Title 5

BUSINESS TAXES, LICENSES AND REGULATIONS

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Chapter 5.04

AMUSEMENT DEVICES

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5.04.010 License—Required.

No person shall have in his possession or on his premise a coin-operated amusement device without first having obtained a license from the city clerk. (Ord. A-128(a), 1976: Ord. A-28(a), 1966)

5.04.020 License—Fee.

The fee for such license shall be established by resolution of the Common Council each year. (Ord. 12D-99, 1999; Ord. 120-94, 1994: 52, 1979: Ord. A- 128(b), 1976: Ord. A-28(b), 1966):

5.04.030 Violation—Penalty.

The penalty for violation of any provision of this chapter shall be as provided in Chapter 1.08, except that the minimum penalties for violation of this chapter shall be twenty-five dollars for all offenses. A separate offense shall be deemed committed on each day during which a violation occurs or continues. If any person shall be convicted of a second or subsequent violation of the provisions of this Chapter, the court in its judgment shall determine that he was personally guilty of a failure to exercise due care to prevent violation, his license privileges shall terminate immediately and he shall not be entitled to another license nor act as an agent or servant to another licensee for five years thereafter. (Ord. A-128(c), 1976: Ord. A-28(c), 1966)

Chapter 5.08

CIGARETTES

Sections:

5.08.010 License—Required—Exception.
5.08.020 License—Fee.
5.08.030 License—Form—Expiration—Transferability.
5.08.040 Violation—First offense penalty.
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5.08.010 License—Required—Exception.

No person shall in any manner, directly or indirectly, manufacture, sell, exchange, dispose of or give away or keep for sale any cigarettes or cigarette papers or wrappers without first obtaining a license therefor from the city clerk in the manner provided in Section 134.65 of the Wisconsin Statutes. This section shall not apply to jobbers or manufacturers doing interstate business with customers outside Wisconsin. (Prior code § 11.04(1))

5.08.020 License—Fee.

The fee for such cigarette license shall be established by resolution of the Common Council each year and the treasurer's receipt therefor must be presented to the clerk before he shall issue any license hereunder. (Prior code § 11.04(2))(Ord. 12D-99)

5.08.030 License—Form—Expiration—Transferability.

All cigarette licenses shall be signed by the city clerk, the name of the licensee and the place where he is authorized to conduct the licensed business shall be indicated thereon, and all cigarette licenses shall expire on June 30th next succeeding the date of issue. No license shall be transferable as to the location of licensed premises, and no license shall be transferable from person to person. (Ord. A-129 (part), 1976: prior code § 11.04(3))

5.08.040 Violation—First offense penalty.

Any person who violates any provision of this chapter shall, upon conviction thereof, forfeit not less than twenty-five dollars nor more than one hundred dollars, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the county jail until said forfeiture and costs are paid, but not exceeding ninety-six days. No person shall be imprisoned under this chapter if there is a showing that he is indigent. (Ord. A-129 (part), 1976: prior code § 11.04(4) (part))

5.08.050 Violation—Second offense penalty.

Any person found guilty of violating any provision of this chapter who shall previously have been convicted of a violation of this same chapter shall, upon conviction thereof, forfeit not less than twenty-five dollars nor more than two hundred dollars for each such offense, together with the costs of prosecution, and in default of payment of such forfeiture and costs shall be imprisoned in the county jail until said forfeiture and costs of prosecution are paid, but not to exceed six months. No person shall be imprisoned under this chapter if there is a showing that he is indigent. (Ord. A-129 (part), 1976: prior code § 11.04(4) (part))

Chapter 5.12

CABLE COMMUNICATIONS REGULATORY ORDINANCE

Sections:

5.12.010 Definitions.
5.12.020 Findings and Purposes.
5.12.030 Franchise Agreement.
5.12.040 Policy of Innovation.
5.12.050 Time Is of the Essence.
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5.12.070 Grant of Authority.
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5.12.090 Geographic Coverage of the System.
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5.12.150 Construction and Technical Standards.
5.12.160 Customer Service Standards.
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5.12.200 Renewal, Revocation, Violations, or Forfeiture of Franchis.
5.12.210 Continuity of Service.
5.12.220 Purchase of System by the City of Altoona.
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5.12.340 Theft of service and Tampering.
5.12.360 Penalties
5.12.361 Severability.

5.12.010 Definitions.

In this chapter, unless the context clearly requires a different meaning, the following terms, phrases, words and their derivations shall have the following meanings.

A. "Applicable Laws" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judegment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

B. "Applicant" means a Person, as defined in this Section, who submits a Proposal to provide Cable Service to the City.

C. “Basic Service” means any service tier which includes the retransmission of local television broadcast signals.

D. “Cable Act” means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 [1982 & Supp. V 1987]) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Cable Communications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be amended.

E. “Cable Channel” means a frequency band capable of carrying at least 1 standard color video signal; but the use of a channel is not limited to carrying a video signal.

F. “Cable Operator” means any Person or group of Persons (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable Systems, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

G. “Cable Liaison” means the Person employed by the cable operator and designated by the City for purposes prescribed under this Chapter.

H. “Cable Service” means (A) the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

I. “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City of Altoona. The term “Cable System” shall not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves Subscribers without using any public Rights-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of 47 U.S.C.A. subchapter V, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unles the extent of such use is solely to provide interactive on-demand services; (D) an open video System certified by the FCC; or (E) any facilities of any electric utility used solely for operating its electric utility system.

J. “City Administrator” means the duly appointed City Administrator of the City, acting City Administrator, or designee.

K. “City Council” means the governing body of the City of Altoona, Wisconsin.

L. “City Property” means and includes all real property owned by the City, other than Rights-of-Way, and all property held in a proprietary capacity by the City, which is not subject to licensing as provided in this Chapter.

M. “Converter” means an electronic device and any associated channel selector which converts signals to a format which permits a Subscriber to receive the signals transmitted via the Cable System.

N. “FCC” means the Federal Communications Commission or any legally designated successor.

O. “Franchisee” means a Person who, in accordance with the provisions of this Chapter, executes a Franchise Agreement with the City for the nonexclusive privilege to erect, construct, operate, maintain or dismantle a Cable System in the City.

P. “Gross Revenues” means all revenue derived from the operation of the Cable System to provide Cable Services by (A) the Franchisee; (B) any Cable Operator of the Cable System; or (C) only to the extent necessary to prevent evasion, their affiliates, subsidiaries, parent and any Person in which the Franchisee has a financial interest, that are not Cable Operators but that are performing the normal functions and responsibilities of a Cable Operator. This definition is intended to be read to reach as boradly as possible to encompass all revenues, subject only to the limitations imposed by federal law. “Gross Revenues” shall include, by way of example but not limitation, the following:

1. Basic Service monthly fees;
2. Optional service monthly fees;
3. Installation and reconnection fees;
4. Leased channel fees;

5. Fees charged for late payment of bills;

6. Converter rentals;

7. Production equipment and Personnel fees;

8. Advertising revenues;

9. The sale, exchange or cablecast of any programming developed on or for community service channels or institutional Users;

10. All recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts; and

11. Revenue received from cable modem service.

This sum shall be the basis for computing the fee imposed pursuant to Section 5.12.300. Gross Revenues shall not include any taxes on services furnished by Franchisee which are imposed upon any Subscriber or User by the state, the City or other governmental unit and collected by Franchisee on behalf of said governmental unit (a franchise fee is not such a tax).

Q. "MDU Rates" means those Subscriber and User rates, fees and charges for Cable Services and products that are applied to or imposed upon multiple-family dwelling units.

R. "Minority" shall mean citizens or lawful permanent residents of the United States, defined for the purposes of this article to include Asian, Black, Hispanic and Native American men and women. Bona fide Minority group memberships shall be established on the basis of the individual's claim that he or shee is a Minority and is so regarded by that particular Minority community.

S. "Normal Business Hours" shall be a minimum of fifty (50) hours Monday through Friday, and four (4) hours on Saturday.

T. Normal Operating Conditions" include those service conditions which are within the control of the Franchisee. These include, but are 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. Conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather out of the ordinary for the area.

U. "Person" includes any individual, partnership, association, corporation, legal entity or organization of any kind. Whenever used in any clause prescribing a penalty, the term "Person" as applied to partnerships or associations includes partners or members thereof, and if applied to corporations, the officers thereof. "Person" shall not include a municipal corporation unless otherwisze indicated.

V. "Proposal" means an Applicant's formal written response to the City's request for Proposals or any other application to provide Cable Services submitted to the City pursuant to this Chapter.

W. "Public, Educational or Government" or "PEG" use means the use of the Cable System by members of the public, educational institutions and representatives of governments to transmit information to Subscribers generally or to specific recipients via channels designated for such use in a Franchise Agreement over Franchisee-provided channels.

X. "Rights-of-Way." The term "Rights-of-Ways" refers to the City Rights-of-Way, alleys, roads, easements, and other City-owned property primarily dedicated to, designed for or actually and customarily used for vehicular or pedestrian travel or any easement the Franchisee is authorized to use by federal law. The term shall not include City-owned real estate utilized primarily for any purpose other than vehicular or pedestrian travel. This exclusion includes without limitation, parking, and ingress/egress areas appurtenant to such other use.

Y. "Service Interruption" means the loss of picture or sound on one or more channels. The definition of Service Interruption affects the timing of when the Franchisee must respond to a service problem.

Z. "Subscriber" or "Customer" means a municipal corporation or Person who lawfully receives any signal or service provided or distributed by a Cable System Franchisee.

AA. "Tap" means the device to which the Subscriber Drop connects to the System.

BB. "Two-Way Capability" means the ability to receive and transmit signals from a Subscriber

terminal to other points in the System.

CC. "User" means a municipal corporation or Person utilizing PEG channels, including all related facilities for purposes of production and/or transmission of electronic or other signals as opposed to utilization solely as a Subscriber.

DD. "Valid Authorization" shall mean an authorization valid under federal or state law.

EE. "Valuation" as referred to in this Chapter shall be determined by audit or System assets pursuant to generally accepted auditing principles. Procedures for Valuation may be specified in a Franchise Agreement.

5.12.020 Findings and Purposes.

A. The City Council finds that the City's Rights-of-Way, public ways and public places constitute valuable public property.

1. Having been acquired and maintained by the City over many years at taxpayer expense;

2. Being capable of providing Rights-of-Way uniquely valuable to private companies for providing Cable Services;

3. Constituting public investments for which the taxpayers are entitled to a fair monetary return on the City's past and future investment in the City's infrastructure; and

4. Comprising significant assets which should be managed fairly and appropriately to enhance the public safety and economy.

B. For the reasons expressed in subsection A., this Chapter is intended to:

1. Regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of the Cable System in, upon, along, across, above, over or under or in any manner connected with the Rights-of-Way, public ways or public places within the jurisdiction of the City, as now or in the future may exist;

2. Provide for the payment of certain fees and other valuable considerations to the City to regulate the construction and operation, use and development of the Cable System within the City.

3. Provide conditions under which the Cable System will serve present and future needs of government, public institutions, commercial enterprises, lawful public and private organizations, and the citizens and general public of the City;

4. Provide remedies and prescribe penalties for violations of this Chapter;

5. Permit and manage reasonable access to the public ways of the City for cable purposes on a competitively neutral basis;

6. Conserve the limited physical capacity of the Rights-of-Way held in the public trust by the City;

7. Assure that the City's current and ongoing costs of granting and regulating private access to and use of the Rights-of-Way are fully paid by the Persons seeking such access and causing such costs.

8. Secure fair and reasonable compensation to the City and the residents of the City for permitting private use of the Rights-of-Way;

9. Assure that all cable companies providing facilities or services within the City comply with the ordinances, rules, and regulations of the City.

10. Assure that the City can continue to fairly and responsibly protect the public health, safety, and welfare.

11. Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

5.12.030 Franchise Agreement.

A. Issuance of Franchises Subject to Agreement. Within thirty (30) days after written notification of the award of a franchise by the City, a selected Applicant shall execute a Franchise Agreement which shall set forth the terms and provisions of the franchise. If such Franchise Agreement is not executed within such thirty (30) day period, the franchise award may be declared void by the City.

B. Relationship of Franchise and Franchise Agreement to Laws. Each Franchise issued by the City is subject to its Franchise Agreement and Applicable Law, including this Chapter. Each Franchisee shall exercise all rights granted to it in accordance with its Franchise Agreement, this Chapter and all Applicable Law.

C. Nature of Franchise Agreements. Each Franchise Agreement is a contract, subject to the City's exercise of its police and other powers. A Franchise Agreement shall not confer any rights upon the Franchisee or limitations upon the City other than as expressly provided therein. Subject to the exercise of the City's police and other powers, in the case of any conflict between the express terms of a Franchise Agreement and the express terms of this Chapter, the Franchise Agreement shall govern. A Franchisee, by entering into a Franchise Agreement, shall not waive its rights to challenge the lawfulness of any particular enactment after the date the franchise is issued, including the right to challenge a particular enactment as an unconstitutional impairment of contractual rights.

5.12.040 Policy of Innovation.

Recognizing the fluid and expanding state of the development of communications technology and uses, it is the policy of the City to strongly encourage experimentation and innovation in the development of the Cable System technology uses, services, programming and techniques that will be of general benefit to the community; provided that all such experiments and innovations shall be subject to the rules of the FCC and any other federal, state and City laws and regulations.

5.12.050 Time Is of the Essence.

Whenever this Chapter or the Franchise Agreement sets forth any time for any act to be performed by the Franchisee, such time shall be deemed of the essence. The Franchisee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the City to invoke the remedies available under the terms and conditions of this Chapter and the Franchise Agreement.

5.12.060 Franchise Required.

A. Franchise Required. No Person shall construct, install, maintain or operate a Cable System within, along or under any Rights-of-Way in the City, or any other public property in the City, unless a franchise has first been granted by the City Council pursuant to the provisions of this Chapter, and unless the Franchise Agreement is in full force and effect.

B. Franchise Nonexclusive. Any franchise granted pursuant to this Chapter by the City shall not be exclusive, and the City specifically reserves the right to grant other franchises to any Persons at any time if the City determines that it is in the public interest to do so.

C. Franchise Binding. All provisions of this Chapter and any Franchise Agreement shall be binding upon the Franchisee, its successors, lessees, or assignees.

5.12.070 Grant of Authority

A. Length of Franchise. Any Franchise Agreement granted by the City pursuant to this Chapter shall commence upon the date specified in the Franchise Agreement by the Franchisee and the City and shall be for a period specified by the Franchise Agreement. All Franchise Agreements shall be subject to periodic review by the City to evaluate whether the Cable System's technology is meeting the community's needs and interests. In no event shall any Franchise Agreement exceed a term of 15 years, subject to the conditions and restrictions as provided in this Chapter. A Franchise Agreement may be renewed pursuant to the provisions of this Chapter and federal law. No privilege of exemption shall be inferred from the granting of any Franchise Agreement unless it is specifically prescribed.

B. No Right of Property. The granting of any franchise pursuant to this Chapter shall be a privilege and shall not impart to the Franchisee any right of property in any City Rights-of-Way or other City property.

5.12.080 Local Regulatory Framework-Continuing Regulatory Jurisdiction.

The City Council shall have continuing regulatory jurisdiction and supervision over the operation of any franchise granted pursuant to this Chapter. The daily administrative, supervisory and enforcement responsibilities of the provisions of this Chapter and the Franchise Agreement shall be delegated and entrusted to the City Administrator.

A. City Administrator Responsibilities. The City Administrator shall have the following responsibilities and authority:

1. Interpret and administer the provisions of this Chapter and the Franchise Agreement;

2. Represent the City in all matters pertaining to the implementation of the provisions of this Chapter and the Franchise Agreement;

3. Resolve disputes or disagreements between Subscribers, Users, potential Subscribers and Users, and the Franchisee as to matters involving an interpretation of this Chapter, the Franchise Agreement, or other matter subject to the City's jurisdiction, but only in the event that such parties are unable first to resolve their dispute; provided that nothing in this Section is meant to waive any rights a Franchisee may have to appeal the City's resolution of a dispute;

4. Review and audit reports and other documents submitted to the City as required by this Chapter or other law, so as to ensure that the necessary reports are completed and fulfilled pursuant to the terms of this Chapter.

5. Assure that all records, reules and charges pertinent to the System are made available for inspection at reasonable hours upon reasonable notice consistent with the Franchise Agreement and Applicable Law;

6. Confer with Franchisees, assist in the coordination among Franchisees, and enforce requirements under Applicable Law and Franchise Agreements for interconnections among Cable Systems and other Systems;

7. Consistent with this Chapter, establish and administer sanctions as authorized by the City Council to ensure compliance with this Chapter.

8. Advise the City Council on matters which may constitute grounds for termination or revocation of the Franchise Agreement in accordance with this Chapter and a Franchise;

9. Advise the City Council on proposed transfers of the System;

10. Consistent with this Chapter and to the extent permissible under Applicable Laws, promulgate regulations regarding the construction, reconstruction, operation, maintenance, dismantling, testing, or use of the System as necessary;

11. Ensure that the Franchisee makes any public access channel(s) defined as necessary for public information or education by the Common Council available to all Subscribers of the City on a nondiscriminatory basis; and

12. Ensure that the operation of any public access channel is free of program censorship and control to the extent permitted by law;

13. Perform any other duties assigned under the provisions of this Chapter or other legislation which may hereafter be enacted by the City Council or such other related duties as the City Council may direct.

5.12.090 Geographic Coverage of the System.

A. Annexation.

1. The rights and privileges awarded pursuant to this Franchise shall relate to and cover the entire present territorial limits of City and any area annexed thereto during the term of the Franchise. In the event City annexes additional territory during the term of this Franchise, Franchisee shall provide cable television service within such areas with due diligence after notification from City to do so consistent with the line extension criteria contained in this Section 5.12.090(B); provided that if another Cable System is offering Cable Service in any such annexed area, Franchisee shall not be required to provide cable television service within any such area.

B. Line Extension. A Franchisee shall construct and operate its Cable System so as to provide service to all parts of its franchise area as provided in the Franchise Agreement and having a density of at least fifteen (15) residential dwelling units per street half-mile of System. In addition, all areas which reach such density at any time during the franchise term shall be provided service upon reaching the minimum density. Subject to the above-described minimum density, any residential dwelling unit located within one hundred fifty (150) feet of the nearest Tap on a Franchisee's System shall be connected to the Cable System at no charge other than the standard installation charge. The Franchisee shall, upon request by any potential Subscriber residing in the City Beyond the one hundred fifty (150) foot limit, extend service to such Subscriber, provided that the Subscriber shall pay the net additional extension costs. All measurements shall be made in a manner most favorable to the Person requestion service.

1. Where the density is less than that specified in subsection B., the Franchisee shall inform Persons requesting service of the possibility of paying for installation of a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for installation or extension for each Person requesting service shall not exceed a pro rata share of the actual cost of extending the service. If, for example, the density in an area were three (3) residential units per half mile, Franchisee would pay one-fifth of the costs of the extension and Persons agreeing to take service would pay the remaining four-fifths.

2. Any residential dwelling unit located within one hundred fifty (150) feet of the closer of the nearest Tap on a Franchisee's System shall be connected to the Cable System at no charge other than the standard installation charge (plus extension charges, if any, that would apply under subsection B).

3. Under Normal Operating Conditions, if Franchisee cannot perform installations within the times specified in applicable Customer standards, the Subscriber may request and is entitled to receive a credit equal to the charge for a standard installation or the applicable promotional rate in effect. For any installation that is not a free installation or a standard installation, the Franchisee shall provide the Subscriber with a written estimate of all charges within seven (7) days of a request by the Subscriber. Failure to comply shall subject Franchisee to appropriate enforcement actions. This Section does not apply to the introduction of new products and services when Franchisee is utilizing a phased introduction.

4. In all cases where new developments and subdivisions are to be constructed to be served in whole or in part by underground power and telephone utilities, the owner or developer of such areas shall provide reasonable notice to the Franchisee of the availability of trenches, backfill and specifications of all necessary substructures in order that the Franchisee may install all necessary electronic cable facilities. In no event shall such undgrounding be at any cost or expense to the City.

5. Subject to the other provisions of this Section, Cable Service shall be made available upon request to all individual residential dwellings, condominiums, cooperative buildings, townhouses, institutions, organizations, businesses and all other structures within the designated franchise area.

6. Nothing in this section 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 and property.

7. Nothing in this Section shall prohibit a Person from requiring the Franchisee to agree to indemnify or compensate the owner for damages or from liability for damages caused by the installation, operation, maintenance or removal of System facilities by the Franchisee.

5.12.110 Conditions of Rights-of-Way Occupancy.

A. Written Approval. A Franchisee shall first obtain the written approval of the Director of Public Works prior to commencing construction within the Rights-of-Way and public places of the City. Approval shall be in accordance with relevant state and local laws and regulations, which approval shall not be unreasonably withheld. Except in cases of a bona fide emergency preventing such notice, the Franchisee shall notify the City at least ten (10) days prior to the commencement of any construction in any Rights-of-Way. The Franchisee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. Permits for emergency work shall be obtained as soon as possible, but in no case more than one (1)

working day after the emergency work is initiated. All excavation shall conform with City ordinances and regulations and shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

B. Use of Existing Poles or Conduits.

1. The Franchisee shall utilize existing poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of the City is obtained. No location or any pole or wire-holding structure of the Franchisee on public property shall be a vested interest, and such poles or structures shall be removed or modified by the Franchisee at its own expense whenever the City determines that the public health, welfare or safety requires removal or modification.

2. The facilities of the Franchisee shall be installed underground in those areas of the City where existing telephone and electric services are both underground at the time of construction by the Franchisee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, the Franchisee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, the Franchisee shall likewise place its facilities underground at sole cost to the Franchise.

C. Minimum Interference. All transmission and distribution structures, lines and equipment erected by the Franchisee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.

D. Disturbance or Damage. In case of disturbance or damage caused by the Franchisee to any Rights-of-Way or public place, the Franchisee shall, at its own cost and expense and in the manner approved by the City, replace and restore such Rights-of-Way or public place in as good condition as before the work performed by the franchisee which caused such disturbance or damage.

E. Relocation.

1. At any time during the period of the franchise, the Franchisee shall, at its own expense, protect, support, relocate, remove or temporarily disconnect any of its property when, in the opinion of the City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way vacation, Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, parks or cemetery projects, or other public project of the City, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary for the City.

2. The Franchisee shall, on request of any Person holding a permit under applicable Altoona ordinances to move a building, temporarily raise or lower its wires to permit the movement of the building. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Franchisee shall have the authority to require such payment in advance. The Franchisee shall be given not less than five (5) days advance notice to arrange such temporary wire alterations.

F. Emergency. Whenever, in case of fire or other emergency, it becomes necessary, in the judgement of the City Administrator, Police Chief, Fire Chief, or their delegates, to remove or damage any of the Franchisee's facilities, no charge shall be made by the Franchisee against the City for restoration, repair or damages unless such restoration, repair or damages result from negligence by the City or its agents.

G. Tree Trimming. The Franchisee shall have the authority to trim trees on public Rights-of-Way at its own expense as may be necessary to protect its wires and facilities, subject to supervision and direction by the City. Trimming of trees on private property shall require consent of the property owner. Any trimming of trees by the Franchisee in the Rights-of-Way and public ways shall be subject to such regulation as the City Administrator or other authorized official may establish to protect the public health, safety and convenience and the continued well being of the trees subject to trimming. Nothing herein

shall be construed to limit Grantee's authority to trim trees in the case of an emergency.

H. Protection of Facilities. Nothing contained in this Section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging the Franchisee's facilities while performing any work connected with grading, regarding or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.

I. Installation Records. Each Franchisee shall keep accurate installation records of the location of all facilities in the Rights-of-Way and public ways and furnish such records to the city upon request. A Franchisee shall cooperate with the City to furnish such information in an electronic mapping format compatible with the then-current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way and public ways, the Franchisee shall provide the City with installation records in an electronic format showing the location of the underground and above ground facilities.

J. Locating Facilities.

1. If, during the design process for public improvements the City discovers that facilities of the Franchisee present a potential conflict with the proposed construction of such public improvements, the Franchisee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with the City to locate or expose its facilities. Each Franchisee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days.

2. The City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, and maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way.

K. City's Rights. When the City uses its prior superior right to the Rights-of-Way and public ways, the Franchisee shall move its property that is located in the Rights-of-Way and public ways, at its own cost, to such a location as the City directs. Notwithstanding the foregoing, in the event the public project is paid for totally or in part by non-public funds, then the Franchisee's costs of moving its property shall be borne by the source of the non-public funds in the same ratio as the non-public funds bear to the total project costs.

L. Facilities in Conflict. If, during the course of a City project, the City determines Franchisee's facilities are in conflict with the project, the following shall apply:

1. Prior to Notice to Proceed to Contractor: The Franchisee shall, within a reasonable time, but in no event exceeding three (3) months, remove or relocate the conflicting facility. This time period shall begin running upon receipt by the Franchisee of written notice from the City. However, if both the City and the Franchisee agree, the time period may be extended based on the requirements of the project.

2. Subsequent to City Notice to Proceed to Contractor: The City and the Franchisee shall immediately begin the coordination necessary to remove or relocate the facility. Removal or relocation shall begin no later than seventy-two (72) hours, if practicable after written notification from the City to the Franchisee of the conflict.

M. Permits.

1. The Franchisee agrees to obtain a permit as required by the City prior to removing, abandoning, relocating or reconstructing any portion of its facilities. Notwithstanding the foregoing, the City understands and acknowledges there may be instances when the Franchisee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. In the event of such an emergency, the Franchisee shall provide such notice as is practicable to the City. Permits for emergency work shall be obtained as soon as possible, but in no case more than one (1) working day after the emergency work is initiated.

2. Reimbursement paid through the permitting process is separate, and in addition to, any other fees included in the franchise. The Franchisee, at the time of or prior to submitting construction plans, shall provide the City with a description of the type of service to be provided by the franchisee in sufficient detail for the City to determine compliance with the franchise and Applicable Law.

3. The City may issue reasonable, competitively neutral policy guidelines to all Franchisees to establish procedures for determining how to control issuance of engineering permits to multiple Franchisees for the use of the same Rights-of-Way for their facilities. The affected Franchisees shall cooperate with the City in establishing such policy and comply with the procedures established by the City Administrator to coordinate the issuance of multiple engineering permits in the same Rights-of-Way segments.

N. Restoration. If, in the installation, use or maintenance of its facilities, the Franchisee damages or disturbs the surface or subsurface of any Rights-of-Way or public ways or public property or the public improvement located thereon, therein, or thereunder, the Fanchisee shall promptly, at its own expense, and in a manner acceptable to the City, restore, repair or replace the property thereon, therein, or thereunder, in as good a condition as before such damage or disturbance. If such restoration, repair or replacement is not completed within a reasonable time, or such repair or replacement does not meet the City's reasonable standards, the City shall have the right to perform the necessary restoration, repair, or replacement, either through its own forces or through a hired contractor after giving Franchisee thirty (30) days prior written notice and an opportunity to cure and Franchisee fails to cure, and the Franchisee agrees to reimburse the City for its expenses in so doing within thirty (30) days after its receipt of the City's invoice therefor.

O. Relocation Delays.

1. If, after prior written notice to Franchisee, Franchisee's relocation effort so delays construction of a public project causing the City to be liable for delay damages, the Franchisee shall reimburse the City for those damages attributable to the delay created by the Franchisee. In the event the Franchisee should dispute the amount of damages attributable to the Franchisee, the matter shall be referred to the Director of Public Works for a decision. In the event that Franchisee disagrees with the decision of the Director of Public Works, the matter shall be submitted to the City Administrator for determination, whose decision shall be final and binding upon Franchisee as a matter of City review, provided that nothing herein waives any right of appeal to the courts.

2. In the event the City becomes aware of a potential delay involving the relocation of Franchisee's faciltities, the City shall promptly notify the Franchisee of this potential delay.

P. Interference with City Faciltities. The installation, use and maintenance of the Franchisee's facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to interfere with the City's placement construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City Systems that have been or may be installed, maintained, used or authorized by the City.

Q. Interference with Utility Facilities. The Franchisee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of any non-municpal utility located within the Rights-of-Way and public ways of the City and agrees to relocate its facilities, if necessary, to accommodate another facility relocation. Nothing in this Section is meant to limit any rights a Franchisee may have under Applicable Law to be compensated for the cost of relocating its facilities from the non-municipal utility that is requesting the relocation.

R. Co-Location. To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along the City Rights-of-Way and sidewalks for underground plant, Franchisee shall make every commercially reasonble effort to co-locate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities.

5.12.120 Use, Rental or Lease of Utility Poles and Facilities.

Each Franchisee assumes all responsibility for gaining permission from any electric, gas or telephone utility in the City for the use, rental or lease of poles, underground conduits and other structures and facilities for the purpose of extending, carrying or laying the franchisee's wires, cables, electronic conductors and other faciltities and appurtenances necessary or desirable in conjunction with the establishment and operation of the Cable System.

5.12.130 Cable System Design.

It is the intent of the City that the Cable System provide the broadest range of services possible. The requirements stated in this Section are intended only as minimum specifications for the Cable System and final determination of Cable System design for Franchisees shall be made through the initial licensing or renewal process. The City may increase or otherwise alter the requirements in a Request for Proposals for a franchise. Applicants for a franchise are strongly encouraged to offer the City, through the Proposal process, the broadest range of services, facilities, equipment, technical assistance and other related considerations as are technologically and economically feasible. Neither the specifications of the minimums in subsections A. through J. nor the final terms of a Franchise Agreement shall be interpreted to waive any rights or obligations of the Franchisee or the City under 47 U.S.C. §546 or successor statute.

A. Channel Capacity. The Franchisee shall construct, at a minimum, a System that provides a minimum capacity of 750 MHz and that is designed in a way so that it can deliver the channels in a manner reasonbly responsive to Customer demand. The System shall be designed so that the number of channels may be increased as supply and demand for additional channel utilization exceeds the number initially activated and so that the capacity of the Cable System may be increased without substantial reconstruction of the Cable System.

B. System Configuration. The Franchisee shall design and construct the System in such a manner as to provide maximum utilization flexibility for both Subscribers and Users.

C. Emergency Override. Except as inconsistent with FCC regulations, the System shall include an emergency alert capability which shall permit the City Administrator to override the audio on all television channels simultaneously, in the case of public emergencies as determined by the City Administrator or Director of Emergency Services. The Franchisee shall also designate a video channel to be used for emergency broadcasts, which designation shall be included in the Franchise Agreement.

D. Standby Power. The Franchisee shall maintain in constant readiness equipment capable of providing standby power for the Cable System, consistent with sound engineering practices and compatible with the Franchisee's System design.

1. Such equipment shall be constructed so as to revert automatically to a standby mode when alternating current power returns.

2. Franchisee shall comply with all utility and other safety regulations to prevent the standby power supply from powering a "dead" utility line so as to prevent injury to any Person.

E. Two-Way Capability. Maximum two-way interactive service capability as reasonably justified in light of the needs and interests of the community and the costs thereof, considering project advances in technology, shall be designed into the System at its inception.

F. PEG Channels.

1. In addition to the other services proposed by applicants, the City shall place significant emphasis on the provision of PEG channels, facilities and related considerations. Such areas include but are not limited to the following: channel(s) for government usage, educational usage (public and nonprofit schools, colleges and universities), public access, and local origination. Applicants for a franchise are strongly encouraged to investigate the needs and desires of potential Users and to offer such community services as are technologically and economically feasible. Both internal institutional communications and connection to Subscribers is encouraged where appropriate.

2. The Franchisee shall not take any actions that would discourage or prevent maximum utilization of all PEG channels provided, and shall cooperate with the City and managers of PEG channels to ensure that Subscribers are aware of the channels, can access them easily, and, to the extent that a Franchisee (or some entity acting on a Franchisee's behalf) is involved in publicizing Franchisee's other channels or channel schedules, that the PEG channels and channel schedules are similarly publicized.

G. Facilities and Management. In regard to the community service provisions referred to in this Section, applicants are strongly encouraged to consider and provide studio facilities, production equipment, technical assistance and other facilities and equipment to enable the City and its residents to fully utilize the Cable System as not only an entertainment medium, but as an intra community

communications and education medium. Such services, facilities, production equipment, origination points, hours of availability where appropriate, costs and all other necessary information relating to community service shall be as proposed by applicants and as provided for in the Franchise Agreement. Specific operational details and responsibilities, including the City's right to designate management organizations to operate various community service channels and facilities (a right specifically reserved herein by the City), shall be provided for in the Franchise Agreement and by separate agreement between the Franchisee, the City and any management organizations designated by the City for this purpose.

H. Public Use Connections. At a minimum, the Franchisee shall offer to provide, without charge, one (1) Drop and one (1) outlet of Basic Cable Service and Cable Programming Service to the ground block of each public, private and parochial school, nonprofit college and university and each fire station, police station, public library branch, City neighborhood community centers, (excluding public spaces in such community centers) and such other facilities used primarily for municipal purposes which are within three hundred (300) feet of the existing System as may be designated by the City. A Franchise Agreement may specify the particular conditions under which the outlets will be provided.

I. Reception. The Cable System shall be capable of and shall produce a picture which meets all applicable FCC technical standards. This requires that equipment be installed at the headend to allow the Franchisee to receive or cablecast signals in substantially the form received, without substantial alteration or deterioration (for example, the headend should include equipment that will transmit color video signals received at the headend in color). Equipment shall be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed captioned signal is provided consistent with FCC standards. Equipment shall be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and PEG) are retransmitted in those same formats.

5.12.140 Privacy.

A. Valid Authorization of Subscriber. The Franchisee shall strictly observe and protect the rights of privacy and property rights of Subscribers and Users at all times. Individual Subscriber preferences of any kind, viewing habits, political, social or economic philosophies, beliefs, creeds, religions or names, addresses or telephone numbers shall not be revealed to any Person, government unit, police department or investigating agency unless upon the authority of a court of law or pursuant to prior voluntary Valid Authorization of the Subscriber, which shall not be required as a condition of receiving service.

1. Neither the Franchisee nor any other Person shall initiate in any form the discovery of any information on or about a Subscriber's premises without prior Valid Authorization from the subscriber potentially affected.

2. A Subscriber may at any time revoke any authorization previously made, by delivering to the Franchisee in writing by mail or otherwise, his/her decision to so revoke. Any such revocation shall be effective upon receipt by the Franchisee.

B. Release of Subscriber Information. The Franchisee may release the number of its Subscribers but only as a total number or as a percentage of the potential Subscribers throughout the City. When indicating the number of Subscribers viewing a particular channel at a particular time, the Franchisee may indicate only the total number of Subscribers viewing during the relevant time and the percentage of all Subscribers which they represent, but never the identity of a particular Subscriber. The Franchisee may maintain such information as is necessary to bill Subscribers for the purchase of any Cable System service.

C. Subscriber Monitoring.

1. No monitoring of any Subscriber terminal shall take place without specific prior Valid Authorization by the User of the terminal in question; provided that athe Franchisee may conduct System wide or individually addressed "sweeps" for the purpose of verifying System integrity. In no event shall aural or visual monitoring of any kind take place without a clear indication to the Subscriber that such monitoring is taking place. The Franchisee shall not initiate a Subscriber response mechanism without the City Administrator's making a finding that the System can operate effectively and yet give absolute

protection against any invasion of privacy.

2. The Franchisee shall not tabulate any test results, nor permit the use of the System for such tabulation, which would reveal the commercial product preferences or opinions of Subscribers, members of their families or their invitees, Franchisees or employees without prior Valid Authorization of the Subscriber.

D. Privacy Violations. Each compilation, publication, tabulation or other dissemination of each piece of information made or permitted to be made in violation of this Section shall be considered a separate violation.

5.12.150 Construction and Technical Standards.

A. Compliance with Construction Codes.

1. Construction practices of Franchisees shall be in accordance with all applicable provisions of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all Applicable Laws, rules and regulations of the state and the City, including but not limited to requirements of the City in regard to various electrical wiring necessary to the operation of City functions, including but not limited to traffic-control signalization, right-of-way lighting, fire lines and emergency communications lines.

2. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable provisions of the current editions of the National Electrical Safety Code as published by the Institute of Electrical and Electronics Engineers, the National Electrical Code of the National Fire Protection Association, and all state and local codes where applicable.

3. Antenna-supporting structures such as towers shall be painted, lighted, erected and maintained in accordance with all applicable laws, rules and regulations of the federal government, state and the City.

B. Performance Standards. The System shall be installed, maintained and operated in accordance with the highest accepted standards of the industry. The Franchisee shall design and construct the System so as to meet the following minimum standards:

1. The Cable System shall be capable of continuous twenty-four (24) hour daily operation without severe material degradation of signal except during extremely inclement weather, and immediately following extraordinary storms which adversely affect utility services or w hich damage major System components.

2. The Cable System should be capable of operating over an outdoor temperature range of -25˚ F to +135˚ F and over variation in supply voltages from 105 to 130 volts AC without catastrophic failure or irreversible performance changes.

C. Technical Standards. Except as otherwise provided in federal law, each Cable System shall be designed, installed and operated so as to comply with all applicable technical standards, codes, and regulations as promulgated by the FCC and other federal, state and local authorities. In this regard, 47 C.F.R. section 76.60, relating to technical standards (including but not limited to performance monitoring and measurements), shall apply in full and is hereby incorporated herein by this reference, except as preempted by federal law. All other applicable state or City laws, rules or regulations relating to technical standards and operation of the System as may be enacted or promulgated from time to time shall apply and govern the installation and operation of the System to the extent such laws, rules or regulations are not preempted by federal regulation.

5.12.160 Customer Service Standards.

A. Office and Phone Service.

1. The Franchisee shall maintain an office in the City which shall be open and staffed during Normal Business Hours. The Franchisee shall have a locally listed telphone number and be so operated that complaints and requests for repairs or adjustments may be received twenty-four (24) hours per day, each day of the year. Franchisee's Personnel at the local office shall, at a minimum, be able to provide immediate billing information, provide for equipment pick-up and drop-off, and provide written Customer service information.

2. Trained company representatives shall be available to respond to telephone inquiries from 7:00 a.m. to 8:00 p.m. Monday through Saturday. Between 8:00 p.m. and 7:00 a.m. Monday through Saturday, the access line may be answered by a service or an automated response System, including an answering machine. Inquiries received by Franchisee's answering service or automated response System shall be responded to by a trained company representative on the next business day.

3. Under Normal Operating Conditions, telephone answer time by a Customer representative, including wait time, shall not exceed thirty (30) seconds from when the connection is made. If the call is required to be transferred, transfer time shall not exceed thirty (30) seconds. Callers shall receive a busy signal less than three percent (3%) of the time. Calls shall be lost or abandoned less than three percent (3%) of the time. The Franchisee shall comply with the standards established in this paragraph no less than ninety percent (90%) of the time, measured on a quarterly basis.

4. Customer service center and bill payment locations shall be open at least during Normal Business Hours and shall be conveniently located. A Franchisee may use an agent such as a bank or other business to receive bill payment from cable Customers during and outside of Normal Business Hours. Such an arrangement shall not relieve the Franchisee of its obligation to have its own bill payment location open at least during Normal Business Hours. The account of a Customer who remits payment at any authorized bill payment location shall be credited by Franchisee no later than the beginning of the second business day after remittance. Bill payment locations shall contain a written notice informing Subscribers when their account will be credited.

5. Franchisee shall notify the City Administrator as promptly as possible, whenever there is a total interruption of telephon service which affects Franchisee's Subscriber service phone lines.

6. Failure to meet the standards contained in this Section shall subject Franchisee to appropriate enforcement actions.

B. Notification Requirements.

1. The Franchisee shall provide written information relating to the material desribed in subparagraphs a. through h. of this paragraph at the time of installation of service, at least annually to all Subscribers, and at any time upon request of a Subscriber or potential Subscriber. A current version of the information shall be provided to the City upon request, and automatically whenever the material provided to Subscribers or potential Subscribers changes. The notice provided shall provide information specific to Altoona; provided that nothing contained in this paragraph shall prevent the Franchisee from complying with this Section by sending a national notice and a separate notice that provides detail concerning local procedures, so long as the two are consistent and contain the information required by this paragraph.

a. Products and services offered;

b. Prices and options for programming services and conditions of subscription to programming and other services. In order that Subscribers are fully apprised of the charges they may incur, Franchisee shall note that advertised rates are subject to additional taxes and fees;

c. Installation and service maintenance policies, including, when applicable, information regarding the Subscriber's home wiring rights and information describing ownership of internal wiring during the period service is provided.

d. Instructions on how to use the Cable Service.

e. Channel positions of programming carried on the System;

f. Billing and complaint procedures, including address and telephone number of the Franchisee located in the City cable office;

g. The address and telephone number of the Franchisee's office to which complaints may be reported.

h. Subscribers' rights to obtain refunds or credits from the Franchisee and the steps that must be taken to obtain the refunds and credits.

2. At any time a Subscriber's services are changed due to action by Franchisee, Franchisee shall send the following notice:

a. Products and services offered;

b. Prices and options for programming services and conditions of subscription to programming and other services. In order that Subscribers are fully apprised of the charges they may incur, Franchisee shall note that advertised rates are subject to additional taxes and fees;

c. Channel positions of programming carried on the System;

d. Subscribers' rights to downgrade their Cable Service or to disconnect from the Cable System.

3. Customers will be notified of any changes in rates, programming services, or channel positions as soon as possible in writing unless otherwise expressly provided by federal law. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Franchisee.

4. The City shall be notified of any change in rates, programming services, channel position or policy at least thirty (30) days in advance of such change by letter delivered to the City Administrator, which shall include a copy of the Subscriber notice, except where such notification is impossible because the change is beyond the control of Franchisee or any affiliate, in which case the notice must be given as quickly as possible.

5. Notice to Subscribers must be reasonable.

6. Every notice of termination of service shall include all of the following information:

a. The name and address of the Subscriber whose account is delinquent;

b. Current account balance;

c. The date by which payment is required in order to avoid termination of service; and

d. The telephone number of a representative of Franchisee who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question.

7. The following special notice procedures shall apply:

a. At any time a Person subscribes to any service, the Person must be specifically informed whether there will be a charge to drop the service;

b. If there is any charge for terminating a promotional or free product or service, the charge must be disclosed in writing prior to connection of the service or provision of the product; and

c. At the time Franchisee completes installation, Franchisee shall provide the Person with information regarding refunds or credit if offered by Franchisee. Franchisee shall annually inform its Subscribers of refunds or credits, if offered by Franchisee, if the Franchisee's personnel miss an installation or service call appointment without the consent of the Subscriber.

C. Service Calls and Response Time. Under Normal Operating Conditions, each of the following standards shall be met no less than ninety-five percent (95%) of the time, as measured on a quarterly basis:

1. Installations to locations that are located within one hundred twenty-five (125) feet of the existing distribution System shall be performed within seven (7) business days after an order has been placed. Installations to locations that are located more than one hundred twenty-five (125) feet away from, but within three hundred (300) feet of the existing distribution System shall be performed within fourteen (14) days after an order has been placed.

2. Where a request for service can be satisfied without a service call, the request shall be satisfied within three (3) business days from the date of request.

3. For installations to locations that are more than three hundred (300) feet from the existing distribution System, service shall be provided on a mutually acceptable schedule. Nothing in this Section permits a Franchisee to charge for extending service in an area where the Franchisee is required to provide service pursuant to Section 5.12.090. Installations on new construction entitled to service under a Franchise Agreement or this ordinance shall be completed within ninety (90) days of the date of occupancy, subject to weather conditions and equipment availability.

4. The "appointment window" for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. The Franchisee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of the Customer.

5. Franchisee may not cancel an appointment with a Person after the close of business on the business day prior to the scheduled appointment without the Person's consent.

6. If the Franchisee's 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. Under Normal Operating Conditions, if Franchisee does not arrive for installations or service calls by appointment within the scheduled appointment window the Person may request within thirty (30) days of the missed appointment and is entitled to receive a $20.00 credit for missed service call appointments or a free installation for missed installation appointments.

8. Excluding conditions beyond the control of the Franchisee, the Franchisee shall begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the Service Interruption becomes known to the Franchisee. The Franchisee must begin actions to correct other service problems the next business day after notification of the service problem. Merely acknowledging the existence of the problem does not satisfy this requirement.

9. Service interruptions shall be corrected within thirty-six (36) hours of the time that the interruption becomes known to the franchisee unless such correction is precluded by circumstances beyond the reasonable control of Franchisee.

10. Problems with Cable Service other than Service Interruptions shall be corrected within ninety-six (96) hours of the time that the problems become known to the Franchisee.

D. Disconnect Charges; Time for Disconnection. No Franchisee shall impose a disconnect charge upon any Subscriber who terminates Cable Service. For purposes of billing, a request for disconnection shall be effective immediately upon the Subscriber's oral or written request to the Franchised, and the Subscriber shall not be billed for any service provided after the request, and shall be entitled to a refund of any prepaid amount that applies to the period after the date of the request. In the case of special promotions, a Subscriber shall not be entitled to a refund or prepayment amounts if the Subscriber was fully and clearly informed prior to taking the service that prepaid amounts would not be returned. Nothing prevents a Franchisee from establishing reasonable charges to disconnect the service of Persons who fail to pay their bills consistent with Applicable Laws.

E. Refunds, Credits and Rebates. Franchisee shall at all times compy with each and every requirement of ATCP 123.02, 123.04 and 123.10 as may be amended, Wisconsin Administrative Code.

F. Bills and Billing Disputes.

1. Bills of the franchisee shall be clear, concise and understandable. Bills shall be fully itemized, with itemizations showing, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, the Franchisee shall respond to a written complaint made by a Subscriber within thirty (30) days. If Franchisee chooses to itemize on its bills as a separate line item franchise fees and/or other governmentally imposed fees, such fees shall be shown in accordance with Applicable Law concerning Franchisee's ability to itemize such fees.

2. Refund checks or rebates shall be issued promptly, but no later than either (i) the Customer's next billing cycle following resolution of the matter resulting in the refund, or thirty (30) days, whichever is earlier, or (ii) a return of equipment supplied by the Cable Operator, if any, if service is terminated. Credits for service shall be issued no later than the Customer's next billing cycle following the determination that a credit is warranted.

3. A specific due date at least ten (10) business days from the date of mailing shall be indicated on every Subscriber bill. Such requirement applies only to active accounts in good standing, and shall not apply to accounts pending disconnection for prior delinquencies. A late charge or other fee for late payment may not be imposed earlier than the later of (i) twenty-thre (23) days after the bill is mailed; or (ii) the 20th day of the month in which the service for which payment is sought is rendered. For purposes of determining whether a fee may be imposed, the bill shall be deemed paid on the date Franchisee receives payment, and it is Franchisee's responsibility to ensure that its posting and crediting practices will not result in assessment of improper fees and charges upon Subscribers.

4. Subscriber bills from Franchisee shall include the name, address, and telephone number of the Cable Liaison. The Cable Liaison shall provide such name, address and telephone number to Franchisee on an annual basis by January 1, or as needed.

5. Franchisee shall forward all regulatory billing inserts affecting rates, policies and procedures and copies of all other mailings required by law or under the franchise to Subscribers to the City Administrator fifteen (15) days prior to the time they are provided to Subscribers. Copies of notices to Subscribers must be forwarded to the City Administrator to determine compliance pursuant to Applicable Law.

6. It is the franchisee's obligation to pick up any equipment upon termination of any service if Franchisee initially delivered the equipment to the Subscriber. Any charges imposed for pick-up of such equipment shall not exceed the charge for delivering the equipment, assuming the Customer honors the equipment pick-up appointment agreed to with the company.

G. Complaints. If a complaint to a Franchisee cannot be resolved to a Customer's satisfaction, the City may consider individual cases brought to its attention and may seek that information necessary to investigate the dispute and to exercise any authority the City may have to resolve the dispute.

H. Complaint Procedure. The City Administrator, or designee, upon receiving complaints about Cable Service shall keep a log of complaints received by telephone. The log shall include the date made, the name and address of the Person lodging the complaint, the subject matter of the complaint and the action taken. The City Administrator shall provide a copy of the complaint log to the Franchisee as frequently as once per quarter, or less frequently, if the number of complaints is low.

I. Disconnection or Denial of Service.

1. Franchisee shall not terminate residential service for nonpayment of a delinquent account unless Franchisee provides initial written notice of the delinquency and impending disconnection at least ten (10) days prior to the proposed termination. The notice shall be mailed, postage prepaid, to the Subscriber to whom the service is billed. This notice shall not be sent until fifteen (15) days after the delinquent date of the bill. The disconnect notice may be included as part of a mailing containing a billing statement so long as the disconnect notice is prominently displayed.

2. Franchisee shall terminate service only on days when a representative of Franchisee will be available to the Subscriber either in Person or by telephone. Service terminated without good cause shall be restored without charge for the service restoration. "Good cause" includes, but is not limited to, failure to pay, payment by check for which there are insufficient funds, or theft of service.

3. Subject to provisions of the Franchise Agreement, Franchisee shall furnish and maintain services to each Person in the franchise area who makes a request to receive any programming service. Nothing in these standards shall limit the right of Franchisee to deny service to any household or individual which has a negative credit or service history with Franchisee, which may include nonpayment of bills or theft or damage to Franchisee's equipment, or who has threatened or assaulted employees of Franchisee in the course of their employment, or for other good cause, which shall be documented; provided, however, that in the event Service is denied, Franchisee will give notice to the Subscriber of the reason for denial.

J. Deposits, Refunds, and Credits.

1. On all deposits, Franchisee shall be required to pay simple interest at a rate of ½% per month (6% per year). Such interest shall be accrued and payable upon termination of service. Upon termination of service for any reason, Subscribers shall be entitled to receive a refund or credit against amounts owed Franchisee equal to the deposit plus accumulated interest. The rate may be modified to reflect prevailing market interest rates upon approval by the City which shall not be unreasonably withheld. Such interest shall be accrued on deposits charged to Subscribers after the effective date of the franchise.

2. Refund checks shall be issued within thirty (30) days following the resolution of the event giving rise to the refund. In addition to a refund, if Franchisee fails to mail a check for a refund to any Subscriber disconnecting service with an outstanding credit of $3.00 or more within thirty (30) days of the date service is ended, and the subscriber has returned all Franchisee-owned equipment, the Subscriber shall receive from Franchisee a $10.00 penalty payment, in addition to the total refund due. Failure

tocomply with the $10.00 penalty provision shall be grounds for appropriate enforcement actions by the City.

K. Rates, Fees, and Charges.

1. Franchisee shall not, except to the extent permitted by law, impose any fee or charge on any Subscriber for service calls to said Subscriber's premises to perform any repair or maintenance work related to Franchisee-installed equipment necessary to receive service.

2. Franchisee shall be entitled to recover a reasonable fee for all checks returned due to insufficient funds.

L. Employee and vehicle identification. All Personnel and service vehicles of Franchisee or its subcontractors contacting Subscribers or potential Subscribers outside the office of Franchisee or performing any work within the City Rights-of-Way shall be clearly identified as associated with Franchisee through visible uniform insignia, photo identification devices, or signs affixed to the vehicle.

M. Rights reserved by City. City reserves the right to establish additional, reasonable Subscriber service standards from time to time, as may be necessary.

5.12.170 Rates.

A. Regulation. The City may regulate rates for Cable Services and products except to the extent prohibited by state and federal law.

B. Rate Filings. Each Franchisee shall file with the City an up-to-date rate schedule of all Subscriber and User rates, fees and charges for all Cable Services and products provided, which schedule shall be on file in the office of the Cable Liaison at all times. All Franchisees shall at all times comply with the geographically uniform rate structure regulations of the FCC at 4 C.F.R. § 76.984.

C. Nondiscrimination. The Cable System shall be operated in a manner consistent with the principles of fairness and equal accessibility of facilities, equipment, channels, studios and other services to all residents, businesses, public agencies and other entities having a legitimate use for the Cable System and no Person shall be arbitrarily excluded from its use. The Franchisee shall not discriminate in the assessment, levy, charge, imposition or collection of rates, fees or charges on the basis of race, color, religion, ancestry, sex, age, physical disability which includes but is not limited to, HIV/AIDS, national origin, sexual or affectional preference or marital status.

D. Promotional Campaigns. Nothing in this Chapter shall prohibit the reduction or waiving of charges by Franchisee in conjunction with promotional campgians for the purpose of attracting Subscribers or Users, so long as the promotion is bona fide, temporary, and available to all similarly situated Persons throughout the City.

E. Experimental Services. Franchisee may request in writing and the City may grant, temporary authority to Franchisee for periods approved by the City Council to offer specifically identified services, packages and combinations of services to selected groups of Subscribers at terms and conditions not generally available to all Subscribers. The City may refuse to grant this waiver unless it is persuaded upon sufficient showing by Franchisee that the temporary authority will be used solely to offer services on an experimental or test market basis, and that the services will either be withdrawn at the conclusion of the test or will be made generally available to all Subscribers in a uniform, consistent and nondiscriminatory manner.

5.12.180 Reports.

A. On or before March 31 of each year during the term of the franchise Agreement, the Franchisee shall submit a written report to the City. The report shall be submitted in accordance with mutually agreed upon forms prepared by the City after providing a period for notice and comment on the forms. Until such forms are prepared after notice and opportunity for comment, the annual reports shall be prepared in accordance with the general business practices of a Franchisee and shall contain at least the following information regarding the previous calendar year:

1. A summary of activities in the development of the System applicable to the City, including but not limited to services begun or discontinued, total number of Subscribers, homes passed, all per the

provisions of this Chapter and the Franchise Agreement.

2. A list of all complaints received and System downtime experienced which are applicable to the City during the reporting period. All such submitted data shall include complaint disposition and response time.

3. A summary by category of complaints referenced in item #2, identifying the number and nature of complaints and their dispositions.

4. A fully audited revenue report which details by category all revenues applicable to the operation of the cable system within the City.

5. A list of officers and members of the board of directors of the Franchisee and its parents.

6. A list of stockholders holding five percent (5%) or more of the voting stock of the franchisee or its parents.

7. A copy of the Franchisee's annual report and those of its parents and subsidiaries provided said report is prepared in the normal course of business by Franchisee and/or its parents and subsidiaries.

8. A copy of the Franchisee's annual report provided said report is prepared in the normal course of business by Franchisee.

9. A full schedule of all Subscriber and User rates, fees and charges for all Cable Services provided.

10. A copy of Subscriber and User agreements used by the Franchisee; provided that, when it provides the information required by 8 and 9 above, a Franchisee need not include proprietary MDU Rates and agreements.

11. A copy of updated maps depicting the location of all cable plant to standard scale and with appropriate tick marks as mutually agreed. These maps shall be accompanied by a digital copy in a mutually agreed upon format and medium. The maps shall depict the location of plant as-built.

12. A report showing compliance with the requirements regarding telephone calls specified in the Customer service standards.

13. The percentage of time that Service Interruptions were cured within thirty-six (36) hours, the average time from notice that a problem existed to final cure, and the percentage of time that other service calls were resolved within ninety-six (96) hours.

14. The percentage of time standard and non-standard installations were completed within the time required by Sections 5.12.090 and 5.12.160.

15. The total number of complaints received for the quarter, and the number of complaints by type of complaint, and complaints received as a percentage of basic Subscribers.

16. The total number of outages, divided into planned and unplanned outages, and showing the total duration of outages. An outage is defined as a loss of audio or video or impairment of audio or video affecting more than five (5) Subscribers.

17. A list of all services offered by the Franchisee; provided that, after the initial filing, subsequent filings need only identify new services and changes in services offered.

B. Annual Surveys. In addition to providing such other information as may be requested above, the Franchisee shall annually provide an opinion survey which identifies Subscriber programming preference in the City.

C. Reports to Others. The Franchisee shall file promptly with the City a copy of any document the Franchisee files with the FCC, the Securities and Exchange Commission, or any other regulatory agency with jurisdiction pertaining to the System. To the extent that such documents contain, to the satisfaction of the City Administrator, the information required by other reports hereunder, the City Administrator may suspend the requirements to file such other reports with the City so as to avoid duplication and unnecessary cost. Alternatively, a Franchisee may comply with this Section by providing the City with a list and short description of the documents it files with such agencies, and providing copies of the documents upon request. Such list shall be kept current.

D. Material Misrepresentations. Any material misrepresentation made by the Franchisee in any report required by this Section shall subject the Franchise to the penalty provisions of this Chapter and shall subject the Franchisee to all remedies available to the City by law.

E. Access to Books and Records.

1. The City may inspect and copy books and records of the franchisee that are reasonably necessary to the enforcement of any provision of this Ordinance, the franchise Agreement; to the conduct of performance evaluation sessions; or to the exercise of any authority that the City may have under the same or any other provision of Applicable Law. Without limiting the foregoing, a Franchisee shall provide the City access to complaint data to enable the City to fully investigate Subscriber complaints. Books and records shall be produced to the City for inspection at the Franchisee's local office or at such other mutually agreed upon location within the City. Provided, however, that nothing in this Chapter shall be read to require the Franchisee to violate any provision of federal or state law relating to Customer privacy. Information requested shall be made available for inspection within fourteen (14) business days of a request therefor, which period shall be subject to extension for good cause shown where no harm will result to the public interest from the delay.

5.12.190 Performance Evaluation Sessions.

To provide for technological advances in the state of the art of cable communications, to promote the maximum degree of flexibility and utilization of the Cable System, to evaluate the Franchisee's performance and compliance with the provisions of this Chapter and the Franchise Agreement, and to evaluate the performance of every Franchisee to ensure that the quality of every Franchisee's service continues to reasonably meet the needs of the community, the City and each Franchisee shall comply with the following review procedures:

A. Procedure.

1. The City may commence a regularly scheduled review session any time after the second anniversary date of the execution of a Franchise Agreement and subsequently every two (2) years thereafter. All review sessions shall be open to the public, notice of date, time, location, and agenda shall be given by the City by publication at least once in a newspaper of citywide general circulation at least one (1) week prior to each session.

2. The City may hold special review sessions at any time on specific issues relevant to the System. All such review sessions shall be open to the public and shall be advertised, if possible, as provided in paragraph 1 of this Section. Either the City or the Franchisee may select additional topics for discussion at any regular or special review session.

3. The City shall provide for the taking of written minutes and a recording of all review sessions held.

B. Topics.

Topics for discussion and review at the regular review sessions shall include but shall not be limited to the following: Rate structure, free or discounted services, application of new technologies, System performance, services provided, programming, Subscriber complaints, User complaints, rights of privacy, construction progress, community service channel implementation and utilization, amendments to this Chapter, undergrounding process and developments in the law.

5.12.200 Renewal, Revocation, Violation or Forfeiture of Franchise.

A. Renewal. The procedure for considering renewal of the Franchise Agreement shall be as provided by Federal Law.

B. Procedure for Violations and Revocation. In the event the City Council believes that Franchisee has breached or violated any material provision of this Ordinance or a Franchise granted hereunder, the City Council may act in accordance with the following procedures:

1. City may notify Franchisee of the alleged violation or breach, stating with specificity the nature of the alleged violation or breach, and demand that Franchisee cure the same within a reasonable time, which shall not be less than ten (10) days in the case of an alleged failure of the franchisee to pay any sum or other amount due the City under this Ordinance or the Franchisee's Franchise and thirty (30) days in all other cases. Franchisee may within ten (10) days of receipt of such notice, submit a written response to City challenging said alleged violation. City shall hear Franchisee's challenge within thirty

(30) days and render a final decision within thirty (30) days thereafter.

2. If Franchisee: a) does not challenge the alleged violation or breach, or b) fails to cure the alleged violation or breach within the time prescribed, the City shall provide Franchisee with written notice of not less than ten (10) days of a public hearing to be held before the City Council. Said notice shall specify the violations or breaches alleged to have occurred. At the public hearing, the City Council shall hear and consider relevant evidence and thereafter render findings and its decision.

3. In the event the City Council finds that a material violation or breach exists and that Franchisee has not cured the same in a satisfactory manner or has not diligently commenced to cure any such violation or breach after notice thereof from the city and is not diligently proceeding to fully cure such violation or breach, the City Council may impose penalties or damages from any security fund or performance bond required in a Franchise Agreement or may terminate Franchisee's Franchise.

4. If the City Council chooses to terminate Franchisee's Franchise, the following additional procedure shall be followed:

a. After holding the public hearing, the City shall provide Franchisee with written notice of the City's intention to terminate the Franchise and specify in detail the reason or cause for the proposed termination. The City shall allow Franchisee a minimum of fifteen (15) days subsequent to receipt of the notice in which to cure the default.

b. Franchisee shall be provided with an opportunity to be heard at a regular or special meeting of City prior to any final decision of City to terminate Franchisee's Franchise.

c. In the event that City determines to terminate Franchisee's Franchise, the franchisee shall have an opportunity to appeal said decision in accordance with all Applicable Laws.

d. If a valid appeal is filed, the Franchise shall remain in full force and effect while said appeal is pending, unless the term of the franchise sooner expires.

C. Effect of Termination or Forfeiture. Upon termination or forfeiture of a franchise, whether by action of the City Council as provided above or otherwise, the Franchisee shall be obligated to cease operating the Cable System for the purposes authorized by the franchise.

D. Remedies Cumulative. All remedies under this Chapter and any Franchise Agreement are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of damages or penalties relieve a Franchisee of its obligations to comply with this Chapter and its Franchise Agreement. Remedies may be used singly or in combination. In addition, the City may exercise any rights it has at law or equity. Recovery by the City of any amounts under insurance, the performance bond, the security fund or letter of credit or otherwise, shall not limit a Franchisee's duty to indemnify the City in any way, nor shall such recovery relieve a Franchisee of its obligations under this Chapter or a Franchise Agreement, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have. Nothing contained in this Chapter shall be read to authorize the double-recovery of damages.

E. Right to Require Dismantling; Restoration. In the event that the City exercises its option to require the Franchise to dismantle the Cable System, the Franchisee shall, in an expeditious manner, at its own expense and at the direction of the Director of Public Works, restore any property, public or private, to the condition in which it existed prior to the erection or construction of the Cable System, including any improvements made to such property subsequent to the construction of the Cable System. The option to require removal of the Cable System shall not apply to any Franchisee which holds valid state or federal authorization to provide tleecommunications services and said Cable System is being used to provide such telecommunications services.

5.12.210 Continuity of Service.

The Franchisee shall provide continuous service for the entire term of the franchise Agreement to all Subscribers and Users in return for payment of the established rates, fees and charges. If for any reason the franchise becomes void, the Franchisee shall continue to operate the Cable System in a normal and orderly manner consistent with federal law until an orderly and lawful change of operation is effectuated. This period of operation shall not exceed sixty (60) days from the date of occurrence or the

date on any appeals of the same are finally concluded, whichever is later. During such interim period, the Franchisee shall not make any material, administrative, or operational changes that would tend to degrade the quality of service.

5.12.220 Purchase of System by the City.

In the event of a termination or denial of Franchise renewal of the Franchise Agreement, the City may purchase the cable System for an equitable price consistent with 47 U.S.C. §547. Upon termination of the Franchise Agreement, the value of the Cable System shall be solely based on the fair market value of the Cable System. No value shall be assigned to the franchise itself whether termination is or is not for cause.

5.12.230 Foreclosure and Receivership.

A. Foreclosure. In the case of a foreclosure or other judicial sale or termination of lease of the plant, property or equipment of the Franchisee, or any substantial part thereof, or any rights under the Franchise Agreement, the Franchisee shall serve written notice upon the City of any such event; and the City may serve written notice of termination upon the Franchisee and the successful bidder at such sale, in which event the Franchise and the Franchise Agreement and all rights and privileges of the Franchisee thereunder shall cease and terminate thirty (30) days after service of such notice, unless:

1. City Council has approved the transfer of ownership of the franchise, in accordance with all pertinent provisions of Chapter 5.12.240 of this Ordinance, and

2. Such successful bidder shall have covenanted and agreed with the City, in writing in a form approved by the City Attorney, to assume and be bound by all the terms and conditions of this Chapter and the Franchise Agreement.

B. Receivership. The Franchise shall terminate one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Franchisee, whether in receivership, reorganization, bankruptcy or other related action or proceeding.

C. Failure to Comply. Failure to comply with the provisions of paragraph (1) of this Section s hall be deemed an unauthorized transfer pursuant to the provisions of Chapter 5.12.240 of this Ordinance.

5.12.240 Transfers and Assignments.

The procedures for transfers and assignments of the Franchise Agreement will conform to the requirements as set forth in federal law and applicable FCC regulations and will include the following requirements:

A. Transfer Rights. The Franchisee shall not sell, transfer, assign, exchange or release, or permit the sale, transfer, assignment, exchange or release ten percent (10%) ownership of the System, nor shall Franchisee sell, transfer, assign, exchange, or release, or permit the sale, transfer, assignment, exchange, or release of the rights in the franchise Agreement to a Person (hereinafter "proposed transferee"), without the prior written authorization of the City Council. A transfer of ownership is presumed to occur if forty percent (40%) or more of the ownership interest in a Cable System is transferred. The City Council specifically reserves the right to deny, restrict or condition authorization to transfer upon the criteria stated in this Section and any other lawful criteria the City Council determines to be necessary in the public interest.

B. Required Information. The Franchisee shall provide the following information to the City:

1. All information and forms required under federal law or the equivalent of such forms if no longer required by federal law;

2. Any contracts or other documents that constitute the proposed transaction and all documents, schedules, exhibits, or the like referred to therein and necessary to understand the terms thereof (confidential trade, business, pricing or marketing, information, or information not otherwise publicly available may be redacted);

3. Any shareholder reports or filings with the Securities and Exchange Commission that discuss the transaction.

C. City Council Review. Once the required information has been provided, the transfer application shall be subject to review by the City Council and any approval shall be subject to the City Council's determination that:

1. The proposed transferee has the qualifications to construct, operate and repair the System proposed in conformity with Applicable Law;

2. The proposed transferee will comply with and agree to be bound by the existing Franchise Agreement.

D. Approval. Any approval will also be subject to a determination by the City Council that:

1. Transferee is legally, technically and financially qualified;

2. Transferee will agree to be bound by all the conditions of the Franchise and to assume all the obligations of its predecessor;

3. Any outstanding compliance and compensation issues will be resolved or preserved to the satisfaction of the City Council; and

4. The proposed transferee and the current Franchisee have provided all required information so that the City Council may act on the application.

E. Acceptance. Any proposed transferee shall execute an agreement, in such form as acceptable to the City Attorney, that it will assume and be bound by all of the provisions, terms and conditions of this Chapter, and the Franchise Agreement.

F. Unauthorized Transfer.

1. The occurrence of an unauthorized transfer or assignment may, at the option of the City Council, provide the City with cause to terminate the Franchise Agreement consistent with Section 5.12.200 herein; provided, however, Franchisee shall have the right to appeal any such determination by the City council and shall continue to operate the System during the pendancy of any appeal.

2. From and after any occurrence constituting an unauthorized transfer or assignment, the putative transferee shall not make, execute or enter into any deed, deed of trust, mortgage, contract, conditional sales contract or any loan, lease, pledge, security agreement, sale, pole agreement or any other agreement or hypothecation concerning any System facilities or property, whether real or Personal, without the written approval of the City Council, provided, however, this paragraph shall be suspended during the pendancy of any appeal.

G. Collateral. Nothing in this Section shall be deemed to prohibit the use of the Franchisee's property as collateral for security in regard to financing. However, any such financing arrangements shall be subject to all provisions of this Chapter and the Franchise Agreement. In no case may any Person, including the institution holding the System as collateral, succeed to the ownership or control of the System or the Franchise without the prior approval of the City Council.

H. Proprietary Information. Nothing in this Section shall be read to prohibit Franchisee from providing information subject to the protections for proprietary information under this Ordinance or a Franchise Agreement.

5.12.250 Subscriber Antennas.

The Franchisee shall not require the removal of any potential or existing Subscriber antennas as a condition for provision of service.

5.12.260 Indemnification and Disputes Regarding Issuance of Franchise.

A. Indemnification. The Franchisee shall indemnify, save harmless and defend the City, the City Council, appointed boards and commissions, officers and employees, individually and collectively from all fines, liens, suits, claims, demands, actions, costs of litigation, attorneys' fees, judgements or liability of any kind (including but not limited to libel, slander, invasion of privacy, unauthorized use of any trademark, trade name or service mark, copyright infringement, injury, death or damage to Person or property) arising out of or in any way connected with the installation, construction, operation, maintenance or condition of the System. The Franchisee shall assume all risks in the operation of the System and shall be solely responsible and answerable for any and all accidents or injuries to Persons or

property arising out of Franchisee's performance of the Franchise Agreement. The amounts and types of insurance coverage requirements set forth by this Chapter shall in no way be construed as limiting the scope of indemnity set forth in this Section. The City shall give the franchisee timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity of this Section, where the Franchisee is not a party thereto.

B. Disputes Regarding Issuance of Franchise:

1. Franchisee shall indemnify, save harmless and defend the City, its City Council, appointed boards and commissions, officers and employees, individually and collectively from all fines, liens, suits, claims, demands, actions, costs of litigation, attorneys' fees, judgements or liability of any kind arising from the defense of any litigation brought by third parties challenging the right of the City to issue a franchise to Franchisee under state law. The City shall give the Franchisee timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity of this Section, where the Franchisee is not a party thereto.

2. Franchisee shall assume the risk of, and shall relinquish any claim against the City in connection with any final, non-appealable determination by a court of competent jurisdiction that the City lacked the current statutory authority to issue the Franchise.

5.12.280 Bonding.

A. Performance Bond. Within thirty (30) days after written notification of the award of a Franchise by the City Council, the Franchisee shall file with the City a performance bond for the benefit of the City at least in the amount of Fifty Thousand Dollars ($50,000.00) to be effective upon the execution of the Franchise Agreement and conditioned that in the event that the Franchisee fails to comply with any provision of this Chapter, the Franchise Agreement or other law applicable to the Franchise, then there shall be recoverable jointly and severally from the principals and surety any and all damages or costs suffered or incurred by the City, including but not limited to attorney's fees and costs of any action or proceeding, and including the full amount of any compensation, indemnification, cost of removal or abandonment of any property or other costs due and owing the City up to the full principal amount of such bond. The performance bond shall be maintained in full as a continuing obligation during the entire term of the Franchise Agreement and thereafter until the Franchisee has satisfied in full any and all obligations to the City which arise out of or pertain to this Chapter and the Franchise Agreement. The performance bond shall be issued by a surety company authorized to do business in the State of Wisconsin and shall be in a form approved by the City Attorney.

1. The performance bond shall contain the following endorsement:

> "It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City of Altoona, by registered mail, of written notice of such intent to cancel or not to renew."

2. None of the provisions of this Section or Section 5.12.290 ("Security Fund"), nor any damages recovered by the City thereunder, shall be construed to excuse the faithful performance or limit the liability of the Franchisee.

B. Return of Performance Bond. Upon application to the City, the Franchisee shall be entitled to the return of the performance bond at the expiration of the Franchise Agreement, or any renewal thereof provided there is then no outstanding default or moneys due to the City by the Franchisee; provided that, nothing herein shall be read to excuse a Franchisee from its obligation to have a performance bond during the renewal term.

5.12.290 Security Fund.

A. Amount. Within thirty (30) days after written notification of the award of a franchise by the City, the Franchisee shall deposit with the Finance Director of the City, and maintain on deposit throughout the term of the Franchise Agreement, a security fund in the sum of Twenty-Five Thousand Dollars ($25,000) in cash as security for the faithful performance by the Franchisee of all provisions of

this Chapter and the Franchise Agreement and compliance with all orders, permits and directions of any agency or department of the City having jurisdiction over the Franchisee's operations. In lieu of the cash deposit, a Franchisee may provide an irrevocable and unconditional Twenty-Five Thousand Dollar ($25,000) letter of credit with a local financial institution acceptable to the City, in a form acceptable to the City Attorney. The term "security fund" in this Section means the letter of credit and the cash deposit.

1. Withdrawal of Funds. Within fifteen (15) days after written notice to the Franchisee by the City that the City has withdrawn any amount from the security fund, the Franchisee shall deposit or pay to the Finance Director a sum of money sufficient to restore such security fund to the original amount of Twenty-Five Thousand Dollars ($25,000), or, in the case of a letter of credit, restore the letter of credit to its full amount.

2. The security fund, including any interest that may have accrued, shall become the property of the City in the event that a Franchise Agreement is terminated by the City by reason of a violation of this Chapter or breach of the Franchise Agreement pursuant to the provisions of Section 5.12.200.

B. Return of Security Fund. Upon application to the City, the Franchisee shall be entitled to the return of all moneys remaining in the cash security fund, including accrued interest, at the expiration of the Franchise Agreement or any renewal thereof, provided there is then no outstanding default or moneys owing on the part of the Franchisee to the City; and further provided that nothing herein s hall be read to excuse a Franchisee from its obligation to have a security fund during any renewal term.

C. Rights Reserved. The rights reserved to the City with respect to the security fund are in addition to all other rights of the City, whether reserved by this Chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the City may have.

5.12.300 Franchise Fee.

A. Amount. In addition to any other consideration supporting the award of a Franchise by the City, including but not limited to the granting of the privilege to utilize the Rights-of-Way of the City pursuant to this Chapter for the purpose of providing Cable Service, and the Franchise Agreement to construct and operate the System, the Franchisee shall pay to the City an amount equal to four percent (4%) of Gross Revenues.

B. Payment of Franchise Fee. Payments due the City under this Section shall be computed quarterly, for the preceding calendar quarter. Each quarterly payment shall be due and payable no later than forty-five (45) days after the applicable computation date. Each payment shall be accompanied by a financial statement showing in detail the Gross Revenues of the Franchisee relating to the relevant calendar quarter as well as any other report required by Chapter 5.12.180.

C. Accord and Satisfaction. No acceptance of any payment of franchise fees shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums due and payable. The City or its designate, upon the giving of reasonable advance notice, shall have a right to audit, during the Normal Business Hours of Franchisee, all financial records of Franchisee reasonably necessary to the determination of whether Gross Revenues and Franchise fees have been accurately computed and paid. In the event an audit results in additional moneys owed the City, interest shall be charged at the rate of one percent (1%) per month on the unpaid balance. If Franchisee claims that a particular item of revenue is not included within the scope of the term "Gross Revenues" relevant records of the Franchisee shall be provided to the City in support of its claim of non-inclusion without prejudice to any claim the Franchisee may have that a Franchise fee is not owed on such revenue. A Franchisee may withhold revenue records for items that it claims are not "Gross Revenues" so long as the Franchisee (i) provides a certified statement describing the nature of the revenues contained in the records withheld and (ii) agrees, in its Franchise Agreement, to pay all costs, including attorney fees, that the City incurs should the City seek production of the records and the contested items are determined to constitute "Gross Revenues." Each Franchisee shall be required, in accordance with the terms of its Franchise, to pay for any audit where the audit shows the Franchisee underpaid the Franchise fee due to the City by four percent (4%) or more.

D. Not Franchise Fees. The payment required pursuant to this Section shall be in addition to and not in lieu of 1) any other tax, fee or assessment of general applicability (including any such tax, fee or assignment imposed on both utilities and Cable Operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operator or cable Subscribers); 2) capital costs which may be required by a Franchise to be incurred by the Franchisee for PEG access facilities; and requirements; or 3) charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification penalties, on liquidated damges.

5.12.310 Rights Reserved to the City.

A. City's Rights. Without limitation upon the rights which the City might otherwise have, every Franchise issued shall be deemed to expressly reserve to the City the following rights, powers and authorities, whether expressly set forth in the Franchise or not;

1. To exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the City.

2. To determine any question of fact relating to the meaning, terms, obligations or other aspects of this Chapter and the Franchise Agreement, subject to applicable judicial review.

3. To inspect all construction or installation work performed by the Franchisee, and to supervise all construction in the public Rights-of-Way or on other City property.

B. Eminent Domain. Nothing in this Chapter shall be deemed or construed to impair or affect the right of the City to exercise its power of eminent domain to acquire the property of the Franchisee for just compensation.

C. Use of Poles. The City reserves the right, during the term of the Franchise Agreement, to install and utilize, upon the poles owned or jointly owned by the Franchisee, any wire or pole fixtures required for municipal purposes, without pole attachment cost to the City so long as any make-ready or other preparation cost is borne by the City and such installation and utilization does not unduly interfere with the operation of the System.

5.12.320 Equal Employment Opportunity.

A. Nondiscrimination. A Franchisee shall not deny service, access or otherwise discriminate against Subscribers, Users or any resident of the City. In this regard, each Franchisee shall comply with the human relations provisions of this Ordinance incorporated herein by this reference. The Franchisee shall strictly adhere to the equal employment opportunity requirements of the FCC. The Franchisee shall comply at all times with all other applicable federal, state and City laws, rules and regulations, and all executive and administrative orders relating to nondiscrimination.

B. Equal Opportunity.

1. A Franchisee shall define the responsibility of each level of management to ensure positive applications of the policy of equal opportunity, making all reasonable efforts to assure employment at the higher and mid-management levels for Minority Persons. The Franchisee shall conduct a continuing review of employment structures and employment practices and adopt positive recruitment policies, on-the-job training, job design and other measures needed to assure genuine equality of opportunity.

2. Each Franchisee shall abide by the following general employment practices:

a. Recruiting through schools and colleges with high Minority enrollments.

b. Maintaining systematic contacts with media advocacy groups, Minority and human relations organizations, leaders, spokespersons and other appropriate recruitment sources within the City to make it known that qualified Minority Persons sensitive to the needs of the Minority community are being sought for consideration whenever the Franchisee prepares to hire employees so as to assure nondiscrimination in selection for employment.

c. Instructing Personally those on the Franchisee's staff who make hiring decisions that Applicants for all jobs are to be considered without discrimination in accordance with the provisions of this Section.

d. Making all reasonable efforts to avoid the use of selection techniques or tests that have the effect of discriminating against Minority Persons.

5.12.321 Selection of Franchisee.

A. Submission of Proposal.

1. Any Person submitting a Proposal for a Franchise shall provide all information required by this Chapter and all other information as may be solicited in the City's request for Proposals or as otherwise required by the City. Any misrepresentation, failure, neglect or refusal to provide any required information may at tahe option of the City render a Proposal invalid and result in the Proposal being given no consideration. The requested information shall be complete and verified as true by the Applicant. Every Proposal shall be submitted as an offer, so that the City may incorporate the Proposal into a Franchise Agreement by reference and may condition the award of any Franchise upon the incorporation of the Proposal into the Franchise Agreement.

2. All Proposals received by the City from the Applicants shall become the sole property of the City.

3. The City reserves the right to reject any and all Proposals and to waive all informalities where the best interest of the City may be served.

4. Before submitting a Proposal, each Applicant shall be solely responsible for and shall: (a) examine this Chapter and the request for Proposal documents thoroughly; (b) be familiar with local conditions that may in any manner affect performance under the Franchise, including but not limited to relevant demographics, topographies, pole attachment policies of appropriate utility authorities, undergrounding, and Subscriber and User desires; (c) be familiar with federal, state and local laws, ordinances, rules and regulations affecting performance under the Franchise; and (d) carefully correlate all observations with the requirements of this Chapter and the Request for Proposals documents.

5. The City may make such investigations as it deems necessary to determine the ability of the Applicant to perform under the Franchise Agreement, and the Applicant shall furnish to the City all information for such purpose as the City may request. The City reserves the right to reject any Proposal 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 Agreement, comply with the provisions of this Chapter, or to satisfactorily construct and operate the System. Conditional Proposals shall not be accepted.

B. Proposal Evaluation. The City Council shall approve or disapprove the Application, and it shall make a written record supporting its decision. In evaluating an application for a Franchise, the City may consider the following factors:

1. The extent to which the Applicant has substantially complied with the Applicable Law;

2. Whether the quality of the Applicant's service, including signal quality, response to Customer complaints, billing practices and the like has been reasonable in light of the needs and interests of the communities served;

3. Whether the Applicant has the financial, technical, and legal qualifications to hold a cable Franchise, which qualifications require that the Applicant can be relied upon to perform as promised and in accordance with Applicable Law;

4. Whether the application satisfies requirements established by the City under this Chapter or in a request for Proposals ("RFP") or is otherwise reasonable to meet the future cable-related needs and interestes of the community, taking into account the cost of meeting such needs and interests;

5. Whether, to the extent not required as part of this Chapter, the Applicant will provide adequate public, educational, and governmental use capacity, facilities, or financial support thereof;

6. Whether issuance of a Franchise is in the public interest considering the immediate and future effect on the public Right-of-Way and private property that would be used by the Cable System, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the public Rights-of-Way; and the comparative superiority or inferiority of competing applications.

C. Issuance of a Franchise.

1. If the City finds that it is in the public interest to issue a Franchise considering the factors set forth in this Section, the City may, by Ordinance or Resolution, adopt a Franchise Agreement setting forth the terms and conditions of the Franchise, which Franchise shall become effective upon satisfaction of conditions precedent to effectiveness, and when signed and accepted by the Applicant. If the City denies a Franchise, it shall issue a written explanation of the denial, which may be in any appropriate form. Without limiting its authority to deny an application for a Franchise, the City specifcally reserves the right to reject any application that is incomplete or fails to respond to an RFP. Nothing in this Chapter shall be construed in any way to limit the discretion and legislative authority of the City Council in making decisions relative to the granting, denial, or renewal of a Franchise.

2. Notwithstanding the provisions of this Chapter, to the extent required by federal law, requests for cable Franchise renewal under the Cable Act shall be received and reviewed in a manner consistent with 47 U.S.C. §546, or successor statute, and every provision of this Chapter shall be interpreted in a manner consistent therewith.

D. Application Fees.

1. Notwithstanding any other requirement of this Chapter, each Applicant for an initial Franchise shall furnish with its Proposal a nonrefundable filing fee in the amount of Seven Thousand Five Hundred Dollars ($7,500) by certified or cashiers check made payable to the City of Altoona. No Proposal for a Franchise shall be considered without receipt of such check.

2. All checks received shall be deposited to an account of the City and shall serve to recover all expenses incurred by the City in the preparation and granting of the Franchise, the execution of the Franchise Agreement and regulation of the Franchisee pursuant to this Chapter. Such expenses shall include but not be limited to any and all publication costs, consultant's expenses and the reasonable value of services performed by the City's employees, agents or contractors.

3. In the event that expenses exceed the total amount of filing fees collected from the applicants, the Applicant awarded the Franchise shall pay to the City (pro rata in the event more than one (1) Applicant is awarded a Franchise) the excess amount, not to exceed a total of Twenty Thousand Dollars ($20,000) within sixty (60) days of demand by the City.

E. Decision Final. The decision of the City Council concerning Franchisee selection shall be final.

5.12.340 Theft of Service and Tampering.

It shall be unlawful for any Person, without the express consent of the Franchisee, to make any connection or attachment, extension or division, whether physically, acoustically, inductively, electronically or otherwise with or to any segment of the Cable System for the purpose of receiving or redistributing service where the Person has not paid for it. Nothing in this Section shall be read to prohibit a Subscriber to Cable Service to lawfully utilize Subscriber-owned equipment in the enjoyment of such service.

5.12.360 Penalties.

All penalties and remedies shall be cumulative, and the imposition of one penalty or remedy shall not prevent the imposition of any other penalty or remedy provided for.

5.12.361 Severability.

If any provision, section, paragraph, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this Chapter. It is the intent of the City in adopting this Chapter that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end all provisions of this Chapter are declared to be several. (Ord. 12D-00, 2000). (Existing Chapters 5.12 and 5.14 were repealed and replaced with revised Chapter 5.12 – Ord. 12D-00)

Chapter 5.14

CABLE COMMUNICATIONS FRANCHISE AGREEMENT

Sections:

5.14.010 Definitions, Interpretation.
5.14.020 Grant of Authority; Term Limits and Reservations.
5.14.030 Effect of Changes in Law.
5.14.040 Transfers.
5.14.050 Franchise Fee.
5.14.060 Notices.
5.14.070 Insurance and Indemnification Requirements.
5.14.080 Letter of Credit; Performance Bond.
5.14.090 Liquidated Damages.
5.14.100 Relationship of Remedies.
5.14.110 Non-Discrimination in the Provision of Service.
5.14.120 Rates.
5.14.130 Subscriber Service.
5.14.135 Cable System Design
5.14.140 System Upgrade.
5.14.150 Construction, Operation, and Repair.
5.14.160 Operation and Reporting Provisions.
5.14.170 Remedies.
5.14.180 Abandonment of Service.
5.14.190 Exercise of Right to Purchase.
5.14.200 Governing Law.
5.14.210 Force Majeure.
5.14.220 Connections to System; Use of Antennas.
5.14.230 Special Discount Rates for Senior Citizens.
5.14.240 Calculation of Time.
5.14.250 Time of Essence; Maintenance of Records of Essence.
5.14.260 Guarantee.
5.14.270 Captions.
5.14.280 Acceptance.

This chapter shall be known and may be cited as the "Cable Communications Regulatory Ordinance." (Ord. 12D-00).

WHEREAS, Marcus Cable Partners, L.L.C., d/b/a Charter Communications (hereafter "Franchisee"), has asked City of Altoona, Wisconsin (hereafter "City"), to issue a nonexclusive Franchise to provide cable television and other services within City.

WHEREAS, City has conducted proceedings in which Franchisee has participated to identify the future cable-related needs and interests of the community; to consider the financial, technical, and legal qualifications of Franchisee; and to determine whether Franchisee's plans for constructing and operating its Cable System are reasonable; and

WHEREAS, based in part upon Franchisee's representatives and information, City has determined that, subject to the terms and conditions set forth herein, issuance of a nonexclusive Franchise to Franchisee is consistent with the public interest; and

WHEREAS, City is willing to issue such a nonexclusive Franchise conditioned on Franchisee's acceptance of the terms and conditions thereof; and

WHEREAS, Franchisee is willing to accept the Franchise subject to its terms and conditions and to abide by those terms and conditions.

NOW THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged, the parties agree as follows:

5.14.010 Definitions; Interpretation.

Except as otherwise provided herein, the definitions and provisions governing the interpretation of terms as contained in the Cable Ordinance shall govern this Franchise Agreement. References to any City official or office also refer to any official or office that succeeds to any or all of the responsibilities of the named official or office. References to "laws" succeeds to any or all of the responsibilities of the named official or office. References to "laws" or "applicable laws" include federal, state, and local laws and regulations adopted pursuant to those laws; and unless otherwise stated, include laws now in effect, as the same may be amended from time to time, and new laws. For purposes of this Franchise, the following words, phrases, terms and their derivations shall have the meaning given herein. When not inconsistent with the context, words in present tense include the future, words in the plural include the singular, and words in the singular include the plural. "Shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

The provisions of this Franchise Agreement are divided into the following in order of decreasing generality: section (whole number), subsection (lower-case alphabetical letter in parentheses), paragraph (number in parentheses), subparagraph (capital alphabetical letter in parentheses), and sub-subparagraph (lower-case italic number in parentheses). Where this Franchise Agreement makes a citation to a section, subsection, paragraph, subparagraph, or sub-subparagraph, unless the context clearly requires otherwise, the reference shall refer to the section, subsection, paragraph, subparagraph or sub-subparagraph contained in this Franchise Agreement.

a. Books and Records. Any recorded information relating to the Cable System or its management, including, but not limited to information regarding its construction, operation or repair, in whatever form stored, including, but not limited to computerized records and programs, paper records, and video or audio-taped records.

b. Cable Ordinance. The City of Altoona Cable Communications Regulatory Ordinance as amended from time to time.

c. Cable System. Defined in the Cable Ordinance, except that as used herein, it specifically refers to Franchisee's Cable System. The term is used to refer to the Cable System as a whole, or to any part of the Cable System, including equipment or facilities appurtenant thereto, such as, by way of example and not limitation, equipment cabinets.

d. City. The City of Altoona, located in Eau Claire County, Wisconsin, including areas added by annexations and excluding areas deleted by detachments subject to density requirements provided in the Cable Ordinance.

e. City Administrator. References to the City Administrator include the City Administrator or any City employee designated by the City Administrator to perform any of the City functions pursuant to this Franchise Agreement.

f. Construction, Operation, or Repair. These and similar formulations of those terms refer to the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready excavation, and tree trimming.

g. Director of Public Works. The term shall mean the person designated by the City as Director of Public Works and the designee of such person.

h. Effective Date. The date upon which this Franchise Agreement becomes effective, December 21, 2000.

i. Franchise. All rights, powers, obligations, duties and responsibilities conferred or imposed upon Franchisee by the Franchise Agreement, Cable Ordinance, law, rule or regulation.

j. Franchisee. Marcus Cable Partners, L.L.C. and its lawful and permitted successors and assigns.

k. Franchise Agreement. This contract and any amendments, exhibits, or appendices hereto.

l. Franchise Area. The area within the City within which the Franchisee is authorized by this Franchise Agreement to operate its Cable System. The Franchise Area shall be presumed to be the corporate limites of the City except where otherwise expressly provided in this Franchise Agreement.

m. MDU Rates. Refers to those Subscriber and user rates, fees and charges for cable services and products that are applied to or imposed upon multiple-family dwelling units.

5.14.020 Grant of Authority; Term Limits and Reservations.

a. Grant of Authority, Term. City hereby grants to Franchisee, subject to the terms and conditions of this Franchise Agreement, the non-exclusive right, privilege, and authority to construct, operate and repair a Cable System within the City limits of Altoona as the same may be modified from time to time to provide Cable Services. The Franchise shall remain in effect from the Effective Date for a period of approximately fifteen (15) years to and through _____, unless otherwise terminated by action of City.

b. Scope of Franchise. The Franchise is intended to convey limited rights and interests only as to those City rights-of-way in which City has an actual interest. The Franchise is not a warranty of title or interest in any right-of-way. The Franchise does not provide Franchisee any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant. The Franchise does not deprive City of any powers, rights, or privileges it now has or may later acquire in the future to use, perform work on, or to regulate the use of, and to control City's right-of-way, including without limitation the right to perform work on its roadway, right-of-way or appurtenant facilities, including but not limited to constructing, altering, removing, paving, widening, grading, or excavating. The City will give Franchisee ninety-six (96) hours notice of any excavating which is likely to damage Franchisee's lines and appurtenances so that Franchisee may protect its lines and appurtenances from any City work except in cases of emergency affecting, or potentially affecting, the health and/or safety of City residents.

c. Exercise of Authority under Franchise. This Franchise only authorizes Franchisee to engage in Cable Service, as that term is defined in the Cable Act. Neither this Franchise Agreement nor the grant of the Franchise shall be interpreted to prevent the City from imposing additional conditions, including compenasation conditions for use of the rights of way of the City should Franchisee provide services other than Cable Services consistent with applicable laws. However, this Franchise Agreement shall not be read as a concession by Franchisee that it needs authorization to provide services other than Cable Services.

d. Franchise Not Exclusive. The right to use and occupy the public Rights-of-Way is not exclusive and does not explicitly or implicitly preclude the issuance of other Franchises to construct, operate, or repair Cable Systems within City; or affect City's right to use or authorize the use of any of its public Rights-of-Way or other property by other persons as City determines appropriate; or affect the City's right to authorize itself or to permit any other governmental entity to provide Cable Service without a Franchise.

e. System Authorizations. In the event that the City issues a Cable Service Franchise to a third party cable operator for the purpose of operating a Cable System in the public Rights-of-Way, the material terms of such Franchise Agreement, shall not be more favorable or less burdensome than the Franchise issued to Franchisee hereunder in cases where the City has clear legal authority to impose such terms and conditions. The City is not required to undertake any litigation to secure Franchisee's rights under this section. This provision shall only apply to Cable Systems where the City has franchising rights.

f. Construction of Franchise Agreement. The provisions of this Franchise Agreement shall be liberally construed to promote the public interest.

g. Relation to Other Provisions of Law. This Franchise Agreement and all rights and privileges granted under the Franchise are subject to, and the Franchise shall exercise all rights granted to it in accordance with applicable law, including the Cable Ordinance, as currently existing and as may be amended over the Franchise term. This Franchise agreement is a contract, subject only to the City's exercise of its police and other powers and applicable law. This Franchise Agreement does not confer rights or immunities upon the Franchisee other than as expressly provided herein. Subject to the exercise of the City's police and other powers, in the case of any conflict between the express terms of this Franchise Agreement and the express terms of the Cable Ordinance, this Franchise Agreement shall govern. Franchisee shall not waive its rights to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights. The Franchise issued and the Franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax, unless expressly stated herein.

h. Relation to Prior Franchise. As of the Effective Date, any Franchise previously held by Franchisee is superseded and of no further force and effect. Notwithstanding, Franchisee promises to pay all amounts owed City and Subscribers under its prior Franchise for which claims are made within any applicable statute of limitations. Franchisee hereby indemnifies and holds City harmless against any claims, damages, or costs arising as a result of Franchisee's acts and omissions under the prior Franchise.

i. Effect of Grant. By granting this Franchise, City acknowledges and agrees that it has the authority to issue this Franchise and did so pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

j. Effect of Acceptance. By accepting the Franchise, Franchisee: (1) acknowledges and accepts City's legal right to issue and enforce the Franchise; and (2) accepts and agrees to comply with each and every provision of this Franchise Agreement and the Cable Ordinance subject to Subsection 2 (f) as to amendments.

k. Franchisee Bears Its Own Costs. Unless otherwise expressly provided by applicable law or in this Franchise Agreement, all acts that Franchisee is required to perform shall be performed at Franchisee's own expense.

l. No Waiver. The failure of City or Franchisee on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance, or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a breach is not a waiver of any other breach, whether similar to or different from that waived.

m. Limitation on Liability. Any claim brought by Franchisee against the City, its officials, employees or agents shall be subject to the limitations on liability pursuant to 47 U.S.C. Section 555(a).

5.14.030 Effect of Changes in Law.

a. Severability. In the event that a court or agency or legislature of competent jurisdiction acts or declares any nonmaterial provision of this Franchise Agreement is unenforceable according to its terms or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Franchise Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court or agency or legislature of competent and controlling jurisdiction acts or declares any material provision of this Franchise Agreement is unenforceable according to its terms, or is otherwise void, the parties agree to immediately enter into negotiations in good faith to restore the relative burdens and benefits of this Franchise Agreement, consistent with applicable law. If the parties are unable to agree to a modification of this Franchise Agreement within sixty (60) days, either party may resort to litigation. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period. Notwithstanding the foregoing, if a party believes a provision is not material, it shall commence an action challenging the materiality within forteen (14) days of a request by the other party that it enter into negotiations. The remedies provided for herein do not prevent a party from contending that a particular provision is enforceable, or foreclose any remedies if a provision is enforceable.

b. Effect of change in Law. In the event that state or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise Agreement, then, subject to each parties' rights under Subsection 3 (a), the provision shall be deemed to be preempted, but only to the extent and for the time required by law. In the event such state or federal law, rule, or regulation is subsequently repealed, rescinded, amended, voided, or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of either party.

5.14.040 Transfers.

The Franchise may not be transferred, assigned, sublet or subdivided in any way or through any mechanism without the express prior permission of City granted by the enactment of a resolution or ordinance, except as may otherwise be provided under the Cable Ordinance or applicable law. It shall be a violation of this Franchise Agreement to extend the benefits of this Franchise to any cable operator or to any Cable System that is operating within the City but which has not obtained a Franchise from the City, and Franchisee agrees that it will not enter into any transaction that would have such an effect.

5.14.050 Franchise Fee.

a. Payment to City. As part of the financial compensation for use of public rights-of-way for the offering of Cable Services, Franchisee and its affiliates shall pay City a Franchise fee in an amount equal to five (5) percent of Gross Revenues as defined in the Cable Ordinance as of the Effective Date of this Franchise Agreement. (Ord. 4C-02).

b. Not in Lieu of Any Other Assessments, Tax or Fee. The Franchise fee is in addition to all other fees, assessments, taxes or payments that Franchisee may be required to pay under any federal, state, or local law, subject to an limitations set forth in 47 U.S.C. ss542 or successor statute.

c. Payments. Franchise fees shall be paid quarterly in accordance with the Cable Ordinance. In the event that a Franchise fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Franchisee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the maximum rate permitted under Wisconsin law, or 12% if no such rate is legally specified, compounded daily.

d. No Accord or Satisfaction. No acceptance of any payment by City shall be construed as a release or an accord and satisfaction of any claim City may have for further or additional sums payable as a Franchise fee under the Cable Ordinance or for the performance of any other obligation of Franchisee.

e. Payment on Termination. If the Franchise terminates for any reason, Franchisee shall file with the City Administrator within ninety (90) calendar days of the date of the termination, a financial statement certified by an independent certified public accountant, showing the Gross Revenues received by Franchisee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of Franchisee to City by utilizing the funds available in any security fund or other security provided by Franchisee, subject to the procedures required by Sections 8 and 9.

f. Disputes. The City shall have the right to audit the books and records of Franchisee to determine whether the Franchisee has paid the Franchise fees owed. If there is a dispute as to whether a particular item of revenue is within the scope of the term "gross revenues," and Franchisee withholds revenue records on the ground that the revenues are not subject to the Franchise fee, Franchisee agrees that it shall provide a certified statement describing the nature of the revenues contained in the records withheld.

5.14.060 Notices.

All notices to Franchisee shall be mailed to:

Marcus Cable Partners, L.L.C., ATTN: Area Manager
d/b/a Charter Communications
2207 Heimstead Road, Eau Claire, WI 54703

Until Franchisee changes that address by notifying the City Administrator in writing of the new address. A notice may be mailed to Franchisee by depositing it in the U.S. Mail, first class postage prepaid, or by providing the notice to Franchisee by overnight delivery service. Notwithstanding any other provision of the Cable Ordinance, notice also may be provided to Franchisee by facsimile at the following number: 715-831-8950. Franchisee may change this number by providing written notice of a substitute number to the City Administrator.

All notices to City shall be mailed to:

City Clerk
City of Altoona
1303 Lynn Avenue
Altoona, WI 54720

5.14.070 Insurance and Indemnification Requirements.

a. Indemnity.

1. Franchisee shall indemnify, save harmless and defend the City, its City Administrator and City Council, appointed boards and commission, officers and employees, individually and collectively, from all fines, liens, suits, claims, demands, actions, costs of litigation, attorneys' fees, judgements or liability of any kind (including, but not limited to libel, slander, invasion of privacy, unauthorized use of any trademark, trade name or service mark, copyright infringement, injury, death or damage to person or property) (collectively, "Actions") arising out of or in any way connected with the installation, construction, operation, maintenance or condition of the Cable System. Franchisee shall assume all risks in the operation of the cable System and shall be solely responsible and answerable for any and all accidents or injuries to persons or property arising out of Franchisee's performance of the Franchise Agreement, except if such accidents or injuries to persons or property are the result of any negligence by the City, or if such Actions arise out of the City's or its designees' management, operation or use of the public education, and governmental ("PEG") access channels or facilities or any PEG programming. The amounts and types of insurance coverage requirements set forth in Subsection (7)(b) shall in no way be construed as limiting the scope of indemnity set forth in this Subsection. The City shall give the franchisee timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity of this Section 7, where the Franchisee is not a party thereto.

2. Franchisee shall indemnify, save harmless and defend the City, its City Administrator, City Council, appointed boards and commissions, officers and employees, individually and collectively, from all fines, liens, suits, claims, demands, actions, costs of litigation, attorneys' fees, judgements or liability of any kind arising from the defense of any litigation brought by third parties challenging the right of the City to issue this Franchise under state law. The City shall give the Franchisee timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity of this Section, where the Franchisee is not a party thereto. Franchisee shall assume the risk of, and shall relinquish any claim against the City in connection with any final, non-appealable determination by a court of competent jurisdiction that the City lacked the current statutory to issue the Franchise.

b. Insurance. Within 30 days after written notification of the award of this Franchise by the City, Franchisee shall file with the City Administrator and thereafter maintain in full force and effect throughout the term of the Franchise Agreement, insurance policies issued by an insurer duly authorized to conduct businss in the state, insuring with respect to the installation, construction, operation and maintenance of the system as follows:

1. Comprehensive general and automobile liability coverage including, but not limited to: (1) blanket contractual liability; (2) completed operations liability; (3) broad form property damage endorsement, including but not limited to coverage for explosion, collapse and underground hazard; and (4) automobile non-ownership liability. This insurance shall be written in at least the following minimum amounts:

A. For bodily injury, including death: $500,000.00 combined single limit;

B. Property damage: $500,000.00 combined single limit;

C. Comprehensive automobile liability; bodily injury: $500,000.00 combined single limit;

D. Excess umbrella liability in the minimum amount of $2,000.000.00.

2. Worker's compensation coverage as required by the laws, rules and regulations of the State of Wisconsin.

3. All insurance policies required herein shall name the City as an additional insured.

4. With respect to the insurance required herein, Franchisee shall be solely responsible for all premiums due and payable.

5. The insurance policies required by this Section shall contain the following endorsement: It is hereby understood and agreed that athis policy of insurance may not be canceled by the insurer nor the intention not to renew be stated by the insurer until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent to cancel or not to renew.

6. It is Franchisee's responsibility to ensure that every insurance policy conforms to the City's requirements. Franchisee shall provide a standard insurance certificate or other adequate proof required by the City Attorney, updated whenever there is a change in the policy or insurer, showing that the policies conform to all the requirements herein, without condition or exception. Franchisee may not initiate or begin construction of a Cable System until such proof has been provided.

7. If the insurance limits required by this subsection are increased by any federal, state, or local law, rule, or regulation, the Franchisee shall, not later than sixty (60) days after receiving written notice from the City of such increase, file with the City Clerk new or amended insurance policies in the required amounts.

5.14.080 Letter of Credit; Performance Bond.

a. Amount. Prior to the City's execution of this Franchise Agreement, Franchisee shall establish and provide to City an irrevocable and unconditional letter of credit ("LOC") as security for the faithful performance by Franchisee of the provisions of this Franchise Agreement. The LOC shall be in the amount of $25,000 and shall be with a local financial institution and in a form acceptable to the City Attorney. The LOC may be drawn on and shall be replenished as provided in this Section.

b. Use. The City may draw on the LOC to ensure the Franchisee's faithful performance of and compliance with this Franchise Agreement, the Cable Ordinance, applicable law, and all orders and permits of City subject to Franchisee's right to due process pursuant to the Regulatory Ordinance.

c. Restoration of LOC. Within fifteen (15) calendar days after City gives Franchisee written notice that the LOC has been drawn upon, Franchisee shall take all steps required to restore the LOC to the original amount.

d. Return of Fund. Franchisee's obligation to maintain the LOC shall expire concurrently with the Franchise.

e. Performance Bond. Within thirty (30) days after written notification of the award of the Franchise, Franchisee shall post a performance bond in the amount of Fifty Thousand Dollars ($50,000). The bond shall be with an entity and in a form acceptable to the City. The bond may be drawn upon to secure the faithful performance of any obligations of Franchisee under its Franchise or other applicable law and shall be maintained continuously throughout the Franchise term.

5.14.090 Liquidated Damages.

a. Amounts. Because Franchisee's failure to comply with provisions of this Franchise Agreement will result in injury to City, and because it will be difficult to estimate the extent of such injury, City and Franchisee agree to the following liquidated damages for the following violations. These damages represent both parties' best estimate of the damages resulting from the specified injury, shall be deemed to be compensatory and not punitive, and shall be construed to include consequential damages and other damages that may not be contemplated at law.

1. For failure to complete construction or commence operations of the portion of the system that is primarily intended to serve residential Subscribers: $500 per day;

2. For failure to extend a service line as required: $10 per day for each affected Subscriber for each day the violation continues;

3. For failure to provide the capacity required by this Franchise Agreement for PEG use of the Cable System as required in this Franchise: $300 for each day the violation continues.

4. For violation of applicable Subscriber service standards where violations are not measured in terms of aggregate performance standards: $250 per violation.

5. For failure to maintain a local office as required in the Cable Ordinance: $1,000 per month or portion thereof that such failure continues;

6. For violating any customer service aggregate telephone performance standards in the Cable Ordinance: $1,000 for the initial violation of the first quarter: $2,000 for violation of two (2) consecutive quarters; if Franchisee violates the same standard in the next quarter, $3,000; $4,000 for violation of the same standard for the fourth consecutive quarter and each subsequent consecutive measurement period violation during the term of this Franchise Agreement. After the submission by Franchisee of the first quarterly report which demonstrates compliance with the Regulatory Ordinance, City may not assess penalties for noncompliance with such standards without first complying with the provisions above;

7. For all other violations of this Franchise Agreement or of the Cable Ordinance for which actual damages may not be ascertainable: $100 per day for each violation for each day the violation continues; and

8. For any violation of any federal, state, or local safety code requirement, $100 per day for each day the violation continues.

b. Imposition of damages. City shall comply with the cable Ordinance when imnposing penalties or damages pursuant to this Section 9 of this Franchise Agreement. If a violation has been cured by Franchisee, liquidated damages shall only apply if the City finds that the violation:

1. Involves a customer service standard that is measured based upon aggregate performance (this does not limit the applicability of pars. (2), (4), and (5) to other customer service violations); or

2. Involves willful or reckless acts or omissions; or

3. Involves violation of transfer provisions or failure to complete construction or commence operations; or

4. Involves a repeat of the specific violation; or

5. Is part of a class or pattern of violations where the Franchisee had reason to know the class or pattern of violations existed and failed to take the actions necessary to correct the class or pattern of violations or prevent the violations from recurring. Nothing herein shall prevent the City and Franchisee from agreeing to waive damages.

c. Deposits, Refunds, and Credits.

1. On all deposits, Franchisee shall be required to pay simple interest at a rate of ½% per month (6% per year). Such interest shall be accrued and payable upon termination of service. Upon termination of service for any reason, Subscribers shall be entitled to receive a refund or credit against amounts owed Franchisee equal to the deposit plus accumulated interest. The rate may be modified to reflect prevailing market interest rates upon approval by the City which shall not be unreasonably withheld. Such interest shall be accrued on deposits charged to Subscribers after the effective date of the franchise.

2. Refund checks shall be issued within thirty (30) days following the resolution of the event giving rise to the refund. In addition to a refund, if Franchisee fails to mail a check for a refund to any Subscriber disconnecting service with an outstanding credit of $3.00 or more within thirty (30) days of the date service is ended, and the Subscriber has returned all Franchisee-owned equipment, the Subscriber shall receive from Franchisee a $10.00 penalty payment, in addition to the total refund due. Failure to comply with the $10.00 penalty provision shall be grounds for appropriate enforcement actions by the City.

3. Under Normal Operating Conditions, if Franchisee does not arrive for installations or service calls by appointment within the scheduled appointment window the Person may request within thirty (30) days of the missed appointment and is entitled to receive a $20.00 credit for missed service call appointments or a free installation for missed installation appointments.

5.14.100 Relationship of Remedies.

Without limitation, recovery of amounts under the insurance, indemnity or liquidated damages provisions of this Franchise Agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Franchisee under the Franchise for damages or otherwise; or an excuse of faithful performance by Franchisee.

5.14.110 Non-Discrimination in the Provision of Service.

a. Franchisee shall comply with all applicable local, state and federal laws and regulations prohibiting discrimination, and any and all other laws and regulations prohibiting discrimination in the provision of cable service or employment. Franchisee shall maintain records and information necessary to document Franchisee's compliance with these provisions.

b. Franchisee is specifically prohibited from discriminating among persons or taking any retaliatory action against a person because of that person's exercise of any right the person may have under federal, state, or local law, nor may Franchisee require a person to waive such rights as a condition of taking service.

c. Franchisee is specifically prohibited from denying access or levying different rates and charges on any group of potential residential Subscribers because of the income of the residents of the lcoal area in which such group resides.

d. To the extent City may enforce such a requirement, Franchisee is specifically prohibited from discriminating in its rates or charges, except as is otherwise permitted by this Franchise Agreement or the Cable Ordinance, to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers. Franchisee may, however, offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similarly situated persons throughout the Franchise area; and Franchisee may offer special discounted rates for the basic and other regulated service tiers to economically disadvanaged Subscribers and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner. Franchisee shall at all times comply with FCC regulations at 47 C.F.R ss76.984 regarding geographically uniform rates.

5.14.120 Rates.

a. Rates and Charges Regulated. The City may regulate Franchisee's rates and charges except to the extent the City is prohibited from doing so by applicable law. The term "regulate" means City may act to the extent that it is not prohibited under applicable law in order to protect the public from unreasonable or discriminatory rates and charges, including but not limited to ordering refunds for overcharges and adopting regulations as appropriate to further implement its authority to regulate rates.

b. Manner of Regulation. Without limiting the foregoing, and except as inconsistent with applicable law:

1. The City may require Franchisee to submit to City for review and approval the rates in effect on the date the Franchise was issued.

2. Franchisee may not change a rate or charge that is subject to City's regulation without City's prior approval, except as applicable law otherwise provides.

c. Rate Schedules. On the Effective Date, the Franchisee shall file with the City an up-to-date rate schedule of all Subscriber and user rates, fees, and charges for all Cable Services and products provided, which schedule shall be on file in the office of the City Clerk at all times, and which schedule shall be updated any time there is a change in the rate schedule. Franchisee shall file any revised rate schedule with the City Administrator in accordance with the requirements of the Cable Ordinance.

d. Annual Reports. Upon request, on or before March 31 of each year during the term of the Franchise Agreement, the Franchisee shall submit a written report to the City. The report shall be submitted in accordance with mutually agreed upon forms prepared by the City after providing a period for notice and comment on the forms. Until such forms are prepared after notice and opportunity for

comment, the annual reports shall be prepared in accordance with the general business practices of a Franchisee and shall contain at least the following information regarding the previous calendar year.

1. A summary of activities in the development of the System applicable to the City, including but not limited to services begun or discontinued, total number of Subscribers, homes passed, all per the provisions of this chapter and the Franchise Agreement.

2. A list of all complaints received and System downtime experienced which are applicable to the City during the reporting period. All such submitted data shall include complaint disposition and response time.

3. A summary by category of complaints referenced in item #2, identifying the number and nature of complaints and their dispositions.

4. A fully audited revenue report which details by category all revenues applicable to the operation of the cable system within the City.

5. A list of officers and members of the board of directors of the Franchisee and its parents.

6. A list of stockholders holding five percent (5%) or more of the voting stock of the Franchisee or its parents.

7. A copy of the Franchisee's annual report and those of its parents and subsidiaries provided said report is prepared in the normal course of business by Franchisee and/or its parents and subsidiaries.

8. A copy of the franchisee's annual report provided said report is prepared in the normal course of business by Franchisee.

9. A full schedule of all Subscriber and User rates, fees and charges for all Cable Services provided.

10. A copy of Subscriber and User agreements used by the Franchisee; provided that, when it provides the information required by 8 and 9 above, a Franchisee need not include proprietary MDU Rates and agreements.

A copy of updated maps depicting the location of all cable plant to standard scale and with appropriate tick marks as mutually agreed. These maps shall be accompanied by a digital copy in a mutually agreed upon format and medium. The maps shall depict the location of plant as-built.

A report showing compliance with the requirements regarding telephone calls specified in the Customer service standards.

The percentage of time that Service Interruptions were curred within thirty-six (36) hours, the average time from notice that a problem existed to final cure, and the percentage of time that other service calls were resolved within ninety-six (96) hours.

The percentage of time standard and non-standard installations were completed within the time required by Sections 5.12.090 and 5.12.160.

The total number of complaints received for the quarter, and the number of complaints by type of complaint, and complaints received as a percentage of basic Subscribers.

The total number of outages, divided into planned and unplanned outages, and showing the total duration of outages. An outage is defined as a loss of audio or video or impairment of audio or video affecting more than five (5) Subscribers.

A list of all services offered by the Franchisee; provided that, after the initial filing, subsequent filings need only identify new services and changes in services offered.

e. Annual Surveys. In addition to providing such other information as may be requested above, the Franchisee shall, upon request, annually provide an opinion survey which identifies Subscriber programming preference in the City.

f. Reports to Others. The Franchisee shall file promptly with the City a copy of any document the Franchisee files with the FCC, the Securities and Exchange Commission, or any other regulatory agency with jurisdiction pertaining to the System. To the extent that such documents contain, to the satisfaction of the City Administrator, the information required by other reports hereunder, the City Administrator may suspend the requirements to file such other reports with the City so as to avoid duplication and unnecessary cost. Alternatively, a Franchisee may comply with this section by providing the City with a list and short description of the documents it files with such agencies, and providing

copies of the documents upon request. Such list shall be kept current.

g. Material Misrepresentations. Any material misrepresentation made by the Franchisee in any report required by this section shall subject the Franchisee to the penalty provisions of this chapter and shall subject the Franchisee to all remedies available to the City by law.

h. Access to Books and Records.

1. The City may inspect and copy books and records of the Franchisee that are reasonably necessary to the enforcement of any provision of this ordinance, the franchise agreement; to the conduct of performance evaluation sessions; or to the exercise of any authority that the City may have under the same or any other provision of Applicable Law. Without limiting the foregoing, a Franchisee shall provide the City access to complaint data to enable the City to fully investigate Subscriber complaints. Books and records shall be produced to the City for inspection at the Franchisee's local office or at such other mutually agreed upon location within the City. Provided, however, that nothing in this chapter shall be read to require the Franchisee to violate any provision of federal or state law relating to Customer privacy. Information requested shall be made available for inspection within fourteen (14) business days of a request therefore, which period shall be subject to extension for good cause shown where no harm will result to the public interest from the delay.

5.14.130 Subscriber Service.

a. Franchisee agrees that it will provide broad categories of Cable Service responsive to the needs and interests of the community throughout the Franchise term.

b. Franchisee will extend service to Subscribers and potential Subscribers and to the City in accordance with the requirements of the Cable Ordinance. Provided, however, Franchisee is not required to extend its Cable System into any area that is served by another cable operator of a Cable System.

c. Franchisee shall satisfy federal, state and local customer service standards and consumer protection laws, as amended during the Franchise term.

5.14.135 Cable System Design.

It is the intent of the City that the Cable System provide the broadest range of services possible. The requirements stated in this section are intended only as minimum specifications for the Cable System and final determination of Cable System design for Franchisees shall be made through the initial licensing or renewal process. The City may increase or otherwise alter the requirements in a Request for Proposals for a franchise. Applicants for a franchise are strongly encouraged to offer the City, through the Proposal process, the broadest range of services, facilities, equipment, technical assistance and other related considerations as are technologically and economically feasible. Neither the specificqtaions of the minimums in subsections A through J nor the final terms of a Franchise Agreement shall be interpreted to waive any rights or obligations of the Franchisee or the City under 47 U.S.C. § 546 or successor statute.

A. Channel Capacity. The Franchisee shall construct, at a minimum, a System that provides a minimum capacity of 750 MHz and that is designed in a way so that it can deliver the channels in a manner reasonably responsive to Customer demand. The System shall be designed so that the number of channels may be increased as supply and demand for additional channel utilization exceeds the number initially activated and so that the capacity of the Cable System may be increased without substantial reconstruction of the Cable System.

B. System Configuration. The Franchisee shall design and construct the System in such a manner as to provide maximum utilization flexibility for both Subscribers and Users.

C. Emergency Override. Except as inconsistent with FCC regulations, the System shall include an emergency alert capability which shall permit the City Administrator to override the audio on all television channels simultaneously, in the case of public emergencies as determined by the City Administrator or Director of Emergency Services. The Franchisee shall also designate a video channel to be used for emergency broadcasts, which designation shall be included in the Franchise Agreement.

D. Standby Power. The Franchisee shall maintain in constant readiness equipment capable of providing standby power for the Cable System consistent with sound engineering practices and

compatible with the Franchisee's System design.

1. Such equipment shall be constructed so as to revert automatically to a standby mode when alternating current power returns.

2. Franchisee shall comply with all utility and other safety regulations to prevent the standby power supply from powering a "dead" utility line so as to prevent injury to any Person.

E. Two-Way Capability. Maximum two-way interactive service capability as reasonably justified in light of the needs and interests of the community and the costs thereof, considering project advances in technology, shall be designed into the System at its inception.

F. PEG Channels.

1. In addition to the other services proposed by applicants, the City shall place significant emphasis on the provision of PEG channels, facilities and related considerations. Such areas include but are not limited to the following: channel(s) for government usage, education usage (public and nonprofit schools, colleges and universities), public access, and local origination. Applicants for a franchise are strongly encouraged to investigate the needs and desires of potential Users and to offer such community services as are technologically and economically feasible. Both internal institutional communications and connection to Subscribers is encouraged where appropriate.

2. The Franchisee shall not take any actions that would discourage or prevent maximum utilization of all PEG channels provided, and shall cooperate with the City and managers of PEG channels to ensure that Subscribers are aware of the channels, can access them easily, and, to the extent that a Franchisee (or some entity acting on a Franchisee's behalf) is involved in publicizing Franchisee's other channels or channel schedules, that the PEG channels and channel schedules are similarly publicized.

G. Facilities and Management. In regard to the community service provisions referred to in this section, applicants are strongly encouraged to consider and provide studio facilities, production equipment, technical assistance and other facilities and equipment to enable the City and its residents to fully utilize the Cable System as not only an entertainment medium, but as an intra community communications and education medium. Such services, facilities, production equipment, origination points, hours of availability where appropriate, costs and all other necessary information relating to community service shall be as proposed by applicants and as provided for in the Franchise Agreement. Specific operational details and responsibilities, including the City's right to designate management organizations to operate various community service channels and facilities (a right specifically reserved herein by the City), shall be provided for in the Franchise Agreement and by separate agreement between the Franchisee, the City and any management organizations designated by the City for this purpose.

H. Public Use Connections. At a minimum, the Franchisee shall offer to provide, without charge, one (1) Drop and one (1) outlet of Basic Cable Service and Cable Programming Service to the ground block of each public, private and parochial school, nonprofit college and university and each fire station, police station, public library branch, City neighborhood community centers, (excluding public spaces in such community centers) and such other facilities used primarily for municipal purposes which are within three hundred (300) feet of the existing System as may be designated by the City. A Franchise Agreement may specify the particular conditions under which the outlets will be provided.

I. Reception. The Cable System shall be capable of and shall produce a picture which meets all applicable FCC technical standards. This required that equipment be installed at the headend to allow the Franchisee to receive or cablecast signals in substantially the form received, without substantial alteration or deterioration (for example, the headend should include equipment that will transmit color video signals received at the headend in color). Equipment shall be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed captioned signal is provided consistent with FCC standards. Equipment shall be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and PEG) are retransmitted in those same formats.

5.14.140 System Upgrade.

a. System Design.

1. General system design. Franchisee has determined that an appropriate design plan for the Cable system in the City will include the following requirements, which Franchisee will provide and construct:

A. The Cable System will use a fiber to the neighborhood node architecture.

B. The Cable System will serve an average of 500 customers per fiber node.

C. All active electronics will be 750 MHz capable equipment, or equipment of higher bandwidth.

D. Two-way capability able to support two-way high-speed Internet access via the Cable System will be activiated upon completion of the system updgrade.

E. All passives that cannot pass 750 MHz will be replaced.

2. System Functionality.

A. As upgraded and maintained, the Cable System shall have a reliability comparable to the reliability of those cable systems whose initial construction or rebuild was completed after 1998.

B. As designed, upgraded, and maintained, the facilities and equipment on the Cable System shall be able to deliver high quality signals that meet or exceed FCC technical quality standards regardless of the particular manner in which the signal is transmitted.

C. Upon completion of the construction, all facilities and equipment will be installed (except customer premises equipment and drops) so that the two-way active capability required by Subparagraph 14 (a)(1) is fully ready to operate upon Subscriber request.

D. The System shall include standby power capability which will provide standby power to the headend and hubs for up to two (2) hours in the event of a commercial power interruption.

E. Equipment shall be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment shall be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and PEG) are retransmitted in those same formats.

F. Consistent with FCC requirements regarding emergency alert systems ("EAS") and other applicable laws, Franchisee shall provide a system that can be activiated from a touch tone phone by an official designated by the City, and which will provide at least all-channel audio override.

3. Procedures for System Design and Construction.

A. Construction of fiber to the nodes shall be completed no later than December 31, 2001.

B. By December 31, 2001, the upgrade to 750 MHZ shall be completed in its entirety, including any change-out of equipment required in Subscriber homes.

C. Franchisee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or applicable law.

D. Timing of Construction. Franchisee's decisions on constructing plant for service from each hub or node shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of the franchise area.

b. Interconnection.

1. Upon completion of the upgrade, the Franchisee shall interconnect the Cable System with all other willing cable systems in the City and adjacent to the City for purposes of delivering PEG services to and from the interconnected systems. A "willing cable system" means the franchised system of any cable operator who is otherwise willing to interconnect with Franchisee's cable system on fair and reasonable terms and who pays its own cost of installation and operation of facilities located within its own territory which are required for the interconnection.

2. Notwithstanding the foregoing, interconnection is only required if technically feasible. It is not Franchisee's responsibility to ensure that the signals provided by another interconnecting system to the interconnect are of adequate quality. Franchisee may terminate an interconnection for any period where an interconnecting system is delivering signals in a manner which endangers the technical operation of Franchisee's Cable System. Nothing in this Paragraph alters Franchisee's channel

obligations for public, educational and governmental programming delivered to Subscribers on the Cable System. Unless the City directs otherwise, or an affected jurisdiction objects, any interconnection shall allow the PEG channels to operate without disruption or delay across franchise boundaries.

3. In addition to the foregoing, all interconnections existing as of the date of the Franchise Agreement will be maintained so long as the systems interconnected are owned by Franchisee. In the event one or more of said systems are no longer owned by Franchisee, Franchisee will not be required to maintain the interconnection to that system.

5.14.150 Construction, Operation, and Repair.

The construction, operation and repair of the Cable System shall be performed in compliance with this Franchise Agreement and all applicable laws, rules and permit requirements regarding use of the rights-of-way and public and private property, as adopted and amended from time to time, including, but not limited to, the Cable Ordinance, which establishes minimum requirements for right-of-way occupancy. Franchisee's obligations and City's rights under this Franchise Agreement include, but are not limited to the following, all of which shall be performed at Franchisee's expense and at no expense to the City, except where expressly provided otherwise:

a. Use of Public and Private Property; Generally.

1. The Cable System shall be constructed, operated and repaired so as to cause minimum interference with the rights and reasonable convenience of property owners (including the City) and users of the right-of-way and other public property. Applications for work permits shall be presented to the City Director of Public Works, who may require copies of plans, blueprints, cross-sections, or further detailing of work to be done. Any work done, whether by Franchisee, its contractors, or third parties, will include necessary paving, patching, grading, and any other necessary repair or restoration to City rights-of-way. All work shall be done to the satisfaction of the City Director of Public Works.

2. All equipment, lines, and appurtenances which are used in the operation, maintenance, repair or construction of the Cable System, except as otherwise specifically noted in this Franchise Agreement, and which are located within City rights-of-way shall be considered to be part of the Cable System and shall be Franchisee's responsibility. All permits for the operation, maintenance, repair or construciton of said system shall be applied for and given in the name of Franchisee, who shall be responsible for all work done under the permit regardless of whether the work is done by Franchisee, its employees or contractors, or by third parties. To the extent that permit conditions are more stringent than the provisions of this Franchise, the permit conditions shall govern.

3. Franchisee shall obtain all required permits or easements before commencing any construction, reconstruction, repair, maintenance, or other work or property use. Permits for emergency work shall be obtained as soon as possible, but in no event later than one working day after the work is begun.

4. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. Work in the rights-of-way or on public property may be subject to the supervision, inspection, approval and direction of the Director of Public Works. Franchisee shall comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law and permits during construction, operation and repair of its Cable System. By way of illustration and not limitation, Franchisee shall compy with the then current edition of City Road Standards of the Altoona Ordinances entitled "Street Excavation & Openings," National Electric Code published by the National Fire Protection Association (currently ANSI/NFPA 70-1990, and as may be replaced by subsequently adopted additions); National Electric Safety Code published by the Institute of Electrical and Electronics Engineers, Inc. (currently ANSI C2-1990 and as may be replaced by subsequently adopted additions); and Occupational Safety and Health Administration (OSHA) Safety and Health Standards, Wisconsin Statutes and Wisconsin Administrative Code. In addition, all work shall be performed in accordance with the National Cable Television Association Standards of Good Engineering Practices and Franchisee's Construction Procedures Manual, except as to the extent the standards, practices and procedures described therein are inconsistent with applicable law. All traffic control shall be performed in compliance with the

current edition of the Manual on Uniform Traffic Control Devices, Part VI.

5. At no point shall underground cables be placed less than twenty-four (24) inches below the surface. Any cables buried less than twenty-four (24) inches that are damaged shall be replaced by Franchisee at its sole expense; provided, however, this section shall not apply to the burial of Drops which shall be placed at a minimum of twelve (12) inches below the surface.

6. Franchisee shall pay nondiscriminatory fees associated with the permitting proces, which fees shall be charged and billed in accordance with the City's permitting procedures.

7. The City and Franchisee shall comply with the provisions of s.182.0175, Wisconsin Statutes, or successor statute, relating to the protection of the transmission facilities of each party.

b. Use of Poles and Conduits.

1. Except as the City may direct otherwise in accordance with the Cable Ordinance or other applicable provisions of the Altoona Code of Ordinances, where electrical and telephone utility wiring is installed underground at the time and initial Cable System construction, or when such wiring is subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground at the sole expense of Franchisee. Related Cable System equipment such as pedestals shall be placed in accordance with code requirements and underground utility rules as interpreted by the Director of Public Works. In areas where either electric and telephone utility wiring are aerial, Franchisee may install aerial cable, except (i) when a property owner or resident requests underground installatrion and agrees to bear the additional cost in excess of aerial installation; and (ii) at such time as existing aerial electric and telephone facilities are placed underground, ranchisee shall likewise place its facilities underground at its sole expense.

2. The Franchise does not grant, give or convey to Franchisee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the city or any other person without their permission. Copies of all agreements for use of poles, conduits or other utility facilities shall be provided to the Director of Public Works upon request, except such agreements that are confidential according to the terms contained therein.

c. Repair and Restoration of Property.

1. Franchisee shall protect public and private property from damage. If damage occurs arising from the actions or omissions of Franchisee, Franchisee shall promptly notify the property owner.

2. If public or private property is disturbed or damaged through the actions or omissions of Franchisee, Franchisee shall restore the property to its former or better condition including necessary paving, patching, grading and other necessary repair or restoration. Public right-of-way or other City property shall be restored to its former or better condition, in a manner and within a reasonable time approved by the Director of Public Works. If suit is brought upon Franchisee's failure to pay for any such repair and restoration, and if judgement in such a suit is entered in favor of City, then Franchisee shall pay all of City's actual costs resulting from the non-payment, including interest from the date the bill was presented. Private property shall be restored promptly, considering the nature of the work that must be performed. It is a violation of this Franchise for Franchisee to leave cable unburied on the ground for more than the shortest, temporary period required to bury it. Except with the express permission of the Director of Public Works, such temporary period may not exceed 14 business days during the period of May 15 through October of each year. Cable left unburied on the ground during the inclement period from November through May 14 of each year shall be buried no later than thirty (30) days after May 15 each year.

3. Except in cases of emergency or responses to unplanned system failures where it is impractical to do so, prior to entering onto private property to construct, operate or repair its Cable System (unless the repair or construction can be performed from the right-of-way, without disrupting the private property), Franchisee shall give the person residing on or using the property adequate advance notice that it intends to work on the property, a description of the work it intends to perform, and a name and telphone number of a Franchisee representative that the person can call to protest or seek modification of the work. Such work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents, and users, and that shall comply in all respects with applicable

law requirements. In cases subject to the exception for prior notice, notice shall be given to the property owner as soon as practical.

d. Alteration of Cable System for and by City. City may remove, modify or disconnect Franchisee's facilities and equipment located in the public right-of-way or on any other City property that may reasonably be required or as may be further provided in the Cable Ordinance. City shall attempt to provide reasonable notice to Franchisee prior to taking such action and shall, when feasible, provide Franchisee with the opportunity to perform such action. Following notice by City, Franchisee shall at its sole expense remove, replace, modify or disconnect any of its facilities or equipment within any public right-of-way, or on any other City property by a reasonable deadline specified by the City. If Franchisee fails to complete this work within the time prescribed and to City's satisfaction, City may cause such work to be done and bill the cost of the work to Franchisee. Within 30 days of receipt of an itemized list of those costs, Franchisee shall pay City such costs. Notwithstanding any other provision of this Franchise Agreement, City, its officials, officers, employees and agents shall not be liable to Franchisee for any damage caused as a result of action taken under this Subsection, except when such damage results from any gross negligence by the City.

e. Alteration of Cable System for Other Franchise Holders. Franchisee shall not unreasonably delay any removal, replacement, modification or disconnection which is required to accommodate the construction, operation, or repair of the facilities or equipment of another City franchise holder.

f. Alteration of Cable System for Other Permittees. At the request of any person holding a valid oversize load, house moving, or similar permit, and upon five (5) business days' advance notice, Franchisee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes, including standby time, shall be paid by the permit holder, and Franchisee may require a reasonable deposit of the estimated payment in advance.

g. Tree Trimming. Franchisee shall have the authority to trim trees that overhang a public right-of-way of City in accordance with the Cable Ordinance and other applicable provisions of the Altoona City Code of Ordinances.

h. Decisions of Director of Public Works. Whenever a decision, requirement or approval is by this Franchise Agreement to be a determination of the Director of Public Works, that determination shall be conslusive upon the parties hereto, with respect to the City's review of the matter. However, this Subsection shall not be read to be a waiver by the Franchisee of any of its rights under applicable law or in equity.

i. Rights-of-Way Vacations. If at any time City vacates and discontinues any City streets or other rights-of-way covered by this Franchise, City shall not be liable for any damages or loss to Franchisee by reason of such vacation and discontinuance. The City shall give thirty (30) days notice to the Franchisee of any planned vacation of City rights-of-way.

5.14.160 Operation and Reporting Provisions.

a. Books and Records.

1. The City may inspect and copy Books and Records of the Franchise or any other cable operator of the Cable System and any person performing work on behalf of the Franchisee that are reasonably necessary to the enforcement of any provision of the Cable Ordinance, the Franchise Agreement, the conduct of performance evaluation sessions or the exercise of any authority that the City may have under the same or any other provision of applicable law. Without limiting the foregoing, Franchisee shall provide the City with access to complaint data to enable the City to fully investigate Subscriber complaints consistent with Subscriber privacy laws. All such books and records shall be produced to the City for inspection at Franchisee's local office or at such other mutually agreed upon location within the City. Information requested shall be made available for inspection within 14 business days of a request therefore, which period shall be subject to extension for good cause shown where no harm will result to the public interest form the delay.

2. Franchisee shall maintain throughout the Franchise term, at its local office, all records and

information necessary to document its compliance with this Franchise Agreement and the Cable Ordinance. All such documents shall be produced in accordance with Paragraph 6(a)(1).

3. To the extent the Books and Records that are subject to production under Paragraph 6(a)(1) are held by third parties, affiliates or contractors or subcontractors of Franchisee, Franchisee shall be responsible for collecting those books and records and producing them as provided in Paragraphs 6(a)(1) and (2).

b. Reports. Franchisee shall provide the reports specified in this Subsection and such other reports as may be required in accordance with the Cable Ordinance and this Franchise Agreement. The form of the reports shall be governed as provided by the Cable Ordinance and this Franchise Agreement.

1. Upon request, Franchisee shall provide, on or before March 31 of each year, the reports required by the Cable Ordinance. Pursuant to the Cable Ordinance, Franchisee has represented that it is in the process of digitizing its maps and, based on that representation, for the first annual report due under this Subsection, Franchisee is only obligated to submit such electronic maps as are in existence and shall thereafter comply with this provision in full.

2. Upon request, Franchisee shall provide, within forty-five (45) days of the end of each calendar quarter, the quarterly reports required by the Cable Ordinance.

3. Franchisee shall provide the City Administrator the following on an ongoing basis:

A. A statement of the resolution of complaints referred to it by the City Administrator or other City officers or employees. Notwithstanding any provision of the Cable Ordinance, such notice may be given by telephone unless the City Administrator requests written notice. A requested written notice shall be given as soon as practicable.

B. Franchisee shall provide the City with a telphone number that the City may call to obtain information about any unplanned or unanticipated outage. This telephone number shall not be the same number used by general Subscribers.

C. Franchisee shall provide the City Administrator notice at least 24 hours prior to any planned outages affecting five hundred (500) or more Subscribers on the same distribution line or fiber node within the Franchise area.

c. Books and Records Must be Maintained. Franchisee shall maintain or have access to a complete set of Books and Records. Such Books and Records shall be retained for a period of time consistent with all applicable laws subject to any permissible confidential or trade secret requirements.

d. Special Testing and Audits. City may require special testing of location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Franchisee or to the Subscribers caused by such testing. Before ordering such tests, Franchisee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The City shall meet with Franchisee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Franchisee if the testing reveals the source of the technical difficulty to be within Franchisee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Franchisee's reasonable control then the cost of said test shall be borne by City.

Upon ten (10) days prior written notice, the City will have the right to conduct an independent audit of Franchisee's records, in accordance with generally accepted accounting principles. If such audit indicates a franchise fee underpayment of four percent (4%) or more, the Franchisee will assume all reasonable costs of the audit. Any additional amount due the City as a result of such audit will be paid

within thirty (30) days following written notice by the City to the Franchisee, which notice will include a copy of the audit report.

5.14.170 Remedies.

a. Rights of City. In addition to exercising any of the other remedies provided in this Franchise Agreement or the remedies available under applicable law, City may revoke the Franchise pursuant to the Cable Ordinance or declare the Franchise forfeited pursuant to the Cable Ordinance for any reason for which the Franchise could have been revoked or forfeited thereunder as of the Effective Date. Franchisee shall always be entitled to all levels of due process provided for in the Cable Ordinance as of the Effective Date of this Agreement and if Applicable Law.

b. Effect of Revocation or Forfeiture. The revocation or forfeiture of Franchisee's rights under the Franchise shall not affect any of City's rights under the preceding Franchise or applicable law. Franchisee shall continue to be bound, for example, by any duties it may have under the Cable Ordinance to continue to provide service.

5.14.180 Abandonment of Service.

Franchisee may not abandon the System or any portion thereof without having first given three (3) months written notice to City. Franchisee may not abandon the System or any portion thereof without compensating City for damages resulting from the abandonment.

5.14.190 Exercise of Right to Purchase.

City shall have the option to purchase the Cable System as provided in the Cable Ordinance, to the extent consistent with federal law. This purchase option does not waive any rights Franchisee may have under applicable law.

5.14.200 Governing Law.

This Franchise Agreement shall be governed in all respects by the laws of the State of Wisconsin. All actions brought under this Franchise Agreement, whether brought in state or federal court, shall be brought in a court located in Wisconsin, unless prohibited by law.

5.14.210 Force Majeure.

Franchisee shall not be deemed in default under its Franchise where performance was rendered impossible by war or riots, civil disturbances, labor strikes, floods, or other circumstances beyond Franchisee's control. The Franchise shall not be revoked or Franchisee penalized for such noncompliance, provided that Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health or safety of Franchisee's employees or the integrity of its property, or the health or safety of the public, or the integrity of public right-of-way, public property, or private property.

5.14.220 Connections to System; Use of Antennas.

a. Subscribers shall have the right to attach devices to the Cable System to allow them to retransmit signals or services when expressly authorized in writing by Franchisee. Subject to reasonable provisions to prevent signal and service theft, Subscribers shall have the right to use their own remote control devices and converters and other similar equipment. If reasonably practicable, Franchisee shall provide information to Subscribers which will allow them to adjust such devices so that they may be used with the Cable System.

b. Franchisee shall not, as a condition of providing service require a Subscriber or potential Subscriber to remove any existing antenna, or to disconnect an antenna except at the express direction of the Subscriber or potential Subscriber, or prohibit a Subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable law.

5.14.230 Special Discount Rates for Senior Citizens.

Franchisee may offer special discount rates to Subscribers who are commonly referred to as senior citizens.

5.14.240 Calculation of Time.

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1 Franchisee is directed to take action within 10 calendar days, the action shall be completed no later than midnight, January 11.

5.14.250 Time of Essence; Maintenance of Records of Essence.

In determining whether Franchisee has substantially complied with its Franchise, the parties agree that time is of the essence to this Franchise Agreement. As a result, Franchisee's failure to complete construction per Section 15, extend service per Section 13, seek approval of transfer per Section 4, constitute material breaches per Section 9. The maintenance of records and provision of reports per Section 16 in accordance with the Franchise is also of the essence to this Franchise Agreement.

5.14.260 Guarantee.

A signed guarantee of performance in a form acceptable to the City shall be filed by Franchisee with the City Administrator prior to the Effective Date.

5.14.270 Captions.

The captions and headings of this agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Franchise Agreement.

5.14.280 Acceptance.

a. Franchisee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Franchisee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise and any and all rights granted hereunder to Franchises shall be null and void.

b. Upon acceptance of this Franchise, Franchisees and City shall be bound by all the terms and conditions contained herein.

c. Franchisee shall accept this Franchise in the following manner:

1. This Franchise will be properly executed and acknowledged by Franchisee and delivered to City.

2. With its acceptance, Franchisee shall also deliver any grant payments, performance bond and insurance certificates as required herein that have not previously been delivered.

Chapter 5.16

GARBAGE HAULERS

Sections:

5.16.010	**License—Required—Application.**
5.16.020	**Compliance with applicable laws, rules and ordinances required.**
5.16.030	**License—Fee—Term.**
5.16.040	**License—Issuance—Placement on vehicle required.**
5.16.050	**License—Limited number to be issued.**
5.16.060	**Maximum charges.**
5.16.070	**Vehicle—Covers required—Dropping of material prohibited.**
5.16.080	**Vehicle—Parking on street prohibited—Exception.**
5.16.090	**Vehicle—Parking prohibited within two hundred feet of a dwelling—Exception.**
5.16.100	**Collection schedule.**
5.16.110	**Regulations generally.**
5.16.120	**Contract cancellation—City council authority— Notice—Hearing.**
5.16.125	**Mandatory separation of yard waste.**
5.16.126	**Mandatory collection of recyclables.**
5.16.127	**Mandatory Monthly Reporting**
5.16.130	**Violation—Penalty.**

5.16.010 License—Required—Application.

No person, firm or corporation shall engage in collection garbage in the city without first obtaining from the city a license to do so. Applications for licenses shall be presented to the city council on forms prepared by the city clerk. Before final action on such application, the same shall be referred to the city-county health officer for consideration and report thereon to the city council. (Prior code § 11.06(1)(a))

5.16.020 Compliance with applicable laws, rules and ordinances required.

It is and shall be a condition in and of all licenses granted under this chapter that the license holder shall comply with the ordinances of the city, the rules, regulations and orders of the local and state boards of health, and the statutes of Wisconsin relating to collecting, hauling and disposal of garbage and of other waste. (Prior code § 11.08.(1)(b))

5.16.030 License—Fee—Term.

The annual license fee for a garbage hauler shall be established by resolution of the Common Council each year and the period of said license shall be from July 1st of each year until June 30th of the following year. (Ord. 51, 1979: Ord. A-27 (part), 1966: Ord. A-17 (part), 1964; prior code § 11.07(1)(c): Ord. 12D-99)

5.16.040 License—Issuance—Placement on vehicle required.

The city clerk shall furnish the person obtaining a license a printed or written license with a number identical with the number of the license on record in his office, and the person so licensed shall immediately thereafter cause the license number to be printed or fixed with letters two inches high on each side of every garbage-hauling vehicle permanently in a conspicuous place, and the same shall be maintained on it at all times in form and condition for convenient reading. (Ord. A-17 (part), 1964: prior code § 11.06(1)(D))

5.16.050 License—Limited number to be issued.

No more than six garbage hauling licenses shall be issued for any one license period, except as follows: Any person holding a trailer park license under Title 17 of this code may apply for special garbage hauling license which the council may issue in addition to the six garbage hauling licenses mentioned above. Such special garbage hauling license holders shall be subject to the same fees and regulations as other garbage hauling licenses holders. Such special garbage hauling license shall permit its holder to collect garbage from the premises of his trailer park only. (Ord. 10D-15, 4A-96 § 1, 1996: Ord. 14, 1978: Ord. A-27 (part), 1966: prior code § 11.06(1)(e))

5.16.060 Maximum charges.

A. No garbage hauler may charge more than the maximum rates established by the city council. The city council may set the maximum rates allowed to be charged for various types of service by either motion or resolution at duly called city council meetings, and the schedule of the rates shall be maintained at the city clerk's office. The city council is empowered to change the maximum rates by motion or resolution at duly called city council meetings.

B. In addition to rate increases or decreases adopted by the city council, the maximum rates authorized to be charged by licensed haulers shall automatically be increased or decreased annually on April 1, 1992, and each April 1st thereafter, to an amount obtained by multiplying the existing authorized rates by the percentage increase or decrease in the National Consumer Price Index of the United States Department of Labor (1967 base, not seasonally adjusted) for all urban consumers (all items index) for the calendar year immediately preceding the adjustment; or five percent, whichever is lower. The determination of the adjustment under this subsection shall be computed annually by the city clerk and/or city treasurer in accordance with the above criteria, and notice of the new, adjusted maximum rates shall be sent to all haulers licensed with the city. (Ord. 4C-91, 1991: Ord. A-27 (part), 1966: prior code § 11.07(1)(f))

5.16.070 Vehicle—Covers required—Dropping of material prohibited.

Vehicles must have metal bodies, and be of such construction that there will be no dripping, dropping or scattering of material therefrom along streets, highways or alleys of the city and each vehicle must have a cover approved by the board of health and the same must be used and employed at all times in conformance with regulations of the board of health relating thereto. (Prior code § 11.06(2))

5.16.080 Vehicle—Parking on street prohibited—Exception.

Trucks, wagons or other vehicles containing garbage must be kept off the streets of the city except for the purpose of collecting and transporting garbage in the most direct route to the dumps and must not be parked on any street, alley or public place except for the reasonable time required in the collection of garbage thereby. (Prior code § 11.06(3) (part))

5.16.090 Vehicle—Parking prohibited within two hundred feet of a dwelling—Exception.

Except as provided in Section 15.16.080, no wagon, truck or other vehicle used in collecting or hauling garbage or other waste shall be parked on any alley, street or public place within the city or unenclosed, in any place within the city within two hundred feet of any dwelling in any residential zone unless such wagon, truck or other vehicle shall have first been thoroughly cleaned and steamed. (Prior code § 11.06(3)(a))

5.16.100 Collection schedule.

A. Garbage collections shall be made regularly as follows:

1. From residences, duplexes, triplexes, rooming-houses and apartments once or twice each week;

2. From hotels, restaurants, taverns, boardinghouses, grocery stores, butcher shops and other business establishments where garbage is likely to accumulate at least three times each week depending

upon the necessity and volume;

3. From places not enumerated above, collections shall be made by agreement with the owner, occupant or tenant subject to the approval of the city-county health officer.

B. In any case where the public interest may require, the city-county health officer may prescribe special regulations. (Ord. 34, 1979; prior code § 11.06(4))

5.16.110 Regulations generally.

A. Contractors and their employees are required to follow the regular walks for pedestrians while on private property and may not "short cut" across the lawns or gardens in making collections or in crossing to neighbor's premises.

B. Extra care must be taken in loading and transporting so that none of the material collected is spilled or left either on private property or on the streets or alleys.

C. Collections must be made as quietly as possible, especially in the early morning hours.

D. Contractors must respond and take care of complaints where garbage has not been collected upon the regularly scheduled trip. (Prior code § 11.06(5))

E. Contractors shall collect only during the hours of 6:00 a.m. to 7:00 p.m. Monday through Saturday. (Ord. 9A-00, 2000)

5.16.120 Contract cancellation—City council authority— Notice—Hearing.

The city council may cancel and rescind any contract made pursuant to this chapter for cause, after hearing, upon ten days' notice to the contractor. In the event that a plan of municipal garbage collection is adopted the city council may terminate any contract made at the end of the current three-year period; provided, that such adoption shall not be made less than six months prior to the end of any three-year period. (Prior code § 11.06(6))

5.16.125 Mandatory separation of yard waste.

A. For purposes of this section, the following definitions shall apply:

1. "Hauler" means any person authorized to collect refuse within the town for deposit at the Eau Claire County landfill.

2. "Yard waste" means grass clippings, lawn rakings and leaves.

B. Purpose. The city council recognizes that yard waste comprises a significant amount of the total volume of refuse deposited at the Eau Claire County landfill. Yard waste needlessly takes up a large volume of space at the landfill which could be utilized for the disposal of other materials. The city council further acknowledges that there is a need to preserve landfill space. To this end, Eau Claire County has adopted regulations prohibiting the deposit of yard waste at the county landfill and requiring that users of the landfill shall adopt a program requiring the separation of yard waste from other refuse. The city council finds that the public health and welfare is served by minimizing, to the extent possible, the materials which are placed in the landfill. The intent of this section is to further the goal of having no yard waste deposited in the landfill, thus conserving this valuable asset.

C. Separation. All persons whose refuse is disposed of at a county owned or operated landfill shall separate yard waste from all other refuse.

D. No Collection or Deposit. Except when permitted by Eau Claire County ordinance, no person shall place for collection or deposit in any county owned or operated landfill any yard waste, and no hauler shall collect any yard waste for deposit at the Eau Claire County landfill.

E. Refusal of Service. Any yard waste placed for collection not in accordance with the provisions of this section may be refused by the hauler.

F. Penalty.

1. Notwithstanding Section 5.16.130, any person who violates a provision of this section after September 15, 1988 shall, upon conviction, forfeit:

a. Not less than ten dollars nor more than twenty-five dollars for the first conviction within one year;

b. Upon the second conviction within one year, not less than twenty-five dollars nor more than fifty dollars;

c. Upon the third conviction within one year, not less than fifty dollars nor more than one hundred dollars;

d. Upon the fourth and subsequent convictions within one year, not less than one hundred dollars nor more than five hundred dollars.

2. Any hauler who violates this section may be subject to suspension or revocation of his or her refuse collection license, in addition to the imposition of a penalty under this section.

The owners and operators of multiple-family dwellings and mobile home parks should, where necessary, facilitate the separation of yard waste by the residents in such dwellings and parks. (Ord. 6A-88, 1988)

5.16.126 Mandatory collection of recyclables.

Any person, firm, or corporation licensed to haul garbage in Altoona is required to provide curbside collection of recyclables from all of their customers residing in single-family residences and units in two to four unit dwellings. This service shall be provided twice-a-month at no charge to the resident except for the charge for refuse collection. The business or person (licensed, etc.) shall provide each of their customers residing in single- family residences and units in two to four unit dwellings with an eighteen-gallon container that complies with subsection 12.73.140A of the Eau Claire County Code for this service. Recyclable materials that shall be collected are those listed in subsection 12.73.100A, 1-10, of the Eau Claire County Code. (Ord. 3B-95, 1995)

5.16.127 Mandatory Monthly Reporting.

Any person, firm or corporation providing curbside recycling service as provided in Section 5.16.126 shall prepare a monthly report containing the following information, and upon request shall submit these reports to the city administrator. A copy of these reports shall be kept on file by the person, firm or corporation for a period of three years:

a. The number of dwelling units serviced, broken down by single family homes, duplexes, triplexes and quadplexes;

b. The weights of recyclables collected that month. They shall be reported separately for each of the following materials: 1) clear glass bottles and jars; 2) brown glass bottles and jars; 3) green glass bottles and jars; 4) tin and bimetal food and beverage containers; 5) aluminum beverage containers; 6) plastic food and beverage containers as required by subsection 12.73.100 of the Eau Claire County Code; 7) corrugate cardboard; 8) newspapers; 9) office paper; 10) magazines and catalogues. (Ord. 1A-05, 2005)

5.16.130 Violation—Penalty.

The penalty for violation of any provision of this chapter shall be as provided in Chapter 1.08. (Prior code § 11.06(7))

Chapter 5.20

Mobile and Temporary Food Vendors

Sections:

5.20.010	**Purpose and Authority**
5.20.015	**Scope**
5.20.020	**Definitions**
5.20.030	**Mobile Food Establishment Licensing Requirments**
5.20.040	**Mobile Food Establishments Operating at Special Events**
5.20.050	**Non Profit Operators**
5.20.060	**Farm Stand Operators**
5.20.070	**General Operating Requirements**
5.20.080	**Penalties**

5.20.010 Purpose and Authority

The purpose of this ordinance is to regulate mobile and temporary food vending activities in order to protect public health, safety, and welfare, while accommodating commercial uses that generally promote an active and social pedestrian environment within appropriate areas of the City of Altoona. This ordinance is also written with specific consideration given to the continued successful operation of existing brick and mortar restaurant establishments in recognition of the investments they make, and tax revenue they generate within Altoona. The overall goal of this ordinance is to provide a business climate in Altoona that offers fair opportunities for both mobile food vending operations and permanent restaurants in order to provide residents and visitors with a variety of food options and a vibrant food scene in our community.

The Common Council carries out these purposes under its legislative authority and police power under Sec. 62.11(5), Wis. Stats. to regulate and license to protect the public's health, safety, and welfare. This ordinance is consistent with the holdings *La Crosse Rendering Works, Inc. v. City of La Crosse*, 231 Wis. 438 (1939) among others, given that vested or seemingly vested interests must yield to the good of the community, and the Common Council's power to establish standards against which human activity may be judged and to protect the health, safety, and welfare of the public. This ordinance shall apply to the extent indicated herein to pre-existing, already-licensed, or operating entities under the preceding version of Section 5.20 for ice cream and popcorn vendors.

5.20.015 Scope

This Chapter shall apply to all mobile food establishments in the City of Altoona, regardless of whether mobile food establishments exist or are permitted before the adoption of this Chapter. Any mobile food vendor licensed under the repealed version of Chapter 5.20 shall be credited the cost of the first license applied for by then-existing license-holders when applying for a license consistent with this chapter.

5.20.020 Definitions

A. "Ice cream truck" means a mobile food establishment that sells either frozen dessert servings that are prepackaged/enclosed in a wrapper or container having been manufactured, prepared or wrapped in a licensed food establishment or ice cream that is not pre-packaged.

B. "Licensee" means a mobile food vendor that holds a City of Altoona mobile food vendor license, a State of Wisconsin license, Eau Claire County license or a license from another authorized permitting jurisdiction.

C. "Mobile food establishment" means a restaurant or retail food establishment where food is served or sold from a mobile food truck, mobile food trailer, mobile sidewalk cart, or temporary food booth, tent or stand.

D. "Mobile food truck" means a vehicle specifically designed and used for cooking, keeping, storing or warming food or beverage which is for sale by a vendor, which may move under its own power.

E. "Mobile food trailer" means a trailer specifically designed and used for cooking, keeping, storing or warming food or beverage which are for sale by a vendor, which does not move under its own power, but may be towed by a vehicle.

F. "Mobile food vendor" means a vendor selling from a mobile food establishment.

G. "Mobile sidewalk cart" means a bicycle cart or a wheeled pushcart, specifically designed and used for keeping, storing, or warming food or beverage which are for sale by a vendor, which may be moved by one person without the assistance of a motor. Each sidewalk cart shall be non-motorized and capable of being moved and kept under control by one person.

H. "Temporary farm stand" means a booth, tent, or stand which exclusively sells non-processed raw agricultural products.

I. "Temporary food booth, tent, or stand" means a booth, tent, or stand vending unit which sells food or beverages.

5.20.030 Mobile Food Establishment Licensing Requirements

A. License Application. Unless operating in conjunction with a permitted event (reference Section 5.20.040), each operator of a mobile food establishment that wishes to operate in the City of Altoona shall annually file an application for a City of Altoona mobile food vendor operator's license with the city clerk or designee on forms provided by the City. Each applicant shall pay an established license fee before a license is issued. The applicant, and employees or agents thereof must pass a background check conducted by the Altoona Police Department prior to issuance of a permit. The background check fee shall be included in the cost of annual license. The application form provided shall require the following information from the applicant:

1. Name, address and telephone number of the person, firm, association or corporation that owns the unit.
2. Birth date, height, weight, color of hair and eyes of the applicant.
3. The length of time for which the right to conduct business is desired.
4. Make, model and license number of any vehicle or trailer to be used in the operation.
5. A statement as to whether the applicant has been arrested or convicted of any crime or ordinance violation as well as the nature of each offense and the place of arrest or conviction, if applicable.
6. The location or locations from which the applicant desires to operate the unit.
7. A copy of the applicant's valid food and beverage license issued by the State of Wisconsin, agent health department or other agency with jurisdiction.
8. A copy of the vendor's proof of insurance as required by **5.20.070.**
9. A copy of written permission to operate on private property if applicable.
10. If applicable, the three jurisdictions where the applicant conducted business immediately preceding the application including identification of any licenses or permits required and the governmental entity that issued such license or permit.
11. The address of the mobile food vendor service base of operation and evidence of satisfactory inspection of the said service base.
12. A copy of any authorization required under 5.20.070.
13. At the time of filing the application, the applicant shall present a driver's license or other acceptable picture proof of identification to the Clerk for examination

B. Secondary Operators. If any persons other than the applicant will be operating the unit without the presence of the applicant, such persons shall also be licensed as operators and the information required in paragraphs (A) 1 through 5 shall be provided.

C. License Approval Process. Upon receipt of an application for a license, the clerk will coordinate a background check and will refer the application to the Chief of Police or his or her designee in order to complete an investigation of the statements made in such application. Any such application will be processed within ten (10) business days. Upon completion of the background check, the permit will be issued unless the City Clerk determines any of the following:

1. The circumstances of a pending criminal charge against the applicant substantially relate to the licensed activity.
2. The applicant has been convicted of any felony, misdemeanor or other offense, the circumstances of which substantially relate to the circumstances of the particular job or licensed activity.
3. The applicant made a false statement on the application.
4. The applicant is under eighteen (18) years old. Only applicable to operators of mobile food establishment vehicles due to CDL requirements.
5. The applicant is found to have unpaid civil judgment(s) which relates to the duties and responsibilities of the permitted occupation which shall be determined by the nature and the amount of the judgment, the relationship of the judgment to the purpose of the permit and the extent that the permit would allow someone to engage in further activity that would lead to unsatisfied civil judgments.
6. The application is incomplete.

D. Appeal Process for Licensed Vendors. Any decision of the city clerk or their designee with respect to the issuance or refusal to issue a permit or their revocation of a permit may be appealed to the city council by filing a letter of appeal stating the reasons for the appeal of such decision with the city clerk within five (5) working days of the date of issuance of the decision being appealed. The city council shall review the appeal and issue a final decision within thirty (30) working days of the date of the filing of the appeal.

E. License Revocation or Suspension for Licensed Vendors. A license may be suspended or revoked by the City Clerk, or the Chief of Police, if it is found at any time that the license holder made any material omission or materially inaccurate statements in the license application, if the license holder violates any provision of this article or any condition of permit issuance, if there are material and substantiated complaints related to the mobile food vendor or the operation thereof, or if the license holder is convicted of any crime or ordinance or statutory violation directly related to the licensed activity. Notice of suspension or revocation will be served on the applicant and will include a statement of the act(s) upon which the denial is based. The appeal process is addressed in Section **5.20.030 D.**

F. Operational Requirements. Operational requirements for all mobile food establishments shall be consistent with Section 5.20.070 of this ordinance.

5.20.040 Mobile Food Establishments Operating at Special Events

Mobile food establishments are exempt from City licensing procedures set forth in this chapter if operating in conjunction with permitted special events provided the vendor is fully permitted through the Eau Claire County Health Department, the State of Wisconsin or other applicable permitting entity. However, non-profit operators and farm stand operators may also operate independent of special events without a City license subject to the provisions noted below. The City of Altoona may require that the special event organizer submit a list of vendor operator names for the purpose of conducting background checks. If background checks are required, then the fee of the background checks shall be paid by the vendors. The fee is noted in the fee schedule in chapter 3.08 of the Altoona municipal code.

5.20.050 Non-Profit Operators

Non-profit group temporary food vendors are exempt from licensing procedures set forth in this chapter; provided, however, their operations are limited to three (3) non-consecutive days per licensing year.

Non-profit groups may operate on private property if granted permission, and, provided further, that public health, safety and welfare is not compromised, as determined in the City's sole and absolute discretion. Non-profit groups may vend in public places designated in this chapter subject to acquiring

express written permission from the City, and further adhering to any conditions required by the City, which such conditions may address compensation for use of City property as well as limitations on hours of operation and specific places of operation. Non-profits groups may also operate in conjunction with permitted special events.

5.20.060 Farm Stand Operators

Temporary farm stands are exempt from licensing procedures set forth in this chapter and may operate on private property if granted permission, and, provided further, public health, safety and welfare is not compromised, as determined in the City's sole and absolute discretion. Temporary farm stands may vend in public places designated in this chapter subject to acquiring express written permission from the City, and further adhering to any conditions required by the City, which such conditions may address compensation for use of City property as well as limitations on hours of operation and specific places of operation. Temporary farm stands may also operate in conjunction with permitted special events.

5.20.070 General Operating Requirements

A. Operations

1. The licensee or the licensee's employee or agent shall be present within the vending site during all times in which items are sold.

2. Vendor display of license and contact information:

a. Each license issued or required under this chapter shall be displayed in a conspicuous location which is visible to the public.

b. The licensee shall permanently and prominently paint on or affix to the mobile food vendor a sign no smaller than twelve inches by twelve inches (12 x 12) displaying contact information, at a minimum, the name, address, and telephone number of the licensee. Such required information shall substantially fill the entire minimum space described herein.

c. If operating on private property, the vendor must keep written permission from the property owner within the vending unit at all times.

d. Vendors exempt from licensing, including non-profit temporary food vendors and temporary farm stands, shall display contact information consistent with (b).

3. Temporary free-standing signs associated with mobile food vendors shall be prohibited unless allowed by sign permit.

4. No mobile food vendors shall use bells or lights, noise-makers, including music, to attract customers. Ice cream/dessert vendors are exempt from this restriction. Any noise originating from a mobile food vendor operation shall comply with Chapter 9.36 of the Altoona Municipal Code at all times.

5. Mobile food vendors are prohibited from use of city water, electricity or other utilities in the course of its operations unless explicitly provided permission from the City of Altoona with an arrangement made for compensation.

6. Special event permitting of mobile food vendors shall take precedence over annual mobile food vendor permits with respect to location and duration of mobile food vendor operations, except as specifically described special event requirements of mobile food vendors provided herein.

B. Required Insurance Mobile food vendors required to obtain a City of Altoona operating permit shall provide proof of liability insurance for any single accident and for any property damage in the amount of $250,000 for a mobile sidewalk cart or $1,000,000.00 for any other mobile food vendor. Such liability insurance shall be in effect at all times the vendor is licensed in accordance with this section. A certificate of insurance for such coverage shall be delivered to the city clerk or designee prior to issuance of a license. If such insurance coverage is cancelled, not renewed, or changed, the insurer and licensee shall immediately provide notice to the city clerk or designee by certified mail. Failure to maintain such insurance may result in the suspension or revocation of the license.

C. Vehicle Regulations

1. Each mobile food vendor platform or vehicle shall be designed and constructed specifically for the purpose of vending the product or products to be vended.

2. Each mobile food vendor platform or vehicle shall have valid license plates and registration as required by Chapter 341, Wis. Stats.

3. Each mobile food vendor platform or vehicle shall be in compliance with all Federal, State and local laws or regulations which govern motor vehicles, including, but not limited to, vehicle size requirements.

4. Each mobile food vendor platform or vehicle shall be in safe, operable condition with no visible signs of rust or other deterioration.

D. Garbage Requirements

1. The licensee and his or her employee(s) shall be responsible at all times for the removal of all refuse resulting from his or her business or customers' use of his or her business. Such refuse shall be placed solely in the mobile food establishment's waste bins. All such containers shall be kept covered with a tight fitting lid. No mobile food establishment shall discharge any material onto the street, sidewalk, gutters, storm drain or the property of another, including, but not limited to, public property. Operators are responsible for ensuring that all waste is disposed of in accordance with city regulations and for maintaining all areas used for food vending and customer activity in a safe and clean condition.

2. Expect for mobile sidewalk carts, all stationary mobile food vendors shall deploy at least two (2) leak-proof, approximately thirty (30) gallon trash containers accessible to the public.

3. All mobile sidewalk carts shall be equipped with at least one (1) appropriately sized leak-proof garbage container.

E. Specified Locations of Operation

1. No mobile food vendor may conduct business at any City-owned or controlled location unless expressed permitted by the City of Altoona as described in this chapter.

2. All mobile food vendors shall be located on a paved surface at all times, unless expressly allowed or required.

3. All mobile food vendor business activity taking place in the public right-of-way shall be conducted from the curbside of the vehicle at all times, unless expressly approved by the City.

4. No mobile food vendor shall operate in a way that impedes pedestrian or vehicle circulation.

5. Mobile food vendor parking in designated City owned or controlled property will be allowed to be operated on a "first come, first served" basis within designated vending locations identified in this provision. Parking spaces may be occupied by non-vendors. Designated vending locations will be in effect at all times unless otherwise expressly approved by the City of Altoona or permitted in conjunction with a special event. Please refer to Appendix A of this ordinance for an illustration of the designated parking and operating spaces.

a. River Prairie:

1. Six (6) curbside parking spaces along the Community Plaza on Front Porch Place.

2. Mobile sidewalk carts may conduct business within the Community Plaza and sidewalks immediately adjacent to the Community Plaza.

b. Downtown (1300 block of Lynn Ave):

1. One (1) mobile food vendor may conduct business in either the designated parking spaces on the south side of the street in the 1300 block of Lynn Ave. or in the designated spaces within the Library/City Hall parking lot. At any given time, at most two (2) parking spaces may be occupied by a vendor in the parking lot.

2. Mobile sidewalk carts may conduct business on the sidewalk along the south side of the street in the 1300 block of Lynn Avenue.

c. City of Altoona Parks

1. Cinder City Park/Hobbs Center: Three (3) mobile food vendors may conduct business in designated parking area (14 spaces) on the west side of the Cinder City Park parking lot area. Each vendor is allotted two (2) parking spaces. At any given time, at most six (6) parking spaces may be occupied by vendors.

2. Devney City Park: One (1) mobile food vendor may conduct business in the designated parking spaces within the park parking lot. At any given time, at most two (2) parking spaces may be occupied by a vendor in the parking lot.

3. Altoona City Park (10th Street Park): Three (3) mobile food vendors may conduct business curbside in the designated parking area adjacent to the park on 9th Street or within spaces in designated area (18 spaces) on the north side of Bartlett Ave. Each vendor is allotted two (2) parking spaces. At any given time, at most six (6) parking spaces may be occupied by vendors.

4. Mobile sidewalk carts may conduct business on sidewalks and paved paths within and along the perimeter of the parks as specified in Appendix A in this provision, provided all other conditions of this chapter are met.

5. No annually licensed mobile food vendors or temporary food vendor shall conduct business in designated park locations if an Altoona Parks and Recreation Department approved concessionaire is open for operation, unless written permission is granted by the City.

F. Distance Restriction from Restaurants Generally

Mobile food vendors are prohibited from conducting business within two hundred (200) feet of a public entrance of any business which is a licensed or permitted restaurant by the Eau Claire City-County Health Department during the hours the subject business is open to the public, unless written permission is granted by the business. This provision does not apply within the designated River Prairie vending areas.

G. Distance Restriction from Restaurants During Special Events

During permitted special events, mobile food vendors may not operate within one hundred (100) feet of any business selling the same or similar type products unless written permission is granted by the business.

H. Distance Restriction from Permitted Special Events

Mobile food vendors shall not conduct business within five hundred (500) feet of any City of Altoona permitted special event unless the vendor has obtained written permission from the event organizer or permittee.

I. Operating on Private Property

Mobile food vendors shall be prohibited from conducting business on any private property without written permission from the property owner. A copy of the written permission shall be kept in the mobile food unit at all times if operating on property that is not personally owned by vendor. The mobile food vendor shall comply if asked to leave the private property by the property owner or a city official.

No more than two (2) annually licensed mobile food vendors or temporary food vendors shall be allowed to conduct business on a single private commercial or industrially zoned property, except in conjunction with a permitted special event. A conditional use permit may be granted for additional mobile food vendors to operate on a commercial or industrial property.

J. Operating in Residental Zones

Mobile food vendors are prohibited from operating in residentially zoned districts or residential property uses. Mobile ice cream/dessert vendors may conduct business within R-1, R-2, and R-3 residential zoned districts from the public right-of-way, while adhering to all other operational regulations of this chapter.

K. Designated Hours of Operation

1. Mobile food vendors may operate in designated locations/areas for the duration of designated times of operation and are not required to move during designated times of operation.

2. Day and time of operation restrictions shall be in effect for mobile food vendors in the following designated vending locations, unless operating in conjunction with permitted special events:

a. River Prairie:

1. Sunday through Thursday: 10 a.m. to 9 p.m.
2. Friday and Saturday: 7 a.m. to 10 p.m.

b. Downtown (1300 block of Lynn Ave):

1. Sunday through Thursday: 10 a.m. to 9 p.m.

2. Friday and Saturday: 7 a.m. to 10 p.m.

c. City of Altoona Parks, including Cinder City Park, Devney Park and Altoona City Park (10th St Park):

1. Sunday through Thursday: 10 a.m. to 9 p.m.
2. Friday and Saturday: 7 a.m. to 10 p.m.
3. Mobile food vendors may operate on private property between 7 a.m. and 3 a.m..
4. In addition to those times listed in (2) and (3) of this section, licensed ice cream/dessert vendors may operate from the public right-of-way within the R-1, R-2, and R-3 residential districts Monday through Sunday, 11 a.m. to a half hour before sunset but no later than 8 p.m. Ice cream / dessert vendors may not conduct business at a location longer than fifteen (15) continuous minutes in residential zoned districts, meaning the vendor must move not less than two hundred fifty (250) feet every fifteen (15) minutes.
5. Temporary Farm Stands may operate between 7 a.m. and 10 p.m.

L. Mobile Food Vendor Service Base Requirements

Mobile food establishments licensed annually by the City, which serve prepared foods that are not pre-packaged shall have a licensed service base of operation consisting of an enclosed building of sufficient size to accommodate mobile units for servicing, cleaning, inspection and maintenance. Refer to the Eau Claire County Health Department for this determination.

1. Mobile food establishments that are licensed by the City and only vend individual prepackaged servings may not require a service base of operation. Refer to the Eau Claire County Health Department for this determination.

2. Mobile food establishments operating in conjunction with a permitted special event shall meet service base requirements as required by their respective permitting agency.

3. Mobile food establishments that are licensed by the City shall return to their service base not less than once in each twenty-four hours for servicing and maintenance and more often if necessary.

4. Service bases may be located within any zoning classification in the City of Altoona provided that the mobile food vendor conforms to all other provisions required by code, permit or ordinance, or unless otherwise specified within this ordinance.

5. Service bases located at a property classified as residential use in the City of Altoona:

a. Applicants wishing to locate their service base in a residential zone within the City of Altoona shall obtain a conditional use permit for this accessory use and conform to associated provisions of chapter 19.24.050 of the Altoona Municipal Code.

b. No more than one (1) mobile food establishment may be parked outdoors at a residential property at any given time and shall conform to appropriate parking requirements of that zoning classification.

c. Service bases and associated uses must be inspected by the City of Altoona Building Inspector in addition to any other agency with inspection jurisdiction.

d. Service bases must be built, maintained and inspected pursuant to commercial kitchen requirements.

e. Spaces used for food preparation and storage of all business related materials must be physically separated from dwelling by not less than an accessible door.

f. A separate exterior entrance directly into the service base must be provided; not less than two (2) entrances to the service base must be provided.

g. Service bases located within residential discricts must specifically conform to the operational requirements of home occupations as described in Chapter 19.08 of the Altoona Municipal Code.

h. Deliveries to the residential address must take place between 7 a.m. and 7 p.m. so to prevent direct or indirect nuisance to neighbors or to the public.

i. All requirements herein are in addition to the requirements of the Eau Claire City-County Health Department and all other applicable state health and/or building codes.

6. Vendors may not offer other goods or services including retail vending at their residential address.

7. Vendors shall not park vending unit on-street if storing the unit at operator's residential address. Vending units must be parked in driveway of operator's residential address or in a garage.

8. Service bases need not be located in the city where the operation is located. (SS 9-103.11)

5.20.080 Penalties

A. The penalty for violation of this chapter shall be as provided in chapter 1.08 of the Altoona municipal code. (Ord 6A-16, 2016)

Chapter 5.24

INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES

Sections:

5.24.010	**Intoxicating liquor and fermented malt beverages.**
5.24.020	**Licenses, permits, authorization required.**
5.24.030	**Classes of licenses and fees.**
5.24.040	**License application.**
5.24.045	**Required training for holders of operator's licenses.**
5.24.050	**License restrictions.**
5.24.060	**Form and expiration of licenses.**
5.24.070	**Search of licensed premises permitted when—License application deemed consent.**
5.24.080	**Transfer of licenses.**
5.24.090	**Posting and care of licenses.**
5.24.100	**Regulation of licensed premises and licensees.**
5.24.110	**Closing hours.**
5.24.115	**Abandonment or non-use of license.**
5.24.120	**Revocation and suspension of licenses.**
5.24.130	**Nonrenewal of licenses.**
5.24.135	**Delinquent taxes, assessments, etc.**
5.24.140	**Violations by agents and employees.**
5.24.150	**Violation—Penalty.**
5.24.160	**Constitutionality.**

(Note: Current Chapter 5.24 was repealed and replaced with revised Chapter 5.24. Ord. 9B-15, 2015.)

5.24.010 Intoxicating liquor and fermented malt beverages.

The provisions of Chapter 125, Wisconsin Statutes, defining and regulating the sale, procurement, dispensing and transfer of beverages, including provisions relating to the penalty to be imposed or the punishment for violation of such statutes, are adopted and made a part of this section by reference. A violation of any such provision shall constitute a violation of this section. (Ord. 11B-82 (part), 1982)

5.24.020 Licenses, permits, authorization required.

A. No person shall serve, sell, manufacture, rectify, brew or engage in any other activity for which this chapter or Chapter 125, Wisconsin Statutes, requires a license, permit or other authorization without holding the appropriate license, permit or other authorization as provided in this chapter. Exceptions to the requirements of Section 5.24.020 are listed in Wis. Stat. § 125.06 and include, but are not limited to, the following:

1. The sale of fermented malt beverages in any public park when sold by officers or employees of the city during a special event. (Ord. 4D-15, 2015)

B. Separate License Required for Each Place of Sale. Except for licensed public warehouses, a license shall be required for each location or premises which is in direct connection or communication to each other where intoxicating liquor or fermented malt beverages are stored, sold or offered for sale. See Wisconsin Statutes § 125.04(9). (Ord. 11B-82 (part), 1982)

5.24.030 Classes of licenses and fees.

The following classes and denominations of licenses may be issued by the city clerk under the authority of the city council after payment of the fee specified in this section, which when so issued shall

permit the holder to sell, deal, or traffic in alcoholic beverages as provided in Wis. Stat. §§ 125.17, 125.25, 125.26, 125.28, and 125.51. (part, Ord. 2B-15, 2015; Ord 12A-99, 1999). Except as otherwise provided in this section, the full license fee shall be charged for the whole or fraction of any year.

A. Class “A” fermented malt beverage retailer's license, fee shall be established by resolution of the common council each year. See Wisconsin Statutes Section 125.25.

B. Class “B” fermented malt beverage retailer's license, fee shall be established by resolution of the common council each year. See Wisconsin Statutes Section 125.26.

1. Six-Month. A license may be issued at any time for six months in a calendar year, for which 50% of the applicable license fee shall be paid; but such license shall not be renewable during the calendar year in which issued.

2. Temporary Class “B” licenses for the sale of fermented malt beverages shall be established by resolution of the common council each year.

C. Retail “Class A” liquor license, fee shall be established by resolution of the common council each year. See Wisconsin Statutes Section 125.51(2).

D. Retail “Class B” liquor license, fee shall be established by resolution of the common council each year. See Wisconsin Statutes Section 125.51(3).

1. A license may be issued after July 1st in any license year. The license shall expire on the following June 30th. The fee for the license shall be prorated according to the number of months or fractions thereof remaining until the following June 30th.

2. Licenses valid for six months may be issued at any time. The fee for the license shall be fifty percent of the annual license fee. The license may not be renewed during the calendar year in which issued.

E. Temporary “Class B” licenses for the sale of wine shall be established by resolution of the common council each year.

F. Retail “Class C” wine license, fee shall be established by resolution of the common council each year. See Wisconsin Statutes Section 125.51 (3m) and 125.51 (3r). (Ord 8D-07, 2007).

G. Provisional retail Class “A”, Class “B”, “Class A”, “Class B”, and “Class C” licenses, of which fee shall be established by ordinance of the common council.

H. Operators’ license, fee shall be established by resolution of the common council each year. See Wisconsin Statutes Section 125.17.

1. Operators' licenses may be granted to individuals by the city council for the purposes of complying with Wisconsin Statutes Sections 125.32(2) and 125.68(2) or 125.06(3g).

2. Operators' licenses may be issued only on written application on forms provided by the city clerk.

3. Operators' licenses shall be valid for one year and shall expire on June 30th of each year.

I. Pursuant to Wisconsin Statutes Section 125.17(5), the city clerk may issue provisional licenses to persons who have applied for operators licenses. This section is subject to all limits and requirements of Wisconsin Statutes Section 125.17(5). The fee for a provisional license shall be established by resolution of the common council each year. (Ord. 10D-03, 2003; Ord. 5C-97, 1997; Ord. 12B-94, 1994; Ord. 9A-90 (part), 1990; Ord. 11A-88, 1988; Ord. 3B- 87, 1987; Ord. 11D-86, 1986; Ord. 11B-82 (part), 1982)

5.24.040 License application.

A. Statutes regarding form of application and processing procedures adopted by reference. The general licensing requirements set forth in Wisconsin Statutes Section 125.04 (1989-90 edition, and as said provisions might subsequently be renumbered and/or amended) are adopted by reference, and the city clerk shall follow said requirements as if set forth herein.

B. Time limits regarding applications for temporary Class “B” licenses. Pursuant to Wisconsin Statutes Section 125.04(3)(f)3, applications for temporary Class “B” licenses for events lasting less than four days must be filed with the city clerk not less than fifteen days prior to granting of the license unless

said waiting period is reduced by the city council, and the city council may not reduce said waiting period to less than four days.

C. License—Investigation. The city clerk shall notify the police chief of each application, and the police chief shall review each application and make any investigations or inspections deemed advisable including, but not limited to, requesting information from the state, surrounding municipalities, and/or any community where the applicant has previously resided concerning the applicant's arrest and conviction record. The police chief may furnish to the city council a report setting forth information derived from any such investigation, accompanied by a recommendation as to whether the license application should be granted or refused. (Ord. 2C-05, 2005; Ord. 11I-91 (part), 1991: Ord. 9A-90 (part) 1990; Ord. 7E-87, 1987; Ord. 11B-82 (part), 1982).

D. Temporary Class "B" and temporary "Class B" licenses may by issued directly by the city clerk without common council approval, provided that all other requirements for applications set forth in this chapter have been complied with by applicant.

E. The city clerk shall provide the common council with monthly reports of any temporary Class "B" and temporary "Class B" licenses issued hereunder. (Ord. 12B-99)

5.24.045 Required training for holders of operator's licenses.

All applicants and holders of operator's licenses shall comply with all training and educational requirements set by Wisconsin Statutes Section 125.17(6) (as it might be amended, revised or renumbered by the legislature), and the city clerk shall require compliance with all statutory training and educational requirements pertaining to operator's licenses. (Ord. 5E-91, 1991)

5.24.050 License restrictions.

A. Statutory Requirements. Licenses shall be issued only to persons eligible therefor under Wisconsin Statutes §§ 125.04 and 125.33(7)(b). (part, Ord. 2B-15, 2015)

B. Location. No retail "Class A" liquor license or "Class B" liquor license shall be issued for premises the main entrance of which is less than three hundred feet from the main entrance of any established public school, parochial school, hospital or church. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church, or hospital to the main entrance to the premises covered by the license.

The foregoing paragraph shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within three hundred feet thereof by any school building, hospital building, or church building.

C. Violators of Liquor or Beer Laws or Ordinances. No retail Class "A" or Class "B" fermented malt beverage retailer's license nor retail "Class A", "Class B", or "Class C" liquor license shall be issued to any person who has been convicted of a violation of any federal or state liquor or fermented malt beverage law or the provisions(s) of this section during one year prior to such application. A conviction of a partner or member of a partnership, partnership, officers, directors, or the agent of a corporation, the corporation, members, managers or the agent of an LLC, or the LLC shall make the partnership, corporation, or LLC, or any partner, agent, officer, director, manager, or member thereof ineligible for such license for one year.

D. Health and Sanitation Requirements. No retail Class "B" fermented malt beverage license or retail "Class B" liquor license shall be issued for any premises which do not conform to the sanitary, safety and health requirements of the State Department of Industry, Labor and Human Relations pertaining to buildings and plumbing, to the rules and regulations of the State Department of Health and Social Services applicable to restaurants and to all such ordinances and regulations adopted by the city.

E. License Quota.

1. The number of persons and places that may be granted a retail "Class B" liquor license under this section is limited as provided in Wisconsin Statutes § 125.51(4).

2. The number of persons and places that may be granted a retail "Class A" liquor license under this section is limited to a total not to exceed ten. (Ord 7B-15, 2015, Ord 10A-09, 2009).

F. Age Requirement. No retail Class “A”, Class “B”, “Class A”, “Class B”, “Class C”, nor a temporary Class “B” or temporary “Class B” license hereunder shall be granted to any person under twenty-one years of age. No operator’s license may be granted to any person under eighteen years of age.

G. Effect of Revocation of License. When a license is revoked under this subsection, the revocation shall be recorded by the clerk and no other license issued under this chapter may be granted within 12 months of the date of revocation to the person whose license was revoked. No part of the fee paid for any license so revoked may be refunded. (Ord 5A-13, 2013)

H. Issuance for Sales in Dwellings Prohibited. No license shall be issued to any person for the purpose of possessing, selling, or offering for sale any alcoholic beverages in any dwelling house, flat or residential apartment. (Ord. 10D-92 (part), 1992; Ord. 11B-82 (part), 1982)

5.24.060 Form and expiration of licenses.

All licenses shall be numbered in the order in which they are issued and shall state clearly the specific premises for which they are granted, the date of issuance, the fee paid, the name of the licensee and, unless sooner revoked, shall expire on June 30th thereafter except as otherwise provided. (Ord. 11B-82 (part), 1982)

5.24.070 Search of licensed premises permitted when—License application deemed consent.

It shall be a condition of any license issued under this chapter that the licensed premises may be entered and inspected at any reasonable hour by any police officer, marshal, or constable, within their respective jurisdictions, and examine the books, papers, and records of any brewer, brewpub, manufacturer, bottler, rectifier, wholesaler, or retailer, without any warrant, and the application for a license shall be deemed a consent to this provision. Any refusal to permit such inspection shall automatically operate as a revocation of any license issued under this chapter and shall be deemed a violation of this chapter. (Ord. 11B-82 (part), 1982)

5.24.080 Transfer of licenses.

A. As to Person. No license shall be transferable as to the licensee except as provided by Wisconsin Statutes § 125.04(12)(b).

B. As to Place. Licenses issued pursuant to this chapter may be transferred as provided in Wisconsin Statutes § 125.04(12)(a). Application for such transfer shall be made on blanks furnished by the State Department of Revenue. Proceedings for transfer shall be had in the same manner and form as the original application. (Ord. 11B-82 (part), 1982)

5.24.090 Posting and care of licenses.

Every license or permit required under this section shall be framed and posted and at all times displayed as provided in Wisconsin Statutes § 125.04(10). No person shall post such license or permit any other person to post it upon the premises other than those mentioned in the application, or knowingly deface or destroy such license. (Ord. 11B-82 (part), 1982)

5.24.100 Regulation of licensed premises and licensees.

A. Gambling and Disorderly Conduct Prohibited. Each license and permitted premises shall at all times be conducted in an orderly manner; and no disorderly, riotous, or indecent conduct or gambling shall be allowed at any time on any such premises.

B. Minimum Age of Employees. No licensee shall employ any person who is under the age of eighteen years old to serve, sell, dispense, or give away any alcoholic beverage.

C. Sales to Underaged Persons—Applicability of State Statutes. The provisions of Wisconsin Statutes Section 125.07 (as it now reads and as it hereafter might be amended or renumbered) shall apply to the sale of fermented malt beverages and intoxicating liquor to persons under the legal drinking age as set by Wisconsin Statutes when not accompanied by a parent, guardian or spouse of legal drinking age.

D. Sales by Clubs. No club shall sell intoxicating liquors or fermented malt beverages except to members and guests invited by members.

E. Operators—On Premises.

1. No premises operated under a Class "A," Class "B," temporary Class "B", retail "Class A," "Class B", temporary "Class B", or "Class C" liquor license shall be open for business unless there is upon the premises the licensee, any member of the licensee's immediate family who has attained the age of eighteen, the agent named in the license if the licensee is a corporation, or some person who has an operator's license. This prohibition does not apply to Class "A" licensed premises at any time during which the sale of fermented malt beverages is prohibited under Section 5.24.110. See Wisconsin Statutes § 125.32(3)(b).

2. No person, including a member of the licensee's immediate family, other than the licensee or agent may serve any fermented malt beverages or intoxicating liquor unless he or she has an operator's license or is at least eighteen years of age and is under the immediate supervision of the licensee, agent, or some other person who has an operator's license. See Wisconsin Statutes §§ 125.32(2) and 125.68(2).

F. Safety and Sanitation Requirements. Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used.

G. Additional Regulations Pertaining to Temporary Class "B" and Temporary "Class B" Licenses Issued to Organizations. Whenever an organization is granted a temporary Class "B" license to sell fermented malt beverages and/or a temporary "Class B" license to sell wine at any picnic, meeting, fair, etc., said sales shall be subject to this subsection. All sales operations shall be managed and conducted by a bona fide organization under the Wisconsin Statutes. Only bona fide members of the licensed organization shall be permitted to dispense fermented malt beverages, unless the city council specifically grants an exemption and the conditions of that exemption are stated on the license. The licensed organization and its bona fide members participating in the sale of fermented malt beverages shall take all steps necessary to make sure that all laws pertaining to drinking are complied with, including, but not limited to, all laws pertaining to minimum drinking ages. For purposes of this subsection, persons who join the licensed organization within one month of the effective date of the license will be presumed to not be bona fide members unless they prove they are permanent, fully active members. (Ord. 11I-91 (part), 1991; Ord. 9A-90 (part), 1990; Ord. 5A-89, 1989; Ord. 7C-88, 1988; Ord. 10C-86, 1986; Ord. 2A-86, 1986; Ord. 11B-82 (part), 1982)

5.24.110 Closing hours.

Except as noted under Section 5.24.100.E.1., no premises for which an alcohol beverage license has been issued shall remain open for business:

A. If a retail Class "A" fermented malt beverage license, between twelve a.m. and eight a.m.;

B. If a retail "Class A" liquor license, between nine p.m. and eight a.m.;

C. If a retail class "B" fermented malt beverage license or "Class "B" liquor license, between two a.m. and six a.m. on Monday through Friday and between two-thirty a.m. and six a.m. on Saturday and Sunday. No sales of fermented malt beverages in original unopened packages, containers or bottles or for consumption away from the premises shall be made between midnight and eight a.m. No sales of intoxicating liquor in original unopened packages, containers or bottles or for consumption away from the premises shall be made between nine p.m. and eight a.m. Notwithstanding the above, on January 1st of each year, Class "B" licensees are not required to close for the purposes of on-premises sale, but the prohibitions against off-premises sales shall continue to be in effect for that day.

1. The city elects to come under paragraph (b) of Wisconsin Statutes § 125.51(3) which authorizes a retail "Class B" license the sale of intoxicating liquor to be consumed by the glass only on the premises where sold and also authorizes the sale of intoxicating liquor in the original package or container, in multiples not to exceed 4 liters at any one time, and to be consumed off the premises where sold. Wine, however, may be sold for consumption off the premises in the original package or otherwise in any quantity.

D. Hotels and restaurants whose principal business is the furnishing of food or lodging to patrons, and bowling alleys and golf courses, may remain open for the conduct of their regular business, but no intoxicating liquor or fermented malt beverages shall be sold during prohibited hours. (Ord. 11I-91 (part), 1991; Ord. 12B-84, 1984; Ord. 6D-83, 1983; Ord. 11B-82 (part), 1982)

5.24.115 Abandonment or non-use of license.

Abandonment of a license issued under this chapter is a basis upon which the license may be revoked, suspended or non-renewed as provided in Sections 5.24.120 and 5.24.130. In this Section, "Abandonment of a license" means a failure to use the licensed premises for the purpose for which the license was granted for a period of 90 or more consecutive days without prior approval of the city council or a failure to open the licensed premises to the public for the purpose for which the license was granted for 50% or more of the days in any 12-month period without prior approval of the city council. (Ord 2A-11, 2011.)

5.24.120 Revocation and suspension of licenses.

A. Procedure. Whenever the holder of any license under this chapter violates any portion of this chapter, proceedings for the revocation or suspension of such license may be instituted in the manner and under the procedures established by Wisconsin Statutes § 125.12, and the provisions therein relating to granting a new license shall likewise be applicable.

B. Automatic Revocation. Any license issued under the provisions of this chapter shall stand revoked without further proceedings upon the conviction of a licensee or employee, agent or representative thereof for a second offense under this chapter or for a violation of Chapters 125 or 139 of Wisconsin Statutes, or any other state or federal liquor or fermented malt beverage laws.

C. Effect of Revocation. See § 5.24.050(H) of this chapter. (Ord. 11B-82 (part), 1982)

5.24.130 Nonrenewal of licenses.

Before renewal of any license issued under this chapter is refused, the licensee shall be given written notice of any charges or violations or the reasons proposed for nonrenewal and a copy of any proposed motion for nonrenewal and shall have an opportunity to be heard before the city council. (Ord. 11B-82 (part), 1982)

5.24.135 Delinquent taxes, assessments, etc.

A. Premises. No initial or renewal alcohol beverage license shall be issued for any premises for which taxes, assessments or their claims of the city are delinquent and unpaid.

B. Persons. No initial or renewal alcohol licenses shall be issued to any person:

1. Delinquent in payment of any taxes, assessments or other claims owed to the city.
2. Delinquent in payment of a forfeiture resulting from a violation of any ordinance of the city.
3. Delinquent in payment to the state of any state taxes owed. (Ord. 4A-83, 1983)
4. Delinquent in payment to any fermented malt beverage or intoxicating liquor wholesaler as provided for in Wisconsin Statutes §§ 125.33(7)(b) and 125.69(4)(b).

5.24.140 Violations by agents and employees.

A violation of this section by an authorized agent or employee of a licensee shall constitute a violation by the licensee. (Ord. 11B-82 (part), 1982)

5.24.150 Violation—Penalty.

The penalty for violation of any of the provisions of this chapter shall be as provided in Chapter 1.08, provided that no penalty imposed shall exceed the maximum allowed by Chapter 125 of the Wisconsin Statutes. A separate offense shall be deemed committed on each day on which a violation occurs or continues. (Ord. 11B-82 (part), 1982)

5.24.160 Constitutionality.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The council hereby declares that it would have passed this chapter, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional, and if for any reason this chapter should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect. (Ord. 9A-15, 2015, 11B-82 (part), 1982)

Chapter 5.26

CABARET LICENSE

Sections:

5.26.010 License required.
5.26.020 Cabaret license.
5.26.030 Licenses—Term.
5.26.040 License—Revocation grounds.
5.26.050 License—Application.
5.26.060 License—Conditions.
5.26.070 Exemptions.
5.26.080 Violation—Penalty.

5.26.010 License required.

No person, firm or corporation licensed to sell fermented malt beverages or intoxicating liquors, shall offer, suffer or permit in the place for which the license is granted any professional dancing, whether public or private, without having first complied with the terms of this chapter relating to same and having procured a license so to do. All licensed premises shall be subject to inspection to insure continual compliance with the terms of this chapter. This chapter shall not apply to premises where fermented malt beverages are being served under the provisions of Wis. Stat. § 125.06(6) or under temporary license issued under Wisconsin Statutes Section 125.26(6). (Ord. 7D-87 (part), 1987: Ord. 6A-87 (part), 1987)

5.26.020 Cabaret license.

A cabaret license, when issued by the city clerk under authority of the city council, shall entitle the holder thereof to give, permit, produce, present, conduct and offer entertainment or exhibitions consisting of professional dancing, upon the licensed tavern premises. The fee for such cabaret license shall be established by resolution of the common council each year. (Ord. 7D-87 (part), 1987: Ord. 6A-87 (part), 1987: Ord. 12D-99)

5.26.030 Licenses—Term.

All cabaret licenses shall expire on the thirteenth day of June thereafter, and the full license fee shall be charged for the whole or fraction of a year. Such license may in the discretion of the city council be transferred to a new location upon the payment of a transfer fee of ten dollars. The new premises must comply in all respects with all provisions of this chapter as if a new application were being made. The same provisions shall apply whenever a change of agent of a corporation occurs, and such cabaret license may in the discretion of the city council be transferred to the new agent upon the payment of the prescribed fee. (Ord. 7D-87 (part), 1987: Ord. 6A-87 (part), 1987)

5.26.040 License—Revocation grounds.

A cabaret license may be suspended or forfeited and revoked by the city council for disorderly or immoral conduct on the premises, or for the violation of any of the rules, regulations or laws governing or applying to cabaret premises or premises licensed to sell intoxicating liquor. (Ord. 7D-87 (part), 1987: Ord. 6A-87 (part), 1987)

5.26.050 License—Application.

No license shall be granted hereunder unless the person or corporation desiring the same shall first have paid the fee therefor and shall have filed with the city clerk a written application therefor under oath and on forms to be furnished by the city clerk, designating the kind of license applied for, the address and description of the premises for which the license is desired, and such other information as may be required to insure compliance with this chapter, state law or such as may be required by the city council.

No license shall be granted under this chapter, however, unless the city council shall, by vote of a majority of the council present and voting at any regular or special meeting called for such purpose, have authorized the same. There shall be a waiting period of at least thirty days between the filing of the application and issuance of said license. (Ord. 7D-87 (part), 1987: Ord. 6A-87 (part), 1987)

5.26.060 License—Conditions.

No cabaret shall be licensed, maintained or operated except in conformity with the following regulations. Violation of any of the following conditions shall be cause for suspension or revocation of such license:

A. Every room used for cabaret purposes shall have a direct entrance from the public street, unless the entire interior thereof shall be visible through windows from the street, and all parts of the premises shall be open and unobstructed by partitions, screens or other devices. This provision shall not, however, be applicable to licensed hotels, motels or restaurants whose principal business is the furnishing of food and/or lodging to patrons.

B. Efficient means shall be employed to prevent the ordinary sounds of music, dancing, singing or entertainment within the cabaret from being heard on adjoining premises or on the public street; and no unusually loud music, singing or entertainment or any boisterousness or noisy conduct on the part of the patrons shall be permitted.

C. All cabarets shall be reasonably lighted at all times when any patrons shall be therein, and at all times when the same is open to the public.

D. Every cabaret shall be closed to the public and no patron shall be therein during the time that liquor or fermented malt beverages may not be sold.

E. No minor under the age of eighteen years shall be permitted in any cabaret unless accompanied by parent or guardian.

F. Upon request, the licensees shall provide the name, address and date of birth of each entertainer who is to perform in a dance, ballet, or floorshow where the majority of the performer's act consists of dancing, to the city police department or any police officer thereof.

G. The licensee shall provide a separate table or booth on the licensed premises for the exclusive use of all dancers appearing therein, for them to occupy before and after each performance, and such dancers shall not sit or remain at any other table or booth or mingle with the patrons on the licensed premises.

H. All dancers or entertainers shall be subject to the terms and conditions of Chapter 5.27 of the Altoona Municipal Code.

I. No intoxicated person shall be permitted to remain in any cabaret, and no person bordering on intoxication shall be served with any beverage containing alcohol or be permitted to dance in any cabaret.

J. Every cabaret shall be provided with separate isolated toilets and lavatory facilities for each sex, which shall be constructed and maintained in a sanitary condition in conformance with the laws of the state, the provisions of this chapter and regulations of the health department.

K. There shall be in every cabaret premises not less than two doors for exits leading to the outside, each not less than three feet in width and opening outward.

L. The sale, service or consumption of commodities for which licenses are otherwise required shall not be permitted in any cabaret unless the proper license or licenses therefor are obtained for the premises in the name of the owner or manager of such cabaret.

M. As a condition of licensing, the licensee shall permit free and unobstructed access to the premises when licensed premises are open to the public, by police officers while acting on official duty. (Ord. 11D-98, 1998; Ord. 7D-87 (part), 1987: Ord. 6A-87 (part), 1987)

5.26.070 Exemptions.

This chapter shall not apply to premises owned by churches, the city or the Altoona school district. (Ord. 7D-87 (part), 1987: Ord. 6A-87 (part), 1987)

5.26.080 Violation—Penalty.

Any person who violates any provision of this chapter shall, upon conviction, be subject to a forfeiture not exceeding one hundred dollars for each offense. (Ord. 7D-87 (part), 1987: Ord. 6A-87 (part), 1987)

Chapter 5.27

NUDE DANCING IN LICENSED ESTABLISHMENTS PROHIBITED

Sections:

5.27.010 Findings and purpose.
5.27.020 Nude dancing in licensed establishments prohibited.
5.27.030 Exemptions.
5.27.040 Definitions.
5.27.050 Penalties.

5.27.010 Findings and purpose.

A. The common council of the City of Altoona has explicit authority under Wis. Stat. § 125.10(1), to adopt regulations governing the sale of alcohol beverages which are in addition to those set forth in Chapter 125, Stats.

B. The common council has authority under its general police powers set forth in Section 62.11(5), Stats. to act for the good order of the municipality and for the health, safety and welfare of the public; and may carry out its powers by regulation and suppression.

C. The common council recognizes it lacks authority to regulate obscenity in light of Wis. Stat. § 66.0107(3), and does not intend by adopting the ordinance codified in this chapter to regulate obscenity, since nudity in and of itself is not obscene, it declares its intent to enact an ordinance addressing the secondary effects of live, totally nude, nonobscene erotic dancing in bars and taverns. (Ord. 2B-15, 2015)

D. Bars and taverns featuring live totally nude, nonobscene, erotic dancing have in other communities tended to further the increase of criminal and other offensive activity, to disrupt the peace and order of the communities, to depreciate the value of real property, to harm the economic welfare of the communities and to negatively affect the quality of life of the communities, and such secondary effects are detrimental to the public health, safety and general welfare of citizens.

E. The common council recognizes the U.S. Supreme Court has held that nude dancing is expressive conduct within the outer perimeters of the First Amendment to the United States Constitution and therefore entitled to some limited protection under the First Amendment, and the governing body further recognizes that freedom of speech is among our most precious and highly protected rights, and wishes to act consistently with full protection of those rights.

F. However, the governing body is aware, based on the experiences of other communities, that bars and taverns in which live, totally nude, nonobscene, erotic dancing occurs may and do generate secondary effects which the governing body believes are detrimental to the public health, safety and welfare of the citizens of the city of Altoona.

G. Among these secondary effects are: (1) the potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses, (2) the potential depreciation of property values in neighborhoods where bars and taverns featuring nude dancing exist, (3) health risks associated with the spread of sexually transmitted diseases, and (4) the potential for infiltration by organized crime for the purpose of unlawful conduct.

H. The governing body desires to minimize, prevent and control these adverse effects and thereby protect the health, safety and general welfare of the citizens of the city of Altoona; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight.

I. The governing body has determined that enactment of an ordinance prohibiting live, totally nude, nonobscene, erotic dancing in bars and taverns licensed to serve alcohol beverages promotes the goal of minimizing, preventing and controlling the negative secondary effects associated with such activity. (Ord. 11C-98, 1998)

5.27.020 Nude dancing in licensed establishments prohibited.

It is unlawful for any person to perform or engage in, or for any licensee or manager or agent of the licensee to permit any person, employee, entertainer or patron to perform or engage in any live act, demonstration, dance or exhibition on the premises of a licensed establishment which:

1. Shows his or her genitals, pubic area, vulva, anus, anal clef or cleavage with less than a fully opaque covering; or

2. Shows any portion of the female breast below a point immediately above the top of the areola; or

3. Deliberately displays the covered male genitals in a discernibly turgid state. (Ord. 11C-98, 1998)

5.27.030 Exemptions.

The provisions of this ordinance do not apply to the following licensed establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not the offering to customers of entertainment which is intended to provide sexual stimulation or sexual gratification to such customers and where the establishment is not distinguished by an emphasis on, or the advertising or promotion of, employees engaging in nude erotic dancing. (Ord. 11C-98, 1998)

5.27.040 Definitions.

For purposes of this chapter, the term “licensed establishment” means any establishment licensed by the common council of the city of Altoona to sell alcohol beverages pursuant to Chapter 125, Stats. The term “licensee” means the holder of a retail “Class A,” “Class B,” Class “B,” Class “A,” or “Class C” license granted by the common council of the city of Altoona pursuant to Wis. Stat. Ch. 125. (Ord. 11C-98, 1998)

5.27.050 Penalties.

Any person, partnership, or corporation who violates any of the provisions of this ordinance shall be subject to a forfeiture of not less than five hundred dollars ($500.00), and not more than one thousand dollars ($1,000.00) per violation. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this ordinance constitutes sufficient grounds for suspending, revoking or nonrenewing an alcohol beverage license under Section 125.12, Stats. (Ord. 11C-98, 1998)

Chapter 5.28

MILK DISTRIBUTORS

Sections:

5.28.010 State provisions adopted by reference—On file where.
5.28.020 License—Required—Fee—Transferability.

5.28.010 State provisions adopted by reference—On file where.

No person shall sell, offer or expose for sale any milk or milk products, as those terms are defined in Wis. Adm. Code, Chapter AG 80, issued by the State Department of Agriculture and State Board of Health, which are incorporated in this section by reference as if fully set forth herein. The clerk is directed to file a certified copy of such regulations in his office for public inspection. (Prior code § 10.03 (part))

5.28.020 License—Required—Fee—Transferability.

No person, firm or corporation shall engage in the sale or handling of dairy products in the city until he has obtained a license therefor from the city clerk. The applicant for a license shall pay for each milk plant maintained or operated by such applicant inside or outside the city a license fee established by resolution of the Common Council each year. Said license period shall expire on the first day of July of each year. Licenses are not transferable. (Ord. A-5 (part), 1961: Ord. 12D-99)

Chapter 5.30

PAWNBROKERS

Sections:

5.30.010	**Definitions.**
5.30.020	**Findings and Purposes.**
5.30.030	**License.**
5.30.040	**Display of license.**
5.30.050	**License application.**
5.30.060	**Investigation of license applicant.**
5.30.070	**License issuance.**
5.30.080	**Transaction Requirements.**
5.30.090	**Receipt required.**
5.30.100	**Label required.**
5.30.110	**Inspection of items.**
5.30.120	**Police order to hold property.**
5.30.130	**Daily report to police.**
5.30.140	**(Reserved).**
5.30.150	**Prohibited acts.**
5.30.160	**License denial, suspension, or revocation.**
5.30.170	**Fees.**
5.30.180	**Penalty.**
5.30.190	**Severability.**

5.30.010 Definitions.

In this section:

A. "Article" means any item of value.

B. "Billable transaction" means every reportable transaction except renewals, redemptions, voids, or extensions of existing pawns or purchases previously reported and continuously in the pawnbroker's possession.

C. "Charitable organization" means a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

D. "Customer" means a person with whom a pawnbroker, or an agent thereof, engages in a transaction of purchase, sale, receipt, or exchange of any secondhand article.

E. "Pawnbroker" means any person who engages in the business of lending money on the deposit or pledge of any article or purchasing any article with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price. To the extent that a pawnbroker's business includes buying personal property previously used, rented, leased, or selling it on consignment, the provisions of this chapter shall be applicable. A person is not acting as a pawnbroker when engaging in any of the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem, or antique show, or a convention.

2. Any transaction entered into by a person engaged in the business of junk collector, junk dealer, or scrap processor, as described in s. 70.995(2)(x), Wis. Stats.

3. Any transaction while operating as a charitable organization or conducting a sale, the proceeds of which are donated to a charitable organization.

4. Any transaction between a buyer of a new article and the person who sold the article when new that involves any of the following:

a. The return of the article.

b. The exchange of the article for a different, new article.

5. Any transaction as a purchaser of a secondhand article from a charitable organization if the secondhand article was a gift to the charitable organization.

6. Any transaction as a seller of a secondhand article that the person bought from a charitable organization if the secondhand article was a gift to the charitable organization.

F. "Reportable transaction" means every transaction conducted by a pawnbroker in which an article or articles are received through a pawn, purchase, consignment, or trade, or in which a pawn is renewed, extended, voided, or redeemed, or for which a unique transaction number or identifier is generated by their point-of-sale software, and is reportable except:

1. The bulk purchase or consignment of new or used articles from a merchant, manufacturer, or wholesaler having an established permanent place of business, and the retail sale of said articles, provided the pawnbroker must maintain a record of such purchase or consignment that describes each item, and must mark each item in a manner that relates it to that transaction record.

2. Retail and wholesale sales of articles originally received by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.

G. "Secondhand" means owned by any person, except a wholesaler, retailer, or licensed secondhand article dealer, immediately before the transaction at hand.

5.30.020 Findings and Purposes.

A. The City Council finds that the services offered by pawnshops provide an opportunity for individuals to readily transfer stolen property to those businesses. The council also finds that consumer protection regulation is warranted in transactions involving these businesses.

B. For the reasons expressed in subsection A, this Chapter is intended to:

1. Prevent pawnshops from being used to facilitate the commission of crimes;

2. Pursuant to the authority granted by s. 134.71, Wis. Stats., assure that pawnshops comply with basic consumer protection standards, thereby protecting the public health, safety, and general welfare of the citizens and

3. Require the use of the Automated Pawn System (APS) to help the police department regulate future pawnshops and to increase identification of criminal activities in pawnshops through the timely collection and sharing of transaction information.

5.30.030 License.

No person may operate as a pawnbroker in the city unless the person first obtains a pawnbroker license under this chapter. A separate license shall be obtained for each individual premises from which the business is operating.

5.30.040 Display of license.

Each license issued under this chapter shall be displayed in a conspicuous place visible to anyone entering a licensed premise.

5.30.050 License application.

A person wishing to operate as a pawnbroker shall apply for a license to the city clerk. The clerk shall furnish application forms approved by the police department that shall require all of the following:

A. The applicant's name, place and date of birth, current residence address, and residence addresses for the 10-year period prior to the date of the application.

B. The name and address of the business and of the owner of the business premises.

C. Whether the applicant is a natural person, corporation, limited liability company, or partnership, and:

1. If the applicant is a corporation, the state where incorporated and the names and addresses of all officers and directors.

2. If the applicant is a partnership, the names and addresses of all partners.

3. If the applicant is a limited liability company, the names and addresses of all members.

4. The name of the manager or proprietor of the business.

5. Any other information that the clerk may reasonably require.

D. A statement as to whether the applicant, including an individual, agent, officer, director, member, partner, manager, or proprietor, has been convicted of any crime, statutory violation punishable by forfeiture, or county or municipal ordinance violation. If so, the applicant must furnish information as to the time, place, and offense of all such convictions.

E. Whether the applicant or any other person listed in subsection D. above has ever used or been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places used.

F. Whether the applicant or any other person listed in subsection D. above has previously been denied or had revoked or suspended a pawnbroker license from any other governmental unit. If so, the applicant must furnish information as to the date, location, and reason for the action.

5.30.060 Investigation of license applicant.

Before any license is issued under the provisions of this chapter, the police department shall investigate each applicant and any other person listed in section 5.30.050 for a pawnbroker license. The department shall furnish the information derived from that investigation in writing to the city clerk and shall be made part of the application. The investigation shall include each agent, officer, member, partner, manager, or proprietor. This investigation shall include fingerprinting of the applicant and all employees. If employees are hired after the license has been issued, the license holder shall notify the Altoona Police Department of this for the purpose of a criminal records check

5.30.070 License issuance.

A. The city council *may* grant the license if all of the following apply:

1. The applicant, including an individual, a partner, a member of a limited liability company, a manager, a proprietor, or an officer, director, or agent of any corporate applicant, does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335 of the Wisconsin Statutes.

2. The applicant provides to the city clerk a bond of $2,500 with not less than 2 sureties for the observation of all municipal ordinances or state or federal laws relating to pawnbrokers. The bond must be in full force and effect at all times during the term of the license.

3. The appropriate license fee for each individual premises has been paid.

B. No license issued under this subsection may be transferred.

C. Each license is valid from January 1 until the following December 31.

5.30.080 Transaction Requirements.

A. Identification. No pawnbroker may engage in a transaction of purchase, receipt, or exchange of any secondhand article from a customer without first securing adequate identification from the customer. At the time of the transaction, the pawnbroker shall require the customer to present one of the following types of identification:

1. Current, valid Wisconsin driver's license;

2. Current, valid Wisconsin identification card;

3. Current, valid photo identification card or photo driver's license issued by another state or province of Canada.

B. Records required. At the time of any reportable transaction other than renewals, extensions, or redemptions, every pawnbroker must immediately record in English the following information by using ink or other indelible medium on forms or in a computerized record approved by the police department:

1. A complete and accurate description of each item, including, but not limited to any trademark, identification number, serial number, model number, brand name, or other identifying mark on such an item.

2. The purchase price, amount of money loaned upon or pledged therefore.

3. The maturity date of the transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges.

4. Date, time, and place the item of property was received by the pawnbroker, and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the pawnbroker's records.

5. Full name, current residence address, current residence telephone number, date of birth, and accurate description of the person from whom the item of property was received, including sex, height, weight, race, color of eyes, and color of hair.

6. The identification number and state of issue from any of the following forms of identification of the seller:

a. Current, valid Wisconsin driver's license;

b. Current, valid Wisconsin identification card;

c. Current, valid photo identification card or photo driver's license issued by another state or province of Canada.

7. The signature of the person identified in the transaction.

8. The pawnbroker must also take a color photograph or color video recording of:

a. Each customer involved in a billable transaction;

b. Every item pawned or sold that does not have a unique serial or identification number permanently engraved or affixed upon it.

If a photograph is taken, it must be at least 2 inches in length by 2 inches in width and must be maintained in such a manner that the photograph can be readily matched and correlated with all other records of the transaction to which it relates. Such photographs must be available to the police department. The major portion of the photograph must include an identifiable front facial close-up of the person who pawned or sold the item. Items photographed must be accurately depicted. The pawnbroker must inform the person that he or she is being photographed by displaying a sign of sufficient size in a conspicuous place in the premises. If a video photograph is taken, the video camera must zoom in on the person pawning or selling the item so as to include an identifiable close-up of that person's face. Items photographed by video must be accurately depicted. Video photographs must be electronically referenced by time and date so they can be readily matched and correlated with all other records of the transaction to which they relate. The pawnbroker must inform the person that he or she is being videotaped orally and by displaying a sign of sufficient size in a conspicuous place on the premises. The pawnbroker must keep the exposed videotape for 3 months.

9. Renewals, extensions, and redemptions. The pawnbroker shall provide the original transaction identifier, the date of the current transaction, and the type of transaction for renewals, extensions, and redemptions.

10. Record retention. Data entries shall be retained for at least 1 year from the date of transaction.

11. For every secondhand article purchased, received, or exchanged by a pawnbroker from a customer off the pawnbroker's premises, or consigned to the pawnbroker for sale on their premises, the pawnbroker shall keep a written inventory. In this inventory the pawnbroker shall record the name and address of each customer, the date, time, and place of the transaction, and a detailed description of the article that is the subject of the transaction. The customer shall sign his or her name on a declaration of ownership of the secondhand article identified in the inventory and shall state that he or she owns the secondhand article. The pawnbroker shall retain an original and a duplicate of each entry and declaration of ownership relating to the purchase, receipt, or exchange of any secondhand article for not less than one year after the date of the transaction, except as provided in subsection D., and shall make duplicates of the inventory and declarations of ownership available to any law enforcement officer for inspection at any reasonable time.

C. Holding period.

1. Except as provided in subsection C. 3., any secondhand article purchased or received by a pawnbroker shall be kept on the premises or other place for safekeeping for not less than 30 days after the

date of purchase or receipt, unless the person known by the pawnbroker to be the lawful owner of the secondhand article redeems it.

2. During the period set forth in subsection C. 1., the secondhand article shall be held separate from saleable inventory and may not be altered in any manner. The pawnbroker shall permit any law enforcement officer to inspect the secondhand article during this period. Within 24 hours after a request of a law enforcement officer during this period, a pawnbroker shall make available for inspection any secondhand article which is kept off the premises for safekeeping.

3. Subsections C. 1. and 2. do not apply to a secondhand article consigned to a pawnbroker.

D. Redemption period. Any person pledging, pawning or depositing any item for security must have a minimum of 60 days from the date of that transaction to redeem the item before it may be forfeited and sold. During the 60-day holding period, items may not be removed from the licensed location. Pawnbrokers are prohibited from redeeming any item to anyone other than the person to whom the receipt was issued, to any person identified in a written and notarized authorization to redeem the property identified in the receipt, or to a person identified in writing by the pledger at the time of the initial transaction and signed by the pledger, or with the approval of the police department. Written authorization for release of property to persons other than the original pledger must be maintained along with the original transaction record in accordance with subsection B.

5.30.090 Receipt Required.

Every pawnbroker must provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for 3 years. The receipt must include at least the following information:

A. The name, address, and telephone number of the licensed business.

B. The date and time the item was received by the pawnbroker.

C. Whether the item was pawned or sold, or the nature of the transaction.

D. An accurate description of each item received, including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying mark on such an item.

E. The signature or unique identifier of the pawnbroker or employee that conducted the transaction.

F. The amount advanced or paid.

G. The monthly and annual interest rates, including all pawn fees and charges.

H. The last regular day of business by which the item must be redeemed by the pledger without risk that the item will be sold, and the amount necessary to redeem the pawned item on that date.

I. The full name, residence address, residence telephone number, and date of birth of the pledger or seller.

J. The identification number and state of issue from any of the following forms of identification of the seller:

1. Current, valid Wisconsin driver's license.

2. Current, valid Wisconsin identification card.

3. Current, valid photo driver's license or identification card issued by another state or province of Canada.

K. Description of the pledger or seller, including approximate sex, height, weight, race, color of eyes, and color of hair.

L. The signature of the pledger or seller.

5.30.100 Label required.

Pawnbrokers must attach a label to every item at the time it is pawned, purchased, or received in inventory from any reportable transaction. Permanently recorded on this label must be the number or name that identifies the transaction in the shop's records, the transaction date, the name of the item and the description or the model and serial number of the items as reported to the police department,

whichever is applicable, and the date the item is out of pawn or can be sold, if applicable. Labels shall not be reused.

5.30.110 Inspection of items.

At all times during the term of the license, the pawnbroker must allow the police department to enter the premises where the licensed business is located, including all off-site storage facilities, during normal business hours, except in an emergency, for the purpose of inspecting such premises and inspecting the items, wares, merchandise, and records therein to verify compliance with this chapter or other applicable laws.

5.30.120 Police Order to Hold Property.

A. Investigative hold. Whenever a law enforcement officer from any agency notifies a pawnbroker not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency within 72 hours and will remain in effect for 15 days from the date of initial notification, or until the investigative order is canceled, or until an order to confiscate is issued, pursuant to subsection 2., whichever comes first.

B. Order to confiscate.

1. If an item is identified as stolen or evidence in a criminal case, the police department may physically confiscate and remove it from the shop, pursuant to a written order from the police department.

2. When an item is confiscated, the person doing so shall provide identification upon request of the pawnbroker, and shall provide the pawnbroker with the name and phone number of the confiscating officer and the case number related to the confiscation.

3. When an order to confiscate is no longer necessary, the police department shall so notify the pawnbroker.

5.30.130 Daily Report to Police.

A. Pawnbrokers must submit every reportable transaction to the police department daily in the following manner. Pawnbrokers must provide to the police department all information required in section 5.30.080(B). and other required information, by transferring it from their computer to the APS via modem. All required records must be transmitted completely and accurately after the close of business each day in accordance with standards and procedures established by the police department using procedures that address security concerns of the pawnbroker and the police department. The pawnbroker must display a sign of sufficient size in a conspicuous place on the premises which informs all patrons that all transactions are reported daily to the department and APS.

B. Billable transaction fees. Pawnbrokers will be charged for each billable transaction reported to the police department. These fees are intended to pay for the cost of participation in the APS.

C. If a pawnbroker is unable to successfully transfer the required reports by modem, the pawnbroker must provide the police department with printed copies of all reportable transactions by 12:00 noon the next business day.

D. If the problem is determined to be in the pawnbroker's system and is not corrected by the close of the first business day following the failure, the pawnbroker must provide the required reports as detailed in subsection C., and shall be charged a daily reporting failure fee of $10.00 until the error is corrected, or, if the problem is determined to be outside the pawnbroker's system, the pawnbroker must provide the required reports in subsection C. and resubmit all such transactions via modem when the error is corrected.

E. Regardless of the cause or origin of the technical problems that prevented the pawnbroker from uploading the reportable transactions, upon correction of the problem, the pawnbroker shall upload every reportable transaction from every business day the problem has existed.

F. The provisions of this section notwithstanding, the police department may, upon presentation of extenuating circumstances, delay the implementation of the daily reporting penalty.

G. This section shall not apply to businesses that did not have 200 reportable transactions in the past calendar year. However, any such pawnbroker must follow the daily reporting procedure for each reportable transaction by submitting a written transaction form approved by the police department to the department on the business day following the date of the reportable transaction.

H. Exception for customer return or exchange. Nothing in this section applies to the return or exchange from a customer to a pawnbroker of any secondhand article purchased from the pawnbroker.

5.30.140 (Reserved).

5.30.150 Prohibited acts.

A. No person under the age of 18 years may pawn or sell or attempt to pawn or sell goods with any pawnbroker, nor may any pawnbroker receive any goods from a person under the age of 18 years.

B. No pawnbroker may receive any goods from a person of unsound mind or an intoxicated person.

C. No pawnbroker may receive any goods unless the seller presents identification in the form of a valid driver's license, a valid state of Wisconsin identification card, or current, valid photo driver's license or identification card issued by the state of residency of the person from whom the item was received.

D. No pawnbroker may receive any item of property that possesses an altered or obliterated serial number or other identification number, or any item of property that has had its serial number removed.

E. No person may pawn, pledge, sell, consign, leave, or deposit any article of property not their own, nor shall any person pawn, pledge, sell, consign, leave, or deposit the property of another, whether with permission or without, nor shall any person pawn, pledge, sell, consign, leave, or deposit any article of property in which another has a security interest with any pawnbroker.

F. No person seeking to pawn, pledge, sell, consign, leave, or deposit any article of property with any pawnbroker shall give a false or fictitious name, nor give a false date of birth, nor give a false or out-of-date address of residence or telephone number, nor present a false or altered identification or the identification of another to any pawnbroker.

5.30.160 License denial, suspension, or revocation.

A. The city council may deny, suspend, or revoke any license issued by it under this section for fraud, misrepresentation, or false statement contained in the application for a license, or for any violation of this chapter or ss. 134.71, 943.34, 948.62 or 948.63, Wis. Stats., or for any other violation of local, state, or federal law related to the businesses licensed under this chapter.

B. The city council may deny, suspend, or revoke any license issued by it under this section if the applicant is not a citizen of the United States or a resident alien, or upon whom it is impractical or impossible to conduct a background or financial investigation due to the unavailability of information.

5.30.170 Fees.

A. The license fee under this chapter shall be as contained in the City of Altoona Fees and Licenses Schedule.

B. A billable transaction fee as contained in the City of Altoona Fees and Licenses Schedule shall be charged for each billable transaction, and such fees shall be billed to each pawnbroker monthly and are due and payable within 30 days of the billing date. Failure to pay within that time period is a violation of this chapter.

C. The Background Check fee under this chapter shall be as contained in the City of Altoona Fees and Licenses Schedule.

5.30.180 Penalty.

Any person who is convicted of violating any of the provisions of this chapter shall forfeit not less than $5 nor more than $2,000, plus the costs of prosecution, and in default of such payment, shall be

imprisoned in the county jail until such forfeiture and costs are paid, but not exceeding 90 days. Each day of violation shall constitute a separate offense.

5.30.190 Severability.

If any section of this ordinance is found to be unconstitutional or otherwise invalid, the validity of the remaining sections shall not be affected. (Ord. 9E-06, 2006)

Chapter 5.32

DIRECT SELLERS

Sections:

5.32.010	**Registration required.**
5.32.020	**Definitions.**
5.32.025	**Shows and exhibitions.**
5.32.030	**Exemptions.**
5.32.040	**Registration.**
5.32.050	**Investigation.**
5.32.060	**Appeal.**
5.32.070	**Regulation of direct sellers.**
5.32.080	**Records.**
5.32.090	**Revocation of registration.**

(Note: Chapter 5.32 "Transient Merchants" was rescinded and replaced with Chapter 5.32 "Direct Sellers", Ord. 8A-09, 8/13/09)

5.32.010 Registration required.

It is unlawful for any direct seller to engage in sales within the city without being registered for that purpose as provided herein. (Ord. 5F-91 (part), 1991)

5.32.020 Definitions.

In this chapter:

"Charitable organization" shall include any benevolent, philanthropic, patriotic, or eleemosynary person, partnership, association or corporation, or one purporting to be such.

"Clerk" shall mean the city clerk.

"Direct seller" means any individual company, corporation, or partnership who engages in retail sale of merchandise at any place in this state temporarily, and who does not intend to become and does not become a permanent merchant of such place. For purposes of this section, sale of merchandise includes a sale in which the personal services rendered upon or in connection with the merchandise constitutes the greatest part of value for the price received, but does not include a farm auction sale conducted by or for a resident farmer of personal property used on the farm, or the sale of produce or other perishable products at retail or wholesale by a resident of this state.

"Merchandise" shall include personal property of any kind, and shall include handbills, door hangers, merchandise, goods, or materials provided incidental to services offered or sold. The sale of merchandise includes donations required by the seller for the retention of goods by a donor or prospective customer.

"Permanent merchant" means any person who for at least six months prior to the consideration of the application of this chapter to said merchant (a) has continuously operated an established place of business in the local trade area among the communities bordering the place of sale or (b) has continuously resided in the local trade area among the communities bordering the place of sale and now does business from his/her residence.

"Services" shall include but not limited to any act, work, assistance, advice, or consultation provided for another for pay or consideration.

5.32.025 Shows and exhibitions.

An individual exhibitor offering goods for sale at a show or exhibition shall not be deemed to be a direct seller if the sponsor of the show or exhibition registers with the city clerk as provided in this chapter and files with the clerk a list of the names, dates of birth, and addresses of exhibitors.

5.32.030 Exemptions.

The following shall be exempt from all provisions of this chapter:

A. Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;

B. Any person selling merchandise at wholesale to dealers in such merchandise;

C. Any person selling agricultural products which the person has grown;

D. Any permanent merchant or employee thereof who takes orders at the home of the buyer for merchandise regularly offered for sale by such merchant within this county and who delivers such merchandise in their regular course of business;

E. Any person who has an established place of business where the merchandise being sold is offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested, a home visit by said person;

F. Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer;

G. Any person selling or offering for sale a service unconnected with the sale or offering for sale of merchandise;

H. Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law;

I. Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization; provided, that there is submitted to the clerk proof that such charitable organization is registered under Wis. Stat. § 202.11. Any charitable organization engaging in the sale of merchandise and not registered under Wis. Stat. § 202.11, or which is exempt from that statute's registration requirements, shall be required to register under this chapter; (Ord. 2B-15, 2015)

J. Any person who claims to be a permanent merchant, but against whom complaint has been made to the clerk that such person is a direct seller; provided that there is submitted to the clerk proof that such person has leased for at least one year, or purchased, the premises from which he/she has conducted business in the market area for at least six months prior to the date the complaint was made;

K. Any individual licensed by an examining board as defined in Section 15.01(7) of the Wisconsin Statutes;

L. This chapter does not apply to direct sellers while doing business at special events authorized by the city council or exhibitors that have registered with the city clerk.. (Ord. 5F-91 (part), 1991)

5.32.040 Registration.

A. Applicant for registration must complete and return to the clerk a registration form furnished by the clerk which shall require the following information:

1. Name, permanent address and telephone number, and temporary address, if any;

2. Age, height, weight, color of hair and eyes;

3. Name, address and telephone number of the person, firm, association or corporation that the direct seller represents or is employed by, or whose merchandise is being sold;

4. Temporary address and telephone number from which business will be conducted, if any;

5. Nature of business to be conducted and a brief description of the merchandise, and any services offered;

6. Proposed methods of delivery of merchandise, if applicable;

7. Make, model and license number of any vehicle to be used by applicant in the conduct of his/her business;

8. Most recent cities, villages, towns, not to exceed three, where applicant conducted his/her business;

9. Place where applicant can be contacted for at least seven days after leaving this City;

10. Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's direct seller business within the last five years, and the nature of the offense and the place of conviction.

B. Applicant shall present to the clerk for examination:

1. A driver's license or some other proof of identity as may be reasonably required;

2. A state certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by state authorities;

3. A state health officer's certificate where applicant's licenses involves the handling of food or clothing and is required to be certified under state law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than ninety days prior to the date the application license is made.

C. At the time the registration is returned, a fee established by resolution of the Common Council each year shall be paid to the clerk to cover the cost of processing said registration. (Ord. 12D-99)

D. The applicant shall sign a statement appointing the clerk his/her agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, in the event the applicant cannot, after reasonable effort, be served personally.

E. Upon payment of said fee and the signing of said statement, the clerk shall register the applicant as a direct seller and date the entry. Said registration shall be valid for a period of 3 months from the date of entry, subject to subsequent refusal as provided in Section 5.32.050 B. (Ord. 12C-94, 1994; Ord. 5F-91 (part), 1991)

5.32.050 Investigation.

A. Upon receipt of each application, the city clerk may refer the application to the police chief or designee who shall review the application and make any investigations or inspections deemed advisable, including, but not limited to, requesting information from the state, surrounding municipalities, and/or any community where the applicant conducted his/her business concerning the applicant’s arrest and conviction record. The police chief may furnish to the city clerk a report setting forth information derived from any such investigation, accompanied by a recommendation as to whether the registration should be granted or refused.

B. The city clerk shall refuse to register the applicant if it is determined, pursuant to the investigation, that: the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the applicant by authorities in the most recent cities, villages and towns, not exceeding three, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling; or the applicant failed to comply with any applicable provision of Section 5.32.040 B. (Ord. 2D-05, 2005; Ord. 5F-91 (part), 1991).

5.32.060 Appeal.

Any person refused or denied registration may appeal the denial through the appeal procedure provided by ordinance or resolution of the common council, or if none has been adopted, under the provisions of Sections 68.07 through 68.16 of the Wisconsin Statutes. (Ord. 5F-91 (part), 1991)

5.32.070 Regulation of direct sellers.

A. Prohibited Practices.

1. A direct seller shall be prohibited from calling at any dwelling or other place between the hours of eight p.m. and nine a.m. except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words “No Peddlers,” “No Solicitors” or words of similar meaning; calling at the rear door of any dwelling place; or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.

2. A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity, or characteristics of any merchandise offered for sale, the purpose of his/her visit, his/ her identity or the identity of the organization he/she represents. A charitable organization direct seller shall specifically disclose what portion of the sale price of the merchandise being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the merchandise.

3. No direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.

4. No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one-hundred foot radius of the source.

5. No direct seller shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.

6. Upon demand from any police officer or other city official, a direct seller shall promptly provide his/her license for examination by that person.

7. The license number issued to a direct seller must appear in a clearly visible place in all printed or written advertisement used by the direct seller to promote his/her business. Such number shall appear at the end of the following phrase: "City of Altoona license no.__." All radio or television advertisement by a direct seller must also contain either a verbal or a written statement that the advertiser is licensed by the City of Altoona, and must include that direct seller's number.

B. Disclosure Requirements.

1. After the initial greeting and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his/her name, the name of the company or organization he/she is affiliated with, if any, and the identity of merchandise or services he/she offers to sell.

2. If any sale of merchandise is made by a direct seller, or any offer for the later delivery of merchandise is taken by the seller, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than twenty-five dollars in accordance with the procedure as set forth in Section 423.203, Wisconsin Statutes; the seller shall give the buyer two copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Sections 423.203(1)(a)(b) and (c), and (2) and (3) of the Wisconsin Statutes. (Ord. 5F-91 (part), 1991)

3. If the direct seller takes a sales order for the later delivery of goods, he/she shall, at the time of the order taken, provide in writing the amount paid in advance whether full, partial or no advance payment is made, the name, address, and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

5.32.080 Records.

The chief of police shall report to the clerk all convictions for violation of this chapter and the clerk shall note any such violation on the record of the registrant convicted. (Ord. 5F-91 (part), 1991)

5.32.090 Revocation of registration.

A. Registration may be revoked by the city council after notice and hearing, if the registrant made any material omission or materially inaccurate statements in the application for registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in transient sales, violated any provision of this chapter or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in selling.

B. Written notice of the hearing shall be served personally or pursuant to Section 5.32.040 on the registrant at least seventy- two hours prior to the time set for the hearing; such notice shall contain the time and place of hearing and a statement of the acts upon which the hearing will be based. (Ord. 5F-91 (part), 1991)

Chapter 5.36

WRECKERS

Sections:

5.36.010 License—Required.
5.36.020 Permit—Application.
5.36.030 License—Fee.
5.36.040 Bond required.
5.36.050 Permit—Requirements generally.
5.36.060 Report to building inspector required when.
5.36.070 Violation—Penalty.

5.36.010 License—Required.

No person, firm or corporation shall pursue the business of building or structure wrecker in the city unless he shall previously have obtained a license to pursue said business and a permit to wreck said building or any part thereof as hereinafter provided. (Ord. A-19 § 1, 1964)

5.36.020 Permit—Application.

Any person desiring to procure a permit as a building wrecker shall make written application to the building inspector, and such application may be granted subject to compliance by the applicant of the requisites set forth in Sections 5.36.030 through 5.36.050. (Ord. A-21 (part), 1965: Ord. A-19 § 2 (part), 1964)

5.36.030 License—Fee.

The applicant shall pay to the city treasurer the fee established by resolution of the Common Council each year and exhibit to the city clerk the treasurer's receipt therefor. (Ord. A-21 § a, 1965: Ord. A-19 § 2a, 1964: Ord. 12D-99)

5.36.040 Bond required.

The applicant shall file with the city clerk a bond running to the city to be determined by the city council, conditioned that the applicant, permit to him being granted, will in prosecuting the business of building wrecker in said city, conform to all regulations relating thereto which are or may be established by the city council. (Ord. A-21 § b, 1965: Ord A-19 § 2b, 1964)

5.36.050 Permit—Requirements generally.

The applicant shall guarantee that he will, within ninety days, remove all debris at the site of the premises being wrecked, and that he will promptly repair any damage done to public property in connection with the wrecking of any building, and that he will indemnify and keep harmless the city against all liability for damages, costs or expenses arising or which may arise in favor of any person by reason of any negligence or misconduct on his part in the wrecking of any building. Such permit shall be signed by the building inspector and attested by the city clerk. (Ord. A-21 § c, 1965: Ord. A-19 § 2c, 1964)

5.36.060 Report to building inspector required when.

Every person receiving a permit to wreck a building shall upon completion of the wrecking make a report to the building inspector. (Ord. A-19 § 3, 1964)

5.36.070 Violation—Penalty.

Any person who shall violate any provision of this chapter shall upon conviction pay a fine of not less than fifty dollars for each and every offense. The penalty for violation of this section shall be as provided in Chapter 1.08. A separate offense shall be deemed committed on each day upon which a violation occurs or continues. If any person shall be convicted of a second or subsequent violation of the provisions of this section and the court in its judgment shall determine that he was personally guilty of a failure to exercise due care to prevent violation, his license privileges shall terminate immediately and he shall not be entitled to another license nor act as an agent or servant of another licensee for five years thereafter. (Ord. A-19 § 4, 1964)

Chapter 5.46

MASSAGE THERAPY FACILITIES, MASSAGE THERAPISTS AND THE PRACTICE OF MASSAGE THERAPY

Note: Chapter 5.46 was repealed on March 12, 2015, Ord. 3A-15, 2015.

Chapter 5.50

SPECIAL EVENTS PERMIT

Sections:

5.50.010 Definitions.
5.50.020 Administration.
5.50.030 Permit required.
5.50.040 Exemptions.
5.50.050 Applications.
5.50.060 Issuance of permit.
5.50.070 Revocation.
5.50.080 Appeal.
5.50.090 Penalties.

5.50.010 Definitions.

"City" means the city of Altoona, Wisconsin.

"City administrator" means the city administrator of the city of Altoona, Wisconsin.

"City council" means the city council of the city of Altoona, Wisconsin.

"Special event" means any activity which attracts, seeks to attract, or otherwise generates or causes a number of participants or spectators, for a particular and limited purpose and time, to gather. Special events include, but are not limited to: races, parades, street fairs, sidewalk sales, circuses, carnivals, shows, exhibitions, festivals, fairs, rallies, demonstrations, parties, and other events that may extraordinarily impact or obstruct public right-of-ways, public property or public services.

5.50.020 Administration.

The regulation of this chapter shall be under the supervision of the city administrator; provided, however, that the city administrator may delegate the duty of enforcing the provisions of this chapter to other designees. The city administrator or designee may adopt written procedures for the purpose of carrying out the provisions of this chapter, provided that said determinations are not contrary to this chapter.

5.50.030 Permit required.

No person shall hold or conduct any special event, governed by this chapter, without first obtaining a special events permit.

5.50.040 Exemptions.

A. This chapter shall not apply to any improvement or maintenance work performed by the city, or to street, utility and related construction work authorized by any other permit or ordinance.

B. This chapter shall be waived for city events and festivals.

5.50.050 Applications.

A. Applications shall be made to the city on a form prescribed and provided by the city. The application shall contain such information as the city deems necessary, which may include, but not be limited to:

1. Property which is not public area, to be used;
2. A full and complete description of the special event;
3. The use to be made of any public area by the applicant; and
4. The duration of the special event and proposed use.

B. Applications for a special events permit shall be submitted to the city no later than thirty working days prior to the proposed event. The city administrator may waive this time limit for good cause.

5.50.060 Issuance of permit.

A. Upon receipt of a complete application and application fee as stipulated in Chapter 3.08, the city administrator shall make a determination regarding said permit within fifteen working days of the date of receipt of the complete application. The permit shall be issued to the applicant conditioned upon the applicant's written agreement to comply with the terms of such permit as determined by the city. The terms of a special events permit, and the city's consideration, shall include, but are not limited to, the following:

1. The time, hours, locations, and size of the special event.
2. Measures necessary to mitigate the disruption or impedance of the movement of traffic within the city.
3. Evidence that the location or type of the special event will not cause undue hardship for neighboring businesses or residents.
4. The special event shall not, in the judgment of the city, require the diversion of so many police officers that it would unreasonably affect police protection for the remainder of the city and its residents.
5. The special event shall not interfere with access for police, fire prevention, emergency and/or medical services and mitigation measures, as appropriate, shall be required to ensure same.
6. Any structure temporarily erected as a part of the special event will not extend or protrude into or over any portion of the public space that is open to vehicle or pedestrian travel in such a manner as to create a likelihood of endangering the use of such space by vehicles or pedestrian travel.
7. In the event the special event involves encroachment or partial obstruction of a sidewalk or other walkway open to the public, a minimum of three feet of unobstructed sidewalk or other protected walkway shall be maintained at all times.
8. The applicant agrees to indemnify, hold harmless and defend the city, its officers, agents and employees from any and all claims, losses or liability of whatever nature that may arise out of or in any way connected to the applicant's special event. Applicant shall provide written proof of insurance coverage satisfactory to the city prior to obtaining said permit.
9. The applicant remits all fees, charges, deposits, taxes, insurance or bonds which may be required by the city in a timely fashion.
10. The applicant meets such other conditions as are imposed by the city to reasonably assure that the special event does not in any way create a likelihood of endangering those who are lawfully using the public place or right-of-ways.

B. The city reserves the right to impose special conditions based upon the particular circumstances of each special event, including, but not limited to, the permittee being required to employ city police officers or other city employees to direct, mitigate and impact public health, safety or welfare.

C. All conditions shall be subscribed on or attached to the permit.

5.50.070 Revocation.

A. All permits issued pursuant to this chapter shall be temporary, shall vest no permanent right in the applicant and may be revoked by the city as follows:

1. Immediate revocation in the event of a violation of any of the terms and conditions of the permit;
2. Without notice in the event such use shall become, for any reason, dangerous or any structure of obstruction permitted shall become insecure or unsafe;
3. Upon thirty days notice if the permit was not for the specified period of time and is not covered by the preceding subsections.

B. If any use or occupancy for which the permit has been revoked is not immediately discontinued, the city may remove any such structure or obstruct or cause to be made such repairs upon the structure or obstruction as may be necessary to render the same secure and safe, or adjourn any special event the cost and expense of which shall be assessed against the permittee, including all professional fees associated with enforcement of the collection of the same.

5.50.080 Appeal.

Any decision of the city administrator or his designee with respect to the issuance or refusal to issue a permit or his revocation of or his refusal to revoke a permit may be appealed to the city council by filing a letter of appeal stating the reasons for the appeal of such decision, with the city clerk within five working days of the date of issuance of the decision being appealed. The city council shall review the appeal and issue a final decision within thirty working days of the date of the filing of the appeal.

5.50.090 Penalties.

A. Criminal Penalty. Any person who willfully violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of this chapter or its provisions shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not in excess of one thousand dollars or by imprisonment in the jail for not to exceed ninety days or by both such fine and imprisonment. Each day that a violation exists shall constitute a separate offense.

B. Civil Penalty. In addition to the foregoing criminal remedy, the violation of any of the provisions of this chapter may be deemed by the city to be a nuisance and threatening to the health and safety of the citizens of Altoona. The city may utilize any civil remedy available to it under the laws of the state of Wisconsin to enforce these provisions, including injunctive relief. Furthermore, any person violating any of the provisions of this chapter may become liable to the city for any direct or indirect expense, loss or damage occasioned the city by reason of such violation. (Ord. 8C-09, 2009)