VINEYARD
STAY CONNECTED

NOTICE OF A REGULAR
VINEYARD CITY COUNCIL MEETING
March 13, 2019 at 6:00 PM

Public Notice is hereby given that the Vineyard City Council will hold a regular session of the City Council meeting on Wednesday, March 13, 2019, at 6:00 pm in the Vineyard City Hall, 125 South Main, Vineyard, Utah. The agenda will consist of the following:

AGENDA

Presiding Mayor Julie Fullmer
(Mayor Pro tem – Councilmember John Earnest – January - March)

REGULAR SESSION

1. **CALL TO ORDER**
   PLEDGE OF ALLEGIANCE
   INVOCATION/INSPIRATIONAL THOUGHT – to be announced.

2. **OPEN SESSION –** Citizens' Comments *(15 minutes)*
   "**Open Session"** is defined as time set aside for citizens to express their views for items not on the agenda. Each speaker is limited to three minutes. Because of the need for proper public notice, immediate action **cannot** be taken in the Council Meeting. If action is necessary, the item will be listed on a future agenda, however, the Council may elect to discuss the item if it is an immediate matter of concern.

3. **MAYOR AND COUNCILMEMBERS' REPORTS/DISCLOSURES/RECUSALS**

4. **STAFF, COMMISSION, AND COMMITTEE REPORTS** *(3 minutes each)*
   - City Manager/Finance Director – Jacob McHargue
   - Public Works Director/Engineer – Don Overson
   - City Attorney – David Church
   - Utah County Sheriff's Office – Sergeant Holden Rockwell
   - Community Development Director – Morgan Brim & Planning Commission Chair – Cristy Welsh
   - City Recorder – Pamela Spencer
   - Building Official – George Reid
   - Water/Parks Manager Sullivan Love - Timpanogos Special Service District – Board Member

5. DISCUSSION ITEMS

No items were submitted

6. CONSENT ITEMS

6.1 Approval of the February 27, 2019 City Council Meeting Minutes
6.2 Approval of the cost for the Public Works property improvements – water and sewer

7. MAYOR'S PROCLAMATION

7.1 The Mayor will proclaim April 26, 2019 as Arbor Day.

8. BUSINESS ITEMS

8.1 DISCUSSION AND ACTION – Zoning Text Amendment, Ordinance #2019-01: Regulations for Golf Driving Ranges

Planning staff will present amendments to the Zoning Code allowing for golf safety netting height, standards for protection netting, requirements for site and building lighting and minimum buffering from residential uses. The City Council will take appropriate action. *(This item was continued from the February 27, 2019 City Council Meeting, where a public hearing was held.)*

8.2 DISCUSSION AND ACTION – Adopting Rules of Procedures – Resolution 2019-03

As per Utah Code 10 -3-606 (2)(a), a municipal legislative body shall adopt rules of order and procedure. City Attorney David Church will present recommended rules of procedure for public meetings. The City Council will possibly act to adopt by resolution, the rules of procedure for conducting a public meeting of the legislative body.

8.3 DISCUSSIONAND ACTION – Comcast Franchise Agreement Ordinance 2019-03

Staff will present a Franchise Agreement between the City of Vineyard and Comcast of California/Massachusetts/Michigan/Utah, LLC. The mayor and City Council will act to approve (or deny) this agreement by Ordinance.

9. CLOSED SESSION

The Mayor and City Council pursuant to Utah Code 52-4-205 may vote to go into a closed session for the purpose of:

(a) discussion of the character, professional competence, or physical or mental health of an individual
(b) strategy sessions to discuss collective bargaining
(c) strategy sessions to discuss pending or reasonably imminent litigation
(d) strategy sessions to discuss the purchase, exchange, or lease of real property
(e) strategy sessions to discuss the sale of real property

10. ADJOURNMENT

This meeting may be held electronically to allow a councilmember to participate by teleconference.

The next regularly scheduled meeting is March 27, 2019.

The Public is invited to participate in all City Council meetings. In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting should notify the City Recorder at least 24 hours prior to the meeting by calling (801) 226-1929.

I the undersigned duly appointed Recorder for Vineyard, hereby certify that the foregoing notice and agenda was emailed to the Salt Lake Tribune, posted at the Vineyard City Hall, the Vineyard City Offices, the Vineyard website, the Utah Public Notice website, and delivered electronically to city staff and to each member of the Governing Body.

AGENDA NOTICING COMPLETED ON: March 12, 2019

CERTIFIED (NOTICED) BY: /s/ Pamela Spencer
PAMELA SPENCER CITY RECORDER

MINUTES OF A WORK AND REGULAR
VINEYARD CITY COUNCIL MEETING
City Council Chambers, 125 South Main Street, Vineyard, Utah
February 27, 2019 at 6:00 PM

Present	Absent
Mayor Julie Fullmer	
Councilmember John Earnest	
Councilmember Tyce Flake	
Councilmember Chris Judd	
Councilmember Nate Riley	

Staff Present: City Manager/Finance Director Jacob McHargue, Assistant City Engineer Chris Wilson, City Attorney David Church, Sergeant Holden Rockwell with the Utah County Sheriff's Office, Community Development Director Morgan Brim, Planning Commission Chair Cristy Welsh, City Planner Elizabeth Hart, Planning Technician McKenna Marchant, City Recorder Pamela Spencer, Building Official George Reid

Other Speaking: Residents Dan Stovall, Angela Reese, and David Lauret

CALL TO ORDER/INVOCATION/INSPIRATIONAL THOUGHT/PLEDGE OF ALLEGIANCE

Mayor Fullmer opened the meeting at 6:01 PM. Councilmember Flake lead the Pledge of Allegiance and gave the invocation.

Mayor Fullmer moved the open session to the beginning of the meeting.

OPEN SESSION – Citizens' Comments
Resident Dan Stovall living in the Providence subdivision felt that there was a safety issue with cars parking on 100 East, Vineyard Loop Road, and 500 North. He said that cars were partially blocking driveways, at the intersection, and causing line-of-sight issues. He suggested that the city could work with HOA West who managed the Lochs and Tucker Row to add additional parking. He also suggested that they temporarily lift the parking restrictions on Vineyard Loop Road.

Mayor Fullmer explained that the city was working with the HOAs on different options to alleviate their parking issues. Mr. Brim explained that they had added parking spaces throughout The Lochs and Tucker Row communities. He further explained that the developments had met the code requirements but had issues with the site plan, which relocated a strip of parking. He felt that it was a cross between education and code enforcement. He said that if the development were to add a parking lot, then they would lose open space and could create stormwater issues. Mayor Fullmer said that if residents saw parking issues, they should call the dispatch number for the Utah County Sheriff's Office and the deputies would have violators move their vehicles. Mr. Stovall stated that he did not want to call on his neighbors. He mentioned that he had contacted the management company. Mayor Fullmer suggested that the deputies could patrol more.

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Resident Angela Reese from the Providence subdivision explained that The Springs subdivision had issued parking passes for their residents. She said that she had heard that there were five or six people living in one unit in The Lochs subdivision. Mayor Fullmer suggested that residents work with their HOAs to establish a parking permit process.

Ms. Reese asked what was being done about The Lochs subdivision having five to six people living in one unit. Mr. Church explained that they were breaking the city code and gave the definition of a family for occupancy purposes. He said that the difficulty was in choosing who was kicked out. He suggested that they work with the landlords/owners to make sure they were renting to no more than four unrelated individuals. He also suggested that if someone had the names of the renters and the exact unit, they should turn them into the city. He said that the problem with the parking was the six adults with six cars. There was a discussion about renting. Councilmember Judd asked if Ms. Reese had specific information about the renters. He said that they needed proof. The discussion continued.

Councilmember Judd felt that allowing temporary parking on a collector road would only solve the problem with a band-aid. Mayor Fullmer commented that when there were other violations in mass number, they send out a notification about the code. The discussion continued.

Ms. Reese asked if there was a way to have parking where The Lochs development met the overpass. Mayor Fullmer replied that they had been working on a solution. Mr. Brim explained that a portion of that area fell within the right-of-way. He said that the HOA was an approved project and the city could not force them to add parking, but they could put parking there as long as they met the open space requirements. Mr. Church mentioned that the HOA was in control of the owners. There was a discussion about an approved project.

Mr. Stovall stated that even if they only had four unrelated renters they would still run out of parking if they all had cars. He said the developers who built the townhomes and condominiums marketed to investors so there were only a small number of owner-occupied units. He felt that with how much it cost to rent the units, they could not rent to less than four people. Councilmember Judd explained that the Edgewater development had townhomes re-subdivided as homeowners had purchased them because of parking issues. He said that the city wanted to see more homeownership. Mr. McHargue said that staff had discussed how other cities had enacted good landlord programs and were looking into it. Mr. Church explained how the good landlord program worked. He stated that the city could allow only three renters if the community were next to a university campus. He felt that the issue was with the out of town owners who were leasing to as many people as they could get away with. Mr. McHargue mentioned that the city was receiving phone calls from owners who wanted to comply with the code.

Councilmember Judd suggested that the city do an outreach to the owners and the HOAs and have an education night about the code. Mr. Brim mentioned that staff was looking at doing a quarterly meeting with the management groups. Mayor Fullmer stated that the city would keep looking into the problem.

Resident David Lauret expressed appreciation to the staff and council for the work they were doing. He asked for an update on the Center Street overpass. Mayor Fullmer explained that Union Pacific (UP) had just responded to the city with changes they wanted to be made to the plans and those requirements had been given to JUB Engineers. Mr. Wilson explained that UP would only take written responses and there were some requests that staff felt were unreasonable. He said that one part was that UP wanted full clearance over the entire right-of-way and over the easement on the east side, which was a utility easement. He said that according

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to UP's protocol, the city had to request a variance. Mayor Fullmer said that she had someone at UP who wanted her to contact them if there was a holdup on the approvals.

Councilmember Riley suggested that if UP denied the request then they open up the 400 North at-grade crossing. Mayor Fullmer mentioned that she had explained this to Nathan Anderson with UP and he would advance all of their commentaries. Council agreed that they should give UP formal notification that they would be opening up the 400 North crossing. Mayor Fullmer explained how UP worked. Councilmember Judd felt that they could run the 400 North crossing parallel with the overpass. There was a discussion about the 400 North crossing. Councilmember Riley stated that 400 North could always be closed after the overpass was completed.

Mr. Lauret felt that the intersection at 400 South and Vineyard Road was failing at rush hour. He suggested that they have unified lighting and flow patterns. There was a discussion about the intersections on 400 South and Vineyard Road and 400 South and Geneva Road. The intersection on 400 South and Vineyard Road was in Orem and the intersection on 400 South and Geneva Road was also in Orem, but Geneva Road was a UDOT road.

Mr. Lauret asked if the city could connect 400 South into Main Street. Mayor Fullmer explained that it was private property. Mr. Brim explained that the city would have to work out a deal with the property owner if they were to build it now. He explained that there were developers who were interested in that property. If they were to build then the infrastructure would be tied to that project. Mayor Fullmer explained that if the property was not sold to a developer then the use would continue to be agricultural. Mr. Lauret expressed concern with density on that property. Mayor Fullmer explained that the developers would have to request a change to the zoning and that the General Plan did not allow for high density in that area. Mr. McHargue stated that the infrastructure constraints would also not allow for high density. Councilmember Judd asked if the city could put a connector's agreement on the property if the owners were willing to sell the right-of-way. Mr. Church replied that they would have to do it through the impact fee system because it would benefit everyone in the city. Councilmember Riley asked if the road would be a major system improvement so they would not be reimbursing the developer. Mr. Church explained how the costs would work. Councilmember Judd explained that the RDA could not help fund the road. Mayor Fullmer said that in previous discussions with the owners, they were not open to selling the right-of-way to the city. Mr. Church explained that if the city decided that the road was important now, then they had the power to condemn the land and build the road. He said that this would affect the cost of the right-of-way. Mr. Lauret felt that the traffic was a significant problem on 400 South and that it was dangerous.

MAYOR AND COUNCILMEMBERS' REPORTS/DISCLOSURES/RECUSALS

Councilmember Earnest reported that the 911 system had a 30-minute outage in the county. He said that they had used the last redundancy to bring the system back up. He mentioned that the Orem Outreach Community Health Board meeting had been canceled. He reported that the Utah County Sheriff's school safety program was underway. He said that there was a software program called SafeUT, which the high schools and some junior high schools were using. He said that he had reached out to SafeUT about getting the software into the elementary schools. He was hopeful that they would have it installed by the time school started in August. He explained that it was to help with suicide prevention. Councilmember Earnest reported that they were looking into the parvo health concerns at the Puppy Barn. He said that they were letting the owner fix and resolve the issues.

Councilmember Flake reported that the legislature had 10 more days. He said that 50 of the bills had to do with local authority.

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- House Bill 228 – city’s authority to regulate parking and towing. Councilmember Flake said that it had not passed out of committee.
- House Bill 320 – bans the authority of the city to make any law or code about plastic bags, straws, cups, etc. He suggested that people call their senators to oppose to the bill.
- House Bill 78 – requires local governments to discuss with the legislature any dealings they had with the federal government.
- House Bill 101 – autonomous vehicles
- House Bill 208 - safe school program – would require the Utah Transportation Commission to pay for safe routes.
- House Bill - alternative voting (ranked choice voting) – changes the dates and adds other amendments. Mayor Fullmer explained that it changed the dates to allow cities to apply to participate at a later date and also to allow cities to opt out in August instead of May. Councilmember Flake felt that this bill would pass.
- Senate Bill 56 – requires a clear view of what the RDA was doing. The bill would require the that county or some government entity publish a report from the information the cities would give them. He said that no one wanted to pay to produce the report. Mr. McHargue explained that this was an unfunded mandate and Senator Henderson changed the language to disallow the entity producing the report to charge a city. He said that his concern was that the counties could go in retroactively and charge cities an administrative fee from the RDA. Mayor Fullmer explained that the city produced a November Report and the senator wanted the report to come from somewhere else. Mr. McHargue said that he had asked what the was problem was they were trying to solve. He felt that there were no transparency issues with the current report. There was a discussion about the bill.

Councilmember Riley expressed concern with Vineyard always being tagged with the south end of the county when it came to an election. He felt that they were not getting enough time from their elected Representatives and Senators. He felt that with the changes in Vineyard, the people’s vote would start to count and they would have to listen. Mr. McHargue explained that he and Mayor Fullmer had met with each of the representatives and they were willing to spend time with them. He felt that the power of the vote was being recognized. Mayor Fullmer mentioned that Senator Henderson made changes to the bill as they were talking to them. She added that there some things in the bill that Senator Henderson was not willing to change so they reached out to other legislators about it. Mayor Fullmer said that she had been reaching out and making connections at the legislature. She felt that if the city felt that something was important, people should make their voices heard. Councilmember Flake felt that this was a feel-good bill and that they needed to talk to other representatives.

Councilmember Flake mentioned that the tax bill would hit on Monday so some of the bills would slide through the legislature.

- Senate Bill 34 – Councilmember Flake stated that affordable housing would not be an issue this year. Mayor Fullmer stated that she would like to see this bill tied to a different type of transportation and would like to discuss it further with each councilmember. Councilmember Flake explained that this bill was tied to the transportation investment fund.
- Senate Bill 90 – Political Sign amendment – the bill failed.
- Senate Bill 184 – Code enforcement – allows someone to run a red light in the middle of the night. He clarified that if you saw no traffic and had done your due diligence, then you can run the red light.
- Senate Bill 107 – Nuisance code – this bill failed

Mayor Fullmer reported that the city had been working hard on a design to get the FrontRunner station in our city and was ready to start building the next phase. She said that the Utah Transit Authority (UTA) needed to do positive train control and needed a double track in Vineyard. She explained that this would put the building of the station behind and UTA would need more money. She said that the city had been involved in helping UTA acquire the money. She said that UTA was able to get $3 million from the House Appropriations Committee, but it did not pass through the house. She explained that there was a possible delay of several years because of a protected flower and needed to see the viability of the area for the flower. She added that she spoke to a UTA employee about four different ways they could get the funding. She said that an unnamed employee stated that UTA would ask the legislature every year for the next three years, hoping to get the funding. Mayor Fullmer met with the lobbyist and the House Majority Whip Leader and the House Appropriations Committee re-appropriated money to pay for the double track in Vineyard. She added that if the flower was an issue then they would move the double track out of the city.

<u>WORK SESSION</u>

<u>Economic Development for the City</u>

The mayor, City Council, and staff will discuss economic development for the city.

Mayor Fullmer explained that they wanted to keep narrowing in on the types of industries and business they wanted to see in the city. She turned the time over to Community Development Director Morgan Brim.

Mr. Brim explained that this would be an extension of the RDA discussion held at the City Council Retreat held on January 25, 2019. He added that this was specific to incentives for business to come to Vineyard. He asked if the City Council wanted to continue to incentivize businesses, what types of industries to target, and if there were specific sites in the city to focus on.

Councilmember Riley felt that it was important to hear from Utah Valley University (UVU) about what emphasis in education they were going to concentrate on. He said that if the city knew what UVU was going to focus on, then they could go after those types of business, to give the city the best opportunity to help make it successful. Mayor Fullmer explained that the city would be holding a monthly economic development meeting, with Councilmember Judd as the liaison. She added that she would also be sitting on the committee but was willing to rotate out if other members of the council wanted to attend. She mentioned that they would be meeting with UVU and Orem City. Mr. McHargue explained that this would be a joint City Council and Planning Commission meeting and include UVU and Orem's City Council.

Councilmember Judd said that the wanted to know, in UVU's 50-year plan, what graduate degrees they planned to have at the Vineyard campus. Mr. McHargue felt that it went beyond the degrees, because of UVU's entertainment uses, and how they could collaborate with those uses as well. Councilmember Judd asked how they could partner with them, but not create a bunch of non-increment tax property value in Vineyard. He felt that it would not help the RDA and the city if they did that.

Mayor Fullmer said that Mr. Brim had met with the University of Utah's Research Park development team in Salt Lake City on how to collaborate with UVU. She said that in a meeting with UVU they had stated that they were still developing their vision. She suggested that as

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Vineyard was developing its vision, working with Collier Group and the county, they would be able to see what would work for Vineyard's market. She added that the UVU president mentioned that they were also looking at the technological industry. Councilmember Flake felt that they needed to find out what services UVU would need in the future, such as roads to accommodate the soccer stadium. He stated that he wanted UVU to work with the city. He said that he had no appetite for the type of payouts that the city had done in the past where they gave a lot away and got little, to nothing in return. He said that if he was going to give a business something to come here, it had to be a quid pro quo.

Councilmember Judd felt that they needed to do more due diligence on not only the viability of the business, but the expertise of the developer so that the City/RDA would have a return. He said that for the business that wanted to come in, there had better be a really good plan showing their experience, timeframe, benchmarks, etc. Mr. Brim suggested that they could build that into the application so that they had clear standards and expectations. Councilmember Flake stated that he would not have voted for the golf project if the accountant had not felt that it was a viable project.

Councilmember Judd felt that the city needed a grocery store. Mayor Fullmer said that she would be willing to incentivize infrastructure, not a buy-down. She felt that it should not include deed restrictions. She wanted to see any deed restrictions up front. Mr. McHargue suggested that they could include in the incentive agreements that a deed restriction would void the agreement. Mayor Fullmer commented about the types of deed restrictions and that they needed to look at them.

Councilmember Judd wanted the city to focus on businesses that would bring in sales tax and jobs. He added that there needed to be a variety of businesses to make it a diverse city. Mr. Brim said that on the industrial/manufacturing side, the city did not have to incentivize those businesses beyond the road already built. He said that they needed to look at those businesses that would give them the biggest bang for their buck. Councilmember Judd felt that the developer needed to show the RDA board what the benefits would be to the city. Councilmember Flake said that they also needed to show what the cost would be to the city.

Mayor Fullmer said that she wanted to go after high brand value companies. She said that The Forge wanted to go after unique nonchain businesses, but they needed an anchor to bring them in. She mentioned that the Shake Shack was coming to Utah, which was a high brand value to attract different types of companies. Councilmember Earnest stated that he would like to have a variety of restaurants. There was a discussion about the different types of restaurants such as Taco Bell. Councilmember Judd said that he liked those types but felt that they did not have to incentivize them.

Councilmember Judd said that they needed to look at the zoning requirements and find similar cities who had already gone through this and find out which of those high brands were doing well. Mayor Fullmer said that they needed to find those businesses that were doing well, who was coming to the state, and who was expanding.

Mr. McHargue said that they could update the incentive application to include a lot of this information, which should help facilitate these discussions. He asked the council if there were other items they wanted to see on the application. Councilmember Judd suggested that he, Mr. McHargue, and Mr. Brim meet and go through the application.

Councilmember Judd asked how they find those businesses. Mr. McHargue replied that they had been looking into attending the retail convention held in Las Vegas in May. Mayor Fullmer explained that the city was building a demographic package to give to developers and brokers.

She suggested that they could write a letter to these companies. She also suggested that they send recommendations to Mr. Brim to take to the city's economic committee for outreach.

Councilmember Judd asked if there were types of industries that had currently approached Vineyard that they were waiting on. Mr. Brim felt that they had done a good job of reaching out to companies. He said that last year at the retail convention, they were able to set up several meetings with businesses interested in coming to Vineyard. Councilmember Earnest stated that he was willing to go to the convention.

Mayor Fullmer said that the city had been approached by people who wanted to do residential businesses such as stores dispersed throughout the community. She suggested that they look at the zoning code if they wanted to explore it more.

Mr. Brim asked if there were small things that they could do with their home occupations. He mentioned that there were currently around 100 home occupations in the city. He asked if there were ways to help them expand into a commercial space and stay in the city. Councilmember Judd stated that he was willing to incentivize incrementally, depending on the business. Mayor Fullmer suggested that they start small by providing incubator meetings to help people find space.

Councilmember Judd asked if the city was getting a benefit from the Utah Valley Chamber of Commerce or if they needed to look at a Vineyard-type chamber. Mayor Fullmer said that from her experience with the chamber, it had been extremely helpful. She felt that it had changed their relationships with businesses. She said that she had spoken to residents who felt that they had benefited from the knowledge and connections they had gotten from the chamber.

Mr. Brim said that Cottonwood Heights had started a business association sponsored by the city. He explained that it was an avenue for people to get together monthly. He said that they hosted events and were a great way to network. Councilmember Judd felt that it was key to establishing relationships with the businesses in the city.

Mr. Brim said that EDCUtah had encouraged the city to retain the house on the Gammon Park or find space in the city for small businesses to grow. Councilmember Judd felt that they could also look at using space at UVU.

<u>7:32 PM REGULAR SESSION</u>

STAFF, COMMISSION, AND COMMITTEE REPORTS *(3 minutes each)*

<u>City Manager/Finance Director – Jacob McHargue</u> – Mr. McHargue had no new items to report.

<u>Public Works Director/Engineer – Don Overson</u> – Mr. Overson was excused. Assistant City Engineer Chris Wilson gave a brief update on the recreation grant he and Ms. Hart were working on. He showed the exhibit they would be submitting.

<u>City Attorney – David Church</u> – Mr. Church had no new items to report.

<u>Utah County Sheriff's Office – Sergeant Holden Rockwell</u> – Sergeant Rockwell had no new items to report.

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Community Development Director – Morgan Brim & Planning Commission Chair – Cristy Welsh – Mr. Brim reported that the city held their fourth General Plan workshop last week, which he felt was successful. He mentioned that they would be producing posters and conducting an online survey for those residents who were not able to attend the workshop. Mayor Fullmer said that there had been a lot of commentary on social media. She felt the residents were having a difficult time understanding what uses were permitted in each of the zones. She suggested that they have a short video that they could send out, highlighting each zone. Mr. Brim suggested that they also add information on how the General Plan related to the city. Councilmember Riley felt that it would be a great tool as they worked on economic development.

City Recorder – Pamela Spencer – Ms. Spencer had no new items to report.

Building Official – George Reid – Mr. Reid had no new items to report.

Water/Parks Manager Sullivan Love – Mr. Love had no new items to report.

Planning Technician – McKenna Marchant – Ms. Marchant gave a quarterly report on code enforcement. Highlights were:

Ms. Marchant explained how code enforcement worked before she was hired and her current plan. She said that her plan was broken down into phases. She explained that code enforcement was done on a complaint basis.

Phase 1 – Formalizing what code enforcement was and the process:

- A complaint is received and a case is opened. If the complaint pertains to another department, it is forwarded.
- The code enforcement officer conducts a site evaluation and letters are mailed to noncompliant parties.
- Violators are granted approximately 10 days to contact the code enforcement officer and to create a plan to comply with the city code.
- If the violator has not moved to compliance or has not contacted the city, enforcement steps will be taken, including fee assessment and/or legal action. If a fee notice is sent out, they will be charged $100 and a daily $25 civil penalty fee, until they reach a $1,000 cap. Once the cap is reached, the city will take them to court.
- The case is closed when the compliance is referred, unfounded, or abated.

Mr. Brim explained that the process was designed to get compliance and was set up to give them plenty of time to comply. They would not be fined if they were showing that they were working with the city to come into compliance. Ms. Marchant mentioned that there was an appeals process. Councilmember Earnest asked if as long as those in violation were communicating with staff, then they would not be charged a fee. Ms. Marchant replied yes. Mayor Fullmer mentioned that Ms. Marchant would take pictures to make sure everything was in compliance and would look at the whole neighborhood for compliance. Ms. Marchant said that the process was proactive.

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- Business Licensing – Operating without a license
    - Determine that a business is operating without a license
    - Send a certified letter notifying them of penalty fee and to apply within 10 business days
    - Compliance
        - They submit a business license application, business license fee, and penalty fee
    - Noncompliance
        - Business Licensing Coordinator passes case to Code Enforcement Officer
        - Regular Code Enforcement process applies

Ms. Marchant mentioned that they would be doing what she called a spring cleaning in regards to sign code violations. Mayor Fullmer asked about facilitating a meeting for new businesses who were still going through the construction phase, about sharing a sign. Mr. Brim replied that they were working with The Yard area on a master sign permit for a monument sign at the entrance to the roundabout. Ms. Marchant explained the "spring cleaning" would deal more with temporary signs and signs that were not compliant with the sign code. She said that they would distribute public education materials first and move into code enforcement.

Statistics from the time the online platform for citizen requests was implemented in September 2017, until December 2018.
Complaints by department:

- 39% – Public Works – had the most requests because they were originally doing code enforcement.
- 34% – Planning and Zoning
- 19% – Police Department
- 8% – Building Department

Code Enforcement by Category

- 46% – Trailer
- 17% – Accessory Dwelling Unit
- 13% – Junked machinery
- 8% – Weeds
- 4% – Occupancy
- 4% – Operating without a Business License
- 4% – Dogs

Ms. Marchant explained that she had gone through all of the open citizen requests that had come in before she started and was able to bring them into compliance. She explained that there was a page on the website giving information about common code violations and how people could contact the city with concerns. She added that these informational pages could be used as public information in the newsletter and on social media sites.

Phase 2 –

- Neighborhood Block Captains/Designated Reporters – Mayor Fullmer mentioned that they had discussed this during the council retreat and how they would work with Sergeant Rockwell and the council's vision for this program.
- Coordinate a quarterly meeting with apartment management and high density HOAs
- Consideration of employing a Full/Part-Time Code Enforcement Officer
- Other suggestions?

Councilmember Judd asked if there was a process to identify at what point a deputy should accompany the code enforcement officer. Mr. Brim replied that he had requested that Ms. Marchant take someone with her if she needed to visit someone on site or request an inspection. Councilmember Judd felt that it would be smart to create a policy to have a police presence at a certain point in the code enforcement process. Sergeant Rockwell responded that Ms. Marchant could have a deputy accompany her at any time she felt she needed them. He added that if they implemented a full or part-time code enforcement officer, they should be certified through the state or be a law enforcement officer. There was a discussion about the code enforcement process. Ms. Marchant explained that most of the code enforcement had not been face to face.

Sergeant Rockwell mentioned that they were scheduling a Neighborhood Watch meeting for March 25. He said that it would be held in the evening, at the city offices, in conjunction with the Bookmobile.

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DISCUSSION ITEMS

No items were submitted

CONSENT ITEMS

7.1 Approval of the January 25, 2019 City Council Retreat Minutes
7.2 Approval of the February 13, 2019 City Council Meeting Minutes

Mayor Fullmer called for a motion.

Motion: COUNCILMEMBER FLAKE MOVED TO APPROVE THE CONSENT ITEMS AS NOTED. COUNCILMEMBER JUDD SECONDED THE MOTION. MAYOR FULLMER, COUNCILMEMBERS EARNEST, FLAKE, JUDD, AND RILEY VOTED AYE. MOTION CARRIED UNANIMOUSLY.

MAYOR'S APPOINTMENTS

No names were submitted.

BUSINESS ITEMS

9.1 PUBLIC HEARING – <u>Zoning Text Amendment, Ordinance #2019-01: Regulations for Golf Driving Ranges</u>

Planning staff will present amendments to the Zoning Code allowing for golf safety netting height, standards for protection netting, requirements for site and building lighting and minimum buffering from residential uses. The City Council will take appropriate action. *(This item was continued from the February 13, 2019 City Council Meeting.)*

Mayor Fullmer called for a motion to open the public hearing.

Motion: COUNCILMEMBER FLAKE MOVED TO OPEN THE PUBLIC HEARING AT 7:57 PM. COUNCILMEMBER EARNEST SECONDED THE MOTION. MAYOR FULLMER, COUNCILMEMBERS EARNEST, FLAKE, JUDD, AND RILEY VOTED AYE. THE MOTION CARRIED UNANIMOUSLY.

Mayor Fullmer turned the time over to Community Development Director Morgan Brim.

Mr. Brim explained that the code would allow for increased height to cover the safety netting and lighting. He said it required that the lighting be restricted to the driving range. He said that that one benefit was that it was not located adjacent to residential. He mentioned that Edgewater Townhomes were located about 500 feet to the south, so there would be some requirements on the lighting. He explained that the Planning Commission would be the authority over approving this type of development. He added that there would be medical and retail buildings between the townhomes and the golf facility.

Mayor Fullmer asked about the lighting design. Mr. Brim replied that the code would allow them to place the lighting above 60 feet if it was required by state and federal codes. He said that he did not have details on the design for the lights. There was a discussion about the lighting.

Mr. Brim explained that the structure poles would be limited to 180 feet, but the developer thought that they would be about 170 feet. He added that there would be a distance requirement of 300 feet from the poles to any adjacent residential units. Mayor Fullmer asked if the development would meet the code requirements if their building was three levels. Mr. Brim replied yes, and that it was linear to the poles.

Mayor Fullmer called for public comment. Hearing none, she called for a motion to close the public hearing.

Motion: COUNCILMEMBER JUDD MOVED TO CLOSE THE PUBLIC HEARING AT 8:01 PM. COUNCILMEMBER FLAKE SECONDED THE MOTION. MAYOR FULLMER, COUNCILMEMBERS EARNEST, FLAKE, JUDD, AND RILEY VOTED AYE. THE MOTION CARRIED UNANIMOUSLY.

Councilmember Judd asked if they should state in the motion that the boundary for the code was from 400 North on the south, 650 North on the north, Mill Road on the west, and Geneva on the east, restricting it to that location. Mr. Brim replied that they could.

Councilmember Riley asked why the developers were requesting to reduce residential spacing from 400 feet to 300 feet. He said that he was worried about the residents that would be impacted by the change. Mr. Brim replied that they could bump it back to 400 feet.

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Councilmember Riley asked about the types of recreational uses that would be allowed on the poles. Mr. Brim replied that the developer had not provided a lot of definition for that use. He said that they could eliminate it. He said that they had mentioned interest in doing a large swing. Councilmember Flake stated that the developer wanted to put carnival-type rides on the poles.

Councilmember Judd felt that if there were items in the golf driving ranges code that had not been defined well, then they should strike them from the code and have them come in for a conditional use permit. He reminded the council that a conditional use permit would not be coming to the council for approval. He said that, because they were giving them a lot of money through the RDA, he wanted it to come back to the council. Mayor Fullmer suggested that they stipulate in the motion that the developer had to come to the council for approval. Mr. Brim suggested that they strike it from the code and have the developer apply for an amendment. The council agreed to strike it from the code.

Mayor Fullmer called for further comments. Hearing none, she called for a motion.

Motion: COUNCILMEMBER JUDD MOVED TO CONTINUE THIS ITEM TO THE FOLLOWING MEETING WHERE STAFF WOULD BE ABLE TO MAKE THESE AMENDMENTS AND COUNCIL COULD LOOK AT THEM. COUNCILMEMBER EARNEST SECONDED THE MOTION. MAYOR FULLMER, COUNCILMEMBERS EARNEST, FLAKE, JUDD, AND RILEY VOTED AYE. THE MOTION CARRIED UNANIMOUSLY.

CLOSED SESSION

No closed session was held.

ADJOURNMENT

Mayor Fullmer called for a motion to adjourn the meeting.

Motion: COUNCILMEMBER FLAKE MOVED TO ADJOURN THE MEETING AT 8:07 PM. COUNCILMEMBER EARNEST SECONDED THE MOTION. MAYOR FULLMER, COUNCILMEMBERS EARNEST, FLAKE, JUDD, AND RILEY VOTED AYE. MOTION CARRIED UNANIMOUSLY.

The next regularly scheduled meeting is March 13, 2019.

MINUTES APPROVED ON: ____

CERTIFIED CORRECT BY: /s/ Pamela Spencer
PAMELA SPENCER, CITY RECORDER

DRAFT

VINEYARD
STAY CONNECTED

VINEYARD CITY COUNCIL STAFF REPORT

Meeting Date: 3-13-2019

Agenda Item: 6.2 Property Improvements

Department: Public Works

Presenter: Chris

Background/Discussion:
Staff is working on improvements to make the new public works property usable. We have completed an all-weather surface access road into the property and would now like to extend the sewer and water utilities into the property and construct a drying bed. The drying bed will be located at the north end of the property with the waterline extended to it. The sewer line will be stubbed into the property a short distance to a new manhole for ease of future extension. In order to keep costs low, it is proposed to purchase materials for the project and staff construct the improvements. This will save the City over $30k by completing the work in house.

Fiscal Impact:

PW Projects Budget Balance	$42,348.06

Materials/Equipment	Cost
Sewer Pipeline	$1,680.24
Manholes	$2,500.00
Waterline and Fittings	$12,000.00
Equipment Rentals	$8,000.00
Drying Bed Construction	$6,627.00
Estimated Total	$30,807.24

PW Projects Budget Remainder	$11,540.82

Recommendation:
Motion to Approve

Sample Motion:
Motion to allow staff to proceed with the purchase of materials and rental equipment to make sewer and water improvement at the public works property as presented.

Attachments:

celebrate
Arbor Day™

Whereas, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

Whereas, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

Whereas, Arbor Day is now observed throughout the nation and the world, and

Whereas, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife, and

Whereas, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

Whereas, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

Whereas, trees, wherever they are planted, are a source of joy and spiritual renewal.

Now, Therefore, I, ______________________________, Mayor of the City of ______________________________, do hereby proclaim ______________________________ as

Arbor Day

In the City of ______________________________, and I urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and

Further, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

Dated this ____________________ day of ____________________

Mayor ______________________________

Date: March 13, 2019

Agenda Item: 8.1 Public Hearing and Consideration of Ordinance 2019-01 Regulations for Golf Driving Ranges

From: Morgan Brim, Community Development Director

Department: Community Development

Subject: Driving Range Zoning Ordinance Text Amendments

The Planning Commission and City Council have both held public hearings on this proposed ordinance. During the last City Council, staff was directed to make the following changes to the ordinance:

1. Increase minimum residential seperation requirements from 300 feet to 400 feet;
2. Limit the location of driving ranges to The Yard commercial development, and
3. Eliminate language regarding recreational use of support poles.

The attached ordinance contains all noted changes.

RECOMMENDATION:
Staff is recommending approval of Ordinance 2019-01.

The Planning Commission recommended approval of the ordinance.

PROPOSED MOTION:
"I move to approve Ordinance 2019-01."

ATTACHMENTS:

- Proposed Ordinance (Includes all text amendments)

ORDINANCE NO. 2019-01

AN ORDINANCE OF THE VINEYARD CITY COUNCIL, VINEYARD, UTAH, AMENDING THE CITY'S ZONING ORDINANCE TO ADD SECTION 15.34.200 DRIVING RANGES TO PROVIDE ALLOWANCES FOR GOLF SAFETY NETTING HEIGHT, STANDARDS FOR PROTECTION NETTING, REQUIREMENTS FOR SITE AND BUILDING LIGHTING AND MINIMUM SPACING FROM RESIDENTIAL USES; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE, PROVIDING FOR PUBLICATION BY SUMMARY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Title 10, Chapter 9a Municipal Land Use, Development, and Management Act of the Utah Municipal Code permits the City of Vineyard to ensure the health, safety and welfare of the community through local land use planning and the adoption of land use ordinances; and

WHEREAS, the City of Vineyard is authorized to amend the City's Zoning Ordinance pursuant to Utah Municipal Code § 10-9a-102(2); and

WHEREAS, the Planning Commission held a public meeting on February 19, 2019 and after fully considering staff recommendations, recommended approval to the Vineyard City Council on February 19, 2019; and

WHEREAS, the Vineyard City Council, having reviewed the proposed text amendments, held a public hearing on February 27, 2019; and

WHEREAS, the Vineyard City Council having considered the recommendation of the Planning Commission and submitted comments and testimony from the public, having determined that it is in the best interest of the public and adopt the proposed text amendments to the Zoning Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF VINEYARD: Section 1: SECTION 15.34.200 DRIVING RANGES:

1. Golf Safety Netting.
    a. Golf safety nets may be permitted for the purposes of retaining golf balls within the boundaries of an established driving range.
    b. Golf safety netting shall only be permitted on the sides and rear of the driving range and are not permitted within the front yard area of the facility.
    c. Golf safety netting and associated support system shall not exceed a height of one hundred eighty feet (180') measured from the adjacent grade of each pole.
    d. Flags, signs, banners and other appurtenances are prohibited from being attached to the support structure or netting.
    e. Golf safety nets shall be constructed in accordance with the following minimum standards:
        i. All golf safety nets require a building permit.
        ii. Support posts and netting shall be consistent in all detail and design throughout the project area serving the driving range.
        iii. All golf safety nets shall be constructed in accordance with the manufacturer's recommendations.
        iv. Support posts shall be constructed of rust-resistant metal approved by a structural engineer and shall meet all requirements of the city's Building Code and all other applicable codes.
        v. Netting material shall be designed for the purpose of obstructing golf balls.
        vi. Support structures should be fitted with a device, such as a halyard, that allows the net panel(s) to be removed for repair or storage.

   f. Golf safety nets shall be maintained and repaired by the property owner in accordance with the following minimum standards:
      i. Any missing or broken support post that was a component of the original design of the golf safety net shall be repaired or replaced with similar material.
      ii. Torn netting which no longer serves the intended purposes shall be repaired or replaced with similar material.
   g. Driving range facilities, safety netting and support structures shall maintain a minimum distance of four-hundred feet (400') from residential buildings.
   h. Driving range facilities and associated safety netting and support poles may be allowed through the provision of a conditional use permit under the Outdoor Commercial Recreation use category within the Regional Mixed-Use District (RMU) within the commercial project known as "The Yard", bounded on the north by 650 North, on the west by Mill Road, to the south by 400 North and on the east by Geneva Road.

2. Golf Range Lighting.
   a. All lights placed on property entrances or on building facades shall be down-directed and shielded to direct light to the entry or pedestrian way. The lighting design shall minimize light trespass. Spotlights and floodlights are prohibited. All pedestrian pathways shall include either bollard lighting, or down-directed lighting which shall not exceed twelve feet in height.
   b. Exterior lighting attached to a golf safety netting support pole shall not exceed a height of sixty (60') feet and shall only be used for the purposes of illuminating the driving range.
   c. Additional lighting height may be approved as required by State or Federal Law.
   d. A lighting plan shall be submitted for review with all driving range site plan and/or conditional use permit applications demonstrating impacts on residential uses located in the general vicinity of the subject area. The Planning Commission may impose conditions to mitigate potential adverse impacts to surrounding properties.

Section 2: REPEALER CLAUSE. All City of Vineyard Ordinances, or parts thereof, which are in conflict herewith are hereby repealed.

Section 3: SAVINGS AND SERVERABILITY CLAUSE. It is hereby declared to be the legislative intent that the provisions and parts of this Ordinance shall be severable. If any paragraph, part, section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 4: PUBLICATION. This Ordinance, or a summary thereof, shall be published in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

Section 5: EFFECTIVE DATE. This Ordinance shall be in full force and effect after its passage, approval and publication according to law.

PASSED by the CITY COUNCIL and APPROVED by the Mayor of Vineyard, Utah on this 13th day of March, 2019.

Julie Fullmer, Mayor

ATTEST:

Pamela Spencer, City Clerk

DRAFT

VINEYARD, UTAH

RESOLUTION NO. 2019-03

A RESOLUTION OF THE CITY COUNCIL OF VINEYARD, UTAH ADOPTING RULES OF PROCEDURE TO GOVERN THE CONDUCT OF ITS MEETINGS.

RECITALS

A. Utah Code 10-3-606 requires all municipal councils to adopt rules of meeting procedure and conduct.

B. the city of Vineyard, Utah wishes to adopt rules that reflect both compliance with state law and that are a less formal set of meeting rules that represents the procedures the council has customarily followed and encourages public participation as appropriate.

RESOLUTION

NOW, THEREFORE, IT IS HEREBY RESOLVED, by the City Council of the Vineyard, Utah:

1. The attached Exhibit A is hereby adopted as the meeting rules of procedure for the meetings of the Vineyard City Council

APPROVED AND ADOPTED in Vineyard, Utah, this____day of _________________ 2019.

MAYOR

____

ATTEST:

____
Recorder

DRAFT

RULES OF PROCEDURE AND ORDER

Pursuant to Utah Code 10-3-606 the Municipality hereby adopts the following rules of order and procedure to govern the meetings of the Municipal Council.

SELECTED SECTIONS OF UTAH STATE CODE. The Municipality shall comply with all required procedures contained in Utah Code including the following Sections:

10-3-502. Regular and special council meetings.

(1) The council of each municipality shall:

(a) by ordinance prescribe the time and place for holding its regular meeting, subject to Subsection (1)(b); and

(b) hold a regular meeting at least once each month.

(2) (a) The mayor of a municipality or two council members may order the convening of a special meeting of the council.

(b) Each order convening a special meeting of the council shall:

(i) be entered in the minutes of the council; and

(ii) provide at least three hours' notice of the special meeting.

(c) The municipal recorder or clerk shall serve notice of the special meeting on each council member who did not sign the order by delivering the notice personally or by leaving it at the member's usual place of abode.

(d) The personal appearance by a council member at a special meeting of the council constitutes a waiver of the notice required under Subsection (2)(c).

10-3-504 (2). Quorum defined.

The number of council members necessary to constitute a quorum is:

(2) in a municipality with a five-member council, three;

10-3-505. Compelling attendance at meetings of legislative body.

The legislative body of a municipality may compel the attendance of its own members at its meetings and provide penalties it considers necessary for the failure to comply with an exercise of the authority to compel attendance.

10-3-506. How the vote is taken.

A roll call vote shall be taken and recorded for all ordinances, resolutions, and any action which would create a liability against the municipality and in any other case at the request of any member of the governing body by a "yes" or a "no" vote and shall be recorded. Every resolution or ordinance shall be in writing before the vote is taken.

10-3-507. Minimum vote required.

(1) The minimum number of yes votes required to pass any ordinance or resolution, or to take any action by the council, unless otherwise prescribed by law, is a majority of the

voting members of the council, without considering any vacancy in the council.

(2) (a) Any ordinance, resolution, or motion of the council having fewer favorable votes than required in this section is defeated and invalid.

(b) Notwithstanding Subsection (2)(a), a council meeting may be adjourned to a specific time by a majority vote of the council even though the majority vote is less than that required in this section.

(3) A majority of the council members, regardless of number, may fill any vacancy in the council as provided under Section **20A-1-510**.

10-3-508. Reconsideration.

Any action taken by the governing body may not be reconsidered or rescinded at any special meeting unless the number of members of the governing body present at the special meeting is equal to or greater than the number of members present at the meeting when the action was approved.

10-3-601. Business of governing body conducted only in open meeting.

All meetings of the governing body of each municipality shall be held in compliance with the provisions of Title 52, Chapter 4, Open and Public Meetings Act.

10-3-607. Rules of conduct for members of the governing body.

The governing body of each municipality may fine or expel any member for disorderly conduct on a two-thirds vote of the members of the governing body.

10-3-608. Rules of conduct for the public.

The governing body on a two-thirds vote may expel any person who is disorderly during the meeting of the governing body. This section or any action taken by the governing body pursuant hereto does not preclude prosecution under any other provision of law.

SPECIAL RULES APPLYING TO VINEYARD

RULE NO. 1 THE AGENDA. The agenda for the meeting will be the guide to the meeting. Items may only be placed on the agenda by either the mayor or any two council members. While matters not on the agenda may at times come up for discussion, no final action can be taken on any matter not on the agenda.

RULE NO. 2 PROCEDURES FOR THE MEETING. The mayor shall open and introduce an item on the agenda in order, unless the mayor feels like there is a good reason to go out of order. If the item is one that requires discussion the council members can consider the item in a polite, civil, free-for-all type exchange of ideas for as long as they feel necessary. The mayor may or may not, at his or her discretion, allow members of the public or staff to participate in the discussion. When the mayor thinks the discussion has gone on long enough, and the item is one that requires a decision of the council, the mayor can ask for vote on the matter.

Any councilmember who has had enough of the discussion, can at any time also ask the mayor to either move on to the next item or call for a vote on the item. If a majority of the others on the council agree, the mayor shall call for a vote or move on to the next item as appropriate. No formal motions or seconds are required or necessary.

RULE NO. 3 CONDUCT OF THE COUNCIL

CODE OF CONDUCT FOR MUNICIPAL COUNCIL AND MAYOR INCLUDES:

- Remarks should apply to the question under debate.
- Shall avoid references to personalities, and refrain from questioning motives of other members or staff personnel.
- Demonstrate courtesy and shall not disrupt proceedings.
- Shall not use their positions to secure privileges or personal gains and shall avoid situations which could cause anyone to believe that they may have brought bias or partiality to a question before the Municipal Council.
- Shall be dedicated to the principles of representative democracy by recognizing that the chief function of local government is to serve the best interests of the public at large while respecting individual rights.
- Shall be dedicated to the effective use of the Municipality's available resources.
- Shall refrain from any activity that would hinder their ability to be objective and impartial.
- Municipal business shall be discussed in open, well-publicized meetings, except in rare situations in which Executive Sessions are authorized.

ETHICS

The mayor and councilmembers shall comply with the Utah Municipal Officers and Employees Ethics Act as found in Utah Code 10-3-1301 et seq.

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RESIDENTS' RIGHT TO BE HEARD:

It is recognized that residents may from time to time believe it is necessary to speak to Municipal Council on matters of concern. Accordingly, the Municipal Council expects any person presenting to the municipal council to speak in a civil manner, with due respect for the decorum of the meeting, and with due respect for all persons attending.

- No member of the public shall be heard until recognized by the Mayor.
- Public comments will only be heard during the Public Comment portion of the meeting unless the issue is a Public Hearing or a member of the public is asked to speak on a matter by the mayor.
- Speakers must state their name and address for the record.
- Any resident requesting to speak shall limit himself or herself to matters of fact regarding the issue of concern.
- Comments should be limited to three (3) minutes unless prior approval by the Mayor.
- If a representative is elected to speak for a group, the Mayor may approve an increased time allotment.
- Personal attacks made publicly toward any person or Municipal employee are not allowed. Speakers are encouraged to bring their complaints regarding employee performance through the supervisory chain of command in accordance with the Municipality's Personnel Policies.
- Any member of the public interrupting Municipal Council proceedings, approaching the dais without permission, otherwise creating a disturbance, or failing to abide by these rules of procedure in addressing Municipal Council, shall be deemed to have disrupted a public meeting and, at the direction of the Mayor, shall be removed from Council chambers by Police Department personnel or other agent designated by Municipal Council.

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FRANCHISE AGREEMENT BETWEEN

CITY OF VINEYARD, UTAH

AND

COMCAST OF CALIFORNIA/MASSACHUSETTS/MICHIGAN/UTAH, LLC

Ordinance 2019-03

This Franchise Agreement ("Franchise") is between the City of Vineyard, Utah, hereinafter referred to as the "Franchising Authority" and Comcast of California/Massachusetts/Michigan/Utah, LLC, hereinafter referred to as the "Grantee".

The Franchising Authority hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

SECTION 1

Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

A. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

B. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.

C. "Cable Act" means the Cable Communications Policy Act of 1984 (Public Law No. 98-549, 47 USC 521 (Supp.)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996 and as further amended or superseded.

D. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

E. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

F. "FCC" means Federal Communications Commission or successor governmental entity thereto.

G. "Franchise" means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System within the Franchise Area.

H. "Franchising Authority" means City of Vineyard, within the State of Utah, or the lawful successor, transferee, or assignee thereof.

I. "Grantee" means Comcast of California/Massachusetts/Michigan/Utah, LLC or the lawful successor, transferee, or assignee thereof.

J "Gross Revenue" means any and all revenue in whatever form, from any source, directly received by the Grantee or Affiliate of the Grantee, according to generally accepted accounting principles consistently applied, that would constitute a Cable Operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Services in any manner that requires use of the Public Ways in the Service Area. Gross Revenues include, but are not limited to, basic, expanded basic, and pay service revenues, revenues from installation, rental of converters, the applicable percentage of the sale of local and regional advertising time, and any leased access revenues.

Gross Revenues do not include (i) revenue from sources excluded by law; (ii) revenue derived by Grantee from services provided to its Affiliates; (iii) late payment fees; (iv) charges other than those described above that are aggregated or bundled with amounts billed to Cable Service Subscribers such as charges for Broadband or Telephone services; (v) fees or taxes which are imposed directly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency including the FCC User Fee; (vi) Franchise Fees on Cable Services (vii) revenue which cannot be collected by the Grantee and are identified as bad debt, provided, that if revenue previously representing bad debt is collected, this revenue shall then at time of collection be included in Gross Revenues for the collection period; (viii) refundable deposits, investment income, programming launch support payments, or advertising sales commissions; and (ix) Internet services to the extent that such service is not considered to be a Cable Service as defined by law.

K. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity but not the Franchising Authority.

L. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over wires, cables, conductors, ducts, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

M. "<u>Service Area</u>" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

N. "<u>Standard Installation</u>" is defined as 125 feet from the nearest tap to the Subscriber's terminal.

O. "<u>Subscriber</u>" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

SECTION 2

Grant of Franchise

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

Each and every term, provision or condition herein is subject to the provisions of State law, federal law, and city ordinances and regulations enacted pursuant thereto. Notwithstanding the foregoing, the Franchising Authority may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

2.3 Competitive Equity.

(A) Overview.

The Grantee and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchising Authority; and changes in the scope and application of the traditional regulatory framework governing the provision of video series are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to the residents; promote local communications infrastructure investments and economic opportunities in the Franchising Authority; and provide flexibility in the event of subsequent changes in the law, the Grantee and the Franchising Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind. Furthermore, if the Franchising Authority authorizes or permits a competitor to Grantee to operate within the Franchise Area, it shall do so on condition that such competitor or entity indemnify and hold harmless the Grantee for and against all costs and expenses incurred in strengthening poles, replacing poles, rearranging attachments, placing underground facilities, conducting inspections and generally in creating infrastructure improvements for the other entity.

(B) New Video Service Provider

Notwithstanding any other provision in this Agreement or any other provision of law, if any Video Service Provider ("VSP") (i) enters into any agreement with the Franchising Authority to provide video services to subscribers in the Franchising Authority, or (ii) otherwise begins to provide video services to subscribers in the Franchising Authority (with or without entering into an agreement with the Franchising Authority), the Franchising Authority, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the Franchising Authority under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Franchising Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the Franchising Authority.

(C) No Written Agreement between Franchising Authority and Third Party VSP

If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Grantee and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSP's, taking into account the terms and conditions under which other VSP's are allowed to provide video services to subscribers within the boundaries of the Franchising Authority.

(D) Effect of this Section on the Overall Agreement

Any agreement, authorization, right or determination to provide video services to subscribers in the Franchising Authority under any provision under this Section 2.3 shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

(E) VSP Defined

The term "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple video programming services to subscribers regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multichannel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet Protocol based services.

2.4 Term. The Franchise granted hereunder shall be for an initial term of Fifteen (15) years commencing on the effective date of the Franchise as set forth in subsection 8.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION 3

Standards of Service

3.1 Conditions of Occupancy. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way at Grantee's expense to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 Relocation for the Franchising Authority. Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall at its own expense protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the Grantee's services. Grantee shall not be required to pay for the relocation of Cable System facilities, and may require advance payment for costs and expense, to the extent such removal or relocation is requested solely for aesthetic purposes, in cases where the original location of the facilities was approved by Franchising Authority through the permitting process.

In the event of an emergency, the Franchising Authority shall notify the Grantee, who shall immediately respond to the emergency. Should the Grantee be unable to respond in a timely manner, the Franchising Authority shall take such action as is necessary to meet the emergency at the expense of Grantee, if such action by the Franchising Authority would otherwise have been at Grantee's expense.

The Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any person using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, then the Franchising Authority shall make application for such funds on behalf of the Grantee.

3.4 **Relocation for a Third Party**. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 **Trimming of Trees and Shrubbery**. The Grantee shall have the authority to trim trees or other natural growth in the public way in order to access and maintain the Cable System and shall reasonably replace all trees and shrubs damaged as a result of any construction and/or maintenance of its system undertaken by Grantee.

3.6 **Safety Requirements**. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.7 **Aerial and Underground Construction**. Prior to construction, in each case, all applicable permits shall be applied for and granted and all fees shall be paid.

In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality.

In any region(s) of the Franchise Area where the transmission of distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals or other related equipment.

3.8 **Access to Open Trenches**. The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench.

3.9 **Extensions of the Cable System**. Nothing in this Agreement requires Grantee to build to all areas of the Franchise Authority. Grantee retains the discretion to determine the scope, location, and timing of the design and construction of its network, as well as the windows during which residential Subscribers may enroll for services, so long as such decisions are consistent with this Section. Grantee, at its sole discretion, may determine separately defined geographic areas within the Franchise Area where its System will be deployed, services will be offered, or facilities will be upgraded.

3.10 **Subscriber Charges for Extensions of the Cable System**. The Grantee may, at Grantee's discretion, extend the Cable System to Subscriber(s) in the Service Area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, in the event Grantee decides to extend the Cable System, the Grantee will contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of unserved residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 15. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any non-Standard Installation charges to extend the Cable System from the tap to the residence.

3.11 **Cable Service to Public Buildings**. Franchising Authority acknowledges that complimentary services reflect a voluntary initiative on the part of Grantee. Grantee does not waive any rights it may have regarding complimentary services under federal law or regulation. Subject to applicable law, should Grantee elect to offset governmental complimentary services against franchise fees, Grantee shall first provide Franchising Authority with ninety (90) days' prior notice. The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in any loss or damage to the Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

3.12 Technical Standards. The Grantee is responsible for ensuring that the Cable System is designed, installed and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time. As provided in these rules, the Franchising Authority shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules but has no authority, pursuant to federal law, to enforce compliance with such standards.

3.13 Emergency Use. Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the Franchise Authority shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

3.14 Reimbursement of Costs. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any act contemplated in this Agreement, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.

3.15 Customer Service Standards. The Franchising Authority hereby adopts the customer service standards set forth in Part 76, § 76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

3.16 Fees and Charges to Customers All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

3.17 Customer Bills and Privacy Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 3.15 above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(C) of the Cable Act (47 U.S.C. 542(c)). The Grantee shall also comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 4

Regulation by the Franchising Authority

4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5%) of annual Gross Revenue (as defined in subsection 1.1 of this Franchise) received by the Grantee from operation of the Cable System to provide Cable Service in the Franchise Area; provided however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other video service provider providing servicer in the Franchise Area. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. Payments shall be made by Grantee to the Franchising Authority on a quarterly basis, within sixty (60) days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

4.2 Rates and Charges. The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.

4.3 Renewal of Franchise.

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

B. In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.3 to be consistent with the express provisions of Section 626 of the Cable Act.

4.4 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.5 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

SECTION 5

Oversight and Regulation by Franchising Authority

5.1 Books and Records The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

5.2 Franchise Fees Subject to Audit.

5.2.1. Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

5.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

5.2.3. Any "Finally Settled Amount(s)" due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Grantee's books and records.

SECTION 6

Insurance and Indemnification

6.1 Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of one million dollars ($1,000,000) combined single limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon commencement of this Franchise Agreement, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its elected officials, officers, employees, agents and volunteers from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System and which arise out of the Grantee's acts or omissions pursuant to or related to this Franchise Agreement and to pay all reasonable costs incurred by the Franchising Authority in defense of such claims, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority to the extent of any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

6.3 Bonds and Other Surety Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchising Authority acknowledges that the legal, financial, and technical qualifications of the Grantee are sufficient for compliance with the terms of the Franchise and the enforcement thereof. The Grantee and the Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for services. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefore. The Franchising Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than $10,000, conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that a bond or other surety is required in the future, the Franchising Authority agrees to give the Grantee at least 60 days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

SECTION 7

Enforcement and Termination of Franchise

7.1 **Notice of Violation**. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2 **The Grantee's Right to Cure or Respond**. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 **Public Hearing**. In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

7.4 **Enforcement**. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

B. Commence an action at law for monetary damages or seek other equitable relief; or

C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with subsection 7.5.

7.5 **Revocation**. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo.* Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6 **Force Majeure**. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

SECTION 8

Miscellaneous Provisions

8.1 **Actions of Parties**. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.2 **Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

8.3 **Notice**. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Vineyard
Attn: City Manager
125 S. Main St.
Vineyard, Utah 84059

The notices or responses to the Grantee shall be addressed as follows:

Comcast of California/Massachusetts/Michigan/Utah, LLC
Attn: Government Affairs Dept.
9602 South 300 West
Sandy UT 84070

with a copy to:

Comcast Corporation
Legal Department
1701 John F Kennedy Blvd.
Philadelphia PA 19103

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

8.4 **Descriptive Headings**. The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5 **Severability**. If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

8.6 **Effective Date**. The effective date of this Franchise is the 13th day of March. 2019, pursuant to the provisions of applicable law. This Franchise shall expire on the 13th day of March, 2034 unless extended by the mutual agreement of the parties.

IN WITNESS WHEREOF, the Franchise Authority has entered into this Franchise Agreement on the date first considered above.

City of Vineyard, Utah

Signature: ______________________
Mayor

ATTEST:

____
City Clerk and Recorder

Accepted this 13th day of March, 2019, subject to applicable federal, state and local law

Comcast of California/Massachusetts/Michigan/Utah, LLC

Signature: ________________________

By: _____________________________

Title: ___________________________