

Title 5

BUSINESS LICENSES AND REGULATIONS

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Chapter 5.04

BUSINESS LICENSES  
GENERALLY

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5.04.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

"Business" means and includes professions, trades and occupations and all and every kind of calling, whether or not carried on for profit.

"Collector" means the city clerk charged with the administration of the provisions of this chapter.

"Gross receipts" means and includes the total amounts actually received or receivable from sales and the total amounts actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or a credit allowed, whether or not such act or service is done as a part of or in connection with, the sales of materials, goods, wares or merchandise. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable or losses or other expenses whatsoever. Excluded from "gross receipts" shall be the following:

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sales price of property returned by purchases upon the rescission of a contract of sale as is refunded either in cash or by credit;
5. Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected provided the agent or trustee has furnished the collector with the names and addresses of the others and the amounts paid to them;
6. That portion of the receipts of a general contractor which represents payments to subcontractors provided such subcontractors are licensed pursuant to the provisions of this chapter and provided the general contractor furnishes the collector with the names and addresses of the subcontractors and the amounts paid each subcontractor;
7. Receipts of refundable deposits; provided, however, refundable deposits forfeited and taken into the income of the business shall not be excluded;
8. As to a real estate agent or broker, the sales price of real estate sold for the account of others, except that portion which represents a commission or other income to the agent or broker;
9. As to a retail gasoline dealer, a portion of his or her receipts from the sales of motor vehicle fuels equal to the motor vehicle fuel license tax imposed by and previously paid pursuant to the provisions of Part 2 of Division 2 of the Revenue and Taxation Code of the state; and

10. As to a retail gasoline dealer, the special motor fuel tax imposed by Section 4041 of Title 26 of the United States Code if paid by the dealer or collected by him or her from the consumer or purchaser.

"Person" means and includes all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, Massachusetts business or common law trusts, societies and individuals transacting and carrying on any business in the city other than as an employee.

"Sale" means and includes the transfer, in any manner or by any means whatsoever, of title to property for a consideration; the serving, supplying or furnishing for a consideration of any property; and a transaction whereby the possession of property is transferred and the seller retains the title as security for the payment of the price. The provisions of this subsection shall not be deemed to exclude any transaction which is or which in effect results in, a sale within the contemplation of law.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths or a declaration or certification made under penalty of perjury. (Prior code  $\beta$  3-1.101)

#### 5.04.020 Revenue measure.

The provisions of this chapter are enacted solely to raise revenue for municipal purposes and are not intended for regulation. (Prior code  $\beta$  3-1.102)

#### 5.04.030 Effect on other laws.

Persons required to pay a license tax for transacting and carrying on any business pursuant to the provisions of this chapter shall not be relieved from the payment of any license tax for the privilege of doing such business required by any other law of the city and shall remain subject to the regulatory provisions of other laws. (Prior code  $\beta$  3-1.103)

#### 5.04.040 Required.

There are imposed upon the businesses, trades, professions, callings and occupations set forth in this chapter license taxes in the amounts set forth in Chapter 5.08 of this title. It is unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the city without first having procured a license from the city so to do and paying the tax set forth in Chapter 5.08 of this title or without complying with any and all the applicable provisions of this chapter. The provisions of this section shall not be construed to require any person to obtain a license prior to doing business within the city if such requirement conflicts with applicable statutes of the United States or of the state. Persons not so required to obtain a license prior to doing business within the city nevertheless shall be liable for the payment of the tax imposed by this chapter. (Prior code  $\beta$  3-1.104)

#### 5.04.050 Licenses--New--Applications.

Upon a person making an application for the first license to be issued pursuant to the provisions of this chapter or for a newly established business, such person shall furnish to the collector a sworn statement, upon a form provided by the collector, setting forth the following information:

A. The exact nature or kind of business for which a license is requested;  
B. The place where such business is to be carried on and the names and places of residence of the owners of the business;

C. In the event the application is made for the issuance of a license to a person doing business under a fictitious name, the names and places of residence of the owners of the business;

D. In the event the application is made for the issuance of a license to a corporation or a partnership, the names and places of residences of the officers or partners of the corporation or partnership;

E. In all cases where the amount of license tax to be paid is measured by gross receipts, such information as may be required and necessary to determine the amount of the license tax to be paid by the applicant; and

F. Any further information which the collector may require to enable him or her to issue the type of license applied for. If the amount of the license tax to be paid by the applicant is measured by gross receipts, he or she shall estimate the gross receipts for the period to be covered by the license to be issued. Such estimate, if accepted by the collector as reasonable, shall be used in determining the amount of license tax to be paid by the applicant; provided, however, the amount of the license tax so determined shall be tentative only and such person shall furnish the collector with a sworn statement, upon a form furnished by the collector, showing the gross receipts during the period of such license within thirty (30) days after the expiration of the period for which such license was issued. The license tax for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of renewal license taxes for other businesses, after deducting from the payment found to be due the amount paid at the time such first license was issued.

The collector shall not issue to any such person another license for the same or any other business until such person shall have furnished to the collector the sworn statement and paid the license tax required by the provisions of this chapter. (Prior code  $\beta$  3-1.105)

#### 5.04.060 Licenses--Contents.

A. Every person required to have a license pursuant to the provisions of this chapter shall make an application, as set forth in Section 5.04.050 of this chapter, to the collector and, upon the payment of the prescribed license tax, the collector shall issue to such person carried on such license which shall contain the following information:

1. The name of the person to whom the license is issued;
2. The business licensed;
3. The place where such business is to be transacted;
4. The date of the expiration of such license; and
5. Such other information as may be necessary for the enforcement of the provisions of this chapter.

B. Whenever the tax imposed by the provisions of this chapter is measured by the number of vehicles, devices, machines or other pieces of equipment used or whenever the license tax is measured by the gross receipts from the operation of such items, the collector shall issue only one license; provided, however, he

or she may issue for each tax period for which the license tax has been paid one identification sticker, tag, plate or symbol for each item included in the measure of the tax or used in a business where the tax is measured by the gross receipts from such items. (Prior code  $\beta$  3-1.106)

5.04.070 Licenses--Statements and records.

A. No statement shall be conclusive as to the matters set forth therein, nor shall the filing of a statement preclude the city from collecting by appropriate action such sum as is actually due and payable pursuant to the provisions of this chapter. Such statement and each of the several items therein contained, shall be subject to audit and verification by the collector, his or her deputies or authorized employees of the city who are authorized to examine, audit and inspect such books and records of any licensee or applicant for a license as may be necessary in their judgment to verify or ascertain the amount of the license tax due.

B. All persons subject to the provisions of this chapter shall keep complete records of business transactions, including sales, receipts, purchases and other expenditures and shall retain all such records for examination by the collector. Such records shall be maintained for a period of at least three years. No person required to keep records pursuant to the provisions of this section shall refuse to allow authorized representatives of the collector to examine such records at reasonable times and places. (Prior code  $\beta$  3-1.107)

5.04.080 Statements--Failure to file.

A. If any person fails to file any required statement within the time prescribed or if, after demand therefor made by the collector, such person fails to file a corrected statement or if any person subject to the tax imposed by this chapter fails to apply for a license, the collector may determine the amount of license tax due from such person by means of such information as the collector may be able to obtain.

B. If the collector is not satisfied with the information supplied in any statement or application filed, he or she may determine the amount of any license tax due by means of any information he or she may be able to obtain.

C. If such determination is made, the collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States Post Office at Colfax, California, postage prepaid, addressed to the person assessed at his or her last known address. Such person, within fifteen (15) days after the mailing or serving of such notice, may make an application in writing to the collector for a hearing on the amount of the license tax. If such an application is made, the collector shall cause the matter to be set for a hearing within fifteen (15) days before the council. The collector shall give at least ten (10) days' notice to such person of the time and place of the hearing in the manner set forth in this section for serving notices of assessment. The council shall consider all evidence produced and shall make findings thereon which shall be final. A notice of such findings shall be served upon the applicant in the manner set forth in this section for serving notices of assessment. (Prior code  $\beta$  3-1.108)

5.04.090 Statements--Filing--Extensions of time.

In addition to all other powers conferred upon him or her, the collector shall have the power, for good cause shown, to extend the time for filing any required sworn statement or application for a period not exceeding thirty (30) days and, in such case, to waive any penalty that would otherwise have accrued, except that six percent simple interest shall be added to any tax determined to be payable. (Prior code  $\beta$  3-1.109)

5.04.100 Licenses--Branch establishments and separate businesses at one location.

A separate license shall be obtained for each branch establishment or location of the business transacted and carried on and for each separate type of business at the same location and each license shall authorize the licensee to transact and carry on only the business licensed thereby at the location or in the manner designated in such license; provided, however, warehouses and distributing plants used in connection with or incidental to a business licensed pursuant to the provisions of this chapter shall not be deemed to be separate places of business or branch establishments and provided, further, that any person conducting two or more types of businesses at the same location and under the same management or at different locations, but which businesses use a single set or integrated set of books and records, may pay, at his or her option, only one tax calculated on all gross receipts of the businesses under the schedule that applies to the type of business of such person which requires the highest percentage payment on such gross receipts, except that a license tax of ten dollars (\$10.00) for each additional branch or location shall be paid upon the issuance of such licenses. (Prior code  $\beta$  3-1.110)

5.04.110 Licenses--Renewal.

In all cases the applicant for the renewal of a license shall submit to the collector for his or her guidance in ascertaining the amount of the license tax to be paid by the applicant a sworn statement, upon a form to be provided by the collector, setting forth such information concerning the applicant's business during the preceding year as may be required by the collector to enable him or her to ascertain the amount of the license tax to be paid by the applicant pursuant to the provisions of this chapter. (Prior code  $\beta$  3-1.111)

5.04.120 Exemptions--Procedure.

A. The provisions of this chapter shall not be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution of the state or applicable statutes of the United States or the state from the payment of such taxes as are set forth in this chapter.

B. Any person claiming an exemption pursuant to the provisions of this section shall file a sworn statement with the collector stating the facts upon which an exemption is claimed. In the absence of such statement substantiating the claim, such person shall be liable for the payment of the taxes imposed by this chapter.

C. Upon a proper showing contained in the sworn statement, the collector shall issue a license to such person claiming an exemption pursuant to the

provisions of this section without payment to the city of the license tax required by this chapter.

D. The collector, after giving a notice and a reasonable opportunity for a hearing to a licensee, may revoke any license granted pursuant to the provisions of this section upon information that the licensee is not entitled to the exemption as provided in this section. (Prior code  $\beta$  3-1.112)

#### 5.04.130 Adjustments--Procedure.

A. None of the license taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the equal protection and due process clauses of the Constitutions of the United States and the state.

B. In any case where a license tax is believed by a licensee or applicant for a license to place an undue burden upon interstate commerce or be violative of such constitutional clauses, he or she may apply to the collector for an adjustment of the tax. Such application may be made before, at or within six months after the payment of the prescribed license tax. The applicant, by sworn statement and supporting testimony, shall show his or her method of business and the gross volume or estimated gross volume of business and such other information as the collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The collector shall then conduct an investigation and, after having first obtained the written approval of the city attorney, shall fix as the license tax for the applicant an amount that is reasonable and nondiscriminatory or, if the license tax has already been paid, shall order a refund of the amount over and above the license tax so fixed. In fixing the license tax to be charged, the collector shall have the power to base the license tax upon a percentage of the gross receipts or any other measure which will assure that the license tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the license tax set forth in Chapter 5.08 of this title. Should the collector determine the gross receipts measure of license tax to be the proper basis, he or she may require the applicant to submit, either at the time of the termination of the applicant's business in the city or at the end of each three-month period, a sworn statement of the gross receipts and pay the amount of license tax therefor; provided, however, no additional license tax during any one calendar year shall be required after the licensee shall have paid an amount equal to the annual license tax set forth in Chapter 5.08 of this title. (Prior code  $\beta$  3-1.113)

#### 5.04.140 Licenses--Transferability.

A. Where a license is issued authorizing a person to transact and carry on a business at a particular place, the licensee, upon application therefor and paying a fee of ten dollars (\$10.00), may have the license amended to authorize the transacting and carrying on of such business under such license at some other location to which the business is to be moved.

B. Where a person transfers a business to another person where such license is duly issued and paid, the transferee, upon application therefor and paying a fee of twenty-five dollars (\$25.00), may have the license amended to

authorize the transaction and carrying on of such business under such license at the same or other location provided the application is made no later than thirty (30) days from the transfer date. (Prior code B 3-1.114)

5.04.150 Licenses--Duplicate.

A duplicate license may be issued by the collector to replace any license previously issued pursuant to the provisions of this chapter which license has been lost or destroyed upon the licensee filing a statement of such fact. At the time of filing such statement, the licensee shall pay to the collector a duplicate license fee of five dollars (\$5.00). (Prior code B 3-1.115)

5.04.160 Licenses--Posting and carrying-- Identification symbols.

A. Posting. Any licensee transacting and carrying on business at a fixed place of business in the city shall keep the license posted in a conspicuous place upon the premises where such business is carried on.

B. Carrying. Any licensee transacting and carrying on business, but not operating at a fixed place of business in the city, shall keep the license upon his or her person at all times while transacting and carrying on the business for which it is issued.

C. Identification Stickers, Tags, Plates and Symbols. Whenever identifying stickers, tags, plates or symbols have been issued for each vehicle, device, machine or other piece of equipment included in the measure of a license tax, the person to whom such stickers, tags, plates or symbols have been issued shall keep firmly affixed upon each vehicle, device, machine or piece of equipment the identifying sticker, tag, plate or symbol which has been issued therefor at such locations as are designated by the collector. Such sticker, tag, plate or symbol shall not be removed from any vehicle, device, machine or piece of equipment kept in use during the period for which the sticker, tag, plate or symbol was issued. No person shall fail to affix any such identifying sticker, tag, plate or symbol to the vehicle, device, machine or piece of equipment for which it was issued at the location designated by the collector. No person shall give away, sell or transfer such identifying sticker, tag, plate or symbol to another person or permit its use by another person. (Prior code B 3-1.116)

5.04.170 Taxes--Payment.

A. Unless otherwise specifically provided in Chapter 5.08 of this title, all annual license taxes shall be due and payable in advance on July 1st of each year; provided, however, license taxes covering new operations commenced after July 1st may be prorated for the balance of the license period but not for less than one-half the full license tax. Licenses shall not be prorated other than for an annual period.

B. Except as otherwise provided in Chapter 5.08 of this title, license taxes, other than annual license taxes, shall be due and payable as follows:

1. Semiannual license taxes measured by gross receipts, on January 1st and July 1st of each year;

2. Quarterly license taxes measured by gross receipts, on January 1st, April 1st, July 1st and October 1st of each year;

3. Monthly license taxes measured by gross receipts, on the first day of each and every month;
4. Weekly flat rate license taxes, on Monday of each week in advance;
5. Daily flat rate license taxes, each day in advance; and
6. Other flat rate license taxes shall be payable in advance on the first day of business and thereafter on the first day of any applicable period. (Prior code § 3-1.117)

#### 5.04.180 Taxes--Delinquencies.

A. For failure to pay a license tax when due, the collector shall add a penalty of ten (10) percent of the license tax on the last day of each month after the due date thereof; provided, however, the amount of such penalty to be added shall in no event exceed fifty (50) percent of the amount of the license tax due.

B. No license or sticker, tag, plate or symbol shall be issued, nor shall one which has been suspended or revoked be reinstated or reissued, to any person who, at the time of applying therefor, is indebted to the city for any delinquent license tax, unless such person, with the consent of the collector, enters into a written agreement with the city, through the collector, to pay such delinquent taxes, plus six percent simple annual interest upon the unpaid balance, in monthly installments or oftener, extending over a period of not to exceed one year.

C. In any agreement so entered into, such person shall acknowledge the obligation owed to the city and agree that, in the event of a failure to make the timely payment of any installment, the whole amount unpaid shall become immediately due and payable and that his or her current license shall be revocable by the collector upon thirty (30) days notice. In the event legal action is brought by the city to enforce the collection of any amount included in the agreement, such person shall pay all costs of suit incurred by the city or its assignee, including a reasonable attorney's fee. The execution of such an agreement shall not prevent the prior accrual of penalties on unpaid balances at the rate set forth in this section, but no penalty shall accrue, on account of taxes included in the agreement, after the execution of the agreement and the payment of the first installment and during such time as such person shall not be in breach of the agreement. (Prior code § 3-1.118)

#### 5.04.190 Taxes--Refunds.

No refund of an overpayment of the taxes imposed by this chapter shall be allowed in whole or in part unless a claim for a refund is filed with the collector within a period of three years after the last day of the calendar month following the period for which the overpayment was made. Any such claim for a refund of the amount of the overpayment shall be filed with the collector on a form furnished by him or her and in the manner prescribed by him or her. Upon the filing of such a claim and when he or she determines that an overpayment has been made, the collector may refund the amount overpaid. (Prior code § 3-1.119)

#### 5.04.200 Evidence of doing business.

When any person, by use of a sign, circular, card, telephone, book or newspaper shall advertise, hold out or represent that he or she is in business in the city or when any person holds an active license or permit issued by a governmental agency indicating that he or she is in business in the city and such person fails to deny by a sworn statement given to the collector that he or she is not conducting a business in the city after being requested to do so by the collector, such facts shall be considered prima facia evidence that he or she is conducting a business in the city. (Prior code  $\beta$  3-1.120)

#### 5.04.210 Rules and regulations.

The collector may make rules and regulations not inconsistent with the provisions of this chapter as may be necessary or desirable to aid in the enforcement of the provisions of this chapter. (Prior code  $\beta$  3-1.121)

#### 5.04.220 Information confidential.

It is unlawful for the collector or any person having an administrative duty pursuant to the provisions of this chapter to make known in any manner whatever the business affairs, operations or information obtained by an investigation of the records and equipment of any person required to obtain a license or pay a license tax or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures or any particular thereof set forth in any statement or application or to permit any statement or application or copy of either or any book containing any abstract or particulars thereof, to be seen or examined by any person; provided, however, the provisions of this section shall not be construed to prevent:

A. The disclosure to or the examination of records and equipment by, another city official, employee or agent for the collection of taxes for the sole purpose of administering or enforcing any provision of this chapter or collecting the taxes imposed by this chapter;

B. The disclosure of information to or the examination of records by, federal or state officials or the tax officials of another city or county or city and county, if a reciprocal arrangement exists or to a grand jury or court of law upon a subpoena;

C. The disclosure of information and the results of an examination of the records of a particular taxpayer or relating to a particular taxpayer, to a court of law in a proceeding brought to determine the existence or amount of any license tax liability of the particular taxpayer to the city;

D. The disclosure, after the filing of a written request to that effect, to the taxpayer himself or herself or to his or her successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to the items included in the measure of any paid tax, any unpaid tax or any amount of tax required to be collected, including interest and penalties; provided, however, the collector may refuse to make any disclosure referred to in this subsection when, in his or her opinion, the public interest would suffer thereby;

E. The disclosure of the names and addresses of persons to whom licenses have been issued and the general type or nature of their business;

F. The disclosure, by way of public meeting or otherwise, of such information as may be necessary to the council in order to permit it to be fully advised as to the facts when a taxpayer files a claim for a refund of license taxes or submits an offer of compromise with regard to a claim asserted against him or her by the city for license taxes or when acting upon any other matter; and

G. The disclosure of general statistics regarding taxes collected or business done in the city. (Prior code  $\beta$  3-1.122)

#### 5.04.230 Appeals.

Any person aggrieved by any decision of the collector with respect to the issuance or refusal to issue the license required by the provisions of this chapter may appeal to the council by filing a notice of appeal with the city clerk. The council shall thereupon fix a time and place for a hearing on such appeal. The city clerk shall give notice to such person of the time and place of the hearing by serving such notice personally or by depositing it in the United States Post Office at Colfax, California, postage prepaid, addressed to such person at his or her last known address. The council shall have the authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this chapter. (Prior code  $\beta$  3-1.123)

#### 5.04.240 Enforcement.

A. It shall be the duty of the collector and he or she is directed, to enforce each and all of the provisions of this chapter and the chief of police shall render such assistance in the enforcement of the provisions of this chapter as may from time to time be required by the collector or the council.

B. The collector, in the exercise of the duties imposed upon him or her by the provisions of this chapter and acting through his or her deputies or duly authorized assistants, shall examine or cause to be examined, all places of business in the city to ascertain whether the provisions of this chapter have been complied with.

C. The collector and each and all of his or her assistants and any police officer shall have the power and authority, upon obtaining an inspection warrant therefor, to enter, free of charge and at any reasonable time, any place of business required by the provisions of this chapter to be licensed and demand an exhibition of the license for such business. Any person having such license theretofore issued in his or her possession or under his or her control who wilfully fails to exhibit the license on demand shall be guilty of a misdemeanor. It shall be the duty of the collector and each of his or her assistants to cause a complaint to be filed against any and all persons found to be violating any of the provisions of this chapter. (Prior code  $\beta$  3-1.124)

#### 5.04.250 Debt to city.

The amount of any license tax and penalty imposed by the provisions of this chapter shall be deemed a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction for the amount of any delinquent license tax and penalties. (Prior code  $\beta$  3-1.125)

5.04.260 Effect of provisions on other laws.

A. Neither the adoption of this chapter, nor its superseding of any portion of any other law of the city, shall in any manner be construed to effect any prosecution for the violation of any other law, nor be construed as a waiver of any license or any penal provision applicable to any such violation, nor be construed to affect the validity of any bond or cash deposit required by any law to be posted, filed or deposited and all rights and obligations thereunto appertaining shall continue in full force and effect.

B. Where a license for revenue purposes has been issued to any person by the city and the tax has been paid for the business for which the license has been issued pursuant to the provisions of any law heretofore enacted and the term of such license has not expired, the license tax set forth in this chapter for such business shall not be payable until the expiration of the term of such unexpired license. (Prior code  $\beta$  3-1.126)

5.04.270 Violation--Penalty.

A. Any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of the city any material fact in procuring the license or permit provided for by this chapter shall be punishable as set forth in Chapter 1.24 of this code.

B. All remedies prescribed by the provisions of this chapter shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter. (Prior code  $\beta$  3-1.127)

5.04.280 License revocation.

Any violation of local, state or federal law the subject of which is required in order to initiate, conduct or continue operating the business for which a business license is required shall be cause for revocation of an existing business license issued under this chapter. (Ord. 392, 1992: prior code  $\beta$  3-1-128)

Chapter 5.08

BUSINESS LICENSE  
FEES AND SCHEDULES

Article I

General Provisions

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## Article I

### General Provisions

#### 5.08.010 Gross annual receipts.

A. Except as otherwise provided in this chapter, every person who engages in business at a fixed place of business within the city shall pay a license tax based upon gross receipts at the following rates in the following classifications:

#### Annual Gross Sales

#### License Tax

#### Per Year

Under \$15,000.00

\$37.50

\$15,000.00 to \$25,000.00

\$45.00

\$25,000.00 to \$50,000.00

\$60.00

\$50,000.00 to \$100,000.00

\$90.00

\$100,000.00 to \$200,000.00

\$150.00

\$200,000.00 to \$500,000.00

\$0.76 per \$1,000.00

Over \$500,000.00

\$375.00 + \$0.14 per \$1,000.00 over \$500,000.00

Gross annual receipts

Max. \$500.00

B. In any case where a licensee or an applicant for a license believes that his or her individual business is not assigned to the proper classification under this section because of circumstances peculiar to such business, as distinguished from other businesses of the same kind, he or she may apply to the collector for a reclassification. Such application shall contain such information as the collector may deem necessary and require in order to determine whether the applicant's individual business is properly classified. The collector shall then conduct an investigation following which he or she shall assign the applicant's individual business to the classification shown to be proper on the basis of such investigation. The proper classification shall be that classification which, in the opinion of the collector, most nearly fits the applicant's individual business. The reclassification shall not be retroactive, but shall apply at the time of the next regularly ensuing calculation of the applicant's tax. No business shall be classified more than one time in any one year.

C. The collector shall notify the applicant of the action taken on the application for a reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office at Colfax, California, postage prepaid, addressed to the applicant at his or her last known address. Such applicant, within fifteen (15) days after the mailing or serving of such notice, may make a written request to the collector for a hearing on his or her application for reclassification. If such request is made within the time prescribed, the collector shall cause the matter to be set for a hearing before the council within fifteen (15) days. The collector shall give the applicant at least ten (10) days' notice of the time and place of the hearing in the manner set forth in this title for serving notices of the action taken on the application for a reclassification. The council shall consider all evidence as adduced and its findings thereon shall be final. Written notice of such findings shall be served upon the applicant in the manner set forth in this title for serving notices of the action taken on the application for a reclassification. (Amended during 2004 codification; prior code  $\beta$  3-1.201)

5.08.020 Flat rates--\$25.00 per year.

The license tax for the following businesses shall be twenty-five dollars (\$25.00) per year:

1. Answering services;
2. Auctioneers;
3. Barber shops;
4. Bars and cocktail lounges for the sale of nonalcoholic beverages;
5. Baths, Turkish and steam;
6. Beauty parlors;
7. Bicycle sales and repairs;
8. Boardinghouses and rest homes;
9. Catering services;
10. Dancing academies;
11. Gardeners, professional;
12. Janitorial services;

13. Kennels;
14. Liquor stores selling nonalcoholic beverages;
15. Locksmiths;
16. Mail order businesses;
17. Music lessons;
18. Music machines, coin-operated;
19. Pawn shops;
20. Pool tables and billiards;
21. Security police;
22. Shoe repair shops;
23. Shoe shine stands;
24. Sign painters;
25. Tailors and dressmakers
26. Taxidermists;
27. Typewriter and business machine dealers and repairs;
28. Warehouses, storage;
29. Welding; and
30. Wig distributors.

(Amended during 2004 codification; prior code  $\beta$  3-1.202)

5.08.030 Flat rates--\$37.50 per year.

The license tax for the following businesses shall be thirty-seven dollars and fifty cents (\$37.50) per year:

1. Accountants and bookkeeping services;
2. Advertising and soliciting;
3. Ambulance services independent from undertakers;
4. Bakeries;
5. Car washes;
6. Cleaning and dyeing;
7. Collection agencies and credit associations;
8. Fertilizer dealers;
9. Florists;
10. Food lockers;
11. Garages without automobile sales;
12. Hotels, ten (10) rooms or less (ten dollars (\$10.00) per unit);
13. Jewelry, sales and repairs;
14. Junk yards;
15. Laundries, coin;
16. Magazines and papers;
17. Marine and cycleries, motored sales and services;
18. Miscellaneous repairs and maintenance;
19. Music stores;
20. Nurseries;
21. Pest control;
22. Photographers;
23. Plumbing and electrical supplies, retail;
24. Printers;
25. Sheet metal shops;

26. Skating rinks;
27. Subcontractors;
28. Tax consultants; and
29. Towing.

(Amended during 2004 codification; prior code  $\beta$  3-1.203)

5.08.040 Flat rates--\$52.50 per year.

The license tax for the following businesses shall be fifty-two dollars and fifty cents (\$52.50) per year per year:

1. Hotels, ten (10) through twenty (20) rooms;
2. Newspapers;
3. Real estate appraisers;
4. Real estate offices and agents;
5. Theaters; and
6. Truck deliveries and taxicabs.

(Amended during 2004 codification; prior code  $\beta$  3-1.204)

5.08.050 Flat rates--\$75.00 per year.

The license tax for the following businesses shall be seventy-five dollars (\$75.00) per year:

1. Abstract title companies;
2. Architects;
3. Attorneys;
4. Automotive body and fender shops;
5. Bond sales;
6. Brokers and commission merchants;
7. Building and loan offices;
8. Bus depots;
9. Chiropractors;
10. Contractors;
11. Dairies, including milk deliveries;
12. Dentists;
13. Engineers, professional;
14. Hospitals, sanitariums and convalescent homes;
15. Insurance agents;
16. Optometrists and oculists;
17. Orthodontists;
18. Pathologists;
19. Physicians;
20. Podiatrists;
21. Radiologists;
22. Service stations;
23. Therapists;
24. Trading stamps;
25. Travel agencies;
26. Undertakers;
27. Van and storage;
28. Veterinarians;

- 29. X-ray or other laboratories; and
- 30. Yards, fruit packing and shipping and buying. (Amended during 2004 codification; prior code B 3-1.205)

5.08.060 Flat rates--\$150.00 per year.

The license tax for conducting card games shall be one hundred fifty dollars (\$150.00) per year. (Amended during 2004 codification; prior code B 3-1.206)

5.08.070 Flat rates--Amusements.

The license tax for conducting amusement businesses not otherwise set forth in this chapter shall be seven dollars and fifty cents (\$7.50) per day or forty-five dollars (\$45.00) per week for each such amusement business. (Amended during 2004 codification; prior code B 3-1.207)

5.08.080 Flat rates--Rental units.

The license tax for every rooming house, house, duplex, apartment, auto court, motel, hotel, mobilehome park, campground, recreational vehicle park, shopping center or any other entity that rents, leases or otherwise lets space to another shall be ten dollars (\$10.00) per rental unit per year. (Prior code B 3-1.208)

5.08.090 Flat rates--Manufacturing and wholesale sales.

The license tax for manufacturing and selling any goods, wares or merchandise at wholesale shall be at the following rate based upon number of employees:

Number of Employees	License Tax Per Year
1-2	\$75.00
3-5	125.00
6-10	200.00
11-43	350.00
44 and over	500.00

(Prior code B 3-1.209)

5.08.100 Flat rates--Bowling lanes.

The license tax for the business of conducting bowling lanes shall be fifty-two dollars and fifty cents (\$52.50) per year for the first lane and twenty-two dollars and fifty cents (\$22.50) for each additional lane. (Amended during 2004 codification; prior code B 3-1.210)

5.08.110 Flat rates--Circuses and carnivals.

The license tax for the business of conducting circuses and carnivals and trained animal shows shall be seventy-five dollars (\$75.00) per day or three hundred twenty-five dollars (\$325.00) per week. (Amended during 2004 codification; prior code B 3-1.211)

5.08.120 Flat rates--Circus parades.

The license tax for the business of conducting circus parades shall be seventy-five dollars (\$75.00) for each parade. (Amended during 2004 codification; prior code B 3-1.212)

5.08.130 Flat rates--Clairvoyants and fortune-tellers.

The license tax for the business of conducting clairvoyancy and fortune-telling shall be one hundred fifty dollars (\$150.00) per year. (Amended during 2004 codification; prior code B 3-1.213)

5.08.140 Flat rates--Peddlers, solicitors and vendors.

The license tax for the business of selling, offering for sale or taking orders for or soliciting the sale of any goods, wares, merchandise or other personal property for sale or trade, whether for present or future delivery, on any street, public place or vacant lot or by a house-to-house canvass or by traveling from place to place in the city, including sales by sample and including the taking or soliciting of orders for the future delivery of prints, pictures, newspapers, magazines, clothing, fixtures, machines, appliances and all other articles or things to be made, produced, combined or manufactured, shall be seven dollars and fifty cents (\$7.50) per agent per day or fifteen dollars (\$15.00) per quarter, if there is no fixed place of business in the city. If the licensee has a fixed place of business in the city the provisions of Section 5.08.010 of this chapter shall apply. (Amended during 2004 codification; prior code B 3-1.215)

5.08.150 Flat rates--Used car lots and sales lots.

The license tax for the business of conducting used car lots and sale lots, if the business is conducted with a garage, shall be as set forth in Section 5.08.010 of this chapter. If such business is run independently, the license tax shall be seventy-five dollars (\$75.00) per year. (Amended during 2004 codification; prior code B 3-1.216)

5.08.160 Businesses outside the city.

Every person not having a fixed place of business within the city who engages in business within the city shall pay a license tax at the same rate set forth in this article for persons engaged in the same type of business having a fixed place of business within the city. (Amended during 2004 codification; prior code B 3-1.217)

5.08.170 Changes of rates.

The rates of tax set forth in this chapter may be changed from time to time by resolution of the council. (Prior code B 3-1.218)

Article II  
Soliciting

5.08.180 Definitions.

For the purposes of this article, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

"Business" means and includes every pursuit, occupation, trade, profession, employment and enterprise regularly engaged in or transacted, either exclusively or not, whether or not transacted in its entirety in the city or partially in the city, all shows, exhibitions and lawful games conducted, the soliciting of orders (other than goods to be delivered through interstate commerce) and the delivery of goods by vehicles owned and/or operated by the seller.

"Fixed place of business" means any establishment, store, office or central place for carrying on regular activities or individual shows, exhibitions or games when opened or maintained in good faith other than for the purpose of qualifying to be licensed under a different classification than would otherwise apply under the provisions of this article.

For the purposes of this article, there shall be rebuttable presumption that a person not having a fixed place of business or domicile in the city for the ninety (90) consecutive days preceding the date of an application or transaction of business, whichever comes first, does not have a fixed place of business or domicile in the city.

"Goods" means and includes all personal property, whether manufactured, processed or produced by the persons dealing therewith or handling the same or which is bought or obtained by such person for resale, other than spirituous, vinous or malt liquors or other intoxicants.

"Labor" means and includes labor, work or service, whether rendered or performed under contract, subcontract, partnership, station plan or other agreement. (Prior code B 5-6.01)

5.08.190 Licenses--Applications.

In addition to the information required by the collector for the issuance of a regular business license pursuant to the provisions of Chapter 5.04 of this title, each applicant for a license to carry on a business, as defined in Section 5.08.180 of this chapter, shall file with the chief of police a written sworn application signed by the applicant, if an individual, by a partner, if a partnership or by the president or secretary of a corporation, if a corporation. Such application shall set forth the following information:

A. The name of the person having the management or supervision of the applicant's business during the time it is proposed the business will be carried on in the city; the local address of such person while engaged in such business; the permanent address of such person; the capacity in which such person will act (that is, whether as proprietor, agent or otherwise); the name and address of the person for whose account the business will be carried, if any; and, if a corporation, under the laws of what state the business is incorporated;

B. The fingerprints of the person having the local management or supervision of the applicant's business or, in lieu thereof, at least three

letters of recommendation from reliable property owners in the city certifying as to the applicant's good character and business responsibility or other evidence which establishes to the satisfaction of the chief of police the good character and business responsibility of such person;

C. The place in the city where it is proposed to carry on the applicant's business and the length of time during which it is proposed such business shall be conducted;

D. The place, other than the permanent place of business of the applicant, where the applicant conducted a transient business within the six months next preceding the date of such application, stating the nature thereof and giving the post office and street address of any building or office in which such business was conducted;

E. A statement of the nature, character and quality of the labor to be performed, goods, wares or merchandise to be sold or offered for sale by the applicant in the city; the invoice value and quality of such goods, wares and merchandise, whether the same are proposed to be sold from stock in possession and by sample, at auction, by direct sale or by direct sale and by taking orders for future delivery; where the goods or property proposed to be sold are manufactured or produced; and where such goods or products are located at the time such application is filed;

F. A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers and, if required by the chief of police, copies of all such advertising, whether by handbills, circulars, newspaper advertising or otherwise, shall be attached to such application as exhibits thereto;

G. Whether or not the person having the management or supervision of the applicant's business has been convicted of a crime, misdemeanor or the violation of any municipal ordinance, the nature of such offense and the punishment assessed therefor;

H. Credentials from the person, firm or corporation for which the applicant proposes to do business authorizing the applicant to act as such representative; and

I. Such other reasonable information as to the identity of the character of the person having the management or supervision of the applicant's business. (Prior code § 5-6.02)

#### 5.08.200 Licenses--Fees.

Every person not having a fixed place of business or domicile within the city who sells or solicits from house to house to perform labor orders or subscriptions for merchandise, literature or photographs and every person not having a fixed place of business or permanent residence within the city who sells or offers to sell, vehicle tire chains shall pay a minimum fee of fifty cents (\$.50) per day, with a minimum fee of fifteen dollars (\$15.00). No license shall be issued for a period in excess of three months. (Prior code § 5-6.03)

#### 5.08.210 Licenses--Separate for each solicitor required.

A separate license shall be obtained by each solicitor or seller, even though employed by the same business. (Prior code  $\beta$  5-6.04)

## Chapter 5.12

### BINGO GAMES

#### Sections:

- 5.12.010 Bingo defined.
- 5.12.020 Compliance with laws.
- 5.12.030 Licenses--Eligibility.
- 5.12.040 Licenses--Applications.
- 5.12.050 Licenses--Applications--Qualifications.
- 5.12.060 Licenses--Applications--Contents.
- 5.12.070 Licenses--Applications--Fees.
- 5.12.080 Licenses--Applications--Certificates of exemption.
- 5.12.090 Licenses--Applications--Investigations.
- 5.12.100 Licenses--Contents.
- 5.12.110 Licenses--Denial.
- 5.12.120 Licenses--Posting.
- 5.12.130 Licenses--Suspension or revocation.
- 5.12.140 Licenses--Denial, suspension or revocation--Appeals--Judicial review.
- 5.12.150 Licenses--Denial or revocation--Effect.
- 5.12.160 Licenses--Nontransferable--Expiration.
- 5.12.170 Profits--Separate funds or accounts.
- 5.12.180 Maximum prizes.
- 5.12.190 Financial interests.
- 5.12.200 Exclusive operation by licensees.
- 5.12.210 Open to the public.
- 5.12.220 Attendance limited to occupancy capacity.
- 5.12.230 Conduct on property of licensees only.
- 5.12.240 Posting of rules.
- 5.12.250 Participation by minors.
- 5.12.260 Hours of operation.
- 5.12.270 Participants to be present.
- 5.12.280 Violation--Penalty.
- 5.12.290 Violation--Enjoinment.

#### 5.12.010 Bingo defined.

For the purposes of this chapter, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card, which numbers or symbols conform to numbers or symbols selected at random. (Prior code  $\beta$  5-8.02)

#### 5.12.020 Compliance with laws.

No person shall operate a bingo game in the city except in conformance with state laws, this chapter and any other applicable city laws. (Prior code β 5-8.01)

#### 5.12.030 Licenses--Eligibility.

Organizations which are exempted from the payment of the bank and corporation tax by subsection (d) of Section 2-3.701 of the Revenue and Taxation Code of the state and a contribution or gift to which would be a charitable contribution under subsection (2) of subsection (c) of Section 170 of the Internal Revenue Code of 1954 shall be eligible to apply for a license to conduct bingo games in the city under the provisions of the Constitution of the state, Section 326.5 of the Penal Code of the state and the provisions of this chapter. (Prior code β 5-8.03)

#### 5.12.040 Licenses--Applications.

The issuing authority for the licenses required by the provisions of this chapter shall be the city clerk or his or her designee. An eligible organization desiring to obtain a license to conduct bingo games shall file an application in writing therefor with the city clerk on a form provided by the city. The license issued shall be for a term of one year after the date of issuance, subject to renewal and payment in advance of the annual fee. (Prior code β 5-8.04)

#### 5.12.050 Licenses--Applications--Qualifications.

No license to conduct a bingo game shall be issued to any organization unless such applicant is an eligible organization pursuant to the provisions of Section 5.12.030 of this chapter and the application conforms to the requirements, terms and conditions of this chapter. (Prior code β 5-8.05)

#### 5.12.060 Licenses--Applications--Contents.

An application for a license to conduct bingo games shall contain the following:

A. The name of the applicant organization and a statement that the applicant is an eligible organization as set forth in Section 5.12.030 of this chapter;

B. The names and signatures of at least two officers, including the presiding officer of the organization and the name and signature of the member of the organization who will be primarily responsible for conducting bingo games;

C. A description of the property, including the street number and post office box, owned, leased or rented by the applicant and used by the applicant for an office or for the performance of the purposes for which the applicant is organized, on which property bingo games will be conducted, together with the occupancy capacity of such place;

D. The proposed days of the week and hours of the day for the conduct of bingo games; and

E. A statement that the applicant agrees to conduct bingo games in strict accordance with the provisions of Section 326.5 of the Penal Code of the state and this chapter, as they may be amended from time to time and agrees that the

license to conduct bingo games may be revoked by the city upon the violation of any such provisions. The application shall be executed under penalty of perjury. (Prior code β 5-8.06)

5.12.070 Licenses--Applications--Fees.

The annual fee for licenses to conduct bingo games fixed by the council by resolution shall accompany the application. Unless otherwise provided by resolution, the license fee shall be ten dollars (\$10.00) per year. (Prior code β 5-8.07)

5.12.080 Licenses--Applications--Certificates of exemption.

The applicant for a license to conduct bingo games shall submit with its application for such license a certificate of determination of exemption under subsection (d) of Section 23701 of the Revenue and Taxation Code of the state or a letter of good standing from the Exemption Division of the Franchise Tax Board of the state showing such exemption. (Prior code β 5-8.08)

5.12.090 Licenses--Applications--Investigations.

Upon the receipt of the complete application and fee for a license to conduct bingo games, the city clerk shall refer the application to the chief of police for an investigation and report to assure that the statement and the application made are true and shall otherwise make or cause to be made such investigations as will enable the city clerk to determine whether the applicant qualifies for a license under the provisions of this chapter. The city clerk may require such additional information from the applicant as he or she deems relevant to the consideration of the application. (Prior code β 5-8.09)

5.12.100 Licenses--Contents.

Upon being satisfied that the applicant for a license to conduct bingo games is fully qualified under law to conduct bingo games, the city clerk shall issue a license to the applicant, which license shall contain the following information:

- A. The name and nature of the organization to which the license is issued;
- B. The address where bingo games are authorized to be conducted;
- C. The occupancy capacity of the room in which bingo games are to be conducted;
- D. The date of expiration of the license; and
- E. Such other conditions as may be necessary or desirable for the enforcement of the provisions of this chapter. (Prior code β 5-8.10)

5.12.110 Licenses--Denial.

If the city clerk determines that the applicant does not qualify under this chapter or other city or state laws for the issuance of a license to conduct bingo games, he or she shall deny the license application. The city clerk shall not issue a license unless it appears:

- A. That all of the statements made in the application are true;

B. That no person whose name is required to be contained in the license application and no other manager of the applicant has been convicted of any felony, misdemeanor involving moral turpitude or any provision of this chapter;

C. That the applicant has not engaged in any fraudulent transaction or enterprise which the city clerk deems relevant to the application;

D. That the bingo games will not be a fraud to the public;

E. That the bingo games will not be conducted for private profit;

F. That the proposed method of conducting bingo games will not be contrary to the provisions of this chapter;

G. That the applicant is maintaining an adequate system of record keeping and accounting which will be available to the city clerk or his or her designee for inspection; and

H. That the conduct of bingo games on the premises will be compatible with the existing zoning and land uses in the neighborhood. (Prior code  $\beta$  5-8.11)

#### 5.12.120 Licenses--Posting.

A copy of the license issued pursuant to the provisions of this chapter shall be conspicuously posted at the location of the bingo games. (Prior code  $\beta$  5-8.12)

#### 5.12.130 Licenses--Suspension or revocation.

A. Any license issued pursuant to the provisions of this chapter may be suspended or revoked by the city clerk, city attorney or council if they determine that the activity authorized by the license has been or is being conducted, maintained or carried out in a manner contrary to or in violation of any law of the state, city or federal government or any provision of this chapter. The city clerk may also suspend or revoke the license upon any grounds which would justify a denial of a license.

B. No license shall be revoked or suspended until a hearing has been held by the city attorney. Written notice of the time and place of such hearing shall be served upon the organization to which the license was granted at least five days prior to the date set for such hearing. Such notice shall contain a brief statement of the grounds to be relied on for revoking or suspending the license. Notice may be given either by personal delivery or by depositing the notice in the United States mail in a sealed envelope, postage prepaid, addressed to the organization to be notified at its address as it appears in its application for the license. (Prior code  $\beta$  5-8.13)

#### 5.12.140 Licenses--Denial, suspension or revocation--Appeals--Judicial review.

A. Any licensee or applicant aggrieved by the decision of the city clerk in denying, suspending or revoking a license to conduct bingo games, within ten (10) days after such decision is delivered or sent to the licensee in writing, may appeal to the council by filing a written notice of appeal with the city clerk. During the pendency of an appeal of a suspension or revocation, the license shall remain in effect.

B. If such appeal is not taken within ten (10) days, the decision of the city clerk shall be final. If a timely appeal is filed, the council shall

thereupon hold a hearing on the appeal and render its decision within thirty (30) days. The decision may deny, suspend or revoke the license if the council finds any of the grounds set forth in Section 5.12.110 of this chapter. The decision of the council shall be final forthwith.

C. Judicial review may be had by filing a petition for a writ of mandate in accordance with the provision of the Code of Civil Procedure of the state. Any such petition shall be filed within thirty (30) days after the day the decision of the council becomes final. (Prior code  $\beta$  5-8.14)

#### 5.12.150 Licenses--Denial or revocation--Effect.

When the city attorney has denied or revoked any license to conduct bingo games, as provided for in this chapter and the time for appeal to the council has elapsed or if, after appeal to the council, the decision of the city clerk has been affirmed by the council, no application for the same type of license at the same location shall be accepted from the applicant or licensee and no such license shall be issued to such organization for a period of one year after the action by the city attorney in denying or revoking the license. (Prior code  $\beta$  5-8.15)

#### 5.12.160 Licenses--Nontransferable--Expiration.

Any license issued pursuant to the provisions of this chapter shall be nontransferable and shall be returned to the city clerk within seven days after its expiration. (Prior code  $\beta$  5-8.16)

#### 5.12.170 Profits--Separate funds or accounts.

All profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. The licensee shall keep full and accurate records of the income and expenses received and disbursed in connection with its operation, conduct, promotion, supervision and any other phase of bingo games which are authorized by this chapter. The city clerk shall have the right to examine and audit such records at any reasonable time and the licensee shall fully cooperate with the city clerk by making such records available. (Prior code  $\beta$  5-8.17)

#### 5.12.180 Maximum prizes.

The total value of prizes awarded during the conduct of any bingo game shall not exceed two hundred fifty dollars (\$250.00) in cash or kind or both, for each separate game which is held. (Prior code  $\beta$  5-8.18)

#### 5.12.190 Financial interests.

No individual, corporation, partnership or other entity, except the licensee, shall hold a financial interest in the conduct of any bingo game. (Prior code  $\beta$  5-8.19)

#### 5.12.200 Exclusive operation by licensees.

Bingo games shall be operated and staffed only by members of the licensee organization. Such members shall not receive a profit, wage or salary from any

bingo game. Only the licensee shall operate such game or participate in the promotion, supervision or any other phase of such game. (Prior code β 5-8.20)

5.12.210 Open to the public.

All bingo games shall be open to the public, not just to the members of the licensee organization. (Prior code β 5-8.21)

5.12.220 Attendance limited to occupancy capacity.

Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which the game is conducted as determined by the fire department in accordance with applicable laws and regulations. The licensee shall not reserve seats or space for any person. (Prior code β 5-8.22)

5.12.230 Conduct on property of licensees only.

The organization which holds a bingo license shall conduct a bingo game only on property owned, leased or rented by it and which property is used by the organization for an office or for the performance of the purposes for which the organization is organized. The license issued under this chapter shall authorize the holder thereof to conduct bingo games only on such property, the address of which is stated in the application. In the event the described property ceases to be used as an office by the licensee or as a place for the performance of the purposes for which the licensee is organized, the license shall have no further force or effect. A new license may be obtained by an eligible organization, upon an application under this chapter, when such organization again owns or leases property used by it for an office or for the performance of the purposes for which the organization is organized. (Prior code β 5-8.23)

5.12.240 Posting of rules.

The rules for the bingo games conducted by the licensee shall be posted by the licensee in a conspicuous place at the location of the bingo games. (Prior code β 5-8.24)

5.12.250 Participation by minors.

No person under the age of eighteen (18) years shall be allowed to participate in any bingo games. (Prior code β 5-8.25)

5.12.260 Hours of operation.

A. Except as otherwise provided in the bingo license, no bingo game shall be conducted between the hours of two a.m. and ten a.m. of any day unless permission therefor is received from the city attorney.

B. A licensee shall not conduct bingo games on more than a total of two days in any calendar week. For the purposes of this subsection, a week shall be deemed to commence on Monday at ten a.m. and end on the next following Monday at two a.m. and a day shall be the sixteen (16) hour period commencing at ten a.m. of any day and ending at two a.m. of the next following day.

C. There shall be no deviation from the requirements of this section unless written permission therefor is received in advance from the city. (Prior code B 5-8.27)

5.12.270 Participants to be present.

No person shall be allowed to participate in a bingo game unless the person is physically present at the time and place in which the bingo game is being conducted. (Prior code B 5-8.28)

5.12.280 Violation--Penalty.

A. It is a misdemeanor under subsection (b) of Section 326.5 of the Penal Code of the state for any person to receive a profit, wage or salary from any bingo game authorized under this chapter, a violation of which shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00), which fine shall be deposited in the general fund of the city.

B. Except as provided in subsection A of this section, a violation of any provision of this chapter shall be an infraction and shall be punishable by a fine as set forth in Section 1.24.010 of this code. (Prior code B 5-8.29)

5.12.290 Violation--Enjoinment.

The city may bring an action in a court of competent jurisdiction to enjoin a violation of Section 326.5 of the Penal Code of the state or any provision of this chapter. (Prior code B 5-8.30)

## Chapter 5.16

### CABLE TELEVISION SYSTEM

#### Sections:

- 5.16.010 Intent.
- 5.16.020 Definitions.
- 5.16.030 Franchise to install and operate.
- 5.16.040 Franchise required.
- 5.16.050 Franchise--Term.
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5.16.010 Intent.

A. The city, pursuant to Government Code Section 53066, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct cable television systems within the city limits.

B. The city council finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the residents of Colfax. Because of the complex and rapidly changing technology associated with cable television, the city council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the city or such persons as the city shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any franchises issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof. (Ord. 439 B 2 (1.1), 1996)

5.16.020 Definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. Words used in the

present tense include in the future, words in the plural number include the singular number and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

"Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

"Cable television system" or "system," also referred to as "cable communications system" or "cable system," means a 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, FM radio service and other communications services and which is provided to multiple subscribers within a community, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves subscribers without using any public right-of-way;

3. A facility of a common carrier which is subject to Title I of the Telecommunications Act of 1996, as amended, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) [47 U.S.C. 541 (b)]) to the extent such a facility is used in the transmission of video programming directly to subscribers; or

4. Any facilities of any electric utility used solely for operating its electric utility system.

"Cable service" means the total of the following:

1. The one-way transmission to subscribers of video programming or 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.

"Channel" or "cable channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the Federal Communications Commission by regulation.

"Council" means the city council of the city of Colfax.

"Franchise" means an initial authorization or renewal thereof, issued by the city council, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a cable system.

"Franchise agreement" means a franchise grant ordinance or a contractual agreement, containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

"Franchise fee" means any tax, fee or assessment of any kind imposed by a franchising authority or other governmental entity on a grantee or cable subscriber or both, solely because of their status as such. The term "franchise fee" does not include:

1. Any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services), but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers;

2. Capital costs which are required by the franchise to be incurred by grantee for public, educational or governmental access facilities;

3. Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

4. Any fee imposed under Title 17, United States Code.

"Grantee" means any person receiving a franchise pursuant to this chapter and under the granting franchise ordinance or agreement and its lawful successor, transferee or assignee.

"Grantor" or "city" means the city of Colfax as represented by the council or any delegate acting within the scope of its jurisdiction.

"Gross annual receipts" means the annual gross receipts received by a grantee during the calendar year from all sources of operations of the cable television system within the city utilizing the public streets and rights-of-way for which a franchise is required in order to deliver such cable service, excluding franchise fees, copyright fees, refundable deposits, amounts paid by subscribers into an escrow account, rebates or credits and any sales, excise or other taxes or charges collected for direct payment or pass-through to local, state or federal government.

"Initial service area" means the area of the city which will receive service initially, as set forth in the franchise agreement.

"Installation" means the connection of the system to subscribers' terminals and the provision of service.

"Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

"Public, educational or government access facilities" or "PEG access facilities" means the total of the following:

1. Channel capacity designated for public, educational or governmental use; and

2. Facilities and equipment or the use of such channel capacity.

"Section" means any section, subsection or provision of this chapter.

"Service area" or "franchise area" means an entire geographic area within the city as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise granting ordinance or agreement.

"Service tier" means a category of cable service or other services provided by a grantee and for which a separate rate is charged by the grantee.

"State" means the state of California.

"Street" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the city limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the grantor shall permit to be included within the definition of street from time to time.

"Subscriber" means any person who or which elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connections with cable system. (Ord. 439 B 2 (1.2), 1996)

5.16.030 Franchise to install and operate.

A franchise granted by the city under the provisions of this chapter shall encompass the following purposes:

A. To provide that grantee may engage in the business of providing cable television service and such other services as may be permitted by law, to subscribers within the designated service area.

B. To provide that grantee may erect, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cable, lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of a cable system in, on, over, under, upon, along and across streets or other public places within the designated service area.

C. To provide that grantee may maintain and operate the franchise properties for the origination, reception, transmission, amplification and distribution of television and radio signals and for the delivery of cable services.

D. To set forth the obligations of a grantee under the franchise. (Ord. 439 § 2 (1.3), 1996)

#### 5.16.040 Franchise required.

It is unlawful for any person to construct, install or operate a cable television system in the city without a properly granted franchise awarded pursuant to the provisions of this chapter. (Ord. 439 § 2 (1.4), 1996)

#### 5.16.050 Franchise--Term.

A. A franchise granted hereunder shall be for a term established in the franchise agreement, commencing on the grantor's adoption of an ordinance or resolution authorizing the franchise. The first day of the term shall from time to time be referred to as the "effective date" of the franchise.

B. A franchise granted hereunder may be renewed upon application by the grantee pursuant to the provisions of applicable state and federal law and of this chapter. (Ord. 439 § 2 (1.5), 1996)

#### 5.16.060 Franchise territory.

Any franchise shall be valid within all the territorial limits of the city and within any area added to the city during the term of the franchise, unless otherwise specified in the franchise granting ordinance or agreement. (Ord. 439 § 2 (1.6), 1996)

#### 5.16.070 Federal or state jurisdiction.

A. This chapter shall be construed in a manner consistent with all applicable federal and state laws. Whenever any state or federal law has paramount jurisdiction over any specific provisions of this chapter or when such paramount jurisdiction is exercised by an individual with standing, the Federal Communications Commission (FCC) or Public Utilities Commission (PUC) of the state of California or any other federal or state agency, such paramount jurisdiction shall preempt or preclude the exercise of like jurisdiction by the city. Any modification of such federal or state law shall to the extent applicable be considered part of this chapter as of the effective date of such modification.

B. In the event that the state or federal government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal authority, grantor may, if it so elects, adopt rules and regulations in these areas, provided that such rules and regulations shall not apply to any franchise issued pursuant to this chapter prior to the adoption of such rules and regulations to the extent they materially adversely affect such franchise, including, without limitation, requirements with respect to system rebuilds, channel capacity, system design, construction and performance requirements, public, educational or governmental access facilities, support for any such facilities, interconnect commitments, activation of interactive capability or institutional networks. Such new municipal regulatory powers may, however, affect existing franchises with respect to franchise renewal procedures, technical standards and related provisions.

C. This chapter shall apply to all franchises granted or renewed after the effective date of this chapter. It shall further apply to the extent permitted by applicable federal or state law to all existing franchises granted prior to the effective date of this chapter. (Ord. 439 § 2 (1.7), 1996)

#### 5.16.080 Franchise nontransferable.

A. Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, without the prior consent of the council and then only upon such terms and conditions as may be prescribed by the council, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the consent of the council shall be null and void. The granting of a security interest in any grantee assets or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this section.

B. The requirements of subsection A of this section shall apply to any change in the control of grantee. The word "control" as used herein is not limited to major stockholders or partnership interests, but includes actual working control in whatever manner exercised. In the event that grantee is a corporation, prior approval of the council shall be required where ownership or control of more than ten (10) percent of the voting stock of grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of grantee as of the effective date of the franchise, singularly or collectively.

C. Grantee shall notify grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the grantee or upon the termination of any lease or interest covering all or a substantial part of the franchise property. Such notifications shall be considered by grantor as notice that a change in control of ownership of the franchise has taken place and the provisions under this section governing the consent of grantor to such change in control ownership shall apply.

D. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, grantor may inquire into the

qualifications of the prospective transferee or controlling party and grantee shall assist grantor in any such inquiry. In seeking grantor's consent to any change of ownership or control, grantee shall have the responsibility of insuring that the transferee completes an application in the form and substance reasonably satisfactory to grantor, which application shall include information required under Section 5.16.130(A) through (G) of this chapter. Grantor may also request such reasonable additional information that it deems applicable. An application shall be submitted to grantor not less than sixty (60) days prior to the date of transfer. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If, after considering the legal, financial, character, technical and other public interest qualities of the applicant and determining that they are satisfactory, the grantor finds that such transfer is acceptable, the grantor shall transfer and assign the rights and obligations of such franchise as may be in the public interest. The consent of the grantor to such transfer shall not be unreasonably withheld.

E. Any financial institution having a pledge of the grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the grantor that it or its designee satisfactory to the grantor shall take control of and operate the cable television system, in the event of a grantee defaulting in its financial obligations. Further, the financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will insure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year unless extended by the grantor in its discretion and during the period of time it shall have the right to petition the grantor to transfer the franchise to another grantee. (Ord. 439 B 2 (1.8), 1996)

#### 5.16.090 Geographical coverage.

A. Grantee shall design, construct and maintain the cable television system to have the capability to pass every dwelling unit in the city, subject to any service area line extension requirements of the franchise documents.

B. After service has been established by activating trunk and/or distribution cables for any service area, grantee shall provide service to any requesting subscriber within that service area within thirty (30) days from the request, provided that the grantee is able to secure all rights-of-way and encroachment permits necessary to extend service to such subscriber within such thirty (30) day period on reasonable terms and conditions mutually acceptable to grantee and such subscriber. (Ord. 439 B 2 (1.9), 1996)

#### 5.16.100 Nonexclusive franchise.

Any franchise granted shall be nonexclusive. The grantor specifically reserves the right to grant, at any time, such additional franchises for a cable television system or any component thereof, as it deems appropriate, subject to applicable state and federal law. (Ord. 439 B 2 (1.10), 1996)

#### 5.16.110 Multiple franchises.

A. Grantor may grant any number of franchises in the service area. Grantor may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:

1. The capacity of the public rights-of-way to accommodate multiple coaxial cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewerage;

2. The benefits that may accrue to cable subscribers as a result of cable system competition, such as lower rates and improved service;

3. The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property and the disruption arising from numerous excavations of the rights-of-way.

B. Each grantee awarded a franchise to serve the entire city shall offer service to all residences in the city, in accordance with construction and service schedules mutually agreed upon between grantor and grantee and consistent with applicable law.

C. Grantor may require that any new grantee be responsible for its own undergrounding trenching and the costs associated therewith, if, in grantor's opinion, the rights-of-way in any particular area cannot feasibly accommodate additional cables. (Ord. 439 B 2 (1.11), 1996)

#### 5.16.120 Franchise applications.

Any person desiring a franchise for a cable television system shall file an application with the city. A reasonable nonrefundable application fee established by the city shall accompany the application to cover all costs associated with processing and reviewing the application, including without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, the selected applicant(s) shall pay the difference to the city within thirty (30) days following receipt of an itemized statement of such costs. (Ord. 439 B 2 (1.12), 1996)

#### 5.16.130 Applications--Contents.

An application for a franchise for a cable television system shall contain, where applicable:

A. A statement as to the proposed franchise and service area;

B. ResumÈ of prior history of applicant, including the expertise of applicant in the cable television field;

C. List of partners, general and limited, of the applicant, if a partnership or the percentage of stock owned or controlled by each shareholder, if a corporation;

D. List of officers, directors and managing employees of applicant, together with a description of the background of each such person;

E. The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by applicant;

F. A current financial statement of applicant verified by a CPA audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the city;

G. Proposed construction and service schedule; and

H. Any reasonable additional information that the city deems applicable.  
(Ord. 439 § 2 (1.13), 1996)

#### 5.16.140 Consideration of applications.

A. Upon receipt of any application for a franchise, the city manager shall prepare a report and make his or her recommendations respecting such application to the city council.

B. A public hearing shall be set prior to any franchise grant, at a time and date approved by the council. Within thirty (30) days after the close of the hearing, the council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted and if granted, subject to what conditions. The council may grant one or more franchises or may decline to grant any franchise. (Ord. 439 § 2 (1.14), 1996)

#### 5.16.150 Franchise renewal.

Franchise renewals shall be in accordance with applicable law, including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. Grantor and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. Grantee shall have no obligation to reimburse grantor for costs associated with processing and reviewing the application for renewal except as allowed by law. To the extent allowed by law, grantee may offset any reimbursement against its franchise fees liability and/or may pass-through the cost of the reimbursement to subscribers.  
(Ord. 439 § 2 (1.15), 1996)

#### 5.16.160 Minimum consumer protection and service standards.

A. Except as otherwise provided in the franchise agreement, grantee shall maintain an office in close proximity to the city to provide the necessary facilities, equipment and personnel to comply with the following consumer protection and standards under normal conditions of operation:

1. Sufficient toll-free telephone line capacity during normal business hours to assure that a minimum of ninety-five (95) percent of all calls will be answered before the fourth ring;

2. Emergency toll-free telephone capacity on a twenty-four (24) hour basis, including weekends and holidays;

3. An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunction on a twenty-four (24) hour per day basis;

4. An installation staff, capable of installing service to any subscriber within seven days after receipt of request, in all areas where trunk and feeder cable have been activated;

5. Grantee shall schedule, within a specified four-hour time period, all appointments with subscribers for installation or service.

B. Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system, preferably between midnight and six a.m.

C. Grantee shall maintain a written log or an equivalent stored in computer memory and capable of access and reproduction in printed form, for all service interruptions and requests for cable service that result in a service call.

D. The grantee shall maintain a repair force of technicians generally capable of responding to subscriber requests for service within the following time frames:

1. For a system outage: within two hours, including weekends, of receiving subscriber calls or request for service which by number identify a system outage of sound or picture of one or more channels, affecting at least ten (10) percent of the subscribers of the system;

2. For an isolated outage: within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one or more channels;

3. For inferior signal quality: within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, the technician shall leave written notification of arrival. Three successive subscriber failures to be present at an appointed time shall excuse grantee of duty to respond.

No charge shall be made to the subscriber for any service call unless the service request can be demonstrated to be unrelated to the portions of the cable system owned by grantee or to involve subscriber negligence or damage to grantee's property by the subscriber.

E. Unless excused, grantee shall determine the nature of the problem within forty-eight (48) hours of beginning work and resolve all cable system related problems within five business days unless technically unfeasible.

F. Upon five days notice, grantee shall establish its compliance with any or all of the standards required above. Grantee shall provide sufficient documentation to permit grantor to verify the compliance.

G. A repeated and verifiable pattern of material noncompliance with the consumer protection standards of subsections A through E of this section, after grantee's receipt of due notice and an opportunity to cure, may be deemed a material breach of the franchise agreement.

H. Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without the intervention by the grantor. The written procedures shall prescribe the manner in which a subscriber may submit a

complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction. Grantee shall file a copy of these procedures with grantor.

I. Grantor may determine, upon review of a subscriber complaint and the grantee's decision, if any, whether further action is warranted.

J. The grantor may establish an escrow account wherein a subscriber may deposit a disputed portion of the subscriber's monthly service charge. If a subscriber either continues to make full and timely payment of all monthly service charges to grantee or deposit any disputed portion of such monthly service charges into the escrow account, grantee shall not discontinue service during the pendency of complaint submitted under the provisions of this chapter. Any amount deposited in the escrow account shall be paid to the grantee or subscriber in accordance with a final determination of a complaint.

K. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to rebuild, modify or sell the system or the grantor gives notice of intent to terminate or not to renew the franchise, the grantee shall act so as to ensure that all subscribers receive service so long as the franchise remains in force.

In the event of a change of grantee or in the event a new operator acquires the system, the original grantee shall cooperate with the grantor, new grantee or operator in maintaining continuity of service to all subscribers. During such period, grantee shall be entitled to the revenues for any period during which it operates the system.

L. In the event grantee fails to operate the system for seven consecutive days without prior approval or subsequent excusal of the grantor, the grantor may, at its option, operate the system or designate an operator until such time as grantee restores service under conditions acceptable to the grantor or a permanent operator is selected. If the grantor should fulfill this obligation for the grantee, then during such period as the grantor fulfills such obligation, the grantor shall be entitled to collect all revenues from the system and the grantee shall reimburse the grantor for all reasonable costs or damages in excess of the revenues collected by the grantor that are the result of the grantee's failure to perform.

M. All officers, agents or employees of the grantee or its contractors or subcontractors who in the normal course of work require entry onto subscribers' premises shall carry a photo-identification card in a form approved by grantor. Grantor shall account for all identification cards at all times. Every vehicle of the grantee utilized for field maintenance shall be clearly identified as working for grantee. All such identification shall be returned on termination of service or permanently defaced on sale of vehicle. (Ord. 439 § 2 (1.16), 1996)

#### 5.16.170 Additional service standards.

Additional service standards and standards governing consumer protection and response by grantee to subscriber complaints not otherwise provided for in this chapter may be established in the franchise agreement and the grantee shall comply with such standards in the operation of the cable television system. A verified and continuing pattern of material noncompliance may be deemed a material breach of the franchise. (Ord. 439 § 2 (1.17), 1996)

5.16.180 Franchise fee.

A. Following the issuance and acceptance of the franchise, grantee shall pay to the grantor a franchise fee in the amount set forth in the franchise agreement.

B. The grantor, on an annual basis, shall be furnished a statement within sixty (60) days of the close of the calendar year, either audited and certified by an independent certified public accountant, reflecting the total amounts of gross receipts and all payments, deductions and computations for the period covered by the payment. Upon ten (10) days prior written notice, grantor shall have the right to conduct an independent audit of grantee's records for the three-year period immediately preceding the notice, in accordance with generally accepted auditing standards and if such audit indicates a franchise fee underpayment of two percent or more, the grantee shall assume all reasonable costs of such an audit.

C. No acceptance of any payment by the grantor shall be construed as a release or as an accord and satisfaction of any claim the grantor may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee.

D. In the event that any franchise payment or recomputed amount is not made on or before the dates specified in the franchise agreement, grantee shall pay as additional compensation:

1. An interest charge, computed from such due date, at an annual rate equal to the average rate of return on invested funds of the grantor during the period for which payment was due; and

2. If the payment is late for forty-five (45) days or more, a sum of money equal to five percent of the amount due in order to defray those additional expenses and costs incurred by the grantor by reason of delinquent payment.

E. Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement. (Ord. 439 B 2 (1.18), 1996)

5.16.190 Design and construction requirements.

A. Grantee shall not construct any cable system facilities until grantee has secured necessary permits from grantor or other cognizant public agencies.

B. In those areas of the city where transmission or distribution facilities of the public utilities providing telephone and electric power service or the facilities of cable service provider(s) are underground as of the effective date of the ordinance codified in this chapter, the grantee likewise shall continue to construct, operate and maintain its transmission and distribution facilities underground. For the purposes of this subsection, "underground" shall include a partial underground system, e.g. streamlining. Amplifiers and other equipment in grantee's transmission and distribution lines may be placed in appropriate housings upon the surface of the ground. The city shall not in any manner be responsible for any costs or liabilities incurred by grantee in placing grantee's facilities underground or obtaining any easements therefor.

C. In those areas of the city where grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service and in the event that the facilities of both such public utilities subsequently are placed underground at such public utilities' cost, then the grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at grantee's cost. Certain of grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground enclosures.

D. In the event of a single franchisee or multiple franchisees desiring to serve new residential developments in which the electric power and telephone utilities are underground, the following procedure shall apply with respect to access to and utilization of underground easements:

1. The developer shall be responsible for contacting and surveying all franchised cable operators to ascertain which operators desire to provide cable television service to that development. The developer may establish a reasonable deadline to receive cable operator responses. The final map shall indicate the cable operators that have agreed to serve the development;

2. If one or two cable operators wish to provide service, they shall be accommodated in the joint utilities trench on a nondiscriminatory basis;

3. Cost of trenching, installing conduit and aerial lines and obtaining easements shall be the responsibility of the property owner;

4. The developer shall provide at least ten (10) working days' notice of the date that utility trenches will be open to the cable operators that have agreed to serve the development. When the trenches are open, cable operators shall have two working days to begin the installation of their cables and five working days after beginning installation to complete installation;

5. The final development map shall not be approved until the developer submits evidence that:

- a. It has notified each grantee that underground utility trenches are to open as of an estimated date and that each grantee will be allowed access to such trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and

- b. It has received a written notification from each grantee that the grantee intends to install its facilities during the open trench period on the specified terms and conditions or such other terms and conditions as are mutually acceptable to the developer and grantee or has received no reply from a grantee within ten (10) days after its notification to such grantee, in which case the grantee will be deemed to have waived its opportunity to install its facilities during the open trench period;

6. Sharing the joint utilities trench shall be subject to compliance with Public Utilities Commission and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables. With the concurrence of the developer, the affected utilities and the cable operators, alternative installation procedures, such as use of deeper trenches, may be utilized, subject to applicable law;

7. If a developer has complied with the terms of this chapter, then any cable operator wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs;

8. In the event that more than one franchise is awarded, the city reserves the right to limit the number of drop cables and/or pedestals per residence;

9. The city reserves the right to grant an encroachment permit to a cable franchise applicant to install conduit and/or cable in anticipation of the granting of a franchise. Such installations shall be at the applicant's risk, with no recourse against the city in the event the pending franchise application is not granted. The city may require an applicant to provide a separate trench for its conduit and/or cable, at the applicant's cost. The construction of such a separate trench, if provided, shall be coordinated with and subject to the developer's overall construction schedule. (Ord. 439 B 2 (1.19), 1996)

#### 5.16.200 Service connections.

A. The grantee shall extend cable service to any premises located in the service area served by grantee's energized distribution cable which requires only the connection of a standard drop or tap to make such service available, including those premises serviced by underground utilities, at a standard rate if the owner or occupant of the premises requests such service.

B. If the service connection requires no more than a two hundred fifty (250) feet aerial drop line, the grantee shall provide connection to its service at no charge for the initial two hundred fifty (250) feet, other than the grantee's standard installation fee. The grantee may charge any new subscriber for the grantee's actual cost of all labor, equipment and materials for:

1. That portion of any new aerial service connection in excess of two hundred fifty (250) feet;
2. The length of any new service connection installed underground; and
3. The entire length of any new service connection to remote or relatively inaccessible subscribers.

Prior to installing any service connection for which the grantee will charge a potential subscriber on a time and materials basis, the grantee must present the prospective subscriber with a written statement of its estimated costs for the service connection. (Ord. 439 B 2 (1.20), 1996)

#### 5.16.210 Line extensions.

The grantee shall be required to extend energized trunk cable from any existing terminus of the cable system to any area within the franchise area having a density of at least ten (10) existing and completed dwelling units within any one-quarter linear mile, provided that the dwelling unit nearest to the existing terminus of the cable system in such one-quarter linear mile is within one-half mile of the existing terminus of the cable system. Within thirty (30) days after grantee has confirmed the existence of the density provided above, grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required for the extension of such trunk cable, including any utility joint use agreements and any permits, licenses and authorizations to be granted by duly constituted regulatory agencies having

jurisdiction over the operation of the cable system. Within thirty (30) days following completion of such line extension construction, the grantee shall proceed to render service provided, however, that any such subscriber requesting service from the extension of the energized trunk cable shall be subject to the provisions of Section 5.16.200 of this chapter. (Ord. 439 B 2 (1.21), 1996)

#### 5.16.220 Technical standards.

The grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws ordinances, construction standards, governmental requirements, FCC technical standards and any detailed standards set forth in its franchise agreement. In addition, the grantee shall provide to the grantor, upon request, a written report of the results of the grantee's periodic proof of performance test conducted pursuant to FCC and franchise standards and guidelines. Failure to maintain specified technical standards shall constitute a material breach of the franchise. (Ord. 439 B 2 (1.22), 1996)

#### 5.16.230 Service to public facilities.

With the city's reasonable cooperation, grantee shall, without charge to grantor, within one hundred eighty (180) days of the effective date of any franchise hereunder, fully wire with one outlet and provide all legally and contractually allowable subscribers services of its system to all public and nonprofit private schools, city police and fire stations, city recreation centers, library, City Hall and such other buildings owned or controlled by the city, provided that such buildings shall be located within the franchise territory. Grantee shall have no obligation to provide such service to buildings owned or controlled by the city if the primary purpose for such buildings is to house equipment, store records or provide residential housing. (Ord. 439 B 2 (1.23), 1996)

#### 5.16.240 Hold harmless.

A. Grantee shall indemnify, defend and hold grantor, its officers, agents and employees harmless from any liability, claims, damages, costs or expenses, including reasonable attorney's fees, arising from injury to persons or damages to property to the extent caused by any conduct undertaken by the grantee, its officers, agents or employees, by reason of the franchise; grantee shall at its sole cost and expense, upon demand of grantor, appear in and defend any and all suits, actions or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting grantor, its officers, agents or employees and arising out of or pertaining to the granting of the franchise to the grantee and/or any conduct of the grantee, its agents or employees which is within the scope of this indemnity. (Ord. 439 B 2 (1.24), 1996)

#### 5.16.250 Insurance.

A. On or before commencement of franchise operations, the grantee shall obtain policies of liability, workers' compensation and property insurance from

companies authorized to transact business in California by the Insurance Commissioner of California.

B. The policy of liability insurance shall:

1. Be issued to grantee and name grantor, its officers, agents and employees as additional insureds;
2. Indemnify for all liability for personal and bodily injury, death and damage to property arising from activities conducted and premises used pursuant to this chapter by providing coverage therefor, including but not limited to, coverage for:
  - a. Negligent acts or omissions of grantee and its agents, servant and employees, committed in the conduct of franchise operations; and/or
  - b. Use of motor vehicles;
3. Provide a combined single limit for comprehensive general liability and comprehensive automobile liability insurance in the amount provided for in the franchise agreement. Such insurance policy shall be subject to the review and approval of grantor's legal counsel; and
4. Be noncancellable without thirty (30) days prior written notice thereof directed to grantor.

C. The policy of workers' compensation insurance shall:

1. Have been previously approved as to substance and form by the California Insurance Commissioner;
2. Cover all employees of grantee who in the course and scope of their employment are to conduct the franchise operations;
3. Provide for every benefit and payment presently or hereinafter conferred by Division 4 of the Labor Code of the state upon an injured employee, including vocational rehabilitation and death benefits;
4. Waive all rights of subrogation against the grantor, its officers, officials, employees and volunteers for losses paid under the terms of the policy which arises from work performed by the named insured for the grantor.

D. The policy of property insurance shall provide fire insurance with extended coverage on the franchise property used by grantee in the conduct of franchise operations in an amount adequate to enable grantee to resume franchise operations following the occurrence of any risk covered by this insurance.

E. Grantee shall file with grantor prior to commencement of franchise operations the required endorsements and either certified copies of these insurance policies or a certificate of insurance for each of the required policies executed by the company issuing the policy or by a broker authorized to issue such a certificate, certifying that the policy is in force and providing the following information with respect to the policy:

1. The policy number;
2. The date upon which the policy will become effective and the date upon which it will expire;
3. The names of the named insureds and any additional insured required by this chapter or the franchise agreement;
4. The subject of the insurance;
5. The type of coverage provided by the insurance; and
6. Amount or limit of coverage provided by the insurance.

F. Conduct of franchise operations shall not commence until grantee has complied with aforementioned provisions of this section.

G. In the event grantee fails to maintain any of the above-described policies in full force and effect, grantor shall, upon forty-eight (48) hours notice to grantee, have the right to procure the required insurance and recover the cost thereof from grantee. Grantor shall also have the right, upon forty-eight (48) hours notice to grantee, to suspend the franchise during any period that grantee fails to maintain the policies in full force and effect.

H. No more than once during any three-year period, grantor shall have the right to order grantee to increase the amounts of the insurance coverage provided herein. Such order may be made by grantor after complying with the hearing procedure provided for in Section 5.16.340 of this chapter. Increases in insurance coverage shall be based upon current prudent business practices of like enterprises involving the same or similar risks. (Ord. 439 B 2 (1.25), 1996)

#### 5.16.260 Performance bond.

No later than the effective date of any franchise granted hereunder, the grantee shall establish and provide to the city a corporate surety bond (the "surety bond") in a form reasonably acceptable to the city and its counsel in the sum of ten thousand dollars (\$10,000.00) as security for the faithful performance by the grantee of specified provisions of the franchise agreement. The surety bond shall remain at this level throughout the term of the franchise. (Ord. 439 B 2 (1.26), 1996)

#### 5.16.270 Records required--Grantor's right to inspect.

A. Grantee shall at all times maintain:

1. A record of all complaints received and interruptions or degradation of service experienced for the preceding two years, provided that such complaints result in or require a service call;

2. A full and complete set of plans, records and "as built" maps showing the location of the cable television system installed or in use in the city, exclusive of subscriber service drops and equipment provided in subscriber's homes. The plans, records and maps are trade secrets of grantee and, as such, are exempt from disclosure to members of the public under the Public Records Act (Government Code Section 6250 et. seq), including Section 6254(n). Grantee agrees to assist grantor in demonstrating that the plans, records and maps are exempt under express provisions of the Public Records Act or that on the facts of the particular case, the public interest served by not making the plans, records or maps public clearly outweighs the public interest served by disclosure of the plans, maps or records. Grantor agrees to provided grantee with prompt notice of any request grantor receives for public records that would include the plans, records or maps;

3. If requested by grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the grantor within thirty (30) days following the end of each month in a form reasonably acceptable to the grantor.

B. The grantor may impose reasonable requests for additional information, records and documents from time to time, provided they reasonably relate to the scope of the city's rights under this chapter or the grantee's franchise agreement. Grantee shall have no obligation to provide information, records or documents which contain trade secrets of grantee or which are otherwise of a confidential or proprietary nature to grantee unless it receives satisfactory assurances from grantor that such information can and will be held in strictest confidence by the grantor.

C. Upon reasonable notice and during normal business hours, grantee shall permit examination by any duly authorized representative of the grantor, of all franchise property and facilities, together with any appurtenance property and facilities of grantee situated within or without the city and all records relating to the franchise, provided they reasonably relate to the scope of the grantor's rights under this chapter or the franchise agreement. (Ord. 439 B 2 (1.27), 1996)

#### 5.16.280 Annual reports.

Within ninety (90) days after the end of the calendar year, at the request of grantor in writing by December 31st of the calendar year, grantee shall submit a written annual report to grantor with respect to the preceding calendar year in a form approved by grantor, including, but not limited to, the following information:

A. A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system including, but not limited to, services begun or discontinued during the reporting year;

B. A list of grantee's officers, members of its board of directors and other principals of grantee;

C. A list of stockholders or other equity investors holding five percent or more of the voting interest in grantee;

D. An indications of any residences in grantee's service area where service is not available and subject to applicable line extension policies, a schedule for providing service;

E. Information as to the number of homes passed, subscribers, additional television outlets and penetration of basic and pay service in the service area;

F. Any other information which the grantor shall reasonably request; and

G. Notwithstanding any of the foregoing, grantee shall have no obligation to include information in its annual report to grantor which is a trade secret of grantee or is otherwise of a confidential or proprietary nature to grantee unless it receives satisfactory assurances from grantor that such information can and will be held in strictest confidence by the grantor. The burden of proof, however, shall be on grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of grantor. (Ord. 439 B 2 (1.28), 1996)

#### 5.16.290 Copies of federal and state communications.

A. Grantee shall submit to grantor copies of all pleadings, applications and reports submitted by grantee to any federal, state or local court, agency or

governmental body as well as copies of all decisions, correspondence and actions by any such federal, state or local court, regulatory agency or other governmental body which are nonroutine in nature and which will materially affect its cable television operations within the franchise area. Grantee shall submit such documents to grantor simultaneously with its submission to such court, agency and/or body; or within five days after its receipt from such court, agency and/or body. Information otherwise confidential by law and so designated by grantee, which is submitted to grantor, shall be retained in confidence by grantor and its authorized agents and shall not be made available for public inspection.

B. Notwithstanding the foregoing, grantee shall have no obligation to provide copies of documents to grantor which contain trade secrets of grantee or which are otherwise of a confidential or proprietary nature to grantee unless it receives satisfactory assurances from grantor that such information can and will be held in strictest confidence by the grantor. To the extent possible, grantee will provide grantor with summaries of any required documents or copies thereof with trade secrets and confidential and proprietary matters deleted therefrom. The burden of proof shall be on grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of grantor. (Ord. 439 B 2 (1.29), 1996)

#### 5.16.300 Public reports.

If grantee is publicly held, a copy of each of grantee's annual and other periodic reports and those of its parent, shall be submitted to grantor within forty-five (45) days of its issuance. (Ord. 439 B 2 (1.30), 1996)

#### 5.16.310 Complaint report and opinion survey.

A. The grantee shall furnish to the grantor the results of any opinion survey conducted by the grantee which identifies satisfaction or dissatisfaction among subscribers within the city with the grantee's cable service. The results of such survey shall be furnished to the grantor within thirty (30) days following completion of the survey.

B. Upon request of the grantor, but not more than once every three years, the grantee shall conduct a subscriber satisfaction survey pertaining to quality of service, which may be transmitted to subscribers in subscriber statements for cable service. The form and content of such survey shall be reasonably acceptable to the grantor. The cost of such survey shall be borne by the grantee. (Ord. 439 B 2 (1.31), 1996)

#### 5.16.320 Privacy report.

Upon grantor's request, but no more than annually, grantee shall submit to grantor a report indicating the degree of compliance with the privacy provisions contained in Section 5.16.450 of this chapter and all steps taken to assure that the privacy rights of individuals have been protected. (Ord. 439 B 2 (1.32), 1996)

#### 5.16.330 Reports--General.

A. All reports required under this chapter, except those which the grantee has agreed to keep confidential, shall be available for public inspection in the grantor's offices during normal business hours.

B. All reports and records required under this chapter shall be furnished at the sole expense of grantee, except as otherwise provided in this chapter or the franchise agreement.

C. The wilful refusal, failure or neglect of grantee to file any of the reports required as and when due under this chapter, may be deemed a material breach of the franchise agreement if such reports are not provided to grantor within thirty (30) days after written request thereof and may subject the grantee to all remedies, legal or equitable, which are available to grantor under the franchise or otherwise.

D. Any materially false or misleading statement or representation made knowingly and willfully by the grantee in any report required under this chapter or under the franchise agreement may be deemed a material breach of the franchise and may subject grantee to all remedies, legal or equitable, which are available to grantor under the franchise or otherwise. (Ord. 439 B 2 (1.33), 1996)

#### 5.16.340 Review of system performance.

A. Every fifth year throughout the term of the franchise, if requested by the grantor, grantor and grantee shall meet publicly to review system performance and quality of service.

B. The various reports required pursuant to this chapter, results of technical performance tests, the record of subscriber complaints and grantee's response to complaints and the information acquired in any subscriber surveys, shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing and these shall be considered. Within thirty (30) days after conclusion of a system performance review meeting, grantor may issue findings with respect to the cable system's franchise compliance and quality of service.

C. If grantor determines that grantee is not in compliance with the requirements of this chapter or the grantee's franchise, grantor may direct grantee to correct the areas of noncompliance within a reasonable period of time. Failure of grantee, after due notice, to correct the areas of noncompliance within the period specified therefor or to commence compliance within such period and diligently achieve compliance thereafter, shall be considered a material breach of the franchise and grantor may exercise any remedy within the scope of this chapter and the franchise agreement considered appropriate. (Ord. 439 B 2 (1.34), 1996)

#### 5.16.350 Special review of system performance.

When there have been complaints made or where there exists other evidence which, in the judgment of the grantor, casts reasonable doubt on the reliability or quality of cable service to the effect that the grantee is not in compliance with the requirements of this chapter or its franchise, the grantor shall have the right to compel the grantee to test, analyze and report on the performance of the system in order to assure compliance with this chapter and the franchise

agreement. Grantor may not compel grantee to provide such tests or reports unless and until grantor has provided grantee with at least thirty (30) days' notice of its intention to exercise its rights under this section and has provided grantee with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report thereof shall be delivered to the grantor no later than thirty (30) days after the grantor notifies the grantee that it is exercising such right and shall be made at grantee's sole cost. Such report shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used and procedures employed in the testing; the results of such tests; and the method by which such complaints were resolved. Any other information pertinent to the special test shall be recorded. (Ord. 439 B 2 (1.35), 1996)

#### 5.16.360 Remedies for franchise violations.

If a grantee fails to perform in a timely manner any obligation required by this chapter or a franchise granted hereunder, following notice from the grantor and, opportunity to be heard by the council and an opportunity to cure such nonperformance in accordance with the provisions of Section 5.16.380 of this chapter, grantor may at its option and in its sole discretion:

A. Cure the violation and recover the actual costs thereof from the surety bond established herein if such violation is not cured within thirty (30) days after prior written notice to the grantee and an opportunity for grantee to be heard, of grantor's intention to cure and assess the surety bond;

B. For violations of consumer service standards of this chapter or the franchise agreement which have materially degraded the quality of service, grantor may order and direct grantee to issue rebates or credits to subscribers, in an amount to be determined by grantor to be reasonably related to the nature of the degradation in service and measured by the period of the degradation, to provide monetary relief substantially equal to the reduced quality of service resulting from grantee's failure to perform. (Ord. 439 B 2 (1.36), 1996)

#### 5.16.370 Grantor's power to revoke.

Grantor reserves the right to revoke any franchise granted pursuant to this chapter and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by grantee and material breach under the franchise grant:

A. If grantee shall default in the performance of its material obligations under this chapter or the franchise agreement and shall continue such default after receipt of due notice and a reasonable opportunity to cure the default;

B. If grantee shall fail to provide or maintain in full force and effect the insurance coverage or surety bond as required herein;

C. If grantee shall violate any order or ruling of any regulatory body having jurisdiction over the grantee relative to the grantee's franchise, unless such order or ruling is being contested by grantee by appropriate proceedings conducted in good faith;

D. If grantee attempts to unlawfully evade any provision of this chapter or practices any fraud or deceit upon grantor;

E. If grantee persistently fails to remedy defaults for which lesser penalties have previously been imposed;

F. If grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged as bankrupt;

The termination and forfeiture of the grantee's franchise shall in no way affect any right of grantor to pursue any remedy under the franchises or any provision of law. (Ord. 439 B 2 (1.37), 1996)

#### 5.16.380 Procedure for remedying franchise violations.

Prior to imposing any remedy or other sanction against grantee specified in this chapter, grantor shall give grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:

A. Grantor shall first notify grantee of the violation in writing by personal delivery or registered or certified mail and demand correction within reasonable time, which shall not be less than five days in the case of failure of the grantee to pay any sum or other amount due the grantor under this chapter or the grantee's franchise and thirty (30) days in all other cases. If grantee fails to correct the violation within the time prescribed or if grantee fails to commence correction of the violation within the time prescribed and diligently remedy such violation thereafter, the grantor shall then give written notice of not less than twenty (20) days of a public hearing to be held before the council. The notice shall specify the violations alleged to have occurred.

B. At the public hearing, the council shall hear and consider all relevant evidence and thereafter render findings and its decision.

C. In the event the council finds that grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from grantor and is diligently proceeding to fully remedy such violation or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

D. In the event the council finds that the alleged violations exist and that grantee has not corrected the same in a satisfactory manner or has not diligently commenced corrections of such violation after notice thereof from grantor and is not diligently proceeding to fully remedy such violation, the council may impose one or more of the remedies specified herein as it, in its discretion, deems appropriate under the circumstance. (Ord. 439 B 2 (1.38), 1996)

#### 5.16.390 Force majeure--Grantee's inability to perform.

A. In the event grantee's performance of any of the terms, conditions or obligations required by this chapter or a franchise granted hereunder is prevented by a cause or event not within grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed by Section 5.16.360(B) of this chapter. Causes or events not within the control of grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies and natural disasters such

as floods, earthquakes, landslides and fires but shall not include financial inability of the grantee to perform or failure of the grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts of omissions of grantee or the failure of the grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable communications system where the grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

B. At the expiration of the term for which the franchise is granted or upon its revocation or earlier expiration, as provided for herein, in any such case without renewal, extension or transfer, the grantor shall have the right to require grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the city within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

C. Notwithstanding anything to the contrary set forth in this chapter, the grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable grantee. (Ord. 439 § 2 (1.39), 1996)

#### 5.16.400 Abandonment or removal of franchise property.

A. In the event that use of any franchise property or a portion thereof is discontinued for a continuous period of twelve (12) months, grantee shall be deemed to have abandoned that franchise property. Any part of the cable system that is intended for use only when needed because it is parallel or redundant to other parts of the system, shall not be deemed to have been abandoned because of its lack of use.

B. Grantor, upon such terms as grantor may impose, may give grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this chapter, the grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. Grantor shall have the right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after such removal. The liability, indemnity and insurance provisions of this chapter and the surety bond provided herein shall continue in full force and effect during the period of removal and until full compliance by grantee with the terms and conditions of this section.

C. Upon abandonment of any franchise property in place, the grantee, if required by the grantor, shall submit to the grantor any instrument,

satisfactory in form to the grantor, transferring to the grantor ownership of the franchise property abandoned.

D. At the expiration of the term for which the franchise is granted or upon its revocation or earlier expiration, as provided for herein, in any such case without renewal, extension or transfer, the grantor shall have the right to require grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the city within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

E. Notwithstanding anything to the contrary set forth in this chapter, the grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable grantee. (Ord. 439 B 2 (1.40), 1996)

#### 5.16.410 Restoration by grantor--Reimbursement of costs.

In the event of a failure by grantee to complete any work required herein or by any other law or ordinance and if such work is not completed within thirty (30) days after receipt of written notice thereof from grantor or, if more than thirty (30) days are reasonably required therefor, if grantee does not commence such work within such thirty (30) day period and diligently complete the work thereafter (except in cases of emergency constituting a threat to public health, safety or welfare), grantor may cause such work to be done and grantee shall reimburse grantor for the costs thereof within thirty (30) days after receipt of an itemized list of such costs or grantor may recover such costs through the surety bond provided by grantee. (Ord. 439 B 2 (1.41), 1996)

#### 5.16.420 Extended operation and continuation of services.

Upon either expiration or revocation of the franchise, the grantor shall have discretion to permit grantee to continue to operate the cable television system for an extended period of time not to exceed twelve (12) months from the date of such expiration or revocation, unless extended by resolution of grantor. Grantee shall, as trustee for its successor-in-interest, continue to operate the system under the terms and conditions of this chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. It shall be the right of all subscribers to continue to receive all available services provided their financial and other obligations to grantee are honored. The grantee shall use reasonable efforts to provide continuous, uninterrupted service to its subscribers, including operation of the system during transitional periods following franchise expiration or termination. (Ord. 439 B 2 (1.42), 1996)

#### 5.16.430 Receivership and foreclosure.

A. A franchise granted hereunder shall, at the option of grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers or trustee or trustees, to take over and conduct the business of grantee, whether in receivership or reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated

prior to the expiration of such one hundred twenty (120) days or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto and the receivership or trustees within such one hundred twenty (120) days shall have remedied all the faults under the franchise or provided a plan for the remedy of such faults which is satisfactory to the grantor; and (2) such receivers or trustees shall, within such one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise granted.

B. In the case of a foreclosure or other judicial sale of the franchise property or any material part thereof, grantor may serve notice of termination upon grantee and the successful bidder at such sale, in which event the franchise granted and all rights and privileges of the grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless: (1) grantor shall have approved the transfer of the franchise, as and in the manner that this chapter provides; and (2) such successful bidder shall have covenanted and agreed with grantor to assume and be bound by all terms and conditions of the franchise. (Ord. 439 § 2 (1.43), 1996)

#### 5.16.440 Rights reserved to grantor.

A. In addition to any rights specifically reserved to the grantor by this chapter, the grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise and the grantee by accepting a franchise hereunder agrees to be bound thereby and to comply with any action or requirement of the grantor in its exercise of any such right or power.

B. The grantor shall have the right to waive any provision of the franchise, except those required by federal or state regulation, if the grantor determines: (1) that it is in the public interest to do so; and (2) that the enforcement of such provision will impose an undue hardship on the grantee or the subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the grantor. Waiver of any provision in one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the franchise unless the statement so relies. (Ord. 439 § 2 (1.44), 1996)

#### 5.16.450 Rights of individuals.

A. Grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders, relating to nondiscrimination, including without limitation, Section 51 of the California Civil Code which is incorporated in this section by reference.

B. Grantee shall adhere to the applicable equal employment opportunity requirements of the FCC, state and local regulations, as now written or as amended from time to time.

C. Neither grantee, nor any person, agency or entity shall, without the subscriber's consent, tap or arrange for the tapping of any cable, line or signal input device or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participating or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

D. In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. Grantee shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

E. No cable line, wire, amplifier, converter or other piece of equipment owned by grantee shall be installed by grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed.

F. The grantee or any of its agents or employees, shall not sell or otherwise make available to any party for any purpose other than the operation or transfer of the cable system without consent of the subscriber pursuant to state and federal privacy laws:

1. Any list of the names and addresses of subscribers containing the names and addresses of subscribers who request in writing to be removed from such list; and

2. Any list which identifies the viewing habits of individual subscribers, without the prior written consent of such subscribers. This does not prohibit the grantee from providing composite ratings of subscriber viewing to any party. (Ord. 439 B 2 (1.45), 1996)

## Chapter 5.20

### CARD ROOMS

#### Sections:

5.20.010 Definitions.

5.20.020 Identity cards--Required.

5.20.030 Identity cards--Applications.

5.20.040 Identity cards--Denial.

5.20.050 Identity cards--Denial--Appeals.

5.20.060 Permits and identity cards--Suspension or revocation--Appeals.

5.20.070 Rules and regulations.

5.20.080 Public nuisances--Abatement.

5.20.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

"Card room" means any space, room or enclosure, furnished or equipped with a table, used or intended to be used, as a card table for the playing of cards, the use of which is available to the public or any portion of the public.

"Employee" means a dealer, manager or any other person directly connected with the operation and supervision of a card table.

"Person financially interested in such business" means and includes any person who shares in the profits of the business on the basis of gross or net revenue. (Prior code  $\beta$  5-2.01)

5.20.020 Identity cards--Required.

Each employee shall secure an identity card from the chief of police. Such card shall be valid for one year after the date of issuance and shall be renewed annually. (Prior code  $\beta$  5-2.09)

5.20.030 Identity cards--Applications.

Applications for the identity cards required by the provisions of this chapter shall be submitted in writing under oath and shall contain the past criminal record, if any, of the applicant, a physical description of the applicant and such information as may be deemed by the chief of police to be necessary to determine whether the applicant is a proper person to be issued such identity card. At the time of the filing of such application, the applicant shall submit to fingerprinting by the chief of police. (Prior code  $\beta$  5-2.10)

5.20.040 Identity cards--Denial.

The chief of police shall deny the application for the identity card required by the provisions of this chapter if:

A. The applicant has previously been convicted of any narcotics violation, a felony involving theft or any crime involving moral turpitude within the past ten (10) years; or

B. The applicant is not, in the opinion of the chief of police, a person of good moral character. (Prior code  $\beta$  5-2.11)

5.20.050 Identity cards--Denial--Appeals.

The action of the chief of police in denying an application for the identity card required by the provisions of this chapter on the basis of the applicant not being a person of good moral character shall be subject to an appeal to the council. Notice of such appeal shall be filed in writing with the city clerk within ten (10) days after the denial of the application. (Prior code  $\beta$  5-2.12)

5.20.060 Permits and identity cards--Suspension or revocation--Appeals.

The chief of police shall have the right for cause to suspend, revoke or take possession of any employee's identity card issued pursuant to the provisions of this chapter. Any of the grounds upon which the chief of police shall be required to refuse an initial card room employee's identity card shall also constitute grounds for such suspension or revocation. In addition, the failure of a holder of a card room employee's identity card to comply with the provisions of this chapter shall also constitute grounds for the suspension or revocation of such permit or identity card. Such action of the chief of police shall be subject to an appeal to the council. Notice of such appeal shall be filed in writing with the city clerk within ten (10) days after such suspension or revocation. Upon the failure to file such notice of appeal within such ten (10) day period, the action of the chief of police shall be final and conclusive. (Prior code  $\beta$  5-2.13)

#### 5.20.070 Rules and regulations.

It is unlawful to operate a card room in violation of any of the following rules and regulations:

A. Not more than two card rooms shall be located at any one premises and there shall be not more than five card tables in any one card room.

B. Card rooms shall be located and so arranged that the card tables and players at the card tables shall be plainly visible from the door opening to the card room. No wall, partition, screen or similar structure between the card room door opening and any card table located in the card room shall be permitted if such wall, partition, screen or similar structure interferes with such visibility.

C. No person under the age of twenty-one (21) years shall be allowed in any card room during operating hours.

D. Card rooms may be open seven days a week, twenty-four (24) hours per day; except that in all events the card room shall close for a twenty-four (24) hour period from Sunday at six a.m. until the following Monday at six a.m.

E. All card rooms shall be open to police inspection at all times.

F. All card room doors shall be unlocked and accessible to the general public during operating hours.

G. Operators and employees shall be required to exhibit their permits or identity cards on the demand of any law enforcement officer.

H. It is unlawful to permit or conduct any game of chance in any card room or at any card table prohibited by the laws of the state.

I. It is unlawful to fail to maintain on the outside of all doors leading to any card room a sign not less than six inches by twelve (12) inches on which is printed the words "No person under the age of twenty-one years is permitted in this room." (Prior code  $\beta$  5-2.14)

#### 5.20.080 Public nuisances--Abatement.

Any house or building in which any card room or card table is operated, conducted or maintained in violation of the provisions of this chapter or for the purpose of evading the provisions of this chapter is declared to be a public nuisance and may be abated as such as provided by the laws of the state for the abatement of public nuisances. (Prior code  $\beta$  5-2.15)

## Chapter 5.24

### OUTDOOR FESTIVALS

#### Sections:

- 5.24.010 Festival defined.
- 5.24.020 Licenses--Required.
- 5.24.030 Licenses--Applications--Form--Fees.
- 5.24.040 Licenses--Applications--Filing.
- 5.24.050 Licenses--Applications--Investigations--Hearings--Notices.
- 5.24.060 Licenses--Conditions--Bonds.
- 5.24.070 Licenses--Issuance--Fees.
- 5.24.080 Licenses--Fees--Waivers.
- 5.24.090 Licenses--Suspension or revocation.
- 5.24.100 Licenses--Nontransferable.

#### 5.24.010 Festival defined.

For the purposes of this chapter, unless otherwise apparent from the context, "festival" means and includes any gathering of individuals for the purpose of participating in street dances, outdoor "rock" dances and similar musical or theatrical type performances which are of a periodic nature and to which the public is admitted with or without the payment of an admission charge. (Prior code § 5-5.01)

#### 5.24.020 Licenses--Required.

Any person desiring to operate, maintain, conduct, advertise or sell or furnish tickets or other types of written authority for admission to a festival within the city shall first obtain a license from the city to operate or conduct such festival. (Prior code § 5-5.02)

#### 5.24.030 Licenses--Applications--Form--Fees.

Applications for licenses to conduct festivals shall be made in writing to the council accompanied by a fee of one hundred dollars (\$100.00) which shall be subject to waiver as set forth in this chapter, but which, unless waived, shall be a nonrefundable application fee filed with the city clerk. Such application shall contain as much of the following information as the nature of the proposed activity may require:

A. The name, age, residence, mailing address and telephone number of the applicant. If the application is made by a partnership, the names and addresses of all general partners shall be listed. If the application is made by a corporation, the application shall be signed by the president and attested by the secretary thereof, shall contain the names and addresses of all corporate officers and a certified copy of the articles of incorporation shall be attached to the application;

B. The location and the legal description of the place or premises where the festival is proposed to be conducted, including all areas to be used for

parking or other uses incidental to the festival. The applicant shall submit proof of ownership of such place or premises or the written consent of the owners thereof for the proposed use;

C. The dates and the hours during which the festival is to be operated;

D. An estimate of the anticipated number of participants, spectators and other persons attending the festival for each day it is conducted;

E. A detailed explanation of the applicant's program and arrangements for security, public safety, water supply, food supply, sanitation facilities, emergency medical services, vehicle access and parking facilities, on-site traffic control, overnight accommodations in the event participants or spectators are expected to remain in the area for more than one day, lighting the festival areas and the cleanup of the festival areas and removal of rubbish after the festival ends; and

F. A detailed explanation of the applicant's plan for police protection during the festival, with particular emphasis on the control of the illegal use of alcohol and drugs. (Prior code  $\beta$  5-5.03)

#### 5.24.040 Licenses--Applications--Filing.

The application required by the provisions of this chapter shall be filed with the city clerk at least thirty (30) days prior to the date of the proposed festival. The city clerk shall review the application and, if complete, shall submit it to the council at its next regular meeting. No license shall be issued by the city clerk until he or she is authorized to do so by resolution of the council made at a regular meeting of the council. (Prior code  $\beta$  5-5.04)

#### 5.24.050 Licenses--Applications--Investigations--Hearings--Notices.

A. Hearings--Time--Notices. Upon the receipt of the application and fee, if applicable, for the license required by the provisions of this chapter, the council shall set a time and date for a public hearing to be held at a regular meeting of the council not less than five days and not more than thirty (30) days, thereafter, but in no case less than fifteen (15) days prior to the proposed festival and shall notify the applicant of the hearing not less than five days prior to the time and date of the proposed hearing.

B. Investigations and Reports. The chief of police shall be directed to investigate the matter and to report in writing to the council the results of his or her investigation and his or her recommendations prior to the public hearing.

C. Notices to County and State Agencies. Copies of the application and notice of hearing shall be forwarded to the county sheriff and health officer and to the Highway Patrol of the state for their information.

D. Hearings--Decisions. The council, at the scheduled public hearing, shall consider all documents submitted and such further matter that may be presented and shall thereafter take appropriate action to either refuse to issue the license, grant the license without conditions imposed or impose conditions which shall be met before the license may be granted. (Prior code  $\beta$  5-5.05)

#### 5.24.060 Licenses--Conditions--Bonds.

A. Conditions. If conditions are imposed by the council upon the issuance of the license required by the provisions of this chapter, the applicant shall furnish to the city clerk proof that all such conditions have been met and that the required security, if any, has been given before the license may be issued by the city clerk.

B. Bonds. The security which the council may require may include the posting of an indemnity bond and/or performance bond in favor of the city in connection with the operation of the festival. Such bond shall be prepared by a corporate bonding company authorized to do business in the state by the Department of Insurance in an amount determined by the council. The bond shall indemnify the city and its council, agents, officers and employees against any and all losses, damages or injuries to either persons or property which may arise from the operation of the festival and shall further indemnify the city and owners of property affected by the operation of the festival against the costs of the cleanup and removal of debris and rubbish attributable to the festival activity. (Prior code  $\beta$  5-5.06)

#### 5.24.070 Licenses--Issuance--Fees.

Upon determining that the council has authorized the issuance of the license required by the provisions of this chapter and that all the conditions, if any, have been met, the city clerk shall collect a fee of one hundred fifty dollars (\$150.00) per day for each day the festival is to be conducted, unless such fee is waived by the council and shall issue a license to the applicant for the dates and locations the council has approved and authorized. (Prior code  $\beta$  5-5.07)

#### 5.24.080 Licenses--Fees--Waivers.

The application and license fees required by the provisions of this chapter may be waived at the discretion of the council for a neighborhood or community benefit organization or for an organization having a charitable, religious or eleemosynary purpose provided the net proceeds from the operation of the festival do not inure to the benefit of any person. (Prior code  $\beta$  5-5.08)

#### 5.24.090 Licenses--Suspension or revocation.

A. Suspension. The chief of police may suspend the operation of and close any festival prior to the expiration of the license issued pursuant to the provisions of this chapter in the event of the occurrence of a riot, major disorder or serious breach of the peace when, in his or her opinion, it may become necessary to prevent injuries to persons or property.

B. Revocation. The council shall have the right to immediately revoke any license issued pursuant to the provisions of this chapter if:

1. The licensee fails, neglects or refuses to perform any of the conditions imposed upon the granting of the license;

2. The licensee permits the festival to be conducted in a disorderly manner or permits any person to remain on the premises while under the influence of liquor or drugs;

3. The licensee violates or attempts to violate the laws of the state, the county or the city; or

4. The licensee makes or is found to have made, a false or fraudulent statement of material fact in the application for the license or in the documents required to be submitted pursuant to the provisions of this chapter.

C. Revocation--Notices. Written notice of such revocation shall be forwarded by the city clerk to the chief of police and to the licensee at the address shown in the application. Such revocation shall be effective immediately upon the order being made by the council. (Prior code  $\beta$  5-5.09)

5.24.100 Licenses--Nontransferable.

No license issued pursuant to the provisions of this chapter shall be transferred to any person or to any location not specified in the application and approved by the council. (Prior code  $\beta$  5-5.10)

## Chapter 5.28

### TAXICABS AND VEHICLES FOR HIRE

#### Sections:

- 5.28.010 Definitions.
- 5.28.020 Certificates of public convenience and necessity.
- 5.28.030 Licenses--Issuance--Fees.
- 5.28.040 Drivers' permits.
- 5.28.050 Insurance.
- 5.28.060 Vehicles--Maintenance and inspections.
- 5.28.070 Vehicles--Replacement.
- 5.28.080 Vehicles--Identification.
- 5.28.090 Rate schedules.
- 5.28.100 Fares.
- 5.28.110 Service mandatory.
- 5.28.120 Passengers.
- 5.28.130 Routes.
- 5.28.140 Appeals.
- 5.28.150 Violation--Penalty.

5.28.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

"Driver" means any person in charge of or operating a taxicab or motor vehicle for hire, either as an owner or employee or under the direction of the owner or another employee. "Driver" shall not include the hirer of a U-drive type vehicle.

"Motor vehicle for hire" means a motor-propelled vehicle, other than a taxicab, used for the transportation of persons along public streets, not over definite routes at fixed times, for which transportation a money fee is paid or is contracted to be paid, whether or not a driver is furnished with such vehicle

and shall include the rental of U-drive vehicles and vehicles used only for the transportation of passengers and parcels from and to public carrier stations.

"Owner" means every person who in any manner has the proprietary use, ownership or control of any passenger-carrying motor-propelled vehicle.

"Stand" means a place upon a public street for the use of the particular taxicabs authorized to utilize such stand while awaiting employment.

"Taxicab" means a motor-propelled vehicle used for the transportation of passengers for hire over and along public streets not over a defined route but, as to route and destination, in accordance with and under the direction of the person hiring such vehicle and which is required by the provisions of this chapter, with a visible schedule of rates for the use of such taxicab. (Prior code  $\beta$  4-4.01)

#### 5.28.020 Certificates of public convenience and necessity.

A. Required. No license to operate vehicles for hire shall be issued unless and until the council, by resolution, declares that the public convenience and necessity will be served by the issuance of the license applied for and authorizes the issuance of a certificate of public convenience and necessity. Such certificates of public convenience and necessity shall be subject to the terms and conditions set forth in this section.

B. Applications. It is unlawful for any person to engage in the business of operating or causing to be operated, a taxicab or motor vehicle for hire in the city without first making an application to the council. Such application insofar as is applicable to the type of certificate sought to be obtained, shall set forth the following:

1. The name, residence and business address of the applicant, if a natural person or, if a firm, association or partnership, the name and address of such firm, association or partnership and the names and addresses of all members. If the application is made on behalf of a corporation, the name and address of such corporation and the names and residences of the officers and local manager, if any and the names and addresses of any person owning more than twenty (20) percent of the voting stock of the corporation;

2. The nature of the business and the fictitious name, if any, under which the business is proposed to be operated;

3. The number of vehicles for which a certificate of public convenience and necessity is desired and the specific type of business in which such vehicles are proposed to be used;

4. The make, type, year of manufacture and passenger accommodating capacity for each vehicle for which an application for a certificate is made, assigning a specific number to each such vehicle;

5. A statement as to whether or not the applicant or any officer of the applicant, has been convicted of any crime, misdemeanor or felony or any violation of any municipal law or state law other than minor traffic and parking offenses, the nature of the offense and the punishment or penalty assessed therefor;

6. The exact location of any taxicab stand which the applicant requests permission to use;

7. The schedule of rates or fares to be charged; and

8. Such other information as the council may require for the proper police protection of the city.

C. Issuance. If the council, after reviewing the application by resolution finds that the public convenience and necessity require or will admit the additional service of the type applied for a certificate to that effect shall be issued to the persons entitled to the certificate upon all the provisions of this chapter having been met. The council, in its discretion, shall determine the total number of vehicles which may be licensed and operated under such certificate and the date of the issuance thereof.

No certificate authorized pursuant to the provisions of this chapter shall be issued to any person who shall not have fully complied with all of the provisions of this chapter.

D. Revocation, Suspension and Changes. The council at any time may revoke, suspend or change, after proper notice and an opportunity of hearing given to the holder thereof, the certificate of public convenience and necessity granted if the owner or a driver fails to operate a vehicle authorized by the provisions of this chapter in accordance with such provisions or if the council determines such revocation, suspension or change to be in the public interest. All certificates suspended or revoked by the council shall be surrendered to the city clerk and the operation of all taxicabs or motor vehicles for hire covered by such certificates shall cease.

E. Sales and Transfers. If an owner to whom a certificate of public convenience and necessity has been issued desires to sell or transfer his or her business, the intended buyer or transferee shall make an application for a certificate of public convenience and necessity as required by the provisions of this chapter. Such application shall be accompanied by a statement of the seller of his or her intention to surrender and cancel the certificate and licenses held by such seller conditionally upon and concurrently with, the consummation of such sale and the issuance of a replacement certificate and license in the name of the buyer. If a buyer/applicant or transferee/applicant for a certificate of public convenience and necessity meets all of the provisions set forth in this chapter for the issuance of the type of certificate sought, the council shall issue a new certificate to the applicant and concurrently therewith shall cancel the certificate of the seller.

F. Sales, Leases and Transfers without Approval. If the owner or person to whom a certificate of public convenience and necessity, license or permit has been issued pursuant to the provisions of this chapter sells, leases, rents or transfers or attempts to sell, lease, rent or transfer, any such certificate, license or permit in any manner other than as set forth in this chapter, such seller, lessor, renter or transferor and any person knowingly attempting to receive such certificate, license or permit or benefit in any such actual or attempted sale, lease, rental or transfer shall be deemed guilty of a misdemeanor and shall be subject to the revocation and cancellation of the certificate, license or permit involved. (Prior code B 4-4.02)

#### 5.28.030 Licenses--Issuance--Fees.

Upon the issuance of a certificate of public convenience and necessity by the council to an applicant, the city clerk shall cause a license to be issued

for each taxicab or motor vehicle for hire authorized by such certificate upon the payment of the license fee required by this section. A minimum license fee of twenty-five dollars (\$25.00) per year for each vehicle authorized in such certificate is levied. Such amount may be changed from time to time by the council by resolution. The license fee shall be payable annually on July 1st of each year and shall not be subject to apportionment. (Prior code  $\beta$  4-4.03)

#### 5.28.040 Drivers' permits.

A. Required. No person shall operate or drive a taxicab without first having obtained a written permit or license to do so from the chief of police.

B. Applications. To secure a driver's permit as required by the provisions of this chapter, a written application setting forth complete information on the applicant with respect to those matters dealt with in this chapter and such other information as the chief of police may desire shall be filed with the chief of police.

C. Denial--Revocation. The chief of police may refuse to issue a driver's permit and may revoke a permit already granted for any of the following reasons:

1. If the applicant is under eighteen (18) years of age;
2. If the applicant does not possess a valid Class 3 driver's license issued by the state;
3. If the applicant has been convicted of reckless driving or a crime involving moral turpitude or has had repeated traffic violations;
4. If the applicant has been convicted of driving while under the influence of intoxicating liquors or narcotics;
5. If the applicant violates any of the provisions of this chapter; and
6. If the applicant is unable to produce at any time a certificate from a duly licensed physician stating that the driver's physical condition is such that, in the opinion of such physician, the possibility of such driver being involved in an accident by reason of his or her physical condition is negligible; that is, that there is no reason to believe that such driver is more susceptible to accidents by reason of any physical disability or condition, injury, sickness or disease than such driver would be were he or she in perfect physical condition.

D. Issuance--Fingerprints. If an applicant for a driver's permit meets all of the requirements set forth in this chapter, expressed or implied, such applicant shall be fingerprinted and the fingerprints and records shall be filed in the office of the police department. Thereupon, a permit shall be issued.

E. Change of Employment. If a driver changes his or her employment to employment by a different owner, within twenty-four (24) hours after such change in employment, he or she shall notify the chief of police for the purpose of having his or her driver's permit changed so as to properly designate the name of the new employer.

F. Renewal. A driver's permit issued pursuant to the provisions of this chapter shall be valid for one year after the date of issuance, unless the permit has been revoked for any of the causes set forth in this chapter. The driver, in making an application for a permit renewal, shall follow the same procedure set forth for making an original application, except that such applicant shall not be required to be fingerprinted.

G. Posting. Any applicant receiving a driver's permit pursuant to the provisions of this chapter shall display such permit in the front portion of the operating vehicle in a place in plain view to all occupants and inspectors and such permit shall be displayed at all times when the vehicle is in operation. (Amended during 2004 codification; prior code  $\beta$  4-4.04)

#### 5.28.050 Insurance.

It is unlawful for any owner or operator to drive or operate a taxicab or rent a motor vehicle for hire or cause a taxicab or motor vehicle for hire to be driven or operated in the city and no license for the operation thereof shall be granted, until there is on file with the city clerk and in full force and effect at all times during which such vehicle is being operated, a policy of insurance, approved as to form by the city attorney, with a solvent and responsible company authorized to do business in the state, insuring the owner and operator of such vehicle and the city, as co-insured to the extent of any insurable interest, obligations or risk to the city, against loss by reason of injuries or damages which may result to persons or property from the faulty or negligent operation or defective construction or condition of such vehicle or from any other cause whatsoever. Each vehicle shall be designated by number and state license number. Such insurance shall be with limits of not less than one hundred thousand dollars (\$100,000.00) for injuries to one person and not less than three hundred thousand dollars (\$300,000.00) for injuries to more than one person and not less than fifty thousand dollars (\$50,000.00) for damages to property. Such insurance amounts may be adjusted from time to time by the council by resolution. No such insurance policy shall be cancelable, except upon thirty (30) days' advance written notice to the city. (Prior code  $\beta$  4-4.05)

#### 5.28.060 Vehicles--Maintenance and inspections.

A. Safety and Sanitation Required. All taxicabs and motor vehicles for hire shall be under the supervision and control of the council and no owner or driver shall operate or permit any such vehicle to be operated in the city while any equipment used thereon shall be defective, unsafe or in an unsanitary condition.

B. Inspections. Every such vehicle shall be subject to inspection at all times by any police officer of the city.

C. Noncompliance--Suspension of Licenses. The council shall suspend without previous notice any taxicab or motor vehicle for hire license granted pursuant to the provisions of this chapter whenever the owner or driver violates any of the provisions of this section.

D. Noncompliance--Suspension of Licenses--Appeals. The owner of the vehicle, the license of which has thus been suspended, within thirty (30) days after such suspension, may appeal from such order of suspension to the council which, after due notice to the owner, shall hear and determine the matter and the decision of the council thereon shall thereupon become final. The council, in such decision, may order a continued suspension of such license until such time as the vehicle shall be restored to a safe or sanitary condition. (Prior code  $\beta$  4-4.06)

5.28.070 Vehicles--Replacement.

If an owner sells or transfers the title to a taxicab or motor vehicle for hire for which a license has been issued or in the event a vehicle for which a license has been issued has been destroyed, the owner, as a matter of right, upon a written application to the city clerk made within forty-five (45) days after such sale, transfer or destruction, shall be entitled to have a new license issued for the taxicab or motor vehicle for hire replacing the one so sold, transferred or destroyed; provided, however, no license or certificate issued pursuant to the provisions of this chapter shall be transferable with vehicles sold or transferred. If a taxicab is withdrawn from service for a period of sixty (60) days without written permission from the council being first secured, the license for such taxicab shall be automatically cancelled and the number of taxicabs authorized by the certificate of the owner shall thereafter be reduced by one or more, as the case may be. (Prior code  $\beta$  4-4.07)

5.28.080 Vehicles--Identification.

Any vehicle operated pursuant to the provisions of this chapter shall be marked on the front doors of both sides of the vehicle with the name of the company and telephone number, if applicable, in clear print with letters not less than three inches in height. (Prior code  $\beta$  4-4.08)

5.28.090 Rate schedules.

A. Filing. Each person engaging in a taxicab or motor vehicle for hire business in the city shall at all times keep on file with the city clerk an up-to-date schedule of rates charged for the services provided the public and no person shall demand or charge any rate for such services which does not conform to the schedule of rates currently on file.

B. Changes--Filing. Such rates shall not be changed or modified in any manner without first filing such changed or modified rates with the council fifteen (15) days prior to the effective date of such change or modification.

C. Posting. All owners and operators of taxicabs shall keep posted in a conspicuous place in the passenger compartment of each vehicle operated the schedule of fares chargeable for the use of such vehicle. It is unlawful to change the schedule of fares so posted unless and until a new schedule of fares has been filed in accordance with the provisions of this chapter. (Prior code  $\beta$  4-4.09)

5.28.100 Fares.

A. Payment. It is unlawful for any person, except where credit is extended, to refuse to pay the lawful fare fixed by the provisions of this chapter for the use of any taxicab or motor vehicle for hire after hiring such taxicab or motor vehicle.

B. Receipts. If requested, every driver shall give a receipt upon the payment of the correct fare.

C. Overcharging. No driver shall charge a passenger a greater fare than that to which he or she is entitled pursuant to the provisions of this chapter. (Prior code  $\beta$  4-4.10)

5.28.110 Service mandatory.

It is unlawful for any driver, when the vehicle is in service and not otherwise engaged, to refuse to transport any person who presents himself or herself or is presented for carriage, in a sober and orderly manner and for a lawful purpose. (Prior code  $\beta$  4-4.11)

5.28.120 Passengers.

A. Receiving and Discharging. Drivers of taxicabs shall not receive or discharge passengers in the roadway but shall drive as near as possible to the right-hand sidewalk or, in the absence of a sidewalk, to the extreme right-hand side of the road and there receive or discharge passengers.

B. Overloading. No driver shall permit more persons to be carried in a taxicab as passengers than the rated seating capacity of such vehicle. A child in arms shall not be counted as a passenger. (Prior code  $\beta$  4-4.12)

5.28.130 Routes.

A. Direct. Any driver employed to transport passengers to a definite point shall take the most direct route which will take the passengers to their destination safely and expeditiously.

B. Passengers With Different Points of Destination. It is unlawful for any taxicab driver to accept passengers with different points of destination, except from a common point of origin and unless such points of destination shall be in the same general direction from the point of origin.

C. Passengers With Different Points of Destination--Effect of Points of Discharge. It is unlawful for any driver to permit any other person to occupy or ride in a taxicab, unless the persons first employing the taxicab shall first consent to the acceptance of the additional passengers. When carrying passengers whose points of destination are different, the point of discharge shall become the point of origin for the next passenger and that passenger's point of discharge shall become the point of origin for the next passenger and so forth and each fare shall be collected accordingly. (Prior code  $\beta$  4-4.13)

5.28.140 Appeals.

Any applicant, owner, driver or permittee shall have the right to appeal to the council from the decision or action or failure to act, of any city agent, officer or employee. Such appeal shall be in writing and shall be filed with the city clerk within thirty (30) days after the act or until the failure to act after a request therefor, from which the appeal is taken. The decision of the council shall be final. Such proceedings shall be informal and need not be reported, nor need any finding of fact or written decision be made or filed. (Prior code  $\beta$  4-4.14)

5.28.150 Violation--Penalty.

Any person violating any provision of this chapter shall be punishable as set forth in Chapter 1.24 of this code. In addition, the council may revoke the license or permit issued as provided in this chapter of any person violating any provision of this chapter. (Prior code  $\beta$  4-4.15)

