

## **Title 5**

### **BUSINESS TAXES, LICENSES AND REGULATIONS**

#### **Chapters:**

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## Chapter 5.04

### BUSINESS LICENSES

#### Sections:

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#### 5.04.010 Purpose.

The purpose of this chapter is to regulate and ensure the legal conduct of businesses, assist in the effective administration of health, fire, building, zoning, and other codes of the town, to impose fees for revenue purposes, and to provide a means for obtaining public information and compiling statistical information on existing and new businesses in the town. (Ord. 2007-26, 2007).

#### 5.04.020 Definitions.

In construing provisions of this chapter, the following words and terms shall have the meanings defined in this section, unless from the context a more limited or different meaning is clearly defined or apparent:

A. “Business” includes all activities, occupations, farmers deriving 60 percent or more of their income from farming pursuits or professions located and/or engaged in within the town, with the object of gain, benefit or advantage to the licensee or to another person or class, directly or indirectly. Each business location shall be deemed a separate business. This term shall not include peddlers and hawkers as defined in Chapter 5.08 EMC.

B. “Engaging in business” means commencing, conducting or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators hold themselves out to the public as conducting such a business.

C. “Licensee” includes any person who is engaged in business or who is required to have a business license under this chapter or who per-

forms any act for which a license fee is imposed by this chapter.

D. “License officer” means the employee of the town of Eatonville who is designated to administer this chapter.

E. “Year” means the calendar year. (Ord. 2007-26, 2007; Ord. 91-21 § 1, 1991. Formerly 5.04.010).

#### 5.04.030 Required.

Unless listed as exempt under EMC 5.04.040, it is unlawful for any person, firm or corporation to engage in or carry on within the town any business, profession, trade or occupation designated in this chapter without first having obtained from the town a license to do so. All licenses issued pursuant to the provisions of this chapter shall be posted in a prominent location at the premises where the licensed business, profession, trade or occupation is carried on. (Ord. 2007-26, 2007; Ord. 91-21 § 2, 1991. Formerly 5.04.020).

#### 5.04.040 Exemptions.

The following businesses and activities shall be exempt from the provisions of this chapter:

A. Businesses where the sale or contract for services occurs on business premises outside of the town and the only event occurring within the town is the mere delivery of the goods or services to the customer or client by common carrier.

B. Minors engaged in baby-sitting, delivery of newspapers, lawn mowing, car washing and other similar activities.

C. Any instrumentality of the United States, state of Washington, or any political subdivisions thereof, with respect to the exercise of governmental functions.

D. Nonprofit organizations, including but not limited to religious, civic, charitable, nonprofit, cultural, or youth organizations. (Ord. 2007-26, 2007).

#### 5.04.050 Applicable regulations.

A. Agents Responsible for Obtaining License. The representatives of nonresidents who are doing business in the town shall be personally responsible for the compliance of their principals, and the business they represent, with this chapter.

B. Joint Operation. A person engaged in two or more businesses at the same location shall be required to obtain separate business licenses for conducting each of the businesses. (Ord. 2007-26, 2007).

**5.04.060 Application and fee renewal.**

Application for such license shall be made at the office of the clerk on a form to be furnished for that purpose, and shall be accompanied by the appropriate license fee. Each such application shall be signed by the person, firm or corporation to be licensed. Licenses may thereafter be renewed without further application, upon the payment to the town of the annual license fee on or before February 1st each year. (Ord. 2007-26, 2007; Ord. 91-21 § 3, 1991. Formerly 5.04.030).

**5.04.070 Term.**

Licenses issued pursuant to this chapter shall be due January 1st of each year and shall be valid for the calendar year, or balance thereof, in which application is received, and the fee license provided for in this chapter shall be payable annually. There shall be no reduction of any license fee because of the fact that an application is received late in the calendar year or for any other reason. (Ord. 2007-26, 2007; Ord. 91-21 § 4, 1991. Formerly 5.04.040).

**5.04.080 Issuance of license.**

No license shall be issued until the application has been fully completed and all applicable ordinances have been fully complied with. In addition, any business requiring a state or federal license shall obtain the licenses and provide the town with proof of their issuance prior to the issuance of a town license or any renewal thereof. (Ord. 2007-26, 2007; Ord. 91-21 § 5, 1991. Formerly 5.04.050).

**5.04.090 Assignability.**

Licenses issued pursuant to the terms of this chapter shall be personal to the applicant or the business for which they were obtained and shall not be assignable in the event of sale or transfer of such business to other ownership except upon application to the town for such transfer and the payment of a transfer fee of \$20.00. (Ord. 2007-26, 2007; Ord. 91-21 § 6, 1991. Formerly 5.04.060).

**5.04.100 License fee for business.**

A. Every non-exempt person, firm or corporation engaged in any business, profession, trade, or occupation within the town shall pay an initial \$50.00 business license fee for the privilege of engaging in business in the town.

B. Business licenses shall be renewed annually prior to February 1st of any year. The renewal fee shall be \$50.00. A penalty of \$25.00 plus \$5.00 per

month starting on March 1st shall be assessed on any delinquent license renewal which has not been paid on or before February 1st of any year.

C. Business license fees shall be waived for temporary vendors selling wares at the farmers market or arts festival for no longer than three consecutive days; provided, that the farmers market or arts festival locations are approved by the mayor or town council. (Ord. 2007-26, 2007; Ord. 2002-07 § 1, 2002; Ord. 91-21 § 7, 1991. Formerly 5.04.070).

**5.04.110 Revocation.**

A. If any person, firm or corporation licensed under this chapter violates any provision of this chapter or the hereinafter set forth restrictions or violates any other town ordinance or provisions thereof, in addition to the criminal penalty provided for in such provisions, the license of the person, firm or corporation shall be revoked or suspended:

1. Not to permit any gambling or immoral conduct on such premises, not to keep, sell, give away or otherwise dispose of any controlled substance or intoxicating liquor on such premises nor permit the same to be kept, sold, given away or otherwise disposed of thereon by any person. The prohibitions contained in this subsection concerning intoxicating liquor shall have no application to establishments from which persons under the age of 21 are excluded either by law or as a matter of business policy nor to a business licensed by the state to sell intoxicating liquor;

2. Not to have a financial interest in any business within one year from the date of revocation of the business license;

3. Not to permit any intoxicating liquors kept for unlawful use, sale or distribution or allow any act done or any omission to perform a duty, which act or omission shall:

a. Annoy, injure or endanger the safety, health, comfort or repose of any considerable number of persons, or

b. Offend public decency, or

c. Unlawfully interfere with, be foul, obstruct or tend to obstruct or render dangerous for passage a public park, square, street, alley or highway, or stream, or

d. In any way render a considerable number of persons insecure in life or the use of property.

Provided, that the person, firm or corporation may request a hearing before the town council by giving written notice of appeal to the town clerk

within 15 days of receipt of notice of revocation or suspension; provided, further, that the mayor and town council may suspend the license for any term they deem appropriate.

B. If a license is revoked or suspended under this section, the license fee shall be forfeited and not refundable. (Ord. 2007-26, 2007; Ord. 91-21 § 8, 1991. Formerly 5.04.080).

#### **5.04.120 Exercise of power.**

This chapter shall be deemed an exercise of the power of the town to license for revenue and regulation, and nothing in this chapter shall be construed to repeal or affect any other ordinance of the town which purports to regulate some business or activity pursuant to the general police power of the town, notwithstanding the fact that such ordinance may or might contain provisions relating to the licensing of such activity. (Ord. 2007-26, 2007; Ord. 91-21 § 9, 1991. Formerly 5.04.090).

#### **5.04.130 Violation – Penalty.**

Any person, firm or corporation who violates any of the provisions of this chapter or fails to comply with any of the requirements thereof shall be guilty of a misdemeanor. (Ord. 2007-26, 2007; Ord. 91-21 § 10, 1991. Formerly 5.04.100).

## **Chapter 5.08**

### **PEDDLERS AND HAWKERS**

#### **Sections:**

- 5.08.010 Definitions.
- 5.08.020 License – Required.
- 5.08.030 License – Fees.
- 5.08.040 License – Granting – Procedure.
- 5.08.050 License – Issuance.
- 5.08.060 License – Revocation.
- 5.08.070 Exceptions.
- 5.08.080 License – Producing for inspection.

#### **5.08.010 Definitions.**

A. Peddler. Any person, either as principal or agent, who carries goods, wares and merchandise, articles, things, or personal property of whatsoever name, nature or description, for sale, from house to house, place to place, or upon any street, highway or public place within the town is defined to be a peddler within the meaning of this chapter. Any person who goes from house to house, dwelling place to dwelling place, or upon any street, highway or public place within the town, soliciting or taking orders for the purchase or sale of goods, wares or merchandise, articles, things, or personal property of whatsoever name, nature or description, to be delivered in the future, is also defined to be a peddler within the meaning of this chapter.

B. Hawker. Every person, either as principal or agent, selling or offering for sale any goods, wares or merchandise, articles, things, or personal property of whatsoever name, nature or description, by peddling the same from house to house or upon any street, highway or public place, who makes public outcry or gives any musical or other public announcement or makes any public speech to draw customers or attract notice is defined to be a hawker within the meaning of this chapter. (Ord. 75-4 §§ 1, 2, 1975).

#### **5.08.020 License – Required.**

It is unlawful for any person to hawk or peddle any article or thing of value, or goods or merchandise, or to engage in the business of hawking or peddling within the town, as defined in EMC 5.08.010, without first having obtained a license therefor in the manner prescribed in this chapter; provided, however, that nothing in this chapter shall apply to peddlers of agricultural, horticultural or farm or dairy products which they may grow or raise, nor shall the provisions of this chapter apply to peddlers or hawkers who, upon petition to the

town council, are found to be engaged in religious, charitable, scientific, educational, artistic, literary, or any other civic undertaking which has been approved by the town council as exempt from the provisions of this chapter. (Ord. 75-4 § 3, 1975).

**5.08.030 License – Fees.**

A. Peddler. The license fee to be paid by any person desiring to engage in the business of a peddler, as defined in EMC 5.08.010, shall be the sum of \$20.00 per day; or, if the license sought to be procured is to engage in the business of peddler for the period of one month, the license fee shall be the sum of \$50.00 per month; or, if the license sought to be procured is to engage in the business of peddler for the period of one year, the license fee shall be the sum of \$150.00 per year. All annual licenses shall expire at the end of the calendar year.

B. Hawker. The license fee to be paid by any person desiring to engage in the business of hawker, as defined in EMC 5.08.010, shall be the sum of \$20.00 per day; or, if the license sought to be procured to engage in the business of hawker is for the period of one month, the license fee shall be the sum of \$50.00 per month; or, if the license sought to be procured to engage in the business of hawker is for the period of one year, the license fee shall be the sum of \$150.00 per year. All annual licenses granted for hawkers shall expire at the end of each calendar year.

C. Hawker of Dairy Products. A hawker that sells primarily dairy and ice cream products shall pay the sum of \$25.00 for an annual license. (Ord. 91-10 § 1, 1991; Ord. 75-4 §§ 4, 5, 1975).

**5.08.040 License – Granting – Procedure.**

A. Peddler. Any person desiring to engage in the business of peddler, as defined in EMC 5.08.010, within the town shall make payment therefor in advance to the town clerk at the rates specified in EMC 5.08.030. The clerk's receipt therefor shall operate as a license for the time specified in the license.

B. Hawker. Any person desiring to engage in the business of hawker, as defined in EMC 5.08.010, within the town shall make payment therefor in advance to the town clerk at the rates specified in EMC 5.08.030. The clerk's receipt therefor shall operate as a license for the time specified in the license. (Ord. 75-4 §§ 6, 7, 1975).

**5.08.050 License – Issuance.**

The town clerk shall issue licenses to applicants for peddler's licenses and hawker's licenses upon

proper application and tender of proper fees for such licenses. (Ord. 78-8 § 9, 1978; Ord. 75-4 § 8, 1975).

**5.08.060 License – Revocation.**

The license issued under this chapter is subject to revocation by the council if the licensee, its employees or agents engage in illegal activities in the conduct of its business, or engage in activities which are dangerous to the health, safety and welfare of the citizens of the town. Such revocation shall be made after the licensee has been given written notice of a hearing to be held by the council at least 10 days prior to the hearing date. (Ord. 78-8 § 10, 1978; Ord. 75-4 § 9, 1975).

**5.08.070 Exceptions.**

This chapter shall not apply to solicitors or hawkers engaged in interstate commerce. (Ord. 78-8 § 11, 1978; Ord. 75-4 § 10, 1975).

**5.08.080 License – Producing for inspection.**

All persons obtaining receipts for licenses from the town clerk shall upon demand being made upon them by any police officer, produce the same for inspection. (Ord. 75-4 § 11, 1975).

**Chapter 5.12****SPECIALIZED FOREST PRODUCTS**

## Sections:

- 5.12.010 Adoption of state statutes.  
 5.12.020 Violation – Penalty.

**5.12.010 Adoption of state statutes.**

Chapter 76.48 RCW is adopted in its entirety, except for RCW 76.48.120 and 76.48.130. (Ord. 78-17 § 1, 1978).

**5.12.020 Violation – Penalty.**

Violations of this chapter shall be punished in accordance with the general penalty ordinance. (Ord. 78-17 § 2, 1978).

**Chapter 5.16****GAMBLING ACTIVITIES TAX**

## Sections:

- 5.16.010 State statutes incorporated.  
 5.16.015 Social card games.  
 5.16.020 Persons subject to tax – Rates.  
 5.16.030 Quarterly computation – Payment – Exceptions.  
 5.16.040 Administration and collection – Report to state.  
 5.16.050 Payment – Method.  
 5.16.060 Payment – Failure – Penalty.  
 5.16.070 Declaration of intention to engage in activity to be filed.  
 5.16.080 Records.  
 5.16.090 Overpayment or underpayment.  
 5.16.100 Failure to make return.  
 5.16.110 Tax additional to others.  
 5.16.120 Taxes, penalties and fees constitute debt to municipality.  
 5.16.130 Limitation on right to recovery.  
 5.16.140 Violation – Penalties.

**5.16.010 State statutes incorporated.**

Chapter 135, Laws of Washington 1974, 3rd Ex. Sess. and Chapter 155, Laws of Washington 1974, 3rd Ex. Sess., are incorporated in total by reference, including any amendments thereto. (Ord. 89-11 § 1, 1989).

**5.16.015 Social card games.**

A. Social card games are not prohibited within the town of Eatonville and bona fide charitable or nonprofit organizations may operate or conduct social card games if social card games have been duly licensed by the Washington State Gambling Commission and if they are otherwise operator-conducted and in compliance with this code.

B. Any person who violates or fails to comply with the provisions of this section shall be guilty of a misdemeanor and punishable pursuant to the general penalty ordinance of this code.

C. For the purposes of this section the words and terms used herein shall have the same meaning given to each pursuant to Chapter 9.46 RCW, as the same may exist and from time to time be amended; and is set forth in the rules of the Washington State Gambling Commission, Chapter 230 WAC, as the same may exist or hereafter be amended, unless otherwise specifically provided herein. (Ord. 2004-14 § 1, 2004; Ord. 99-12 §§ 1, 2, 3, 1999).

**5.16.020 Persons subject to tax – Rates.**

There is levied upon all persons, associations and organizations conducting or operating within the town any of the activities listed below, a tax in the following amounts to be paid to the town:

A. Any punch boards or pull tabs, in the amount of two and seven-tenths percent of adjusted gross receipts distributed directly from the operation of the punch board or pull tabs themselves. “Adjusted gross receipts” is defined as gross receipts minus the actual cost of prizes distributed to customers;

B. Card playing in the amount of 10 percent of the gross receipts received as fees charged persons for the privilege of playing in card games; provided, however, a minimum tax of \$100.00 per year shall be imposed on each licensee, the tax payable at such time as the licensee is authorized to conduct social card games within the town. Credit for the \$100.00 payment shall be given for the tax due under EMC 5.16.030;

C. Bingo in the amount of one percent of gross revenues, less amounts distributed for prizes; provided, that bona fide charitable or nonprofit organizations conducting once per year bingo shall be exempt up to the first \$10,000 of revenue, less amount distributed for prizes;

D. Raffles in the amount of 10 percent of the gross revenues, less amounts distributed for prizes, and provided further that a bona fide charitable organization or nonprofit organization shall be exempt up to the first \$10,000 of revenues, less amounts distributed for prizes;

E. Amusement games in the amount of two percent of the gross revenues, less amounts distributed for prizes. (Ord. 97-08 § 1, 1997; Ord. 89-11 § 2, 1989).

**5.16.030 Quarterly computation – Payment – Exceptions.**

Each of the various taxes imposed by this chapter shall be computed on the basis of activity during each calendar quarter year, shall be due and payable in quarterly installments, and remittance therefor, together with return forms, shall be made to the town, on or before the last day of the month next succeeding the quarterly period in which the tax accrued, that is, on January 31st, April 30th, July 31st, and October 31st of each year; provided, that the following exceptions to this payment schedule shall be allowed, or required:

A. Whenever any person, association or organization taxable hereunder conducting or operating a taxable activity for a period of more than two consecutive weeks, quits business, sells out, otherwise

disposes of its business or terminates the business, any tax due hereunder shall become due and payable and such taxpayer shall, within 10 days thereafter, make a return and pay the tax due.

B. Whenever it appears to the town clerk-treasurer that the collection of taxes from any person, association or organization may be in jeopardy, the town clerk-treasurer, after not less than 10 days’ notice to the taxpayer, is authorized to require that taxpayer to remit taxes and returns at such shorter intervals than quarterly or annually, as the town clerk-treasurer shall deem appropriate under the circumstances. (Ord. 89-11 § 3, 1989).

**5.16.040 Administration and collection – Report to state.**

A. Administration and collection of the various taxes imposed by this chapter shall be the responsibility of the town clerk-treasurer. Remittance of the amount due shall be accompanied by a completed return form prescribed and provided by the town clerk-treasurer. The taxpayer shall be required to swear and affirm that the information given in the return is true, accurate and complete.

B. The town clerk-treasurer is authorized, but not required, to mail to taxpayers forms for returns. Failure of the taxpayer to receive such a form shall not excuse a taxpayer from making the return and timely paying all tax due. The town clerk-treasurer shall make forms available to the public in reasonable numbers in the town clerk-treasurer’s office during regular business hours.

C. In addition to the return form, a copy of the taxpayer’s quarterly report to the Washington State Gambling Commission required by WAC 230-08 for the period in which the tax accrued, shall accompany remittance of the tax amount due. (Ord. 89-11 § 4, 1989).

**5.16.050 Payment – Method.**

Taxes payable hereunder shall be remitted to the town clerk-treasurer on or before the time required by bank draft, certified check, cashier’s check, personal check, money order or in cash. If payment is made by draft or check, the tax shall not be deemed paid until the draft or check is honored in the usual course of business, nor shall the acceptance of any sum by the town clerk-treasurer be an acquittance or discharge of the tax unless the amount paid is the full amount due. The return, and copy of quarterly report to the Washington State Gambling Commission, shall be filed in the office of the town clerk-treasurer after notation by that office upon the

return of the amount actually received from the taxpayer. (Ord. 89-11 § 5, 1989).

**5.16.060 Payment – Failure – Penalty.**

If full payment of any tax or fee due under this chapter is not received by the town clerk-treasurer on or before the date due, there shall be added to the amount due a penalty fee as follows:

A. One to 10 days late, 10 percent of tax due;

B. Eleven to 60 days late, 30 percent of tax due; but in no event shall the penalty amount be less than 10 percent. In addition to the penalty, the town clerk-treasurer may charge the taxpayer interest of nine percent of all taxes and fees due for each 30-day period, or portion thereof, that said amounts are past due.

Failure to make payment in full of all tax amounts, and penalties, within 60 days following the day the tax amount initially became due shall be both a civil and a criminal violation of this section. (Ord. 89-11 § 6, 1989).

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**5.16.070 Declaration of intention to engage in activity to be filed.**

In order that the town may identify those persons who are subject to taxation under this chapter, each person, association or organization, including charitable and nonprofit organizations, shall file with the town clerk-treasurer a sworn declaration of intent to conduct an activity taxable under this chapter upon a form to be prescribed by the town clerk-treasurer together with a copy of the license issued therefor by the Washington State Gambling Commission. The filing shall be made not later than 10 days prior to conducting or operating the taxable activity. No fee shall be charged for such filing, which is not for the purpose of regulation of this activity but for the purposes of administration of this chapter only.

Failure to timely file shall not excuse any person, association or organization from any tax liability. (Ord. 89-11 § 7, 1989).

**5.16.080 Records.**

Each person, association or organization engaging in an activity taxable under this chapter shall maintain records respecting that activity which truly, completely and accurately discloses all information necessary to determine the taxpayer's tax liability hereunder during each base tax period. Such records shall be kept and maintained for a period of not less than three years. In addition, all information and items required by the Washington State Gambling Commission under Chapter 230-08 WAC, and the United States Internal Revenue Service respecting taxation, shall be kept and maintained for the periods required by those agencies.

All books, records and other items required to be kept and maintained under this section shall be subject to, and immediately made available for, inspection and audit at any time with or without notice, at the place where such records are kept, upon demand by the town clerk-treasurer or his designees, for the purpose of enforcing the provisions of this taxing ordinance codified herein.

Where a taxpayer does not keep all of the books, records or items required to be kept or maintained under this section in this jurisdiction so that the town clerk-treasurer may examine them conveniently, the taxpayer shall either:

A. Produce all of the required books, records or items within this jurisdiction for such inspection within 10 days following a request of the local official that he do so; or

B. Bear the actual cost of inspection by the town clerk-treasurer or his designee, at the location at which such books, records or items are located, provided that a taxpayer choosing to bear these costs shall pay in advance to the town clerk-treasurer the estimated cost thereof, including but not limited to, round-trip fare by the most rapid means, lodging, meals and incidental expenses. The actual amount due, or to be refunded for expenses shall be determined following said examination of the records.

A taxpayer who fails, neglects or refuses to produce such books and records either within or without this jurisdiction, in addition to being subject to other civil and criminal penalties provided by this chapter shall be subject to a jeopardy fee or tax assessment by the town clerk-treasurer.

This penalty fee or jeopardy assessment shall be deemed prima facie correct and shall be the amount of fee or tax owing the town clerk-treasurer by the taxpayer unless he can prove otherwise by competent evidence. The taxpayer shall be notified by mail by the town clerk-treasurer of the amount of tax so determined by jeopardy assessment, together with any penalty and/or interest, and the total of such amounts shall thereupon become immediately due and payable. (Ord. 89-11 § 8, 1989).

**5.16.090 Overpayment or underpayment.**

If, upon application by a taxpayer for a refund or for an audit of his records, upon any examination of the returns or records of any tax payer it is determined by the town clerk-treasurer that within three years immediately preceding receipt by the town clerk-treasurer of the application of the taxpayer for a refund, or an audit, or, in the absence of such an application, within the three years immediately preceding the commencement by the town clerk-treasurer of such examination:

A. A tax or other fee has been paid in excess of that properly due, the total excess paid over all amounts due the town within such period of three years shall be credited to the taxpayer's account or shall be allowed with respect to the town clerk-treasurer more than three years before the date of such application or examination;

B. A tax or other fee has been paid which is less than that properly due, or no tax or other fee has been paid, the town clerk-treasurer shall mail a statement to the taxpayer showing the balance due, including separate, additional violation of this chapter, both civil and criminal, if the taxpayer

fails to make payment in full within 10 calendar days of such mailing. (Ord. 89-11 § 9, 1989).

**5.16.100 Failure to make return.**

If any taxpayer fails, neglects or refuses to make and file his return as and when required under this chapter, the town clerk-treasurer is authorized to determine the amount of tax payable, together with any penalty and/or interest assessed under the provisions of this chapter, and by mail to notify such taxpayer of the amount so determined, which amount shall thereupon become the tax and penalty and/or interest and shall become immediately due and payable. (Ord. 89-11 § 10, 1989).

**5.16.110 Tax additional to others.**

The tax herein levied shall be additional to any license fee or tax imposed or levied under the law or any other ordinance of the town except as herein otherwise expressly provided. (Ord. 89-11 § 11, 1989).

**5.16.120 Taxes, penalties and fees constitute debt to municipality.**

Any tax due or unpaid under this chapter and all penalties or fees shall constitute a debt to the town, a municipal corporation, and may be collected by court proceedings the same as any other debt in like amount which shall be in addition to all other existing remedies. (Ord. 89-11 § 12, 1989).

**5.16.130 Limitation on right to recovery.**

The right of recovery by the town from the taxpayer for any tax provided hereunder shall be outlawed after the expiration of three calendar years from the date said tax became due. The right of recovery against the town because of overpayment of tax by any taxpayer shall be outlawed after the expiration of the three calendar years from date such payment was made. (Ord. 89-11 § 13, 1989).

**5.16.140 Violation – Penalties.**

Any person violating or failing to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the town clerk-treasurer pursuant thereto is guilty of a misdemeanor. (Ord. 89-11 § 14, 1989).

**Chapter 5.20**

**CABLE COMMUNICATION SYSTEM  
FRANCHISE**

Sections:

- 5.20.010 Definitions.
- 5.20.020 Terms of franchise.
- 5.20.030 Hearing.
- 5.20.040 Acceptance.
- 5.20.050 Police powers.
- 5.20.060 Rules and regulations by the town.
- 5.20.070 Technical standards.
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- 5.20.085 Access channels – Adopted.
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- 5.20.140 Emergency override.
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- 5.20.370 Transfer of ownership.
- 5.20.380 Right of town to purchase.
- 5.20.390 Removal and abandonment of property of franchisee.
- 5.20.400 Revocation for cause.
- 5.20.410 Effect of termination for noncompliance.
- 5.20.420 Indemnify and hold harmless.
- 5.20.430 Insurance.
- 5.20.440 Inconsistency.
- 5.20.450 Force majeure.

**5.20.010 Definitions.**

For the purposes of this chapter:

A. "Access channels" means free composite channels to be used for educational purposes and by government and other public agencies and/or their representatives (commonly referred to as "PEG" channels).

B. "Act" means the Cable Communications Policy Act of 1984 and any subsequent amendments.

C. "Addressability" means the ability of a system allowing the franchisee to authorize by remote control customer terminals to receive, change or to cancel any or all specified programming.

D. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with franchisee.

E. "Applicant" means any person or entity that applies for a franchise.

F. "Basic services" means those broadcast and nonbroadcast services provided by the cable franchisee at the lowest monthly charge as defined by the Act or rules now or subsequently adopted by the FCC.

G. "Cable service" means (1) the one-way transmission to subscriber of video programming or other programming service; and (2) in case of two-way transmission capability, subscriber interaction, if any, which is required for the selection by the subscriber of such video programming or other programming service.

H. "CATV" means a community antenna television system as hereinafter defined.

I. "Channel" means a single path or section of the spectrum which carries a television signal.

J. *Repealed by Ord. 95-10.*

K. "Community antenna television system," "cable television system," or "system," means a system of antennas, cables, wires, lines, towers, transmission lines, equipment or facilities, designed and constructed for the purpose of producing, receiving, controlling, transmitting, amplifying, scrambling and distributing audio, video and other forms of electronic or electrical signals, which provides cable service to multiple subscribers located in whole or in part in the town. Such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in

part, to the provisions of Title II of the Act, except that such facility shall be considered a cable system (other than for purposes of Section 621 (c) of the Act) to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility systems.

L. "Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and with an appropriate channel selector which also permits a subscriber to view all signals delivered at designated converter dial locations.

M. "Council" means the present governing body of the town or any future board constituting the legislative body of the town.

N. "FCC" means the Federal Communications Commission, a regulatory agency of the United States government.

O. "Franchise" means the nonexclusive right or authority to construct, operate and maintain a cable television system by use of town owned rights-of-way, easements or other publicly owned properties.

P. "Franchisee" means the person, firm or corporation to whom or which a franchise, as hereinabove defined, is granted by the council under this chapter and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in town ordinance.

Q. "Headend" means the electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.

R. "Interactive services" means services provided to subscribers where the subscriber either (1) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (2) transmits signals to any other location for any purpose.

S. "Office" means the person or entity designated by the town as being responsible for the administration of the franchise for the town.

T. "Operator" shall have the same meaning as "franchisee."

U. "Property of franchisee" means all property owned, installed or used by a franchisee in the conduct of a CATV business in the town under the

authority of a franchise granted pursuant to this chapter.

V. "Public way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the town in the service area which shall entitle the town and the franchisee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. Public way shall also mean any easement now or hereafter held by the town within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the town and the franchisee to the use thereof for the purpose of installing or transmitting franchisee's cable service or other service over poles, wires, cables, conductor, ducts, conduits, vaults, man-holes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the cable system.

W. "Receipts" means monthly fees received directly from subscribers by the grantee as a result of the operation of the cable system through the use of the public streets and rights-of-way for which a franchise is required under this chapter. For purposes of calculating franchise fees hereunder, gross receipts shall not include, or shall be reduced by the following:

1. Any taxes on services furnished by the franchisee imposed directly upon the franchisee or any subscriber or used by the state or any other governmental entity, including any franchise fee, sales, tax, or utility users tax;
2. Revenue derived from noncable related services;
3. The value of in-kind services or revenue from the sale, rental or servicing of merchandise not related to the cable system in the town or with respect to which a franchise for the operation of a cable system is not required under this chapter;
4. Reimbursement from developers, individuals, suppliers or utilities;
5. Product cost;
6. Installation revenues;
7. Copyright fees paid to the Copyright Royalty Tribunal;

8. Reimbursement for damaged equipment or plant;

9. Advertising revenues;

10. Revenues from leased access channel.

X. "Subscriber" means a person or entity or user of the cable system who lawfully receives cable services or other service therefrom with franchisee's express permission.

Y. "Town" means the town of Eatonville, a municipal corporation of the state of Washington. (Ord. 95-10 § 1, 1995; Ord. 90-5 § 1, 1990).

#### **5.20.020 Terms of franchise.**

A. Authority to Grant Franchises or Licenses for Cable Television.

1. It is unlawful to engage in or commence construction, operation or maintenance of a cable communications system without a franchise issued under this chapter. The council may, by ordinance, award a nonexclusive franchise to construct, operate and maintain a cable communications system which complies with the terms and conditions of this chapter.

2. Any franchise granted pursuant to this chapter shall be nonexclusive and shall not preclude the town from granting other or further franchises or permits or preclude the town from using any roads, rights-of-way, streets or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the town to make all necessary changes, as the town in its sole discretion shall decide, including the dedication, establishment, maintenance and improvements of all new rights-of-way and thoroughfares and other public properties of any type. In the event the town grants another cable franchise, the new franchise shall be granted on the same terms as the existing franchise.

B. Incorporation by Reference.

1. The provisions of this chapter shall be incorporated by reference in any franchise ordinances or licenses approved hereunder.

2. The provisions of any proposal submitted and accepted by the town shall be incorporated by reference in the applicable franchise or license. However, in the event of any conflict between the proposal and this chapter, this chapter will be the prevailing document.

C. Nature and Extent of the Grant. Any franchise granted hereunder by the town shall authorize the franchisee, subject to the provisions herein contained:

1. To engage in the business of operating and providing cable service and the distribution

and sale of such service to subscribers within the town;

2. To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across, and along any street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable communications system; and, in addition, so to use, operate, and provide similar facilities, or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other franchisee franchised or permitted to do business in the town; and

3. No privilege or exemption shall be granted or conferred upon franchisee by any franchise except those specifically prescribed therein, any use of any street shall be consistent with any prior lawful occupancy of the street or any subsequent improvement or installation therein.

D. Term of Franchise. The franchise and rights and privileges granted shall remain in force and effect for a period of 15 years from the effective date of the acceptance of such franchise. (Ord. 90-5 § 2, 1990).

#### **5.20.030 Hearing.**

Prior to the granting of a franchise, the town council shall conduct a public hearing to determine the following:

A. That the public will be benefited by the granting of a franchise to the applicant;

B. That the applicant has requisite financial and technical resources and capabilities to build, operate and maintain a cable television system in the area;

C. That the applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the town;

D. That the applicant will comply with all terms and conditions placed upon the franchisee by this chapter; and

E. That the applicant is capable of complying with all relevant federal, state, and local regulations pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise. (Ord. 90-5 § 3, 1990).

#### **5.20.040 Acceptance.**

A. No franchise granted pursuant to the provisions of this chapter shall become effective unless

and until the ordinance granting same has become effective.

B. Within 30 days after the effective date of the ordinance awarding a franchise, or within such extended period of time as the council in its discretion may authorize, the franchisee shall file with the town clerk its written acceptance, in a form satisfactory to the town attorney, of the franchise, together with bond and insurance policies required by any ordinance. (Ord. 90-5 § 4, 1990).

#### **5.20.050 Police powers.**

In accepting any franchise, the franchisee acknowledges that its rights hereunder are subject to the police power of the town to adopt and enforce general ordinances necessary to the safety and welfare of the public, and it agrees to comply with all applicable general laws enacted by the town pursuant to such power provided such laws do not change the material terms of the ordinances. (Ord. 90-5 § 5, 1990).

#### **5.20.060 Rules and regulations by the town.**

A. In addition to the inherent powers of the town to regulate and control any franchise it issues, the authority granted to it by the Act, and those powers expressly reserved by the town, or agreed to and provided for in a franchise, the right and power is reserved by the town to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers provided they are consistent with the terms and conditions of this chapter and provided further they do not increase the material burdens nor diminish the rights of the franchisee.

B. The town council reserves the right to delegate its authority for franchise administration to a designated agent. (Ord. 90-5 § 6, 1990).

#### **5.20.070 Technical standards.**

A. Franchisee shall comply with FCC rules, Part 76, Subpart K, Sections 76.601 through 76.610 and as amended, at the minimum, the following:

1. Applicable town, county, state and national federal codes and ordinances;
2. Applicable utility joint attachment practices;
3. The National Electrical Safety Code; ANSI C2;
4. Local utility code requirements;
5. Local rights-of-way procedures; and
6. NCTA manual 741 Signal Leakage and Interference Control.

B. Preventative Maintenance. A comprehensive routine preventive maintenance program shall be developed, effected and maintained for each system by the respective franchisee to ensure continued top quality cable communications operating standards in conformance with FCC Part 76. (Ord. 90-5 § 7, 1990).

**5.20.080 Coverage.**

Within 12 months after the date of the franchise, franchisee shall have complete the installation of cable in all areas of the town subject to the conditions of EMC 5.20.200. All annexed and newly developed areas shall be provided cable service, if such areas are contiguous to the town limits, within six months from the time of obtaining necessary permits subject to the provisions of EMC 5.20.190 and 5.20.200. (Ord. 90-5 § 8, 1990).

**5.20.085 Access channels – Adopted.**

Franchisee shall make available one standard video channel on the system for public, educational and/or governmental (PEG) access purposes which is shared with other local governmental agencies. The PEG access channel shall be provided as a part of basic service. (Ord. 95-10 § 2, 1995).

**5.20.090 Public buildings.**

Franchisee shall provide a basic service outlet, without charge for installation, basic monthly service, outlet and converter at such public buildings within 150 feet of the existing trunk line in the franchise area and as specified in Appendix A (adopted by the ordinance codified in this chapter and on file in the office of the town clerk) and that may be constructed during the period of the franchise.

However, in such cases, franchisee and the administrator of public buildings may share such additional costs involved in excess of normal installation costs in excess of the first 150 feet on a mutually agreed upon case-by-case basis. (Ord. 90-5 § 9, 1990).

**5.20.100 Parental control devices.**

Franchisee will make available parental control or lock-out devices (audio and visual) upon request by subscriber at a reasonable charge. These devices should provide the greatest degree of parental discretion and control to prevent unauthorized viewing of any premium channel or channels and, where technically and practically feasible, non-premium channels as well. (Ord. 95-10 § 3, 1995; Ord. 90-5 § 10, 1990).

**5.20.110 Other interactive services.**

Franchisee shall construct its system to include the ability of providing interactive services to residential and governmental subscribers, to the extent economically and financially feasible to do so. (Ord. 95-10 § 4, 1995; Ord. 90-5 § 11, 1990).

**5.20.120 Emergency power.**

Franchisee shall provide a standby power system to automatically activate equipment at the headends in the event of a primary electrical failure. Such system shall be operational within six months from the effective date of the franchise. (Ord. 90-5 § 12, 1990).

**5.20.130 Leased access.**

The franchisee will comply with Section 612 of the Act to make available a cable channel for local commercial use as soon as the various criteria of that section are reached. (Ord. 90-5 § 13, 1990).

**5.20.140 Emergency override.**

The franchisee will provide emergency override capability from its headend via telephone line from the town within 24 months, provided no objections are received from other communities served by the same headend. The town shall file with the franchisee a list of authorized officials who will be granted permission to request the franchisee to transmit such information. Such a request will be made solely in case of extreme local emergency as a form of disaster control only when all other means of notification are inadequate in view of the urgency of a communications crisis. The town shall accept fully responsibility for any legal consequences that may occur through its use of such system. (Ord. 90-5 § 14, 1990).

**5.20.150 Construction standards.**

All facilities constructed under this chapter shall be placed and maintained at such places and positions in or upon such streets, avenues, alleys and public places as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to the applicable section of the National Electrical Code, codes of the state, and town regulations pertaining to such construction.

Whenever the town imposes as a condition to its approval of a tentative map or a parcel map a requirement that necessitates replacing, undergrounding or permanently or temporarily relocating existing facilities of the cable system, the builder, developer or subdivider shall reimburse the franchisee for all costs of the replacement,

undergrounding or relocation. (Ord. 90-5 § 15, 1990).

**5.20.160 Construction notification.**

The town may establish reasonable minimum requirements for advance notification to residents adjacent to proposed construction areas. The franchisee shall deliver to the town within 30 days of the effective date of the franchise a street obstruction performance bond of \$5,000.

The franchisee shall maintain a current pole attachment agreement with the town for the period of time that the town retains ownership. In the event pole ownership should change, pole attachment agreement will be maintained in force and transferred to the new owner. (Ord. 90-5 § 16, 1990).

**5.20.170 Undergrounding.**

In those areas and portions of the town where the transmission or distribution facilities of both the public utility providing telephone service and those of the utility providing electric service are underground or hereafter may be placed underground, then the franchisees at its expense shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground. Amplifiers and associated equipment in franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground as approved by the town. (Ord. 90-5 § 17, 1990).

**5.20.180 Safety requirements.**

A. The franchisee shall, at all times, employ professional care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys and public ways or places of the franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

C. The town reserves the general right to see that the system of the franchisee is constructed and maintained in a safe condition. If an unsafe condition is found to exist by the town, it may order the franchisee to make necessary repairs within 30 days from the receipt of the town's notification thereof. If franchisee fails to correct the unsafe condition by making necessary repairs, the town

may make the repairs itself or have them made, and collect all reasonable costs thereof from the franchisee. (Ord. 95-10 § 5, 1995; Ord. 90-5 § 18, 1990).

**5.20.190 Annexed and newly developed areas.**

The developer or property owner shall, at its cost, provide the franchisee with sufficient space for conduit, vaults, pedestals and laterals. The franchisee shall provide specifications for such construction as required.

The franchisee shall be given written notification 30 days in advance of when such trenches will be open. If the franchisee fails to place its equipment in such open construction after five working days, the cost of new trenching shall be borne by the franchisee. When feasible the franchisee will make a best effort to shorten the notification timeline.

The franchisee's amplifiers and essential connection thereto may be placed in appropriate housing aboveground as approved by the town. In any case, the town shall not be responsible for any costs in placing such equipment underground. (Ord. 90-5 § 19, 1990).

**5.20.200 Line extension.**

Franchisee agrees to provide cable communications service to all areas within the town, subject to the condition that there are at least 50 permanent, primary residential dwelling units per street mile and one such unit within 150 feet of franchisee's distribution system as measured from the existing system.

In the event request is made for service by a resident living in an area not meeting such criteria, the franchisee may make such installation available to the requesting subscriber provided a signed work agreement is on file, on a time and material cost basis plus 15 percent maximum. (Ord. 95-10 § 6, 1995; Ord. 90-5 § 20, 1990).

**5.20.210 Building moving.**

Whenever any person shall have obtained permission from the town to use any street for the purpose of moving any building, the franchisee, upon seven days' written notice from the town or its agent, shall raise or remove, at the expense of that person desiring to move the building, any of its or their wires which may obstruct the removal of such building provided that the moving of such building shall be done in accordance with the regulations and general ordinances of the town. Where more

than one street is available for the moving of such building, the building shall be moved on such street as shall cause the least interference with the lines of franchisee and other franchise holders. It is further provided that the person or persons moving such building shall indemnify and save harmless said franchisee of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly by such temporary arrangement of the lines and poles of the franchisee. (Ord. 90-5 § 21, 1990).

**5.20.220 Rates and rate change.**

Within 60 days after the grant of any franchise hereunder, franchisee will file with the town a complete schedule of all rates to be charged to all subscribers.

Prior to implementation of any change in rates or charges for any service or equipment provided by franchisee, franchisee shall provide the town and all subscribers a minimum of 30 days' prior written notice of such change. However, this requirement shall not pertain to pay-per-view and other like services. (Ord. 95-10 § 7, 1995; Ord. 90-5 § 22, 1990).

**5.20.230 Discounts.**

Franchisee shall offer a discount of 25 percent from the normal rate to subscribers for basic service and 50 percent from installation to those persons who are aged 62 or older, or are at least 70 percent disabled, provided that such person(s) are the legal owner or lessee/tenant of their residence and that person(s) are identifiable by the Washington State Department of Social and Health Services as financially needy. (Ord. 95-10 § 8, 1995; Ord. 90-5 § 23, 1990).

**5.20.240 Franchise fee.**

Franchisee shall pay to the town a sum equal to five percent of gross receipts as defined herein. Such payment will be made on a quarterly basis. (Ord. 90-5 § 24, 1990).

**5.20.250 Record inspection.**

Subject to statutory and constitutional limits and reasonable advance notice, the town reserves the right to inspect the following records of the franchisee at any time during normal business hours provided the town shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the franchisee: (1) service complaint logs; (2) performance test results; (3) records required to be kept by franchi-

see related to cable service pursuant to the rules and regulations of the FCC and other regulatory agencies; and (4) such financial records of the franchisee as are necessary to verify the accuracy of franchise fees paid to the town. Such data, however, is understood to be limited to such information that pertains solely to the operation and maintenance of the cable television system within the town. (Ord. 95-10 § 9, 1995; Ord. 90-5 § 25, 1990).

**5.20.260 Reports.**

A. Quarterly Reports. Beginning with the third quarter of 1996, within 25 calendar days after the end of the quarter, franchisee shall submit to the town a completed form reporting revenues from cable services and subscriber levels by categories for the previous quarter. These reports shall be in a form agreed to by the town and franchisee. The town and franchisee may from time to time agree to make such reasonable amendments to the forms as are required to ensure that all gross revenues are reported clearly and accurately. To the extent included as gross revenues, at a minimum the quarterly reports shall break out gross revenues into the following categories: (1) basic cable services; (2) pay-per-view revenue; (3) premium channel fees; (4) installation payments; (5) service call payments; and (6) equipment rental fees.

B. Annual Report. No later than 60 days following the end of franchisee's fiscal year each year, franchisee shall present a written report to the town which shall include:

1. A summary of the previous year's activities for the franchise area, including, but not limited to, the total number of subscribers for each category of service, the number of homes passed, miles of overhead and underground cable plant, other system facilities and equipment constructed, any services added or dropped, and any technological changes occurring in the cable system;

2. A summary showing by month the number of service calls received by type and month, the percentage of service calls compared to the subscriber base by type of complaint, the number of outages by month, the number of planned outages by month, and the approximate total duration of these outages;

3. A copy of the most recent annual report, if any, to the FCC;

4. Maps showing the location of underground facilities. In addition, franchisee and town shall consult from time to time to discuss franchi-

see's construction plans. (Ord. 95-10 § 10, 1995; Ord. 90-5 § 26, 1990).

#### **5.20.270 Periodic meetings.**

Should any dispute arise between the franchisee and the town concerning the operation of the cable system or the franchisee's performance under this chapter and the specific franchise ordinance, the franchisee and representatives from the town shall meet within 10 days of receiving a request from the other to review the performance of the franchisee and/or attempt to resolve the dispute. If the dispute is unable to be resolved, the town and the franchisee shall submit the matter to binding arbitration conducted according to the rules of the American Arbitration Association for commercial arbitration or such other rules as the town and franchisee may agree. All parties shall use their best efforts to conduct the arbitration as quickly as possible. (Ord. 95-10 § 9,\* 1995; Ord. 90-5 § 27, 1990).

\*Editor's note: This is a second Section 9 in Ord. 95-10.

#### **5.20.280 Performance tests.**

A. If the town determines that reasonable evidence exists of inadequate cable system performance pursuant to EMC 5.20.070, it may require franchisee to perform tests and analyses directed toward such suspected inadequacies at the franchisee's own expense. Franchisee shall fully cooperate with the town in performing such testing and shall prepare results, and the report prepared by franchisee shall include at least:

1. A description of the problem in CATV system performance which precipitated the special tests;
2. What CATV system component was tested;
3. The equipment used and procedures employed in testing;
4. The method, if any, by which such CATV system performance problem was resolved;
5. Radiation limits tests, such as those heretofore required by the FCC; and
6. Any other information pertinent to said tests and analyses which may be required by the town, or determined when the test is performed.

B. If the results of testing indicate that the franchisee was operating within the established parameters as described in EMC 5.20.100; then the town shall be responsible for the costs of such tests. If the technical analysis shows that the franchisee is in violation of such parameters, the franchisee shall reimburse the town for such actual costs of testing.

If such violation is shown, franchisee shall correct all violations within 60 days after written notice from the town. (Ord. 90-5 § 28, 1990).

#### **5.20.290 Customer service.**

A. Franchisee shall maintain an office which shall be open during normal business hours, shall have a publicly listed telephone number listed in the town telephone directory which is toll free to subscribers of the town cable system, and shall be operated to receive customer inquiries on a 24-hour-a-day, seven-day-a-week basis. A record of all complaints requiring service calls shall be maintained for a one-year period. Franchisee's office shall be staffed a minimum of regular business office hours from Monday through Friday, except holidays for a prompt response to any complaint concerning billing, employee courtesy, programming, safety or company policy.

B. Franchisee shall render repair service to restore the quality of the signal at no less than the same standards existing prior to the failure or damage of the component causing the failure and make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system. A written or computerized log shall be maintained for a period of one year for all service interruptions which can be inspected upon notice.

C. Franchisee will maintain a sufficient repair force to respond to individual customer complaints or request for repair service within 48 hours after receipt of the complaint or request except Saturday, Sunday and legal holidays. All complaints shall be resolved within seven days, to the extent reasonable. Upon a request by customer, no charge for the period of the outage shall be made to the customer if the customer was without service for a period exceeding 24 hours, unless the outage was due to acts of God or events beyond the reasonable control of the franchisee.

D. Franchisee shall, upon request, provide to customers the title, address and telephone number of the town official or his/her designee, to whom system subscribers may direct their concerns.

E. Franchisee shall at all times meet or exceed industry standards for maintenance of the cable system. Should a cable system outage occur affecting more than five customers, a restoration procedure shall be followed which shall be handled in conjunction with restoration of other utility services. The priority for restoration of services is

power, telephone and then cable services. (Ord. 95-10 § 10,\* 1995; Ord. 90-5 § 29, 1990).

\*Editor's note: This is a second Section 10 in Ord. 95-10.

**5.20.300 Subscriber's right of privacy.**

The franchisee shall comply with all of the provisions of Section 631 of the Act. (Ord. 90-5 § 30, 1990).

**5.20.310 Programming.**

For informational purposes only, the franchisee shall file, upon granting of the franchise, a complete listing of its channel line-up including a breakdown of its basic and tier services. Such listing shall become the initial programming and cost schedule to be considered as the basis from which any changes may be contemplated in the future. This information, however, does not accord the town any greater rights of regulation than those granted in the Act. (Ord. 90-5 § 31, 1990).

**5.20.320 Modification.**

In the event the franchisee shall seek to have the existing franchise modified, Section 625 of the Act shall govern the procedure for the modification request unless the town and franchisee shall otherwise agree. Both parties shall act in good faith to reach agreement. (Ord. 90-5 § 32, 1990).

**5.20.330 Nondiscrimination.**

The franchisee shall not as to rates, charges, service facilities, rules, regulations, or in any other respect make or grant any preferences or advantage to any person nor subject any person to any prejudice or disadvantage, provided that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled, and provided further that connection and/or service charges may be waived or modified during promotional campaigns of franchisee.

The franchisee will not deny access to cable communications service to any group of potential subscribers because of the income of the residents of the local area in which the group resides. (Ord. 95-10 § 11, 1995; Ord. 90-5 § 33, 1990).

**5.20.340 Equal employment opportunity.**

The franchisee shall comply with all provisions of Section 634 of the Act. (Ord. 90-5 § 34, 1990).

**5.20.350 Continuity of service.**

It shall be the right of all subscribers to continue receiving service so long as their financial and other obligations to the franchisee are fulfilled.

A. In this regard the franchisee shall act so far as it is within the control of the franchisee so as to ensure that all subscribers receive continuous uninterrupted service during the term of this franchise.

B. In the event the franchisee fails to operate a system for 72 continuous and consecutive hours without prior notification to and approval of the town or without just cause such as an impossibility to operate the system because of the occurrence of an act of God or other circumstances reasonably beyond franchisee's control, the town or its designee may, after notice and an opportunity for franchisee to commence operations at its option, operate the system until such time as the franchisee restores service to conditions acceptable to the town, or a permanent franchisee is selected. If the town is required to fulfill this obligation for the franchisee, the franchisee shall reimburse the town for all reasonable costs or damages in excess of revenues from the system received by the town that are the result of the franchisee's failure to perform. (Ord. 90-5 § 35, 1990).

**5.20.360 Franchise renewal.**

The provisions of Section 626 of the Act, as it exists on September 1, 1995, will govern the actions of the town and the franchisee in proceedings relating to franchise renewal. The town expressly reserves the right to establish guidelines and monitoring systems in accordance with the provisions of the Act to measure the effectiveness of the franchisee's performance during the term of such franchise. (Ord. 95-10 § 12, 1995; Ord. 90-5 § 36, 1990).

**5.20.370 Transfer of ownership.**

Any franchise awarded by the town shall be based upon an evaluation by the town of each application, the qualifications, and other criteria as such pertain to each particular applicant. No franchise can be sold, transferred, leased, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary, merger, consolidation or otherwise, unless approval is granted by the town council under the same terms and conditions as the original franchise or as it may be subsequently amended by mutual agreement to insure a review of unforeseen circumstances not present at the time of the original franchise. The town's approval shall not be unreasonably withheld. Such costs associ-

ated with this process shall be reimbursed to the town by the new prospective franchisee.

An assignment of a franchise shall be deemed to occur if there is an actual change in control or where ownership of 50 percent or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

The franchisee shall promptly notify the town prior to any proposed change in, or transfer of, or acquisition by any other party of control of the franchisee's company. Every change, transfer or acquisition of control of the franchisee's company shall make the franchise subject to cancellation unless and until the town shall have consented thereto. In the event that the town adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the town may cancel the franchise unless control by the franchisee is restored to a status acceptable to the town council.

Such approval of transfer, subject to conditions enumerated above, shall not be unreasonably withheld. Approval of the town shall not be required if said transfer is from franchisee to another person or entity, controlling, controlled by or under common control with the franchisee. Approval shall not be required for mortgaging purposes provided that less than 50 percent of the beneficial interests, as described above, are affected by such mortgage.

Upon the commencement of a foreclosure action or other action which could possibly result in a judicial sale of all or a substantial part of the cable system, the franchisee shall notify the town of such fact in writing, and such notification shall be treated as a notification that a change in control of the company has taken place, and the provisions of this chapter governing the consent of the town council to such change in control of the franchisee shall apply.

Any transfer or assignment approved by the town shall be evidenced by a written instrument, a duly executed copy of which shall be filed in the office within 60 days after the approval of the transfer or assignment by the town. By said instrument, the assignee shall agree to comply with all terms of this chapter, the franchise ordinance, and the assignor's application. The town shall have the right, at its sole discretion, to require that any conditions in the original franchise be fulfilled prior to such transfer. Such costs associated with this pro-

cess shall be reimbursed to the town by the new prospective franchisee. (Ord. 90-5 § 37, 1990).

#### **5.20.380 Right of town to purchase.**

The town reserves the right to purchase the existing system pursuant to Section 627 of the Act. (Ord. 90-5 § 38, 1990).

#### **5.20.390 Removal and abandonment of property of franchisee.**

The town may direct the franchisee to temporarily disconnect or bypass any equipment of the franchisee in order to complete street construction or modification, install and remove underground utilities, or for other reasons of public safety and efficient operation of the town. Such removal, relocation or other requirement shall be at the sole expense of the franchisee.

In the event that the use of any part of the cable system is discontinued for any reason for a continuous period of 12 months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this chapter or other town ordinances, or this chapter has been terminated, cancelled, or has expired, the franchisee shall promptly, upon being given 10 days' notice, remove within six months from the streets or public places all such property of such system other than any which the town may permit to be abandoned in place. In the event of such removal, the franchisee shall promptly restore the street or other areas from which such property has been removed to a condition similar to that condition existing before such removal.

Any property of the franchisee remaining in place six months after the termination or expiration of the franchise shall be considered permanently abandoned. The town may extend such time not to exceed an additional 90 days.

Any property of the franchisee to be abandoned in place shall be abandoned in such manner as the town shall prescribe. Upon permanent abandonment of the property of the franchisee in place, the property shall become that of the town, and the franchisee shall submit to the town clerk an instrument in writing, to be approved by the town attorney, transferring to the town the ownership of such property. None of the foregoing affects or limits franchisee's rights to compensation for an involuntary abandonment of its property under state or federal law or the Constitution. In the event the town and the franchisee are unable to agree as to whether an abandonment is voluntary for the purposes of

this section, either party may invoke arbitration to resolve such question. (Ord. 90-5 § 39, 1990).

**5.20.400 Revocation for cause.**

A. Any franchise granted by the town may be terminated during the period of such franchise for the following reasons:

1. Failure by the franchisee to substantially comply with material provisions of this chapter;
2. Failure of the franchisee to comply with FCC regulations, or other provisions of the Act.

B. The procedure to be followed resulting in termination for any of the above reasons, save franchisee's request, will be:

1. The town will direct in writing franchisee to correct such deficiencies or comply with such regulation within 30 days or a reasonable period of time if the deficiency or other item is not subject to correction within 30 days.

2. Failure to do so will cause the matter of termination to be brought before the town council.

3. At such hearing the franchisee and other interested parties may offer evidence explaining or mitigating such noncompliance. The town council in its sole discretion, will make the determination as to whether such noncompliance was without just cause. In the event the town council finds that such noncompliance was without just cause, the town council may, at its sole discretion, fix an additional time period to cure such deficiency(ies). If the deficiency has not been cured at the expiration of any additional time period or if the town council does not grant any additional period, the town council may by ordinance declare the franchise to be terminated and forfeited.

4. If the franchisee appeals the revocation and termination of the franchise through legal remedies, the revocation of such franchise shall be held in abeyance pending such de novo judicial review by a court of competent jurisdiction or, at the option of the franchisee, by an arbitrator using the rules of the American Arbitration Association for commercial arbitration or such other rules as the franchisee and town may agree.

5. Provided, nothing contained in the above subsections of this section shall prevent the issuance of a new franchise containing terms substantially the same or identical to a franchise which previously was revoked, on satisfactory assurance made to the town council that the terms and conditions of this chapter can be met by the franchisee. (Ord. 95-10 § 13, 1995; Ord. 90-5 § 40, 1990).

**5.20.410 Effect of termination for noncompliance.**

Subject to state and federal law, if any franchise is terminated by the town by reason of the franchisee's noncompliance, that part of the system under such franchise located in the streets and public property shall, at the election of the town, become the property of the town at a cost consistent with the provisions of Section 627(b)(1) of the Act. If the town, or a third party, does not purchase the system, the franchisee shall, upon order of the town council, remove the system. (Ord. 90-5 § 41, 1990).

**5.20.420 Indemnify and hold harmless.**

The franchisee will indemnify and hold harmless the town from any and all liabilities, fees, costs and damages except in the case of negligence or wilful misconduct on the part of the town, whether to person or property, or expense of any type or nature which may occur to the town by reason of the construction, operation, maintenance, repair and alterations of franchisee's facilities or any other actions of franchisee in the town. In any case in which suit or action is instituted against the town by reason of damages or injury caused by franchisee, the town shall cause written notice thereof to be given to the franchisee and franchisee thereupon shall have the duty to appear and defend in any such suit or action, without cost or expense to the town. (Ord. 90-5 § 42, 1990).

**5.20.430 Insurance.**

The franchisee shall concurrently with the filing of an acceptance of award of any franchise granted hereunder, furnish to the town and file with the town clerk and at all times during the existence of any franchise granted hereunder, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, in protection of the town, its officers, boards, commissions, agents and employees, protecting the town and all persons against liability for loss or damage for personal injury, death and property damage, and errors or omissions occasioned by the operations of the franchisee under such franchise, with minimum limits of \$1,000,000 for both personal injury and/or property damage.

The policies mentioned in the foregoing paragraph shall name the town, its officers, boards, commissions, agents and employees, as additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the town 30 days

in advance of the effective date thereof; if such insurance is provided by a policy which also covers franchisee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement. (Ord. 90-5 § 43, 1990).

**5.20.440 Inconsistency.**

If any portion of this chapter should be inconsistent with any rule or regulation now or hereinafter adopted by the FCC or other federal legislation, then to the extent of the inconsistency, the rule or regulation of the FCC or other federal legislation shall control for so long, but only for so long, as such rule or regulation shall remain in effect, but the remaining provisions of this chapter shall not hereby be effected. (Ord. 90-5 § 44, 1990).

**5.20.450 Force majeure.**

In the event that the franchisee's performance of any of the terms, conditions, obligations or requirements of this chapter is prevented or impaired due to any cause(s) beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof. (Ord. 90-5 § 46, 1990).

**Chapter 5.24**

**ELECTRIC UTILITY FRANCHISE**

Sections:

- 5.24.010 Purpose.
- 5.24.020 Definitions.
- 5.24.030 Terms of franchise.
- 5.24.035 Hearing.
- 5.24.040 Acceptance.
- 5.24.050 Police powers.
- 5.24.060 Rules and regulations by the town.
- 5.24.070 Technical standards.
- 5.24.080 Service area.
- 5.24.090 Construction bond and notification.
- 5.24.100 Undergrounding and system improvements.
- 5.24.110 Safety requirements.
- 5.24.120 Newly developed areas.
- 5.24.130 Franchise fee.
- 5.24.140 Record inspection.
- 5.24.150 Reports.
- 5.24.160 Dispute resolution.
- 5.24.170 Customer service.
- 5.24.180 Nondiscrimination.
- 5.24.190 Continuity of service.
- 5.24.200 Transfer of ownership.
- 5.24.210 Right of town to purchase.
- 5.24.220 Removal and abandonment of property of franchisee.
- 5.24.230 Revocation for cause.
- 5.24.240 Effect of termination for noncompliance.
- 5.24.250 Indemnification.
- 5.24.260 Insurance.
- 5.24.270 Inconsistency.
- 5.24.280 Force majeure.

**5.24.010 Purpose.**

This chapter is provided to regulate the operation of electrical utility facilities, operated by other than the town government, in town rights-of-way or on other town property. This chapter is intended to permit the continued use and maintenance of only such facilities as exist in street rights-of-way, easements, or other lands at the time such rights-of-way, easements, or other lands are acquired by the town through annexation or otherwise. No franchise granted under the provisions of this chapter shall give the holder of such franchise the right to expand its electric utility service area to include any area not served by the franchise holder at the time of annexation. (Ord. 99-27 § 1, 1999).

**5.24.020 Definitions.**

For the purposes of this chapter:

A. "Applicant" means any person or entity that applies for a franchise.

B. "Council" means the present governing body of the town or any future board constituting the legislative body of the town.

C. "Customer" means a separately metered user of electricity. An individual with two meters is considered two customers, and shared use of a home or other facility with a single meter, by two or more individuals without submetering, is considered a single customer.

D. "Electric service" means the provision of electrical energy to customers inside town limits.

E. "Electric distribution system" is a system of overhead and/or underground electric conductors, pole or pad-mounted transformers, switchgear, meters, and related equipment for the provision of electric distribution service.

F. "Existing" means physically in place.

G. "Franchise" means the nonexclusive right to operate and maintain an electric distribution system by use of town owned rights-of-way, easements, or other publicly owned property.

H. "Franchisee" means the person, firm or corporation to whom or which a franchise, as hereinabove defined, is granted by the council under this chapter and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in town ordinance.

I. "Franchisee's electric utility service area" means that area in lots or parcels with existing electric service by franchisee or, for any area subject to subdivision application, those proposed lots or parcels with existing electric service by franchisee. (Ord. 99-27 § 1, 1999).

**5.24.030 Terms of franchise.**

A. Authority to Grant Franchises or Licenses for Electric Distribution Systems.

1. It is unlawful to engage in or commence construction, operation or maintenance of an electric distributions system without a franchise issued under this chapter. The council may, by ordinance, award a nonexclusive franchise to construct, operate and maintain an electric distribution system that complies with the terms and conditions of this chapter.

2. Any franchise granted pursuant to this chapter shall be nonexclusive and shall not preclude the town from granting other or further franchises or permits or preclude the town from using

any roads, rights-of-way, streets or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the town to make all necessary changes, as the town in its sole discretion shall decide, including the dedication, establishment, maintenance and improvements of all new rights-of-way and thoroughfares and other public properties of any type. In the event the town grants another electric distribution system franchise, the new franchise shall be granted on the same terms as the existing franchise.

B. Incorporation by Reference.

1. The provisions of this chapter shall be incorporated by reference in any franchise ordinances or licenses approved hereunder.

2. The provisions of any proposal submitted and accepted by the town shall be incorporated by reference in the applicable franchise or license. However, in case of any conflict between the proposal and this chapter, this chapter will be the prevailing document.

C. Nature and Extent of the Grant. Any franchise granted hereunder by the town shall authorize the franchisee, subject to the provisions herein contained:

1. To engage in the business of operating and providing electric distribution service to subscribers within the town;

2. Provide service to:

a. Any customers of the franchisee served by facilities existing at the time of annexation;

b. Any additional customers that cannot be efficiently served by the town's distribution system, as determined by the public works director.

D. No privilege or exemption shall be granted or conferred upon franchisee by any franchise except those specifically prescribed therein, any use of any street shall be consistent with any prior lawful occupancy of the street or any subsequent improvement or installation therein.

E. Term of Franchise Rights.

1. General franchise rights and privileges granted shall remain in force and effect for a period of 15 years from the effective date of the acceptance of such franchise.

2. Franchise rights for any street or other defined area shall terminate upon any discontinuation of the operation of the electric distribution system in such street or area for 30 consecutive calendar days. (Ord. 99-27 § 1, 1999).

**5.24.035 Hearing.\***

Prior to the granting of a franchise, the town council shall conduct a public hearing to determine the following:

A. That the public will be benefited by the granting of a franchise to the applicant;

B. That the applicant has requisite financial and technical resources and capabilities to build, operate and maintain an electrical distribution system in the area;

C. That the applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the town;

D. That the applicant will comply with all terms and conditions placed upon the franchisee by this chapter; and

E. That the applicant is capable of complying with all relevant federal, state, and local regulations pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise. (Ord. 99-27 § 1, 1999).

\*Code reviser's note: Ord. 99-27 added two sections numbered 5.24.030. This section has been editorially renumbered to avoid duplication.

**5.24.040 Acceptance.**

A. No franchise granted pursuant to the provisions of this chapter shall become effective unless and until the ordinance granting same has become effective.

B. Within 30 days after the effective date of the ordinance awarding a franchise, or within such extended period of time as the council in its discretion may authorize, the franchisee shall file with the town clerk its written acceptance, in a form satisfactory to the town attorney, of the franchise, together with bond and insurance policies required by any ordinance. (Ord. 99-27 § 1, 1999).

**5.24.050 Police powers.**

In accepting any franchise, the franchisee acknowledges that its rights hereunder are subject to the police power of the town to adopt and enforce general ordinances necessary to the safety and welfare of the public, and it agrees to comply with all applicable general laws enacted by the town pursuant to such power provided such laws do not change the material terms of the ordinances. (Ord. 99-27 § 1, 1999).

**5.24.060 Rules and regulations by the town.**

A. In addition to the inherent powers of the town to regulate and control any franchise it issues, the authority granted to it by the state, and those powers expressly reserved by the town, or agreed to and provided for in a franchise, the right and power is reserved by the town to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers; provided, they are consistent with the terms and conditions of this chapter; and provided further, they do not increase the material burdens nor diminish the rights of the franchisee.

B. The town council reserves the right to delegate its authority for franchise administration to a designated agent. (Ord. 99-27 § 1, 1999).

**5.24.070 Technical standards.**

Franchisee shall comply with, at the minimum, the Eatonville development and construction standards. (Ord. 99-27 § 1, 1999).

**5.24.080 Service area.**

A. Franchisee's electric utility service area shall be that area in lots or parcels with existing electric service by franchisee or, for any area subject to subdivision application, those proposed lots or parcels with existing electric service by franchisee.

B. Franchisee's electric utility service area shall not be expanded except in, accordance with the procedure described herein. (Ord. 99-27 § 1, 1999).

**5.24.090 Construction bond and notification.**

A. The franchisee shall deliver to the town within 30 days of the effective date of the franchise a maintenance bond of \$5,000. The town shall have the right to collect against the bond for cost of restoration of street or other town-owned facilities damaged by franchisee and not corrected by franchisee within 30 days of issue of written notice by town to franchisee. Such costs may include town administration and collection costs.

B. Franchise holder shall provide a minimum of 48 hours' notice to residents affected by proposed construction areas subject to service outages, disruptions to site access, or other substantial impacts. Additional notification may be required as a condition of permit issuance for projects with large impacts.

C. Written notification shall be submitted to the town for any activity that disturbs the ground surface, including but not limited to pole, guy, pad, or underground construction or replacement. Notice shall also be given for any above-ground work that will entail a service interruption to six or more cus-

tomers, and for any limbing, brushing, or tree removal. Notice need not be given for other exclusively above-ground work, such as pole-mounted transformer, fuse, insulator, or conductor replacement, to be completed without a service interruption to six or more customers.

D. Notice of scheduled repairs or maintenance shall be submitted no less than 72 hours before scheduling the proposed work. The town may require up to 30 days for review of complex projects. Work shall not proceed until approved in writing by the town. Submittals shall include:

1. Plan showing the location of existing and proposed electric distribution system; other existing utilities in the area; pavement, drainage, and other surface features; right-of-way lines; and other information as may be requested by the town.

2. Schedule showing the anticipated duration of any outages, traffic disruptions, and disturbance of existing pavements or other surface features, from initial disturbance to final restoration.

3. Name and contact number for the project foreman or other responsible person.

4. Any other information as may be requested by the town.

E. For emergency repairs necessary to restore service or to prevent an imminent outage:

1. Initial notification of emergency repairs may be given verbally.

2. Such verbal notice may be given to the town's answering service or system.

3. Emergency repairs to restore service, or to prevent an outage that would otherwise likely occur within 24 hours, may proceed without acknowledgment by the town.

4. Emergency repairs to prevent an outage likely to occur before completion of the notice and approval process for scheduled maintenance may proceed upon verbal approval of the town's mayor, public works director, or power and light superintendent.

F. Construction Records.

1. Record drawings shall be submitted for both scheduled and emergency repairs and maintenance.

2. Construction records shall be submitted within 30 days of construction completion.

3. Records shall include plans of the same form as that for scheduled repairs and maintenance and a record schedule describing the time and duration of any outages, access limitations, or other major impacts. (Ord. 2000-08 § 1, 2000; Ord. 99-27 § 1, 1999).

#### **5.24.100 Undergrounding and system improvements.**

A. Franchise rights for existing overhead lines shall not be construed to provide any franchise rights for underground lines.

B. Franchise rights for existing direct-buried cable shall not be construed to provide any franchise rights for installation of conduit or new cable.

C. Franchisee shall remove any overhead lines within 60 days of written notice of completion of construction of an extension of the town's underground electric system adequate to provide alternative service.

D. Franchisee shall remove any transformers, vaults, junction boxes, or other surface features that go out of service as the result of any failure or abandonment of franchisee's underground electrical distribution system. (Ord. 99-27 § 1, 1999).

#### **5.24.110 Safety requirements.**

A. The franchisee shall, at all times, employ professional care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys and public ways or places of the franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

C. The town reserves the general right to see that the system of the franchisee is constructed and maintained in a safe condition. If an unsafe condition is found to exist by the town, it may order the franchisee to make necessary repairs within 30 days from the receipt of the town's notification thereof. If franchisee fails to correct the unsafe condition by making necessary repairs, the town may make the repairs itself or have them made, and collect all reasonable costs thereof from the franchisee. (Ord. 99-27 § 1, 1999).

#### **5.24.120 Newly developed areas.**

A. The franchisee explicitly acknowledges that the town service area includes all lands in its adopted urban growth area, and that the town may offer to provide service to any development in said urban growth area, whether inside or outside the town's corporate boundary, and the town may expand or revise its urban growth area without consultation with franchisee.

B. The franchisee shall have the continued right to provide service in the town's urban growth area, outside its corporate boundaries.

C. The franchisee's continued operation and maintenance of existing facilities to serve existing customers inside the town's corporate limits shall not be construed to provide any right to serve new development. (Ord. 99-27 § 1, 1999).

#### **5.24.130 Franchise fee.**

Franchisee shall pay to the town a sum equal to two percent of gross receipts for electric service to customers in the franchise area. Such payment shall be made on a quarterly basis. (Ord. 99-27 § 1, 1999).

#### **5.24.140 Record inspection.**

Subject to statutory and constitutional limits and reasonable advance notice, the town reserves the right to inspect the following records of the franchisee at any time during normal business hours provided the town shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the franchisee: (1) service complaint logs; (2) performance test results; (3) records required to be kept by franchisee related to electrical distribution service pursuant to other regulatory agencies; and (4) such financial records of the franchisee as are necessary to verify the accuracy of franchise fees paid to the town. Such data, however, is understood to be limited to such information that pertains solely to the operation and maintenance of the electrical distribution system within the town. (Ord. 99-27 § 1, 1999).

#### **5.24.150 Reports.**

A. Quarterly Reports. Beginning with the first quarter of 2000 within 25 calendar days after the end of the quarter, franchisee shall submit to the town a completed form reporting revenues from electrical distribution services and customer charges by categories for the previous quarter. These reports shall be in a form agreed to by the town and franchisee. The town and franchisee may from time to time agree to make such reasonable amendments to the forms as are required to ensure that all gross revenues are reported clearly and accurately. To the extent included as gross revenues, at a minimum the quarterly reports shall break out gross revenues into the following categories:

1. Basic residential services;
2. Basic commercial services;
3. Electrical energy;

4. Electrical demand;
5. Service call payments;
6. Equipment rental fees; and
7. Other fees.

B. Annual Report. No later than 60 days following the end of franchisee's fiscal year each year, franchisee shall present a written report to the town which shall include:

1. A summary of the previous year's activities for the franchise area, including, but not limited to, the total number of subscribers for each category of service, the number of homes passed, miles of overhead and underground plant, other system facilities and equipment constructed, any services added or dropped, and any technological changes occurring in the electrical distribution system;

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2. A summary showing by month the number of service calls received by type and month, the percentage of service calls compared to the subscriber base by type of complaint, the number of outages by month, the number of planned outages by month, and the approximate total duration of these outages;

3. A copy of the most recent annual report, if any;

4. Maps showing the location of underground facilities. In addition, franchisee and town shall consult from time to time to discuss franchisee's construction plans. (Ord. 99-27 § 1, 1999).

#### **5.24.160 Dispute resolution.**

Should any dispute arise between the franchisee and the town concerning the operation of franchisee's electric distribution system or the franchisee's performance under this chapter and the specific franchise ordinance, the franchisee and representatives from the town shall meet within 10 days of receiving a request from the other to review the performance of the franchisee and/or attempt to resolve the dispute. If the dispute is unable to be resolved, the town and the franchisee shall submit the matter to binding arbitration conducted according to the rules of the American Arbitration Association for commercial arbitration or such other rules as the town and franchisee may agree. All parties shall use their best efforts to conduct the arbitration as quickly as possible. (Ord. 99-27 § 1, 1999).

#### **5.24.170 Customer service.**

A. Franchisee shall maintain an office which shall be open during normal business hours, shall have a publicly listed telephone number listed in the town telephone directory that is toll free to in-town customers of the franchisee's electrical distribution system, and shall be operated to receive customer inquiries on a 24-hour-a-day, seven-day-a-week basis. A record of all complaints requiring service calls shall be maintained for a one-year period. Franchisee's office shall be staffed a minimum of regular business office hours from Monday through Friday, except holidays for a prompt response to any complaint concerning billing, employee courtesy, programming, safety or company policy.

B. Franchisee shall render repair service to restore service after any accidental interruption and shall intentionally interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum

use of the system. A written or computerized log shall be maintained for a period of one year for all service interruptions that can be inspected upon notice.

C. Franchisee will maintain a sufficient repair force to respond to individual customer complaints or request for repair service within 48 hours after receipt of the complaint or request except Saturday, Sunday and legal holidays. All complaints shall be resolved within seven days, to the extent reasonable.

D. Franchisee shall, upon request, provide to customers the title, address and telephone number of the town official or his/her designee, to whom franchisee's in-town customers may direct their concerns.

E. Franchisee shall at all times meet or exceed industry standards for maintenance of franchisee's in-town electrical distribution system. Should a power outage occur affecting more than five customers, a restoration procedure shall be followed which shall be handled in conjunction with restoration of other utility services. The priority for restoration of services is power, telephone and then cable services. (Ord. 99-27 § 1, 1999).

#### **5.24.180 Nondiscrimination.**

A. The franchisee shall not as to rates, charges, service facilities, rules, regulations, or in any other respect make or grant any preferences or advantage to any person nor subject any person to any prejudice or disadvantage; provided, that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled; and provided further, that connection and/or service charges may be waived or modified during promotional campaigns of franchisee.

B. The franchisee will not deny access to electrical distribution service to any group of potential subscribers because of the income of the residents of the local area in which the group resides. (Ord. 99-27 § 1, 1999).

#### **5.24.190 Continuity of service.**

A. It shall be the right of all of franchisee's existing customers to continue receiving electrical distribution service so long as their financial and other obligations to the franchisee are fulfilled, and so long as franchisee's existing facilities remain in service.

B. In this regard the franchisee shall act as far as it is within the control of the franchisee to ensure

that all in-town electrical distribution customers receive continuous uninterrupted service during the term of this franchise.

C. In the event the franchisee fails to operate a portion of its in-town electrical distribution system for 12 continuous and consecutive hours without prior notification to and approval of the town or without just cause such as an impossibility to operate the system because of the occurrence of an act of God or other circumstances reasonably beyond franchisee's control, the town or its designee may, after notice and an opportunity for franchisee to commence operations at its option, operate the system until such time as the franchisee restores service to conditions acceptable to the town, or the franchisee transfers ownership of the affected facilities to the towns. If the town is required to fulfill this obligation for the franchisee, the franchisee shall reimburse the town for all reasonable costs or damages in excess of revenues from the system received by the town that are the result of the franchisee's failure to perform. (Ord. 99-27 § 1, 1999).

#### **5.24.200 Transfer of ownership.**

A. Any franchise awarded by the town shall be based upon an evaluation by the town of each application, the qualifications, and other criteria as such pertain to each particular applicant. No franchise can be sold, transferred, leased, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary, merger, consolidation or otherwise, unless approval is granted by the town council under the same terms and conditions as the original franchise or as it may be subsequently amended by mutual agreement to insure a review of unforeseen circumstances not present at the time of the original franchise. The town's approval shall not be unreasonably withheld. Such costs associated with this process shall be reimbursed to the town by the new prospective franchisee.

B. An assignment of a franchise shall be deemed to occur if there is an actual change in control or where ownership of 50 percent or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

C. The franchisee shall promptly notify the town prior to any proposed change in, or transfer of, or acquisition by any other party of control of the franchisee's company. Every change, transfer or acquisition of control of the franchisee's company shall make the franchise subject to cancella-

tion unless and until the town shall have consented thereto. In the event that the town adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the town may cancel the franchise unless control by the franchisee is restored to a status acceptable to the town council.

D. Such approval of transfer, subject to conditions enumerated above, shall not be unreasonably withheld. Approval of the town shall not be required if said transfer is from franchisee to another person or entity, controlling, controlled by or under common control with the franchisee. Approval shall not be required for mortgaging purposes provided that less than 50 percent of the beneficial interests, as described above, are affected by such mortgage.

E. Upon the commencement of a foreclosure action or other action which could possibly result in a judicial sale of all or a substantial part of the franchisee's in-town electrical distribution system, the franchisee shall notify the town of such fact in writing, and such notification shall be treated as a notification that a change in control of the company has taken place, and the provisions of this chapter governing the consent of the town council to such change in control of the franchisee shall apply.

F. Any transfer or assignment approved by the town shall be evidenced by a written instrument, a duly executed copy of which shall be filed in the office within 60 days after the approval of the transfer or assignment by the town. By said instrument, the assignee shall agree to comply with all terms of this chapter, the franchise ordinance, and the assignor's application. The town shall have the right, at its sole discretion, to require that any conditions in the original franchise be fulfilled prior to such transfer. Such costs associated with this process shall be reimbursed to the town by the new prospective franchisee. (Ord. 99-27 § 1, 1999).

#### **5.24.210 Right of town to purchase.**

The town reserves the right to purchase the franchisee's in-town electrical distribution system, and franchisee shall sell it to no other party without first offering the town the opportunity to exercise that right by matching the highest third-party offer. (Ord. 99-27 § 1, 1999).

#### **5.24.220 Removal and abandonment of property of franchisee.**

A. The town may direct the franchisee to temporarily disconnect or bypass any equipment of the franchisee in order to complete street construction

or modification, install and remove underground utilities, or for other reasons of public safety and efficient operation of the town. Such removal, relocation or other requirement shall be at the sole expense of the franchisee.

B. In the event that the use of any part of the franchisee's electrical distribution system is discontinued for any reason for a continuous period of 12 months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this chapter or other town ordinances, or this chapter has been terminated, cancelled, or has expired, the franchisee shall promptly, upon being given 10 days' notice, remove within six months from the streets or public places all such property of such system other than any which the town may permit to be abandoned in place. In the event of such removal, the franchisee shall promptly restore the street or other areas from which such property has been removed to a condition similar to that condition existing before such removal.

C. Any property of the franchisee remaining in place six months after the termination or expiration of the franchise shall be considered permanently abandoned.

D. Any property of the franchisee to be abandoned in place shall be abandoned in such manner as the town shall prescribe. Upon permanent abandonment of the property of the franchisee in place, the property shall become that of the town, and the franchisee shall submit to the town clerk an instrument in writing, to be approved by the town attorney, transferring to the town the ownership of such property. None of the foregoing affects or limits franchisee's rights to compensation for an involuntary abandonment of its property under state or federal law or the Constitution. In the event the town and the franchisee are unable to agree as to whether an abandonment is voluntary for the purposes of this section, either party may invoke arbitration to resolve such question. (Ord. 99-27 § 1, 1999).

#### **5.24.230 Revocation for cause.**

A. Any franchise granted by the town may be terminated during the period of such franchise for the following reasons:

1. Failure by the franchisee to substantially comply with material provisions of this chapter;
2. Failure of the franchisee to comply with state or federal regulations resulting in any fine, judgment, or other disciplinary action.

B. The procedure to be followed resulting in termination for any of the above reasons, save franchisee's request, will be:

1. The town will direct in writing franchisee to correct such deficiencies or comply with such regulation within 30 days or a reasonable period of time if the deficiency or other item is not subject to correction within 30 days.

2. Failure to do so will cause the matter of termination to be brought before the town council.

3. At such hearing the franchisee and other interested parties may offer evidence explaining or mitigating such noncompliance. The town council, in its sole discretion, will make the determination as to whether such noncompliance was without just cause. In the event the town council finds that such noncompliance was without just cause, the town council may, at its sole discretion, fix an additional time period to cure such deficiency(ies). If the deficiency has not been cured at the expiration of any additional time period or if the town council does not grant any additional period, the town council may by ordinance declare the franchise to be terminated and forfeited.

4. If the franchisee appeals the revocation and termination of the franchise through legal remedies, the revocation of such franchise shall be held in abeyance pending such de novo judicial review by a court of competent jurisdiction or, at the option of the franchisee, by an arbitrator using the rules of the American Arbitration Association for commercial arbitration or such other rules as the franchisee and town may agree.

5. Provided, nothing contained in the above subsections of this section shall prevent the issuance of a new franchise containing terms substantially the same or identical to a franchise which previously was revoked, on satisfactory assurance made to the town council that the terms and conditions of this chapter can be met by the franchisee. (Ord. 99-27 § 1, 1999).

#### **5.24.240 Effect of termination for noncompliance.**

If any franchise is terminated by the town by reason of the franchisee's noncompliance, that part of the system under such franchise located in the streets and public property shall, at the election of the town, become the property of the town at a cost calculated on the basis of depreciated initial construction cost. By acceptance of a franchise under this chapter, franchisee expressly waives any restriction to this right of acquisition. (Ord. 99-27 § 1, 1999).

**5.24.250 Indemnification.**

The franchisee will indemnify and hold harmless the town from any and all liabilities, fees, costs and damages except in the case of negligence or willful misconduct on the part of the town, whether to person or property, or expense of any type or nature which may occur to the town by reason of the construction, operation, maintenance, repair and alterations of franchisee's facilities or any other actions of franchisee in the town. In any case in which suit or action is instituted against the town by reason of damages or injury caused by franchisee, the town shall cause written notice thereof to be given to the franchisee and franchisee thereupon shall have the duty to appear and defend in any such suit or action, without cost or expense to the town. (Ord. 99-27 § 1, 1999).

**5.24.260 Insurance.**

A. The franchisee shall concurrently with the filing of an acceptance of award of any franchise granted hereunder, furnish to the town and file with the town clerk and at all times during the existence of any franchise granted hereunder, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, in protection of the town, its officers, boards, commissions, agents and employees, protecting the town and all persons against liability for loss or damage for personal injury, death and property damage, and errors or omissions occasioned by the operations of the franchisee under such franchise, with minimum limits of \$5,000,000 for both personal injury and/or property damage.

B. The policies mentioned in the subsection A of this section shall name the town, its officers, boards, commissions, agents and employees, as additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the town 30 days in advance of the effective date thereof, if such insurance is provided by a policy which also covers franchisee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement. (Ord. 99-27 § 1, 1999).

**5.24.270 Inconsistency.**

If any portion of this chapter should be inconsistent with any applicable rule or regulation now or hereinafter adopted by the Federal Energy Regulatory Commission, other federal legislation, any provisions of the Revised Code of Washington or the Washington Administrative Code then to the

extent of the inconsistency, the FERC, other federal legislation, RCW, or WAC shall control for so long, but only for so long as such rule or regulation shall remain in effect, but the remaining provisions of this chapter shall not hereby be affected. (Ord. 99-27 § 1, 1999).

**5.24.280 Force majeure.**

In the event that the franchisee's performance of any of the terms, conditions, obligations or requirements of this chapter is prevented or impaired due to any cause(s) beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof. (Ord. 99-27 § 1, 1999).