobs, and they can efficiently access health care and government services or run their businesses. Those who do not have access to affordable broadband or advanced broadband speeds will get left behind or will be at a disadvantage in the marketplace.

Imposing reasonable (but binding and enforceable) full-community service requirements on all companies serving the community would protect competitive and consumer equity and prevent selective service deployment. It would equalize the investment that all providers would be required to make in return for access to the public rights of way. And it would ensure that competition develops according to which provider can best serve subscribers, and not according to which provider enjoys the most advantageous regulatory requirements.

By way of comparison, the City of Denver's City Council Technology Committee recently voted on a CenturyLink franchise, which will soon move before Denver's City Council for consideration. Like Portland, the City of Denver is concerned about the potential of new cable providers "cherry-picking" subscribers rather than moving toward a fair and equitable buildout of service. To that end, the Technology Committee imposed the following buildout conditions in their franchise agreement with CenturyLink:

- **CenturyLink must serve 15% of the Living Units in the City in the first 2 years of the franchise;**
- **CenturyLink must place at least one Remote Terminal in each of the 11 council districts within the first two years of the franchise to ensure a "balanced deployment" throughout the city;**
- **Should CenturyLink hit 27.5% penetration (of homes) in any Remote Terminal service area, it must add another Remote Terminal in that council district;**
- **Should CenturyLink hit 50% penetration (of cable customers) at any point in the franchise, it is required to serve the entire city;**
- **CenturyLink "shall not" discriminate against potential customers based on income;**
- **CenturyLink must meet with city staff and city council representatives at least quarterly to demonstrate its deployment is balanced;**
- **The city staff or council can at any point request service maps from CenturyLink to ensure they are complying with the nondiscrimination provisions;**
- **CenturyLink is required to spend a "significant portion of its investment" in Prism in low income areas of the city.**

The Cable Act provides that "in awarding a franchise, the franchising authority shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area," see 47 U.S.C. Section 541(4)(A), implying that build-out requirements will be imposed, and the FCC (in its 2006 Franchising Order) specifically clarified that reasonable build out requirements are certainly allowed and it listed what constitutes unreasonable versus reasonable build-out provisions. **Yet the provision that addresses build out in the CenturyLink Franchise in Section 1.3 (entitled "Franchise Term Extension") falls far short of requirements we have seen in other communities: it allows CenturyLink to self-select initial service territory that would**

comprise no more than 20% of the community and contains no binding obligation on CenturyLink to build out their service area whatsoever. This is hardly a "reasonable period" to serve "all households" as stipulated in the Cable Act – rather, it gives total deference to CenturyLink on whether it ever expands its advanced offerings throughout the community.

The impact of the purported build out language in Section 1.3 of the CenturyLink franchise, accordingly, likely equates to no impact for the vast majority of Portland's residents, which could mean that the small minority of residents getting access to CenturyLink's new services would have advanced services from CenturyLink while the rest are stuck with plain old legacy phone service. If, as CenturyLink has said in other markets, increased video competition is good for consumers and will lead to faster broadband speeds, then shouldn't all of Portland's residents get the benefits of a new telecommunications provider competing for their business, at least over some reasonable period of time?

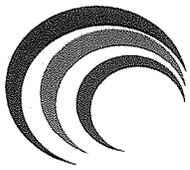
As stated above, Comcast does not oppose CenturyLink's entry into video marketplace. But we are concerned that competitive providers who make use of the same rights of way as Comcast, and who are subject to the same federal law and the same local regulatory authority, be held to some reasonable level of city-wide service requirement standards similar to what we have been held to.

Again, thank you for the opportunity to share our views with you on this important issue. Please do not hesitate to contact me if you have any questions, or if you need any additional information.

Sincerely,



Marc Farrar
Vice President of External Affairs



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▲ Broadband & Communications Policy

▲ Cable Regulation & Consumer Protection

▲ Utility Franchises, Licenses & Wireless

April 20, 2015

Marc Farrar
Vice President of External Affairs
Comcast
9605 NW Nimbus Avenue
Beaverton, Oregon 97008

RE: Comcast letter to Portland City Council on proposed CenturyLink Cable Franchise

Dear Marc,

Thank you for your comments ("Comcast Council Letter") regarding the pending CenturyLink cable franchise which has a First Reading on April 22, 2015. I have been asked to provide a response to your letter as the staff Director of the MHCRC and Manager of the Office for Community Technology.

First, I would note that in most respects, Comcast's Council Letter substantially duplicates points previously made via your letter of February 10, 2015 to the Mt. Hood Cable Regulatory Commission ("Comcast MHCRC Letter"). The MHCRC provided a point by point response to Comcast on March 11, 2015 ("MHCRC Reply Letter"). Rather than repeat responses to a set of issues already considered by the MHCRC, I've provided copies of the MHCRC Reply Letter to the Council to inform the Commissioners. The MHCRC Reply Letter speaks for itself in establishing that the MHCRC considered and responded to most of the issues you raised. In summary, it is understandable that Comcast would seek to protect its current market position (created primarily by the investment of Comcast's predecessors) and oppose the entrance of a true wireline competitor into the video and Internet market Comcast presently dominates in Portland. It is also understandable that that Comcast would try to cast doubt on the plan of CenturyLink to invest and provide real competition to Comcast in Portland. However, it is unfortunate that Comcast (in both its earlier MHCRC letter and current Council letter) continues to mischaracterize the FCC's strict limitations barring local governments from imposing universal or expedited buildout requirements on new market entrants, particularly with respect to incumbent telephone companies such as CenturyLink, and instead suggest that the FCC has somehow done the opposite.¹

¹ As Comcast is aware, the FCC in January of this year strongly reiterated its rules limiting local government authority to impose universal or expedited buildout requirements on facilities-based competitors. See *Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Implementation of Section 621(a) (1) of the*

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What is new and different in the Comcast Council Letter is your inclusion of arguments to the effect that the CenturyLink cable franchise pending in Portland is somehow less stringent or advantageous in terms of buildout than the CenturyLink franchise recently approved by the Denver City Council. My response in this letter is to primarily address these newer arguments.

A significant factor for the City and the MHCRC in the franchise negotiations was CenturyLink's system architecture plans in the City of Portland. CenturyLink ("CTL") acting through its subsidiary QBSI, and pursuant to authorizations provided under both the upcoming QBSI cable and CTL telecommunications franchises, has begun to construct and deploy FTTP (Fiber-to-the-Premises) architecture to Portland residents within CTL's service area. This is a major goal of the City's 2010 Broadband Strategic Plan. State-of-the art 21st century FTTP architecture, offering upload and download speeds to the world standard of 1 Gigabit per second and beyond, remains a significant City policy goal set forth in the City's Broadband Strategic Plan, and remains referenced as a commitment in the CTL Cable Franchise, §1.5(B). The City is unaware of any plans by Comcast to deploy FTTP in Portland, whether in the near-term or the foreseeable future.

I have reviewed the Denver-CTL franchise language in comparison with the proposed Portland-CTL franchise language. I offer the following comparisons regarding the particular provisions Comcast cites as more favorable to Denver when contrasted with Portland's-CTL franchise language.²

ISSUES RAISED IN COMCAST COUNCIL LETTER & STAFF COMMENTS

1. *CTL must serve 15% of the Living Units in Denver in the first 2 years of the Franchise;*
 - o COMMENT: By comparison, CTL must serve 20% of the Living Units in Portland by December 31, 2018, or the franchise will expire by its own terms. CTL Franchise § 1.3(A). If CTL offers cable services to 50% of the Living Units by December 31, 2021, it will receive a franchise extension until December 31, 2026. The City believes that this form of positive incentives is appropriate and legally defensible in the context of a competitive cable franchise. More importantly, CTL has already begun FTTP deployment on a pilot basis in Portland in the Hawthorne area (the City has documented this). CTL expects to exceed the thresholds identified in the CTL franchise. Denver commits CTL to a lower percentage of initial buildout but a marginally more aggressive timeline. In light of CTL's commitment to a higher percentage of initial coverage in Portland, already-committed capital budgeting and a good faith start to construction

Cable Communications Policy Act of 1984 as amended by the Cable Television-Consumer Protection and Competition Act of 1992, MB Docket No. 05-311. See Paragraphs 82-91 and note particularly the FCC's discussion at Paragraph 89.

²For reference, Denver-CTL franchise construction and-extension commitments are primarily set forth in Section 12 of the proposed Denver franchise.

(already begun) MHCRC staff believes that the Portland and Denver buildout schedules are substantively comparable;

2. *CTL must place at least one Remote Terminal (RT) in each of the 11 Denver Council Districts within the first two years of the Franchise to ensure "balanced deployment";*
 - o COMMENT: Identifying a greater degree of RT deployment presumes that RT deployment is somehow advantageous to Denver. RTs facilitate CTL's delivery of its Prism video service on CTL's existing copper telephone plant. The deployment of RTs represents an adequate-- but technically inferior-- video delivery mechanism in comparison with video delivery via CTL's planned FTTP deployments. RTs represent an investment by CTL in video delivery via old copper telephone technology in the "last mile" to residential homes. For business purposes, CTL will want to recover a return on this investment before any RT area is upgraded to the far-preferable world-standard FTTP. The extent to which Denver has agreed to a higher degree of RT deployment perhaps represent a decision that any head-to-head video competition (even using copper telephone plant) is superior to none at all. In contrast, Portland has chosen an approach of encouraging CTL to undertake the greatest degree of FTTP technology buildout, and to ensure continuous monitoring toward that end. Regarding Comcast's comment on the "11 Denver Council Districts", the City of Portland has no Council districts as the Mayor and Council members (and the City Auditor) are elected "at large". Portland sees no benefit in encouraging a political "filter" to be applied;
3. *Should CTL hit 27.5% penetration of homes in any Denver Remote Terminal area, CTL must add another RT in that Council district;*
 - o COMMENT: My prior comment addresses staff and the MHCRC's belief that the CTL franchise approach is superior. Moreover, Portland's CTL franchise encourages CTL to deploy and market a competitive alternative video package to potential customers in its service area as steadily as possible. The availability of competitive alternatives tends to restrain rate increases, and reduce overall cable pricing for the benefit of the entire community. The City's 2007 business case for a municipal FTTP suggested that close to 30% market share would provide a "break-even" threshold in a competitive marketplace. If CTL reaches 27.5% or more market penetration in Portland, this should allow sufficient profitability for further deployment of FTTP. To "lock in" continued reliance on copper connections to the home by incenting RT deployment when CTL's video penetration is showing positive growth would not be useful in the long term in achieving the goals identified in the City's Broadband Strategic Plan;
4. *Should CTL hit 50% penetration of cable customers in Denver, CTL would be required to serve the entire City;*

- COMMENT: As Comcast's cable penetration in Portland has been hovering around 50% of homes passed for many years, CTL's achievement of such a target in its Portland service area would mean Comcast would have lost half or more of its cable customers to CTL in areas where head-to-head competition took place; This is at best an abstract possibility staff deems highly unlikely; should such a scenario occur it is inevitable (and common sense) in the view of staff that market forces (along with obvious business incentives) would compel CTL to build the rest of the City or buy plant from another provider. Staff believes that the Denver franchise also presents some issues under the FCC's constraints for competitive cable franchises;
5. *Denver-CTL franchise provides that CTL "shall not discriminate" against potential customers based on income;*
- COMMENT: Section 10.6 of the Portland CTL franchise includes far more extensive protection. For example the Portland CTL Franchise among other things prohibits any and all discrimination "on the basis of race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, disability, income level or source of income";
6. *Denver-CTL Franchise provides that CTL must meet with City staff and Council representatives at least quarterly to demonstrate its deployment is "balanced";*
- COMMENT: The Portland CTL franchise provides for quarterly reports on deployment and Qualified Living Units (§8.1). Moreover under the Portland CTL Franchise, the ongoing cable regulatory structure as well as specific provisions in the Franchise provide for relatively continuous interaction with CTL, particularly in areas of PEG Access commitments, construction, and regular reports to the City under the auspices of the MHCRC;
7. *Denver-CTL Franchise provides that City staff or council can at any point request service maps from CTL to ensure they are complying with nondiscrimination provisions;*
- COMMENT: Similar to the franchise under which Comcast operates in Portland, CTL will be obligated to provide "as-built" maps showing the location of constructed facilities. CTL franchise § 15.2(A). The similarity of treatment provides for competitive parity in the Portland market. Furthermore, the extensive nondiscrimination provisions in the Portland CTL Franchise are not dependent on a map of Council districts or other political filters to determine compliance with nondiscrimination provisions. The regulatory monitoring process conducted continuously on the Council's behalf through the MHCRC, the broad and extensive nature of the nondiscrimination provisions in the Franchise, and the right of the City to request regular reports (§13) collectively provide a significant degree of regulatory oversight and assurances that the nondiscrimination provisions of the Franchise will be monitored and enforced;

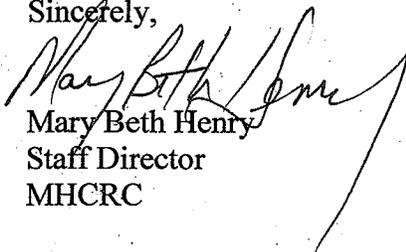
8. *Denver CTL Franchise requires CTL to spend a "significant portion of its investment in Prism" in low-income areas of the City*
 - COMMENT: The franchise restriction against discrimination based on income prohibits discriminatory construction and deployment of CTL's competitive video service. Moreover, Portland's focus is on encouraging FTTP deployment. Staff will be vigilant in monitoring CTL's deployment of RT technology in low-income areas contrasted with deployment of FTTP technology in wealthier areas. This distinction is reflected in the Denver CTL Franchise. Finally, it should be noted that (statistically speaking) traditional cable video service packages tend to have higher penetration in low-income (and suburban) areas than in high-income or gentrified inner-city areas. Staff's view is that, in some respects, the cable market can be viewed as self-correcting – it would not be a good business decision for a cable operator to refrain from upgrading or providing video packages in lower-income areas;
9. *Portland CTL Franchise allows CTL to self-select initial service territory that would comprise no more than 20% of the community and contains no binding obligation on CTL to build out their service area*
 - COMMENT: The Portland-CTL Franchise does not use a political filter (e.g. Council districts) to require CTL to lock in old technology through incenting deployment of RTs. Instead the Portland CTL franchises (cable and telecommunications) are collectively designed to encourage CTL to deploy fiber to the premises (FTTP) to the maximum extent CTL's budget and deployment schedule will allow. As noted previously, Portland's "initial" service buildout target of 20% is favorable compared to Denver's target of 15% in the initial period. Furthermore, the Portland Franchise provides additional incentives (via franchise extensions) for building out 30% or more of the territory. Buildout must be verified through acceptable documentation and a written MHCRC report to the City Council;
10. *Conclusion re Fiber (FTTP) vs Copper Based (RT) deployment: CTL has discretion and Portland and Denver franchise provision are similar on this point;*
 - COMMENT: The Portland and Denver franchises both allow CTL complete discretion in deciding whether to deploy FTTP (fiber) versus FTTN (Fiber-to-the-Node, meaning an RT must be used) in particular instances. In fact, the Denver CTL Franchise is specific about this (§12.1.F. of the Denver Franchise states that "Grantee shall have the sole discretion to determine where and when to activate a Remote Terminal or provide service through FTTP and offer Cable Services to Subscribers."). In contrast, the Portland CTL Franchise identifies a commitment by CTL to a fiber to the premises network. See, for example, Sec. 1.5(B), Sec. 1.7 and Sec. 2.23. Staff believes that this approach better reflects Portland's broadband strategy than the Denver approach, which otherwise emphasizes the

deployment of RT. Portland is encouraging buildout but without mandating or locking in Franchise incentives to encourage CTL to invest in and rely on old technology.

In conclusion, staff and the MHCRC are satisfied that the proposed Portland-CTL Cable Franchise is well suited to the City's particular policies and needs. The Portland Franchise is comparable or superior in the manner in which it dovetails with the City's existing policies and encourages deployment of state-of-the-art technology in accordance with the City's Broadband Strategic Plan.

Thank you for your advocacy on behalf of Comcast. Your attention to these matters helps staff to provide better outcomes for the citizens of Portland.

Sincerely,



Mary Beth Henry
Staff Director
MHCRC

Copy: Mayor and City Council

Attachment (to Council copies only):
MHCRC Reply letter to Comcast, March 11, 2015

ORDINANCE No.

Require activation of closed captioning on televisions in public areas (Ordinance, Amend Chapter 23.01)

The City of Portland ordains:

Section 1. The Council finds:

1. Hearing loss is a significant problem in the United States. A study released in 2011 by researchers at Johns Hopkins estimated that approximately one in five Americans have some type of hearing loss in one or both ears that affect their ability to communicate and receive information.¹
2. In 1993, the Federal Communications Commission (“FCC”) adopted regulations requiring all analog television receivers manufactured and sold in the United States with screens larger than 13 inches contain built-in decoder circuitry to display closed captioning.
3. Closed captioning consists of a transcript of the audio portions of television programming displayed on the television receiver screen when the user activates the caption feature.
4. In 1996, Congress amended the Communications Act to require that all video program distributors (including broadcasters, cable operators, etc.) add closed captioning to certain video programming and authorized the Federal Communications Commission (the FCC) to establish a transition schedule for complying with this requirement.
5. Following Congress’s legislative directive, the FCC adopted administrative rules to ensure that video programming be accessible by closed captioning to the maximum extent possible. 47 CFR Part 79 sets forth the FCC’s standards for accessibility of video programming.
6. In 2002, the FCC adopted closed captioning requirements for digital television receivers.
7. Under the FCC’s rules, video program distributors are required to add closed captioning to all new English language programming. Starting in 2010, a similar requirement has applied to Spanish language programming. The FCC also requires video program distributors to add closed captioning to a certain percentage of previously broadcast programs.
8. In 2010, Congress enacted the Communications and Video Accessibility Act (“CVAA”), extending the scope of closed captioning requirements to all devices that

¹ http://www.hopkinsmedicine.org/news/media/releases/one_in_five_americans_has_hearing_loss (site visited May 6, 2015)

can play back video. Since September 30, 2012, new TV programming shown online is required to have closed captioning rendered as well.

9. Television receivers are increasingly used in facilities open to the general public, including hospital waiting rooms, bars and restaurants, health clubs, bus stations, airport lounges, and appliance stores. These and other public facilities represent the kinds of locations where the general public has access to television programming.
10. Television receivers in these locations enable members of the general public to obtain the latest news reports in an emergency, watch local sports teams, or simply pass the time while waiting for an appointment or service to be completed. People with hearing disabilities should not be excluded from being able to meaningfully participate in these activities while in public areas.
11. In order to avoid screening out those members of the general public who are deaf or hard of hearing in places of public accommodation, there should be a requirement closed captioning be activated so as to not exclude, deny service, segregate or otherwise treat those with hearing disabilities differently from being able to fully participate in or experience the full benefits of the television programming offered to the public in those settings.
12. This ordinance requires that television receivers located in any part of a facility open to the general public have closed captioning activated at all times when the facility is open and the television receiver is in use.

NOW, THEREFORE, the Council directs:

- a. Chapter 23.01 of the City Code is amended by adding a new section as follows:

23.01.075 Closed Caption Activation Requirement.

A. Definitions. As used in this Section 23.01.075, the following words and phrases shall be construed as defined in this subsection:

1. “Closed Captioning” means a transcript or dialog of the audio portion of a television program that is displayed on the bottom portion of a television receiver screen when the user activates the feature.

2. “Closed-Captioned Television Receiver” means a receiver of television programming that has the ability to display closed captioning, including but not limited to a television, digital set top box, and other technology capable of displaying closed captioning for television programming.

3. “Public Area” means any part of a public facility that is open to the general public.

4. “Public Facility” shall have the same meaning as place of public accommodation, as defined in ORS 659A.400 (2013).

5. “Regular Hours” means the hours of any day in which a Public Facility is generally open to members of the general public.

B. Any person owning or managing a public facility must activate closed captioning on any closed captioned television receiver in use in any public area during regular hours.

C. A person owning or managing a public facility is not required to make a closed captioned television receiver available for viewing in a public area if:

1. No receiver of television programming of any kind is available in a public area of the public facility; or,
2. The only receiver of television programming available in a public area of the public facility is incapable of displaying close captioning.

D. Civil Penalties. A violation of this Section may result in the assessment of civil penalties, as provided below:

1. If the City Attorney reasonably believes a violation has occurred, the City Attorney may issue a written determination addressing the following:
 - a. A reference to this Section, describing the violations that have occurred or are occurring;
 - b. The date and the time of the occurrence, and the street address or location of the public facility;
 - c. A concise statement of the matters asserted or charged; and,
 - d. A request that the addressee provide a written response to the City Attorney within ten (10) business days either disputing the occurrence of the violation or describing how the violation has been abated and how such violations will be prevented from reoccurring.

The determination may be personally delivered to the person, or may be served by Registered or Certified Mail. For purposes of this Subsection, service by registered or certified mail is complete and effective when a correctly addressed notice is deposited with the postal service after being either certified or registered by the postal service.

2. If the person fails to provide a written response, or the written response fails to reasonably satisfy the City Attorney regarding the identified violations, the City Attorney may file a complaint with the Code Hearings Officer, as provided under Section 22.03.020, for violations of this Section 23.01.075, asking the Code Hearings Officer to impose civil penalties not to exceed \$500 for each day such

violation is committed or permitted to continue as provided in this Section. Having made a determination to ask that the Code Hearings Officer to impose civil penalties as provided by this Section, the City Attorney shall give the person written notice of the determination by causing notice to be served upon the person at their business or residence address. Service of the notice shall be accomplished by mailing the notice by regular mail, or at the option of the City Attorney, by personal service in the same manner as a summons served in an action at law. Mailing of the notice by regular mail shall be prima facie evidence of receipt of the notice. Service of notice upon the person apparently in charge of a business during its hours of operation shall constitute prima facie evidence of notice to the business owner.

3. In determining the amount of the civil penalty to be imposed for violations of the provisions of this Chapter, the Code Hearings Officer shall consider:

- a.** The extent and nature of the person's involvement in the violation;
- b.** The harms, whether economic, financial or otherwise, which occurred or were suffered as a result of the violation;
- c.** Whether the violations were isolated or temporary, or repeated or continuous;
- d.** The magnitude and seriousness of the violation;
- e.** The City's costs of investigating the violations and correcting or attempting to correct the violation; and,
- f.** Any other applicable facts bearing on the nature and seriousness of the violation.