TITLE XI: BUSINESS REGULATIONS

Chapter

CHAPTER 110: GENERAL LICENSING PROVISIONS

Section

Cross-reference:

Commercial animal establishments, see § 91.25
Heating and air conditioning, see § 152.12

Statutory reference:

Power of city to regulate businesses generally, see I.C. 36-1-3-8 and 36-8-2-10

§ 110.01 SCOPE.

This chapter contains general provisions with respect to the licensing of businesses or other activities as well as the license fees prescribed therefor. Additional provisions and regulations applicable to particular businesses or activities are contained either in subsequent chapters in Title XI or in other portions of this code.

('64 Code, § 70.1)

§ 110.02 LICENSE REQUIRED; FEE.

No person shall conduct, engage in, maintain, operate, carry on, or manage any of the following trades, occupations, businesses, devices, or activities without first applying for and obtaining a license to do so and paying the fees prescribed below to the City Controller or other duly authorized city official:

Classification	***License Fee***
Bicycles.	See § 74.11
Billiard or pool rooms (Chapter 113) For each table.	$25 per year
Bowling alleys (Chapter 113) For each alley.	$10 per year
Budget service companies.	See Chapter 112
Cigarette vending machines (Chapter 113), each machine.	$5 per year
Coin vending machines (Chapter 113), each machine.	$5 per year
Electricians.	See Chapter 151
Juke boxes, (Chapter 113), each machine.	$15 per year
Merchants, transient.	See Chapter 119
Night clubs (Chapter 113)	$50 per year
Pawnbrokers.	$25 per year
Photographers, transient.	See Chapter 119
Phrenology.	$100 per day
Plumbers.	See Chapter 158
Public movers, for each van.	$25 per year
Restaurants and public eating places.	See Chapter 117

Classification	*License Fee*
Taxicabs.	See Chapter 118
Waste collectors.	See Chapter 120

('64 Code, § 70.2) Penalty, see § 110.99

Cross-reference:

Term of license; proration of fees, see § 110.07

Statutory reference:

Powers specifically prohibited, see I.C. 36-1-3-8

§ 110.03 APPLICATION FOR LICENSE.

(A) All original applications for licenses, unless otherwise specifically provided, shall be made in writing to the City Controller on forms prescribed by him and shall contain or state the following:

(1) The name of the applicant and of each officer, partner, or business associate;

(2) The applicant's present occupation and place of business;

(3) The applicant's place of residence for the five years next preceding the date of application;

(4) The nature and location of the intended business or activity;

(5) The period of time for which the license is desired;

(6) If the applicant is a vendor, a description of the merchandise to be sold;

(7) The description of a mailing address which will be acceptable to the licensee for the receipt of letters or notifications to appear before the proper city authorities to show cause why license should not be revoked for failure on the part of the licensee to comply with the provisions of this code;

(8) Any other pertinent information which the City Controller may require in conformity with the provisions of this code or in the public interest.

(B) Where the application is merely for a renewal of a license, unless otherwise specifically required, the City Controller may shorten the application form on verification by the applicant that all matters and answers are the same as in the original application.

('64 Code, § 70.3)

§ 110.04 MISREPRESENTATION; AFFIDAVITS.

(A) No person, either in his own behalf or for another, shall knowingly make a false statement or false representation in the application. ('64 Code, § 70.4) Penalty, see § 110.99

(B) All applicants may be required to swear to any statement made in con- nection with the application for the issuance of any license. ('64 Code, § 70.5)

§ 110.05 INSPECTIONS.

(A) On receipt of the application the City Controller may refer the application to other proper city officials for investigation as to the truth of statements contained in the application, the character and qualifications of the applicant, and the condition and location of the licensed activity or premises to insure that if the license is issued, there will be compliance with the applicable fire, sanitary, and police laws and regulations.

(B) A licensee shall at all reasonable times permit the inspection of the licensed activity or premises by the duly constituted city and state authorities to determine whether there has been compliance with all fire, sanitary, and police regulations.

('64 Code, § 70.6) Penalty, see § 110.99

§ 110.06 ISSUANCE OF LICENSE.

(A) On receipt of an application for a license, accompanied by the proper fee, if approval or investigation by another officer or department is not required, the City Controller shall forthwith deposit the fee in the treasury to the credit of the general fund and issue to the applicant a proper license certificate

which indicates the name of the licensee, the address and nature or kind of trade, occupation, business, or activity licensed, the period for which the license is issued, the amount of fee paid, and any other information as the City Controller shall prescribe. The license certificate shall bear the seal of the city and signature of the Mayor. No license shall be issued until and unless any special requirements provided for elsewhere in this code have been satisfied.

(B) If for any reason the license is not issued, the license fee, less $1 to cover the expense of considering the application, shall be returned to the applicant.
('64 Code, § 70.7)

§ 110.07 TERM OF LICENSE.

A license shall not be valid beyond the expiration date specified on the license certificate. Annual licenses shall not extend beyond December 31, of the year for which it is issued.
('64 Code, § 70.8)

§ 110.08 NONTRANSFERABLE.

Every license shall be issued to a real party in interest in the trade, occupation, business, or activity, and unless otherwise provided, no license shall be assigned or transferred.
('64 Code, § 70.9)

§ 110.09 LICENSE CERTIFICATE TO BE DISPLAYED.

Every licensee carrying on business at a fixed location shall keep the license certificate posted in a prominent place on the licensed premises. Other licensees shall carry their license certificates at all times and whenever requested by any police officer or citizen, shall exhibit the same.
('64 Code, § 70.10) Penalty, see § 110.99

§ 110.10 REVOCATION OR SUSPENSION.

(A) Any license may be revoked by the Mayor at any time for conditions or consideration which, had they existed at the time of issuance, would have been valid grounds for its denial; for any misrepresentation of a material fact in the application discovered after issuance of the license; for violation of any provisions of this chapter or other law or ordinance relating to the operation of the business or enterprise for which the license was issued; or on conviction of a licensee for violation of any federal, state, or city law or ordinance involving moral turpitude. Revocation shall become effective on notice served on such licensee or posted on the premises affected.

(B) As a preliminary to revocation, the Mayor may issue an order suspending a license, which order shall become effective immediately on service of written notice to the licensee. Notice shall specify the reason for suspension, and may provide conditions under which reinstatement of the license may be obtained. On compliance with the conditions with the time specified, the license may be restored.
('64 Code, § 70.11)
Statutory reference:
Hearing complaints against persons licensed by city, see I.C. 36-4-5-5

§ 110.11 APPEAL AND REVIEW.

In case any applicant has been denied a license, or if his license has been revoked or suspended, the applicant or licensee as the case may be, shall within three business days have the right to appeal to the Council from such denial, revocation, or suspension. Notice of appeal shall be filed in writing with the Mayor who shall fix the time and place for hearing, the same to be not later than one week thereafter. The Mayor shall notify the issuing authority, if other than himself, and all members of Council of the time and place of the hearing not less than 12 hours in advance thereof. Three members of Council shall constitute a quorum to hear the appeal. The applicant may appear and be heard in person or by counsel. If, after hearing, a majority of the members of Council present

at the meeting declare in favor of the applicant, the license shall be forthwith issued or fully reinstated as the case may be; otherwise the order appealed from shall become final.
('64 Code, § 70.12)

§ 110.12 ALTERATION OR REMOVAL OF CERTIFICATE.

(A) No person shall add to, alter, deface, forge, or counterfeit any license certificate or license plate, tag, badge, emblem, or other insignia which has been or is being issued by the city.

(B) No person shall destroy, obliterate, take, remove, or carry away without the consent of the owner, any license certificate or license plate, tag, badge, emblem, or other insignia which has been issued by the city; except that the certificate, plate, tag, badge, emblem or other insignia may be removed after the licensed business has been discontinued or the licensed premises have been abandoned, or the period of the license has expired. Nothing herein contained shall prevent the Mayor, or his duly authorized representative, or the City Controller from removing any license certificate, emblem, or insignia from the possession of a former licensee or from his premises, device or thing, or from any vehicle when the license has been revoked or suspended under the provisions of this code.
('64 Code, § 70.13) Penalty, see § 110.99

§ 110.13 UNLAWFUL TRANSFER OF CERTIFICATE.

(A) No licensee shall lend or give away any license certificate or any license plate, tag, badge, emblem, or other insignia issued to the licensee.

(B) No person shall use or display any license certificate or license plate, badge, tag, emblem, or other insignia which has been unlawfully acquired.
('64 Code, § 70.14) Penalty, see § 110.99

§ 110.14 AUTHORITY OF CITY CONTROLLER.

The City Controller shall adopt rules and regulations and provide the forms and procedures as he deems necessary for the administration of the provisions of this title.
('64 Code, § 70.15)

§ 110.99 PENALTY.

Whoever violates any provision of this title for which no penalty is otherwise provided shall be fined not more than $500. A separate offense shall be deemed committed on each day that a violation occurs or continues.

CHAPTER 111: BUDGET SERVICE COMPANIES

Section

Statutory reference:

Power of city to regulate businesses generally, see I.C. 36-1-3-8 and 36-8-2-10

§ 111.01 SCOPE.

This chapter establishes and sets forth regulations pertaining to the licensing of budget service companies operating within the city.
('64 Code, § 73.1) (Ord. 2386, passed 7-15-58)

§ 111.02 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUDGET SERVICE COMPANY. Any person doing business as a budget counseling, credit counseling, debt management, or debt pooling service or holding himself out, by words of similar import, as providing services to debtors in the management of their debts, and contracting with the debtor for a fee to receive from the debtor and disburse to his creditors any money or anything of value.

CONTRACT DEBTOR. A debtor who has entered into a contract with a licensee.

LICENSE. A license issued under the provisions of this chapter.

LICENSEE. Any person to whom a license has been issued pursuant to the provisions of this chapter.
('64 Code, § 73.2) (Ord. 2386, passed 7-15-58)

§ 111.03 RULES AND REGULATIONS.

The City Controller shall adopt such rules and regulations as he deems advisable for the administration of this chapter, and to provide such forms and procedures as he determines to be necessary to carry out the provisions of this chapter.
('64 Code, § 73.3) (Ord. 2386, passed 7-15-58)

§ 111.04 LICENSE REQUIRED.

(A) No person shall operate a budget service company in the city without having obtained a license from the City Controller. Each office of each company shall have a separate license. The fee for such license shall be $100 on application, and $50 annual fee thereafter providing the renewals are consecutive. A licensee failing to renew annually shall be required to pay $100 as on a new application.

(B) Persons who are not residents of this city, making application for a license, shall deposit a sum

not to exceed $500 with the City Controller, in addition to the license fee, to cover the excess cost of investigation.
('64 Code, § 73.4) (Ord. 2386, passed 7-15-58) Penalty, see § 111.99

Cross-reference:

General licensing provisions, see Ch. 110

§ 111.05 APPLICATION.

Every person doing business as a budget service company shall make application to the City Controller for a license to engage in such business. Such application shall be in the form prescribed by the City Controller, and shall contain the following information together with such further information as the City Controller may require:

(A) The name under which such business is to be conducted.

(B) The name and address of each owner, partner, or associate, or in the case of a corporation, the names and addresses of all officers, directors, and controlling stockholders of the company.

(C) A sworn statement that no owner, partner, associate, or officer has been convicted of a felony.

(D) The address of each office of the business.

(E) A sworn financial statement of the company.
('64 Code, § 73.5) (Ord. 2386, passed 7-15-58) Penalty, see § 111.99

§ 111.06 BOND.

Each application for a license shall be accompanied by a bond to the city in the sum of $5,000, with surety to the satisfaction of the City Controller and to be approved as to form by the City Attorney, conditioned on the faithful performance of the rules and regulations of the City Controller and the compliance with the ordinances of the city. The bond shall also indemnify any person damaged by failure on the part of the licensee to conduct the business in accordance with the provisions of this chapter.
('64 Code, § 73.6) (Ord. 2386, passed 7-15-58)

§ 111.07 APPEAL.

Every application for a license shall be approved or disapproved within 60 days after filing, and if an application is rejected, the applicant shall be notified in writing of the reason for the rejection and shall have the right to appeal to a committee consisting of the Mayor or someone designated by him, the City Attorney, and the City Controller, which committee, after full hearing, shall have authority to affirm the rejection or to order the license issued. Notice of intention to appeal shall be filed at the office of the City Controller within ten days after receipt of the notice of rejection. The date of hearing and appeal shall be set within ten days from the date on which notice of intention to appeal if filed.
('64 Code, § 73.7) (Ord. 2386, passed 7-15-58)

§ 111.08 DISPLAY OF LICENSE.

When a license has been issued, such license shall be prominently displayed by the licensee in his place of business.
('64 Code, § 73.8) (Ord. 2386, passed 7-15-58) Penalty, see § 111.99

§ 111.09 CONDUCT OF LICENSEE.

Every licensee:

(A) Shall deliver to every contract debtor, at the time the contract is made, a copy of the contract, showing the date executed, the rate of charge, the amount of debts claimed, by the contract debtor to be due to his creditors, and in addition, within five days, deliver to the same contract debtor a list containing the names and addresses of the creditors and amounts due each.

(B) Shall take no fee until a debt program agreed on by the licensee and the contract debtor has been arranged, and further, not until at least two-thirds of the creditors in numbers and amounts have been notified and advised of the licensee's and debtor's relationship.

(C) Shall give to the contract debtor a dated receipt for each payment, at the time of the payment.

(D) Shall notify immediately the contract debtor if any creditor or creditors refuse to accept or agree to the debt plan and the liquidation of the indebtedness of the contract debtor.

(E) Shall, on cancellation by contract debtor of the contract, notify immediately in writing all the creditors.

(F) Shall maintain in his business such books, accounts and records as will enable the City Controller or the City Attorney to determine whether such licensee is complying with the sections of this chapter. Such books, accounts, and records shall be preserved for at least three years after making the final entry on any contract recorded therein.

(G) Shall not receive a fee for his services in excess of 12% of the total amount of the contract debtor's debts listed by the contract debtor with the licensee, up to $1,000, and 10% of such total indebtedness above $1,000. When a contract debtor stops making payments to the licensee, the licensee shall be entitled to not more than 5% of the contract debtor's unserviced balance.

(H) Shall not withhold for his own benefit, out of any payment made while the contract is in full force and effect, more than 12% of the moneys received by licensee up to $1,000, except in the event of cancellation, in which event, licensee shall be entitled to the fee as provided for in division (G) above. All other moneys shall be distributed to the creditors of the contract debtor in accordance with the terms of the debt program and in accordance with the licensee's debtor arrangements with the creditors but in any event within 35 days after the payment of the money of the contract debtor to the licensee.

(I) Shall not make, or cause to be made, any false, misleading, or deceptive statements, or representation (including advertising) with regard to the licensee's fee or of the nature of the services to be provided.

('64 Code, § 73.9) (Ord. 2386, passed 7-15-58) Penalty, see § 111.99

§ 111.10 EXAMINATION OF RECORDS.

(A) The City Controller may examine all books, records, and accounts of any person doing business as a budget service company at least once a year.

(B) On affidavit of any person, or other information that the licensee has failed to comply with the provisions of this chapter, the City Attorney shall have authority to examine such books, records, and accounts.

('64 Code, § 73.10) (Ord. 2386, passed 7-15-58)

§ 111.11 REVOCATION.

If the City Controller finds that a licensee is operating in violation of any of the sections of this chapter or that a licensee has made any false material statement in any application for a license, he may, on ten days written notice to the licensee revoke the license of such licensee. Notice of such revocation or suspension, with the reasons therefor, shall be given in writing to the licensee as in the case of the rejection of an original application, as provided in § 111.07 and the licensee shall have the right to appeal as provided in such cases by § 111.07. When an appeal is taken, the special committee shall have the power, after a full hearing, to affirm, modify, or set aside the order of the City Controller, and the decision of the committee shall be final.

('64 Code, § 73.11) (Ord. 2386, passed 7-15-58)

§ 111.12 EXCEPTIONS.

This chapter shall not apply to any attorney at law authorized to practice in this state, or to any individual, partnership association, or corporation doing business or operating in this state as a charitable

institution or as a bank, trust company, or building and loan association.
('64 Code, § 73.12) (Ord. 2386, passed 7-15-58)

§ 111.99 PENALTY.

Whoever violates any provision of this chapter, for which no penalty is otherwise provided, shall be fined not more than $500. A separate offense shall be deemed committed on each day that a violation occurs or continues. In addition the license of any licensee shall be revoked on the date of his second conviction of an offense under this chapter.

CHAPTER 112: CABLE TELEVISION

Section

GENERAL PROVISIONS

§ 112.01 SHORT TITLE.

This chapter shall be known and may be cited as the "City of Anderson Cable Communications Ordinance."
(Ord. 37-02, passed 8-2-02)

§ 112.02 PURPOSES.

The purpose of this chapter is to:

(A) Provide for the franchising and regulation of cable television systems within the city;

(B) Provide for the payment of franchise fees based upon gross revenues and other valuable consideration for the costs associated with the use of municipal property, public streets, public ways, easements and other public lands and to compensate the city for costs incidental to the award and implementation of any and all cable television franchises;

(C) Provide for the regulation under this chapter by the Common Council of rates and
fees charged by grantees as allowed by applicable law;

(D) Provide for the development of cable television as a means to improve communication by and between and among the citizens, businesses, organizations and public institutions of the city;

(E) Provide policies which protect the city's infrastructure by requiring grantees who perform work or construct facilities in municipal rights-of-way to adhere to said policies;

(F) Provide customer service standards and consumer protection provisions which protect the public welfare and public interest; and

(G) Provide remedies and prescribe penalties for violation of this chapter and any franchise granted hereunder.
(Ord. 37-02, passed 8-2-02)

§ 112.03 DEFINITIONS.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein unless the context clearly indicates that another meaning is intended. When consistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is permissive.

ACT. The Cable Communications Policy Act of 1984 [P.L. 98-549] as amended by the Cable Television Consumer Protection and Competition Act of 1992 [P.L. 102-835] and the Telecommunications Act of 1996 [P.L. 104-104], now or hereafter amended.

AFFILIATE. Any person which has an arrangement of affiliation with the cable operator to provide cable services to the cable operator or to subscribers by way of the cable operator. An affiliate shall not include a business entity which does not provide cable services to the grantee.

BASIC CABLE SERVICE. All subscriber services provided by a grantee in one or more service tiers for an established regular monthly fee, which includes at a minimum the delivery of local television broadcast stations and public, educational and government access channels. Basic service does not include optional program and satellite service tiers, a la carté services to the extent that such services are not ***BASIC CABLE SERVICE*** under FCC rules, per channel, per program or auxiliary services for which

a separate charge is made. However, grantee may include other video programming signals or services on the basic service tier.

BOARD OF PUBLIC WORKS. The Board of Public Works of the city or its successor (also referred to as Board of Works)

CABLE COMMUNICATIONS CHAPTER. The city's Cable Communications Chapter (see ***CHAPTER***)

CABLE OPERATOR. Any person or persons, including but not limited to corporations, partnerships and joint ventures, who provide cable services or other services through means of a cable system, or any person or persons who manage, control, coordinate or direct the operations of a cable system.

CABLE SERVICE. The one-way transmission to subscribers of

(1) Video programming; or

(2) Other programming service and subscriber interaction, if any, which is required for the selection or use of such programming or other programming service.

CABLE SYSTEM or ***SYSTEM*** or ***CABLE TELEVISION SYSTEM.*** 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 program-ming and which is provided to multiple subscribers within a community. 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 in whole or in part to the provisions of Title II of the Telecommunications Act of 1996, except that such facility shall be considered a ***CABLE SYSTEM*** (other than for purposes of Section 621(c)) to the extent that such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) An open video system that complies with Section 653 of the Telecommunications Act of 1996 (P.L. 104-104); or

(5) Any facilities of any electric utility used solely for operating its electric utility services.

CHANNEL. A signaling path provided by a cable communications system to transmit signals of any type to and/or from a subscriber terminal from another point in the cable communications system.

CHAPTER. The City of Anderson cable communications chapter as may be amended from time to time.

CITY. The City of Anderson, Indiana, and all the territory within its present and future corporate boundaries.

CITY CONTROLLER. The City Controller of the City of Anderson, Indiana, or her or his designee.

COMMON COUNCIL or ***COUNCIL.*** The Common Council of the City of Anderson, Indiana.

COMPLAINT. Any written or verbal communication from any person by telephone or by electronic mail from any individual, business, unit of government or institution to the franchising authority regarding a matter or matters pertaining to the service or other function of the cable system or the franchise.

CONTROL or ***CONTROLLING INTEREST.*** Actual working control or ownership of a system in whatever manner exercised unless otherwise specifically agreed to and set out in an agreement between the franchising authority and the grantee. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or entity (except underwriters during the period in which they are offering securities to the public) of 25% or

more of a cable system or the franchise under which the system is operated. A change in the control or controlling interest of an entity which has control or a controlling interest in a grantee shall constitute a change in the control or controlling interest of the system under the same criteria. ***CONTROL*** or ***CONTROLLING INTEREST*** as used herein may be held simultaneously by more than one person or group of persons.

CONVERTER. An electronic device provided by a grantee to subscribers for the purpose of decoding digital and analog signals or changing the frequency of midband, superband, or hyperband signals to a suitable channel or channels which the television receiver is able to deliver at designated dial locations.

DWELLING UNIT. A single-family or multi-family residential place of occupancy or business place of occupancy.

EDUCATIONAL ACCESS CHANNEL. A non-commercial educational access channel or channels set aside and so designated for the use of schools and related educational institutions.

FCC. The Federal Communications Commission and any legally appointed, designated or elected agent or successor.

FRANCHISE. The non-exclusive, revocable rights granted hereunder or as described in a franchise agreement entered into between the city and a grantee to own, operate, construct, reconstruct, upgrade, dismantle, test and use a cable system along the public streets and public ways in the city and is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the city as may be required by other ordinances and laws of the city.

FRANCHISE AGREEMENT. That certain written agreement entered into between a grantee and the city wherein the franchise and the terms thereof are conferred on the grantee.

FRANCHISE AREA. That portion of the city for which a franchise is granted under the authority of a franchise agreement. If not otherwise stated in a franchise agreement, the franchise area shall be the corporate limits of the city including all territory thereafter annexed to the city.

FRANCHISE FEE. Any assessment imposed herein by the city on a grantee solely because of its status as a grantee. The term ***FRANCHISE FEE*** does not include any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed upon both utilities and cable operators or their services) but not including a tax, fee or assessment which is unduly discriminatory against a grantee or cable subscribers; capital costs which are required by the franchise to be incurred by grantee for the establishment of and operation of public, educational or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, liquidated damages or any fee imposed under Title 17, U.S. Code.

FRANCHISING AUTHORITY. The corporate authorities of the City of Anderson, Indiana.

GOVERNMENT ACCESS CHANNEL. A non-commercial channel or channels set aside and so designated for the use of units of local government, in accordance with Sections 602(1) and 611 of the Cable Act (47 U.S.C. 522, 47 U.S.C. 531).

GRANTEE. Any person or persons, including corporations, limited liability companies, partnerships, associations, joint ventureships or organizations of any type granted a franchise hereunder and its agents, employees, subsidiaries, assignees, transferees or lawful successors.

GRANTOR. The City of Anderson, Indiana.

GROSS REVENUES. All revenue collected, earned, or accrued by the grantee, derived from or attributable to the provision of cable service by a grantee or its affiliates within the city including, but not limited to:

(1) Fees charged subscribers for any basic, optional, premium, pay-per-view, per-channel or per-program service;

(2) Installation, disconnection and reconnection fees;

(3) Service call fees;

(4) Leased channel fees;

(5) Rentals of converter or remote control units;

(6) Program guide revenues;

(7) Studio or production equipment rentals;

(8) Late or administrative fees;

(9) Upgrade, downgrade or other change-in-service fees;

(10) Advertising revenues, including commissions;

(11) Revenues from "infomercials", home shopping and bank-at-home channels;

(12) Revenues from the sale, exchange, use or cable-cast of any programming developed on the system for community or institutional use. Those ***GROSS REVENUES*** whose source cannot be specifically identified with a particular subscriber shall be allocated among the units of government served by a grantee from the cable system headend serving the franchise area in proportion to the number of subscribers in each. ***GROSS REVENUES*** shall not include any bad debts, copyright fees, franchise fees, or taxes or other governmentally-imposed assessments on services furnished by a grantee herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by a grantee on behalf of the governmental unit. As of the effective date of this chapter, gross revenues shall not include revenues derived from the sale of Internet or data services carried over the cable system or sales or rentals of cable modems; provided, however, that in the event that a final non-appealed judicial decision is made or the United States Congress and the President of the United States through legislative edict declares that Internet and data services carried over the cable system are subject to regulation by the franchising authority, then revenues collected by subscribers for such Internet and data services carried over the cable system or sales or rentals of cable modems shall be considered to be gross revenues from which franchise fees shall be paid. Any and all franchise fees owed to the city from Internet and data services or sales or rentals of cable modems resulting from a final non-appealed judicial decision or legislation approved by the United States Congress and the President of the United States, shall be paid to the city within a time period established by such ruling or legislation, or by agreement between the city and the grantee.

HEADEND. The control center of a cable system where incoming signals are amplified, converted, processed and combined into a common cable along with any origination cable casting, for transmission to subscribers. ***HEADEND*** usually includes antennas, pre-amplifiers, frequency converters, demodulators, processors, servers and other related equipment.

INSTALLATION. The connection of the system from subscriber drop cables to subscribers' terminals.

LEASED ACCESS CHANNEL. A cable television channel or channels or parts thereof designated for cable-casting which is provided by means of a lease arrangement for cable-cast air time between the cable operator and the lessee. This shall include without limitations all use pursuant to Section 612 of the Act (47 U.S.C. 532).

MAY. A permissive indicator.

MAYOR. The Mayor of the City of Anderson, Indiana, or his or her authorized designee.

MONITORING. Observing a communications signal or the absence of a signal where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided monitoring shall not include system-wide, non-individually addressed sweeps of the system for purposes of

verifying system integrity, controlling return paths transmissions or billing for pay services.

MULTI-CHANNEL VIDEO PROVIDER. Any system including a Satellite Master Antenna Television System (SMATV) that is not a traditional cable system distributing video programming of its own or from third parties to subscribers and which uses all or part of the city's public streets or public ways including rights-of-way in order to distribute such video programming or which distributes such video programming to subscribers over the lines of a common carrier which are located in all or part of the city's public streets or public ways.

NORMAL BUSINESS HOURS. Those hours during which businesses are normally open to serve customers. In all cases, normal business hours must include some evening hours at least one night per week based on customer demand, and some weekend hours.

NORMAL OPERATING CONDITIONS. Those service conditions that are within the control of the grantee. Normal operating conditions include those conditions which are ordinarily under the control of a grantee including but not limited to special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the cable system. ***NORMAL OPERATING CONDITIONS*** excludes those conditions which are not within the control of grantee, including but not limited to natural disasters, civil disturbance, power outages, telephone network outages and severe or unusual weather conditions.

PERSON. Any individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

PUBLIC ACCESS CHANNEL. A cable television channel or channels specifically designated as a channel or channels available to the public for the production of non-commercial programming as subject to applicable law.

PUBLIC STREET. The surface, the air space above the surface and the area below the surface of any public street, road, highway, lane, path, alley, sidewalk, boulevard, drive or bridge now or hereafter held by the city. No reference herein or in any franchise to the public street shall be deemed to be a representation or a guarantee by the city that its title or interest to any property is sufficient to permit its use for such purpose, and a grantee shall by the use of such terms be deemed to gain only such rights to use property in the city as the city may have the undisputed right and power to give.

PUBLIC WAY. The surface, the air space above the surface and the area below the surface of any public driveway, conduit, tunnel, park, parkway, square, waterway, utility easement or other public right-of-way now or hereafter held by or dedicated to the city, except where expressly limited by this chapter or a franchise and, in any event, only to the extent necessary to permit the installation and maintenance of a cable system. No reference herein to the public way shall be deemed to be a representation or guarantee by the city that its title or interest in any property is sufficient to permit its use for such purpose, and a grantee shall, by the use of such term, be deemed to gain only such rights to use property in the city as the city may have the right and power to give.

SERVICE CALL. Grantee's on-site visits to a subscriber's residence regarding cable service.

SERVICE INTERRUPTION or ***OUTAGE.*** The loss of either picture or sound or both for any channel for single or multiple subscriber(s).

SHALL. A mandatory indicator.

SUBSCRIBER. Any person who legally receives one or more of the services provided by a grantee's cable system and does not further distribute such services.

SUBSCRIBER DROP. A cable which connects the tap of a feeder cable to a ground block at the subscriber's premises.

USER. A party utilizing a cable television system channel for purposes of production or transmission of material to subscribers as contrasted with receipt thereof in a subscriber capacity
(Ord. 37-02, passed 8-2-02)

§ 112.04 RIGHTS AND PRIVILEGES OF GRANTEE.

(A) Any cable television franchise granted by the city shall grant to a cable operator or multi-channel video provider acting as grantee the right and privilege to erect, construct, install, repair, replace, reconstruct and retain in, on, over, under, upon and across the public streets and public ways now in existence and as may be created or established during its terms any wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment necessary for the maintenance and operation of a cable system, but only in strict compliance with the provisions of such franchise and this chapter.

(B) Each such franchise shall include the following terms:

(1) A franchise fee not less than the fee required pursuant to § 112.25 of this chapter;

(2) Performance security not less than the security required pursuant to § 112.17 of this chapter;

(3) A franchise term; and

(4) Specially-designated non-commercial channels for use by local governmental, educational, and the public as provided in § 112.34 of this chapter.

(C) Nothing in this chapter or any cable television franchise granted by the city shall be construed to prohibit a grantee from providing cable service, telecommunications service, information services and any other service which it may lawfully provide.
(Ord. 37-02, passed 8-2-02)

§ 112.05 AGREEMENT AND INCORPORATION OF APPLICATION BY REFERENCE.

(A) The execution of a franchise agreement by a grantee shall be agreement and acknowledgment of a grantee to be bound by all the terms and conditions contained in this chapter.

(B) Where a grantee has submitted an application in order to receive a franchise, a grantee shall provide all services specifically set forth in its application and shall provide cable service within the confines of the city. And by its acceptance of the franchise, a grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise.
(Ord. 37-02, passed 8-2-02)

§ 112.06 FRANCHISE AREA.

Each franchise shall be for the incorporated area of the city defined in the franchise agreement, including all territory thereafter annexed to the city.
(Ord. 37-02, passed 8-2-02)

§ 112.07 DURATION AND ACCEPTANCE OF FRANCHISE.

(A) Any franchise and the rights, privileges and authority hereby authorized shall take effect and be in force from and after the signing of a franchise agreement by the city as provided by law and shall continue in force and effect for a term to be specified in the franchise agreement, said term being that as stated in a franchise agreement;

(B) Such franchise, however, shall have no force or effect and shall be null and void except only if the grantee within 60 days after the date of city approval of the franchise shall file with the city its unconditional acceptance of the franchise and promise to comply with and abide by all of its provisions, terms and conditions and the provisions of this chapter.

(C) Such acceptance and promise shall be in writing duly executed and sworn to by or on behalf of a grantee before a notary public.

(D) Such franchise shall be non-exclusive and revocable.
(Ord. 37-02, passed 8-2-02)

§ 112.08 FRANCHISE RENEWAL.

(A) To the extent applicable, current federal procedures and standards pursuant to 47 U.S.C. 546 shall govern the renewal of any franchise awarded under this chapter.

(B) In the event that Section 626 of the Cable Act (47 U.S.C. 546) is repealed and no successor is enacted, then the franchising authority and a grantee shall follow the terms and conditions of 47 U.S.C. 546 as if it were still in effect.
(Ord. 37-02, passed 8-2-02)

§ 112.09 FRANCHISE REVIEW AND MODIFICATION.

(A) To the extent applicable, the modification provisions of the Cable Act (47 U.S.C. 545) as the same may be amended from time to time shall govern the procedures and standards for modification of a franchise. A grantee may file a request for modification of a franchise with the city in accordance with said modification provisions at any time during the term of the franchise.

(B) To the extent that the modification provisions of the Cable Act as the same may be amended from time to time are repealed or otherwise not applicable, a franchise may be modified to the extent permitted by applicable law according to the standard set forth in division (C) below and in other applicable provisions of this chapter.

(C) Any modification to a franchise agreement shall:

(1) Be requested in writing by the grantee.

(2) Be subject to review by the franchising authority. Such review may require a grantee to provide justification for the modification consistent with the provisions of 47 U.S.C. 545.

(3) Require the approval of the Common Council in the form of an ordinance.

(4) If approved, be amended to the franchise agreement.
(Ord. 37-02, passed 8-2-02)

§ 112.10 RIGHTS RESERVED TO THE CITY.

The city hereby expressly reserves the following rights which shall not be deemed to be waived or abrogated by any franchise granted pursuant to this chapter:

(A) To exercise its governmental and police powers now or hereafter to the full extent that such powers may be vested in or granted to the city.

(B) To adopt in addition to the provisions contained herein in any franchise agreement and in any existing applicable ordinance such additional regulations as it shall find necessary in the exercise of its police power. Any conflict between the provisions of a franchise and any other present or future lawful exercise of the city's police powers affecting the public health, safety and welfare shall be resolved in favor of the latter.

(C) To amend this chapter, to modify any franchise agreement pursuant to § 112.09 of this chapter, to require reasonable and appropriate modifications to this chapter which would not alter the provisions concerning franchise renewal or revocation contained herein or which would not materially impact the terms and conditions of the franchise agreement to the detriment of a grantee.

(D) To re-negotiate the terms of any franchise granted pursuant to this chapter should section(s) of the chapter or franchise agreement be rendered void by the FCC or by subsequent changes in applicable federal or state laws.
(Ord. 37-02, passed 8-2-02)

CONSTRUCTION

§ 112.20 FRANCHISE REQUIRED.

No cable operator or multichannel video provider shall be allowed to operate or to occupy or use any public street or public way for system installation and maintenance purposes without a franchise.
(Ord. 37-02, passed 8-2-02)

§ 112.21 POLE LINES AND FACILITY ARRANGEMENTS.

(A) The city and a grantee shall follow the provisions of a general agreement regarding pole attachment between a grantee and the City of Anderson Department of Municipal Light and Power.

(B) A grantee shall, where an agreement can be reached with the telephone company, the utility company serving the city and all other holders of public licenses and franchises within the corporate limits of the city, utilize existing poles, towers or other facilities of said holders wherever possible, and it shall be the sole responsibility of a grantee to negotiate and to enter into any and all contracts with the owners of such facilities to secure the necessary space thereof or therein for its operation under a franchise agreement.

(C) Upon securing such agreement with such other holders of public permits and franchises, a grantee shall be granted the right to use such existing poles, towers, and other facilities. Such use shall be subject to all existing and future ordinances and regulations of the city. All holders of public licenses and franchises within the corporate limits of the city shall cooperate with a grantee to allow grantee's joint use of their poles and pole line facilities wherever possible or wherever such usage does not interfere with the normal operation of said poles. Said cooperation shall include the rights of joint usage at reasonable rates and terms in accordance with applicable law.

(D) To the extent that a grantee is unable to contract with the owners and users of such existing poles, towers and other facilities, it may erect such poles, towers and other facilities which may be required as may be necessary for the proper construction and maintenance of the cable system upon the filing of the plans and specifications for same with the Board of Works and receiving the Board of Works' approval.

(E) A grantee shall grant to the city free of expense, joint use of any and all poles owned by a grantee for any proper municipal purpose insofar as such may be done without interfering with the free use and enjoyment of grantee's own wires and fixtures, and the city shall hold a grantee harmless from any and all actions, causes of actions or damages caused by the placing of city wires or appurtenances upon the poles of a grantee. Where the city desires to make use of the poles or other wire-holding structures of a grantee, but agreement thereof with grantee cannot be reached, the city may require grantee to permit such use for such consideration and upon such terms as the city shall determine to be just and reasonable, if the city determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operations.
(Ord. 37-02, passed 8-2-02)

§ 112.22 SYSTEM CONSTRUCTION.

(A) *Initial franchises - required documents and construction schedule.*

(1) Upon accepting an initial franchise, a grantee shall within 60 days file the documents required to obtain all necessary federal, state and local licenses, permits and authorizations required for the conduct of its business and shall submit monthly reports to the Common Council on progress in this respect until all such documents are in hand. Failure of a grantee to pursue all necessary steps to secure the aforementioned authorizations with due diligence shall constitute a violation of this chapter.

(2) Franchise applications shall include a schedule for construction of the cable system, including a timetable for commencement of cable service to subscribers. Said schedule shall be incorporated into the franchise agreement and shall be

enforceable as to a grantee under the provisions of this chapter.

(3) Within 90 days after accepting a franchise, a grantee shall furnish the city a copy of the preliminary engineering drawings and an operating construction schedule setting forth target dates by areas for construction activity. The drawings and schedule shall be updated whenever substantial changes become necessary.

(4) Every three months after the start of initial construction, or more frequently if requested by the city, a grantee shall furnish the Common Council a report on progress of construction until complete. The report shall include a map that clearly defines the areas wherein cable service to subscribers is available.

(B) *New construction timetable*.

(1) Within two years from the date of the award of an initial franchise, a grantee must make cable television service available to every residential dwelling unit within the franchise area.

(a) A grantee must make cable television service available to at least 20% of the residential dwelling units within the franchise area within six months from the date of the award of the franchise.

(b) A grantee must make cable television service available to at least 60% of the residential dwelling units within the franchise area within one year from the date of the award of the franchise.

(c) A grantee must make cable television service available to 100% of the residential dwelling units within the franchise area within two years from the date of the award of the franchise.

(2) The grantee in its application may propose a timetable of construction which will make cable television service available in the franchise area sooner than the above minimum requirements, in which case said schedule will be made part of the franchise agreement, and will be binding upon a grantee.

(3) Any delay beyond the terms of this timetable, unless specifically approved by the city, will be considered a violation of this chapter for which the provisions of § 112.71 shall apply, as determined by the city.

(4) In special circumstances and for good cause shown by a grantee, the city in the exercise of its sole discretion may waive 100% completion within the two-year time frame, provided that substantial completion is accomplished within the allotted time frame, substantial completion to be not less than 95%. Justification for less than 100% must be submitted subject to the approval of the city.

(C) *Line extensions and density requirements for service*.

(1) Following completion of construction within the franchise area, each grantee shall extend its cable system and make cable service available to areas newly annexed by the city which do not yet receive cable service as follows:

(a) Along public streets or parts of public streets of newly-annexed areas, beginning at the boundary of the prior franchise area or at any trunk, feeder line extension or node beyond the prior franchise area within three months after any such public street reaches a minimum density of 32 dwelling units per street mile; and,

(b) Concurrently with the installation of utility lines to newly-annexed developing areas having a planned minimum density of 32 dwelling units per street mile which lie contiguous to the boundary of the prior franchise area or at the end of any trunk or feeder line extensions or within the service area of any node located beyond the prior franchise area.

(2) Any grantee, in its new or renewal application or proposal, may propose a line extension policy which will result in serving more residents of the newly-annexed areas of the city than as required above, in which case a grantee's proposal will be incorporated by reference in the franchise agreement and will be binding on a grantee.

(3) A grantee shall extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge if the connection to the isolated resident would require no more than a standard 125-foot drop line from grantee's trunk or feeder line.

(4) In areas not meeting the requirements for mandatory extension of service, a grantee shall provide upon the request of a potential subscriber desiring service an estimate of its costs required to extend service to the subscriber prior to starting construction. A copy of the engineering report and proof of payment will be submitted to the Board of Works on areas exceeding ten homes. A grantee shall then extend service upon request of the potential subscriber.

(5) In the event the area subsequently reaches the density required for mandatory extension within 12 months from initial construction, such payments shall be refunded within 12 months from initial construction to the subscriber.

(D) *Undergrounding*.

(1) All installations shall be underground in those areas of the city where utilities providing both telephone and electric service are underground, except as otherwise specifically approved in advance by the city. In areas where either telephone or electric facilities are aboveground at the time of installation, a grantee may install its service aboveground, provided that at such time those facilities are required to be placed underground by the city or are placed underground, a grantee shall likewise place its services underground without additional cost to the city or to the individual subscriber so served within the city. Where not otherwise required to be placed underground by this chapter, a grantee's system shall be located underground at the request of the adjacent property-owner, provided that the excess cost over aerial location shall be borne by the property-owner making the request. Such underground installation shall be constructed to the maximum extent with the then-existing technology and in accordance with all city codes, ordinances and state statutes.

(2) In cases of new construction or property development where utilities are to be placed underground, all cable system facilities also shall be placed underground. If a grantee receives notice of such new construction or property development, including the date on which open trenching is available for the grantee's work (the "Notice"), then a grantee shall provide to the developer or property-owner and to the city the specifications for its trenching, and a grantee shall install its trunk or feeder cable, pedestals and vaults and laterals within 48 hours after the trenches first become available to a grantee for such work, provided grantee has received prior reasonable notice of the availability of the trench(es) unless weather conditions prohibit such trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; provided, however, that if a grantee fails to install its trunk or feeder cable, pedestals and vaults and laterals within said 48 hours subject to the foregoing, then the cost of any new trenching and easements if necessary shall be borne by the grantee. The notice may be given to a grantee at the address stated in the franchise agreement or to the local general manager or system engineer of grantee. Written or oral notice from the developer, property owner or city shall be sufficient to qualify as the Notice.

(E) *Property restoration*

(1) In the event of disturbance of any public street or public way, private property or improvement on either of them by a grantee, it shall at its own expense and in a manner approved by the Board of Public Works or other appropriate governmental authority and the owner replace and restore such public street, public way, private property or improvement in substantially as good a condition as before the work causing such disturbance was done. Where a public street or a public way has been disturbed, a grantee shall restore said public street or public way in accordance with the requirements of applicable city codes and ordinances.

(2) In the event that a grantee fails to perform such replacement or restoration within 30 days to the reasonable satisfaction of the city, the Board of Public Works shall on prior notice to grantee

have the right to undertake remedial restoration activities at the grantee's cost, with such costs to be chargeable against the security fund required of a grantee herein below.

(3) In the event that a grantee has failed to replace or restore private property, replacement or restoration shall be at the sole expense of a grantee.

(4) Whenever in case of emergency it becomes necessary in the judgment of the Mayor, Chief of Police or Fire Chief, to remove or damage any of a grantee's facilities, no charge shall be made by a grantee against the city for restoration or repair.

(F) *Movement of buildings*. At the request of any person holding a valid building moving permit issued by the city or other appropriate government authority and upon at least five days advance written notice, a grantee shall temporarily raise, lower or remove its wires as may be necessary to facilitate such move. The direct expenses of such temporary changes, including standby time, shall be paid by the permit-holder, and a grantee shall have the authority to require payment in advance.

(G) *Removal of vegetation*.

(1) A grantee shall have the authority to trim trees upon and overhanging public streets and public ways that interfere with or come into contact with the wires and cables of a grantee. However, all trimming is to be done under the supervision and direction of a designated city official(s) and at the expense of grantee.

(2) Regardless of who performs the work requested by a grantee, a grantee shall be responsible and shall defend and hold city harmless from any and all damages to any tree as a result of trimming or to the property surrounding any tree, whether such tree is trimmed or removed.

(3) The grantee shall have the authority to trim trees or other natural growth overhanging any of its cable system in the service area at its own expense so as to prevent branches from coming into contact with the grantee's wires, cables or other equipment, subject to the supervision and direction of the franchising authority. Trimming of trees on private property shall require the written consent of the property-owner when such may reasonably be obtained.
(Ord. 37-02, passed 8-2-02)

§ 112.23 CONSTRUCTION AND TECHNICAL STANDARDS.

The following construction standards shall apply to all grantees operating a cable system within the franchise area:

(A) Construction, installation and maintenance of the cable television system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed where possible parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(B) A grantee shall at all times comply with the most recent version adopted by the city of:

(1) National Electrical Safety Code (American National Standards Institute [ANSI]);

(2) National Electrical Code (National Fire Protection Association [NFPA]);

(3) Applicable FCC regulations or other applicable federal, state and local regulations.

(C) In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where a grantee may have equipment located.

(D) Any antenna structure used in the system shall comply with construction, marking and lighting of antenna structure required by the United States Department of Transportation or the Federal Aviation Administration.

(E) All towers, antennas, satellite receiving stations and other exposed equipment including subscriber drops and power supplies of grantee used in the provision of cable service shall be properly wired and grounded in accordance with the National Electrical Code and the National Electrical Safety Code.

(F) All working facilities and conditions used during construction, installation and maintenance of the system shall comply with the standards of the Occupational Safety and Health Administration and the Indiana Department of Labor.

(G) A grantee shall regularly check radio frequency leakage at reception locations for emergency radio services to prove that no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.

(H) A grantee shall provide stand-by power generating capacity at the cable system's headend capable of providing 48 hours of emergency power supply. A grantee shall maintain equipment capable of providing stand-by power at critical system locations for node sites, transportation and trunk amplifiers for a minimum of four hours.

(I) Plans and permits.

(1) Right to review; briefings.

(a) The city shall have the right to review a grantee's construction plans and specifications prior to the commencement of any new construction to assure compliance with the standards specified in this chapter and to inspect all aspects of cable system construction.

(b) The city shall not, however, be required to review or approve such plans and specifications or to make such inspections, and the city specifically disclaims such obligation.

(c) A grantee shall be solely responsible for taking all steps necessary to assure compliance with such standards and to ensure that the cable system is installed in a safe manner and pursuant to the terms and conditions of this chapter and a franchise agreement.

(2) A grantee shall within 90 days after the completion date of cable system construction, reconstruction or upgrade furnish to the city complete "as-built" plans of the cable system and shall thereafter furnish to the city amendments to such plans within 45 days after completion of any extension or modification of the cable system. These plans may be submitted in an electronic format compatible with the city's Geographic Information System (GIS) if the City Engineer and the grantee determine that such plans can be provided electronically and if the grantee has the ability to do so. If so requested in writing by a grantee, the city shall keep such as-built plans confidential to the extent allowable by law and shall show such plans only to those employees, contractors or city officials who need to see them as a part of their responsibilities to the city or pursuant to their utility-locating responsibilities. The as-built plans shall not be released to private parties for competitive purposes in accordance with applicable law.

(3) A grantee shall secure all necessary building and/or inspection permits which are required or hereafter may be required by the ordinances of the city before commencing any new construction of or within the cable system, with specific permission being required for the opening or disturbance of any public street or public way within the city. The permit application shall include a plan drawn in sufficient detail to demonstrate to the city that the cable system will be constructed in accordance with all applicable codes and ordinances. Where cable is to be installed on existing poles, the permit application shall include a drawing showing the existing poles and additional poles, if requested. No construction or other work relating to such facilities within the public streets or public ways of the city shall be commenced until the city shall have approved and issued a permit on the plans, specifications and methods for such work. Any such permit may be so conditioned or restricted as deemed necessary by the city to protect the public health and safety of local residents. Grantee will ensure that all subcontractors are operating in compliance with all applicable federal and state laws

and local ordinances. Subcontractors will be as specified in required permits if the work to be done requires a permit.

(4) Without characterizing the violation of other provisions of this chapter, the failure to obtain said permits shall constitute a material violation of this chapter.

(J) All work involved in the construction, operation, maintenance, repair and removal of the cable system or any part thereof shall be performed in a workmanlike manner using materials of good and durable quality. If at any time it is determined by the city or any other agency or authority of competent jurisdiction that any part of the cable system, including without limitation any means used to distribute signals over or within the cable system, is harmful to the health or safety of any person, then a grantee, at its sole cost and expense, shall promptly correct all such conditions. Any contractor, subcontractor or other person proposed to be employed for the installation, maintenance, relocation or repair of cable system equipment or facilities shall be licensed in accordance with applicable laws and shall be thoroughly experienced in the work for which he or she is retained.

(K) A grantee's transmission and distribution system, poles, wires, pipes, conduits, structures and other appurtenances shall be located, erected and maintained so as not to endanger or interfere with the lives of persons or to interfere with new improvements that the city may deem proper to make or to unnecessarily hinder or restrict the free use of the public streets and public ways. The removal of poles, wires, pipes, conduits, structures or other appurtenances to avoid such interference shall be at a grantee's own expense.

(L) Excavation work and time periods.

(1) No excavation on or in any public street, public way, public property or private property in the city permitted hereunder in connection with the installation of any cable system facilities shall be made more than 24 hours immediately before installation of such facilities. A grantee may apply for a waiver in unusual circumstances.

(2) A grantee shall notify the Director of the Board of Public Works or designated individual at least 72 hours before any excavation on or in any public street, public way, public property or private property so that the Director of the Board of Public Works or his or her designee will have the opportunity to inspect such excavation work.

(3) From April 1 through November 15, all excavations in lawns or grassy parkways shall be backfilled, tamped and restored with sod within 30 calendar days in accordance with the applicable provisions of this chapter.

(M) Location of pedestals and vaults.

(1) Pedestals and similar above-ground appurtenances.

(a) As of the effective date of this chapter, where the city has determined that the location of pedestals and similar aboveground appurtenances located on a public street or public way (other than in an alley or as provided in division (c) below) or on public property will adversely affect the appearance of the city and of the property therein and, accordingly, pursuant to Section 541(a)(2) of the Cable Act, a grantee shall not, except with the express authority of the city, which authority shall not be unreasonably withheld, install or locate a pedestal or any similar above-ground appurtenance on any public street or public way (other than in an alley or as provided in division (c) below) or on any public property as a part of any new construction or any relocation or reinstallation.

(b) Pedestals or similar above-ground appurtenances may be installed on private property only with the express, prior written consent and permission of the affected property-owner or his or her authorized agent or the duly-elected or appointed representative of the affected property; provided, however, that such pedestals or above-ground appurtenances shall comply with all applicable provisions of the city's municipal code.

(c) Notwithstanding division (b) above, pedestals or similar above-ground appurtenances may be installed within certain utility

easements on private property without the consent or permission of the affected property-owner provided that

1. A grantee is lawfully authorized to use such utility easement pursuant to state or federal law; and

2. The grantee's pedestal or similar above-ground appurtenance shall be located as close as is practicable to said existing above-ground appurtenance.

(2) Vaults. A grantee shall not install underground vaults on any public street or public way after the effective date of a franchise except in accordance with and pursuant to the provisions of this subsection. All underground vaults shall be flush-mounted with the surface of the land area.
(Ord. 37-02, passed 8-2-02)

§ 112.24 USE OF PUBLIC STREETS AND PUBLIC WAYS.

(A) All transmission lines, cables, equipment, structures and appurtenances of a grantee's cable system shall be installed and located in compliance with all applicable local ordinances and so as to cause minimum interference with the rights and reasonable convenience of the city and of private property-owners who adjoin any public street or public way. At all times, transmission lines, cables, equipment, structures and appurtenances shall be kept and maintained in a safe, adequate and substantial condition and in good order and repair.

(B) In the maintenance and operation of its cable system in the public streets and public ways, in the course of any new construction or addition to its facilities and at all times when a grantee is working in the public streets and public ways, a grantee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the public streets and/or public ways made by a grantee in the course of its operations shall be guarded and protected by adequate barriers or fences or boardings, the bounds of which shall be clearly designated by suitable barricades, flags, pylons, lights, signs, flares or other devices which shall be used at such times and places as are required by applicable ordinances and at such additional times and places as are reasonably required for the safety of all members of the public.

(C) Unless expressly provided otherwise in a franchise agreement, a grantee shall at all times comply with any and all rules and regulations enacted or to be enacted by the city with reference to construction activity in public streets or public ways.

(D) If at any time during the period of the franchise the city shall elect to alter or change the grade of any public street, public ways or utilities, the grantee, upon reasonable notice by the city, shall promptly remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(E) A grantee shall not use road cuts for the laying of cable or wires without the prior approval of the city.

(F) The right of a grantee to use and occupy the public streets or public ways shall not be exclusive. The city reserves the right to grant any right or use of such public streets or public ways to any person at any time during the term of the franchise or any other franchise subsequently granted to any other person provided such other person does not physically interfere with a grantee's facilities.

(G) If any public street or public way or portion thereof used by a grantee shall be vacated by the city or the use thereof discontinued by the city or the grantee during the term of the franchise, then a grantee shall forthwith at its sole cost and expense remove its facilities therefrom unless specifically permitted by the city to continue to use the same and, on the removal thereof, a grantee shall restore, repair or reconstruct the public street or public way area where such removal has occurred to substantially its original condition as required by the city. In the event of any failure, neglect or refusal by the grantee after 30 days written notice from the city to repair, improve or maintain such public street or public way, the city may but shall be under no obligation to conduct such work or cause it to be conducted, and the actual cost

thereof shall be paid by a grantee in the time and manner as directed by the city. Collection may be made by resort to the letter of credit or cash security deposit established pursuant to § 112.17 of this chapter or by court action or otherwise.
(Ord. 37-02, passed 8-2-02)

§ 112.25 NOTICE TO THE GRANTEE.

(A) Unless otherwise specified in this chapter, all notices from a grantee to the city pursuant to any franchise shall be sent to the Office of the City Controller. A grantee shall maintain with the city throughout the term of the franchise an address for service of notices by mail. A grantee shall maintain a central office to address any issues relating to operating under this chapter.

(B) Where the a franchising authority provides written notice to a grantee regarding any matter concerning this chapter, any of the other ordinances of the city or the franchise agreement, the franchising authority shall provide all such notices in writing with delivery by either of the following: certified United States mail, return receipt requested; overnight delivery service for which written confirmation of delivery is received; or if the parties agree by electronic facsimile transfer ("fax"). Notice shall be deemed to have been given to a grantee upon the date of transmittal; however, this shall not preclude the city from allowing a grantee to act upon such notice where action is applicable within a specified time period starting from the date of receipt by the party to which the notice was sent. Except as provided in § 112.56 regarding performance evaluation sessions herein below, the city shall not take any final action involving the evaluation, modification, renewal, revocation or termination of the grantee's franchise unless the Common Council has:

(1) Called a public meeting for the purpose of taking such action as specified above;

(2) Complied with the public notice provisions of the Indiana Open Door Law (I.C. 5-14-1.5-1 *et seq.*);

(3) Advised a grantee in writing by either certified United States mail or delivery by hand at least seven days prior to such meeting as to its time, place and purpose; and

(4) Given grantee and any interested person an opportunity to be heard at such meeting.

(C) Televised notice of public meetings. Minimum public notice of any public meeting relating to the franchise shall follow state statutory requirements and shall be on the Government Access Channel of the cable system at various points between the hours of 7:00 p.m. and 9:00 p.m. for five consecutive days prior to the meeting.
(Ord. 37-02, passed 8-2-02)

§ 112.26 FORMS OF SECURITY.

(A) *Initial franchises only*. Within 15 days after the award of an initial franchise, a grantee shall deposit with the city either a cash escrow deposit, a faithful performance bond or an irrevocable letter of credit from a financial institution running to the city in the penal sum of $200,000 which may be used for removal of the cable system plant in the event of the termination or revocation of a franchise as stated in § 112.55 of this chapter, and a cash security deposit in the amount of $10,000. The form and content of any such escrow agreement or letter of credit shall be reviewed by the City Attorney and approved by the Common Council.

(B) *Renewal franchises only*.

(1) Within 15 days after the award of a renewal franchise, a grantee shall deposit with the city an irrevocable letter of credit or surety bond from a financial institution acceptable to the Common Council in the amount of $100,000 and, at the city's option, a cash security deposit in the amount of $10,000. The form and content of such letter of credit or surety bond shall be approved by the city's attorney and approved by the Common Council.

(2) The letter of credit or surety bond and cash security deposit shall be used to ensure the faithful performance of a grantee of all provisions of

this chapter and to ensure compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the city having jurisdiction over its acts or defaults under this chapter and to ensure the payment by a grantee of any claims, liens, taxes and penalties assessed pursuant to § 112.71 of this chapter due the city which arise by reason of the construction, operation or maintenance of the system.

(C) *Initial and renewal franchises*.

(1) Said cash escrow deposit or letter of credit or surety bond and cash security deposit shall be recoverable from the escrow agent or principal and sureties or from the cash security deposit by the city for all damages and costs whether direct or indirect resulting from the failure of a grantee to well and faithfully observe and perform any provision of this chapter or the franchise agreement.

(2) Such damages and costs shall be deemed to include as a minimum and without limitation any expenses as may be incurred by the city as a result of the grantee's failure to comply with the obligations imposed by this chapter and the franchise agreement including, but not limited to the cost of removal or abandonment of any property or other costs which may be in default. Such expenses and costs subject to reimbursement from the cash escrow deposit, letter of credit or surety bond shall be based upon verified costs and expenses incurred by the city or by actual cost estimates which are attributed to the failure of grantee to observe and perform any provision of this chapter or the franchise agreement. The rights reserved to the city with respect to the cash escrow or letter of credit and cash security deposit are in addition to all other lawful rights and remedies of the city whether reserved by the franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit or surety bond and security deposit shall affect any other lawful right the city may have.

(3) The cash escrow or letter of credit or surety bond and cash security deposit shall be maintained at the amount established herein for the entire term of the franchise, even if amounts have to be withdrawn pursuant to this chapter. Grantee shall promptly replace any amounts withdrawn from the cash escrow or letter of credit, surety bond or cash security deposit.

(4) If a grantee fails to pay to the city any compensation within the time fixed herein or fails to pay to the city any penalties assessed on taxes due and unpaid or fails to repay the city any damages, costs or expenses which the city incurs as a result of the grantee's failure to comply with all rules, regulations, orders, permits and other directives of the city issued pursuant to a franchise or which the city is compelled to pay by reason of any act or default of a grantee in connection with a franchise or fails to properly and adequately restore any public street, public way, public property or private property disturbed by the grantee's activities or fails to pay any costs incurred by the city in connection with the award of any franchise or renewal franchise or otherwise fails to faithfully perform the duties and responsibilities of a franchise, then the city may withdraw money from the letter of credit, surety bond or cash security fund in accordance with the procedures set forth in division (C)(5) below.

(5) The city shall provide grantee with written notice informing grantee that such amounts are due to the city. The written notice shall describe in reasonable detail the reasons for the assessment. A grantee shall have 30 days subsequent to receipt of the notice or, depending on the circumstances, a reasonable period of time thereto within which to cure every failure cited by the city or to notify the city that there is a dispute as to whether grantee believes such amounts are due the city. Such notice by a grantee to the city shall specify with particularity the basis of grantee's belief that such monies are not due the city.

(6) Any letter of credit or surety bond shall contain the following endorsement:

"It is hereby understood and agreed that this (letter of credit/surety bond) may not be canceled by the issuer bank nor the intention not to renew be stated by the issuer bank until 30 days after receipt by the city by registered mail of a written notice of such intention to cancel or not to renew."

(7) Except as noted below, receipt of the notice by the city shall be construed as a default granting the city the right to immediate payment from either the issuer bank of the amount from the letter of credit or the issuer of the surety bond necessary to cure the default.

(8) The city at any time during the term of a franchise, may waive in writing grantee's requirement to maintain a cash escrow, letter of credit, surety bond or cash security deposit.
(Ord. 37-02, passed 8-2-02)

§ 112.27 CONSTRUCTION SECURITY.

(A) *Initial construction of a cable system*. Under an initial franchise, prior to being approved for an initial installation of a cable system, a grantee shall file with the city a construction letter of credit in the amount of not less than 110% of the costs to install the cable system in the franchise area contained in the application proposal in favor of the city. This letter of credit shall be maintained throughout the construction period and until such time as determined by the city, unless specified in the franchise agreement.

(B) *Upgraded or reconstructed cable systems*. Prior to being approved for a reconstruction or upgrade of the system that involves significant excavation or other disturbance of a substantial portion of the public streets and/or public ways as determined by the city Engineer, a grantee shall file with the city a construction letter of credit in the amount of not less than $100,000. This letter of credit shall be maintained throughout the upgrade period and until such time as determined by the city based upon notification of the completion of the upgrade by the grantee, unless specified in the franchise agreement. Upon the city's determination that the upgrade or reconstruction of the cable system is complete, the requirement for the construction letter of credit shall be rescinded.

(C) In the event that a grantee constructs, reconstructs or upgrades the cable system after the initiation of upgrade or rebuild, and if a grantee fails to diligently pursue and complete the construction of the installation or upgrade of its cable system or fails to well and truly observe, fulfill and perform each term and condition of this chapter or of the franchise as it relates to construction, installation or upgrade of the system, after receipt of notice of such failure and a reasonable period in which to cure, then there shall be recoverable jointly and severally from the principal and surety of the letter of credit the cost of completing such construction and any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the grantee plus a reasonable allowance for attorney's fees, including the city's legal staff and costs, up to the full amount of the letter of credit. This division shall be an additional remedy for any and all violations outlined in § 112.26.

(D) The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be canceled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the city by registered mail a written notice of such intent to cancel or not to renew."

(E) Upon receipt of a 30-day notice and grantee's failure to commence and promptly proceed to cure, this shall be construed as default granting the city the right to demand payment on the letter of credit.

(F) The city at any time during the term of this chapter may in writing waive or reduce grantee's requirement to maintain a construction letter of credit.
(Ord. 37-02, passed 8-2-02)

§ 112.28 LIABILITY AND INSURANCE.

(A) A grantee shall maintain and by its acceptance of a franchise specifically agrees that it will maintain throughout the term of the franchise general comprehensive liability insurance insuring a grantee and the city and the city's officers, boards, commissions, elected and appointed officials, agents, and employees, with regard to all claims mentioned herein below in the minimum amounts of:

(1) $3,000,000 for bodily injury or death to any one person, within the limit of $5,000,000 for bodily injury or death resulting from each occurrence;

(2) $3,000,000 for property damage including damage to city property from each occurrence;

(3) $3,000,000 for all other types of liability resulting from each occurrence;

(4) Workers Compensation Insurance within statutory limits of not less than that required by the State of Indiana;

(5) A grantee shall carry and maintain in its own name automobile liability insurance with a limit of $3,000,000 for each person and $3,000,000 for each occurrence for property damage with respect to owned and non-owned automobiles for the operation of which a grantee is responsible.

(6) A grantee shall carry and maintain in its own name automobile liability for bodily injury, including death and property damage with a limit of $3,000,000 for each occurrence and $3,000,000 aggregate.

(B) All policies of insurance required by this section shall be placed with companies which are qualified to write insurance in the State of Indiana and which maintain through-out the policy term a General Rating of "A-" and a Financial Size Category of "B+XIII" as determined by Best Insurance Rating services unless otherwise specified by the franchise agreement.

(C) Certificates of Insurance obtained by a grantee in compliance with this section must be approved by the City Attorney and such insurance policy certificate of insurance shall be filed and maintained with the Board of Public Works during the term of the franchise. A grantee shall immediately advise the City Attorney of any litigation that may develop that would have a material adverse effect on this insurance.

(D) Should the City Attorney find a document to be in non-compliance, then the City Attorney shall so notify a grantee and grantee shall be obligated to cure the defect.

(E) *Self-insurance*. A grantee may self-insure all or a portion of the insurance coverage and limit requirements required by division (A) of this section. If grantee self-insures, it is not required to the extent of such self-insurance to comply with the requirement for the naming of additional insureds under this division or the requirements of divisions (F) and (I) of this section. If a grantee elects to self-insure, it shall provide to the city evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements under division (A) of this section, such as evidence that a grantee is a "private self-insurer" under the Workers Compensation Act.

(F) Neither the provisions of this section nor any damages recovered by the city thereunder shall be construed to or limit the liability of a grantee under any franchise issued hereunder or for damages.

(G) Such insurance policies provided for herein shall name the grantor, its officers, boards, commissions, agents and employees as additional insured and shall be primary to any insurance carried by the grantor. The insurance policies required by this section shall be carried and maintained by a grantee throughout the term of the franchise and such other period of time during which a grantee operates or is engaged in the removal of its cable system.

(H) Each policy shall contain a provision providing that the insurance policy may not be canceled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the city by registered mail of written notice of such intention to cancel or not to renew.

(I) Insurance of subcontractors required. If a grantee uses any subcontractors ("subcontractors") to perform any work relating to the cable system, grantee will be responsible for supervision, quality control, payment and insurance of and for all work performed by the subcontractors.

(Ord. 37-02, passed 8-2-02)

§ 112.29 INDEMNIFICATION.

(A) A grantee shall save and hold the city, its corporate authorities, officers (elected and appointed), boards, commissions, employees, agents and all associated, affiliated, allied and subsidiary entities of the city now existing or hereinafter created and their boards, commissions, employees and agents (hereinafter referred to as "indemnitees") harmless from and against:

(1) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants) which may be imposed upon, incurred by or asserted against the indemnitees by reason of any act or omission of the grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the cable system caused by grantee, its subcontractors or agents or the grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

(2) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants) which are imposed upon, incurred by or asserted against the indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the cable system. Upon the written request of the city such claim or lien shall be discharged or bonded upon such request.

(3) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants) which may be imposed upon, incurred by or asserted against the indemnitees by reason of any financing or securities offering by grantee or its affiliates for violations of the common law or any laws, statutes or regulations of the State of Indiana or of the United States, including those of the Federal Securities and Exchange Commission, whether by a grantee or otherwise; excluding therefrom, however, claims which are solely based upon and arise solely out of information supplied by the city to a grantee in writing and included in the offering materials with the express written approval of the city prior to the offering.

(B) Damages shall include but not be limited to penalties arising out of copyright infringements and damages arising out of any failure by a grantee to secure consents from the owners, authorized distributors or licensees, or programs to be delivered by the grantee's cable system.

(C) The grantor shall give immediate notice to a grantee of any claim or facts which might give rise to a claim under this chapter. Said notice shall state particulars sufficient to identify the claim and shall contain reasonably-obtainable information respecting the time, place and circumstances of the occurrence underlying the claim or potential claim. However, the city shall not be held liable in any way should said notice not be given to the grantee.

(D) A grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any city-owned or controlled property, including public streets and public ways, and a grantee hereby agrees to indemnify and hold harmless the indemnitees against and from any claim asserted or liability imposed upon the indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the cable system or the grantee's failure to comply with any federal, state or local statute, ordinance or regulation, except for any claim asserted or liability imposed upon the indemnitees that arises or is related to wanton or willful negligence by the indemnitees.

(E) In the event any action or proceeding shall be brought against the indemnitees by reason of any matter for which the indemnitees are indemnified hereunder, a grantee shall, upon notice from any of the indemnitees, at the grantee's sole cost and expense, resist and defend the same, provided further, however, that a grantee shall not admit liability in any such matter on behalf of the indemnitees without the written consent of the City Attorney or his or her designee. The grantor shall, at its sole cost, have the option to participate in its defense as an indemnitee in coordination with the defense provided by a grantee.

(F) The city shall give a grantee prompt notice of the making of any written claim or the commencement of any action, suit or other proceeding covered by the provisions of this section.

(G) Nothing in this chapter or in any franchise is intended to or shall be construed or applied to express or imply a waiver by the city of statutory provisions, privileges or immunities of any kind or nature as set forth in Indiana Statutes, including the limits of liability of the city as exists presently or as may be increased from time to time by the legislature.
(Ord. 37-02, passed 8-2-02)

SERVICES AND RATES

§ 112.40 RIGHTS OF INDIVIDUALS.

(A) 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, income, gender, marital status, sexual preference or age. A 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 non-discrimination which are hereby incorporated and made part of this chapter by reference.

(B) A grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission and of state and local governments, and as amended from time to time.

(C) A grantee shall, at all times, comply with the privacy requirements of state and federal law.
(Ord. 37-02, passed 8-2-02)

§ 112.41 SERVICE AVAILABILITY AND RECORD REQUEST.

A grantee shall provide cable service throughout the entire franchise area pursuant to the provisions of this chapter and the franchise and shall keep a record for at least three years of all requests for service received by the grantee. Requests for service shall include telephone and written requests for installations, including new cable service, disconnections, and repairs. This record shall be available for inspection by the city or its designee at a grantee's office located nearest to the city during regular office hours upon prior reasonable notice. The grantee's provision of any such information shall be subject to grantee's subscriber privacy requirements.
(Ord. 37-02, passed 8-2-02)

§ 112.42 AVAILABILITY OF BOOKS AND RECORDS.

(A) A grantee shall fully cooperate in making available at reasonable times, and the city shall have the right to inspect, where reasonably necessary for the enforcement of the franchise, books, records, maps, plans and other like materials of a grantee applicable to the cable system at any time during normal business hours; provided a grantee may require inspection to take place on the grantee premises.

(B) Where grantee is unable to locate books or records specific to the franchise areas at a local or regional location in the Indianapolis metropolitan area, grantee may maintain such books and records at a remote location with the provision that in the event that the city or its designee requests to inspect such records, grantee shall permit the inspection of such records within 14 days of such request.

(C) The following records and/or reports shall be sent to the city upon written request of the city for a 12-month interval:

(1) A report for all temporary subscriber drops installed, including "snow drops", which includes the location, date of installation, and date of burial.

(2) Periodic preventive maintenance reports.

(D) The following records and/or reports shall be sent to the city upon written request of the city for a 24-month interval:

(1) Actionable, written subscriber inquiry/complaint resolution data and the right to review documentation concerning these inquiries and/or complaints on an aggregate basis with respect for federal subscriber privacy legislation periodically.

(2) During the reconstruction or upgrading of a substantial portion or all of the cable system in the city, periodic construction update reports.

(E) The following records may be reviewed upon request by the city:

(1) Any copies of FCC Form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies; and

(2) Any other additional information as the city may reasonably require from time to time provided that such requests pertain to regulatory matters involving the enforcement of this chapter, other applicable ordinances of the city or the franchise agreement.

(F) All proprietary information shall be provided on a confidential basis, and any such information shall be subject to federal subscriber privacy legislation.
(Ord. 37-02, passed 8-2-02)

§ 112.43 OTHER PETITIONS AND APPLICATIONS.

Upon request, copies of all petitions, applications, communications and reports submitted by a grantee to the Federal Communications Commission, to the Securities and Exchange Commission or to any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations provided by the cable system in the franchise area and authorized pursuant to this chapter or the franchise agreement or received from such agencies shall be provided upon request to the city within 14 working days of the city's request, and a method of obtaining the file shall be made available to the city.
(Ord. 37-02, passed 8-2-02)

§ 112.44 FRANCHISE FEE.

(A) A grantee shall pay to the city a franchise fee of not less than 5% of its annual gross revenues or such other maximum amount as allowed by law which is derived from its cable television operations in the city.

(B) The franchise fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the city. The quarterly anniversary shall be March 31, June 30, September 30, and December 31 of each year, and each quarterly payment shall be paid within 45 days thereafter. A grantee shall also file a complete and accurate statement verified by an authorized financial officer of grantee of all gross revenues as previously defined within said 45 days. A grantee shall annually within 90 days after the close of the grantee's fiscal year prepare in accordance with generally accepted accounting principles (GAAP) and submit to the city a statement of gross revenues audited by a certified public accountant who may be employed by the grantee and covering the grantee's operations in and relating to the city and the grantee's cable system.

(C) The City Controller or her/his designee shall have the right, power and authority upon reasonable notice to inspect and copy the books and records of a grantee insofar as such books and records pertain to the gross revenues of the grantee's operation in the city for 36 months, 24 months of which shall be kept on paper and the remaining 12 months shall be kept electronically and the right to audit and to recompute any amounts determined to be payable under this chapter. A grantee shall furnish to the city upon request by the City Controller or her/his designee such

additional reports, documents and information necessary to enable the grantor to verify the payments made to it by a grantee. Any additional amount due the city as a result of an inspection shall be paid within 60 days following written notice to a grantee by the city, which notice shall include a copy of the inspection report. The cost of said inspection, including any travel expenses incurred by the city or its designee where such inspection necessitated travel outside the Indianapolis metropolitan area, shall be borne by a grantee if it is properly determined that grantee's annual payment due to the city for the preceding year is increased thereby by more than 4%, otherwise such costs shall be borne by the city and a grantee equally.

(D) In the event that any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at an annual rate of two percentage points over the prime rate given by Bank One, N.A., to its most creditworthy borrowers of demand loans as of the date of default.

(E) A grantee shall maintain books and records of its operations within and related to the city and the grantee's cable system in sufficient detail to show gross revenue by service category consistent with generally-accepted accounting principles (GAAP). Said books and records shall be retained in accordance with the grantee's document retention policies, but in no event less than five years.

(F) In the event that the franchise is revoked or expires, a grantee shall file with the city within 45 days of such revocation or expiration a statement clearly showing the gross revenues received by a grantee since the end of the previous fiscal quarter. A grantee shall pay such partial franchise fees due at the time such statement is filed or within 45 days of such revocation or expiration.

(G) The acceptance by the city of any franchise fee payment shall not in any way be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim the city may have for further or additional sums payable under the provisions of the franchise. All franchise fee payments shall be subject to audit and re-computation by the city in accordance with this section.

(H) A grantee shall acknowledge as follows:

(1) The franchise fee is not a tax; and

(2) The franchise fee shall be in addition to any and all taxes, other applicable fees or charges that a grantee or any affiliate shall be required to pay to the city or to any state or federal agency or authority, all of which shall be separate and distinct obligations of a grantee and its affiliates; and

(3) The term franchise fee does not include any tax, fee or assessment of general applicability (including 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).

(4) Neither a grantee nor any affiliate shall have or make any claim for any deduction or other credit of all or any part of the franchise fee from or against any of said city taxes or other fees or assessments of general applicability that a grantee or any affiliate is required to pay to the city except as may be identified and authorized by federal or state law; and

(5) Except as authorized by law, if a grantee or any affiliate applies or seeks to apply all or any part of the amount of the franchise fee as a deduction or other credit from or against any city tax or other fee or assessment of general applicability or if a grantee or any affiliate applies or seeks to apply all or any part of any such tax or other fee or assessment of general applicability as a deduction or other credit from or against the franchise fee, then, in any such event, such action will be deemed a violation of this chapter subject to the provisions of § 112.40 herein.

(I) The city may increase the franchise fee if and to the extent that the maximum allowable franchise fee is increased by an act of the United States Congress, a court of competent jurisdiction or the FCC. If the city desires to increase the franchise

fee in that event, then the city shall provide at least 60 days written notice to the grantee. If, within 60 days after the city's notice, a grantee so requests, the city shall conduct a public meeting on the franchise fee increase. The effective date of the proposed franchise fee increase shall be delayed until the expiration of the 60-day notice period if within that period a grantee does not request an opportunity to be heard at a public meeting or, if an opportunity to be heard at a public meeting is requested, until the conclusion of the public meeting conducted pursuant to this division.
(Ord. 37-02, passed 8-2-02)

§ 112.45 REQUESTS FOR SERVICE AND TEMPORARY SERVICE DROPS.

(A) Where a person living within a newly-annexed area of the city requests installation of cable service, such installation shall be performed within the terms of the line extension policy stated in § 112.13(C) herein above.

(B) Temporary service drops.

(1) A grantee shall put forth every effort to bury temporary drops within 14 working days after placement between March 1 and December 1, weather permitting, unless a grantee receives permission to delay burial. Temporary drops will be buried by a grantee as expeditiously as possible, and in no event will a drop which has been placed between November 15th of the prior year and March lst of the current year be left unburied beyond May lst of the same year, weather permitting. Any delays for any other reason than weather, ground conditions, street construction or system redesign will be communicated to the city and copied to the subscriber.

(2) Upon request of the city, a grantee shall provide a monthly report to the city on the number of drops pending.

(C) A grantee shall render efficient service, make a good faith effort to make repairs within 24 hours and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

(D) A grantee shall not allow its cable or other operations to interfere with television reception of subscribers or persons not served by the grantee; nor shall the cable system interfere with, obstruct or hinder in any manner the operation of the city's electrical utility and other various utilities serving the residents within the confines of the city; nor shall other utilities interfere with a grantee's cable system.
(Ord. 37-02, passed 8-2-02)

§ 112.46 REQUIRED SERVICES AND FACILITIES.

(A) A grantee shall, as a part of an initial franchise, provide the franchising authority with a written description of the cable system within the franchise area, including technical characteristics, channel capacity, channel carriage and a strand map.

(B) Any cable system shall provide a minimum of 90 channels without regard to method of delivery or capacity, stereo sound reproduction capacity where a stereo signal is provided by the programmer and platform expansion capability without regard to technological format that enables a grantee to respond to marketplace conditions for enhanced cable services.

(C) A grantee shall install electronic status monitoring equipment at locations consistent with the grantee's engineering practices.

(D) A grantee shall design said cable system with the capability to provide upstream and downstream channel capacity. A grantee shall also operate and maintain said cable system in a manner which will enable continuous 24-hour operation of all services as required herein.

(E) Upon request of the subscriber, a grantee shall make available a "parental control" mechanism or device that permits the subscriber to "lock out" audible and visual reception of programming of the subscriber's choice. For purposes of this chapter, a converter box which contains a micro-processing chip that enables blocking or scrambling of cable-cast signals shall meet the requirements of this section.
(Ord. 37-02, passed 8-2-02)

§ 112.47 PERIODIC TESTING AND COMPLIANCE WITH FCC STANDARDS.

(A) A grantee shall construct and operate the cable system to comply with the FCC technical standards as contained in 47 U.S.C. 76, Subpart K of the commission's rules and regulations, as updated and amended from time to time.

(B) A grantee shall perform all tests necessary to determine compliance with the FCC technical standards. Tests shall include, at minimum, proof-of-performance tests required by FCC Rule Section 76.601 (47 U.S.C. 76.601) and such additional or repeat tests involving specific subscriber terminals as may be required to determine compliance with the FCC technical standards.

(C) Written records of test results shall be maintained at a grantee's local office and made available for inspection by the city or other designated agent of the city upon request of the city.

(D) The city or other designated agent of the city may monitor and facilitate the enforcement of the FCC technical standards referenced herein in accordance with the Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96-85, FCC 99-57, released Mach 29, 1999 as directed by the city.

(E) When repeated, material complaints regarding the quality of video or audio service have been made during the course of a periodic evaluation session as described in § 112.56 below or where there exists other evidence which in the judgment of the city in consultation with the grantee casts doubt on the reliability or quality of cable service, the city shall have the right and authority to require a grantee to test, analyze and report on the performance of the system. A grantee shall fully cooperate with the city in performing such testing and shall prepare results and a report, if requested, within 30 days after notice. Such report shall include the following information:

(1) The nature of the complaint or problem that precipitated the special tests;

(2) The system component(s) tested;

(3) The equipment used and procedures employed in testing;

(4) The method, if any, in which such complaint or problem was resolved; and

(5) Any other information pertinent to the tests and analysis which may be required.

(F) If after receiving grantee's report and after a grantee has completed any corrective action identified in the report the city determines that reasonable evidence still exists of inadequate cable system performance and the grantee fails to promptly commence corrective action, then the city may enlist an independent engineer at grantee's expense to perform tests and analysis directed toward such suspected failures to meet the requirements of this chapter. Grantee shall cooperate and permit such testing.

(G) The city shall require tests, analysis and reports covering specific subjects and characteristics based on repeated material complaints or other evidence only when the city has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against cable service which has significantly degraded video and/or audio quality.

(H) The city may require the tests to be supervised by a professional cable television engineer to be approved by the city not on the staff of the grantee. The engineer shall sign all records of special tests and forward to the city such records with a report interpreting the results of the test and recommending action to be taken.
(Ord. 37-02, passed 8-2-02)

§ 112.48 CUSTOMER SERVICE STANDARDS.

(A) A grantee shall be subject to the following customer service standards consistent with 47 U.S.C. 76.309, 47 U.S.C. 76.1603, and 47 U.S.C. 76.1618:

(1) A grantee will maintain a local, toll-free or collect telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(a) Trained grantee representatives will be available to respond to customer telephone inquiries during normal business hours.

(b) After normal business hours, the access line may be answered by a service or automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained grantee representative on the next business day.

(2) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90% of the time under normal operating conditions as measured on a quarterly basis.

(3) A grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(4) Under normal operating conditions, the customer will receive a busy signal less than 3% of the time.

(5) Customer service centers and bill payment locations will be open at least during normal business hours and will be conveniently located.

(6) Installations, outages, and service calls. Under normal operating conditions, each of the following four standards will be met no less than 95% of the time as measured on a quarterly basis.

(a) Standard installations will be performed within seven business days after an order has been placed. Standard installations are those that are within 125 feet of the existing distribution system.

(b) Excluding conditions beyond the control of the grantee, a grantee will begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known. A grantee must begin actions to correct other service problems the next business day after notification of the service problem.

(c) The "appointment window" alternatives for installations, service calls and other installation activities will either be at a specific time or, at maximum, a four-hour time block during normal business hours. A grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

(d) A grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled as necessary, at a time which is convenient for the customer.

(7) Communications between a grantee and subscribers.

(a) Notification to subscribers. A grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers and at any time upon request:

1. Products and services offered.

2. Prices and options for programming services and conditions of subscription to programming and other services.

3. Installation and service maintenance policies.

4. Instructions on how to use the cable service.

5. Channel positions of programming carried on the system; and,

6. Billing and complaint procedures, including the address and telephone number of the franchising authority's cable office.

(b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of 30 days in advance of such changes if the change is within the control of the cable operator. In addition, a grantee shall notify subscribers 30 days in advance of any significant changes in the other information required by division (A)(7)(a) of this section.

(c) In addition to the requirement of division (A)(7)(b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and the franchising authority before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g. inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of digital broadcast signals, a grantee need only identify for subscribers the television signal added and not whether that signal may be multiplexed during certain day-parts.

(d) A grantee shall provide written notice to a subscriber of any increase in the price charged for the basic service tier or associated equipment at least 30 days before any increase is effective. The notice should include the name and address of the franchising authority.

(e) To the extent that a grantee is required to provide notice of service and rate changes to subscribers, it may provide such notice using any reasonable written means at its sole discretion.

(f) Notwithstanding any other provision of Part 76 of the FCC Cable Television Regulations, a grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, state, or franchising authority on the transaction between a grantee and the subscriber.

(g) Billing.

1. Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including but not limited to basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

2. In case of a billing dispute, a grantee must respond to a written complaint from a subscriber within 30 days.

(h) Refunds. Refund checks will be issued promptly, but no later than either:

1. The customer's next billing cycle following resolution of the request or 30 days whichever is earlier; or

2. The return of the equipment supplied by a grantee if service is terminated.

(I) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(B) Nothing in this section shall be construed to prevent or prohibit:

(1) A franchising authority and a grantee from agreeing to customer service standards that exceed the FCC customer service standards;

(2) The franchising authority from enacting or enforcing any consumer protection law to the extent not specifically preempted herein; or

(3) The establishment or enforcement of any state or municipal law or regulation concerning

customer service that imposes customer service requirements that exceed or address matters not addressed by the FCC customer service standards. (Ord. 37-02, passed 8-2-02)

§ 112.49 CONSUMER PROTECTION.

(A) In the event of a verifiable service interruption, the following standards for subscriber credits shall be applied by the grantee:

(1) If a subscriber experiences a service interruption totaling four hours or more on any day in any calendar month, then a grantee shall provide a credit to that subscriber equal to one-thirtieth of one month's total fees paid by that subscriber for each day on which such a service interruption occurs; provided, however, that such credit shall not apply to a subscriber disconnected because of non-payment or excessive signal leakage. Such credit shall be provided by a grantee upon request from that subscriber of such service interruption.

(2) If a subscriber reports a verifiable service interruption totaling four hours or more on four or more days in any calendar month, then a grantee shall provide a credit to that subscriber upon request equal to one month's total fees paid by that subscriber; provided, however, that such credit shall not apply to a subscriber disconnected because of non-payment or excessive signal leakage. Such credit shall be provided by a grantee automatically upon request from that subscriber of the fourth such service interruption.

(B) A grantee shall provide advance written or other notice to residents when performing scheduled system construction in the public easements, utility easements or otherwise on the residents' private property. Said notice may utilize door hangers, letters, bill-stuffers or personal communications from a grantee representative to a resident. Further, a grantee shall use its best efforts to notify residents when performing non-scheduled system construction, including unanticipated work associated with a service call or service interruption.

(C) Identification of customer service representatives and technicians.

(1) Identification of telephone representatives. Upon telephone contact by a customer, customer service representatives of a grantee shall identify themselves by first name. Technicians representing a grantee or his contractors or subcontractors shall wear a company uniform or display upon request a bona fide company identification badge.

(2) Identification of service representatives. Technicians of a grantee and its contractors or subcontractors shall identify vehicles used for technical services with the name of a grantee or contractor or subcontractor of the grantee. Where practicable, vehicles belonging to the contractor or subcontractor shall also be identified with the grantee's name located in a conspicuous place and manner. The type of identification need not be of a permanent nature.

(D) A grantee shall establish a repair service available on a 24-hour, seven-day-a-week basis, capable of identifying, locating and correcting major cable system malfunctions in an expeditious manner. Said repair service shall be staffed with a workforce of skilled technicians and keep and maintain an inventory of maintenance and repair parts. Upon completion of a service call, installation, or installation-related activity, the subscriber shall receive a notification of the service call. Such notification shall be in the form of a door tag.

(E) A grantee shall issue the subscriber a refund for any amount due to the subscriber at the time of the termination of cable service. A grantee shall refund the subscriber in the form of a refund check. Refund checks shall be issued promptly, but no later than either the customer's next billing cycle following resolution of the request or 30 days, whichever is earlier, or the return of the equipment supplied by a grantee if service is terminated.

(F) In the event that a grantee leases accessory equipment for receiving cable service:

(1) A grantee may assess a reasonable deposit for the acquisition of cable service by a subscriber, and for the rental of converter box, remote control and related equipment necessary for the reception or interdiction of cable service.

(2) Upon the termination of cable service by the subscriber and return of converter boxes, remote control units and related equipment in reasonable condition, deposits for said service and equipment shall be returned to the subscriber within 30 days of the date that the equipment supplied by a grantee is returned.

(G) A grantee shall adhere to the following installation standards. A subscriber's standard subscriber drop shall be connected to the dwelling unit by either:

(1) Connection of the aerial drop to the dwelling unit in accordance with National Electrical Code rule 820-10(c)) or its successor, or by;

(2) Attachment of the drop to the side of the utility pole and buried from the base of the utility pole to the dwelling unit.

(H) A subscriber shall have the ability to disconnect service at any time at no charge. A grantee shall cease charging for the subscriber's service on the date that service is terminated.

(I) A grantee shall be subject to the following complaint procedures. As subscribers are connected or reconnected to the system, a grantee shall by appropriate means such as a card or brochure furnish information concerning the procedures for making inquiries or complaints, including the address and telephone number of the customer service department of the grantee's cable system operations to whom such inquiries or complaints are to be addressed.

(J) A grantee shall keep a monthly service log which indicates the nature of each service complaint received during the past 12 months, the date and time each complaint was received, the disposition of each complaint, and the time and date thereof. This log shall be sent to the city upon request, subject to grantee's privacy obligations.

(K) The city or other designated agent of the city shall have the authority to investigate complaints tendered by subscribers to the city.

(L) When the city or other designated agent of the city refers a complaint from a subscriber to a grantee for resolution, a grantee shall investigate such complaint within two working days from the date of a grantee's receipt of such referral. A grantee's investigation shall include contact to the subscriber where possible and a written response to the city with a copy to the city's designated agent if the complaint is referred from that source. At the discretion of the city, the referral may be sent to a grantee in writing on a form to be provided by the city or other designated agent of the city. In such case, the resolution response shall be provided on the form provided by the city or other designated agent of the city. Upon completion of investigation of an unresolved subscriber complaint, the city, in accordance with a franchise agreement, shall provide to a grantee notice and an opportunity to cure any error, deficiency or violation of the franchise agreement or this chapter found in the course of such investigation.

(M) If a grantee's response to the city-referred complaint is not satisfactory to the complainant, the complainant shall be referred to a grantee's appropriate cable system management personnel. Grantee's management shall make a good faith effort to reach resolution of the complaint and shall notify the city and copy the designated agent of the city in writing of its effort to resolve the complaint. If a grantee's cable system management cannot resolve the complaint, a grantee shall provide the name, address, and telephone number of the appropriate management personnel at the next level of operations.
(Ord. 37-02, passed 8-2-02; Am. Ord. 1-03, passed 2-13-03)

§ 112.50 CONTINUITY OF SERVICE MANDATORY.

(A) In the event of revocation of a franchise, expiration of a franchise or transfer of a franchise between the existing grantee and a successor grantee, the existing grantee shall continue to provide cable service to its subscribers for a reasonable period of time in the same manner and with the same types of programming, customer service and repair capabilities under the same terms and conditions as provided by a franchise agreement and this chapter prior to the change in the status of the franchise.

(B) If there is a change of franchise or if a new cable operator or multichannel video provider acquires the cable system, a grantee shall cooperate with the city, new franchisee and operator in maintaining continuity of service to all subscribers. During such period, a grantee shall be entitled to the revenues for any period during which it operates the system.
(Ord. 37-02, passed 8-2-02)

§ 112.51 TRANSFER OF OWNERSHIP OR CONTROL.

(A) Except or as otherwise provided in the franchise agreement, the franchise shall not be assigned, transferred, pledged, leased, sublet, hypothecated or mortgaged either in whole or in part disposed of, transferred in trust, pledged in whole or in part by voluntary sale, merger, sale and leaseback consolidation or otherwise or by forced or involuntary sale without prior consent of the city expressed by ordinance and then on such conditions as therein maybe prescribed. Any sale, transfer or assignment not made according to the procedures set forth in this chapter shall render the franchise agreement void. The sale, transfer or assignment in bulk of the major part of the tangible assets of a grantee shall be considered an assignment and shall be subject to the provisions of this section.

(B) Any sale, transfer or assignment authorized by the city shall be made by a bill of sale or similar document, an executed copy of which shall be filed with the city within 30 days after such sale, transfer or assignment. The city shall not withhold its consent unreasonably. The transferee must at a minimum satisfy the legal, financial and technical qualifications as established by the Act (47 U.S.C. 537) and character qualifications as established for new franchise applicants as stated in § 112.80 herein below. A grantee shall assist the city in such inquiry regarding these qualifications. In no event shall a transfer of ownership or control be approved without the successor(s) in interest to the franchise agreement agreeing in writing to comply with the terms, obligations and conditions of the franchise agreement.

(C) Prior approval of the city shall be required where ownership or control of more than 5% of the right-of-control of a grantees acquired during the term of the franchise in any transaction or series of transactions by a person or group of persons acting individually or in concert, none of whom owned or controlled 5% singularly or collectively on the effective date of the franchise agreement. The word "control" as used herein is not limited to major stockholders but also includes actual working control in whatever manner exercised. By its acceptance of the franchise agreement, a grantee specifically grants and agrees that any such acquisition occurring without a prior approval of the city shall render the franchise void.

(D) Subject to any limitations set forth in the franchise agreement, any transfer of the grantee's cable system or any part thereof subject to the city's right of approval pursuant to division (A) hereof shall also be subject to the city's right to elect to acquire the grantee's system or the part thereof proposed to be transferred for the consideration specified in a bona fide purchase offer acceptable to the grantee. The city shall exercise this right by written notice to a grantee within 30 days following its receipt of the notice required in division (E) of this section. Except for the consideration, the city shall be obligated in exercising this right to accept all other terms of the proposed transfer. The city's rights hereunder shall in no way affect its independent rights under any other provision of this chapter or under the franchise agreement.

(E) A grantee shall submit a petition to the city requesting the city's approval before a grantee takes any action in furtherance of accomplishing any such assignment, sale, transfer, pledge, lease, sublet, hypothecation or mortgage containing or accompanied by such information as is required in accordance with FCC regulations and by the city. The city shall have 120 days to act upon any request for approval of any such assignment, sale, transfer, pledge, lease, sublet, hypothecation or mortgage. The city shall be deemed to have consented to a proposed assignment, sale, transfer, pledge, lease, sublet, hypothecation or mortgage if its refusal to consent is not communicated in writing to a grantee within 120 days following receipt of said petition and receipt of all necessary information as to the effect of the proposed assignment, transfer, pledge, lease, sublet, hypothecation or mortgage upon the public, unless the requesting party and the city agree to an extension of time.

(F) The consent or approval of the city to any sale, transfer, lease, trust, mortgage or other instrument of hypothecation shall not constitute a waiver or release of the rights of the city under this chapter and the franchise agreement.

(G) In the absence of extraordinary circumstances the city shall not be required to approve any transfer or assignment of a new franchise prior to substantial completion of construction of the proposed system.
(Ord. 37-02, passed 8-2-02; Am. Ord. 1-03, passed 2-13-03)

§ 112.52 CITY ACQUISITION OR REMOVAL OF CABLE SYSTEM.

(A) In the event that a franchise has been revoked by the city and the city acquires ownership of the cable system or effects a transfer of ownership of the cable system to another person, any such acquisition or transfer shall be governed by Section 627 of the Cable Act (47 U.S.C. 547) or its successor provision.

(B) If upon revocation of a grantee's franchise the city does not elect to purchase the cable system and no sale of the cable system is made to a successor grantee, then the city shall require that grantee terminate and dismantle the cable system, including its wiring, equipment, headend facilities if the headend is located within the boundaries of the city and related appurtenances except that in the event that a grantee is providing telecommunications services as defined by the Cable Act, a grantee shall not be required to remove those facilities which provide said services. Upon completion of termination and dismantling of the cable system, grantee shall upon direction of the city restore any property, public or private, to substantially the condition in which it existed prior to erection or construction of the cable system, including any improvements made to such property subsequent to construction of the system. Restoring of city property, including all public streets and public ways as defined herein, shall be in accordance with the directions and specifications of the city as set forth herein and all applicable laws. A grantee shall restore said public streets and public ways at its expense.
(Ord. 37-02, passed 8-2-02)

§ 112.53 CABLE PROGRAMMING.

(A) Categories of service to be provided. A grantee shall provide on the cable system all over-the-air broadcast stations required to be carried by federal law or FCC regulations. A grantee shall provide a wide range and diversity of programming for subscribers residing in the franchise area. Unless otherwise provided by a franchise agreement, categories of programming comparable in quality, mix and level to be provided by a grantee to subscribers shall include without limitation the following:

(1) Local, regional, national, and international news programs;

(2) Local, regional, national, and international sports and sporting events;

(3) Local, regional, and national weather;

(4) Educational programming;

(5) Children's programming;

(6) Music programming (including audio music services);

(7) Public affairs programming;

(8) General entertainment programming, including movies;

(9) Cultural/ethnic programming;

(10) Pay-per-view programming;

(11) Financial and business-related programming;

Where a broadcaster providing over-the-air broadcast service to a grantee has not reached an agreement with a grantee for carriage of the broadcaster's signal by the deadline established by the FCC for consent to transmit said broadcaster's signal ("Retransmission Consent"), a grantee shall not be obligated pursuant to this chapter to carry said signal until such agreement has been finalized.

(B) A grantee shall comply with all applicable laws concerning the cable-casting of obscene programming.

(C) Unless otherwise provided in a franchise agreement, a grantee shall dedicate an amount of channel space on its cable system at a minimum level of one channel for Public Educational and Government (PEG) access channel programming. In no event shall a grantee place an access programming channel on any expanded basic cable service, satellite service or digital service tier of programming without the express written consent of the Common Council.

(1) The PEG access channel shall be made available to residents of the city, all schools which have been granted a certificate of recognition by the Indiana State Board of Education, public libraries, the city, Madison County and any units of government serving the city on a first-come, first- served, non-discriminatory basis. The operator of the PEG access channel shall adopt operating rules for the channel designed to prohibit the presentation of any advertising material designed to promote the sale of commercial products or services, including advertising by candidates for public office, lottery information and programming in violation of any federal, state or local law. The operator of the PEG channel shall keep a complete record of the names and addresses of all persons, groups or users requesting access time. In the event that a grantee operates the PEG channel, it shall provide said record to the franchising authority upon request.

(2) Consistent with Section 612 of the cable Act (47 U.S.C. 532), educational access programming on the PEG channel shall not carry paid advertising to the extent that it would be considered a channel for commercial use.

(3) At such time as the PEG access channel has reached a level of live and taped programming totaling 12 hours per day, five days per week, for a total of eight weeks, including play-backs, which necessitates the provision of a second access channel for educational access or governmental access programming, the grantee, the city and any other educational access channel users shall meet and confer with a grantee to establish the creation of a second access channel for either governmental or educational access programming. Where a second PEG access channel is created, the grantee shall, wherever possible, cluster the PEG access channels together.

(D) Distribution of government-produced programming. In the event that there is more than one cable operator or multichannel video provider providing cable service to the franchise area, the city shall not be precluded from providing or causing to be provided programming produced by the city for any access programming channel to any cable operator or multichannel video provider if such cable operator or multichannel video provider provides a separate, direct link to the point of origination. Where a grantee controls and supervises a PEG access channel and a second educational or governmental access channel, a

grantee shall be exempt from the requirements of this division.

(E) The content of programs on public, educational and governmental access channels shall not be controlled by the grantee. In the event that a grantee controls and supervises a public access channel, a grantee shall be exempt from the requirements of this division.

(F) A grantee shall provide leased access channel space or a portion of channel space for leased programming consistent with the Cable Act and FCC regulations.
(Ord. 37-02, passed 8-2-02)

§ 112.54 EMERGENCY OVERRIDE.

(A) A grantee shall configure the cable system to enable carriage of audio emergency override cable-casting over all channels of the cable system in accordance with FCC regulations. Said emergency override capability shall be designed to allow the Mayor or the Mayor's designee to activate the emergency override by touch-tone telephone, including cellular telephones or personal Communications System (PCS) telephones, upon declaration of a public emergency.

(B) Upon requirement by the FCC to participate in the Emergency Alert System, grantee shall provide the following:

(1) A channel alert system which provides subscribers with appropriate audio and/or visual emergency warnings on all channels operated by a grantee at any given time.

(2) An Emergency Alert System (EAS) or its successor in accordance with all requirements of the FCC including but without limitation the requirement currently set forth in FCC regulations that cable television systems transmit a visual EAS message on at least one channel and that cable television systems also provide video interruption and audio EAS messages on all channels with the video further stating which channel is carrying the visual message. In establishing its EAS system, a grantee shall in accordance with FCC or other applicable regulations cooperate with the city on the use and operation by the city of the EAS.

(3) In the event of emergencies which are not subject to the provisions of the EAS regulations established by the FCC (47 U.S.C. 11.53, 11.55), upon notification of said emergency by the Mayor or the Mayor's designee a grantee shall transmit a visual message on at least one channel and provide video interruption and an audio message on all channels with the video further stating which channel is carrying the visual message.

(4) A grantee and the city shall jointly develop an emergency notification plan which shall be integrated into the city's disaster or emergency operations plan, and which plan shall be coordinated with emergency communications and disaster planning services operated by Madison County.
(Ord. 37-02, passed 8-2-02)

§ 112.55 RULES AND REGULATIONS.

(A) In addition to the inherent powers of the city to regulate and control any cable television franchise and those powers expressly reserved by the city or agreed to and provided for herein, the right and power is hereby reserved by the city to promulgate such additional regulations as it shall find necessary in the exercise of its lawful police powers as referenced in § 112.10 above and furtherance of the terms and conditions of the franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, any franchise agreement or applicable state and federal laws, rules and regulations.

(B) The city may also adopt such regulations at the request of grantee upon application.
(Ord. 37-02, passed 8-2-02)

§ 112.56 PERFORMANCE EVALUATION SESSIONS.

(A) The Board of Works and a grantee shall hold performance evaluation meetings within 90 days upon request and at such other times as may be required by federal and state law or the terms of a franchise agreement. All such evaluation meetings shall be open to the public and transcribed. The city shall notify the grantee in writing at least 60 days in advance of each of the specified performance evaluation meetings. Notice to the public shall be in accordance with the provisions of the Indiana Open Door Law.

(B) All evaluation sessions shall be open to the public and announced by the city in a newspaper of general circulation in accordance with legal notice. The city shall notify subscribers of all evaluation meetings including adjourned meetings by announcements no less than three times on the

government access channel between the hours of 7:00 p.m. and 9:00 p.m. for five consecutive days preceding each meeting.

(C) Topics which may be discussed at any scheduled or special evaluation session may include but are not limited to: franchise fees, penalties, free or discounted services; application of new technologies; system performance; services provided; customer complaints; privacy; amendments to this chapter; judicial and FCC rulings; line extension policies; and grantee or city ordinances or resolutions.

(D) During a review and evaluation by the city, a grantee shall fully cooperate with the city and shall provide such information and documents as the city may request to reasonably perform its review.

(E) If at any time during its review the Board of Works determines that reasonable evidence exists of inadequate cable system performance, it may require a grantee to perform tests and analysis directed toward the suspected inadequacies in accordance with the procedures set forth in § 112.46 herein above.
(Ord. 37-02, passed 8-2-02)

§ 112.57 RATES AND FEES.

(A) *Uniformity*. Rates for cable service and charges for equipment necessary for the reception of cable service shall be uniform throughout the franchise area in accordance with applicable law and regulation. A grantee may establish different rates for tiers of programming and may establish a rate schedule appropriate to commercial enterprises which differ from such rates provided to residential dwelling units. A grantee may also establish separate rates for subscribers living in congregate dwelling units for which bulk billing rates may be established. A grantee may create separate rates and service tiers for dwelling units which are occupied by businesses consistent with federal law.

(B) *Non-discrimination*. A grantee shall not in its rates or charges or in the availability of the services or facilities of its cable system or in any other respect discriminate against any persons or group of persons protected by applicable non-discrimination laws; provided, however, a grantee may offer promotional discounts in order to attract or maintain subscribers, provided that such discounts are offered on a non-discriminatory basis to similar classes or types of subscribers in the city.

(C) *Filing of rate schedule*. A grantee shall file annually with the city a full written schedule of all subscriber and user rates and all other rates, fees, or charges. Said schedule shall be filed no less than 30 days prior to the time such changes are announced by grantee in the levels of regulated rates, fees, or other charges.

(D) A grantee may refuse to offer service to any person because of due or owing accounts between such person and the grantee.

(E) *Basic tier availability*. Consistent with 47 U.S.C. § 76.1618, a grantee shall provide written notification to subscribers of the availability of basic tier service to new subscribers at the time of installation. This notification shall contain the following information:

(1) That basic tier service is available;

(2) The cost per month for basic tier service;

(3) A list of all services included in the basic service tier;

(F) *Reservation of rights to regulate cable service rates.*

(1) The city reserves the right to regulate rates for basic cable service and equipment of a grantee as allowed by the FCC. The city shall adopt by separate ordinance in accordance with 47 U.S.C. 76.910 such regulations consistent with the FCC regulations governing the basic tier of cable service. Where a grantee adjusts the number of channels provided on the cable system to subscribers, a grantee shall in accordance with FCC regulations as now or hereafter amended adjust its rates to subscribers accordingly.

(2) In the event that the United States Congress or the FCC allows the city to regulate rates beyond the basic tier of cable service, the city may at that time reserve the right to regulate said rates in accordance with FCC regulations and shall notify a grantee 30 days in advance of the date that the city intends to begin regulation of said rates.

(G) A grantee may offer discounts in rates in accordance with applicable law.
(Ord. 37-02, passed 8-2-02)

ENFORCEMENT

§ 112.70 BREACHES AND SANCTIONS.

(A) In addition to all other rights and powers retained by the city under this chapter or otherwise, the city reserves the right to terminate the franchise and all rights and privileges of a grantee hereunder in the event of a substantial breach of its terms and conditions subject to the terms outlined below and in § 112.40. A breach by a grantee shall include but shall not be limited to the following:

(1) Failure to complete initial construction or reconstruction, including upgrade, of a cable system as specified in. a franchise agreement.

(2) Repeated failure after notice and opportunity to cure to comply with the material provisions of this chapter.

(3) Repeated failure after notice and opportunity to cure to comply with the material terms of a franchise agreement.

(4) Repeated failure to cure material violations of this chapter, other city ordinances or a franchise agreement within a reasonable time after notice from the city.

(5) Failure to restore service after 72 consecutive hours of interrupted service, provided the grantee's failure to restore system-wide service is not caused by circumstances or events beyond the grantee's reasonable control.

(6) Material fraud or misrepresentation in the application for or negotiation of the franchise.

(7) Repeated failure to pay taxes, franchise fees, costs or penalties when and as due the city.

(8) Failure to maintain required insurance coverage.

(9) Insolvency or bankruptcy of the grantee.

(10) Transfer of the franchise without Common Council consent pursuant to § 112.51 of this chapter.

(11) A grantee abandons the franchise. A grantee shall be deemed to have abandoned its franchise if it willfully refuses or is unable to operate the cable system as granted by a franchise agreement pursuant to this chapter where there is no event beyond the grantee's control that prevents the operation of the cable system and where operation would not endanger the health or safety of the public or property.

(12) A grantee unreasonably refuses to provide subscribers service insofar as their financial and other obligations to a grantee are honored.

(B) *Notice of substantial breach*. Written notice shall be given to a grantee setting forth:

(1) The nature of the substantial breach or default by the grantee;

(2) A written demand that a grantee correct the violation;

(3) Notice that any failure to correct the remedy within 30 days or such other period as may be stipulated in a franchise agreement or as the parties may agree and to diligently pursue the completion of the breach or default may be cause for revocation of the franchise, or lesser sanctions.

(C) A grantee shall provide an answer to notice of breach in the manner specified in § 112.99(D)(2) herein below.

(D) *Judicial relief*. No provision of this section shall be deemed to delay, bar or otherwise limit the right of the city to seek or obtain judicial relief to enforce the provisions of this chapter or a franchise agreement.

(E) In the event grantee continues operation of all or any part of the cable system beyond the revocation or expiration of the franchise agreement, grantee shall pay to the city the compensation set forth in § 112.25 herein above at the rate in effect at the time of such revocation or expiration and in the manner set forth herein, together with any taxes it would have been required to pay had its operation been duly authorized in addition to any damages or other relief to which the city may be entitled in § 112.40 herein below.
(Ord. 37-02, passed 8-2-02)

§ 112.71 FORCE MAJEURE.

Whenever a period of time is provided for in the franchise for either the city or a grantee to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, insurrection, rebellion, strike, sabotage, unavoidable casualty or damage to personnel, materials or equipment, failure of a utility provider to provide pole attachments on reasonable terms or conditions therefore, fire, flood, storm, earthquake, tornado, orders of a court of competent jurisdiction or any act of God; provided, however, that said time period shall be extended for only the actual amount of time said party is so delayed. An act or omission shall not be deemed to be "beyond the grantee's control" if committed, omitted or caused by the grantee, the grantee's employees, officers or agents or a subsidiary, affiliate or parent of the grantee or by any corporation or other business entity that holds a controlling interest in the grantee, whether held directly or indirectly. Further, the failure of a grantee to obtain financing or to pay any money due from it to any person, including the city, for whatever reason shall not be an act or omission "beyond the grantee's control."
(Ord. 37-02, passed 8-2-02)

§ 112.72 FORECLOSURE.

Upon the foreclosure or other judicial sale of all or a substantial part of the system or upon the termination of any lease covering all or a substantial part of the system, a grantee shall notify the city of such fact, and such notification shall be treated as a notification that a change in control of a grantee has taken place and the provisions of this chapter and a franchise governing the consent of the city to such change in control of a grantee shall apply.
(Ord. 37-02, passed 8-2-02)

§ 112.73 RECEIVERSHIP.

The city shall have the right to cancel a franchise 120 days after the appointment of a receiver or trustee to take over and conduct the business of the grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of 120 days or unless:

(A) Within 120 days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this chapter and remedied all defaults thereunder; and

(B) Such receiver or trustee within the 120 days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the franchise granted to the grantee.
(Ord. 37-02, passed 8-2-02)

§ 112.74 COMPLIANCE WITH STATE AND FEDERAL LAWS.

(A) Notwithstanding any other provisions of the franchise to the contrary, a grantee shall at all times comply with all laws and regulations of the state and

federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require a grantee to perform any service or shall permit a grantee to perform any service or shall prohibit a grantee from performing any service in conflict with the terms of the franchise or of any law or regulation of the city, then as soon as possible following knowledge thereof a grantee shall notify the city of the point of conflict believed to exist between such regulation or law and the laws or regulations of the city or the franchise.

(B) If the city determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the city and a grantee shall negotiate to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement in accordance with then applicable law.
(Ord. 37-02, passed 8-2-02)

§ 112.75 NOTICE TO COMPLY.

(A) *Compliance periods*. Unless otherwise stated in this chapter or a franchise agreement, a grantee shall comply with the terms and conditions of this chapter or the franchise agreement with respect to compliance periods.

(B) *Designation of agent for notification*. A grantee shall designate a person within its management structure who shall have the authority to receive and respond to notifications sent by the franchising authority of franchise violations, subscriber complaints or other concerns relating to the franchise.

(C) *Continuing obligation*. Subject to the provisions of this chapter, a grantee shall not be relieved of its obligations to comply with any of the rules, regulations or directives as stated in this chapter or the franchise agreement by reason of any failure of the city or its officers, agents or employees to enforce prompt compliance, nor shall such be considered a waiver thereof.
(Ord. 37-02, passed 8-2-02)

§ 112.76 LANDLORD AND TENANT.

(A) Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable television service, cable installation or maintenance from a grantee regulated by and lawfully operating under a valid and existing franchise issued by the city.

(B) Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident or discriminate in any way against such tenant or resident who requests or receives cable television service from a grantee operating under a valid and existing franchise issued by the city.

(C) Nothing in this chapter shall prohibit a person from requiring that cable system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

(D) Nothing in this chapter shall prohibit a person from requiring a grantee to agree to indemnify the owner or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable television facilities.
(Ord. 37-02, passed 8-2-02)

§ 112.77 PROHIBITED ACTS.

(A) It shall be unlawful for any person to install, attach, wire, program or connect or cause to be installed, attached, wired, programmed or connected any equipment, device or computer hardware or software which enables the use of cable television or data signals transmitted by a grantee without compensation to said grantee for said cable television or data signals. This section shall not prohibit the recording of programming or downloading of data as allowed under applicable state and federal laws.

(B) No person receiving within the franchise area any cable service, program or signal transmitted by any grantee operating under a franchise issued by the franchising authority shall resell such service, program or signal without the expressed, written consent of the grantee.

(C) Violations of the provisions of this section shall be punishable by a fine of no less than $500 per day per occurrence and where applicable incarceration as so prescribed by statutory provisions concerning theft of services.
(Ord. 37-02, passed 8-2-02)

§ 112.78 APPLICANTS' BIDS FOR INITIAL FRANCHISE.

(A) After receiving applications for an initial franchise, the Common Council after considering financial, technical and programming proposals and the legal and character qualifications of the applicant may by ordinance grant one or more non-exclusive franchises creating a right to construct and operate a cable system within the public streets and public ways of the city. No provision of this chapter shall be deemed or construed to require the Common Council to grant a franchise.

(B) The application for a cable television franchise shall be submitted to the Common Council or its designee on a written application in the form specified in a Request For Proposal (RFP) furnished by the city and in accordance with procedures and schedules to be established by the city. The application form may request facts and information the city deems appropriate; upon receipt by the Common Council or its designee such facts and information shall be deemed public records. Applicants shall pay a non-refundable fee of no less than $2,500 for the application forms to be determined by the council to offset direct expenses in preparing the application documents. Applications submitted to the Common Council shall be accompanied by a non-refundable application fee in an amount to be determined by the Common Council, which amount shall be used by the city to offset direct expenses incurred in the franchising and evaluation procedures, including but not limited to staff time and consulting assistance. An applicant to whom the Common Council grants a non-exclusive franchise shall, in addition to the non-refundable fee specified herein above, pay to the city at the time of acceptance of the franchise an amount to be determined by the Common Council based upon the costs to the city for the granting of the franchise to be used to reimburse all direct, reasonable expenses actually incurred by the city in granting the franchise which are not fully defrayed by fees forthcoming from the provisions cited in this subsection herein above.

(C) All questions regarding the meaning or intent of this chapter or application documents shall be submitted to the city in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the city as having received the application documents. The city reserves the right to make extensions of time for receiving applications as it deems necessary. Questions received less than 14 days prior to the deadline date for the application will not be answered. Only replies to questions by written addenda will be binding. All applications must contain an acknowledgment of receipt of all addenda.

(D) Applications must be sealed and submitted at the time and place indicated in the Request For Proposal. No application shall be opened or inspected prior to the deadline for applications.

(E) Before submitting an application, an applicant shall:

(1) Examine this chapter and the application documents thoroughly;

(2) Be familiar with local conditions that may in any manner affect performance under the franchise;

(3) Be familiar with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise; and

(4) Carefully correlate the application with the requirements of this chapter and the application documents.

(F) The city may make such investigations as it deems necessary to determine the ability of an

applicant to perform under the franchise, and the applicant shall furnish to the city all such information and data for this purpose as the city may request. The city reserves the right to reject any application if the evidence submitted by or investigation of such applicant fails to satisfy the city that such applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional applications will not be accepted. (Ord. 37-02, passed 8-2-02)

§ 112.79 FINANCIAL, CONTRACTUAL, SHAREHOLDER AND SYSTEM DISCLOSURE FOR FRANCHISES.

(A) No franchise will be granted to any applicant unless all requirements and demands of the city regarding financial, legal and technical requirements and contractual, shareholder and system disclosure have been met.

(B) Initial applicants including all shareholders and parties with any interest in the applicant shall fully disclose all agreements and undertakings whether written or oral or implied with any person with respect to the franchise and the proposed cable system. A grantee of a franchise shall disclose all other contracts to the city as the contracts are made. This section shall include but not be limited to any agreements between local applicants and national companies.

(C) Applicants including all shareholders and parties with any interest in the applicant shall submit all requested information as provided by the terms of this chapter or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the applicant.

(D) Initial applicants including all shareholders and parties with any interest in the applicant shall disclose the numbers of shares of stock and the holders thereof and shall include the amount of consideration for each share of stock and the nature of the consideration.

(E) Initial applicants including all shareholders and parties with any interest in the applicant shall disclose any information required by the application documents regarding other cable systems in which they hold an interest of any nature including but not limited to the following:

(1) Locations of all other franchises and the dates of award for each location;

(2) Estimated construction costs and estimated completion dates for each system;

(3) Estimated number of miles of construction and number of miles completed in each system as of the date of this application; and

(4) Date for completion of construction as promised in the application for each system.

(F) Initial applicants including all shareholders and parties with any interest in the applicant shall disclose any information required by the application documents regarding pending applications for other cable systems, including, but not limited to, the following:

(1) Location of other franchise applications and date of application for each system;

(2) Estimated dates of franchise awards;

(3) Estimated number of miles of construction; and

(4) Estimated construction costs.
(Ord. 37-02, passed 8-2-02)

§ 112.80 LIMITS ON GRANTEE RECOURSE.

(A) To the extent that any laws immunize the city and its officials, boards, commissions, agents or employees, a grantee shall have no recourse whatsoever against the city or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of any provision or requirement of this chapter or the franchise agreement. A grantee shall expressly acknowledge that, upon accepting the right, privilege and franchise granted pursuant to this chapter, it does so relying

upon its own investigation and understanding of the power and authority of the city. By the acceptance of a franchise, a grantee shall agree that it will not at any time set up against the city in any claim or proceeding, any provision, condition or term of the ordinance, this chapter or the franchise agreement as unreasonable, arbitrary or void or that the city had no authority to make such provision, term or condition as part of or pursuant to the ordinance, except as to those matters preempted by federal or state law.

(B) Within a franchise agreement, a grantee shall acknowledge that it has not been induced to accept a franchise by any promise, verbal or written, by or on behalf of the city or by any third person regarding any term or condition of the franchise not otherwise expressed herein. A grantee shall further be deemed to warrant that no promise or inducement, oral or written, has been made to any city employee or official regarding receipt of the franchise, other than as contained in the franchise.
(Ord. 37-02, passed 8-2-02)

§ 112.81 RIGHTS AND REMEDIES.

In the event of a violation or an alleged violation of the franchise by a grantee, the city by suit, action, mandamus or other proceeding in law or in equity may enforce or compel the performance of the terms of the franchise to the full allowable extent. In the event of a judicial proceeding, the prevailing party shall be entitled to reimbursement of all costs and expenses, including reasonable attorneys fees, incurred in connection with such judicial proceeding.
(Ord. 37-02, passed 8-2-02)

§ 112.82 WAIVER.

The city may on its own motion or at the request of an applicant for a franchise or a grantee for good cause shown waive any requirement of this chapter.
(Ord. 37-02, passed 8-2-02)

§ 112.83 TIME IS OF THE ESSENCE.

Whenever any provision of this chapter or the franchise agreement shall set forth any time for any act to be performed by a grantee, such time shall be deemed to be of the essence.
(Ord. 37-02, passed 8-2-02)

§ 112.84 SAVINGS CLAUSE.

The express provisions of this chapter as it now exists will prevail over conflicting or inconsistent provisions of other municipal ordinances or conflicting or inconsistent provisions in a franchise agreement unless a franchise agreement expresses an explicit intent to waive or modify strict compliance with a requirement of this chapter. Provided, however, that no change in this chapter made by the city after the effective date of a franchise agreement shall amend the express provisions of a franchise agreement without an amendment to the franchise agreement which has been agreed upon by the city and a grantee. Neither party may take any unilateral action which materially changes the explicit performance promised in a franchise agreement unless modified or altered by a superior regulatory authority.
(Ord. 37-02, passed 8-2-02)

§ 112.85 DELEGATION OF POWERS.

Except for the powers of revocation and rate regulation, any right, power or duty of the Common Council of the city, the agency or any official of the city under this chapter may be transferred or delegated by ordinance, resolution or other appropriate action of the city to an appropriate officer, employee or department of the city or any legal authority created for the purpose of regulating the operation and development of the cable system.
(Ord. 37-02, passed 8-2-02)

§ 112.86 NO WAIVER OF RIGHTS BESTOWED BY VIRTUE OF LAW.

The city does not waive or release rights bestowed upon it by virtue of law or statute.
(Ord. 37-02, passed 8-2-02)

§ 112.87 GOVERNING LAW.

This chapter shall be governed in accordance insofar as applicable with the laws of the State of Indiana. Where federal jurisdiction applies, this chapter shall be governed by the applicable laws and agencies of the United States Government. Venue shall be in either the Circuit Court of Madison County or the United States District Court, Southern District of Indiana.
(Ord. 37-02, passed 8-2-02)

§ 112.99 PENALTIES.

A grantee shall comply with the requirements of this chapter and the franchise agreement at all times during the term of its franchise. If the city has reason to believe that a grantee has committed a certain violation of this chapter or the franchise agreement including those described in § 112.70(A)(1) through (12) above, the city may act to remedy the violation.

(A) *Remedies retained*. No provision of this chapter shall be deemed to bar or otherwise limit the right of the city to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the city to recover monetary damages, except where liquidated damages are otherwise prescribed, for such violation by the grantee or judicial enforcement of the grantee's obligations by means of specific performance, injunctive relief or mandate or any other remedy available contractually at law or in equity.

(B) *Fine imposed*. Unless otherwise provided, a grantee or any person convicted of violating any provision of this chapter or any rule or regulation promulgated hereunder shall upon conviction be subject to a fine not to exceed $1,000 and costs for each offense. Each day of a continuing violation shall constitute a separate and distinct offense.

(C) *Liquidated damages*. A franchise agreement shall include provisions for liquidated damages to be paid by a grantee in amounts set forth in the franchise agreement and chargeable to a security fund.

(D) *Violation procedures*.

(1) Notice of violations. Written notice shall be given to a grantee setting forth the nature of the violation and a reasonable period of time for a grantee to correct the violation. Unless the city determined that the violation is of such a nature that a lesser period of time is warranted for remedying the violation, a grantee shall be given 30 days after receipt of such notice to remedy the violation.

(2) Answer to notice of violations. Within 30 days or other such period of time specified by the city in its notice to a grantee, a grantee shall respond in writing to the city:

(a) That it contests the city's notice of violation and requests an opportunity to be heard as provided herein. A grantee shall submit supporting documentation with its response to the notice.

(b) That it contests the city's notice of violation for the reasons that the violation was beyond the reasonable control of a grantee and requests an opportunity to be heard as provided herein. A grantee shall submit supporting documentation with its response to the notice.

(c) That a grantee will remedy the violation within the time specified by the city in its notice to the grantee.

(d) If a grantee contends that an extended period of time is reasonably needed to remedy the violation, it shall submit a written request for an extension together with supporting

documentation that a grantee cannot reasonably remedy the violation within the time specified by the city in its notice to a grantee. The city shall not unreasonably deny an extension of time to remedy the violation. If the city grants the extension, a grantee shall proceed to remedy the violation within the extended time period prescribed, provided that a grantee also informs the city on a regular basis of the steps being taken to remedy the violation.

(3) Opportunity to be heard. The city shall give a grantee not less than 14 calendar days written notice of the date, time and place of the public meeting to be held before the Board of Works. A grantee shall be entitled to the right to present evidence and the right to be represented by counsel. At the public meeting, the Board of Works shall hear and determine the issues and render its findings and decision.

(4) Determination. The Board of Works shall determine at a public meeting with grantee having the opportunity to be present and heard whether or not a substantial violation, breach or default by a grantee has occurred; whether it has been cured or a satisfactory corrective action plan has been submitted and is being actively and diligently pursued; and whether cause exists to revoke the franchise or impose a lesser sanction. In the event that the city determines that it has cause to revoke the franchise, it shall send notice of revocation to a grantee within ten business days of the city's determination. In the event that the Board of Works is persuaded after a grantee's opportunity to be heard in a public meeting that a grantee has committed a violation for which a lesser sanction other than revocation is warranted, the Board of Works may, after giving a grantee an opportunity to be heard:

(a) Order a grantee to remedy the violation within a reasonable period of time specified by the Board of Works.

(b) Assess liquidated damages against a grantee in accordance with a franchise agreement and to exercise any other remedy provided in this chapter or the franchise agreement.

(c) Impose any lesser sanction permitted by a franchise agreement.

(5) The city shall not exercise any right without a resolution approved by the Board of Works.

(6) Judicial relief. No provision of this section shall be deemed to bar or otherwise limit the right of the franchising authority to seek or obtain judicial relief to enforce the provisions of this chapter. (Ord. 37-02, passed 8-2-02)

CHAPTER 113: COMMERCIAL AMUSEMENTS; VENDING MACHINES

Section

Statutory reference:

Power of city to regulate businesses generally, see I.C. 36-1-3-8 and 36-8-2-10

COMMERCIAL AMUSEMENTS

§ 113.01 DEFINITIONS.

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AMUSEMENT LOCATION. Any public room or area containing amusement machines.

AMUSEMENT LOCATION PERMIT. A license or permit issued by the City Controller for any public room or area containing amusement machines, pool tables, billiard tables, shuffleboard tables or devices being displayed on the premises for which it shall be issued.

AMUSEMENT MACHINE. Any machine or device designed or modified to be operated by a coin, coins or token or for which charge is made for the operation thereof. Such a machine or device used exclusively for the vending of merchandise of a tangible nature shall not be deemed an amusement machine. Outdoor baseball batting machines shall not be deemed to be an amusement machine.

AMUSEMENT MACHINE PERMIT. Any sort of tag, badge, plate, emblem or decal which may be issued by the Controller of the City of Anderson and required to be used or displayed by a licensee.

BILLIARD or ***POOL ROOM.*** Any public place operated for private hire or gain wherein is played any of the several games played on a table surrounded by an elastic ledge of cushions with balls which are impelled by a cue, including carom billiards, pocket billiards, pool, three cushion billiards, and English billiards.

BILLIARD or ***POOL TABLE.*** A table used for any form of the games commonly referred to as pool or billiards which consists of impelling balls by means of sticks or cues and includes any table of any size, the top of which is surrounded by an elastic ledge and which is operated by any coin, coins or tokens or for which a charge is made for the operation or use thereof. Such a machine or device used exclusively for pool or billiards shall not be deemed an amusement machine.

BOWLING ALLEY or ***BOWLING MACHINE.*** Bowling alleys, pin and ball alleys, pin and ball alley machines, box ball alleys and all alleys of similar character. Such a machine or device used exclusively for bowling shall not be deemed an amusement machine.

BUSINESS. All kinds of vocations, occupations, professions, enterprises, establishments and all other kinds of activities and matters, together with all devices, vehicles and appurtenances used therein, which are conducted directly or indirectly, on any premises within this city or elsewhere within the jurisdiction of this city.

CIGARETTE VENDING MACHINE. Any automatic vending machine commercially used for the sale of cigarettes or cigarettes and matches and controlled by the insertion of a coin or coins. Such a machine or device used for the vending of cigarettes shall not be deemed an amusement device.

COIN VENDING MACHINE. Any automatic vending machine, commercially used for the sale of food, drink or confection, or other articles.

JUKEBOX. Any music vending machine, contrivance, or device commercially used, which, on the insertion of a coin, slug, token, plate, disc, or key into any slot, crevice, or other opening, or by the payment of any price, operates or may be operated, for the emission of songs, music, or similar amusement. Such a machine or device used for the emission of songs or music shall not be deemed an amusement device.

LICENSE. Shall include the word "permit" and shall mean the privilege of carrying on a specified business within the city; however, both permits and licenses may be granted where specifically authorized under this chapter.

LICENSEE. Shall include the word "permittee" and shall mean the person to whom a license has been granted and his agents and employees.

MASTER VENDOR. A person, corporation or entity, who sells, leases or rents any amusement machine whether on his own behalf or for another.

PREMISES. All lands, structures, places, and equipment and appurtenances connected with or used in any business, and also any personal property which is either affixed to or is otherwise used in connection with any business.

PRIMA FACIE EVIDENCE OF DOING BUSINESS. The placing or permitting of any business sign or notice on or within any premises or place; any publication of the opening or conduct of any business by advertisement in any newspaper or other publication, or by any poster, circular, letter or card, or by any method attracting public notice thereto; by soliciting business; by acquiring or using any premises in the city for business purposes, and any premises where such business is subject to a license or permit therefor, shall be prima facie evidence of liability of such person to obtain and pay for the license or permit as provided by this chapter.

PUBLIC WELFARE. The prosperity, well-being and convenience of the inhabitants of the city, either as a whole or in some limited group.

SHUFFLEBOARD. Any table or device where a metal or any other type puck is propelled on the surface of the table or device from one end to another. Such a table or device used exclusively for shuffleboard shall not be deemed an amusement machine.

TEMPORARY AMUSEMENT LOCATION PERMIT. Any public room or area containing four or more amusement machines which will operate for a period of not more than 14 days in any permit period and shall not be renewable in the permit period.

TEMPORARY AMUSEMENT MACHINE PERMIT. Any sort of tag, badge, plat, emblem, or decal which may be issued by the City Controller and required to be used or displayed by a licensee for an amusement machine which will operate for a period of

not more than 14 days in any permit period and shall not be renewable in the permit period.
('64 Code, § 74.1; Am. Ord. 1-82, passed 2-12-82; Am. Ord. 36-82, passed 7-8-82; Am. Ord. 24-83, passed 4-14-83)

§ 113.02 LICENSE REQUIRED.

(A) No person shall own, lease, operate, keep for operation, manage, engage in, or carry on any of the following businesses, activities, or devices without first applying for and obtaining a license to do so in accordance with the provisions of Chapter 110:

(1) Billiard or pool room.

(2) Shuffleboard.

(3) Amusement machine.

(4) Coin vending machine.

(B) An application for an amusement location license, a master vendor's license and amusement machine permits shall be made in such form and contain such information as the City Controller may prescribe. The requirements for all permits for machines and devices shall be determined by the Controller.
('64 Code, § 74.2; Am. Ord. 1-82, passed 2-12-82; Am. Ord. 36-82, passed 7-8-82) Penalty, see § 113.99
Cross-reference:
General licensing provisions, see Ch. 110

§ 113.03 AMUSEMENT MACHINE APPLICATION.

(A) The application for a license to own or operate an amusement location and application for vendor's license shall contain the following information:

(1) Name of the applicant and, if a partnership or corporation, the state in which organized;

(2) Residence address of applicant;

(3) Business address of applicant;

(4) The age and citizenship of the applicant, if an individual; of all partners, if the applicant is a partnership or joint venture; or of the manager and officers, if the applicant is a corporation;

(5) The name and residence address of the owner of the premises proposed for licensing as an amusement location;

(6) The street address of the amusement location to be licensed;

(7) The location, time and duration of any other amusement location operated by the applicant presently or at any previous time, and whether such license was revoked;

(8) The number of pool or billiard tables and amusement machines or devices that are to be located on the premises to be licensed;

(9) The name of the manager or operator if said person is not the applicant;

(10) The name and address of the master vendor or vendors;

(11) The applicant shall provide a site location drawing or floor plan of the premises where the business is to be conducted with the same drawn to scale with exits clearly indicated for each amusement location.

(B) A license shall be obtained for each amusement location.
(Ord. 1-82, passed 2-12-82)

§ 113.04 AMUSEMENT MACHINE LICENSING INVESTIGATION.

(A) Before a license is issued, an investigation of the character of the applicant or applicants, and the officers or manager of the business shall be made. The license may be denied if it is found that any of the persons named in the application have previously been convicted of an infraction connected with any

amusement location where the license has been revoked, or where any of the provisions of this chapter applicable to them have been violated or if the amusement location sought to be licensed does not comply in every way with the ordinances applicable thereto.

(B) All licensees shall be no less than 18 years of age.

(C) If an application is denied, the applicant for such license or permit shall be notified in writing of the reasons for rejection and shall have the right to appeal.
(Ord. 1-82, passed 2-12-82)

§ 113.05 TERM OF AMUSEMENT MACHINE LICENSE, PERMIT.

(A) The license or permit shall be for the period from January 1 through December 31 of each year.

(B) The fees for licenses purchased during the permit period, shall be prorated on the basis of one-twelfth of the total fee for each month or fraction of month remaining in the period as set forth in division (A) above. Proration of fee shall apply to new applications during permit year. Continuous operations shall pay full fee for permit year.

Examples.

Master vendor license purchased on August 15 costs 5/12 of the master vendor's license fee of $300. 5/12 of $300 = $125.

Amusement location permit purchased on August 15 for twelve machines costs 5/12 of location permit fee of $300. 5/12 of $300 = $125.

(C) The license for the amusement location shall not be transferable.

(D) The license and permit fees are nonrefundable.
(Ord. 1-82, passed 2-12-82; Am. Ord. 24-83, passed 4-14-83)

§ 113.06 AMUSEMENT MACHINE LICENSE FEES.

The fees for licenses and permits issued for amusement machines shall be as follows:

(A) Amusement machine permit	$ 30
(B) Master vendor's license	300
(C) Amusement location permit	
One to two machines	25
Three to four machines	50
Five to ten machines	100
More than ten machines	300
(D) Temporary amusement location permit	75
(E) Pool tables, billiard tables, shuffleboards	10
(F) Temporary amusement machine permit	5

(Ord. 1-82, passed 2-12-82; Am. Ord. 24-83, passed 4-14-83; Am. Ord. 4-97, passed 3-13-97)

§ 113.07 LICENSE TO BE DISPLAYED.

Every public room or location used in connection with any business and where an amusement machine, pool table, billiard table or shuffleboard table or device is located shall have at all times prominently displayed upon the premises an amusement location permit issued by the City Controller and a permit shall be securely attached to the permit for each amusement machine, pool table, billiard table, shuffleboard table or device upon the premises for which the permit was issued.
(Ord. 1-82, passed 2-12-82; Am. Ord. 36-82, passed 7-8-82)

§ 113.08 INSPECTION; REPORTS OF VIOLATIONS.

(A) All employees of the city who have been authorized by the Controller to make inspections may

enter any place of business of a licensee under this chapter to make inspections conducted in a reasonable manner. The Controller may call upon city employees having police power to enforce the provisions of this chapter.

(B) All boards and officials of the city shall issue the necessary orders to their respective employees to conduct the inspections necessary to meet the requirements pursuant to this chapter.

(C) All violations of this chapter as observed during any inspection of a licensed business or observed by a policeman, fireman or other city official during the course of their employment shall be immediately reported to the Controller or any of the Boards and officials of the city as they deem proper.
(Ord. 1-82, passed 2-12-82; Am. Ord. 4-97, passed 3-13-97)

§ 113.09 AMUSEMENT LOCATION VIOLATIONS.

(A) It shall be unlawful to own or operate any location fitting the definition of an amusement location as stated in this chapter without an amusement location license issued by the City Controller.

(B) It shall be unlawful for any owner to display, exhibit or expose, or permit to be displayed, exhibited or exposed any amusement machine without having procured from the City Controller a permit for each amusement machine or device.

(C) It shall be unlawful to permit the operation in any public place of any amusement machine without an amusement machine permit being displayed upon the same as issued by the City Controller.

(D) It shall be unlawful for any person, corporation or entity to act as a master vendor without a master vendor's license issued by the City Controller.

(E) It shall be unlawful for the master vendor to possess an amusement machine, intended for sale or placement, without a master vendor's license.

(F) It shall be unlawful for a person subject to compulsory school attendance to be present in an amusement location during such hours as would constitute a violation of the laws of the State of Indiana requiring compulsory school attendance.

(G) It shall be unlawful for a person who has not reached the age of 18 to be present in an amusement location after the hours established by state statute or city ordinance for juvenile curfew unless accompanied by a parent or legal guardian.

(H) It shall be unlawful to operate any amusement machine, video device and/or mechanical device which will be located within range of any police or fire department radio receiver equipment. All amusement machines, video devices and/or mechanical devices shall have proper grounding and/or filtering devices to prevent such machines and/or devices from interfering with police or fire department radio equipment. Any such machines and/or devices found to be interfering with police or fire department equipment shall be disconnected and not allowed to operate until such machine or device is properly grounded or has a filtering device installed.
(Ord. 1-82, passed 2-12-82)

§ 113.10 GAMBLING DEVICES PROHIBITED.

Nothing in this chapter shall in any way be construed to authorize, license, or permit any gambling devices whatsoever, or any mechanism that has been judicially determined to be a gambling device in this state or which is now or may hereafter be contrary to law.
('64 Code, § 74.3)

§ 113.11 (RESERVED).

§ 113.12 (RESERVED).

§ 113.13 BILLIARD AND POOL ROOMS; BOWLING ALLEYS.

Gambling in any form in any billiard or pool room or bowling alley is hereby prohibited. However, this provision shall not be construed to prevent the giving of cash prizes or merchandise to billiard or pool players or bowlers in tournament, league, or any other competitive play.
('64 Code, § 74.7; Am. Ord. 27-66, passed 6-9-66; Am. Ord. 36-82, passed 7-8-82) Penalty, see § 113.99

UNDERAGE DANCE HALLS

§ 113.30 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LICENSEE. A person in whose name a license to operate an underage dance hall has been issued, as well as the individual listed as an applicant on the application for a dance hall license.

PERSON. An individual, partnership, corporation, association, or other legal entity.

PRIVATE CLUB. An association of persons for the promotion of some common object which operates continuously or on a regular basis as a not for a profit organization within a continuously maintained and operated structure or building, and operated for the accommodation of its members and guests only.

SCHOOL. A public or private elementary or secondary school.

UNDERAGE DANCE HALL. Any place where dancing is permitted at any time for persons from age 14 through age 21, whether known or referred to commonly as underage or teen dance halls, teen dance clubs, or any other name.
(Ord. 40-08, passed 8-14-08)

§ 113.31 LICENSE REQUIRED.

(A) A person commits an offense if he operates an underage dance hall without a license.

(B) An application for a license must be made on a form provided by the Chief of Police. The form shall be as prescribed by the Chief of Police but shall include the following information:

(1) The name, address, phone number, and other identification of the person, and all other individuals which the person intends to hire or otherwise use, in the conducting of the activity upon the premises;

(2) The intended activity and/or use of the premises;

(3) The hours of operation for such intended use;

(4) Certificates of liability insurance for the event;

(5) The means of reproduction of noise by any device to be used upon the premises;

(6) The means of production of any flame, combustible device or other pyrotechnics, together with certifications of the proper working condition of the same;

(7) A description of the fire protective equipment upon the premises together with certification that the same is in proper working condition;

(8) The number of persons who may be reasonably expected to be present at the event;

(9) The provisions made to secure the premises and the surrounding parking areas during the time and for a reasonable period of time before and after the activities are to be conducted;

(10) Whether the premises are to be open to the public or limited to certain ages. If limited to

certain ages, the ages so limited, and what procedures are in place to insure the same;

(11) If persons under the age of 21 are allowed upon the premises, what measures will be taken to insure that no alcoholic beverages shall be possessed or consumed by minors upon the premises; and

(12) If persons under the age of 18 are allowed upon the premises, what measures will be taken to insure that no such person shall be upon the premises after the time allowed by curfew laws and ordinances of the State of Indiana.

(C) The applicant must be qualified according to the provisions of this subchapter and the premises where the dance hall is to operate must be inspected and found to be in compliance with the law by the Anderson Police Department, the Madison County Health Department, the Anderson Fire Department, and the Office of the Anderson Building Commissioner.

(D) A person who wishes to operate an underage dance hall must sign the application for a license as applicant. If a person is other than an individual, each individual who has any interest in the business must sign the application for a license as an applicant.

(E) A person does not commit an offense under this subchapter if the person conducts a dance at:

(1) A private residence from which the general public is excluded;

(2) An event sponsored by the federal, state or local government. An underage dance otherwise conducted at a place owned by the federal, state or local government, but not by the federal, state or local government shall be subject to the provisions of this subchapter;

(3) A public or private elementary school, secondary school, college, or university, or any place sponsored by any such entity;

(4) A private club as defined within this subchapter; or

(5) A dance which is conducted in connection with a wedding, anniversary celebration, or other private gathering not open to the general public.

(F) In carrying out the provisions of this section, the Chief of Police is authorized to conduct any criminal background check necessary to verify the contents of the application.
(Ord. 40-08, passed 8-14-08; Am. Ord. 31-09, passed 8-13-09)

§ 113.32 ISSUANCE OF LICENSE; POSTING.

(A) The Chief of Police shall issue a license to an applicant within ten days after receipt of an application unless he finds one or more of the following to be true:

(1) An applicant is under 18 years of age;

(2) An applicant or an applicant's spouse is not of good moral character, and his reputation for being peaceable and law-abiding in the community where he resides or does business is bad;

(3) An applicant or an applicant's spouse is overdue in his payment to the City of Anderson of any taxes, fees, tines, or penalties assessed against him or imposed upon him;

(4) An applicant uses alcoholic beverages to excess;

(5) An applicant is mentally incapacitated to an extent that he cannot operate an underage dance hall;

(6) An applicant has failed to answer or falsely answered a question or request for information on the application form provided; or otherwise failed to so operate in allowing any inspections requested under this subchapter;

(7) An applicant or an applicant's spouse has been convicted of a violation of a provision of this subchapter, other than the offense of operating a dance hall without a license, within two years immediately preceding the application. The fact that conviction is being appealed shall have no effect;

(8) An applicant is residing with a person who has been denied a license by the city to operate a dance hall within the preceding 12 months, or residing with a person whose license to operate a dance hall has been revoked with the preceding 12 months;

(9) An applicant's premises have not been approved by the Health Department, Fire Department, and the Building Department;

(10) The license fee required by this subchapter has not been paid;

(11) An applicant or an applicant's spouse has been convicted of:

(a) A felony; or

(b) A misdemeanor involving an offense of:

1. Prostitution;

2. Promotion of prostitution;

3. Public lewdness;

4. Gambling;

5. Violation of any controlled substances/drugs act of the State of Indiana or the United States; or

6. Unlawfully carrying a weapon;

and five years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed shall have no effect.

(12) An applicant has been employed in a dance hall in a managerial capacity within the preceding 12 months and has demonstrated that he is unable to operate or manage a dance hall premises in a peaceful and law abiding manner; or

(13) Alcoholic beverages are possessed, consumed, or sold on premises used or to be used by the applicant for a dance hall.

(B) The license shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the dance hall.

(C) The license, shall be posted in a conspicuous place at or near the entrance to the dance hall so that it may be easily read at any time.
(Ord. 40-08, passed 8-14-08)

§ 113.33 FEES.

A nonrefundable fee of $100 shall be charged for each license issued under the terms of this subchapter. (Ord. 40-08, passed 8-14-08)

§ 113.34 HOURS OF OPERATION.

A person commits an offense if he operates a dance hall during any hours other than the following:

(A) When school is in session in the school district in which the dance hall is located, between the hours of:

(1) 4:00 p.m, and 10:00 p.m., Monday through Thursday;

(2) 4:00 p.m. and 12:00 midnight, Friday;

(3) 1:00 p.m. and 12:00 midnight, Saturday; and

(4) 1:00 p.m. and 10:00 p.m., Sunday.

(B) When school is not in session in the school district in which the dance hall is located, between the hours of 1:00 p.m. and 12:00 midnight, Monday through Sunday.
(Ord. 40-08, passed 8-14-08)

§ 113.35 INSPECTION.

(A) Representatives of the Police, Health, Fire, and Building Departments may inspect the premises of a dance hall for the purpose of insuring compliance with the law at any time it is open for business or occupied.

(B) A person who operates a dance hall or a person designated as the Dance Hall Supervisor commits an offense if he refuses to permit a lawful inspection of the premises of a dance hall by a representative of the city at any time it is open for business or occupied.
(Ord. 40-08, passed 8-14-08)

§ 113.36 DANCE HALL SUPERVISOR.

(A) A person who operates a dance hall must designate a person as Dance Hall Supervisor and register his name with the Chief of Police.

(B) A person designated Dance Hall Supervisor must remain on the premises of the dance hall during the time dancing is permitted and until 30 minutes after the end of the dance to insure that the dance is conducted in an orderly manner.
(Ord. 40-08, passed 8-14-08)

§ 113.37 PERSONS UNDER 14 YEARS OLD AND PERSONS 21 YEARS OLD OR OLDER PROHIBITED.

(A) No person who is under the age of 14 years or who is 21 years old or older may enter an underage dance hall.

(B) A person commits an offense if he is 21 years old or older and:

(1) Enters an underage dance hall; or

(2) For the purpose of gaining admittance into an underage dance hall, he falsely represents himself to be:

(a) Of an age from 14 years through 20 years;

(b) A licensee or an employee of the dance hall;

(c) A parent or guardian of a person inside the dance hall; or

(d) A governmental employee in the performance of his duties.

(C) A licensee or an employee of an underage dance hall commits an offense if he knowingly allows a person to enter or remain on the premises of the dance hall who is:

(1) Under the age of 14 years; or

(2) Age 21 or older.

(D) An offense is not committed under divisions (B)(1) and (C)(2) if the person 21 years old or older is:

(1) A licensee or employee of the dance hall;

(2) A parent or guardian of a person inside the dance hall; or

(3) A governmental employee in the performance of his duties.
(Ord. 40-08, passed 8-14-08)

§ 113.38 EXPIRATION OF LICENSE.

(A) A license for an underage dance hall expires one year from the date of issuance and may be renewed only by making application as provided in § 113.31. Application for renewal should be made at

least 30 days before the expiration date, and when made less than 30 days before the expiration date the expiration of date of the license will not be extended.

(B) A license for an underage dance hall expires at 2:00 a.m. on the day following the date of the dance.
(Ord. 40-08, passed 8-14-08)

§ 113.39 SUSPENSION.

The Chief of Police shall suspend a dance hall license for a period of time not exceeding 30 days if he determines that a licensee or an employee of a licensee has:

(A) Violated §§ 113.32, 113.34, 113.35, 113.37, 113.38 or 113.99;

(B) Engaged in excessive use of alcoholic beverages while on the dance hall premises;

(C) Refused to allow an inspection of the dance hall premises as authorized in this subchapter;

(D) Knowingly permitted gambling by any person on the dance hall premises;

(E) Demonstrated inability to operate or manage a dance hall premises in a peaceful and law abiding manner, thus necessitating action by law enforcement officers; or

(F) Knowingly permitted the possession, consumption, or sale of an alcoholic beverage on the premises of an underage dance hall.
(Ord. 40-08, passed 8-14-08)

§ 113.40 REVOCATION.

(A) The Chief of Police shall revoke a license if a cause of suspension in § 113.39 occurs and the license has been suspended within the preceding 12 months.

(B) The Chief of Police shall revoke a license if he determines that one or more of the following is true:

(1) A licensee has given false or misleading information in the material submitted to the Chief of Police during the application process;

(2) A licensee or an employee is unable to lawfully operate the dance hall because of mental impairment;

(3) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(4) A licensee or an employee has knowingly allowed prostitution or solicitation for prostitution on the premises;

(5) A licensee or an employee knowingly permitted a customer to dance during a period of time when the dance hall license was suspended; or

(6) A licensee has been convicted of:

(a) A felony;

(b) A misdemeanor involving an offense of:

1. Prostitution;

2. Promotion of prostitution;

3. Public lewdness;

4. Gambling;

5. Violation of the controlled substances and dangerous drugs act of the State of Indiana; or

6. Unlawfully carrying a weapon;

and five years have not elapsed since the termination of any sentence, parole, or probation. The

fact that a conviction is being appealed shall have no effect.

(C) When the Chief of Police revokes a license, the revocation shall continue for one year and the licensee shall not be issued a dance hall license for one year from the date revocation became final. If, subsequent to revocation, the Chief of Police finds that the basis for the revocation action has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became final. If the license was revoked under division (B)(6), an applicant may not be granted another license.
(Ord. 40-08, passed 8-14-08)

§ 113.41 APPEAL.

If the Chief of Police denies the issuance of a license, or suspends or revokes a license, he shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. The aggrieved party may appeal the decision of the Chief of Police in the manner provided by state law and city ordinances.
(Ord. 40-08, passed 8-14-08)

§ 113.42 TRANSFER OF LICENSE.

A licensee shall not transfer his license to another, nor shall a licensee operate a dance hall under the authority of a license at any place other than the address designated in the application.
(Ord. 40-08, passed 8-14-08)

§ 113.99 PENALTY.

(A) Any person who violates any provision of §§ 113.02 through 113.09, or any person who aids, abets or assists therein shall, upon conviction, be found guilty of a Class B infraction and shall pay not more than $1,000 for each violation. A separate violation may be filed for each day that the violation continues and the person or persons may be subject to a penalty for each complaint filed against them for such violations.
(Ord. 1-82, passed 2-12-82)

(B) Whoever violates any provision of this chapter, for which no penalty is otherwise provided, shall be fined not more than $500. A separate offense shall be deemed committed on each day that a violation occurs or continues.

(C) Any person, firm, or corporation violating any provision of §§ 113.30 through 113.42 shall be fined not less than $100 nor more than $2,500 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
(Ord. 40-08, passed 8-14-08)

CHAPTER 114: MASSAGE PARLORS

Section

Statutory reference:

Power of city to regulate businesses generally, see I.C. 36-1-3-8 and 36-8-2-10

§ 114.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MASSAGE. Any method of treating the superficial soft parts of the body for remedial or hygienic purposes, consisting of rubbing, stroking, kneading, or tapping with the hands or instruments by a person of one sex on a person of the opposite sex.

MASSAGE PARLOR. Any building, room, place, or establishment, other than a regularly licensed hospital or dispensary where nonmedical and nonsurgical manipulative exercises are practiced on the human body with or without the use of mechanical or bath devices by a person of one sex on a person of the opposite sex.

MASSAGE THERAPIST. Any person who practices, administers, or performs massages as defined by definition of massage.

SEXUAL AREA or ***GENITAL AREA.*** The sexual or genital area of any person and shall include the genitals, pubic area, anus, or perineum of any person, or the vulva or breast of a female.
(Ord. 5-78, passed 12-18-78)

§ 114.02 LICENSE REQUIRED.

(A) It is unlawful for any person or firm to operate, conduct, or maintain a massage parlor without a license to operate such massage parlor issued by the City Controller.

(B) It shall be unlawful for any person or firm licensed to operate a massage parlor to employ or permit any person to perform a massage unless such person is licensed as a massage therapist by the City Controller.

(C) No license shall be required of any school licensed and regulated by the State Department of Public Instruction, by any regular four-year college or university, or by any Young Men's Christian Association or Young Women's Christian Association, licensed hospital or licensed nursing home, or by any licensed physician, osteopath, chiropractor, or physical therapist.
(Ord. 5-78, passed 12-18-78) Penalty, see § 114.99

Cross-reference:

General licensing provisions, see Ch. 110

§ 114.03 APPLICATION FOR LICENSES.

(A) The application for a license to operate a massage parlor shall contain the following information and shall be individually signed by the applicant:

(1) Name of applicant and aliases;

(2) Resident address of applicant and former addresses for the past three years;

(3) Business address of applicant;

(4) Number of massage tables, shower stalls, or other such individual units;

(5) The age, date of birth, and citizenship of the applicant, in the case of individuals, and of the manager and officers in the case of a corporation;

(6) The names, addresses, ages, citizenship, and designations of each person connected with the applicant's establishment;

(7) Whether the applicant or its manager or officers have ever been previously engaged in operating a massage school, massage parlor, massage therapy clinic, or bathhouse;

(8) Whether any applicant, or in the case of a corporation, its managers, officers, directors, or stockholders, have ever been convicted of any act of violence, moral turpitude, sex offense, or prior violation of this chapter;

(9) An agreement by the operator permitting inspection;

(10) Type of license being applied for by the applicant.

(B) There shall be filed a verified application for a massage therapist license by each individual who is employed in any establishment who is required by this chapter to be licensed. The application shall contain the following information:

(1) Name and aliases;

(2) Age, date of birth;

(3) Address and former addresses for past three years;

(4) Citizenship;

(5) Whether convicted of any public offense concerning an act of violence, moral turpitude, sex offense, or prior violation of this chapter;

(6) Nature of work performed.

(C) Along with aforesaid applications for licenses there shall be a certificate from a duly licensed medical practitioner, on a form prescribed by the Madison County Health Department, certifying that the applicant is free from communicable diseases and that the examination has been made within 30 days prior to the application for the license or permit herein sought.
(Ord. 5-78, passed 12-18-78)

§ 114.04 LICENSE FEES.

The annual license fee for each person who operates or is employed by a massage parlor shall be determined in accordance with the following scale:

(A) Licenses shall be required for all massage parlors, the fee for said license to be $250 annually;

(B) Licenses shall be required for massage therapists, the fee for the license to be $25 annually for each therapist.
(Ord. 5-78, passed 12-18-78)

§ 114.05 OPERATION.

(A) No massage parlor shall be operated or conducted within 500 feet of a church, school, or residential area, or with a separate opening to living quarters. There must be a separate opening to living quarters and a separate entrance to the place of business.

(B) All licensed operators or permit holders under this chapter shall display their licenses or permits in a visible location in their establishment.

(C) All license or permit holders shall be subject to all other city ordinances, county ordinances, and state statutes and to regulations of various administrative bodies of the city, county, and state.

Violation of such regulations, ordinances, or statutes shall be grounds for revocation of licenses or permits.

(D) No person holding a license under this chapter shall administer to a person of the opposite sex, any massage, alcohol rub or similar treatment, fomentation, bath, or electric or magnetic treatment, except on the signed order of a licensed physician, osteopath, chiropractor, podiatrist, or registered physical therapist. A person shall neither cause or permit in or about his place of business, or in connection with his business, any agent, employee, servant, or other individual to administer any such treatment to any individual of the opposite sex.

(E) All employees of establishments licensed under this chapter, including masseurs, masseuses, and therapists, shall wear clean, nontransparent outer garments covering the sexual or genital areas.

(F) The sexual or genital areas of patrons of establishments required to be licensed under this chapter must be covered with towels, clothes, or undergarments when in the presence of an employee, masseur, masseuse, or therapist.

(G) No person in any establishment licensed under this chapter shall place his or her hand on or touch with any part of his body or fondle in any manner or massage a sexual or genital area of any other person.

(H) No employee of an establishment licensed under this chapter shall perform, offer, or agree to perform, any act which shall require the touching of the patron's genitals.

(I) Every massage parlor shall be open for inspection during all business hours and at other reasonable times by police officers, health and fire inspectors, and duly authorized representatives of the City Controller on the showing of proper credentials by such persons.

(J) Any massage parlor is prohibited from installing or maintaining any lock or similar device on the inside of any door of the business which cannot be operated by key or knob from the exterior of the door.
(Ord. 5-78, passed 12-18-78) Penalty, see § 114.99

§ 114.06 ISSUANCE OR REJECTION OF APPLICATION; QUALIFICATIONS.

(A) The City Controller, before issuing any license provided for herein, shall investigate the character of the applicant, and the officers, directors, and managers of the business if it is a corporation. No license shall be issued if he shall find:

(1) That any of the persons named in the application or any employee thereof are not persons of good moral character;

(2) That any of the persons have previously been connected with any massage school, massage parlor, massage therapy clinic, or bathhouse where the license therefor has heretofore been revoked, or where any of the provisions of the law applicable to massage schools, massage parlors, massage therapy clinics, or bathhouses have been violated;

(3) That the premises sought to be so licensed fail to comply in any manner with the ordinances and laws applicable thereto.

(B) All applicants for licenses to engage in the practice of massage therapy must submit a certificate or affidavit of their respective qualifications as to schooling, training and experience, and where and how obtained.
(Ord. 5-78, passed 12-18-78)

§ 114.07 COMPLAINTS.

Complaints of alleged violations of the provisions of this chapter may be made in writing to the City Controller. On learning of violations of the provisions of this chapter or related ordinances or laws, the City Controller shall hold a hearing to determine if any previously issued licenses shall be revoked. After a hearing thereon, if the City Controller should determine that the license shall be revoked, no refund of license or permit fee shall be due.
(Ord. 5-78, passed 12-18-78)

§ 114.99 PENALTY.

Whoever violates any provisions of this chapter for which no penalty is otherwise provided, shall be fined not more than $500. A separate offense shall be deemed committed on each day that a violation occurs or continues.

CHAPTER 115: RESTAURANTS

Section

Statutory reference:

Power of city to regulate businesses generally, see I.C. 36-1-3-8 and 36-8-2-10

§ 115.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

EMPLOYEE. Any person who handles food or drink during the preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed in a room or other place in which food or drink is prepared or served.

FOOD. All articles used for food, drink, confectionery, or condiment, whether simple mixed or compound, and all substances or ingredients used in the preparation thereof.

HEALTH OFFICER. The secretary of the state Board of Health or his duly authorized representative.

ITINERANT RESTAURANT. One operating for a temporary period, in connection with a fair, carnival, circus, public exhibition, or other similar gatherings.

RESTAURANT. Restaurant, coffee shop, cafeteria, short-order café, luncheonette, tavern, sandwich stand, soda fountain, and all other eating or drinking establishments, as well as kitchens, or other places in which food or drink is prepared for sale elsewhere.

UTENSILS. Any kitchenware, tableware, glassware, cutlery, containers, or other equipment of any kind or nature, with which food or drink comes in contact during storage, preparation, or serving.
('64 Code, § 78.1)

§ 115.02 PERMIT REQUIRED FOR OPERATION.

It shall be unlawful for any person to operate a restaurant or itinerant restaurant in the city, who does not possess an unrevoked permit from the Health Officer, which permit is posted in a conspicuous place in such restaurant. Only persons who comply with the requirements of this chapter shall be entitled to receive and retain such a permit. The permit so issued shall be good for 12 months from the date of issuance.
('64 Code, § 78.2) (Ord. 1751, passed 2-13-47) Penalty, see § 115.99

Cross-reference:

General licensing provisions, see Ch. 110

§ 115.03 APPLICATION.

Each application for a permit from the Health Officer, and any permit issued by the Health Officer, shall contain the name of the person to whom the permit is granted, the address of the premises for which the same is issued, the address of the person to whom the same is issued, if such address be different than the premises for which it is issued, and such other pertinent information as may be required by the Health Officer. A permit shall be issued to any applicant who has complied with the requirements of this chapter, and no permit or renewal thereof shall be denied on arbitrary or capricious grounds. A separate permit and license shall be required for each restaurant operated, or to be operated, by any person.
('64 Code, § 78.3) (Ord. 1703, passed 12-13-44)

§ 115.04 SUSPENSION OR REVOCATION.

Such a permit may be temporarily suspended by the Health Officer on the violation by the holder of any of the terms of this chapter after due notice shall have been given by the Health Officer and an opportunity given to correct the violation except in case of an emergency declared by the Board of Health, or revoked after an opportunity for a hearing by the Board of Health on serious or repeated violations.
('64 Code, § 78.4) (Ord. 1703, passed 12-13-44)

§ 115.05 APPEALS.

(A) Refusal to grant, renew, or reinstate a permit shall be cause for hearing before the Board of Health if requested within ten days.

(B) Within ten days after any hearing before the Board of Health, as provided in division (A), the Board of Health shall take final action and enter such order as it shall determine in the proceedings and shall notify the applicant or permittee at the address given in the application or permit. Such applicant or permittee may, within ten days of the receipt of such notice, appeal from the decision of the Board of Health to the circuit or superior court of Madison County, Indiana, in the manner now provided by law in other civil cases.
('64 Code, § 78.5) (Ord. 1703, passed 12-13-44)

§ 115.06 REINSTATEMENT OF SUSPENDED PERMIT.

(A) Any restaurant, the permit of which has been suspended, may at any time make application for the reinstatement of the permit.

(B) Within one week after the receipt of a satisfactory application, accompanied by a statement signed by the applicant to the effect that the violated provision of this chapter has been conformed with, the Health Officer shall make a reinspection, and thereafter as many additional reinspections as he may deem necessary to assure himself that the applicant is again complying with the requirements, and, in case the findings indicate compliance, shall reinstate the permit.
('64 Code, § 78.6) (Ord. 1703, passed 12-13-44)

§ 115.07 NONPROFIT INSTITUTIONS SUBJECT TO REQUIREMENTS.

The provisions of this chapter shall apply to restaurants, and itinerant restaurants, operated by fraternal organizations, service clubs, religious, educational, and charitable institutions.
('64 Code, § 78.7) (Ord. 1703, passed 12-13-44)

§ 115.08 EXAMINATION OF FOOD AND DRINKS.

Samples of food, drink, and other substances may be taken and examined by the Health Officer as often as may be necessary for the detection of unwholesomeness or adulteration. The Health Officer may condemn and forbid the sale of, or cause to be removed or destroyed, any food or drink which is unwholesome or adulterated.
('64 Code, § 78.8) (Ord. 1703, passed 12-13-44)

§ 115.09 INSPECTION OF RESTAURANTS.

(A) At least once every six months the Health Officer shall inspect every restaurant located within the city. In case the Health Officer discovers the violation of any item of sanitation, he shall make a second inspection after a lapse of such time as he deems necessary for the defect to be remedied, and the second inspection time shall be used in determining compliance with the requirements of this chapter. Any violation of the same item of this chapter on such second inspection shall call for immediate suspension of permit.

(B) One copy of the inspection report shall be left at the premises at the time of the inspection.

(C) The person operating the restaurant shall on request of the Health Officer permit access to all parts of the establishment. In case of emergency and the emergency is to be determined by the Board of Health, the person operating the restaurant shall permit copying of any or all records of food purchased. ('64 Code, § 78.9) (Ord. 1703, passed 12-13-44) Penalty, see § 115.99

§ 115.10 SANITATION REQUIREMENTS.

All restaurants shall comply with the following items of sanitation:

(A) *Floors*. The floors of all rooms in which food and drink is stored, prepared, or served, or in which utensils are washed, shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair.

(B) *Walls and ceilings*. Walls and ceilings of all rooms shall be kept in good repair and clean. All walls and ceilings of rooms in which food or drink is stored or prepared shall be finished in light color. The walls of all rooms in which food or drink is prepared or utensils are washed shall have a smooth washable surface up to the level reached by splash or spray.

(C) *Doors and windows*. When flies are prevalent, all openings into the outer air shall be effectively screened and doors shall be self-closing, unless other effective means are provided to prevent the entrance of flies.

(D) *Lighting*. All rooms in which food or drink is stored or prepared or in which utensils are washed shall be well lighted.

(E) *Ventilation*. All rooms in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be well ventilated.

(F) *Toilet facilities*. Every restaurant shall be provided with adequate and conveniently located water-flush toilet facilities for its employees. The toilet fixtures and the installation of same shall conform with the plumbing ordinances of the city. Toilet rooms shall not open directly into any room in which food, drink, or utensils are handled or stored. The doors of all toilet rooms shall be tight- fitting and self-closing. Toilet rooms shall be kept in a clean condition, in good repair, well lighted, and ventilated. Hand-washing signs shall be posted in each toilet room used by employees.

(G) *Water supply*.

(1) Running hot and cold water under mechanical pressure shall be easily accessible to all rooms in which food is prepared or utensils are washed and the water supply shall be adequate and of a safe sanitary quality. All coolers for drinking water shall be of an approved type and shall be kept free from contamination.

(2) If a private water supply is maintained, the supply and all appurtenances thereto shall be constructed, installed, and maintained as required by the State Board of Health and approved before the water supply is used. A sample of water from private wells must be sent to a recognized laboratory each month for bacteriological analysis and a copy of remit of analysis filed with the City Board of Health.

(H) *Lavatory facilities*. Adequate and convenient hand-washing facilities shall be provided, including hot and cold running water, soap and approved

sanitary towels. The use of a common towel is prohibited. No employee shall resume work after using the toilet room without first washing his hands.

(I) *Construction of utensils and equipment*. All multi-use utensils and all show and display cases or windows, counters, shelves, tables, refrigerating equipment, sinks, and other equipment or utensils used in connection with the operation of a restaurant shall be so constructed as to be easily cleaned and shall be kept in good repair. No cracked, chipped, or broken dishes or glass shall be used in the preparation or serving of food or drink. Utensils containing or plated with cadmium or lead shall not be used, provided, that solder containing lead may be used for jointing.

(J) *Cleaning and bactericidal treatment of utensils and equipment*.

(1) All equipment, including display cases or windows, counters, shelves, refrigerators, stoves, hoods, and sinks, shall be kept clean and free from dust, dirt, insects, and other contaminating material. All cloths used by waiters, chefs, and other employees shall be clean. Single-service containers shall be used only once.

(2) All multi-use eating and drinking utensils shall be thoroughly cleaned and effectively subjected to an approved bactericidal process after each usage. All multi-use utensils used in the preparation or serving of food and drink shall be thoroughly cleaned and effectively subjected to an approved bactericidal process immediately following the day's operation. Drying cloths, if used, shall be clean and shall be used for no other purpose.

(3) No article, polish, or other substances containing any cyanide preparation or other poisonous material shall be used for the cleaning or polishing of utensils.

(K) *Storage and handling of utensils and equipment*. After bactericidal treatment, utensils shall be stored in a clean dry place protected from flies, dust, and other contamination, and shall be handled in such manner as to prevent contamination as far as practicable. Single-service utensils shall be purchased only in sanitary containers, shall be stored therein in a clean dry place until used, and shall be handled in a sanitary manner.

(L) *Disposal of wastes*. All wastes shall be properly disposed of, and all garbage and trash shall be kept in suitable receptacles, in such manner as not to become a nuisance.

(M) *Refrigeration*. All readily perishable food or drink shall be kept at or below 50°F. except when being prepared or served. Waste water from refrigeration equipment shall be properly disposed of. All meats which are kept longer than 24 hours shall be refrigerated at 40° or less. Temperature thermometers shall be provided in each refrigerator at all times. In establishments where adequate refrigeration is not provided as approved by the Health Officer, cream-filled pies and pastries shall not be sold from June 15 to September 15.

(N) *Wholesomeness of food and drink*. All food and drink shall be clean, wholesome, free from spoilage, and so prepared as to be safe for human consumption. No restaurant shall serve milk or milk products below the standards set forth in state law governing the production and sale of milk or milk products, nor shall any restaurant serve milk or milk products furnished by any dairyman whose dairy does not comply with the sanitary regulations pertaining thereto. Ice cream and other frozen desserts served shall be from sources approved by the City and State Board of Health. Milk and fluid milk products shall be served in individual original containers in which they were received from the distributor or from a bulk container equipped with an approved dispensing device; provided, that this requirement shall not apply to cream, which may be served from the original bottle or from a dispenser approved for such service. All oysters, clams, and mussels shall be from approved sources, and if shucked shall be kept until used in the containers in which they were placed at the shucking plant.

(O) *Storage, display, and serving of food and drink*. All food and drink shall be so stored, displayed, and served as to be protected from dust, flies, vermin, depredation, and pollution by rodents, unnecessary handling, droplet infection, overhead

leakage, and other contamination. No animals or fowls shall be kept or allowed in any room in which food or drink is prepared or stored. All means necessary for the elimination of flies, roaches, and rodents shall be used.

(P) *Cleanliness of employees*. All employees engaged in handling food, drink, utensils, or equipment shall be required to secure a health certificate from the Health Officer, at least every 12 months, or as often as may be deemed necessary by the Health Officer, showing that they are free from any infectious or transmittable disease. A blood test for syphilis shall be provided the Health Officer by all such employees at least once annually. Examinations for such health certificate shall be made and issued by a reputable licensed physician. All employees shall wear clean outer garments and shall keep their hands clean at all times while engaged in the preparation or serving of food, wear suitable head covering to protect the food from contamination from human hair. Employees shall not expectorate or use tobacco in any form in rooms in which food is prepared. Each employee shall furnish the Health Officer, at least once each two years, an X-ray of the chest for the purpose of determining freedom from tuberculosis. (Ord. 1751, passed 2-13-47)

(Q) *Miscellaneous*. The premises of all restaurants shall be kept clean and free of litter or rubbish. None of the operations connected with a restaurant shall be conducted in any room used as living or sleeping quarters. Adequate lockers or dressing rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats, and aprons shall be kept in containers provided for this purpose. (Ord. 1703, passed 12-13-44)
('64 Code, § 78.10) Penalty, see § 115.99

§ 115.11 DISEASE CONTROL.

No person who is affected with any disease in a communicable form or is a carrier of such disease shall work in any restaurant, and no restaurant shall employ any such person or any person suspected of being affected with any disease in a communicable form or of being a carrier of such disease. If the restaurant manager or Health Officer suspects that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the Health Officer immediately.
('64 Code, § 78.11) (Ord. 1703, passed 12-13-44) Penalty, see § 115.99

§ 115.12 PROCEDURE WHEN INFECTION SUSPECTED.

When suspicion arises as to the possibility of transmission of infection from any restaurant employee, the Health Officer is authorized to require any or all of the following measures:

(A) The immediate exclusion of the employee from all restaurants;

(B) The immediate closing of the restaurant concerned until no further danger of disease outbreak exists, in the opinion of the Health Officer;

(C) Adequate medical examinations of the employee and of his associates, with such laboratory examinations as may be indicated.
('64 Code, § 78.12) (Ord. 1703, passed 12-13-44)

§ 115.13 INTERPRETATION OF REQUIREMENTS.

This chapter shall be enforced by the Health Officer in accordance with the interpretation thereof contained in the current U.S. Public Health Service Code regulating eating and drinking establishments, a certified copy of which shall be on file in the City Clerk's office.
('64 Code, § 78.13) (Ord. 1703, passed 12-13-44)

§ 115.14 SUSPENSION OF PERMIT.

No restaurant shall be operated within the city or its police jurisdiction unless it conforms with the restaurant requirements of this chapter, provided, that when any restaurant fails to qualify, the Health Officer is authorized to suspend the permit.
('64 Code, § 78.97) (Ord. 1703, passed 12-13-44)

§ 115.99 PENALTY.

Whoever violates any provision of this chapter for which no penalty is otherwise provided, shall be fined not more than $500. A separate offense shall be deemed committed on each day that a violation occurs or continues.

CHAPTER 116: TAXICABS

Section

Cross-reference:

Parking in taxicab stands, see § 72.10

Statutory reference:

Power of city to license and regulate taxicabs, see I.C. 36-9-2-4

Power of city to regulate businesses generally, see I.C. 36-1-3-8 and 36-8-2-10

§ 116.01 DEFINITION.

For the purpose of this chapter the following definition shall apply unless the context clearly indicates or requires a different meaning.

TAXICAB. A motor driven vehicle, used within the limits of the city, for public hire and carrying passengers for hire or furnishing passengers transportation for hire, along or over public streets, avenues, or other highways in the city.
('64 Code, § 76.1) (Ord. 1678, passed 5-12-43)

§ 116.02 REGULATIONS ESTABLISHED.

It shall be unlawful for any person, firm, or corporation to drive, run, or operate any taxicab upon or along any street, avenue, or other highway in the city, except in accordance with the regulations, terms, and conditions established by this chapter; or to stop, stand, park any taxicab on, upon, or along any street, avenue, or other highway in the city, except in accordance with the regulations, terms, and conditions established by this chapter.
('64 Code, § 76.2) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

§ 116.03 LICENSE REQUIRED.

No person shall drive, run, or operate any taxicab within the city without first obtaining a license

therefor in accordance with the provisions hereinafter prescribed.
('64 Code, § 76.3) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

Cross-reference:

General licensing provisions, see Ch. 110

§ 116.04 LICENSE APPLICATION.

Any person, firm, or corporation desiring to operate a taxicab or taxicab service upon or along any of the streets, avenues, or highways of the city, before undertaking so to do, shall file a signed application in writing for a license, duly sworn to by the applicant, with the Anderson Police Department. The applicant shall not be entitled to a license unless the application shall show the following:

(A) The name of the person, firm, or corporation desiring the license; if a firm, the full name of each of the partners thereof;

(B) The place of residence and the principal place of business of the applicant;

(C) That the applicant is financially able to render taxicab service as applied for and is financially able to give such additional service in the city as shall from time to time be necessary; also, that the applicant has reasonable resources and financial backing;

(D) The age and experience in automobile operation and the residence of each of the proposed drivers of such taxicabs and their chauffeur's license number, both state and city;

(E) The make, model, factory and engine number, and state license number of the motor vehicle to be driven as a taxicab;

(F) hat the applicant has a business office in a properly zoned business district, equipped with a telephone and waiting room and the location and address of the office of the business, firm, or corporation.
('64 Code, § 76.4) (Ord. 1678, passed 5-12-43; Am. Ord. 5-97, passed 3-13-97)

§ 116.05 DURATION; RENEWAL.

(A) The application referred to in § 116.04 shall be filed upon the issuance of the license under this chapter and it shall not be necessary to refile said application each month, but corrections thereon, if any, shall be made each month, by the filing of a new application. If no corrections are necessary, the original application shall stand until the end of the calendar year in which it is issued. All licenses issued under this chapter shall expire on December 31, in the year in which they are issued. All new licenses for the ensuing year shall be secured and paid for on or before January l, of each year hereafter succeeding, regardless of the length of time the license has been in force under which such vehicle or drivers of vehicles have been operating.

(B) It shall be necessary for the licensee to give proof that he has complied with § 116.17 before a renewal of the license can be had upon his application.
('64 Code, § 76.5) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

§ 116.06 FEE.

The fee for the license required by § 116.03 shall be $200 annually, or portion thereof, for each business rendering licensed taxicab services. The fee shall be paid through the Anderson Police Department at the time that the application for such license is made.
('64 Code, § 76.6) (Ord. 1678, passed 5-12-43; Am. Ord. 5-97, passed 3-13-97)

§ 116.07 (RESERVED).

§ 116.08 OPERATOR'S LICENSE REQUIRED.

It shall be unlawful for any person to operate a taxicab as a driver thereof within the city, without first having secured a license so to do from the city in accordance with the provisions hereinafter prescribed,

and it shall be unlawful for any person to operate a taxicab as a driver thereof, without having on his person a taxicab driver's license issued by the city.
('64 Code, § 76.8) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

§ 116.09 APPLICATION FOR OPERATOR'S LICENSE.

Every person desiring to drive a taxicab in the city shall, before undertaking so to do, file an application in writing for a taxicab driver's license, duly sworn to by the applicant, with the Anderson Police Department, which application shall show the following:

(A) The name and present address of applicant;

(B) The address of each place of residence of said applicant during the last past six years prior to the date of said application;

(C) The place of employment, the kind of employment, and the name of each of the employers of the applicant for the two years immediately preceding the date of the application;

(D) The age and sex of said applicant;

(E) Applicant's experience in automobile operation;

(F) Whether or not applicant has ever been convicted in any court of any crime or misdemeanor, and if so, the facts concerning each such conviction;

(G) Whether or not applicant uses intoxicating liquors;

(H) Applicant's state chauffeur's license number;

(I) And upon the face of the application a certificate of the Chief of Police, that the applicant has been duly examined as to his or her ability to drive and operate a motor vehicle and has been examined concerning the traffic ordinances of the city, and the traffic laws of the State of Indiana, and has been examined as to conviction for any crime or misdemeanor, and that in the opinion of the Chief of Police the applicant is a fit and proper person to receive a taxicab driver's license.
('64 Code, § 76.9) (Ord. 1678, passed 5-12-43; Am. Ord. 5-97, passed 3-13-97) Penalty, see § 116.99

§ 116.10 OPERATOR'S LICENSE FEE.

Each person so filing his application for a taxicab driver's license as provided in § 116.09 above, shall pay to the Anderson Police Department for the benefit of the city, an annual license fee of $10. Such license shall expire on December 31 of the year in which the same is granted.
('64 Code, § 76.10) (Ord. 1678, passed 5-12-43; Am. Ord. 5-97, passed 3-13-97) Penalty, see § 116.99

§ 116.11 DENIAL OR REVOCATION OF OPERATOR'S LICENSE.

No taxicab driver's license shall be issued to any applicant whose application shows that he has been convicted of any felony, or who has three times been convicted of the violation of any traffic law in the city within the six years prior to the date of such application, and any taxicab driver's license shall be revoked upon a showing that the said license was obtained by a false statement contained in the application for such license.
('64 Code, § 76.11) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

§ 116.12 REPORTING OF LOST ARTICLES.

It shall be the duty of every person operating a taxicab to promptly notify the Police Department of all articles found, and where they are kept and may be claimed.
('64 Code, § 76.12) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

§ 116.13 STATE CHAUFFEUR'S LICENSE REQUIRED.

Each driver of such taxicab must be thoroughly responsible and licensed as a chauffeur under the laws of the State of Indiana and must at all times, when called upon, either by a passenger or the officials of such city or police officials of the state, be able and produce for inspection his chauffeur's licenses, both state and city. Failure at any time to comply with any provision of this section shall automatically revoke the city license of such driver.
('64 Code, § 76.13) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

§ 116.14 DISPLAY OF LICENSES.

Each driver and each licensee shall be personally responsible in seeing that the license for the operation of such vehicle shall be prominently displayed therein, open for inspection to the public, and that each driver's license shall always be available for inspection as herein provided. Failure to have such taxi license posted, or failure to have such driver's license available shall automatically constitute a revocation of such taxi license or such driver's license, and this revocation shall be in addition to the penalties hereinafter provided.
('64 Code, § 76.14) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

§ 116.15 MARKING OF TAXICABS.

(A) It shall be unlawful for any person, firm, partnership, or corporation to operate a taxicab within the corporate limits of the city unless the same is numbered in accordance with the number recited in the license issued for the operation of such vehicle. This number shall at all times be displayed so that the same is visible from the rear of such cab. This number shall not be moved from the cab whose factory and engine number is endorsed upon the license and placed on any other cab bearing a different engine number or factory number or being of a different model without the written consent of the City Controller, which consent shall be endorsed on the license together with any change in the model, kind, factory, or engine number on such cab.

(B) Such cab shall be identified with the word "TAXI" printed in letters at least four inches in height clearly visible from the front and rear of said cab and said taxicab shall further be identified by an identification light on the front of said cab.
('64 Code, § 76.15) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

§ 116.16 DISPLAY OF RATE SCHEDULES.

Each person, firm, or corporation running, driving, or operating a taxicab within the city shall have printed on a card the maximum fare and rate of transportation of passengers, together with the prevailing schedule of rates for such taxicab, which cards shall be prominently displayed in each taxicab so that the same can readily be seen and read by all passengers.
('64 Code, § 76.16) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

§ 116.17 BOND OR INSURANCE POLICY REQUIRED.

No license shall be issued and no taxicab shall be operated upon the street, avenue, or public highway in the city until there shall have been filed with the City Controller, a bond indemnity undertaking or policy of insurance, executed by a solvent insurance company, legally authorized to execute such instruments in the State of Indiana; or a bond with good resident freehold security thereon, running for the year of the license to be issued to the applicant, as provided in this chapter, providing for the payment of any final judgment that may be rendered against the insured for damage to property or for bodily injury or death of passengers or other persons resulting from collision or other accident for which the person, firm, or corporation may be liable while operating the taxicab described in the application, in a sum up to and not exceeding

$5,000, to or for any one person, or $10,000, to or for more than one person, as the result of any one collision or accident.
('64 Code, § 76.17) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

§ 116.18 MAINTENANCE OF TAXICABS.

Every taxicab shall be kept in good repair and in a clean and sanitary condition, so as to be capable of safely and comfortably transporting passengers therein, and no person shall be allowed to ride upon the running board or outside the body of any taxicab, and it shall be the duty of the licensee to compel the observance by passengers of this provision.
('64 Code, § 76.18) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

§ 116.19 STOPPING AT GRADE CROSSINGS.

Every taxicab shall be brought to a full stop and the driver thereof shall see that the way is clear and safe before crossing the tracks of any stream, street, or interurban railroad in the city. However, this section shall not apply to the crossing of any street or interurban railroad track at any street intersection point where automatic electric stop and go-traffic signals have been installed by such city during such time as such signals are in active operation.
('64 Code, § 76.19) (Ord. 1678, passed 5-12-43) Penalty, see § 116.99

§ 116.20 REVOCATION OF LICENSES.

(A) Any license issued under the terms of this chapter may be revoked by the city judge for the violation of any of the provisions of this chapter and upon being three times convicted, for the violation of any of the terms of this code or of the laws of the State of Indiana regulating or controlling traffic upon the streets of the city. The driver's license of said driver shall be revoked by the city judge and the licensee shall be ineligible to receive another license for a period of one year from such revocation.

(B) The license for operating the taxicab shall be revoked if, upon the report of the Chief of Police, it is made to appear that the vehicle so licensed is not properly constructed or is not in good repair, is not a safe conveyance for the transportation of passengers, or upon it being shown that any representation made by said licensee in the application for such license is false, and any license issued under the terms of this chapter shall be issued subject to the rights reserved in the Common Council to amend, supplement, or repeal this chapter or any part thereof.
('64 Code, § 76.20) (Ord. 1678, passed 5-12-43)

§ 116.21 NO LIMIT ON NUMBER OF LICENSES.

There shall be no limit on the amount of taxicab licenses issued by the city.
('64 Code, § 76.21) (Ord. 1678, passed 5-12-43)

§ 116.22 LICENSE NOT TRANSFERABLE.

No license for any taxicab shall be transferable nor may any taxicab be operated under any license under any other name than that in which it was originally issued and to whom it was originally issued.
('64 Code, § 76.22) (Ord. 1678, passed 5-12-43)

§ 116.99 PENALTY.

Whoever violates any provision of this chapter for which no penalty is otherwise provided shall be fined not more than $500. A separate offense shall be deemed committed on each day that a violation occurs or continues.

CHAPTER 117: TRANSIENT MERCHANTS; PHOTOGRAPHERS

Section

Statutory reference:

Power of city to regulate businesses generally, see I.C. 36-1-3-8 and 36-8-2-10
Transient Merchant Law of Indiana, see I.C. 25-37-1-1 et seq.

§ 117.01 DEFINITION.

For the purpose of this chapter the following definition shall apply unless the context clearly indicates or requires a different meaning.

TRANSIENT MERCHANT.

(1) All persons, firms, and corporations, both as principals and agents, who engage in, do, or transact any temporary or transient business in this city, offering for sale or selling goods, wares, or merchandise, and including those, who, for the purpose of carrying on such business, hire, lease, or occupy any permanent or mobile building, structure, or real estate for the exhibition of by means of samples, catalogs, photographs and price lists or sale of such goods, wares, or merchandise, but shall not include any person, individual, copartnership, or corporation which grows the goods, wares, or merchandise which he or it sells or offers for sale.

(2) Any person, firm, or corporation engaged in the business of photography and not being a resident of the city, who shall carry on the business of photography in said city, in any or all of its phases by making negatives, exposing plates, films, or paper for making negatives or positives upon which photographs are made for sale, or by soliciting or employing agents to solicit or canvass for photographic work or copies.

('64 Code, § 75.1) (Ord. 2339, passed 5-28-57)

§ 117.02 LICENSE REQUIRED.

It shall be unlawful for any transient merchant to transact business in the city unless such transient merchant and the owner of any goods, wares, or merchandise to be offered for sale or sold, shall have first secured a license as herein provided, and shall have complied with the other requirements of this chapter herein set forth.

('64 Code, § 75.2) (Ord. 2339, passed 5-28-57) Penalty, see § 117.99

§ 117.03 LICENSE APPLICATION.

(A) Any transient merchant desiring to transact business in the city shall file an application for license for that purpose with the City Planning Department. The application shall state the following facts:

(1) The name, residence, and post office address of the person, firm, or corporation making the application, and if a firm or corporation, the name and address of the members of the firm or officers of the corporation, as the case may be.

(2) If the applicant is a corporation, then there shall be on the application form the date of incorporation, the state of incorporation, and if the applicant is a corporation formed in a state other than the State of Indiana, the date on which such corporation qualified to transact business as a foreign corporation in the State of Indiana.

(3) A statement showing the kind of business proposed to be conducted, the length of time for which the applicant desires to transact business, the proposed location for transacting business, and if for the purpose of transacting such business, any permanent or mobile building, structure, or real estate is to be used for the exhibition by means of samples, catalogs, photographs, and price lists or sale of goods, wares, or merchandise, the location of such proposed place of business.

(4) A detailed inventory and description of such goods, wares, and merchandise to be offered for sale or sold, the manner in which the same is to be advertised for sale, and the representation to be made in connection therewith. The names of the persons from whom the goods, wares, and merchandise so to be advertised or represented were obtained, the date of receipt of goods, wares, and merchandise by the applicant for the license, the place from which the same were last taken, and any and all details necessary to locate and identify all goods, wares, and merchandise to be sold.

(B) Attached to the application shall be a receipt showing that the personal property tax on the goods, wares, and merchandise to be offered for sale or sold, have been paid.

(C) The proposed location is subject to the city's zoning ordinances.

(D) The application shall be verified.
('64 Code, § 75.3) (Ord. 2339, passed 5-28-57; Am. Ord. 12-05, passed 3-10-05)

§ 117.04 BOND.

(A) At the time of filing the application, and as a part thereof, the applicant shall file and deposit with the City Controller a bond with sureties to be approved by the City Controller in the penal sum of $1,000 to the city and for the use and benefit of any purchaser of any such goods, wares, or merchandise, who might have a cause of action of any nature arising from or out of such sale or sales, or against the applicant. The bond shall be further conditioned upon the payment of any fines that may be assessed by any court against the applicant or its agents or employees for violation of the provisions of this chapter and the satisfaction of all causes of action commenced within one year from the date that such sale is made. However, the aggregate liability of the surety for all fines and causes of action shall in no event exceed the amount of such bond, but there shall be no limitation of liability against the transient merchant or the applicant for the license.

(B) In such bond, the applicant and the surety shall appoint the City Controller as the agent of the applicant and the surety for the service of process. In the event of such service of process, the agent on whom such service is made shall, within five days after the service, mail by ordinary mail a true copy of the process served upon him to each party for whom he has been served, addressed to the last known address of such party. Failure to mail the copy shall not however affect the court's jurisdiction.

(C) The city or any person having a cause of action arising from or out of any such sale or sale of such goods, wares, or merchandise, or against the applicant, may join the applicant and the surety on such bond in the same action, or may sue either such applicant or the surety alone.
('64 Code, § 75.4) (Ord. 2339, passed 5-28-57; Am. Ord. 12-05, passed 3-10-05)

§ 117.05 FEE.

The applicant desiring to file an application with the city for a transient merchant license shall pay to the city a license fee of $20 per day for each day or part thereof that he proposes to transact business within the city. In addition to the license to be issued to the applicant, the applicant shall secure a license for each agent, solicitor, and canvasser, selling or offering for sale goods, wares, and merchandise, or selling by coupon or contract within the city. The fee for the license for each such agent, solicitor, or canvasser shall be $10 per day or any part thereof.
('64 Code, § 75.5) (Ord. 2339, passed 5-28-57; Am. Ord. 12-05, passed 3-10-05)
Statutory reference:
Power of city to license transient merchants, see I.C. 25-37-1-11, 36-1-3-8, and 36-8-2-10

§ 117.06 ISSUANCE OF LICENSE.

(A) Upon the filing of an application and after the applicant has established that he has fully complied with all the provisions of this chapter, the City Planning Department may issue to the applicant a license authorizing the applicant to transact business as proposed in the application. Such license shall not be transferable and shall be valid only for the time and location issued. No license shall be good for more than one person unless such person shall be copartner, or an employee of a firm or corporation obtaining such license, then in that event additional licenses shall be issued to each agent, salesman, canvasser, or solicitor as defined in § 117.05. No license shall be good for more than one location in the city.

(B) The City Planning Department shall keep a record of such license in a book provided for that purpose, which shall at all times be open to public inspection.

(C) No particular form of license shall be required to be issued by the City Planning Department. However, any license issued shall state the name of the person, firm, or corporation which is licensed, the approved location, names of sales agents, the number of days for which the license is issued, and the expiration date.
('64 Code, § 75.6) (Ord. 2339, passed 5-28-57; Am. Ord. 12-05, passed 3-10-05)

§ 117.07 EXPIRATION OF LICENSE.

Within ten days after a license expires, the holder thereof shall file in duplicate with the City Planning Department an inventory of all goods, wares, and merchandise sold and the price received therefor, which inventory shall be verified by the person who filed the application for the license with the City Planning Department. The holder of the license shall also file with the City Planning Department a list of all persons from whom orders were taken for future delivery of goods, wares, merchandise, photographs, or the articles contracted to be sold.
('64 Code, § 75.7) (Ord. 2339, passed 5-28-57; Am. Ord. 12-05, passed 3-10-05) Penalty, see § 117.99

§ 117.08 EXEMPTIONS.

The provisions of this chapter shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to bona fide sale of goods, wares, or merchandise by sheriffs, constables, or other public officers selling goods, wares, and merchandise according to law, nor to bona fide assignees, or receivers appointed in this state selling goods, wares, and merchandise for the benefit of creditors.
('64 Code, § 75.8) (Ord. 2339, passed 5-28-57)

§ 117.99 PENALTY.

Any transient merchant, either as principal or agent, who shall transact business without having first obtained the license as provided in this chapter, or

who shall knowingly advertise, offer for sale, or sell any goods, wares or merchandise, or solicit or canvass for orders for merchandise for future delivery contrary to the provisions of this chapter shall be fined not more than $500 per offense. A separate offense shall be deemed committed on each day that a violation occurs or continues.
(Am. Ord. 12-05, passed 3-10-05)

CHAPTER 118: WASTE COLLECTION

Section

Cross-reference:

Use of sanitary landfill, see § 130.11

Statutory reference:

Power of city to regulate businesses generally, see I.C. 36-1-3-8 and 36-8-2-10

Regulation of waste disposal, see I.C. 36-9-2-16

§ 118.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ASHES. All the materials which result from the burning of fuel and including cinders, clinkers, and unconsumed fuel.

GARBAGE. All and every refuse, accumulation of animal, fish, fowl, fruit, or vegetable matter that results from the preparation, use, cooking, retail or wholesale dealing in or storing of meat, fish, fowl, fruit or vegetable, and including garbage wrapped in paper or its equivalent.

RUBBISH. Material other than garbage resulting from ordinary household operations, including such items as tin cans, glass, bottles, ashes, papers, magazines and newsprint, boxes, rags, old shoes, small cartons and lawn cuttings, shrubbery, and tree trimmings.

SMALL DEAD ANIMALS. Animals and parts thereof not intended to be used as food for man.

TRASH OR DEBRIS. All the discarded refuse of an heterogeneous character produced in households or places of business including manufacturing concerns such as waste metal, material, broken crockery, glass, chinaware, grass, weeds, rags, bottles, tin, barrels, boxes, metal substances, and all material which cannot be classified as garbage and ashes.

('64 Code, § 77.1) (Ord. 2283, passed 3-20-56; Am. Ord. 2380, passed 4-15-58)

§ 118.02 LICENSE REQUIRED.

No person, firm, or corporation shall engage in the business of collecting and transporting over the streets, alleys, and public ways of the city, waste, rubbish, garbage, refuse, trash, debris, or ashes without first making application for and obtaining a garbage and rubbish collection and disposal license at the office of the City Board of Health and complying fully with the requirements set forth in this chapter.

('64 Code, § 77.2) (Ord. 2380, passed 4-15-58) Penalty, see § 118.99

Cross-reference:

General licensing provisions, see Ch. 110

§ 118.03 LICENSE APPLICATION.

The application for the license required by § 118.02 shall be made on a form prescribed by the Board of Health and shall contain the following information:

(A) Full name of the applicant;

(B) Home and business address;

(C) Telephone number;

(D) Size, gross weight, general description, and number of vehicles used in the applicant's business;

(E) Type and character of refuse, waste, and rubbish to be collected by the applicant;

(F) Place and manner of disposal to be used;

(G) Name and address of places from which the applicant will make collections;

(H) Hours during which the applicant will make collections.
('64 Code, § 77.3) (Ord. 2380, passed 4-15-58)

§ 118.04 ISSUANCE OF LICENSE.

Upon completion of the application, one copy of the application shall be returned to the applicant by the Board of Health stamped, "Approved", provided the application is approved. The applicant shall take the copy of the approved application to the office of the City Controller and the City Controller shall thereupon issue a license after receiving the application and the fee prescribed in § 118.05.
('64 Code, § 77.4) (Ord. 2380, passed 4-15-58)

§ 118.05 FEE.

The fee for the license required by § 118.02 shall be as follows:

Annual license fee (one vehicle)	$15.00
Each additional vehicle, annual fee	5.00

('64 Code, § 77.5) (Ord. 2380, passed 4-15-58)

§ 118.06 DISPLAY OF LICENSE NUMBER ON VEHICLE.

(A) Each license shall be numbered, and the number of the license shall be prominently displayed on each side of the vehicle operated by the licensee in letters and numbers not less than three inches in height as follows:

"COLLECTION AND DISPOSAL PERMIT NO. _____."

(B) Letters and numbers must at all times be clearly visible.
('64 Code, § 77.6) (Ord. 2380, passed 4-15-58) Penalty, see § 118.99

§ 118.07 COVERED VEHICLES REQUIRED.

(A) As used in this section, ***COVERED*** shall be deemed to mean that such conveyance shall be covered in such a manner so as to prevent any trash, ashes, debris, or garbage being transported in said conveyance from falling upon the streets, lanes, alleys, or public highways of the city.

(B) It shall be unlawful and a nuisance for any person, firm, or corporation to transport through, over, or upon any street, lane, alley, or public highway of the city any trash, ashes, debris, or garbage in any receptacles, wagons, trucks, trailers or any other conveyance of whatever kind unless the same shall be constructed so as to prevent any part of trash, debris, ashes, or garbage from falling upon any of the streets, lanes, alleys, or public highways of the city and unless any such wagon, truck, trailer, or other conveyance shall have the top thereof at least

one-half covered while being loaded and completely covered while in motion upon any street, lane, alley, or public highway within the city.
('64 Code. § 77.7) (Ord. 2283. passed 3-20-56) Penalty, see § 118.99

§ 118.08 COMPLIANCE; REVOCATION.

Each person, firm, or corporation in addition to securing the license herein provided for shall comply in all respects with the provisions of § 118.07. If the licensee shall use the city operated sanitary landfill as a disposal site, he shall comply fully with the rules and regulations established therein and with all reasonable rules and regulations of the Board of Health. In addition to the penalties hereinafter provided, failure to fully comply with this section shall be deemed sufficient cause for revocation of the license by the Board of Health, and the Board is hereby authorized to suspend or revoke such license.
('64 Code, § 77.8) (Ord. 2380, passed 4-15-58) Penalty, see § 118.99

§ 118.09 FRANCHISE HOLDERS.

This chapter shall not apply to any person, firm, or corporation under contract to the city for the collection and disposal of rubbish, refuse, trash, and garbage.
('64 Code, § 77.9) (Ord. 2380, passed 4-15-58)

§ 118.99 PENALTY.

Whoever violates any provision of this chapter for which no penalty is otherwise provided shall be fined not more than $500. A separate offense shall be deemed committed on each day that a violation occurs or continues.

CHAPTER 119: SCRAPYARDS, PAWNBROKERS, PRECIOUS METAL DEALERS, AND SECONDHAND DEALERS

Section

§ 119.01 APPLICABILITY.

This applies to any person who owns, operates, or otherwise acts as a scrapyard, pawnbroker, precious metal dealer, and/or secondhand dealer in accordance with such terms as defined below.
(Ord. 58-13, passed 1-9-14)

§ 119.02 REGULATION.

It shall be unlawful for any person to own, operate, or otherwise act as a scrapyard, pawnbroker, precious metal dealer, and/or secondhand dealer except in accordance with the regulations and provisions set forth in this chapter.
(Ord. 58-13, passed 1-9-14) Penalty, see § 119.99

§ 119.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CHIEF OF POLICE. The Chief of Police of the Anderson Police Department.

CITY. The City of Anderson.

PAWNBROKERS. Any person, as such term is defined below, who loans money on deposit or pledge of personal property or on the condition of selling the property back again at a stipulated price.

PAWNSHOP. This shall have the same meaning as ***PAWNBROKERS***.

PERSON. An individual, a firm, an association, a limited liability company, a partnership, a joint stock association, sole proprietorship, joint venture, unincorporated organization, a trust, a corporation, or any other form of entity.

PLEDGE. Providing goods, articles, or things as security for a loan or obligation.

PRECIOUS METAL.

(1) Used jewelry; and

(2) other used articles of personal property that:

(a) Are made of gold, silver, or platinum; and

(b) Were previously purchased at retail, acquired by gift, or obtained in some other fashion by a consumer.

PRECIOUS METAL DEALERS. A person who engages in the business of purchasing precious metal for the purpose of reselling the precious metal in any form.

SCRAPYARD. Any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling scrap metals, building materials, rope, rags, batteries, paper trash, rubber debris, waste. This term shall not be construed or applicable to foundry manufacturing businesses or plants. The term ***SCRAPYARD*** shall apply in general to any business or establishment concerned mainly or primarily with the storage, processing, recycling or salvaging of used or secondhand materials.

SECONDHAND DEALERS. Any person who loans money on deposit or pledge or who purchases secondhand property of any description.
(Ord. 58-13, passed 1-9-14)

§ 119.04 LICENSE REQUIRED.

No person shall own, operate, maintain, or otherwise establish or act as a scrapyard, pawnbroker, precious metal dealer, and/or secondhand dealer in the city without first obtaining a license to do so from the Anderson Police Department.
(Ord. 58-13, passed 1-9-14) Penalty, see § 119.99

§ 119.05 APPLICATION FOR LICENSE.

(A) The application for a license as required by § 119.04 shall be made on a form provided by the Anderson Police Department and shall set forth the name of the owner, manager, lessee, or other person seeking a license; the name of the person owning or otherwise operating as a scrapyard, pawnshop, precious metal dealer, and/or secondhand dealer; the location of such operation, and other facts as the Anderson Police Department may deem reasonably necessary.

(B) Every person applying for a license to operate as a scrapyard, pawnbroker, precious metal dealer and/or secondhand dealer as defined herein, shall be given a copy of the city ordinance codified herein, and every applicant shall sign a statement, as part of the application process, that the person has read, understood, and intends to comply with the ordinance.
(Ord. 58-13, passed 1-9-14)

§ 119.06 FEE.

Every person owning, operating, maintaining, or otherwise establishing or acting as a scrapyard, pawnshop, precious metal dealer operation and/or secondhand dealer operation within the city shall pay an annual license fee of $100.
(Ord. 58-13, passed 1-9-14)

§ 119.07 ANNUAL RENEWAL OF LICENSE REQUIRED.

Every licensed scrapyard, pawnbroker, precious metal dealer, and secondhand dealer must have their license renewed annually with such renewal occurring no later than January 31st of every year for the succeeding calendar year.
(Ord. 58-13, passed 1-9-14)

§ 119.08 RECORDS.

Every person who owns, operates, maintains, or otherwise establishes or acts as a scrapyard, pawnbroker, precious metal dealer, or secondhand dealer shall keep a record of each pledge, purchase, or transaction conducted. Each record of each pledge, purchase, or transaction shall include the following information:

(A) Date of sale;

(B) A true and accurate description of the goods, articles, and things pledged or purchased;

(C) The amount loaned or paid for the goods, articles, and things;

(D) The name, date of birth, address, last four digits of the social security number, driver's license number if applicable, and a description of the person from whom such pledge is taken or such purchase is made;

(E) A color photograph of the good, articles, and things pledged or purchased; and

(F) A color photograph of the person from whom such pledge is taken or such purchase is made.
(Ord. 58-13, passed 1-9-14)

§ 119.09 WEBSITE REPORTING OF RECORDS REQUIRED.

All records of any and all transactions generated and maintained pursuant to § 119.08 shall be posted and uploaded to an Internet website to be determined and approved by the Chief of Police or his or her designee. Such records shall be posted daily by the end of business. If a technical malfunction occurs during the posting and uploading of records, it is the responsibility of the person uploading the information to contact the Anderson Police Department and report such malfunction and to maintain a hard copy of such records and make them available for inspection by the Anderson Police Department.
(Ord. 58-13, passed 1-9-14)

§ 119.10 CERTAIN ITEMS MAY BE HELD FOR IDENTIFICATION.

The Chief of Police or his or her designee may in his or her discretion order any goods, articles, or things of value, which he or she shall have reason to believe were not pledged by or purchased from the lawful owner, to be held for the purpose of identification by the lawful owner for such length of time as he or she shall deem necessary for the identification; provided, that no such goods or articles shall be held more than ten calendar days. If it is determined the goods, articles, or things were not pledged by or purchased from the lawful owner, then such items shall be surrendered to the Chief of Police or his or her designee upon request.
(Ord. 58-13, passed 1-9-14)

§ 119.11 IMPLEMENTATION DATE.

Scrapyards, pawnbrokers, precious metal dealers, and secondhand dealers operating before this chapter was passed by the Common Council shall have an implementation period of not more than 30 days after the police department provides licensees with written instructions on how to properly report transactions using the Internet website as detemiined and approved by the Chief of Police or his or her designee. Persons who apply for and receive a license after this chapter is passed by the Common Council shall post and upload transaction records to the selected Internet website beginning on the first day of operations.
(Ord. 58-13, passed 1-9-14)

§ 119.99 PENALTY.

Whoever violates any provisions of this chapter shall be fined $100. A separate offense shall be deemed committed on each day that a violation occurs or continues.
(Ord. 58-13, passed 1-9-14)