

TITLE 4 -- BUSINESS TAXES, LICENSES AND REGULATIONS

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CHAPTER 4-1 GENERAL REQUIREMENTS

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For the purposes of this title, the following words and phrases are defined as follows:

(a) "Business" means and includes professions, trades, occupations and all and every kind of calling carried on for profit or livelihood, except the earning of wages as an employee of another; provided, however, that an employee acting as an agent for a business shall be deemed to be conducting the business of his principal.

(b) "Established place of business," "regular place of business" or "fixed place of business" mean and include permanent stores, offices or places within the City where business is legally and regularly transacted from month to month in such manner as business of that nature is generally or customarily carried on and conducted and when the circumstances show an intention to be an established, fixed and continuous part of the regular and legitimate business life of the City for a period of six (6) months or more. In no event shall a unit or group of units in a hotel, motel, rooming house, trailer rental, apartment house or similar establishment be regarded as a fixed or established place of business within the City, except the office or unit of or occupied by the manager of a business defined in this Code as an apartment house operation.

(c) "Gross receipts" means and includes the total amount of the sale price of all retail sales, which are subject to retail sales tax under the provisions of the laws of the state of California.

(d) "Itinerant merchant" or "itinerant vendor" mean and include all persons, whether principal or agent, who engage in a temporary or transient business in the City, selling or offering to sell goods, wares, merchandise or any other thing of value, with the intention of conducting such business for a period of less than six (6) months, and who, for the purposes of such business, hires, uses or occupies any room, doorway, vacant lot, building or other place for the exhibition for sale, or sale, of goods, wares, merchandise or other thing of value. If any such place, occupied or used for such business, is rented or leased for a period of less than six (6) months, such fact shall be presumptive evidence that the business carried on therein is a transient business, and any person so engaged shall not be relieved from the provisions of this chapter or from payment of the license taxes provided for in this title for such business by reason of any temporary association with any local dealer, trader, merchant or auctioneer. "Itinerant merchant" or "itinerant vendor" shall not include commercial travelers or selling agents selling their goods at wholesale exclusively to merchants, dealers or traders, whether selling for present or future delivery by sample or otherwise, nor to peddlers, as the same are defined in this chapter, nor to persons selling or fruits, vegetables, eggs, butter or other farm or ranch products of their own farm or dairy farm exclusively.

(e) "Jobbing business" means and includes every business conducted solely for the purpose of selling or offering for sale goods, wares or merchandise in job lots to wholesale merchants for resale at wholesale to the trade by the wholesale merchants.

(f) "Manufacturer" means and includes any person engaged in making materials, raw or partly finished, or assembling finished parts, into articles suitable for use.

(g) "Newly established business" means a business in existence and operation for less than three (3) months.

(h) "Peddler" means and includes any person who goes from house to house, place to place, or in or along the streets within the City selling or offering to sell, barter or exchange, and making or offering to make, immediate delivery of any goods, wares, merchandise or any thing of value in possession of the peddler (except religious publications, religious newspapers or other religious periodicals) to persons other than manufacturers, wholesalers, jobbers or retailers of such commodities; provided, that a producer who furnishes directly and delivers any poultry, eggs, butter, fruit, vegetables or meat being exclusively the produce of his own garden, farm, ranch or dairy to a person in the City is not a peddler within the meaning of this chapter.

(i) "Quarter" means and includes a period of three (3) calendar months. The quarters referred to in this chapter shall begin on the first day of July, October, January and April of each year. The quarter shall include fractions thereof.

(j) "Retail business" means and includes every business conducted for the purpose of selling or offering for sale any goods, wares or merchandise, other than as a part of a "wholesale business" or "jobbing business" as defined in this section.

(k) "Solicitor" or "canvasser" mean and include any person who goes from house to house or from place to place in the City, selling or taking orders for, or offering to sell or take orders for, any goods, wares, merchandise or articles for future delivery, or selling or taking orders for any service to be furnished or performed in the future at any place in the City other than a fixed place of business, or for making, manufacturing, treating or repairing any article or thing whatsoever for future delivery.

(l) "Transient business" means every business not conducted at a "fixed place of business" as defined in this chapter, whether or not the person conducting such transient business is or is not, a resident of the City.

(m) "Vehicle" means and includes every device in, upon or by which any person or property is or may be transported or drawn upon a public street or highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

(n) "Verified statement," or any requirement of verification as used in this chapter, means that the statement or other matter verified shall be verified by the applicant or person submitting the same under penalty of perjury in the form and in the manner required by the laws of this state for such verifications.

(o) "Wholesale business" means and includes every business conducted solely for the purpose of selling or offering for sale goods, wares or merchandise in wholesale lots to retailers for resale to the trade by the retailers. (Prior Code § 15-1)

Section 4-1.02. Purpose.

This title is enacted for the purpose of raising revenue for municipal purposes and also for the purpose of regulation of certain businesses as set forth in this title. (Prior Code § 15-2)

Section 4-1.03. Prior obligations and prosecutions.

Neither the adoption of this title nor its superseding of any portion of any other ordinance of the City shall in any manner be construed to affect prosecution for violation of any other ordinance committed prior to the effective date of the ordinance from which this section derives, nor be construed as a waiver of any license or any penal provision applicable to any such violation, nor be construed to affect the validity of any bond or cash deposit required by any ordinance to be posted, filed or deposited, and all rights and obligations thereunto appertaining shall continue in full force and effect. (Prior Code § 15-3)

Section 4-1.04. License required.

Except as otherwise provided in this title, license taxes in the amounts prescribed in this title are imposed upon all business transacted or carried on in the City. It is unlawful for any person to commence, transact, engage in or carry on any business in the City without first having procured a license from the City so to do, or without complying with any and all applicable regulations of this title and other related or relevant laws. Each day any such business is carried on without a license and/or without such compliance constitutes a separate violation of this title for each and every day that such business is so carried on. Such license, when issued, shall authorize the person obtaining the same to transact the business described therein at the particular locality within the City designated in the license during the term stated in the license. Pursuant to Government Code §37100, no business license shall be issued to authorize any activity in conflict with any law, whether federal, state, or local. (Prior Code § 15-4; Ord. 2005-01, eff. 3/3/05; Ord. 2008-01, eff. 3/20/08)

Section 4-1.05. Branch establishments and locations.

A separate license must be obtained for each branch establishment or location of the business transacted and carried on and for each separate type of business in accordance with this title, at the same location, and each license authorizes the licensee to transact and carry on only the business licensed thereby at the location designated in such license; provided, that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this title shall not be deemed to be separate places of business or branch establishments. (Prior Code § 15-5)

Section 4-1.06. Exemptions: Constitutional and statutory.

Nothing in this title will be deemed or construed to apply to any person transacting or carrying on any business exempt from the payment of municipal corporation taxes by virtue of the Constitution or applicable statutes of the United States or of the state. (Prior Code § 15-6(a))

Section 4-1.07. Exemptions: Charitable or nonprofit organizations.

The provisions of this title shall not be deemed or construed to require the payment of a license tax to conduct, manage or carry on any business, occupation or activity from any institution or organization which is conducted, managed or carried on wholly for the benefit of charitable purposes or from which a profit is not derived, either directly or indirectly, by any person. No license tax shall be required for the conduct of any entertainment, concert, exhibition or lecture on scientific, historical, literary, religious or moral subjects within the City whenever the receipts of any such entertainment, concert, exhibition or lecture are to be appropriated to any church or school or to any religious or benevolent purpose. No license tax shall be required for the conduct of any entertainment, dance, concert, exhibition or lecture by any religious, charitable, fraternal, educational, military, state, county or municipal

organization or association whenever the receipts of any such entertainment, dance, concert, exhibition or lecture are to be appropriated exclusively for the purposes for which such organization or association was formed and from which profit is not derived, either directly or indirectly, by such organization or association or the members thereof; provided further, however, that nothing in this section shall be deemed to exempt any such organization or association from complying with the provisions of this Code, or any ordinance of the City and regulations adopted pursuant thereto, requiring a permit from the Council or any commission or officer of the City to conduct, manage or carry on any profession, trade, calling or occupation. (Prior Code § 15-6(b))

Section 4-1.08. Exemptions: Public sales.

The provisions of this title shall not be deemed or construed to require the payment of a license tax to conduct, manage or carry on any public auction for the sale of any goods belonging to the United States, the state or the county or for the sale of property by virtue of any process issued by any court, or for the sale of property by virtue of any deed of trust, or for the bona fide sale of household goods by the owner thereof at the domicile of the owner thereof, or for the sale at auction or otherwise of merchandise or salvage from any wreck, fire or other calamity occurring in the City for the purpose of adjusting the loss sustained by reason of such fire, wreck or other calamity, or for the sale at auction or otherwise of any stock of goods by any assignee for the benefit of creditors, receivers in bankruptcy or their assignees for the purpose of liquidating and adjusting the debts and liabilities of any person having a permanent place of business in the City. (Prior Code § 15-6(c))

Section 4-1.09. Exemptions: Veterans.

Every honorably discharged veteran who meets the requirements of Sections 16000, 16001.5 and any successor sections of the Business and Professions Code of the state shall be issued a license free of charge. (Prior Code § 15-6(d); Ord. 2008-01, eff. 3/20/08)

Section 4-1.10. Exemptions: Blind persons.

Blind persons licensed by the Bureau of Vocational Rehabilitation in the State Department of Education may be permitted to operate vending stands for the sale of newspapers, periodicals, candy, chewing gum, tobacco products, picture postcards and such other articles as may be approved by the Bureau (and not otherwise prohibited by law) in the City without paying a license fee therefor. As used in this section, "blind person" means a person having not more than ten percent (10%) visual acuity in the better eye with correction. Such blindness shall be certified by a licensed physician and surgeon who specializes in diseases of the eye. The Director of Administrative Services shall issue a permit to such person upon proof of his qualifications. (Prior Code § 15-6(e))

Section 4-1.11. Exemptions: Interstate commerce.

Every peddler, solicitor or other person claiming to be entitled to exemption from the payment of any license provided for in this chapter upon the ground that such license casts a burden upon his right to engage in commerce with foreign nations or among several states, or conflicts with the laws or regulations of the United States respecting interstate commerce, shall file a verified statement with the Director of Administrative Services disclosing the interstate or other character of his business entitled to such exemption. Such statement shall state the name and location of the company or firm for which the orders are to be solicited or secured, name of the nearest local or state manager, if any, and his address, the kind of goods, wares or merchandise to be delivered, the place from which the same are to be shipped or forwarded, the method of solicitation or taking orders, the location of any warehouse, factory or plant within the state, the method of delivery, the names and location of the residences of the applicants, and any other facts necessary to establish such claim of exemption. A copy of the order blank, contract form or other papers used by such person in taking orders shall be attached to the affidavit for the information of the Director of Administrative Services. If it appears that the applicant is entitled to such exemption, the Director of Administrative Services shall forthwith issue a license to such person without payment of a license fee. (Prior Code § 15-6(f))

Section 4-1-11.1 Exemptions: Child day-care business.

The provisions of this title shall not be deemed or construed to require the payment of a license tax to carry on a child day-care business in the residence of the operator. (Ord. 92-1 § 1, eff. 2/20/92)

Section 4-1.12. Exemptions: Claiming and conditions.

(a) Any person claiming an exemption pursuant to Sections 4-1.06 through this section shall file a verified statement with the Director of Administrative Services stating the fact upon which exemption is claimed.

(b) The Director of Administrative Services shall, upon a proper showing contained in the verified statement, issue a license to such person claiming exemption under Sections 4-1.06 through this section without payment to the City of the license tax required by this title.

(c) The Director of Administrative Services may revoke any license granted pursuant to the provisions of this section upon information that the licensee is not entitled to the exemption as provided in Sections 4-1.06 through this section. (Prior Code § 15-6 (g), (h), (i))

Section 4-1.13. Application for license.

Every person required to have a license under the provisions of this title shall make application for the same to the Director of Administrative Services and pay the application fee set forth in the Schedule of Fees and Charges. The applicant shall furnish all information required to enable the Director of Administrative Services to properly classify the business of the applicant and determine the proper license fees to be paid by such applicant, or which may be necessary for the enforcement of the provisions of this title. (Prior Code § 15-7 (part); Ord. 2005-01, eff. 3/3/05)

Section 4-1.14. Issuance: Contents.

Upon the payment of the prescribed tax, the Director of Administrative Services shall issue to such person a license which shall state on the face thereof the following:

- (a) The name of the person to whom the license is issued and the date of issue;
- (b) The kind or kinds of business licensed thereby;
- (c) The place where such business is to be transacted and carried on; and
- (d) That the license is permanent, temporary or limited and the expiration date thereof. (Prior Code § 15-7 (part))

Section 4-1.15. Validity.

A license issued as a permanent license shall remain valid so long as the required license tax payments are made within the time and in the manner required by this title. (Prior Code § 15-7 (part))

Section 4-1.16. Conformance to ordinances.

Notwithstanding anything to the contrary contained in this title, the Director of Administrative Services shall not issue any new license under this title to any person where the transaction of the business licensed at the place named in the application for license would constitute a violation of any other ordinance of the City, and the Director of Administrative Services shall not issue any transfer of any license issued under this title where the transaction of the business licensed at the place to which the license is requested to be transferred would constitute a violation of any other ordinance of the City; provided, however, that this section shall not be construed to be effective retroactively and shall not apply to or be deemed to prohibit renewal of any license previously issued under City ordinances so long as the renewal is for the transaction of business at the place named in a license lawfully issued under City ordinances previous to the effective date of the ordinance from which this section derives. (Prior Code § 15-8)

Section 4-1.17. Transferability.

(a) No license issued pursuant to this title shall be transferable; provided, that where a license is issued authorizing a person to transact and carry on a business at a particular place, such licensee may, upon application therefor and paying a fee as set forth in the Schedule of Fees and Charges, have the license amended to authorize the transacting and carrying on of such business by the same licensee under the license at some other location to which the business is or is to be moved.

(b) Transfer of assignment of a license in the case of any business regulated under the provisions of this title, as distinguished from being only taxed under provisions of this title, shall include the addition of new partners, joint venturers or any person to an ownership share or right to participate directly or indirectly in the earnings or control of the business; provided, however, that the terms shall not apply to the sales of shares of stock to the public.

(c) Any person succeeding, by purchase or otherwise, to the ownership or control of a business previously licensed under this title, shall obtain a new license therefor in his own name in the same manner as provided for a new business. (Prior Code § 15-9 (part); Ord. 84-1088 § 1, eff. 12/6/84; Ord. 2005-01, eff. 3/3/05)

Section 4-1.18. Duplicates.

A duplicate license may be issued by the Director of Administrative Services to replace any license previously issued under this title which has been lost or destroyed, upon the licensee filing an affidavit attesting to such fact, and at the time of filing such affidavit, paying to the Director of Administrative Services a duplicate license fee as set forth in the Schedule of Fees and Charges. (Prior Code § 15-10 (part); Ord. 84-1088 § 2, eff. 12/6/84; Ord. 2005-01, eff. 3/3/05)

Section 4-1.19. Posting, display and exhibition of license.

Except as otherwise specifically provided in this title, every person receiving a license under the provisions of this title and carrying on a business at a fixed place of business shall keep such license posted and exhibited in some conspicuous place in his business while such license is in force. All persons receiving such a license, and not carrying on a business at a fixed place of business, as defined in this chapter, shall keep such license upon his person at all times while carrying on the business for which it was granted. Every person having a license under the provisions of this title shall produce and exhibit the same whenever requested to do so by the Director of Administrative Services or any of his deputies or assistants. Every person or peddler who fails or refuses to post, exhibit on demand or display, as the case may be, the license required by this title shall, in addition to the penalties imposed by this chapter, have his license revoked as provided in this chapter. (Prior Code § 15-11)

Section 4-1.20. Enforcement.

(a) It shall be the duty of the Director of Administrative Services to enforce each and all of the provisions of this title, and the Police Chief shall render such assistance in the enforcement of this title as may from time to time be required by the Director of Administrative Services or the Council.

(b) The Director of Administrative Services, in the exercise of the duties imposed upon him by the provisions of this title, and acting through his deputies or duly authorized employees, shall examine or cause to be examined all places of business and all persons in the City liable to pay a license, and ascertain whether the provisions of this chapter have been complied with. (Prior Code § 15-12)

Section 4-1.21. Right of entry and examination.

The Director of Administrative Services, his deputies, duly authorized employees and any police officer, shall have and exercise the power and authority to enter, free of charge, at any reasonable time, any place of business required to be licensed in this title, and to demand the exhibition of such license for the current term thereof by any person engaged or employed in the transaction of such business. Any person having such license certificate theretofore issued, in his possession or under his control, who willfully fails to exhibit the same on demand, is guilty of a misdemeanor. It shall be the duty of the Director of Administrative Services to determine any violations of this title and to take such appropriate action with regard thereto as may be provided by the provisions of this title and other applicable laws. (Prior Code § 15-13)

Section 4-1.22. Unlawful business.

The payment of a license fee required by this title, and acceptance of the same by the City, and the issuance of a license, shall not authorize or entitle the holder of the license to conduct or carry on any business in violation of any zoning ordinance or other ordinance of the City, or any violation of any federal, state or municipal law, ordinance or regulation, regardless of the fact or municipal law, ordinance or regulation, regardless of the fact that such license may designate certain premises whereon such business is to be conducted. (Prior Code § 15-14)

Section 4-1.23. Machine identification tags.

(a) In all cases where, under the provisions of this title, the license fee for a specified class or type of business is based upon the number of machines, chairs or articles of equipment to be maintained or used by the licensee, including but not limited to barber chairs or coin-operated vending machines, there shall be affixed to each such machine, chair or article of equipment an identification tag.

(b) Each such tag shall have on it information sufficient to identify the license under which such tag is issued and the license year in which issued, together with the serial number of the tag. Such tags shall be of such form, size and material and include such other information as is determined by the Director of Administrative Services.

(c) If, subsequent to the issuance of any license, and prior to its expiration date, any licensee shall desire to use additional machines, chairs or equipment, he shall procure an identification tag therefor from the Director of Administrative Services, upon payment of the additional machine, chair or article of equipment.

(d) It is unlawful for any person, subject to license under this title, to use or operate any such machine, chair or article of equipment in the conduct of his business without having such identification tag affixed thereto.

(e) In the event the licensee wishes to replace any such machine, chair or article of equipment for which a tag has been issued him, he shall report such fact to the Director of Administrative Services, together with a request for a new tag to be affixed to the new machine, chair or article of equipment, and that the original tag be destroyed. (Prior Code § 15-16)

Section 4-1.24. Transient business: License fee and issuance.

The license tax rates fixed in this title shall apply only to businesses conducted at a fixed place of business in the City. As to transient businesses, the tax rate shall be the amount set out in the Schedule of Fees and Charges within this Code. Every license issued by the Director of Administrative Services for a transient business, as defined thereon by the Director of Administrative Services for a transient business, as defined in this chapter, shall have the word “transient” stamped or printed thereon by the Director of Administrative Services. (Ord. 84-1088 § 4, eff. 12/6/84; prior Code § 15-17)

* Editor's Note: Section 4-1.24 was amended by request of the City Attorney.

Section 4-1.25. Transient business: Scope of license: Local deliveries exempted: Nonresident discrimination.

Every person engaging in any transient business in the City, and who has procured a license therefor, shall have the right to sell the goods, wares or merchandise or engage in the business for which the transient license was issued at a fixed place of business without procuring any additional license therefor. Every person engaging in business at a fixed place of business in the City, and who has procured a license therefor, shall have the right to deliver the goods, wares or merchandise for which such license was issued, at any place in the City, without procuring any additional license therefor. In the issuance of transient licenses and licenses for fixed places of business or regular places of business, no discrimination or distinction shall ever be made against nonresidents of the City in favor of residents, and nonresidents of the City shall be entitled to equal rights in all matters relating to the issuance of licenses. (Prior Code § 15-18)

Section 4-1.26. Transient business: Transient lodging not fixed place of business.

No bedroom of any place of business licensed, used and occupied as a hotel, inn, rooming house or boardinghouse shall, for the purposes of this chapter, ever be construed to be “fixed place of business” or a “regular place of business” for any business other than of such hotel, inn, rooming house, lodging house or boardinghouse. All persons claiming any such room of such hotel, inn, rooming house, lodging house or boardinghouse, licensed, used and occupied as such, are, for the purposes of this title, conducting a transient business, and shall be required to procure a proper transient license therefor. (Prior Code § 15-19)

Section 4-1.27. Multiple business.

In the event that any person conducts more than one type or classification of business at any one business establishment or place of business, such person shall be issued the corresponding number of licenses. The license tax to be paid shall be computed as if one business were being conducted at such location, except that any business conducted at the place, which business is listed in this title as having a flat fixed rate, shall in every case be regarded and licensed as a separate business. (Ord. 2007-08, eff. 7/5/07; Prior Code § 15-20)

Section 4-1.28. Terms of licenses.

(a) Where an annual license is required by this title, the term of the license shall commence from the date of the issuance or renewal of the license and shall expire on the last day of the twelfth month following the issuance or renewal of the license.

(b) Where a quarterly license is provided for in this title, the same shall apply to the following quarter of a year:

- (1) First quarter: July 1st to September 30th, inclusive;
- (2) Second quarter: October 1st to December 31st, inclusive;
- (3) Third quarter: January 1st to March 31st, inclusive; and
- (4) Fourth quarter: April 1st to June 30th, inclusive.

(c) Where a monthly license is provided for in this title, the same shall apply to a calendar month.

(d) Where a weekly license is provided for in this title, the same shall apply to a seven (7) day period, beginning on Monday and ending on Sunday.

(e) Where a daily license is provided for in this chapter, the same shall apply to a twenty-four (24) hour period beginning at two (2:00) a.m. on the following date.

(f) Every license issued shall become null and void at the expiration of the term for which it was issued. (Ord. 99-14, eff. 7/20/99) (Prior § 15-21)

Section 4-1.29. License tax due dates.

All license fees due under the provisions of this title shall be due and payable in advance to the City in lawful money of the United States at the office of the Director of Administrative Services. Due dates shall be as follows:

(a) All annual license fees shall be due and payable on the first day of the tenth month of the current license term.

(b) All semiannual license fees shall be due and payable on the first day of June and the first day of December of each calendar year.

(c) All quarterly license fees shall be due and payable on the first day of June, September, December and March of each calendar year.

(d) All monthly license fees shall be due and payable on the first day of each calendar month.

(e) All weekly license fees shall be due and payable each Monday. For the purpose of this title, "week" means a seven (7) day period, beginning on Monday and ending on Sunday.

(f) All daily license fees shall be due and payable each day in advance. Daily licenses may be issued at any time for any number of days except where the number of days therefor is expressly limited by the provisions of this title or other applicable ordinances of the City. (Ord. 99-14, eff. 7/20/99) (Prior Code § 15-22 (part), (a)--(f))

Section 4-1.30. Delinquency.

(a) License tax payments shall be delinquent as follows:

(1) Annual tax payments are delinquent at five (5:00) p.m. on the last day of the license term.

(2) Semiannual tax payments are delinquent at five (5:00) p.m. on the last day of the first month in which the semiannual license tax is due.

(3) Quarterly tax payments are delinquent at five (5:00) p.m. on the last day of the first month in which the quarterly license tax is due.

(4) Monthly tax payments are delinquent at five (5:00) p.m. on the tenth day of the month in which the monthly license tax is due.

(b) In the event a license tax payment becomes delinquent, whether monthly, quarterly, semiannually or annually, a penalty of ten percent (10%) of the amount of the tax shall be added thereto, and an additional penalty of ten percent (10%) of the amount of the tax shall be added to the tax for each thirty (30) days thereafter in which the tax and accumulated penalties on the tax remain unpaid; provided, however, that the total of such accumulated penalties on the tax shall not exceed the full amount of the delinquent tax.

(c) The penalty shall be collected and payment thereof shall be enforced in the same manner as other license taxes are collected and payment thereof is enforced; provided, however, that "paid" shall, for the purposes of this section, be held to mean and include actual receipt of payment in the office of the Director of Administrative Services. Daily license tax payments shall be subject to a ten percent (10%) penalty if not made prior to the beginning of any act or business activity required to be licensed under the provisions of this chapter. The provisions of this title for delinquencies and penalties shall not be construed in any way as affecting the liability of the person in default for prosecution on account of failure to pay his license fee as prescribed in this title. (Ord. 99-14, eff. 7/20/99) (Prior Code § 15-23)

Section 4-1.31. Collection of license tax as debt.

The amount of any license tax imposed by the provisions of this title, and any and all penalties and interest for the nonpayment thereof, shall be deemed a debt due to the City from any person doing any business within the City for which a license is required by this title. Such persons shall be liable to a civil action in the name of the City as plaintiff in any court of competent jurisdiction for the amount of the license tax imposed by this chapter for such business, together with all penalties then due thereon as provided in this title, for the costs of suit, and for interest thereon in accordance with the laws of this state. (Prior Code § 15-24)

Section 4-1.32. Fingerprinting and identification fees.

In all cases not otherwise provided for by this Code, including but not necessarily limited to first-time City license issuance, the fee for fingerprinting and identification services by the Police Department shall be the actual cost of investigation and processing of the applicant, plus the cost of processing fingerprints to the Department of

Justice, rounded off to the next highest dollar; or as fixed by the Council from time to time by resolution. (Ord. 82-1044 § 1, eff. 12/16/83; prior Code § 15-22 (i))

Section 4-1.33. New business.

New businesses requiring an annual or semiannual license, as required in this title, commenced after the due date, as referred to in this title, shall obtain a license and the license tax shall be prorated for the balance of the license period, such prorated amount to be paid in advance; provided, however, that all new businesses shall pay the sum set out in the Schedule of Fees and Charges within this Code to defray the clerical expense in issuing such license. No new businesses requiring quarterly, monthly, weekly or daily licenses shall have the taxes therefor prorated. (Prior Code § 15-22 (g) (part))

Section 4-1.34. Refunds: Discontinuance of business.

Where any license tax has been paid pursuant to this title, and the business so licensed is thereafter discontinued, the licensee shall not be entitled to a refund for a balance of the license period. (Prior Code § 15-22 (h))

Section 4-1.35. Refunds: When payable.

(a) License fees, penalties and costs collected and received by the City may be refunded as provided in this section and not otherwise.

(b) A refund may be allowed:

- (1) Where the amount paid was in excess of the amount required by this title;
- (2) Where the amount paid was not required by law;
- (3) Where the applicant for any license or permit has not, at any time after the commencement of the period or term during which the requested license or permit would have been effective, commenced or engaged in the business or occupation or performed any act for which the license or permit was required; or
- (4) Where the money paid was erroneously or illegally collected or received by the City through mistake, inadvertence or error of fact.

(c) A claim for refund must be made in writing and verified by the person who paid the sum for which claim is made.

(d) Upon receiving such verified claim the Director of Administrative Services shall notify the Council at its next regular meeting, together with his report and recommendation whether the claim shall be allowed. The Council shall grant prior approval before any refund may be made. If the claim is made on the grounds set forth under subdivision (3) of subsection (b) of this section, no refund may be made until the license or permit has been returned to the Director of Administrative Services, if available.

(e) If any section of this title is repealed or amended, the Council may, in its discretion, refund a portion of the license tax paid thereunder in proportion to:

- (1) The amount by which the tax is reduced, if such is the case; or
- (2) The portion of the license period expired for which the tax has been paid but the entire tax repealed, if such is the case. (Prior Code § 15-25)

Section 4-1.36. Criminal prosecution unimpaired.

Prosecution of any person for engaging in any business without first obtaining a license therefor, or for violation of regulations of this title, shall not relieve such person from paying the license fee prescribed in this title to conduct such business, nor shall the payment of any license fee prevent a criminal prosecution or the exercise or imposition of other appropriate remedies and penalties provided for in this title for the violation of any of the provisions of this title. All remedies prescribed under this title shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy or remedies for the purpose of enforcing the provisions of this title. (Prior Code § 15-26)

Section 4-1.37. Other regulations unimpaired.

Unless otherwise specifically provided in this title, all requirements and regulations prescribed in this title are regulations in addition to other existing regulations and requirements imposed by the ordinances of the City or the laws of the state. No failure or omission to enforce any provision of this title at any time or for whatever cause shall constitute or be implied to constitute a waiver of any of the provisions of this title or any other applicable provisions of City ordinances or the laws of the state. (Prior Code § 15-27)

Section 4-1.38. Deposit and accounting of monies.

All money collected by the Director of Administrative Services under the terms and provisions of this title shall be paid daily to the City Treasurer, and placed in the general fund of the City, and a report of the amount thereof filed with the City Council. The Director of Administrative Services shall keep accurate records in which shall be shown all licenses issued by him, the date thereof, to whom issued, for what purpose, the location where the same is to be carried on, the time when the license expires, the amount of license tax charged therefor, and all pertinent information. (Prior Code § 15-28)

Section 4-1.39. Failure to file statement: Assessment of tax.

(a) If any person fails to file any required statement of gross receipts within the time prescribed, or if after demand therefor made by the Director of Administrative Services, such person fails to file a corrected statement, the Director of Administrative Services may determine the amount of license tax due from such person by means of such information as he may be able to obtain. In case such a determination is made, the Director of Administrative Services shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States Post Office at Santa Maria, California, postage prepaid, addressed to the person so assessed at his last known address. The person so assessed may thereupon pay the amount specified in the notice or such amount indicated thereby over and above such amount as he may have theretofore paid.

(b) If the person so assessed does not pay the amount stated in the notice, as provided in subsection (a) of this section, the Director of Administrative Services shall cause the matter to be set for hearing by the Council, and he shall give at least ten (10) days' notice to such person of the time and place of hearing in the manner prescribed in subsection (a) of this section for the service of notice of the amount of assessment. The Council shall consider all evidence produced, and written notice of its findings thereon, which findings shall be final and conclusive, shall be served upon the licensee in the manner prescribed in subsection (a) of this section for service of notice of the amount of assessment. (Prior Code § 15-29)

Section 4-1.40. Audit of gross-receipts statements.

(a) No statement of gross receipts shall be conclusive upon the City or upon any officer thereof as to the matters set forth in such statement, nor shall the filing of the same preclude the City from collecting by appropriate action such sum as is actually due and payable pursuant to this title. No such statement shall prejudice or limit the right of the City to fix the amount of the license tax at a greater amount in the event there is reason to believe that such business should pay a greater amount than shown by such statement, nor to recover any amount that may be ascertained to be due from such person in addition to the amount shown by such statement if it should be found to be incorrect. The Director of Administrative Services shall fix the amount of such license in a greater amount when he has reason to believe or evidence that such statement is incorrect.

(b) Statements of gross receipts and each of the several items contained in them shall be subject to audit and verification by the Director of Administrative Services, his deputies or duly authorized employees or agents of the City. Such persons are authorized to examine, audit and inspect such books and records of any licensee or applicant for a license as may be necessary in their judgment to verify or ascertain the amount of license fee due. All licensees, applicants for licenses, and persons engaged in business in the City are required to permit an examination of such books and records for the purposes set out in this section; provided, however, no audit shall be commenced under the provisions of this section prior to approval therefor by the Council.

(c) Whenever it appears to the Director of Administrative Services that there is evidence of a substantial error in, or falsification of, the gross receipts as set forth in the statement, and the applicant or licensee, upon being advised thereof, fails or refuses to correct the same, the Director of Administrative Services shall make a complete report regarding such matter to the Council. If it appears to the Council that there is reasonable cause to believe that there is such a substantial error or falsification, the Council shall direct that an audit be made. (Prior Code § 15-30)

Section 4-1.41. Confidentiality.

The information furnished or secured pursuant to the provisions of this title regarding gross receipts shall be confidential. Any unwarranted disclosure or use of such information by any officer or employee of the City shall constitute a misdemeanor and such officer or employee shall be subject to the penalty provisions of this title. (Prior Code 15-31)

Section 4-1.42. Exemption of governments.

Notwithstanding anything to the contrary contained in this title, the Council by a majority vote thereof may waive the fee imposed in this title whenever the following conditions exist:

(a) The business concerned is to be or is being conducted upon property which such business leases from or which property is otherwise owned or controlled by the State or any political subdivision of the State; and

(b) The State or a political subdivision of the State requests the Council to waive the collection of the fee. (Prior Code § 15-32)

Section 4-1.43. Revocation of license: Procedure.

(a) Upon being informed of any violation by any licensee of any provision of this title, except failure to pay an annual license tax when due, the Director of Administrative Services shall, and in the case of failure to pay an annual license tax when due may, conduct a hearing to determine whether the violation was in fact committed. The Director of Administrative Services shall give the licensee written notice of the date, time and place of the hearing not less than three (3) days prior to the date thereof. The notice and any other written notice required by this section and Section 4-1.44 shall be delivered to the licensee named in the license by certified mail, addressed to the address of the place of business shown on the license.

(b) If, upon such hearing, the Director of Administrative Services determines that the reported violation was in fact committed, he shall promptly thereafter notify the licensee in writing that the license is revoked.

(c) Any person operating any business after the fifteenth day following the date of the notice of revocation provided for in subsection (b) of this section is guilty of a misdemeanor unless within the fifteen (15) day period the person has filed written notice of appeal therefrom in the manner provided in Section 4-1.44. If, on appeal, the Council sustains the revocation, any person operating the subject business after being notified by the City Clerk of the Council action, as provided in Section 4-1.44, is guilty of a misdemeanor. No portion of the license tax may be refunded. (Prior Code § 15-35 (part))

Section 4-1.44. Revocation of license: Appeal.

(a) The licensee may appeal from the determination and consequent revocation of his license to the Council by filing written notice of such appeal with the City Clerk within not more than fifteen (15) days of the date of the notice of revocation. At its next regular meeting, following receipt by the City Clerk of such notice of appeal, the Council shall consider the appeal, at which time it shall hear and consider all pertinent information with regard thereto. The Council may rule on the appeal at that time or order that the matter is submitted and make its ruling within not more than twenty-one (21) days thereafter.

(b) In ruling on such an appeal the Council may either (1) affirm the determination and revocation made by the Director, (2) overrule the determination and revocation made by the Director, thereby reinstating the license revoked thereby, or (3) affirm the determination of the Director, but overrule the revocation of the license if it finds that, considering all the facts presented at that hearing, the violation occurred, but that the violation was not so grave as to require revocation of the license, and that reinstatement of the license would not appear to jeopardize the public health, safety or welfare, and may prescribe conditions to the reinstatement of the license which it deems reasonably necessary to prevent a repetition of the violation and to protect the public health, safety and welfare. Such conditions shall include the full payment of license taxes and penalties where applicable. The ruling of the Council shall be final and conclusive. (Prior Code § 15-35 (part))

Section 4-1.45. Appeal of license issuance or denial.

Any person aggrieved or dissatisfied by any decision of the Director of Administrative Services with respect to the issuance or refusal to issue a license, as required by this title, may within fifteen (15) days of being informed either in person or in writing of the decision of the Director of Administrative Services, file with the City Clerk a notice of appeal to the City Council, stating the reasons why he feels such decision is in error. The Council shall consider such appeal at its next regular meeting following the filing of the notice of appeal. The Council may rule on the appeal or order the matter submitted and make its ruling within not more than twenty-one (21) days thereafter. The Council may (a) affirm the decision of the Director, or (b) overrule the decision of the Director and make such order as it deems appropriate in view of all the matters presented before it at the hearing. The ruling of the Council shall be final and conclusive. (Prior Code § 15-36)

Section 4-1.46. License expiration upon delinquency.

(a) In the event any tax payment due under the provision of this title becomes delinquent, the Director of Administrative Services shall notify the licensee, in writing, that the license has expired, that any attempt to operate the business under the license is in violation of this title, and that the license is to be returned to the Director of Administrative Services or, alternatively, the license tax and penalties fully paid, on or before the fifth day following the date of mailing of the notice. If the licensee fails or refuses to return the license or, alternatively, to pay the tax

and penalties in full, in accordance with the notice, and the Director of Administrative Services has reasonable cause to believe the business continues to be conducted, the Director shall initiate such proceedings as may be required to enforce the provisions of this chapter.

(b) The notice required by this section shall be served upon the licensee personally, or by United States mail, addressed to the licensee at the address stated by him to be his mailing address in his license application.

(c) It is unlawful for any person to post or exhibit, or permit to be posted or exhibited, any license which has expired or which has been revoked as provided in this chapter. (Prior Code § 15-37)

Section 4-1.47. Violations: Misdemeanor.

Any person violating any of the provisions of this title, or knowingly or intentionally misrepresenting to any officer or employee of this City any material fact in procuring or meeting the requirements of any license or permit provided for in this title, is guilty of a misdemeanor. (Prior Code § 15-33)

Section 4-1.48. Violations: Public nuisance.

The conduct of any business within the City in violation of any of the terms of this title is found and declared to be a public nuisance, and the City Attorney is authorized to proceed by all appropriate legal proceedings to enjoin the continued operation of such business. (Prior Code § 15-34)

CHAPTER 4-2 CRIMINAL CONVICTIONS AND LICENSE ELIGIBILITY

Section 4-2.01. Disqualification by convictions.

Except as otherwise provided in this chapter, conviction (including pleas of guilty and nolo contendere) of a felony or a misdemeanor shall be prima facie disqualification of an applicant for the following City licenses/permits:

- (a) Coin-operated service operator;
- (b) Peddler;
- (c) Photographer;
- (d) Solicitor/canvasser;
- (e) Topless entertainer. (Prior Code § 15-39 (part))

Section 4-2.02. Mitigating circumstances.

The City licensing authority, however, may disregard the condition set out in Section 4-2.01 if it is found and determined by such licensing authority that mitigating circumstances exist. In making such determination, the City licensing authority shall consider the following factors:

- (a) The type of business license or permit for which the person is applying;
- (b) The nature and seriousness of the offense;
- (c) The circumstances surrounding the conviction;
- (d) The length of time elapsed since the conviction;
- (e) The age of the person at the time of the conviction;
- (f) The presence or absence of rehabilitation or efforts at rehabilitation; and
- (g) Contributing social or environmental conditions. (Prior Code § 15-39 (part))

Section 4-2.03. Notice of disqualification.

The licensing authority shall give notice of disqualification to an applicant disqualified under this provision. Such notice shall be in writing and delivered personally or mailed to the applicant at the address shown on the application. (Prior Code § 15-39 (part))

Section 4-2.04. Appeal.

An applicant who is disqualified for a City business license or permit under this provision, unless disqualified by the Council, may appeal such determination of disqualification. Such appeal shall be in writing and filed with the City Clerk within ten (10) days from the date of the notice of disqualification. The Council shall hear and determine the appeal at the next regular Council meeting and rule on the appeal within twenty-one (21) days thereafter. The determination of the Council on the appeal shall be final. (Prior Code § 15-39 (part))

Section 4-2.05. Access to criminal histories.

Pursuant to Section 11105 of the State Penal Code, the following officers of the City are authorized to have access to and to utilize State summary criminal history information when it is needed to assist them in fulfilling licensing duties as set forth in this title:

- (a) Councilmembers;
- (b) City Administrative Officer;
- (c) City Attorney;
- (d) Director of Administrative Services; and
- (e) Police Chief. (Prior Code § 15-40)

CHAPTER 4-3 RATE SCHEDULE

Section 4-3.100. Article 100. Generally

Section 4-3.101. Designated maximum rates.

The several rates for licenses for the pursuit of the businesses set forth in this chapter shall be the maximum rates, and they are fixed and established for and within the City, as follows in this chapter. The rates to be presently charged, up to and below these maximum rates, shall be set by resolution of the City Council.* (Ord. 84-1088 § 4, eff. 12/6/84; prior Code § 15-38 (part))

* See Schedule of Fees and Charges within this Code.

Section 4-3.200. Article 200. Gross-receipts Tax

Section 4-3.201. Schedule.

Every person who, at a fixed place of business within the City, sells or offers for sale at retail any goods, wares or merchandise, except as otherwise provided for in this title, either as principal or agent, whether on commission or otherwise, and whether for present or future delivery, or whether the goods, wares or merchandise are owned by or consigned to the person, and every person engaged in the business of redeeming any stamps, coupons, tickets or other devices to purchasers of goods, wares or merchandise, which entitle such purchaser to procure any goods, wares or merchandise free of charge upon the presentation of the stamps, coupons, tickets or other devices, shall pay an annual license tax based upon annual gross receipts, as the same are defined in this title, in accordance with the following schedule and the further provisions of this title:

RATE SCHEDULE

Gross Receipts in Preceding Four (4) Quarters	License Tax Per Year
\$ -0- to \$600	\$ None
600.01 to 3,000	40
3,000.01 to 10,000	60
10,000.01 to 40,000	80
40,000.01 to 70,000	100
70,000.01 to 100,000	120
100,000.01 to 160,000	140
160,000.01 to 220,000	160
220,000.01 to 280,000	180
280,000.01 to 340,000	200
340,000.01 to 420,000	220
420,000.01 to 500,000	240
500,000.01 to 650,000	320
650,000.01 to 800,000	400
800,000.01 to 1,000,000	480
1,000,000.01 and over	500

(Ord. 99-14, eff. 7/20/99)

Section 4-3.202. Retail-sales only.

For every person conducting a business exclusively at retail, including redeeming any stamps, coupons, tickets or other devices to purchasers or goods, wares or merchandise which entitle such purchaser to procure any goods, wares or merchandise free of charge upon the presentation of the stamps, coupons, tickets or other devices, the license tax shall be in accordance with the rates shown in the schedule set forth in Section 4-3.201. Every such person shall file with his application for a license, or request for renewal thereof, a statement showing the annual gross receipts from the business for the four quarters previous to the date the application is made; provided, that newly established businesses shall, in lieu of such statement, pay a provisional license fee of forty dollars (\$40.00), and shall thereafter file a statement showing the annual gross receipts from the business for the previous four

quarters from the date of such application. In any case where the business license tax on such gross receipts, as provided in this section, exceeds forty dollars (\$40.00), the person shall pay an additional license tax in the amount by which the license tax on gross receipts exceeds forty dollars (\$40.00). In no event shall any part of the forty dollar (\$40.00) provisional license tax be refunded. (Ord. 99-14, eff. 7/20/99)

Section 4-3.203. Wholesale and retail.

Every person conducting both a wholesale and retail business on or from the same premises shall file with the Director of Administrative Services a segregated statement of his sales for the preceding year, segregating the retail sales which are subject to the gross receipts tax as provided in this article. The license tax for such combined wholesale and retail sales shall be computed annually as follows: The amount in the preceding year of the annual retail gross receipts shall be added to the amount to be paid for the wholesale business as provided in Article 3 of this chapter. The sum as so computed shall be the license tax due for such business. (Prior Code § 15-38 (a) (3))

Section 4-3.204. Minimum.

The minimum license fee to be paid by any licensee under this article, except newly established businesses and businesses whose annual gross receipts are less than six hundred dollars (\$600.00), is forty dollars (\$40.00) per year. (Prior Code §§ 15-38 (a) (4), 15-38A (part))

Section 4-3.205. Employees exempted.

This article shall not be construed as requiring a license from any person engaging in any business solely as an employee of another person, which employer is licensed under this chapter, except as otherwise provided in this title. (Prior Code § 15-38 (a) (5))

Section 4-3.206. Partnerships.

Members of a partnership maintaining one (1) office in the City engaged in any occupation shall pay only one (1) license tax, except as otherwise provided in this title. (Prior Code § 15-38 (a) (6))

Section 4-3.207. Laundries and coin-operated vending machines.

The businesses of renting, leasing or operating laundry equipment and renting, leasing or operating coin-operated vending machines can only be taxed on the gross-receipts basis. (Business and Professions Code Sections 16002.2 and 16002.5.) (Prior Code § 15-38 (a) (7))

* Editor's Note: Section 4-3.207 was added by request of the City Attorney.

Section 4-3.208. Trading stamp companies.

Every person engaged in the business or occupation of selling or redeeming any stamps, coupons, tickets, cards or other devices to be issued to purchasers of goods, wares or merchandise, which stamps, coupons, tickets, cards or other devices entitle the purchaser receiving them to procure from the person issuing them or any other person any goods, wares or merchandise free of charge upon the presentation of one (1) or a number of the stamps, coupons, tickets, cards or other devices shall pay a license tax based upon the gross receipts of the business or occupation in accordance with the provisions of this title relating to retail sales businesses. (Prior Code § 15-38 (b) (144))

Section 4-3.300. Article 300. Flat Tax

Section 4-3.301. Applicability.

Every person who, at a fixed place of business within the City, conducts or carries on a business or occupation, of the classes described in this article, shall pay a license tax in the amounts set forth in this article, and shall conduct such business in accordance with the provisions and regulations set forth in this title for the conduct of such business. (Prior Code § 15-38 (b) (part))

Section 4-3.302. Accounting, bookkeeping or tax preparation.

For the license tax on accounting, bookkeeping or tax preparation, see Section 4-3.3103, Profession. (Prior Code § 15-38 (b) (1))

Section 4-3.303. Adjuster.

For the license tax on adjusters, see Section 4-3.3103, Profession. (Prior Code § 15-38 (b) (2))

Section 4-3.304. Advertising agency.

The annual license tax on an advertising agency is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (3), 15-38A (part))

Section 4-3.305. Advertising distributor and sales.

(a) The annual license tax for every business conducting, carrying on or managing the business of advertising distribution or sales is eighty dollars (\$80.00).

(b) For the purposes of this section, “advertising distribution and sales” includes the distributing or sale of dodgers, handbills, circulars, printed advertisements, cards, tickets or advertising samples of merchandise. It also includes the publication or distribution of shopping news or similar paper, which is distributed without charge to the recipients and has no paid subscription list. It shall also include the sale of advertising time or space on, in or by means of any news media, including but not necessarily limited to newspapers, periodicals, radio and television. It shall also include and mean the doing of any act or series of acts of distributing or selling advertising by any means or in any manner specified in this subsection. This section does not apply to job printers; see Section 4-3.3101, Printer or lithographer. (Prior Code §§ 15-38 (b) (4), 15-38A (part))

Section 4-3.306. Advertising sign.

For the license tax on an advertising sign, see Section 4-3.328, Billboard and advertising sign. (Prior Code § 15-38 (b) (5))

Section 4-3.307. Aircraft charter or rental service.

The license tax on an aircraft charter or rental service is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (6), 15-38A (part))

Section 4-3.308. Ambulance service or operation.

For the license tax on an ambulance service or operation, see Chapter 4-4 of this Code, Ambulances. (Prior Code § 15-38 (b) (7))

Section 4-3.309. Amusement machine.

For the license tax on an amusement machine, see Chapter 4-6 of this Code, Coin-Operated Machines. (Prior Code § 15-38 (b) (8))

Section 4-3.310. Animal exhibit.

For the license tax on an animal exhibit, see Sections 4-3.345, Circus, carnival, animal exhibit, itinerant show, rodeo and sports exhibit, and 4-3.393, Parade. (Prior Code § 15-38 (b) (9))

Section 4-3.311. Animal hospital, boarding kennel, kennel generally.

The annual license tax for an animal hospital, boarding kennel or kennel generally is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (10), 15-38A (part))

Section 4-3.312. Apartment house operation.*

(a) The annual license tax for every person keeping or managing an apartment house having four (4) or more apartments available for rental is as follows:

- (1) From four (4) to six (6) units, sixty dollars (\$60.00);
- (2) From seven (7) to ten (10) units, eighty dollars (\$80.00);
- (3) From eleven (11) to twenty-five (25) units, one hundred dollars ((\$100.00);
- (4) From twenty-six (26) to fifty (50) units, one hundred twenty dollars (\$120.00);
- (5) Fifty-one (51) units or more, one hundred forty dollars (\$140.00).

(b) For the purpose of this section, “apartment house” means a building or buildings under single ownership each having residence units (apartments) for four (4) or more families living independently of each other, with facilities for doing their own cooking and for other permanent residential needs of families within such residence unit. The number of units shall be based on the total number of units in all buildings operated by the licensee within the City; provided, however, that a unit actually occupied by the licensee or by his agent or employee as manager of the apartment house shall not be counted as a unit for purposes of this provision. (Prior Code §§ 15-38 (b) (11), 15-38A (part))

* Editor's Note: Section 4-3.312 was amended by request of the City Attorney.

Section 4-3.313. Appraiser.

For the license tax on an appraiser, see Section 4-3.3103, Profession. (Prior Code § 15-38 (b) (12))

Section 4-3.314. Arcade.

For the license tax on an arcade, see Chapter 4-6 of this Code, Coin-Operated Machines. (Prior Code § 15-38 (b) (13))

Section 4-3.315. Assayer.

For the license tax on an assayer, see Section 4-3.3103, Profession. (Prior Code § 15-38 (b) (14))

Section 4-3.316. Auctioneer.

(a) The annual license tax for every person engaging in the practice of auctioneering or operating an auction house or auction company, non-proratable, is one hundred dollars (\$100.00).

(b) As used in this section:

(1) "Auction" means a sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of his or her audience, which exchanges consist of a series of invitations for offers for the purchase of goods made by the auctioneer and offers to purchase made by members of the audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience.

(2) "Auction company" means any person who, as a part of the person's business, arranges, manages, sponsors, advertises or carries out auctions.

(3) "Auctioneer" means an individual who is engaged in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for, the recognition of and the acceptance of, offers for the purchase of goods at an auction. (Ord. 83-1055, eff. 7/30/83: prior Code § 15-38 (b) (15))

Section 4-3.317. Auditor.

For the license tax on an auditor, see Section 4-3.3103, Profession. (Prior Code § 15-38 (b) (16))

Section 4-3.318. Automobile or trailer renting or leasing.

The annual license tax for every person engaged in the business of automobile or trailer renting or leasing is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (17), 15-38A (part))

Section 4-3.319. Automobile court.

For the license tax on an automobile court, see Section 4-3.373, Hotel, motel or auto court. (Prior Code § 15-38 (b) (18))

Section 4-3.320. Automobile painting shop.

The annual license tax for every automobile paint shop where no body repair or other automobile repair is conducted is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (19), 15-38A (part))

Section 4-3.321. Automobile parking lot or storage garage.

The annual license tax for an automobile parking lot or storage garage is eighty dollars (\$80.00). (Prior Code § 15-38 (b) (20))

Section 4-3.322. Automobile top or upholstery shop.

The annual license tax for every automobile top shop or upholstering shop not connected with mechanical repair, body repair or paint works is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (21), 15-38A (part))

Section 4-3.323. Automobile wrecking.

The annual license tax for every person conducting or maintaining an automobile wrecking business, where wrecked or damaged automobiles are bought or sold in whole or in part, is two hundred dollars (\$200.00). (Prior Code §§ 15-38 (b) (22), 15-38A (part))

Section 4-3.324. Bankrupt or fire sale.

(a) The license tax for every person who sells any bankrupt, assigned or damaged goods, wares or merchandise, other than at auction, is one hundred dollars (\$100.00) per day.

(b) The provisions of this section shall not apply to any stock of goods owned by any person actually conducting a permanent business in this City whose stock has been assigned in bankruptcy or damaged by casualty. (Prior Code §§ 15-38 (b) (23), 15-38A (part))

* Editor's Note: See also Chapter 4-13, Closing-Out and Other Special Sales.

Section 4-3.325. Barbershop.

The annual license tax for a barbershop is forty dollars (\$40.00) for one (1) chair, and ten dollars (\$10.00) for each additional chair in use. (Prior Code §§ 15-38 (b) (24), 15-38A (part))

Section 4-3.326. Bath or massage studio and club.

(a) The annual license tax for every person conducting, managing, carrying on, keeping, maintaining or furnishing steam baths, turkish baths or any similar type of bath, or providing massage or alcohol rubs, whether or not conducted with or as a part of any other business paying a license under the provisions of this chapter, is eighty dollars (\$80.00).

(b) Repealed.

(c) Repealed. (Ord. 2007-10, eff. 7/5/07; Prior Code §§ 15-38 (b) (25), 15-38A (part))

Section 4-3.327. Beauty salon or beauty parlor.

The annual license tax for every person conducting, carrying on or managing a beauty parlor, manicure parlor, or where facial massage, hair-dressing fomentations or electric or magnetic treatments are administered, is forty dollars (\$40.00) for one (1) operator, and ten dollars (\$10.00) for each additional operator. (Prior Code §§ 15-38 (b) (26), 15-38A (part))

Section 4-3.328. Billboard or advertising sign.

(a) The annual license tax for every person conducting, carrying on or managing the business of bill posting or sign advertising by means of billboards or advertising signs on boards, fences, posts, buildings or other structures, or advertising by means of posting, hanging or otherwise affixing or displaying bills, signs or other advertisements in or upon vehicles or upon aircraft or towed by aircraft, is eighty dollars (\$80.00).

(b) The provisions of this section shall not apply to bulletin boards, newspapers or signs posted on any building by the person conducting business therein, advertising his own business, or to owners of real estate or their agents advertising their property for sale or lease when posted upon the property advertised for sale or lease. (Prior Code §§ 15-38 (b) (27), 15-38A (part))

Section 4-3.329. Billiards or pool.

For the license tax on billiards or pool, see § 4-3.399, Pool hall or billiard parlor. (Prior Code § 15-38 (b) (28))

Section 4-3.330. Blacksmith or metal repair shop.

The annual license tax for a blacksmith or metal repair shop is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (29), 15-38A (part))

Section 4-3.331. Boardinghouse.

For the license tax on a boardinghouse, see § 4-3.3112, Rooming house or boardinghouse. (Prior Code § 15-38 (b) (30))

Section 4-3.332. Bookkeeping.

For the license tax on bookkeeping, see § 4-3.3103, Profession. (Prior Code § 15-38 (b) (31))

Section 4-3.333. Bootblack or shoeshine stand or parlor.

The annual license tax on a bootblack or shoeshine stand or parlor is twenty dollars (\$20.00). (Prior Code §§ 15-38 (b) (32), 15-38A (part))

Section 4-3.334. Bowling alley.

The annual license tax for every person operating, conducting or managing a bowling alley is twenty dollars (\$20.00) for each bowling lane, to a maximum of five hundred dollars (\$500.00). (Prior Code §§ 15-38 (b) (33), 15-38A (part))

Section 4-3.335. Boxing, wrestling or other sports, fixed place of business.

The annual license tax for every person conducting any place for the exhibition of boxing, wrestling or other sports within a building or permanent stadium, not otherwise previously licensed under this chapter, is four hundred dollars (\$400.00). (Prior Code §§ 15-38 (b) (34), 15-38A (part))

Section 4-3.336. Broker.

The annual license tax on the business of brokering bail bonds, business opportunities, food, futures, hay, grain, cotton, stocks, bonds, investment securities, real estate or other interests which do not involve the having or carrying on hand of a stock of merchandise for delivery to purchasers, for each broker, member, partner or other person sharing or entitled to share in the profits of the business, but not including salesmen and similar employees paid on a commission or percentage basis per sale, is eighty dollars (\$80.00) for one such broker, member, partner or other person, and forty dollars (\$40.00) for each additional such broker, partner, member or other person. (Prior Code §§ 15-38 (b) (35), 15-38A (part))

Section 4-3.337. Building or ground maintenance.

The annual license tax on building or ground maintenance is sixty dollars (\$60.00). (Prior Code §§ 15-38 (b) (36), 15-38A (part))

Section 4-3.338. Burglar alarm, fire alarm or other signaling systems.

The annual license tax on burglar alarm, fire alarm or other signaling systems is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (37), 15-38A (part))

Section 4-3.339. Bus line operation.

For the license tax on bus line operation, see Chapter 4-12, Bus Franchises. (Prior Code § 15-38 (b) (38))

Section 4-3.340. Buses, charter and rental.

The annual license tax on a charter and rental bus is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (39), 15-38A (part))

Section 4-3.341. Canvasser.

For the license tax on a canvasser, see Section 4-3.3124, Solicitor or canvasser. (Prior Code § 15-38 (b) (40))

Section 4-3.342. Cardroom.

(a) No license shall be issued for the operation of a commercial cardroom or card table within the City.

(b) For the purposes of this section:

(1) "Cardroom" means any building or temporary structure or any room or space therein in which is conducted any game of chance, including the game of draw poker and any or all variations thereof, played with cards, for the gain or profit of the person maintaining the cardroom or conducting the game, in which a charge is made by any person for playing in the game, either in the form of a rental or fee for the use of any seat, card table or space in the building, or for participation in the game in the form of a percentage or fixed fee taken out of the stakes for which the game is played.

(2) "Card table" includes any table, desk, blanket, space or area on or at which is played any game of chance, including the game of draw poker, and any or all variations thereof, with cards, for the gain or profit of the person maintaining the card table or conducting any game of chance thereat, in which a charge is made by any person for playing in the game, either in the form of a rental or fee for the use of any seat, card table or space, or for participation in the game in the form of a percentage or fixed fee taken out of the stakes for which the game is played.

(3) "Person maintaining the building or temporary structure or conducting the game" includes the owner, tenant, permittee or licensee having the use of the building or space or card table, or any employee of such person, or any skill for such person. (Prior Code § 15-38 (b) (41))

Section 4-3.343. Carnival.

For the license tax on a carnival, see Section 4-3.345, Circus, carnival, animal exhibit, itinerant show, rodeo and sports exhibit. (Prior Code § 15-38 (b) (42))

Section 4-3.344. Christmas tree sales.

The annual license tax for every person engaged in the business of selling Christmas trees is forty dollars (\$40.00). The license tax shall not be proratable. (Prior Code §§ 15-38 (b) (43), 15-38A (part))

Section 4-3.345. Itinerant show. Repealed.

(Ord. 2011-02, eff. 5/5/11; Ord. 2010-06, eff. 10/7/10; Ord. 2007-08, eff. 7/5/07; Ord. 90-25 § 2, eff. 11/1/90)

Section 4-3.346. Coin-operated device for other than vending purposes.

For the license tax on coin-operated devices for other than vending purposes, see Chapter 4-6 of this Code, Coin-Operated Machines. (Prior Code § 15-38 (b) (46))

Section 4-3.347. Collection agency.

(a) The annual license tax for every person carrying on the business of a collection agency is eighty dollars (\$80.00).

(b) The tax required by this section shall be in addition to the license taxes required by any other provisions of this title.

(c) For the purposes of this section, "collection agency" means an establishment for the collection of accounts, notes, obligations or debts for others for a compensation or fee. (Prior Code §§ 15-38 (b) (48), 15-38A (part))

Section 4-3.348. Contractor, subcontractor or builder.

(a) The annual license tax for every person engaged in any type of contracting or specialty contracting for which a state license is required under the provisions of the Business and Professions Code of the State is eighty dollars (\$80.00). Any contractor who sells merchandise at a retail outlet within the City, in connection with the contracting business, shall pay an additional annual license tax of twenty dollars (\$20.00).

(b) This section shall apply to any person who, for himself or others, engages in the business of erecting or constructing houses for the purpose of leasing, renting or selling them, and who does not employ a licensed contractor therefor. This section shall not apply to any person building, repairing or altering any building occupied by himself or his family upon completion of the building, repairing or altering.

(c) Every person engaged in the business of a contractor must produce evidence that he holds a valid state contractor's license before a license will be issued pursuant to this title. (Prior Code §§ 15-38 (b) (49), 15-38A (part))

Section 4-3.349. Credit bureau or credit reporting agency.

(a) The annual license tax on every person conducting, carrying or managing the business of a credit bureau or credit reporting agency is eighty dollars (\$80.00).

(b) The license tax required by this section shall be in addition to the license tax required for the carrying on of any other kind of business licensed by any other section of this title. (Prior Code §§ 15-38 (b) (50), 15-38A (part))

Section 4-3.350. Dancehall or public dance. Repealed.

(Ord. 2011-02, eff. 5/5/11; Ord. 2010-06, eff. 10/7/10; Ord. 90-25 § 3, eff. 11/1/90; Res. 2617, eff. 9/18/67; prior Code §§ 15-38 (b) (51), 15-38A (part))

Section 4-3.351. Dancing, music and art schools.

The annual license tax for every person conducting, managing or carrying on any dancing, voice, music, art or crafts school, class or academy is as follows:

(a) When operated in a single-family residential district in accordance with a home occupation permit issued under the zoning provisions of the City, forty dollars (\$40.00);

(b) All others, eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (52), 15-38A (part))

Section 4-3.352. Delivery or messenger service.

The annual license tax for every person engaged in the managing, conducting or operating of a delivery or messenger service, which does not include retail sales as a part of such business, is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (53), 15-38A (part))

Section 4-3.353. Delivery of wholesale goods from outside City.

For the license tax on delivery of wholesale goods from outside the City, see Section 4-3.392, Out-of-town delivery firm, wholesale. (Prior Code § 15-38 (b) (54))

Section 4-3.354. Demonstration party.

The annual license tax for every person selling goods, wares or merchandise by conducting a party demonstration is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (55), 15-38A (part))

Section 4-3.355. Detective agency, security guard or private patrol service.

The annual license tax for every person engaged in the managing, conducting or operating of a detective agency, security guard or private patrol service is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (56), 15-38A (part))

Section 4-3.356. Distributor sales, retail.

The annual license tax for every person selling goods, wares or merchandise, including food and food products of every description, except food and food products produced by such person on his own farm or ranch, having a fixed place of business within the City, whereby distribution and sales are conducted through the use of trucks, vans, wagons or other vehicles, whether motorized or not, is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (57), 15-38A (part))

Section 4-3.357. Dog or cat hospital or kennel.

For the license tax on a dog or cat hospital or kennel, see Section 4-3.311, Animal hospital, boarding kennel, kennel generally. (Prior Code § 15-38 (b) (58))

Section 4-3.358. Drive-in theater or show.

For the license tax on a drive-in theater or show, see Section 4-3.3136, Theater or show. (Prior Code § 15-38 (b) (59))

Section 4-3.359. Eating place.

The annual license tax for every restaurant, cafe or cafeteria or other eating place where no entertainment, as the same is defined in Chapter 4-7 of this title, is provided, is as follows:

- (a) With a seating capacity of fifty (50) seats or less, sixty dollars (\$60.00);
- (b) With a seating capacity of fifty-one (51) seats or more, one hundred dollars (\$100.00);
- (c) For drive-in establishments where the food or beverages are served in vehicles on the premises, whether some seating is available for service or not, one hundred fifty dollars (\$150.00);
- (d) For take-out establishments where food or beverages are served only at take-out windows, eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (61), 15-38A (part))

Section 4-3.360. Employment office.

The annual license tax for every person engaged in managing, conducting or operating the business of providing employment services is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (62), 15-38A (part))

Section 4-3.361. Entertainment business.

For the license tax on an entertainment business, see Chapter 4-7 of this Code. (Prior Code § 15-38 (b) (63))

Section 4-3.362. Exercise or health studio and club.

(a) The annual license tax for every person conducting, managing, carrying on, keeping, maintaining or furnishing an exercise or health studio or club, whether or not conducted with or as a part of any other business, paying a license tax under the provisions of this chapter, is eighty dollars (\$80.00).

(b) In addition to the license fees set out in subsection (a) of this section, all persons conducting, managing, carrying on, keeping, maintaining or furnishing an exercise or health studio or club, shall keep and maintain the same in a safe, clean, healthful and sanitary condition, and shall permit authorized officers of the City, including but not limited to representatives of the Health Department, Police Officers, Fire Inspectors and Building Inspectors to enter the premises at all reasonable times to inspect the premises as to their safe, clean, healthful and sanitary condition.

(c) All persons carrying on a business licensed under this section shall maintain the premises on which the business is operated in accordance with all applicable codes and ordinances, and shall promptly comply with any order of an authorized representative of the Health, Police, Fire or Building Departments to correct any condition which is found by the representative to constitute other than a safe, clean, healthful and sanitary condition on or within the premises. Failure of any person licensed under the provisions of this section to maintain the premises on which the business is conducted in a safe, clean, healthful and sanitary manner, or failure or refusal of such person to comply with an order of an authorized representative of the Health, Police, Fire or Building Departments to ensure that the premises shall be in a safe, clean, healthful and sanitary condition, shall constitute a violation of this chapter and shall be grounds for revocation of the license to operate the business as provided in this chapter.

(d) Repealed by Ordinance 2007-10. (Ord. 2007-10, eff. 7/5/07; Prior Code §§ 15-38 (b) (63.1), 15-38A (part))

Section 4-3.363. Exhibit.

For the license tax on an exhibit, see Section 4-3.345, Circus, carnival, animal exhibit, itinerant show, rodeo or sports exhibit. Prior Code § 15-38 (b) (64))

Section 4-3.364. Fire alarm service.

For the license tax on a fire alarm service, see Section 4-3.338, Burglar alarm, fire alarm or other signaling systems. (Prior Code § 15-38 (b) (67))

Section 4-3.365. Fortuneteller, etc.

For the license tax on a fortuneteller, etc., see Chapter 4-8, Fortunetellers and Similar Occupations. (Prior Code § 15-38 (b) (68))

Section 4-3.366. Franchise and utility services.

Every person providing electrical, gas, telephone, telegraph, water or cable television service within the City shall pay an annual license tax based upon the number of employees of the business in the same manner as provided for wholesale sales and other businesses paying such a license tax under the provisions of this chapter. See Section 4-3.3147 of this Code, Wholesale sales, etc. However, if such person, in accordance with an existing franchise from the City, pays a franchise tax to the City, based upon the gross receipts from the operation of the franchised business, this provision shall not apply, and no business license tax need be paid in addition to the franchise tax. (Prior Code § 15-38 (b) (69))

Section 4-3.367. Funeral parlor.

For the license tax on a funeral parlor, see Section 4-3.385, Mortuary or funeral parlor. (Prior Code § 15-38 (b) (70))

Section 4-3.368. Gardener.

For the license tax on a gardener, see Section 4-3.337, Building or ground maintenance. (Prior Code § 15-38 (b) (71))

Section 4-3.369. Grocery store, retail.

For the license tax on a retail grocery store, see Section 4-3.3147, Wholesale sales, etc. (Prior Code § 15-38 (b) (72))

Section 4-3.370. Ground maintenance.

For the license tax on ground maintenance, see Section 4-3.337, Building or ground maintenance. (Prior Code § 15-38 (b) (73))

Section 4-3.371. Health club.

For the license tax on a health club, see Section 4-3.326, Bath or massage studio and club. (Prior Code § 15-38 (b) (74))

Section 4-3.372. Hospital or rest home.

The annual license tax for every person conducting or managing a hospital, maternity home, sanitarium, rest home or convalescent home, for each bed therein, is ten dollars (\$10.00); provided, that the annual license tax under

this provision shall not exceed five hundred dollars (\$500.00). This section does not apply to residential home care facilities providing care for six (6) or fewer persons. (Prior Code §§ 15-38 (b) (76), 15-38A (part))

* Editor's Note: Section 4-3.372 was amended by request of the City Attorney.

Section 4-3.373. Hotel, motel or auto court.

(a) Every person conducting, carrying on or managing a hotel, motel or auto court shall pay an annual license tax based on the number of units therein for rental as follows:

- (1) From one (1) to ten (10) units, eighty dollars (\$80.00);
- (2) From eleven (11) to twenty-five (25) units, one hundred dollars (\$100.00);
- (3) From twenty-six (26) to fifty (50) units, one hundred twenty dollars (\$120.00);
- (4) From fifty-one (51) to seventy-five (75) units, one hundred forty dollars (\$140.00);
- (5) Seventy-six (76) units or more, one hundred sixty dollars (\$160.00).

(b) An additional license tax shall be required for each classification of business operated in conjunction with that provided for in this section. (Prior Code §§ 15-38 (b) (77), 15-38A (part))

Section 4-3.374. Interior decorator and designer.

The annual license tax on every person engaged in managing, conducting or operating the business of an interior decorator and designer, except when the same is provided without additional charge, as an incident to the sale of furniture or furnishings, is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (78), 15-38A (part))

Section 4-3.375. Itinerant show. Repealed.

(Ord. 2011-02, 5/5/11; Ord. 2004-01, eff. 2/20/04)

Section 4-3.376. Junk dealer.

The annual license tax for every person conducting, carrying on or maintaining the business of dealing in junk or collecting junk is two hundred dollars (\$200.00). (Prior Code §§ 15-38 (b) (80), 15-38A (part))

Section 4-3.377. Laboratory.

The annual license tax for every person engaged in the conduct of a laboratory, whether medical, dental, chemical, bacteriological or other, not producing any goods for sale, is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (81), 15-38A (part))

Section 4-3.378. Lawn maintenance.

For the license tax on lawn maintenance, see Section 4-3.337, Building or ground maintenance. (Prior Code § 15-38 (b) (84))

Section 4-3.379. Locksmith or sharpener.

The annual license tax for every person engaged in managing, conducting or operating the business of repairing locks or sharpening tools or blades is sixty dollars (\$60.00). (Prior Code § 15-38 (b) (85))

Section 4-3.380. Manufacturing.

For the license tax on manufacturing, including food processing, packing, canning, freezing, of all foods or beverages, and the production of dairy products, see Section 4-3.3147, Wholesale sales, etc. (Prior Code § 15-38 (b) (86))

Section 4-3.381. Merchandise stamp.

For the license tax on the business of merchandise stamps, see Section 4-3.208, Trading stamp companies. (Prior Code § 15-38 (b) (87))

Section 4-3.382. Merry-go-round.

For the license tax on a merry-go-round, see Section 4-3.3110, Rides. (Prior Code § 15-38 (b) (88))

Section 4-3.383. Miniature golf, practice driving course and/or putting green.

The annual license tax for every person engaged in the managing, conducting or operating the business of miniature golf, practice driving courses and/or putting greens is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (89), 15-38A (part))

Section 4-3.384. Mobile home or trailer park.

(a) Every person conducting, carrying on or managing a mobile home or trailer park shall pay an annual license tax as follows:

- (1) From one (1) to ten (10) units, one hundred dollars (\$100.00);
- (2) From eleven (11) to twenty-five (25) units, one hundred thirty dollars (\$130.00);
- (3) From twenty-six (26) to fifty (50) units, one hundred fifty dollars (\$150.00);
- (4) From fifty-one (51) to seventy-five (75) units, one hundred eighty dollars (\$180.00);
- (5) Seventy-six (76) units or more, two hundred dollars (\$200.00).

(b) "Unit," as used in this section, includes developed spaces available for rental for the placing of trailers. An additional license tax shall be required for each classification of business operated in conjunction with a mobile home or trailer park. (Prior Code §§ 15-38 (b) (90), 15-38A (part))

Section 4-3.385. Mortuary or funeral parlor.

The annual license tax for a mortuary or funeral parlor is two hundred forty dollars (\$240.00). (Prior Code §§ 15-38 (b) (91), 15-38A (part))

Section 4-3.386. Motel.

For the license tax on a motel, see Section 4-3.373, Hotel, motel or auto court. (Prior Code § 15-38 (b) (92))

Section 4-3.387. Moving or storage service.

For the license tax on a moving or storage service, see Section 4-3.3147, Wholesale sales, etc. (Prior Code § 15-38 (b) (93))

Section 4-3.388. Music machine.

For the license tax on a music machine, see Chapter 4-6, Coin-Operated Machines. (Prior Code § 15-38 (b) (94))

Section 4-3.389. Newspaper.

(a) The annual license tax for every person engaged in the business of publishing newspapers, magazines or periodicals, less than six (6) days per week, is eighty dollars (\$80.00), and in addition thereto, that person shall pay a license fee for all job printing.

(b) The annual license tax for every person engaged in the business of publishing a newspaper, magazine or periodical six (6) days or more per week in the City is two hundred dollars (\$200.00), and in addition thereto that person shall pay a license fee for all job printing.

(c) For the purposes of this section, a "newspaper," "magazine" or "periodical" means such as has a regular paid subscription list, excepting papers printed or issued by schools or colleges. (Prior Code §§ 15-38 (b) (95), 15-38A (part))

Section 4-3.390. Newsstand.

The annual license tax on a newsstand is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (96), 15-38A (part))

Section 4-3.391. Office and commercial building operation.

(a) Every person conducting, carrying on or managing a building having four (4) or more rental units therein for office or commercial purposes shall pay an annual license tax as follows:

- (1) From four (4) to ten (10) units, eighty dollars (\$80.00);
- (2) From eleven (11) to twenty-five (25) units, one hundred dollars (\$100.00);
- (3) From twenty-six (26) to fifty (50) units, one hundred twenty dollars (\$120.00);
- (4) Fifty-one (51) units or more, one hundred forty dollars (\$140.00).

(b) For the purpose of this section, "office or commercial building" means a building or buildings having office or commercial units or spaces for four (4) or more businesses, so constructed with partitions, partial partitions or movable partitions, as to permit commercial businesses or offices to operate in such units independently of each other, but such units need not have separate sanitary or other like facilities. The number of units referred to in this section shall be based on the total number of such units in all buildings operated by the licensee within the City; provided, that a unit actually occupied by the licensee or his employee or agent, as manager of the building or buildings, shall not be counted as a unit for purposes of this provision. (Prior Code §§ 15-38 (b) (97), 15-38A (part))

Section 4-3.392. Out-of-town delivery firm, wholesale.

(a) The annual license tax for every person, other than one having a fixed place of business in the City, engaged in the business of using the public streets of the City for the operation of motor vehicles in wholesale deliveries of foods, food products, petroleum products or other goods or merchandise, and sold by such persons at wholesale, is one hundred twenty dollars (\$120.00).

(b) Any person so engaged shall not be relieved from compliance with the provisions of this section by associating temporarily with any dealer or merchant, or by reason of conducting such business in connection with or in the name of any local dealer or merchant. The provisions of this subsection shall have no application to motor vehicle carriers certificated by the Public Utilities Commission of the state, or when the sale, delivery or distribution of merchandise by such motor vehicle carriers within the City is occasional and incidental to business conducted elsewhere. (Prior Code §§ 15-38 (b) (98), 15-38A (part))

Section 4-3.393. Parade.

For the license tax on a parade, see Chapter 8-4, Parades. (Prior Code § 15-38 (b) (99) (part))

Section 4-3.394. Patrol service.

For the license tax on a patrol service, see Section 4-3.355, Detective agency, security guard or private patrol service. (Prior Code § 15-38 (b) (100))

Section 4-3.395. Pawnbroker or personal property broker.

(a) The annual license tax for every person carrying on the business of money lending when loans are secured by pledge of personal property, or operating a pawnshop, is three hundred dollars (\$300.00).

(b) For the purpose of this section, "pawnbroker" means and includes every person managing, conducting or carrying on the business of loaning money, either for himself or for any other person, and receiving goods, wares or merchandise as a pledge or pawn in security for the payment of same, or who purchases articles of personal property and resells, or agrees to resell, such personal property to vendors or their assigns at prices agreed upon at or before the time of such purchase; provided, however, that this section shall not apply to persons exempt from the payment of municipal license taxes under state or Federal laws.

(c) Each such person is required to keep a book in which shall be entered at the time of purchase, written legibly in the English language, a true and accurate description of every article purchased, pledged with or received by him; the name, residence and an accurate description of the vendor or person from whom received; the amount paid for such article; and the date and hour of purchase or reception. Such book shall be preserved intact for the space of one (1) year from the date of the last entry therein, and shall be exhibited upon request to any police officer of the City. The Council shall have the power to revoke any such pawnbroker's license without notice, and the money representing the unused portion of such license shall be forfeited to the City. (Prior Code §§ 15-38 (b) (101), 15-38A (part))

Section 4-3.396. Peddler, hawker or street vendor.

(a) The annual license tax for every person, whether individually or as a partner, agent or employee, who engages in business in the City as a hawker or peddler of goods, wares or merchandise, is five hundred dollars (\$500.00).

(b) Upon making application for, and before receiving such a license, each such person shall submit to being fingerprinted and an identification record made by the Police Department of this City, and a record of the fingerprints and the identification records shall be filed with and maintained by the Police Department, and no such license shall be issued until approved by the Police Department following a check of the record and fingerprints by the Police Department; provided, that if no report is made by the Police Department within forty-five (45) days after the taking of the fingerprints and identification record, then it shall be deemed an approval of such issuance and such license shall issue.

(c) As to persons licensed under this section, the provisions of Section 4-1.33 providing for the prorating of annual licenses in the event of the commencement of a business after the beginning of a license year shall not be applicable, so that the full annual license tax shall be payable regardless of the time during the license year when such business is commenced.

(d) The provisions of this section shall not apply to a person who is specifically licensed elsewhere under the terms and provisions of this title, who maintains a fixed place of business in the City and who, as an incident only to

the business so otherwise licensed, peddles or hawks goods, wares or merchandise. (Ord. 84-1088 § 7, eff. 12/6/84; prior Code §§ 15-38 (b) (102), 15-38A (part))

Section 4-3.397. Photographer.

For the license tax on a photographer, see Chapter 4-9, Photographers. (Prior Code § 15-38 (b) (103))

Section 4-3.398. Pinball machine.

For the license tax on a pinball machine, see Chapter 4-6, Coin-Operated Machines. (Prior Code § 15-38 (b) (104))

Section 4-3.399. Pool hall or billiard parlor.

The annual license tax on a pool hall or billiard parlor with one (1) pool, billiard or snooker table is eighty dollars (\$80.00). For each additional such table, the annual license tax is twenty dollars (\$20.00). (Prior Code §§ 15-38 (b) (105), 15-38A (part))

Section 4-3.3100. Practice driving course.

For the license tax on a practice driving course, see Section 4-3.383, Miniature golf, practice driving course or putting green. (Prior Code § 15-38 (b) (106))

Section 4-3.3101. Printer or lithographer.

For the license tax on a printer or lithographer, including a job printer, see Section 4-3.3147, Wholesale sales, etc. (Prior Code § 15-38 (b) (107))

Section 4-3.3102. Produce exchange.

For the license tax on a produce exchange, see Section 4-3.336, Broker. (Prior Code § 15-38 (b) (108))

Section 4-3.3103. Profession.

(a) The annual license tax for every accountant, adjuster, appraiser, assayer, architect, attorney, chiroprapist, chiropractor, consulting engineer or consultant in any of the sciences, dentist, engineer, geologist, oculist, optometrist, physician, surveyor, veterinarian or any other member of a recognized profession or calling similar to those enumerated in this section, whether practicing individually or as a member of a partnership, firm or association, is eighty dollars (\$80.00).

(b) Nothing in this section shall be construed or deemed to apply to any person engaged in any of the professions or occupations enumerated solely as the employee of any other person conducting, carrying on or managing such business, occupation or profession in the City, but if such employee shares in the profits of the business, he shall be liable for the tax. A separate tax must be paid by each member of each such firm, association or partnership.

(c) Any person conducting two (2) or more such businesses, occupations or professions at the same place of business shall be required to take out one (1) license where conducted at the same place of business, but the license shall specify the businesses, occupations or professions for which the license is issued and the applicable license tax for each business paid. (Prior Code §§ 15-38 (b) (109), 15-38A (part))

Section 4-3.3104. Promoter.

The annual license tax on every person who, for any compensation whatsoever, carries on or manages the business of selling tickets for or promoting any activity, event, fund drive or similar activity on behalf of any actual or purported charitable, political, philanthropic, social service, benevolent or patriotic club, corporation, association or person within the City, for which a paid admission is charged or collected, or as a part of which funds are solicited, donated or received, is five hundred dollars (\$500.00). (Prior Code §§ 15-38 (b) (110), 15-38A (part))

Section 4-3.3105. Putting green.

For the license tax on a putting green, see Section 4-3.383, Miniature golf, practice driving course or putting green. (Prior Code § 15-38 (b) (111))

Section 4-3.3106. Radio broadcasting studio.

The annual license tax for every person engaged in managing, conducting or operating a commercial radio broadcasting studio is one hundred dollars (\$100.00). (Prior Code §§ 15-38 (b) (112), 15-38A (part))

Section 4-3.3107. Refuse collection.

For the license tax on refuse collection, see Chapter 8-11 of this Code, Refuse collection. (Prior Code § 15-38 (b) (113))

Section 4-3.3108. Repair shop and business.

For the license tax on a repair shop and business, see Section 4-3.3147, Wholesale sales, etc. (Prior Code § 15-38 (b) (114))

Section 4-3.3109. Rest home.

For the license tax on a rest home, see Section 4-3.372, Hospital or rest home. (Prior Code § 15-38 (b) (115))

Section 4-3.3110. Ride, mechanical.

The daily license tax on any person conducting or operating any flying horses, merry-go-rounds, Ferris wheels or other riding devices, when such flying horses, merry-go-rounds, Ferris wheels or other riding devices are not shown with any other circus, show, game, attraction or carnival, otherwise licensed under this title for each ride or device, is twenty dollars (\$20.00). (Ord. 84-1088 § 8, eff. 12/6/84; prior Code §§ 15-38 (b) (116), 15-38A (part))

Section 4-3.3111. Rodeo.

For the license tax on a rodeo, see Section 4-3.345, Circus, animal exhibit, itinerant show, rodeo and sports exhibit. (Prior Code § 15-38 (b) (117))

Section 4-3.3112. Rooming house or boarding house.

The annual license tax on every person keeping or conducting a rooming house or boardinghouse where there are three (3) or more rooms rented for sleeping purposes, for from three (3) to six (6) rooms, is eighty dollars (\$80.00). For each additional room, the annual license tax is ten dollars (\$10.00). (Prior Code §§ 15-38 (b) (118), 15-38A (part))

Section 4-3.3113. Rubbish hauling.

For the license tax on rubbish hauling, see Chapter 8-11 of this Code, Refuse collection. (Prior Code § 15-38 (b) (119))

Section 4-3.3114. School, business, secretarial, cosmetology or trade.

The annual license tax for every person engaged in the operation of a business, secretarial, cosmetology or trade school is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (120), 15-38A (part))

Section 4-3.3115. School, dancing, music and art.

For the license tax on dancing, music, art and similar schools, see Section 4-3.351. (Prior Code §§ 15-38 (b) (121), 15-38A (part)) (Ord. 94-16, eff. 8/18/94)

Section 4-3.3116. School, nursery.

The annual license tax on every person engaged in the business of a nursery school is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (122), 15-38A (part))

Section 4-3.3117. Secretarial or telephone answering service.

The annual license tax for every person engaged in the business of providing a secretarial or telephone answering service is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (123), 15-38A (part))

Section 4-3.3118. Shooting gallery.

(a) The license tax for every person carrying on the business of shooting gallery, unless the same is a part of any other show, game, attraction or carnival otherwise licensed under this title, is as follows:

- (1) Twenty dollars (\$20.00) per day;
- (2) Eighty dollars (\$80.00) per month;
- (3) One hundred sixty dollars (\$160.00) per quarter;
- (4) Four hundred eighty dollars (\$480.00) per year.

(b) It is unlawful to carry on the business specified in this section without first procuring a permit from the Building Inspector so to do; provided, that the Building Inspector shall issue such permit, if safety devices and appliances are installed so as to render the conduct of such place safe. Such permit shall be filed with the Director of Administrative Services prior to the issuance of a license under this chapter.

(c) Nothing in this section is to be construed or implied to permit any person to carry on the business of a shooting gallery as part of any other show, game, attraction or carnival, even though no license fee is required as provided in this section, unless such person first procures a permit from the building official as provided in subsection (b) of this section. (Prior Code §§ 15-38 (b) (124), 15-38A (part))

Section 4-3.3119. Show.

For the license tax on a show, see Section 4-3.345, Circus, carnival, animal exhibit, itinerant show, rodeo and sports exhibit, and Section 4-3.3147, Theater or show. (Prior Code § 15-38 (b) (125))

Section 4-3.3120. Sign painting.

The annual license tax for every person engaged in the business of sign painting, unless licensed as a contractor under other provisions of this chapter, is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (126), 15-38A (part))

Section 4-3.3121. Sign or bill posting.

The annual license tax for every person engaged in the business of installing display signs or bill posting is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (127), 15-38A (part))

Section 4-3.3122. Signaling system.

For the license tax on signaling systems, see Section 4-3.338, Burglar alarm, fire alarm or other signaling systems. (Prior Code § 15-38 (b) (128))

Section 4-3.3123. Skating rink.

The annual license tax on every person keeping, conducting, managing or maintaining a skating rink is one hundred twenty dollars (\$120.00); provided, that an additional tax of twenty dollars (\$20.00) shall be paid by such person for each skating exhibition, hockey game or athletic game held in such skating rink for which an admission fee is charged. (Prior Code §§ 15-38 (b) (129), 15-38A (part))

Section 4-3.3124. Solicitor or canvasser.

(a) License Tax. The license tax for every person engaged in the business of soliciting or canvassing, or soliciting, canvassing or taking orders from house to house or from place to place, whether individually or as a member of a partnership or firm, or as an agent or employee, for each such solicitor or canvasser, is as follows:

- (1) Twenty dollars (\$20.00) per day;
- (2) Eighty dollars (\$80.00) per month;
- (3) One hundred sixty dollars (\$160.00) per quarter;
- (4) Five hundred dollars (\$500.00) per year.

(b) Service of Process. Each and every applicant shall deposit with the Director of Administrative Services a written statement executed by him appointing the Director of Administrative Services as his agent for the service of process in all matters connected with or arising out of the conduct of the applicant's business within the City. It shall be the duty of the Director of Administrative Services immediately to advise the applicant by registered mail, addressed to the applicant at place of business, as set forth in his application for a business license under this section, of the nature and pendency of any action brought against the applicant wherein process is served on the Director of Administrative Services.

(c) Police Check.

(1) Upon making application for, and before receiving such a license, each such solicitor or canvasser shall submit to being fingerprinted and an identification record made by the Police Department of this City, and a record of the fingerprints and the identification records shall be filed with and maintained by the Police Department. No such license shall be issued until approved by the Police Department following a check of the record and fingerprints by the Police Department; provided, that if no report is made by the Police Department within forty-five (45) days after the taking of the fingerprints and identification record, then it shall be deemed an approval of such issuance and such license shall issue.

(2) The provisions of subdivision (1) of this subsection shall not apply to solicitors or canvassers representing persons conducting a business at a fixed place of business within the City, which business is licensed

under other provisions of this title; provided, that any such licensed business shall provide a list of the names and addresses of all persons who are to act as solicitors or canvassers for such business, with the Director of Administrative Services, which list shall be certified by them, stating that all persons listed thereon are known to them, and agreeing that upon the request of the Director of Administrative Services, or of the Police Chief, any person named on the list shall submit to identification procedures, including fingerprinting by the Police Department, or that such person shall cease any and all soliciting or canvassing within the City if such person refuses to submit to such identification procedures. (Ord. 82-1044 § 2, eff. 12/16/82; Ord. 2004-01, eff. 2/20/04)

Section 4-3.3125. Sports exhibit.

For the license tax on a sports exhibit, see Section 4-3.345, Circus, carnival, animal exhibit, itinerant show, rodeo and sports exhibit. (Prior Code § 15-38 (b) (131))

Section 4-3.3126. Stock or produce exchange.

For the license tax on a stock or produce exchange, see Section 4-3.336, Broker. (Prior Code § 15-38 (b) (132))

Section 4-3.3127. Storage service.

For the license tax on a storage service, see Section 4-3.387, Moving or storage, and Section 4-3.3147, Wholesale sales, etc. (Prior Code § 15-38 (b) (133))

Section 4-3.3128. Surplus merchandiser.

For the license tax on a surplus merchandiser, see Article 1 of this chapter, describing the gross receipts license tax, or Section 4-3.376, Junk dealer. (Prior Code § 15-38 (b) (134))

Section 4-3.3129. Tailor shop.

The annual license tax for every tailor shop, unless conducted as an incidental part of a cleaning or dyeing business, is sixty dollars (\$60.00). (Prior Code §§ 15-38 (b) (135), 15-38A (part))

Section 4-3.3130. Taxicab.

For the license tax on a taxicab business, see Chapter 4-10, Taxicabs. (Prior Code § 15-38 (b) (136))

Section 4-3.3131. Taxidermist.

The annual license tax on a taxidermist is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (137), 15-38A (part))

Section 4-3.3132. Telephone answering service.

For the license tax on a telephone answering service, see Section 4-3.3117, Secretarial or telephone answering service. (Prior Code § 15-38 (b) (138))

Section 4-3.3133. Telephone solicitation.

(a) License Tax. The license tax for every person engaged in the business of using a telephone or telephones for the purpose of soliciting or canvassing orders, other than commercial travelers, soliciting orders at wholesale and persons licensed under other provisions of this title, whether individually or as a member of a partnership or firm, or as an agent or employee, is as follows for each individual:

- (1) Fifty dollars (\$50.00) per day;
- (2) Two hundred fifty dollars (\$250.00) per month.

(b) Application. Upon making application for, and before receiving such a license, the applicant shall state, in addition to any other information required in the business application form, the number of telephones to be used, and the place at which the telephone or telephones shall be located, and shall provide the Director of Administrative Services with written statements, copies, drafts or transcripts of the offer or proposal to be made to members of the public through such telephone solicitation, and copies of all printed matter, including order forms, contracts, brochures and any other materials to be displayed to, or delivered to, members of the public in the event that members of the public respond to such telephone solicitation. The making of offers or proposals in the course of such telephone solicitation which are substantially different from or deviate from the offer or proposal provided the Director of Administrative Services in making the application, or the display of or delivery to members of the public responding to such solicitations of any printed material other than that provided the Director of Administrative Services in conjunction with the application as required in this section, shall constitute a violation of the provisions

of this chapter and subject the person making such offer or proposal to the penalties provided in this title for violations.

(c) **Misleading Offers.** No license shall be issued to any person for the business of telephone solicitation if the proposed offer or proposal, as provided by the applicant to the Director of Administrative Services, indicates that the public is to receive money or anything of value free of charge or purportedly in return for, or as a commission for, selling to others or persuading others to order any goods, wares or merchandise or anything which the person subject to this license requirement is attempting to purvey, or for persuading others to respond, by telephone or otherwise, to the offer or proposal being made by the person so licensed.

(d) **Number of Telephones.** If more than one (1) telephone is to be used or located in the place from which telephone calls are to be made, the license tax in this section shall be paid by the applicant on the basis of the number of telephones in the same manner as if there were more than one (1) person to be licensed.

(e) **Employees.** If the applicant hires or attempts to hire any person to conduct such telephone solicitation as his employee, whether temporary or permanent, the license tax shall be paid for each such person, and each such person shall appear in the office of the Director of Administrative Services, prior to the issuance of the license, and execute an acknowledgment on a form provided by the Director of Administrative Services, stating that they have read, and are familiar with, the offer or proposal to be used in such telephone solicitations, and have read and are familiar with the printed materials to be displayed to or delivered to members of the public responding to such solicitations, and that they are aware that the making of an offer or proposal substantially different from or deviating from the offer or proposal as delivered to the Director of Administrative Services, or the display or delivery to the public of any printed materials other than those delivered to the Director of Administrative Services, will constitute a violation of this chapter and subject them to misdemeanor penalties for such violation in the manner provided by this Code. (Prior Code §§ 15-38 (b) (139), 15-38A (part))

Section 4-3.3134. Television cable company.

For the license tax on a television cable company, see Chapter 4-11, Cable Television System Franchises. (Prior Code § 15-38 (b) (140))

Section 4-3.3135. Television studio.

The annual license tax for every person engaged in managing, conducting or operating a commercial television studio is two hundred dollars (\$200.00). (Prior Code §§ 15-38 (b) (141), 15-38A (part))

Section 4-3.3136. Theater or show.

(a) **Walk-in.** The annual license tax for every person engaged in the business of conducting a theater or moving picture show at an established place of business is as follows:

- (1) Seating capacity of eight hundred (800) persons or fewer, one hundred fifty dollars (\$150.00);
- (2) Seating capacity of more than eight hundred (800) persons, three hundred dollars (\$300.00).

(b) **Drive-in.**

(1) The annual license tax for every person engaged in the business of conducting a drive-in theater or show at an established place of business is as follows:

- (A) Capacity of two hundred (200) vehicles or fewer, one hundred fifty dollars (\$150.00);
- (B) Capacity of more than two hundred (200) vehicles, three hundred dollars (\$300.00).

(2) For the purposes of this provision the capacity for a vehicle means a car or vehicle stall equipped with a speaker or such other equipment as may be required for motion picture viewing from a vehicle standing in such stall.

(c) The license tax for every person engaged in the business of conducting an open-air theater or tent show wherein vaudeville, comic, dramatic or operatic productions or performances are given, motion pictures shown or exhibited, as an independent business and not as a part of any other business or entertainment, is as follows:

- (1) One hundred dollars (\$100.00) per day;
- (2) Three hundred dollars (\$300.00) per week;
- (3) Four hundred dollars (\$400.00) per month. (Prior Code §§ 15-38 (b) (142), 15-38A (part))

Section 4-3.3137. Title company.

The annual license tax for every person conducting, carrying on or managing the business of examining, searching or investigating titles to real estate and issuing abstracts, statements or certificates of title showing or purporting to show or certify the condition or state of the title to any particular property as disclosed by examination

of the public records is two hundred dollars (\$200.00). The provisions of this section shall not apply to the business of title insurance. (Prior Code §§ 15-38 (b) (143), 15-38A (part))

Section 4-3.3138. Trailer park.

For the license tax on trailer parks, see Section 4-3.384, Mobile home or trailer park. (Prior Code § 15-38 (b) (145))

Section 4-3.3139. Trailer renting or leasing.

For the license tax on trailer renting or leasing, see Section 4-3.318, Automobile or trailer renting and leasing. (Prior Code § 15-38 (b) (146))

Section 4-3.3140. Transfer.

For the license tax on transfer, see Section 4-3.3147, Wholesale sales, etc. (Prior Code § 15-38 (b) (147))

Section 4-3.3141. Travel bureau or agency.

The annual license tax on every person engaged in the managing, conducting or operating the business of a travel bureau or agency is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (148), 15-38A (part))

Section 4-3.3142. Tree service.

The annual license tax for every person engaged in managing, conducting or operating the business of tree service, including tree surgery and removal, is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (149), 15-38A (part))

Section 4-3.3143. Trucking or draying.

For the license tax on trucking or draying, see Section 4-3.3147, Wholesale sales, etc. (Prior Code § 15-38 (b) (150))

Section 4-3.3144. Warehouse for storage.

For the license tax on a warehouse for storage, see Section 4-3.3147, Wholesale sales, etc. (Prior Code § 15-38 (b) (152))

Section 4-3.3145. Watch, clock or jewelry repair.

The annual license tax for every person engaged in managing, conducting or operating the business of watch, clock and/or jewelry repair is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (153), 15-38A (part))

Section 4-3.3146. Water conditioning service.

The annual license tax on every person engaged in managing, conducting or operating the business of a water conditioning service is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (154), 15-38A (part))

Section 4-3.3147. Wholesale sales, etc.

(a) The annual license tax for every person engaged in the business of wholesale sales; manufacturing, including food processing, packing, canning, freezing and the production of dairy products; trucking; moving and storage; warehousing; retail automotive vehicle sales; retail aircraft sales; retail grocery stores; job printers or lithographers; food lockers; any repair shops not otherwise specifically provided for in this chapter; or franchise or utility service businesses, as such franchise or utility services are defined in Section 4-3.366; is upon the number of employees of the business, in accordance with the following:

- (1) One (1) to five (5) employees, eighty dollars (\$80.00);
- (2) Each additional employee from six (6) to twenty (20), ten dollars (\$10.00);
- (3) Each additional employee of twenty-one (21) or more, two dollars (\$2.00);
- (4) Maximum license tax to be paid pursuant to this section, five hundred dollars (\$500.00).

(b) For the purposes of this section, “employee” means any person engaged full time or part time in the operation or conduct of any business described in this section, whether as owner, member of the owner’s family, partner, agent, manager, solicitor or any other persons employed or working in the business.

(c) For the purpose of determining the “average number of employees employed” during the year, the number of persons employed at or near the fifteenth day of each month during the year in which business is transacted

within the City shall be added together and the sum shall be divided by the number of months or fractions of months the business is in operation.

(d) Every business required to be licensed under this section shall report to the Director of Administrative Services, on a form prescribed by him, the number of employees of such business, for the purpose of determining the amount of license tax to be paid. Any intentional misrepresentation in such report shall constitute a violation of the provisions of this chapter. (Prior Code §§ 15-38 (b) (155), 15-38A (part))

Section 4-3.3148. Wrestling.

For the license tax on wrestling, see Section 4-3.335, Boxing, wrestling or other sports, fixed place of business; see also Section 4-3.335, Circus, carnival, animal exhibit, itinerant show, rodeo and sports exhibit. (Prior Code § 15-38 (b) (156))

Section 4-3.3149. Unlisted business.

The annual license tax for any business not otherwise provided for in this title is eighty dollars (\$80.00). (Prior Code §§ 15-38 (b) (157), 15-38A (part))

CHAPTER 4-4 AMBULANCES

Section 4-4.01. County provisions: Adoption.

The provisions of County Ordinance No. 2881, being Chapter 5 of the Santa Barbara County Code, are adopted by reference, subject to the adoptions and amendments set forth in this chapter. (Prior Code § 2A-1)

Section 4-4.02. County provisions: References to county.

In each and every case wherein the ordinance adopted in Section 4-4.01 refers to the county, the same is amended to refer to the City, and all references delineating the scope of the ordinance as extending to the unincorporated territory of the county shall include the incorporated area of the City. All references in the ordinance to "county" shall include "City." (Prior Code § 2A-2)

Section 4-4.03. License suspension or revocation.

Any license or permit issued pursuant to the provisions of this chapter may be suspended or revoked by the Sheriff of the county upon the grounds and after following the procedures outlined in the Emergency Medical Response Manual (EMRM). (Prior Code § 2A-3 (a))

Section 4-4.04. Appeal of license decisions.

Any person whose application for a license or permit is disapproved, or whose license or permit is suspended or revoked after a hearing, as specified in the Emergency Medical Response Manual, may appeal to the board of supervisors of the county in accordance with the provisions therefor set forth in the Emergency Medical Response Manual (EMRM). (Prior Code § 2A-3 (b))

Section 4-4.05. Enforcement by County.

No provision in this chapter is to be construed as limiting the ability of the county, acting by and through the county counsel, from enforcing the provisions of this chapter by appropriate civil proceedings in a court of competent jurisdiction whenever the context or the circumstances in any given instance indicate the advisability of such proceedings in the judgment of the County Counsel. (Prior Code § 2A-3 (d))

Section 4-4.06. Violation: Misdemeanor.

Violations of the provisions of this chapter shall constitute misdemeanors punishable as provided in Chapter 1-6, and may be prosecuted by the District Attorney of the County. (Prior Code § 2A-3 (c))

CHAPTER 4-5 BINGO GAMES

Section 4-5.01. Bingo defined.

As used in this chapter, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random. It shall also include cards having numbers or symbols which are concealed and preprinted in a manner providing for distribution of prizes; provided, that the winning card shall not be known prior to a bingo game by any person participating in the playing or operation of the game; and provided further, that all such cards shall bear the legend "for sale or use only in a bingo game authorized under California law and pursuant to local ordinance." (Ord. 83-1063 § 1, eff. 12/1/83: prior Code § 15A-11)

Section 4-5.02. Eligible organizations.

Nonprofit organizations exempted from the payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g and 23701h of the Revenue and Taxation Code and mobile home park associations and senior citizens' organizations; provided, that the proceeds of such games are used only for charitable purposes, are eligible to apply to the City for a license to conduct bingo games in the City under the provisions of Section 326.5 of the Penal Code and the provisions of this chapter. (Prior Code § 15A-1)

Section 4-5.03. License: Filing application: Term.

Eligible organizations desiring to obtain such license to conduct bingo games in the City shall file an application in writing therefor in the office of the Director of Administrative Services on a form to be provided by the Director. The issuing authority shall be the Director of Administrative Services. The license issued shall be for a term of one (1) year from the date of issuance, subject to renewal and annual license fee; provided, however, that the license year shall be the same as the business license year and, upon first application, shall be prorated proportionately to the portion of the year remaining. (Prior Code § 15A-2)

Section 4-5.04. Qualification for license.

No license shall be issued to any organization unless such applicant is an eligible organization under Section 4-5.02 and its application conforms to the requirement, terms and conditions of this chapter. (Prior Code § 15A-3)

Section 4-5.05. Contents of application.

(a) The application for a license under this chapter shall contain the following:

(1) The name of the applicant organization and a statement that applicant is an eligible organization under Section 4-5.02, together with the mailing address of the organization for the purpose of giving notices and communications as provided in this chapter;

(2) The name and signature of at least two (2) officers, including the presiding officer of the organization, corporation or community chest or the trustee of any trust;

(3) The particular property within the City, including the street number, owned or leased by the applicant, used by such applicant for an office or for the performance of the purposes for which the applicant is organized, on which property bingo games will be conducted, together with the occupancy capacity of such place;

(4) Proposed days of week and hours of day for conduct of bingo games;

(5) That the applicant agrees to conduct bingo games in strict accordance with the provisions of Section 326.5 of the Penal Code and this chapter as they may be amended from time to time, and agrees that the license to conduct bingo games may be revoked by the Director of Administrative Services upon violation of any of these provisions;

(b) The application shall be signed by the applicant under penalty of perjury.

(c) The annual license fee fixed by the Council by resolution shall accompany the application.

(d) The applicant shall also submit, with its application, a certificate or determination of exemption under Section 23701 of the Revenue and Taxation Code, or a letter of good standing from the exemption division of the Franchise Tax Board in Sacramento showing exemption under Section 23701. If the eligibility for a bingo license is not determined by Section 23701 of the Revenue and Taxation Code, then the applicant shall submit such documents as required by the Director of Administrative Services. (Prior Code § 15A-4)

Section 4-5.06. Investigation of applicant.

Upon receipt of the completed application and the fee, the Director of Administrative Services shall refer the same to interested departments of the City including, but not limited to, the City Manager, City Attorney, Police

Department, Fire Department and Community Development Department for investigation as to whether or not all the statements in the application are true, and whether or not the property of the applicant qualifies and the extent to which it qualifies, as property on which bingo games may lawfully be conducted as to fire, occupancy and other applicable restrictions. (Prior Code § 15A-5)

Section 4-5.07. License issuance: Contents of license.

Upon being satisfied, based upon the written reports of the Police, Fire and Community Development Departments, that the applicant is fully qualified under law to conduct bingo games in the City, the Director of Administrative Services shall issue a license to the applicant, which shall contain the following information:

- (a) The name and nature of the organization to whom the license is issued, together with the mailing address of the organization for the purpose of giving notice or any communication;
- (b) The address where bingo games are authorized to be conducted;
- (c) The occupancy capacity of the room or rooms in which bingo games are to be conducted;
- (d) The date of the expiration of such license;
- (e) Such other information as may be necessary or desirable for the enforcement of the provisions of this chapter. (Prior Code § 15A-6)

Section 4-5.08. Summary suspension of license.

(a) Whenever it appears to the Director of Administrative Services that the licensee is conducting a bingo game in violation of any of the provisions of this chapter, the Director of Administrative Services shall have the authority to summarily suspend the license and order the licensee to cease and desist any further operation of any bingo game immediately.

(b) Any person who continues to conduct a bingo game after any summary suspension thereof under subsection (a) of this section is guilty of a misdemeanor.

(c) The order issued under subsection (a) of this section shall also notify the licensee that it shall have ten (10) days from the date of such order to request a hearing to determine whether such license shall be revoked. Failure to request, in writing, such hearing before the Director of Administrative Services within the ten (10) day period shall result in revocation of the license.

(d) Upon such request by the licensee whose license has been suspended under subsection (a) of this section for a hearing to determine whether such license shall be revoked, the Director of Administrative Services shall provide such hearing within fifteen (15) days after receipt of such request, at which hearing the suspended licensee may appear before the Director of Administrative Services for the purpose of presenting evidence why the license should not be revoked. No license shall be revoked under this section unless notice of the time and place of such hearing has first been given at least five (5) days before the hearing thereof by depositing in the United States mail a notice directed to the suspended licensee at the address given in the application. The notice shall set forth a summary of the ground advanced as the basis of the suspension and revocation.

(e) Any organization whose license is revoked under this section shall not conduct any bingo game in the City until such time as the Council, on appeal, determines to overrule the decision of the Director of Administrative Services. (Prior Code § 15A-7)

Section 4-5.09. Revocation of license.

(a) Whenever it appears to the City Manager that the licensee is conducting bingo games in violation of any of the provisions of this chapter, or that the license was obtained by fraudulent representation and no summary suspension is ordered under Section 4-5.08, the license may be revoked; provided, however, that the licensee may appear before the Director of Administrative Services at the time fixed by the Director, for the purpose of presenting evidence why the license should not be revoked. No license shall be revoked under this section unless written notice has first been given at least five (5) days before the hearing thereof by depositing in the United States mail a notice directed to the licensee at the address given in the application. The notice shall set forth a summary of the ground advanced as the basis of the revocation.

(b) Any organization whose license is revoked under this section shall not conduct any bingo game in the City until such time as the Council, on appeal, determines to overrule the decision of the Director of Administrative Services. (Prior Code § 15A-8)

Section 4-5.10. Appeal of license revocation.

(a) Any holder of a license whose license is revoked under this chapter shall have the right, within ten (10) days after receiving notice in writing of the revocation, to file a written appeal to the Council. Such appeal shall set

forth the specific ground or grounds on which it is based. The Council shall hold a hearing on the appeal within thirty (30) days after its receipt by the City, or at a time thereafter agreed upon between the appellant and the City Manager. The City Clerk shall cause the appellant to be given at least ten (10) days' written notice of such hearing. At the hearing, the appellant or his authorized representative shall have the right to present evidence and a written or oral argument, or both, in support of his appeal. The determination of the Council on the appeal shall be final.

(b) Any organization whose license is finally revoked may not again apply for a license to conduct bingo games in the City for a period of one (1) year from the date of such revocation; provided, however, that if the ground for revocation is cancellation of the exemption granted under Section 23701d of the Revenue and Taxation Code, such organization may again apply for a license upon proof of reinstatement of the exemption; provided further, however, that such application shall meet all the requirements of an original application, including but not limited to the payment of the license fee prescribed by the resolution of the Council. (Prior Code § 15A-9)

Section 4-5.11. Service of notices.

All notices provided for in this chapter shall be served upon the organization to be served by deposit in the United States mail addressed to the mailing address shown in its license. All notices to the City shall be served by filing in the office of the City Clerk; provided, however, that service upon any organization may be accomplished by personal service upon the presiding officer of that organization. (Prior Code § 15A-10)

Section 4-5.12. Prize value.

The total value of prizes awarded during the conduct of any one bingo game shall not exceed the limitation set forth in Penal Code Section 326.5 or any successor statute. (Prior Code § 15A-12; Ord. 94-9, eff. 5/19/94)

Section 4-5.13. Proceeds.

(a) With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code, all profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Such profits shall be used only for charitable purposes. With respect to other organizations authorized to conduct bingo games pursuant to this chapter, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Such proceeds shall be used only for charitable purposes except as provided in Penal Code Section 326.5 or any successor statute.

(b) The licensee shall keep full and accurate records of the income and expenses which are authorized by this chapter. The City, by and through its authorized officers, shall have the right to examine and audit such records at any reasonable time, and the licensee shall fully cooperate with the City by making such record available. (Ord. 82-1034 § 1 (part), eff. 9/2/82; prior Code § 15A-13) (Ord. 94-9, eff. 5/19/94; Ord. 82-1034, eff. 9/2/82)

Section 4-5.14. Outside financial interests.

No individual, corporation, partnership or other legal entity except the licensee shall hold a financial interest in the conduct of any bingo game conducted by the licensee. (Prior Code § 15A-14)

Section 4-5.15. Operating personnel.

A bingo game shall be operated and staffed only by members of the licensee organization. Such members shall not receive a profit, wage, salary or commission of any kind from any bingo game, or any rentals or payments of any kind for property or equipment or services in connection therewith. Only the licensee shall operate such game, or participate in the promotion, supervision or any other phase of such game. (Prior Code § 15A-15)

Section 4-5.16. Open to public.

All bingo games shall be open to the public, not just to the members of the licensee organization. (Prior Code § 15A-16)

Section 4-5.17. Attendance limited.

Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which such game is conducted, as determined by the Fire Department and building division of the City, in accordance with applicable laws and regulations. Licensee shall not reserve seats or space for any person. (Prior Code § 15A-17)

Section 4-5.18. Location of games.

A licensee shall conduct a bingo game only on property owned or leased by it, or property whose use is donated to the organization, and which property is used by such organization for an office or for performance of the purposes for which the organization is organized. Nothing in this section shall be construed to require that the property owned or leased by or whose use is donated to the organization be used or leased exclusively by or donated exclusively to such organization. (Ord. 82-1034 § 1 (part), eff. 9/2/82: prior Code § 15A-18)

Section 4-5.19. Minors.

No person under the age of eighteen (18) years of age shall be allowed to participate in any bingo game. "Participation," as that term is used in this section, includes any form of participation in the game or games, whether by the purchase of cards, holding of cards, acceptance of prizes, receiving of prizes, or assisting others in such activities. (Prior Code § 15A-19)

Section 4-5.20. Intoxicated persons.

No person who is obviously intoxicated shall be allowed to participate in a bingo game. (Prior Code § 15A-20)

Section 4-5.21. Hours.

No licensee shall conduct any bingo game more than six (6) hours out of any twenty-four (24) hour period. No bingo game shall be conducted before ten (10:00) a.m. nor after two (2:00) a.m. of any day. (Prior Code § 15A-21)

Section 4-5.22. Presence required for participation.

No person shall be allowed to participate in a bingo game unless the person is physically present at the time and place in which the bingo game is being conducted. (Prior Code § 15A-22)

Section 4-5.23. Personal receipt of profit.

It is a misdemeanor under Section 326.5 (b) of the Penal Code of the state for any person to receive a profit, wage or salary from any bingo game authorized under this chapter, a violation of which is punishable by a fine not to exceed ten thousand dollars (\$10,000.00), which fine shall be deposited in the general fund of the City. (Prior Code § 15A-23)

Section 4-5.24. Violation: Enjoinment.

The City may bring an action in a court of competent jurisdiction to enjoin a violation of Section 326.5 of the Penal Code or of this chapter. (Prior Code § 15A-24)

Section 4-5.25. Violation: Misdemeanor.

It is unlawful for any person to violate any of the provisions of this chapter. Any violation of any provision of this chapter other than violations of Section 326.5 (b) of the Penal Code of the state shall constitute a misdemeanor pursuant to the provisions of Chapter 1-6 of this Code. (Prior Code § 15A-25)

CHAPTER 4-6 COIN-OPERATED MACHINES

Section 4-6.100. Article 100. Generally

Section 4-6.101. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) "Coin-operated machine" means any machine, device or apparatus other than a vending machine, the operation or use of which is permitted, controlled or made possible by the deposit or placing of any coin, plate, disk, slug or key into any slot, crevice or other opening or by the payment of any fees.

(b) "Game machine" means any coin-operated machine for use as a game or contest of any description or for amusement, or which may be used for any such game or contest or for amusement.

(c) "Mechanical amusement machine" means any coin-operated machine which will produce or reproduce music or sound.

(d) "Persons financially interested" includes all persons who share in the profits of the business on the basis of gross or net revenue, but it shall not include persons who receive a portion of such gross or net revenue in return for the privilege of maintaining any such coin-operated machine in their place of business.

(e) "Vending machine" means any coin-operated machine used or which may be used for the purpose of vending or distributing any commodity, except postal stamps, envelopes and cards issued by the United States Government. "Commodity," as used in this definition, includes services as well as articles of commerce. (Prior Code § 9-1)

Section 4-6.102. Records.

It shall be the duty of the Director of Administrative Services to keep complete and accurate records showing all operator's and machine licenses issued, the owners thereof and all serial numbers of the license tags or plates issued and all other pertinent information. (Prior Code § 9-12)

Section 4-6.103. License fees.

(a) There is fixed and established for each license provided for in this chapter a license fee payable quarterly in advance in accordance with the gross receipts schedule set out in Section 4-3.201 of Chapter 3, Title 4.

(b) Any coin-operated machine, not a mechanical music machine, or game machine, not clearly definable as one of those, shall for the purpose of computing license fees, be considered a game machine.

(c) For the issuance of any license under the provisions of this chapter after the beginning of a quarter of a year, the license fee shall be the pro rata amount of the license fee for such license for an entire quarter prorated for the balance of the time remaining in the quarter of issuance. (Ord. 84-1088 § 9, eff. 12/6/84; prior Code § 9-13)

Section 4-6.104. Revocation or suspension of license.

The City Council shall have the power, for good cause shown, to revoke or suspend any operator's license and any machine license issued under this chapter and to take possession of the same. "Good cause" shall consist of anything deleterious to the public health, welfare or morals. (Prior Code § 9-14)

Section 4-6.105. Other business license not required.

The licenses required under the terms of this chapter shall be in lieu of any other business licenses required by any other ordinance of the City for the privilege of engaging in the business of the subject of this chapter. (Prior Code § 9-15)

Section 4-6.106. Multiple coin slots.

Any coin-operated machine which is so constructed or regulated that it may be activated or operated from more than one coin box, slot or position shall be considered to be one coin-operated machine only. (Prior Code § 9-16)

Section 4-6.107. Prohibited machines.

Nothing in this chapter shall be construed to permit the licensing, maintenance or operation of any coin-operated machine which is forbidden by any state or local law or regulation or to permit the operation of any coin-operated machine in such a manner as to constitute gambling or otherwise be contrary to any state law or regulation. (Prior Code § 9-17)

Section 4-6.200. Article 200. Operator's License

Section 4-6.201. Required.

It is unlawful for any person to engage in the business of renting, leasing, selling or maintaining any coin-operated machine in the City, without first having secured a license from the City to do so. Such license is referred to in this chapter as an "operator's license." (Prior Code § 9-2)

Section 4-6.202. Application.

An applicant for an operator's license shall submit an application to the Director of Administrative Services. Such application shall be under oath upon a form supplied by the Director of Administrative Services and shall include the true names, fingerprints and past criminal record, if any, of all persons financially interested in the applicant's business, and such other information as may be deemed necessary by the Director of Administrative Services to determine whether such operator's license shall be granted. (Prior Code § 9-3)

Section 4-6.203. Investigation of applicant.

The Director of Administrative Services shall refer the application referred to in Section 4-6.202 to the Chief of Police, who shall carefully investigate the facts and circumstances concerning the application submitted to him pursuant to Section 4-6.202 and shall endorse on such application, in writing, his recommendations as to whether such operator's license should be granted to the applicant. Such application, together with such recommendation, shall be submitted to the City Council at a regular meeting of the Council. The City Council may deny an applicant an operator's license if good cause appears why such person should not be engaged in such business. For the purpose of determining the existence of such good cause, the City Council may cause a further investigation to be made and may continue the matter until its next regular meeting. In the event that good cause does not appear to the City Council why such person should not be engaged in such business, the Director of Administrative Services shall issue such operator's license to such applicant. (Prior Code § 9-4)

Section 4-6.204. Term.

An operator's license issued pursuant to this chapter shall be valid until the beginning of the next succeeding quarter of a year unless sooner revoked or suspended as provided in this chapter. For the purposes of this article, a quarter of a year shall begin on the first day of June, September, December and March. (Ord. 84-1088 § 10, eff. 12/6/84; prior Code § 9-5)

Section 4-6.205. Renewal.

Operator's licenses may be renewed by the Director of Administrative Services upon request of the holders thereof without the making of application therefor as provided in Section 4-6.202 and without investigation. (Prior Code § 9-6)

Section 4-6.206. Nontransferability.

No operator's license issued pursuant to this chapter shall be assignable or transferable either voluntarily or by operation of law or otherwise. (Prior Code § 9-7)

Section 4-6.300. Article 300. Machine License

Section 4-6.301. Required.

It is unlawful for any person to have upon premises controlled by him any coin-operated machine and to use the same or offer the same for use by other persons without first having secured a license from the City for each machine. Such a license is referred to in this chapter as a "machine license." (Prior Code § 9-8)

Section 4-6.302. Issuance.

Upon the request of any person holding an operator's license under the terms of this chapter or upon the request of any person owning or controlling the coin-operated machine, the Director of Administrative Services shall issue a machine license. At the time of issuing any machine license the Director of Administrative Services shall issue a license tag or plate for each machine license or renewal thereof and such license tag or plate shall be given serial numbers consecutively in the order of their issuance. Such license tag or plate shall further indicate thereon the type of machine for which it is issued, whether music machine, game machine or vending machine. Such license tag or

plate shall be serially numbered of wear-resistant materials and shall bear the date of expiration of the license. (Prior Code § 9-9)

Section 4-6.303. Term.

A machine license issued pursuant to this chapter shall be valid until the beginning of the next succeeding quarter of the year unless sooner revoked or suspended as provided in this chapter. For the purpose of this article a quarter of a year begins on the first day of June, September, December and March. (Ord. 84-1088 § 11, eff. 12/6/84: prior Code § 9-10)

Section 4-6.304. Display of tag or plate.

Every coin-operated machine licensed under the terms of this chapter shall at all times have affixed to it in a conspicuous place the license tag or plate issued pursuant to this chapter. (Prior Code § 9-11)

CHAPTER 4-7 GOOD NEIGHBOR RULES

Section 4-7.01. Definitions.

As used in this chapter,

- (a) "Chief of Police" means the Chief of Police of Santa Maria, or that person's designee.
- (b) "Director" means the Director of Administrative Services of Santa Maria, or that person's designee, unless otherwise specified in this Chapter.
- (c) "Floor Plan" means a plan, to scale, showing the length and breadth of a building, the location and dimensions of the rooms which the building contains, the use of each room, the location of moveable furniture and equipment in each room to be used, sizes and types of windows and doors, door swings and landings, floor coverings, and the location of stairs and/or steps.
- (d) "Responsible party" shall have the same meaning as in the City's property nuisance ordinance, Santa Maria Municipal Code §5-6.200(i), or successor section.
- (e) "Site Plan" means a plan, to scale, showing uses and structures existing and/or proposed for a parcel of land. It includes lot lines and lot dimensions, location and dimensions of area to be used, location of furniture and equipment within area to be used, location of easements, streets, building footprints and dimensions, setbacks from property lines, driveway approaches, drive aisles, parking, fences, sidewalks, landings, landscaping, north arrow, and any other structure that is part of a development project, including, major landscape features – both natural and man-made. (Ord. 2010-06, eff. 10/7/10; Ord. 85-1097, eff. 4/16/85; Ord. 84-1088; Ord. 661)

Section 4-7.02. Good Neighbor Requirements.

No responsible party(ies) shall initiate or continue any program, event, or activity which may result in the creation of a public nuisance without complying at all times with the requirements of this Chapter. The requirements of this Chapter are in addition to all other requirements of law and are:

- (a) To control behavior of attendees so that the program, event, or activity complies at all times with the noise limitations contained in Chapters 5-5 and 5-6 of this Code;
- (b) To limit attendance and control behavior of attendees so that the program, event, or activity complies at all times with the limitations on occupancy specified in Title 9 of this Code and any Code adopted by reference in Title 9;
- (c) To limit attendance and control behavior of attendees so that the program, event, or activity complies at all times with the limitations on use specified in Title 12 of this Code;
- (d) To limit attendance so that vehicles of attendees do not exceed the number of off-street parking spaces at the address where the program, event, or activity is held;
- (e) To limit attendance and control behavior of attendees so that the program, event, or activity occurs only within the dates and hours specified in any license or permit issued pursuant to this Code;
- (f) To limit attendance and control behavior of attendees so that all toileting and sanitation of attendees at the program, event, or activity occurs within buildings or structures constructed for that purpose in compliance with this Code;
- (g) To limit attendance and control behavior of attendees so that all trash from the program, event, or activity is secured in receptacles on the premises;
- (h) To restrict the program, event, or activity so that it does not encroach on areas required for another purpose by this Code or any permit or license issued pursuant to this Code, including but not limited to, parking, drive aisles, and landscaping;
- (i) To conduct the program, event, or activity in a manner that provides at all times for the safe ingress, circulation and egress of attendees, including accessibility for attendees with a disability. For the purpose of this subsection, a responsible party provides for safe ingress, circulation, and egress by following the standards set out in the most current edition of the California Manual on Uniform Traffic Control Devices and any applicable encroachment permit;
- (j) To build and maintain structures and other construction in a manner that complies at all times with Title 9 of this Code and any Code adopted by reference in Title 9 when structures or other construction are used in the program, event, or activity. (Ord. 2010-06, eff. 10/7/10; Ord. 85-1097, eff. 4/16/85; Ord. 84-1088; Ord. 661)

Section 4-7.03 Application for Good Neighbor License.

- (a) Application and Compliance by Responsible Party. No responsible party(ies) shall initiate or continue any program, event, or activity:
 - (1) that is held open to the public or for which a fee is charged; and

(2) that may result in a violation of the requirements of this chapter without first applying for and obtaining a license from the Director, following the requirements stated in that license, and otherwise complying with this Code.

(b) Exemption for Private Functions. Private functions, gatherings or assemblies are exempt from the requirement of obtaining a license pursuant to Section 4-7.03, but only if all attendees at the program, event, or activity are present with the express or implied permission of the responsible party(ies) and are not charged a fee for admission.

(c) Exemption When License or Permit Already Issued. This Section shall not apply for a program, event, or activity held at a location that has already been issued a license under this Chapter or has obtained a conditional use permit for such programs, events, or activities.

(d) Application Procedure. A responsible party shall make application for a Good Neighbor license to the Director no less than six (6) calendar days before commencing the program, event, or activity. Application shall be made on such a form as the Director may prescribe from time to time, and shall be accompanied by a processing fee in an amount set from time to time by City Council resolution. The amount of the fee shall not exceed the cost to provide City processing services.

Upon receipt of a completed application and fee, the Director shall circulate the application to affected departments.

A completed application shall contain the following information and other information requested by the form that the Director determines to be reasonably necessary to allow the City to process the application and to serve the purposes of this ordinance:

(1) The name, address and telephone number of the responsible party(ies);
(2) The location, date(s) and time(s) of the proposed program, event, or activity;
(3) An estimate of the approximate number of persons who will be expected to participate in the program, event, or activity;

(4) A site plan and floor plan as defined in this Chapter, showing areas for ingress and egress; circulation of people and vehicles; and proposed construction, if any;

(5) A copy of any applicable health permit issued by the County of Santa Barbara, if food will be served;

(6) If alcoholic beverages will be served or sold, and the program, event, or activity includes live or recorded music played by a D.J. ("disc jockey") and dancing by attendees:

(i) A statement that attendees shall be limited to those 21 years of age or older, unless there is a barrier (or barriers) approved by the City to separate alcohol service and consumption from the remainder of the area, which area shall be designated on the site plan;

(ii) The number of licensed, private security guards to be provided. These security guard(s) shall have no duties other than to provide security. Security duty includes preventing admission of persons under 21 years of age or preventing such persons from entering into any separate areas for alcohol service and consumption. Security shall be provided during the program, event, or activity, and for one-half hour before and afterwards. A minimum of one licensed security guard shall be provided for each 50 attendees or fraction thereof. All licensed security guards shall wear distinctive uniforms identifying them as security personnel, including private security badges and arm patches.

(iii) A copy of a permit issued by the California Department of Alcohol Beverage Control, along with proof of insurance covering injuries or property damages caused by attendees.

(7) For all other programs, events or activities where alcoholic beverages will be served, sold, or allowed at the program, event, or activity, the number of security personnel that will be provided pursuant to the City's standardized security guard-attendee ratio. For this type of program, event, or activity, security guards need not be licensed. Security shall be provided during the program, event, or activity, and for one-half hour before and afterwards;

(8) The zoning designation of the property proposed for the program, event, or activity, and the file number of any use or planned development permit applicable to the property; and

(9) Proof of the property owner's permission for the property to be used for that purpose. (Ord. 2010-06, eff. 10/7/10; Ord. 85-1097, eff. 4/16/85; Ord. 84-1088; Ord. 661)

Section 4-7.04. Action on Application.

Within no more than six (6) calendar days after receipt of a complete application and processing fee, the Director shall act on the application. The Director shall issue a Good Neighbor license unless s/he finds that:

(a) The information contained in the application is false or intentionally misleading; or

(b) The proposed area for the program, event, or activity could not physically accommodate the number of participants expected to participate in the program, event, or activity, as reflected in the application completed and submitted pursuant to the requirements of this chapter; or

(c) The program, event, or activity would result in a violation of any federal, state or local law or regulation; or

(d) The program, event, or activity conducted previously by the same applicant has resulted in a public nuisance, as defined by the laws of the State of California, within the past twelve months; or

(e) The responsible party has, within the past twelve months, permitted or allowed attendees of the previously conducted program, event, or activity to engage in activity prohibited by state or federal law on or adjacent to the premises.

The Director's decision shall be final. (Ord. 2010-06, eff. 10/7/10; Ord. 85-1097, eff. 4/16/85; Ord. 84-1088; Ord. 661)

Section 4-7.05. Content of License; Responsible Party to Maintain License.

(a) The Director shall set forth in each permit the following information if and as that information is set forth in the approved application:

(1) The name, address and telephone number of the responsible party(ies) to whom the license is issued;

(2) The location, date(s) and time(s) of the proposed program, event, or activity;

(3) The maximum number of persons who may participate in the program, event, or activity at the approved location;

(4) A statement that the licensed program, event, or activity shall be conducted at all times in compliance with the statements on the application, as modified by the requirements of law and in particular with the requirements of the Good Neighbor Ordinance, and

(5) The number of private licensed security guards or other security personnel that will be present during the program, event, or activity, and one-half hour before and afterwards.

(b) A copy of each license shall be kept upon the responsible party(ies) person at all times during the program, event, or activity, including during set-up and tear-down. The responsible party(ies) shall advise all participants in the program, event, or activity of the terms and conditions of the license prior to the commencement of the program, event, or activity. (Ord. 2010-06, eff. 10/7/10; Ord. 85-1097, eff. 4/16/85; Ord. 84-1088; Ord. 661)

Section 4-7.06. Modification, Suspension and Revocation.

(a) The Chief may, after notice and a hearing, modify or revoke a Good Neighbor license for any of the following reasons:

(1) A responsible party violated or permitted the violation of any federal, state or local law in connection with the licensed activity;

(2) A responsible party set forth information in the application that is or was false or intentionally misleading, which the City discovered after issuance of the Good Neighbor license;

(3) A responsible party violated or permitted the violation of any term of the license; or

(4) An unforeseen dangerous activity occurs.

(b) The Chief may immediately suspend a Good Neighbor license pending a notice and a hearing on modification or revocation for any of the reasons set out below. License suspension shall be effectuated by delivery, in person or by ordinary mail, of a notice of suspension to a responsible party. The notice of suspension shall include the information required by subsection (c) of this section. Reasons justifying an immediate suspension of a Good Neighbor license include:

(1) A responsible party violated or permitted the violation of a federal, state or local law in connection with the licensed activity and the violation was of a serious or substantial nature; and/or

(2) An unforeseen dangerous activity occurred and is likely to recur if the program, event, or activity is allowed to continue.

(c) The notice required by this section shall be given as follows: In person to a responsible party or by ordinary mail to the responsible party's last address as listed on the application for Good Neighbor license. The notice shall set a hearing date not less than fourteen days in the future, unless the potentially responsible party agrees to an earlier date. The notice shall state the deadline and any required format for submission of a declaration.

(d) The hearing required by this section may be by written declaration at the licensee's option.

(e) The Chief shall modify, confirm or deny suspension of, revoke, or leave unchanged a license based on all credible evidence received at or before the hearing on the matter.

(f) The Chief shall forthwith communicate the decision and supporting reasons to the responsible party by ordinary mail, to the responsible party's address as listed in the application for Good Neighbor license. The Chief's decision shall be final. (Ord. 2010-06, eff. 10/7/10; Ord. 85-1097, eff. 4/16/85; Ord. 84-1088; Ord. 661)

Section 4-7.07. Violation.

Any responsible party who violates any of the provisions of this Chapter is guilty of a misdemeanor, punishable as provided pursuant to Chapter 1-6 of this Code. (Ord. 2010-06, eff. 10/7/10; Ord. 85-1097, eff. 4/16/85; Ord. 84-1088; Ord. 661)

Section 4-7.08. Judicial Review.

Judicial review under this ordinance shall be pursuant to Code of Civil Procedure Section 1094.8. (Ord. 2010-06, eff. 10/7/10; Ord. 85-1097, eff. 4/16/85; Ord. 84-1088; Ord. 661)

Section 4-7.09. Severability.

Should any provision, section, paragraph, sentence or word of this Ordinance be declared invalid by any court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance shall remain in full force and effect and, to that end, the provisions of this Ordinance are severable. (Ord. 2010-06, eff. 10/7/10; Ord. 85-1097, eff. 4/16/85; Ord. 84-1088; Ord. 661)

CHAPTER 4-8 FORTUNETELLING AND SIMILAR OCCUPATIONS

Sections 4-8.01. through 4-8.08 were repealed by Ordinance No. 2006-02.

CHAPTER 4-9 PHOTOGRAPHERS

Section 4-9.01. License or permit required.

It is unlawful for any person, except newspapers and commercial printers, to engage in the business, occupation or profession of resident, transient or itinerant portrait or commercial photography or color photography or transparencies, or in the enlarging, copying, coloring or portrait-finishing of photographs, or to solicit or offer for sale any of such goods or services, directly or indirectly, verbally, by telephone, by mail through the use of coupons or tokens of whatsoever nature, or by means of printed advertising of any form, by subterfuge or otherwise, in the City, without first having procured a license or permit therefor as provided by this chapter. (Prior Code § 18-1)

Section 4-9.02. License or permit fee.

The license fee for any person engaged in business as provided by Section 4-9.01, whether resident, transient or itinerant, shall be ten dollars (\$10.00) per annum or any fraction thereof, and in addition a permit fee of five dollars (\$5.00) per annum, or any fraction thereof, shall be paid by such person for each outside solicitor, sales person or photographer, including solicitors or sales persons so employed by operating from their own temporary or permanent residences or telephones and whether paid on a salary or commission basis, contracted with or employed by such person for the purposes of selling, distributing or securing orders for portrait or commercial photographs or color photographs or transparencies or for the enlarging, copying, coloring or portrait-finishing thereof, or for the selling or distribution of coupons or tokens, or other printed or similar offers of advertising literature pledged or used in the sale of portrait or commercial photographs or the enlarging, copying, coloring or portrait-finishing thereof. (Prior Code § 18-2)

Section 4-9.03. Application for license or permit.

(a) Applicants for a license or permit under this chapter must file with the Director of Administrative Services a sworn application in writing and in duplicate on a form to be furnished by the Director, which shall give the following information:

- (1) Name of applicant;
- (2) Permanent home address and full local address of applicant;
- (3) A brief description of the nature of the applicant's business;
- (4) If employed, the name and street address of the employer, together with credentials establishing the exact relationship; and
- (5) The City, County, State and street address where the taking, finishing, coloring or enlarging of photographs will be done, the proposed method of delivery and the average length of time within which delivery will be made.

(b) At the time of filing the application for a license or permit a fee, as set out in the Schedule of Fees and Charges within this Code, shall be paid to the Director of Administrative Services to cover the cost of investigation of the facts stated therein, together with the fees as provided in Section 4-1.32 of this Code to the Police Department to compensate the City for the cost of investigating and processing the applicant. (Ord. 82-1045 § 1 (part), eff. 12/16/83; prior Code § 18-3 (part))

Section 4-9.04. Investigation of applicant: Issuance or denial.

(a) Upon receipt of the application referred to in Section 4-9.03, the original shall be transferred to the Chief of Police, who shall cause such investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good.

(b) If as a result of such investigation the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse on such application his disapproval and reasons for the same, and return such application to the Director of Administrative Services, who shall notify the applicant that his application is disapproved and that no license will be issued.

(c) If as a result of such investigation the character and business responsibility of the applicant are found to be satisfactory, the Chief of Police shall endorse on the application his approval, execute a permit addressed to the applicant and return the permit along with the application to the Director of Administrative Services who shall, upon the payment of the prescribed permit fee, issue such permit. The permit must bear a photograph of the licensee or permittee, and a print of the right index finger of the licensee or permittee, and shall be of convenient card size to permit carrying on the person.

(d) In the event that such applicant desires a license as provided for in this chapter, upon the return of the application, as provided in this section, upon payment of the prescribed license fee and upon the filing of the bond

provided for in Section 4-9.08, the Director of Administrative Services shall issue such license to the applicant. (Prior Code § 18-4)

Section 4-9.05. Appeal of denial.

Any person aggrieved by the action of the Chief of Police or by action of the Director of Administrative Services in the denial of a license as provided in Section 4-9.04 shall have the right to appeal to the Council. Such appeal shall be taken by filing with the City Council, within fourteen (14) days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds of the appeal. The City Council shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant by mailing notice, postage prepaid, to the appellant at his last known address. (Prior Code § 18-5)

Section 4-9.06. Exhibition of license.

Licensees are required to exhibit their license at the request of any police officer or prospective customer. (Prior Code § 18-6)

Section 4-9.07. Receipts to customers.

Any permittee or licensee engaging in a business transaction in such capacity with any customer whereby the customer pays to the permittee or licensee any sum of money shall give to such customer as evidence of the receipt of the money a receipt for the amount. The receipt shall bear the name, address and license number or permit number of the licensee or permittee. (Prior Code § 18-7)

Section 4-9.08. Surety bond: Required.

Section 4-9.08 is hereby repealed. Surety bonds are not required. (Ordinance 99-06)

Section 4-9.09. Surety bond: Form.

Section 4-9.09 is hereby repealed. Surety bonds are not required. (Ordinance 99-06)

Section 4-9.10. Actions brought: Notice to licensee.

The applicant shall further appoint the Director of Administrative Services as his process agent in all matters connected with or arising out of the applicant's business, occupation or profession of portrait or commercial photography or color photographs or transparencies or the enlarging, copying or portrait-finishing of photographs or the solicitation or offering for sale thereof whether by the applicant or by the applicant's agents or employees in the City before obtaining such license. It shall be the duty of the Director of Administrative Services immediately to advise the applicant by registered mail addressed to the applicant at his place of business at the address furnished in the indemnity bond of the nature and pendency of any action brought against the applicant wherein process is served on the Director of Administrative Services. (Prior Code § 18-10)

Section 4-9.11. Term of license.

All licenses provided for by this chapter shall grant to the applicant the privilege of conducting the business provided for in this chapter on a yearly basis beginning June 1st and ending on the following May 31st. (Ord. 84-1088 § 13, eff. 12/6/84; prior Code § 18-11)

Section 4-9.12. Renewal.

Any licensee or permittee granted a license under the provisions of this chapter shall have the privilege of renewing such license or permit at the end of each license year without first complying with the provisions of Section 4-9.03. (Prior Code § 18-12)

* Editor's Note: Sections 4-9.11 and 4-9.12 were amended by request of the City Attorney.

Section 4-9.13. Revocations.

Any permit or license granted to any person under the provisions of this chapter may be revoked for good cause after a hearing before the City Council after due notice of such hearing is served in writing upon the licensee or permittee not less than five (5) days prior to such hearing. The notice provided for in this section may be served upon the licensee or permittee by registered mail addressed to the licensee's or permittee's address as it appears upon the face of such license or permit. (Prior Code § 18-13)

CHAPTER 4-10 TAXICABS

Article 1. Generally.

Section 4-10.100. Purpose.

The purpose of this chapter is to provide rules and regulations governing the operation and permitting of taxicab companies and taxicab drivers, for the public necessity and convenience. The further purpose of this chapter is to provide for a policy for entry into the business of providing taxicab transportation service, and to impose a mandatory controlled substance and alcohol testing certification program, as required by section 53075.5(b) of the California Government Code. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.101. Definitions.

Unless the context requires otherwise, the terms below have the indicated meanings when used in this chapter:

- (a) "Certificate" means a certificate of public convenience and necessity issued as provided in this chapter.
- (b) "Driver" includes every person who drives or is in actual physical control of a taxicab.
- (c) "Hire" means engage for service in exchange for consideration. Consideration includes, but is not limited to, payment in money, payment in tips, and acceptance of a free ride for development or maintenance of business good will.
- (d) "Holder" means an operator who has received a certificate as provided under this chapter.
- (e) "Operator" means a person engaged in the business of providing transportation services through advertising, use or dispatch of taxicabs; or who causes a taxicab to be operated for the purpose of either soliciting or picking up passengers for hire in the city.
- (f) "Taxi stand" means a place permitted by the Public Works Department for the use, while awaiting employment, of taxis and such other vehicles as the City Council may specify by resolution.
- (g) "Taxicab" means a passenger vehicle designed to carry not more than eight persons, excluding the driver, and is used to carry passengers for hire. "Taxicab" shall not include a charter-party carrier of passengers within the meaning of the Passenger Charter-party Carriers' Act, Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code.
- (h) "Taximeter" means an instrument or device attached to a taxi which mechanically calculates a fare on the basis of distance traveled or waiting time, or a combination thereof, and displays the fare in figures of dollars and cents. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.102. Compliance with chapter; vehicle impoundment.

It shall be unlawful for any person to be an operator or driver of a taxicab within the city limits, where passenger pick-up is in the City, without first obtaining a certificate or driver permit. A taxicab operated or driven within the city in violation of this chapter shall be subject to impoundment pursuant to Government Code section 53075.61. For purposes of this chapter, any City of Santa Maria Police Officer shall be considered a "transportation inspector" authorized to cite a taxicab operator or driver for operating or driving a taxicab without a permit and authorized to impound a taxicab operated or driven without a permit. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.103. Operating rules and regulations.

It shall also be unlawful for any operator, holder or driver to operate or permit operation of a taxicab in the City unless s/he/it complies with all of the following:

- (a) The taxicab is marked in accordance with this chapter, with the approved certificate, and with Vehicle Code §27908 or successor section;
- (b) The taxicab displays, in at least 10-point type and clearly visible to passengers, the schedule of rates submitted to the City in accordance with this chapter;
- (c) The taxicab displays, in the lower portion of the front window on the passenger side, a current vehicle inspection "pass" sticker issued by the Santa Maria Police Department;
- (d) The taxicab is neat, clean, and meets all safety requirements to operate legally on streets;
- (e) The taxicab has safety belts for the driver and each passenger in working order. For the purpose of this subsection, the City Council notes that Santa Maria is bisected by two state highways; consequently, the seatbelt exemption for "city streets" in Vehicle Code §27315(d)(1) does not apply;

- (f) The taxicab contains an operating taximeter whose accuracy has within the last year been tested, approved and sealed by the County Department of Weights and Measures, as evidenced by a current sticker;
- (g) The taxicab is covered by a policy of insurance as required by this chapter, and documentation as required by this chapter is on file with the City;
- (h) Where hired to transport passengers to a definite point, the taxicab shall travel the most direct route possible that will carry the passenger to the destination safely and expeditiously;
- (i) Conveyance shall not be denied to any orderly person unless the taxicab is previously engaged or unable or forbidden by law to convey;
- (j) A correct receipt for the amount of payment received shall be provided to passengers upon request;
- (k) The driver's permit of the driver is conspicuously displayed at all times during operation;
- (l) The taxicab service is operated twenty-four hours per day, seven days per week. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.104. Additional rules and regulations.

The City Council shall have the authority to adopt and promulgate such rules and regulations as may be necessary for the service and safety of the operation of taxicabs. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Article 2. Certificate of Public Convenience and Necessity.

Section 4-10.201. Application; updating; processing.

An application for a certificate of public convenience and necessity shall be filed with the City Clerk upon forms provided by the clerk. Such applications shall be verified under oath or affirmation and shall include the following information:

- (a) Name, street and mailing address, and driver's license number of individual and partnership applicants who are natural persons; the legal name, agent for service of process and street address of the agent for applicants who are legal persons;
- (b) For each vehicle proposed for use as a taxicab:
 - (1) Make, model, year, and vehicle identification number;
 - (2) Name, street and mailing address and driver's license number of the owner;
 - (3) Insurance policy or original endorsements evidencing the requirements of this chapter, and referencing the vehicle by make, model, year and vehicle identification number;
 - (4) A report from the Chief of Police evidencing that the vehicle has been issued a current vehicle inspection "pass" sticker;
- (c) For each person the applicant intends to use as a taxicab driver:
 - (1) The person's name, street and mailing address, and driver's license number;
 - (2) A completed copy of the person's application for driver's permit;
 - (3) A report from the Chief of Police evidencing that the driver has, within the past year, successfully completed the requirements of Government Code §53075.5, pertaining to controlled substance and alcohol testing;
 - (4) A statement that the applicant has offered employment in Santa Maria to the person.
- (d) Any facts which the applicant believes tend to prove that public convenience and necessity require the granting of a certificate;
- (e) The location of any proposed depots, terminals and offices, together with a statement from the Community Development and Public Works Departments approving the depots, terminals and offices;
- (f) Taxicab insignia and color scheme, including a color photograph depicting such insignia and color scheme;
- (g) The applicant's experience in operating a taxicab service, including, but not limited to, the names and addresses of any taxicab or transportation service businesses the applicant has owned or managed, and whether the applicant has had a permit or license to operate such a business denied, revoked or suspended in any jurisdiction, and the reasons therefor;
- (h) The applicant's knowledge of Santa Maria and plans to promote the city as a destination for travelers, businesses and families;
- (i) Copies of all current licenses the applicant holds which were issued by the California Public Utilities Commission;
- (j) The name, address and telephone number of all owners and leasing companies of any taxicab vehicles which the applicant seeks to operate on City streets under a certificate;

(k) Service standards proposed to be provided in the city, including the estimate of response time between placement of a telephone order and the arrival of the dispatched taxicab as well as the method applicant proposes to record and evaluate actual performance under the service standards;

(l) Applicant's operating procedures (including training, record keeping, safety standards, maintenance schedules, dispatching procedures, and disciplinary rules);

(m) A policy of motor vehicle liability insurance or an original endorsement thereof, as follows:

(1) Insuring the owner and any other person using or responsible for the use of any such vehicle, with the consent, express or implied, of the owner against loss from the liability imposed upon such owner by law for injury to or death of any person, or damage to property, growing out of the maintenance, operation or ownership of any public motor vehicle to the amount or limit of seven hundred fifty thousand dollars (\$750,000.00) per accident for bodily injury and property damage.

(2) The motor vehicle liability policy shall inure to the benefit of any and all persons suffering loss or damage either to person or property as herein provided, and the liability of the insurance carrier shall be in no manner abrogated or abated by the death of the tortfeasor or the owner.

(3) Every endorsement evidencing the insurance required under the provisions of this section shall certify that the motor vehicle liability policy or policies evidenced shall not be canceled except upon thirty (30) days' prior written notice thereof to the Director of Administrative Services.

(4) All motor vehicle liability policies and all certificates thereof shall be subject to the approval of the Director of Administrative Services or his/her designee in any and all matters and if at any time, in the judgment of the Director, the motor vehicle liability policies are not sufficient for any cause, the Director may require the owner of such public motor vehicle who filed the same to replace the motor vehicle policies within ten (10) days with other policies in accordance with the provisions of this section. If the owner fails to replace the motor vehicle policies within the ten-day period with good and sufficient policies, as set out in this section, then at the termination of the period the City may proceed in the manner set out in this chapter to determine whether the owner's certificate should be suspended until the requirement is complied with.

(n) Such further information as the City Clerk may require; and

(o) If any of the above information changes after the filing of the application, an applicant or holder shall within 24 hours notify the City Clerk in writing of any such changes and provide correct, replacement documentation. The City Clerk shall forward updated information to the Administrative Services Director and the Police Chief, or their delegates.

No application for certificate shall be processed by the City unless the applicant submits complete information from each category set out above. The City shall return incomplete applications by mail to the applicant at the address listed by the applicant. The Clerk shall forward complete applications to the Director of Administrative Services for action. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.202. Fee.

The application shall be accompanied by a fee in an amount no greater than the cost to process the application, as specified by resolution of the City Council. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.203. License tax.

Unless otherwise prohibited by law, no certificate shall be issued or continued in operation unless the holder has paid an annual license tax of twenty dollars (\$20.00) for the right to engage in the taxicab business and twelve dollars (\$12.00) each year for each vehicle operated under the certificate. Such license taxes shall be for the fiscal year and shall be in addition to any other license charges established by proper authority and applicable to the holder or the vehicle under the holder's operation or control; provided, however, that whenever any vehicle is placed in service after the beginning of the fiscal year, the tax for the vehicle shall be prorated on a monthly basis. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.204. Issuance.

(a) Upon receiving a complete application, the Director of Administrative Services shall conduct an investigation to determine whether the public convenience and necessity requires the issuance of a certificate, taking into account public demand for taxicab service, adequacy of existing public transportation service, the proposed equipment and color scheme, the applicant's qualifications as set out in the application, and other relevant facts. If the Director determines that the public convenience and necessity require a certificate then s/he shall issue a

certificate stating the name and address of the applicant, the number of vehicles authorized under the certificate and the date of issuance, and designating the color and insignia which must be used on such vehicles; otherwise, the application shall be denied. A certificate shall be issued for up to one year.

(b) The Director shall maintain current files pertaining to applications, certificates, and updated information. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.205. Nontransferability of Certificates.

No certificate may be sold, assigned, mortgaged or otherwise transferred without first obtaining and having the prior consent of the City Council. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.206. Service hours and response.

All persons engaged in the taxicab business in the City under this chapter shall render an overall service to members of the public desiring to use taxicabs, as follows:

(a) Each holder shall maintain a central place of business and keep this business open twenty-four hours per day for the purpose of receiving calls and dispatching cabs.

(b) Each holder shall cause all requests received for taxicab service within the City limits to be filled as soon as reasonably possible, and shall cause prospective passengers to be notified how long it will be before service will be provided. If a holder refuses or permits refusal to provide taxicab service within the limits of Santa Maria, the holder shall forthwith deliver a written statement indicating date, time and reason for refusal to the City Clerk.

(c) The certificate of any holder who refuses or permits refusal to accept a call anywhere within the corporate limits of the City at any time when the holder has available cabs may be suspended or revoked by the Administrative Services Director after providing the holder notice and an opportunity to be heard as provided in this chapter. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.207. Revocation, denial or suspension.

(a) A certificate issued under the provisions of this chapter may be denied, revoked or suspended by the City Director of Administrative Services if the holder or applicant has:

(1) Violated any of the provisions of this chapter;

(2) Discontinued operations for more than thirty (30) days within a period of one (1) year;

(3) Violated any of the ordinances of the City, or the laws of the United States or of the state, the violations of which reflect unfavorably on the fitness of the owner to provide public transportation.

(4) Failed to meet the requirements of the City Municipal Code or any regulations promulgated by the City Council.

(5) Provided incomplete or untruthful information when applying for a certificate or permit under this chapter.

(b) Prior to suspension, denial or revocation, the owner shall be given notice of the proposed action to be taken and shall have an opportunity to be heard. Notice shall be given in the manner specified by Section 4-1.43 and the Director of Administrative Services shall schedule a hearing within thirty (30) days of the notification.

(c) Any person adversely affected by a decision of the Director of Administrative Services may, within fourteen (14) days, appeal in writing to the City Council, stating reasons therefor. A hearing before the City Council shall be scheduled within thirty (30) days of receipt of an appeal. The City Council shall make its decision based on the evidence received, and that decision shall be final. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004-01, eff. 2/20/04; Ord. 2004/02, eff. 3/18/04)

Section 4-10.208. Record keeping and reporting.

Each holder shall maintain complete and accurate records of each taxicab call and trip on a daily trip sheet, showing the time and place of the call; origin and destination of the trip; the number of passengers carried; the mileage and the amount of fare collected; and the substance of, and action taken on, any passenger complaints received. Such records shall be submitted to the City Clerk upon request. Annually on a date and in a form prescribed by the clerk, each holder shall provide a report of taxicab operations to the City Council. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.209. Renewal; existing holders.

A certificate shall be renewed annually. Any holder lawfully operating on the effective date of this chapter under a certificate without an expiration date shall, within one year of the effective date of this chapter, comply with

all of the requirements of this chapter, and shall also comply annually thereafter. All certificates containing an expiration date shall expire on the date listed on the certificate. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Article 3. Driver's Permit.

Section 4-10.301. Driver's permit application.

An application for a driver's permit shall be filed with the Police Chief on forms provided by the chief and such application shall be notarized and shall contain the following information:

- (a) The names and addresses of three (3) residents of the state who have known the applicant for a period of one (1) year and who will vouch for the sobriety, honesty and general good character of the applicant;
- (b) California driver's license and social security numbers;
- (c) The date of birth and physical description of the applicant;
- (d) A statement of any convictions of public offenses involving the applicant.
- (e) The name, address and telephone number of the applicant's employer; and
- (f) Proof of a negative test for controlled substances and for alcohol which complies with the requirements of Government Code Section 53075.5 (or a successor statute). (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.302. Investigation fee.

At the time the application for a taxicab driver's permit is filed, the applicant shall pay to the Police Department the fees as provided in Section 4-1.32 of this Code to compensate the City for the cost of investigating and processing the applicant. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.303. Compliance with state law requirements.

(a) The applicant shall be employed by a person who is applying for a certificate of public necessity and convenience in Santa Maria. The applicant's employer shall be responsible for complying with requirements of Government Code §53075.5 or successor section, and shall pay all costs of certification with respect to their employees and potential employees, except that an employer may require employees who test positive to pay the cost of such testing and any follow-up testing. Self-employed independent drivers shall be responsible for compliance with, and shall pay all costs of, this program with regard to themselves.

(b) An employer shall promptly notify the Police Chief in writing of the termination of employment of a driver. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.304. Handling of test results.

(a) In the case of a self-employed independent driver, the test results shall be reported directly to the City, which shall notify the taxicab leasing company of record, if any, of positive results. In all other cases, the results shall be reported directly to the driver's employer, which shall forward the test results to the Chief of Police.

(b) Except as authorized or required by law, all test results are confidential and shall not be released without the consent of the driver. No evidence derived from a positive test result pursuant to this program shall be admissible in a criminal prosecution for unlawful possession, sale, or distribution of controlled substances. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.305. Investigation: Grant or denial.

(a) Upon making application for, and before receiving such a license, each taxicab driver shall submit to being fingerprinted and an identification record made by the Police Department of the City, and a record of the fingerprints and the identification records shall be filed with and maintained by the Police Department, and no such license shall be issued until approved by the Police Department following a check of the record and fingerprints by the Police Department except as provided by subsection (d) of this section.

(b) All applications for drivers' permits will be considered by the Chief of Police and either granted or denied within forty-five (45) days unless for good cause time for further investigation is needed. Such further time shall not exceed thirty (30) days for reasons under the control of the Chief of Police.

(c) Upon approval of an application, the Chief of Police shall issue a driver's permit to the applicant which shall bear the name, address, age and other identifying characteristics of the applicant, at the discretion of the Chief of Police.

(d) The Police Chief may for good cause issue a temporary permit to an applicant provided that the applicant pays to the Police Department the fees as provided in Section 4-1.32 of this title. The permit shall be valid for a period not longer than it takes to receive record and fingerprint checks back from the State Department of Justice. Upon receipt of the information from the Department of Justice, the temporary permit shall be revoked and the applicant processed pursuant to the provisions set forth in subsections (a), (b) and (c) of this section.

In determining whether to issue a temporary permit, the Chief of Police may consider the applicant's reputation in the community for honesty and veracity, the hardship to the community created by the lack of taxicab permits, or any other factor which would support the need for the issuance of a temporary permit. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.306. Grounds for denial, suspension or revocation; appeal.

The Police Chief may deny, suspend or revoke a driver's permit to any of the following persons:

- (a) Any person not more than eighteen (18) years old;
- (b) Any person lacking a valid California driver's license;
- (c) Any person convicted of a public offense involving theft;
- (d) Any person convicted of a public offense involving violence to a person(s);
- (e) Any person convicted of a public offense under Health and Safety Code Section 11550 or similar section;
- (f) Any person with more than three (3) moving violations in any six-month (6-month) period;
- (g) Any person convicted of violating Vehicle Code Section 23103, 23103.5, 23152 (a) or (b) or similar section within the past year;
- (h) Any person not providing proof of a negative test for controlled substances and alcohol which complies with the requirements set forth in Government Code Section 53075.5 (or a successor statute);
- (i) Any person no longer employed, or awaiting immediate employment, as a driver of a taxicab in the streets of the City;
- (j) Any person who has made a material misstatement on a driver's permit or renewal application;
- (k) Any person who has failed to comply with any provisions of any ordinance of the City or of the laws of the state.

A driver whose permit has been suspended or revoked shall have the right to notice and an opportunity to present evidence to the Police Chief regarding the suspension or revocation. These rights shall be afforded within ten days after a suspension or revocation. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.307. Re-application upon positive test results.

Any person whose permit application is denied or whose permit is revoked based on his failure to submit proof of a negative test for controlled substances and alcohol may re-apply for a driver's permit after a period of one (1) year from the date of the permit denial or revocation. Evidence from a substance abuse professional of the absence of drug and alcohol dependency and abuse for a period of not less than nine (9) months will be required prior to re-application. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.308. Expiration: Renewal.

All permits granted, as provided in this article, shall expire at the end of one (1) year and may be renewed upon the application of the holder. Prior to renewal, each driver shall submit proof of a negative test for controlled substances and for alcohol which complies with the requirements set forth in Government Code Section 53075.5 (or a successor statute). The applicant seeking renewal shall pay to the Police Department the fees as provided in Section 4-1.32 of this Code to compensate the City for the cost of investigating the applicant and processing the application. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Section 4-10.309. Return of driver's permit upon termination of employment.

The driver shall promptly notify the Police Department in writing of his/her termination of employment with the employer listed on his/her application, and shall return the driver's permit to the Police Department. The driver's permit shall become null and void upon the driver's termination of employment with that employer. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Article 4. Taxicab Vehicles.

Section 4-10.401. Taxicab Inspections.

(a) Prior to the use and operation of any vehicle under the provisions of this chapter, the owner shall permit such vehicle to be thoroughly examined by the Police Department for the purpose of determining compliance with state and local laws and reasonable regulations prescribed by the Police Chief or City Council pertaining to vehicle safety and required postings and markings. In developing these regulations, the Police Chief or Council may be guided by the requirements of the Orange County Taxi Administration Program. The inspection shall be conducted during reasonable business hours and shall be preceded by payment of a fee no greater than the inspection cost as set by resolution of the City Council. Upon the vehicle's passage of all inspection requirements, the Police Chief shall affix a vehicle inspection "pass" sticker in the lower portion of the passenger side front window of the vehicle. The sticker shall contain a clearly legible expiration date.

(b) At least annually, the owner shall obtain and pass re-inspections for each taxicab operated under this chapter in the manner prescribed above.

(c) The Police Department may conduct periodic inspections of taxi vehicles for the purposes and in the manner described in subsection (a). The Police Department may, but is not required to, collect a fee for this service in an amount no greater than the inspection cost as set by resolution of the City Council. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

Article 5. Authority to Franchise.

Section 4-10.501. Franchise.

(a) Notwithstanding any other provision of this chapter, the City Council may enter into one or more franchises with persons wishing to operate taxicabs in the City of Santa Maria. Any such franchise shall specify the provisions of this chapter applicable to the franchisee.

(b) The City Clerk shall maintain current files respecting any taxicab franchise. (Ord. 91-20, eff. 9/5/91; Ord. 2003-20, eff. 9/16/03; Ord. 2003-21, eff. 11/7/03; Ord. 2004/02, eff. 3/18/04)

CHAPTER 4-11 CABLE COMMUNICATIONS SYSTEMS

Section 4-11.01. Replacement ordinance.

The previous Chapter 4-11, which this Ordinance replaces, shall remain in force and be effective as to all franchises, which may have been granted under the authority of, said chapter until such franchise is renewed. It shall be of no effect for any franchises granted or renewed after the enactment of this chapter.

Article 2. Generally

Section 4-11.02. Definitions.

For the purposes of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Words not defined in this chapter shall have the same meaning as in Title VI of Title 47 of the United States Code, and, if not defined therein, their common and ordinary meaning. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

(a) “Access,” “PEG access,” or “PEG use” refers to the availability of a cable system or open video system for public, education or government use (including Institutional Network use) by various agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to acquire, create, and distribute programming not under a franchisee's editorial control, including, but not limited to:

(1) “Public access” or “Public use” means access where organizations, groups, or individual members of the general public are the primary or designated programmers or users having editorial control over their programming;

(2) “Education access” or “Education use” means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their programming;

(3) “Government access” or “Government use” means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their programming;

(b) “Affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

(c) “Basic service “ means any service tier regularly provided to all subscribers which includes the retransmission of local television broadcast signals.

(d) “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

(e) “Cable communications system” refers to open video systems (OVS) and cable systems.

(f) “Cable system” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

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

(2) A facility that serves subscribers without using, or connecting to a facility that uses, any public right of way within the City;

(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title 11 (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on demand services;

(4) Any facilities of any electric utility used solely for operating its electric utility systems;

(5) An OVS that is certified by the Federal Communications Commission (FCC). Any reference to a cable system includes the cable system as a whole, or any part thereof, including all pedestals, equipment cabinets, electronic equipment and devices appurtenant to the system.

(g) “Cable service “ means:

(1) The one way transmission to subscribers of;

- (A) Video programming or;
- (B) Other programming service, and;
- (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (h) "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system or OVS and which is capable of delivering a television signal whether in an analog or digital format. The definition does not restrict the use of any channel to the transmission of analog television signals.
- (i) "City" means the City of Santa Maria and all departments, divisions, and agencies thereof.
- (j) "City Manager" means the City Manager or the City Manager designee.
- (k) "Construction, operation or repair" and similar formulations of that term means the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make ready, and excavation.
- (l) "Downstream channel" means a channel designed and activated to carry a transmission from the headend to other points on a cable communications system, including interconnections.
- (m) "FCC" means the Federal Communications Commission.
- (n) "Franchise" refers to an authorization granted by the City to the operator of a cable communications system giving the operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over public rights of way in the City, to provide specified services within a franchise area.
- (o) "Franchise area" means the area of the City that a franchisee is authorized to serve by the terms of its franchise or by operation of law.
- (p) "Franchisee" refers to a person holding a cable communications system franchise granted by the City.
- (q) "Gross revenues" means any and all revenue, of any kind, nature or form derived from the operation of the system to provide cable service. Gross revenues include, by way of example and not limitation, revenues from equipment sales and rentals, services (including cable modem services), installation, late fees and other subscriber charges, fees for carriage of programming, advertising, and shopping services. "Gross revenues" shall be construed broadly to include revenues of affiliates (other than those revenues that are already treated as the revenues of the franchisee); to prevent avoidance of fees owed on gross revenues.
- (r) "Institutional Network" or "I Net" means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.
- (s) "Operator" when used with reference to a system, refers to a person;
 - (1) Who directly or through one or more affiliates provides service over a cable communications system and directly or through one or more affiliates owns a significant interest in such facility; or
 - (2) Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility.
- (t) "OVS" or "Open Video System" means a system for dissemination of video signals as defined by the Telecommunications Act of 1996. A reference to an OVS includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics and other equipment necessary to operate the OVS, or installed in conjunction with the OVS.
- (u) "Person" includes any individual, corporation, partnership, association, Joint Stock Company, trust, or any other legal entity, but not the City.
- (v) "Public rights of way" means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, or right of way or easement, now or hereafter existing within the City which may be properly used for the purpose of installing, maintaining, and operating a cable communications system; and any other property that a franchisee is entitled by state or Federal law to use by virtue of the grant of a franchise.
- (w) "Public property" means any property that is owned or under the control of the City that is not a public right of way, including, for purposes, of this chapter, but not limited to, buildings, parks, poles, structures in the public rights-of way such as utility poles and light poles, or similar facilities or property owned by or leased to the City.
- (x) "School" means any accredited primary school, secondary school, college, and university.
- (y) "Subscriber" means the City or any person who is lawfully receiving, for any purpose or reason, any cable service via a cable communications system, whether or not a fee is paid for such service.
- (z) "Upstream channel" means a channel designed and activated to carry transmissions from a point on the cable system, other than the headend, to the headend or another point on the cable system.
- (aa) "User" means a person or the City utilizing a channel, capacity or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a subscriber.

Section 4-11.03. Franchise required.

No person may construct or operate a cable communications system in the City without first obtaining a City franchise therefor.

Section 4-11.04. Form of franchise.

Any franchise shall be issued in the form of an ordinance, and must be accepted by the franchisee to become effective.

Section 4-11.05. Nature of franchise.

(a) Scope. A franchise granted pursuant to this chapter shall authorize and permit a franchisee to construct, operate and repair a cable system, or an OVS (as applicable) to provide cable service in a designated franchise area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain facilities appurtenant to such system in, on, over, under, upon, across, and along those public rights of way that the City may authorize a franchisee to use.

(b) Nothing passes by implication. A franchise shall not convey rights other than as specified in this ordinance, or in a franchise agreement; no rights shall pass by implication.

(c) Franchise not in lieu of other authorizations. A franchise shall not include, or be a substitute for:

(1) Complying with requirements for the privilege of transacting and carrying on a business within the City, including but not limited to, complying with the conditions the City may establish before constructing facilities for, or providing, non cable services;

(2) Any permit, agreement or authorization required in connection with operations on or in public rights of way or public property, including by way of example and not limitation, street cut permits;

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by the franchise.

(d) Franchisee must comply with other laws. A franchise does not relieve a franchisee of its duty to comply with all City ordinances and regulations, and every franchisee must comply with the same. Likewise, the rights granted under a franchise are subject to the exercise of police and other powers that the City now has or may later obtain, including but not limited to the power of eminent domain.

(e) Franchise not a grant of property rights. A franchise does not convey title, equitable or legal, in the public rights of way. Rights granted may not be subdivided or subleased.

(f) Franchise non exclusive. No franchise shall be exclusive, or prevent the City from issuing other franchises or authorizations, or prevent the City from itself constructing, operating, or repairing its own cable communications system, with or without a franchise.

(g) Franchise term. Every franchise shall be for a term of years, which term shall be eight (8) years, unless a franchise specifies otherwise.

(h) Costs borne by franchisee. Unless otherwise specifically stated in a franchise or required by law, all acts which a franchisee is required to perform under the franchise or applicable law must be performed at the franchisee's expense.

(i) Failures to perform. If a cable communications system operator, after receiving written notice to do so from the City Manager, fails to perform work that it is required to perform within the time provided in the notice for performance, the City may perform the work and bill the operator therefor. The operator shall pay the amounts billed within thirty (30) days.

Section 4-11.06. Administration of ordinance; adoption of regulations.

(a) Adoption of regulations. The City may from time to time adopt regulations to implement the provisions of this ordinance. This ordinance, and any regulations adopted pursuant to this ordinance are not contracts with any franchisee, and may be amended at any time. Nothing in this section shall affect a cable company's right to challenge the lawfulness of a future City exercise of the police or legislative power as it affects an existing franchise.

(b) Delegation. The City Manager or his or her designees are hereby authorized to administer the provisions of this ordinance and any franchise issued pursuant thereto, and to provide any notices (including noncompliance notices) and to take any action on the City's behalf that may be required hereunder or under applicable law.

(c) No waiver. The failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under a franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.

(d) Administration of public, educational and government access. The City may designate one or more entities, including itself, to control and manage the use of public, educational and government access channels, facilities and equipment.

Section 4-11.07. Transfers.

(a) Prior approval required. Every franchise shall be deemed to be held in trust, and to be personal to the franchisee. Any transfer that is made without the prior approval of the City shall be deemed to impair that trust. A transfer is any transaction pursuant to which:

(1) A cable communications system is sold or assigned (except the term does not include sale of portions of the cable system that are removed);

(2) There is any change, acquisition, or transfer of control of the franchisee or its direct or indirect parents, whether by merger, consolidation, sale of assets or ownership interests, or by any other means. A transfer will be deemed to have occurred whenever there is a change, acquisition or transfer of control of more than a ten-percent 10% ownership in the franchisee or its direct or indirect parents by any entity, or a group of entities acting in concert. However, a transfer also occurs whenever there is a change in actual working control, in whatever manner exercised, over the affairs of a franchisee or its direct or indirect parents. Without limiting the above, any change in the general partners of a franchisee will be presumed a change in control; or

(3) The rights and/or obligations held by the franchisee under the franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party.

(b) Exception for mortgages. Notwithstanding any other provision of this chapter, pledges in trust or mortgages of the assets of a cable communications system to secure the construction, operation, or repair of the system may be made without application and without the City's prior consent. However, no such arrangement may be made if it would in any respect under any condition:

(1) Prevent the cable communications system operator or any successor from complying with the franchise or applicable law; or

(2) Permit a third party to succeed to the interest of the operator, or to own or control the system, without the prior consent of the City. Any mortgage, pledge or lease shall be subject to and subordinate to the rights of the City under any franchise, this chapter, or other applicable law.

Section 4-11.08. General conditions upon construction, operation and repair.

(a) Franchisee must follow local rules. The construction, operation, and repair of cable communications systems shall be performed in compliance with all laws, ordinances, departmental rules, regulations, and practices affecting such system. By way of example, and not limitation, this includes zoning and safety codes, construction standards, regulations for providing notice to persons that may be affected by system construction, and directives governing the time, place and manner in which facilities may be installed in the rights of way. Persons engaged in the construction, operation, or repair of communications facilities shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

(b) No permit without franchise. A franchise is required before a permit may be issued for work associated with the construction of a cable communications system. Any permit issued for such work to a person that does not hold a franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon the City's demand.

(c) Permits must be obtained. Construction, operation, or repair of a cable communications system shall not commence until all required permits have been obtained from the proper City officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. Upon order of the City, any work and/or construction undertaken that is not completed in compliance with the City's requirements, or which is installed without obtaining necessary permits and approvals shall be removed.

(d) No interference. Interference with the use of the public rights of-way by others, including others that may be installing cable communications systems, must be minimized. The City may require a person using the rights of way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the rights of way.

(e) Existing poles to be used. To the extent possible, operators of cable communications systems shall use existing poles and conduit. Additional poles may not be installed in the right of way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the City Manager.

(f) Undergrounding.

(1) Whenever existing telephone or electric utilities are located underground in an area in the City, every cable communications system operator that wishes to place its facilities in the same area must locate its cable communications system underground.

(2) Whenever the owner of a pole locates or relocates underground within an area of the City, every cable communications system operator in the same area shall concurrently relocate its facilities underground.

(3) The City Manager may, for good cause shown, exempt a particular system or facility or group of facilities from the obligation to locate or relocate facilities underground, where relocation is impractical, or where the interest in protecting against visual blight can be protected in another manner. Nothing in this section prevents the City from ordering communications facilities to be located or relocated underground under other provisions of the City Municipal Code.

(g) Prompt repairs. Any and all public rights of way, other public property, or private property that is disturbed or damaged during the construction, operation or repair of a cable communications system shall be promptly repaired by the operator, within time frames required by the City Public Works Director or representative. Public property and public rights of way must be restored, to the satisfaction of the City, to a condition as good or better than before the disturbance or damage occurred.

(h) Movement of facilities for government.

(1) A cable communications system operator shall, by a time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City by reason of traffic conditions; public safety; public right of way construction and repair (including re-grading, resurfacing or widening); public right of way vacation, construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government owned system or utility, public work, public facility, or improvement or for any other purpose where the work involved would be aided by the removal or relocation of the cable communications system. Collectively, such matters are referred to below as the "public work."

(2) The City shall provide written notice describing where the public work is to be performed at least thirty (30) days prior to the deadline by which a cable communications system operator must protect, support, temporarily disconnect, relocate or remove its facilities. Provided that, in an emergency, or where a cable communications system creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the cable communications system without prior notice, and charge the cable communications system operator for costs incurred.

(i) Movement for others.

(1) To accommodate the construction, operation, or repair of the facilities of another person authorized to use the streets or public property, a franchisee shall, by a time specified by such person or by the City, protect, support, temporarily disconnect, relocate or remove its facilities. The franchisee must be given written notice describing where the construction, operation or repair is to be performed at least thirty (30) days prior to the time by which its work must be completed. The City may, as it deems appropriate, resolve disputes as to responsibility for costs associated with removal, relaying, or relocation of facilities among entities authorized to install facilities in the streets or on public property if such entities are unable to do so themselves. Such resolution by the City shall have the force and effect of binding arbitration upon the entities. Alternatively, the City may designate a neutral arbiter, whose decision shall be final.

(2) A cable communications system operator shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A cable communications system operator shall be given not less than seven (7) days advance notice to arrange for such temporary wire changes. The expense of such temporary removal or raising or lowering of wires shall be paid in advance by the person requesting the same.

(j) Abandonment in place.

(1) A cable communications system operator may abandon any property in place in the public rights of way upon written notice to the City. However, if, within ninety (90) days of the receipt of written notice of abandonment, the City determines, that the safety, appearance, functioning or use of the public right-of way and facilities in the public right of way will be adversely affected, the property must be removed by a date specified by the City.

(2) A cable communications system operator that abandons its property must, upon request, transfer ownership of the properties to the City at no cost, and execute necessary quitclaim deeds and indemnify the City against future costs associated with mitigating or eliminating any environmental hazard associated with the abandoned property.

(k) Systems subject to inspection. Every cable communications facility shall be subject to inspection and testing by the City. Each operator must respond to requests for information regarding its system and plans for the

system as the City may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired. Each operator shall cooperate and assist fully in facilitating the inspection of equipment permitted by this section, including, without limitation, any disassembly required to allow inspection of interior portions of the facility.

(l) Underground services alert. Each operator of a cable communications system that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The operator shall locate its facilities for the City at no charge.

(m) Plan for construction. Each cable communications system operator shall provide the City a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the City that will be affected.

(n) Use of facilities by City. The City shall have the right to install and maintain free of charge, upon any poles or in any conduit owned by a franchisee any wire and pole fixtures that do not unreasonably interfere with the cable service operations of the franchisee.

(o) Provision for future expansion. Each cable communications system operator shall provide in plans for construction and refurbishment of facilities sufficient empty conduit, fiber, and cabling to meet the projected needs of the communications system operator and any anticipated co user of the facilities constructed, in order to prevent unnecessary disturbance to public facilities and the community at a future date.

Section 4-11.09. Protection of the City and residents.

(a) Indemnity required. No franchise shall be valid or effective until and unless the City Risk Manager approves the indemnity and insurance to be provided by the franchisee. The indemnity, at a minimum, must:

(1) Release the City from and against any and all liability and responsibility in or arising out of the construction, operation or maintenance of the cable communications system. Each cable communications system must further agree not to sue or seek any money or damages from the City in connection with the above mentioned matters.

(2) Indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the cable communications system operator, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation or repair of the system.

(b) Insurance required. A franchisee (or those acting on its behalf) shall not commence construction or operation of the system without obtaining insurance in amounts and of a type satisfactory to the City. The required insurance must be obtained and maintained for the entire period that the franchisee has facilities in the rights of way. If the franchisee, its contractors, or subcontractors do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.

(c) Proof. Certificates of insurance, reflecting evidence of the required insurance and naming the City as an additional insured, and other proofs as the City may find necessary, shall be filed with the City. For persons issued franchises after the effective date of this ordinance, certificates and other required proofs shall be filed within thirty (30) days of the issuance of a franchise, once a year thereafter, and whenever there is any change in coverage. For entities that have facilities in the rights of way as of the effective date of this chapter, the certificate shall be filed within sixty (60) days of the effective date of this chapter, annually thereafter, and whenever there is any change in coverage, unless a pre existing franchise provides for filing of certificates in a different manner.

(d) Certificate contents. Certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of California.

(e) Insurance amounts. A cable communications system operator (and those acting on its behalf to construct or operate the system) shall maintain the following minimum insurance. The City shall be named as an additional insured on the general liability and automotive policies; those insurance policies shall be primary and contain a cross liability clause.

(1) COMPREHENSIVE GENERAL LIABILITY insurance to cover liability bodily injury and property damage. Exposures to be covered are premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

Bodily Injury

Property Damage	Each Occurrence	\$1,000,000
	Annual Aggregate	\$3,000,000
Personal Injury	Each Occurrence	\$1,000,000
	Annual Aggregate	\$3,000,000
	Annual Aggregate	\$3,000,000

Completed Operations and Products Liability shall be maintained for two years after the termination of the franchise or license (in the case of the cable communications system owner or operator) or completion of the work for the cable communications system owner or operator (in the case of a contractor or subcontractor). Property damage liability insurance shall include coverage for the following hazards: X-explosion, C-collapse, U underground.

(2) WORKERS COMPENSATION insurance shall be maintained during the life of this contract to comply with statutory limits for all employees, and in the case any work is sublet, each cable operator shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each cable communications system operator. Each cable communications system operator and its contractors and subcontractors shall maintain during the life of this policy employers liability insurance. The following minimum limits must be maintained:

Worker's Compensation		Statutory
Employer's Liability	Per Occurrence	\$ 500,000

(3) COMPREHENSIVE AUTO LIABILITY

Bodily Injury	Each Occurrence	\$1,000,000
	Annual Aggregate	\$3,000,000
Property Damage	Each Occurrence	\$1,000,000
	Annual Aggregate	\$3,000,000

Coverage shall include owned, hired, and non owned vehicles.

(f) Performance bond. Every operator of a cable communications system shall obtain and maintain a performance bond to ensure the faithful performance of its responsibilities under this chapter and any franchise. The amount of the performance and payment bonds shall be set by the City Manger or may be set in a franchise ordinance in light of the nature of the work to be performed, but shall not be less than ten-percent (10%) of the estimated cost of constructing or (in the case of existing systems) upgrading the system. The bond is not in lieu of any additional bonds that may be required through the permitting process. The bond shall be in a form acceptable to the City Attorney. Bonds must be obtained prior to the effective date of any franchise, transfer or franchise renewal, unless a franchise specifically provides otherwise.

(g) Security fund. Every cable communications system operator shall establish and maintain a cash security fund or provide the City an irrevocable letter of credit in the amount of fifty thousand (\$50,000) dollars to secure the payment of fees owed, to secure any other performance promised in a franchise, and to pay any taxes, fees or liens owed to the City. The letter of credit shall be in a form and with an institution acceptable to the City's Director of Administrative Services and in a form acceptable to the City Attorney. Should the City draw upon the cash security fund or letter of credit, the cable communications system operator shall, within fourteen (14) days, restore the fund or the letter of credit to the full required amount. This security fund/letter of credit may be waived or reduced by the City for a franchisee where the City determines in its discretion that a particular franchisee's operations are sufficiently limited that a security fund/letter of credit is not necessary to secure the required performance. The City may from time to time require a franchisee to change the amount of the required security fund/letter of credit to reflect changed risks to the City and to the public, including delinquencies in taxes or other payments to the City.

The cash security fund or letter of credit must be obtained prior to the effective date of any franchise, transfer or franchise renewal, unless a franchise specifically provides otherwise.

Section 4-11.10. Enforcement and remedies.

(a) Revocation and termination. The City Council may, after thirty (30) days' written notice, revoke a franchise or reduce the term of a franchise if it finds, after a hearing, that a cable communications system operator has violated this chapter or its franchise; has defrauded or attempted to defraud the City or subscribers; or has attempted to evade the requirements of this chapter or its franchise. Except as to violations that are impossible to cure, and as provided in Sections 4-11.10(2) (3), the franchise may only be revoked if the franchisee;

(1) Was given notice of the default;

(2) Thirty (30) days to cure the default; and;

(3) The franchisee failed to cure the default, or to propose a schedule for curing the default acceptable to the City where it is impossible to cure the default in thirty (30) days.

(b) Exception for certain acts. No opportunity to cure is required for repeated violations, and fraud and attempted fraud shall be deemed incurable. Further, the City may declare a franchise forfeited without opportunity to cure where a franchisee;

(1) Intentionally stops providing service it is required to provide; or

(2) Transfers the franchise without the prior consent of the City.

(c) Exception for bankruptcy. A franchise will terminate automatically by force of law one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the franchise may be reinstated within that one hundred twenty (120) day period, if;

(1) Such assignment, receivership or trusteeship has been vacated; or

(2) Such assignee, receiver or trustee has fully complied with the terms and conditions of this chapter and the franchise, and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this chapter and the franchise.

In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee, the City may revoke the franchise following a public hearing before the City Council, by serving notice upon the franchisee and the successful bidder at the sale, in which event the franchise and all rights and privileges thereunder will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

(3) The City has approved the transfer of the franchise to the successful bidder; and

(4) The successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the franchise and this chapter.

(d) Effect of termination or forfeiture. Upon termination or forfeiture of a franchise, whether by action of the City as provided above, or by passage of time, the franchisee must stop using the cable communications system for the purposes authorized by the franchise. The City may take possession of some or all of franchisee's facilities, or require the franchisee or its bonding company to remove some or all of the franchisee's facilities from the City, and restore affected property to its same or better, condition. This provision does not permit the City to remove facilities that are used to provide another service for which the franchisee holds a valid franchise issued by the City.

(e) Remedies cumulative. Remedies provided for under this chapter or under a franchise shall be cumulative. Recovery by the City of any amounts under insurance, the performance bond, the security fund or letter of credit, does not limit a franchisee's duty to indemnify the City; or relieve a franchisee of its franchise obligations or limit the amounts owed to the City.

(f) Penalties. Any person violating the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall punished as specified in California Penal Code Section 19, as amended.

(g) Generally. Each cable communications system operator shall provide the City access to books and records related in whole or in part to the construction, operation, or repair of the cable communications system. or a group of systems of which the system is a part, so that the City may inspect and copy these books and records, which are hereby acknowledged to be of a confidential and proprietary nature. The records include, but are not limited to revenue records, and other records related to compliance with any provision of this chapter or a franchise. A franchisee is responsible for obtaining or maintaining the necessary possession or control of all such books and records, so that it can produce the documents upon request. Books and records must be maintained for a period of five years, except that a franchise may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The phrase "books and records" shall be read expansively to include information in whatever format stored.

(h) Production. Books and records requested shall be produced to the City by a time and at a location in the City designated by the City Manager. However, if the requested books and records are too voluminous, or for security reasons cannot be copied and moved, then the franchisee may request that the inspection take place at some other location mutually agreed to by the City and the franchisee, provided that (1) the franchisee must make necessary arrangements for copying documents selected by the City after its review; and (2) the franchisee must pay all travel and additional copying expenses incurred by the City (above those that would have been incurred had the documents been produced in the City) in inspecting those documents or having those documents inspected by its designee.

Section 4-11.11. Reports.

(a) Obligation to submit. The City Manager may from time to time direct a franchisee to prepare reports and to submit those reports by a date certain, in a format prescribed by the City Manager, in addition to those required by this chapter.

(b) Quarterly reports. Unless an exemption is granted by the City Manager, within forty-five (45) days of the end of each calendar quarter, a franchisee shall submit a report to the City containing the following information:

(1) The number of service calls (calls requiring a truck roll) received during the prior quarter and the percentage of service calls compared to the subscriber base; and

(2) The total estimated hours of known outages as a percentage of total hours of operation. An outage is a loss of sound or video on any signal, or a significant deterioration of any signal affecting two or more subscribers.

(c) Annual reports. Unless an exemption is granted by the City Manager, no later than ninety (90) days after the end of its fiscal year, a franchisee shall submit the following information, except that the information required by subsection (3) need only be provided where there has been a change from the preceding year:

(1) A fully audited or certified revenue report from the previous calendar year for the cable communications system, and a certified statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceding year and a detailed explanation of the method of computation showing

(A) Gross revenues by category (e.g., basic, pay, pay per view, advertising, installation, equipment, late charges, miscellaneous, other); and

(B) What, if any, deductions were made from gross revenues in calculating the franchise fee (e.g., bad debt, credits and refunds), and the amount of each deduction.

Revenues and deductions shall be reported in a format and in categories approved by the City Manager.

(2) A report showing, for each applicable customer service standard (Appendix of this chapter), the franchisee's performance with respect to that standard for each quarter of the preceding year. In each case where franchisee concludes it did not comply fully, the franchisee will describe the corrective actions it is taking to assure future compliance. In addition, the report should identify the number and nature of the customer service complaints received and an explanation of their dispositions.

(3) An ownership report, indicating all persons whom at the time of filing control or own an interest in the franchisee of ten percent (10%) or more.

(d) Contemporaneous Reports. Within ten (10) days of their receipt or (in the case of documents created by the operator or its affiliate) filing, a franchisee shall provide the City:

(1) Notices of deficiency or forfeiture related to the operation of the system; and

(2) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the franchisee or by any partnership or corporation that owns or controls the franchisee directly or indirectly.

Section 4-11.12. Maps required.

Each franchisee shall maintain accurate maps and improvement plans which show the location, size, and a general description of all facilities installed in the public rights of way and any power supply sources (including voltages and connections). Maps shall be based upon post construction inspection to verify location. Each franchisee shall, upon request, provide a map to the City showing the location of its facilities, in such detail and scale as may be directed by the City Engineer and update the map at least annually, and whenever the facility expands or is relocated. Copies of maps shall be provided on disk, in a commercially available electronic format specified by the City Engineer.

Section 4-11.13. Other records required.

Unless the City Manager waives the requirement, a franchisee shall at all time, maintain:

- (a) Complaint records. Records of all complaints received their nature and resolution. The term “complaints” refers to complaints about any aspect of the franchisee's operations.
- (b) Outage records. Records of outages known to the franchisee, their cause and duration.
- (c) Service call response. Records of service calls for repair and maintenance indicating the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved.
- (d) Installation records. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.
- (e) Customer service. Records sufficient to show whether the franchisee has complied with each customer service standard that applies to it.

Section 4-11.14. Exemptions.

The City Manager may temporarily exempt any franchisee from its obligations under Sections 4-11.10 through 4-11.13 if the City Manager determines that the requirement would be unduly burdensome or unnecessary, and that City and subscriber interests may be adequately protected in some other manner.

Section 4-11.15. Privacy.

A franchisee shall take all reasonable steps required so that it is able to provide reports, books and records to the City, including by providing appropriate subscriber privacy notices. Each franchisee shall be responsible for redacting data that applicable law prevents it from providing to the City. Nothing in this section shall be read to require a franchisee to violate state or federal subscriber privacy laws.

Section 4-11.16. Procedures for paying franchise fees and fees in lieu of franchise fees.

- (a) Fees paid quarterly. The franchise fee paid shall be paid quarterly unless otherwise specified in a franchise. Payment for each quarter shall be made to the City not later than forty five (45) days after the end of each calendar quarter.
- (b) Quarterly statement. Unless a franchise provides otherwise, a franchisee or other entity subject to a fee under Article 2 or 3 shall file with the City within forty five (45) days of the end of each calendar quarter a statement showing gross revenues during the preceding quarter and the number of subscribers served.
- (c) Acceptance of payment not a release. No acceptance by the City of any payment shall be construed, as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such payment be construed as a release of any claim the City may have for additional sums payable.
- (d) Fee not in lieu of taxes. Neither the franchise fee under Article 2, nor the fee paid in lieu of the franchise fee under Article 3 is a payment in lieu of any tax, fee or other assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers).
- (e) Failure to pay franchise fee. In the event that a fee payment is not received by the City on or before the due date, or the fee owed is not fully paid, the person subject to the fee will be charged interest from the due date at an interest rate equal to three percentage points (3%) above the rate for three month Federal Treasury Bills at the most recent United States Treasury Department sale of such Treasury Bills occurring prior to the due date of the franchise fee payment.
- (f) Final statement of gross revenues. Within ninety (90) days of the date a franchisee ceases operations under a franchise (whether because of franchise termination, transfer, bankruptcy or for any other reason), the franchisee shall file a final statement of gross revenues covering the period from the beginning of the calendar year in which the operations ceased to the date operations ceased. The statement shall contain the information and be certified as required by Section 4-11.11(3).

Section 4-11.17. Applications Generally.

- (a) Application required. An application must be filed for an initial and renewal cable system franchise, or for approval of a transfer. A request for renewal filed under 47 U.S.C. § 546(h) need not contain the information required by Section 4317(2)(a) (b).
- (b) Application contents.
 - (1) The City Manager may specify the information that must be provided in connection with an application, and the form in which the information is to be provided.

(2) At a minimum each application must identify the applicant, show that the applicant is financially, technically and legally qualified to construct, maintain and operate the cable system, contain a pro forma showing capital expenditures and expected income and expenses for the first five years the applicant is to hold the franchise, and show that the applicant is willing to comply unconditionally with its franchise obligations. In addition, any application for an initial or renewal franchise must describe in detail the cable system that the applicant proposes to build, show where it will be located, set out the system construction schedule, and show that the applicant will provide adequate channels, facilities and other support for public, educational and government use (including institutional network use) of the cable system. To be accepted for filing, an original and six copies of a complete application must be submitted. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

(3) An applicant (and the transferor and transferee, in the case of a transfer) shall respond to any request for information from the City, by the time specified by the City.

(c) Incomplete applications. An application may be rejected if it is incomplete, or if the response to requests for information is not timely and complete.

Section 4-11.18. Application for an initial franchise or renewal franchise

(a) Scope. This section establishes additional provisions that apply to an application for an initial franchise, or a renewal franchise application that is not governed by 47 U.S.C. §546(a) (h).

(b) Process. Any person may apply for an initial or renewal franchise by submitting an application therefore on that person's own initiative, or in response to a request for proposals issued by the City. If the City receives an unsolicited application, it may choose to issue a request for additional proposals, and require the applicant to amend its proposal to respond thereto. The City shall promptly conduct such investigations as are necessary to act on an application.

(c) Consideration of application. In determining whether to grant a franchise, the City may consider:

(1) The extent to which an applicant for renewal has substantially complied with the applicable law and the material terms of any existing cable franchise;

(2) Whether an applicant for renewal's quality of service under its existing Franchise, including signal quality, response to customer complaints, billing practices, and the like has been reasonable in light of the needs of the community;

(3) Where the applicant has not previously held a cable system franchise in the City, whether the applicant's record in other communities indicates that it can be relied upon to provide high quality service throughout any franchise term;

(4) Whether the applicant has the financial, legal, and technical ability to provide the services, facilities, and equipment set forth in an application, and to satisfy any minimum requirements established by the City;

(5) Whether the applicant's application is reasonable to meet the future cable related needs and interests of the City, taking into account the cost of meeting such needs and interests;

(6) Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on streets, public property, and private property that will be used by the applicant's cable system;

(7) Whether issuance of the franchise would reduce competition in the provision of cable service in the City;

(8) Such other matters as the City is authorized or required to consider.

(d) Issuance of franchise. If the City determines that issuance of a franchise would be in the public interest considering the factors described above, it may proffer a franchise agreement to the applicant. No franchise shall become effective until the applicant unconditionally accepts the franchise, and the franchise agreement is signed.

Section 4-11.19. Application for renewal franchise filed pursuant to 47 U.S.C. §546.

(a) Scope. This section establishes additional provisions that apply to applications for renewal governed by 47 U.S.C. §546(a) (g).

(b) Process. A franchisee that intends to exercise rights under 47 U.S.C. § 546(a) (g) shall submit a notice in writing to the City in a timely manner clearly stating that it is activating the procedures set forth in those sections. The City shall thereafter commence any proceedings that may be required under Federal law, and upon completion of those proceedings, the City may issue a request for proposals and an application may be submitted for renewal. The City may preliminarily deny the application by resolution, and if the application is preliminarily denied, the City may conduct such proceedings and by resolution establish such procedures and appoint such individuals as may be necessary to conduct any proceedings to review the application.

Section 4-11.20. Application for transfer.

(a) Scope. This section establishes additional provisions that apply to applications for transfer approval.

(b) Information. An application for transfer must contain all the information required by the City Manager, pursuant to this chapter, and all information required by any FCC transfer form.

(c) Consideration of application. In determining whether a transfer application should be granted, denied, or granted subject to conditions, the City may consider the legal, financial, and technical qualifications of the transferee to operate the cable system; any potential impact of the transfer on subscriber rates or services; whether the incumbent cable operator is in compliance with its franchise; whether the transferee owns or controls any other cable system in the City, whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in the City; and whether operation by the transferee or approval of the transfer would otherwise adversely affect subscribers, the public, or the City's interest under this chapter, the franchise, or other applicable law. The proposed transferee shall pay all reasonable costs incurred by the City in reviewing and evaluating the applications.

(d) Minimum conditions. In order to obtain approval of a transfer, an applicant must show, at a minimum that: the transferee is qualified; the transfer will not adversely affect the interests of subscribers, the public, or the City; and that noncompliance issues have been resolved. No application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this chapter and the franchise and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous franchisee for all purposes.

Section 4-11.21. Legal qualifications.

(a) Standards.

(1) The applicant must be willing to comply with the provisions of this chapter and applicable laws and to comply with such requirements of a franchise as the City may lawfully require.

(2) The applicant must not have had any cable system or OVS franchise validly revoked, (including any appeals) by the City within three (3) years preceding the submission of the application.

(3) The applicant may not have had an application to the City for an initial or renewal cable system franchise denied on the ground that the applicant failed to propose a cable system meeting the cable related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three (3) years preceding the submission of the application; and may not have had an application for an initial or renewal OVS franchise denied on any ground within three years of the application.

(4) The applicant shall not be issued a franchise if, at any time during the ten (10) years preceding the submission of the application, applicant was convicted of fraud, racketeering, anti-competitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to deal truthfully with the City and the subscribers, or to substantially comply with its obligations.

(5) Applicant must have the necessary authority under California and Federal law to operate a cable system, or show that it is in a position to obtain that authority.

(6) The applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.

(7) For purposes of this section the term applicant includes any affiliate of applicant.

(b) Exception. Notwithstanding Section 4-11.21(l), an applicant shall be provided a reasonable opportunity to show that a franchise should issue even if the requirements of Section 4-11.21 (1)(c) (d) are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of a cable system.

Section 4-11.22. Franchise fee.

A cable operator shall pay to the City a franchise fee in an amount equal to five percent (5%) of gross revenues, or such other amount as may be specified in the franchise; provided, however, that if the franchise specifies an amount, that amount shall be subject to increase should federal limits on fee payments be eliminated or changed and other cable operators are subject to a higher fee.

Section 4-11.23. No exclusivity.

(a) A franchisee may not require a subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing service. However, nothing herein prevents a franchisee from

entering into an otherwise lawful, mutually desired exclusive arrangement with a building owner or manager of a multiple dwelling unit or commercial subscriber.

(b) No franchisee shall enter into or cooperate with any agreement with any other utility, cable system, OVS or other entity which provides for the exclusive right to attach equipment to utility poles or use underground conduit. This provision is not intended, however, to interfere with any utility, cable system, OVS or other entity from obtaining reasonable compensation for the use of their facilities by other entities.

Section 4-11.24. Minimum franchise conditions.

In addition to satisfying such additional or stricter conditions as the City finds necessary based on its investigations, the following elements shall be required in every franchise serving more than one thousand (1000) subscribers: An operator who provides service in an area which is defined as "isolated rural" may be exempted from the minimum franchise requirements for that area.

(a) System design. Each franchisee shall provide a cable system that uses at least 750MHz equipment of high quality and reliability. Each franchisee shall install and activate the return portion of the cable system in the sub low frequency spectrum of 5 MHz to 30 MHz.

(b) Public, educational and government use of the system.

(1) A franchisee shall provide channels for PEG access to each subscriber; the number of channels shall be specified in the franchise.

(2) Each franchisee shall install, maintain, and replace as necessary, a dedicated, bi directional fiber optic link between its headend and a location designated by the City as the primary access center.

(3) Each franchisee shall install, maintain, and replace activated two way cable plant and all headend, cable plant, and node equipment required to make it operable so that the City, schools, and all designated PEG access centers and access facilities located within the franchise area will be able to send and receive signals (video, audio, and data) using the activated two way cable plant.

(4) Each franchisee shall ensure that technically adequate signal quality, routing systems, and switching and/or processing equipment are initially and continuously provided for all access interconnections both within franchisee's cable system and with other cable systems throughout the duration of its franchise.

(5) In the event a franchisee makes any change in the cable system and related equipment and facilities or in the franchisee's signal delivery technology which directly or indirectly substantially affects the signal quality or transmission of access programming, the franchisee shall at its expense take necessary steps or provide necessary technical assistance, including the acquisition of all necessary equipment, to ensure that the capabilities of access programmers are not diminished or adversely affected by such change.

(6) A franchisee shall maintain all access channels (both upstream channels and downstream channels) and all interconnections of access channels at the same level of technical quality and reliability as the best commercial channels carried on the system.

(c) Service to franchise area. It is the policy of the City to ensure that every cable system provides service in its franchise area upon request to any person or any government building. Each franchisee shall extend service upon request within its franchise area, provided that, a franchise may permit a franchisee to require a potential subscriber to contribute a fair share of the capital costs of installation or extension as a condition of extension or installation in cases where such extension or installation may be unduly expensive. Service must be provided within time limits specified in Section 4-11.24 (4).

(d) Time for extension. Except as a franchise otherwise provides, service must be extended upon request to any person or to any government building in a franchisee's franchise area (1) within seven (7) days of the request, where service can be provided by activating or installing a drop; (2) within ninety (90) days of the request where an extension of one half mile or less is required; or (3) within six (6) months where an extension of one half mile or more is required.

(e) Technical standards. A cable system within the City shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards.

(f) Testing. Each cable operator shall perform at its expense such tests as may be necessary to show whether or not the franchisee is in compliance with its obligations under applicable FCC standards, this chapter or a franchise.

(g) Interconnection. Upon request of the City, every cable system shall be required to interconnect with every other cable system within the City, or adjacent to the City, on fair and reasonable terms for purposes of providing PEG and I Net services.

(h) Continuity of service. Each franchisee shall, during the term of the franchise, ensure that subscribers are able to receive continuous service. In the event the franchise is revoked or terminated, the franchisee may be

required to continue to provide service for a reasonable period to assure an orderly transition of service from the franchisee to another entity. A franchise may establish more particular requirements under which these obligations will be satisfied.

Section 4-11.25. Rate regulation and consumer protection.

(a) All rates subject to regulation. The City may regulate any of the cable operator's rates and charges, except to the extent it is prohibited from doing so by law. If the City chooses to regulate rate it will regulate rates in accordance with FCC rules and regulations, where applicable. Except to the extent FCC rules provide otherwise, all rates and charges that are subject to regulation, and changes in those rates or charges must be approved in advance. The City Manager may take any required steps to file complaints, toll rates, issue accounting orders or take any other steps required to comply with FCC regulations. The City Council shall be responsible for issuing rate orders that establish rates or order refunds.

(b) No rate discrimination. Except to the extent the City may not enforce such a requirement, a cable operator is prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers; provided, however, that a franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of subscribers throughout the franchise area; and a franchisee may offer discounts for the elderly, the disabled, or the economically disadvantaged; and such other discounts as it is expressly entitled to provide under Federal law, if such discounts are applied in a uniform and consistent manner.

(c) Redlining prohibited. A cable operator shall not deny access or charge different rates for the same services to any group of subscribers or potential subscribers because of the income of the residents of the local area in which such group resides.

(d) Customer service.

(1) Each cable operator must satisfy FCC, State and City cable customer service standards or consumer protection standards. City cable customer service standards may be adopted by resolution. In the case of a conflict among standards, the stricter standard shall apply.

(2) For violation of cable customer service standards (Appendix A), penalties will be imposed as follows:

(A) Two hundred dollars (\$200) for each day of each material breach, not to exceed six hundred dollars (\$600) for each occurrence of material breach.

(B) If there is a subsequent material breach of the same provision within twelve (12) months, four hundred (\$400) for each day of each material breach, not to exceed twelve hundred dollars (\$1200) for each occurrence of the material breach.

(C) If there is a third or additional material breach of the same provision within twelve (12) months of the first, one thousand dollars (\$1000) for each day of each material breach, not to exceed three thousand dollars (\$3000) for each occurrence of the material breach.

(3) Any penalty assessed under this section will be reduced dollar for dollar to the extent any liquidated damage provision of a franchise imposes a monetary obligation on a franchisee for the same customer service failures, and no other monetary damages may be assessed. The City will provide notice, and impose penalties, under this section pursuant to the procedures established by California Government Code § 53088.2(r).

Article 3. Open video systems

Section 4-11.26. Additional definitions.

(a) "OVS Agreement" means a contract entered into in accordance with the provisions of this chapter between the City and an OVS franchisee setting forth the terms and conditions under which the franchise will be exercised.

Section 4-11.27. Applications for grant or renewal of franchises.

(a) Initial and renewal franchise: application.

(1) A written application shall be filed with the City for grant of an initial or renewal franchise.

(2) To be acceptable for filing, a signed original of the application shall be submitted together with six (6) copies. The application must conform to any applicable request for proposals, and contain all information required under this chapter for cable TV or OVS franchises. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

(b) Contents of applications. The City Manager may specify the information that must be provided in connection with a request for proposals or an application for an initial or renewal franchise. At a minimum, each application must: identify the applicant, where it plans to construct its system, and the system construction schedule;

show that the applicant will provide adequate channels, facilities and other support for public, educational and government use (including institutional network use) of the OVS; and show that the applicant is financially, technically and legally qualified to construct and operate the OVS.

(c) Procedure for applying for grant of a franchise.

(1) A person may apply for an initial or renewal franchise on its own initiative or in response to a request for proposals. Upon receipt of an application the City shall promptly proffer the applicant a proposed OVS Agreement, which shall be mailed to the person requesting its issuance and made available to any other interested party. The City may request such additional information as it deems appropriate.

(2) An applicant shall respond to requests for information completely, and within the time directed by the City, and must strictly comply with procedures, instructions, and requirements the City may establish.

(3) An application may be rejected if it is incomplete or the applicant fails to follow procedures or respond fully to information requests.

(d) Evaluation. In evaluating a franchise application, the City may consider the following:

(1) The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing City OVS franchise;

(2) Whether the applicant has the financial, technical, and legal qualifications to hold an OVS franchise;

(3) Whether the application satisfies any minimum requirements established by the City for, or will otherwise provide adequate public, educational, and governmental use capacity, facilities, or financial support (including with respect to institutional networks);

(4) Whether issuance of a franchise would require replacement of property or involve disruption of property, public services, or use of the public rights-of way;

(5) Whether the approval of the application may eliminate or reduce competition in the delivery of cable service in the City.

(e) Issuance. If the City finds that it is in the public interest to issue a City franchise considering the factors above, and such other matters as it is required or entitled to consider, and subject to the applicant's entry into an appropriate OVS agreement, it shall issue a franchise. Prior to deciding whether or not to issue a franchise, the City may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received.

(f) Legal qualifications. In order to be legally qualified:

(1) The applicant must be willing to comply with the provisions of this chapter and applicable laws, and to comply with such requirements of an OVS agreement as the City may lawfully require.

(2) The applicant must not hold a cable system franchise in the City, or have pending an application for a cable system franchise in the City.

(3) The applicant must not have had any cable system or OVS franchise validly revoked, (including any appeals) by the City within three (3) years preceding the submission of the application.

(4) The applicant may not have had an application for an initial or renewal cable system franchise to the City denied on the ground that the applicant failed to propose a cable system meeting the cable related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three (3) years preceding the submission of the application, and;

(5) The applicant may not have had an application for an initial or renewal OVS franchise denied on any grounds within three (3) years of the applications.

(6) The applicant shall not be issued a franchise if, at any time during the ten (10) years preceding the submission of the application, applicant was convicted of fraud, racketeering, anti-competitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to deal truthfully with the City and the subscribers, or to substantially comply with its obligations.

(7) Applicant must have the necessary authority under California and Federal law to operate an OVS, and must be certified by the FCC under Section 653 of the Cable Act.

(8) The applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.

(9) For purposes of Section 4-11.27(f)(2) (5), the term applicant includes any affiliate of applicant.

(g) Exception. Notwithstanding Section 4-11.27(f), an applicant shall be provided a reasonable opportunity to show that, a franchise should issue even if the requirements of Section 4-11.27(f) (4) (5) are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of a cable system.

Section 4-11.28. Transfers.

City approval required. No transfer shall occur without prior written notice to and approval of the City Council.

(a) Application.

(1) A franchisee shall promptly notify the City of any proposed transfer, and submit an application for its approval.

(2) The City Manager may specify information that must be provided in connection with a transfer application. At a minimum, an application must describe the entities involved in the transaction and the entity that will hold the franchise; describe the chain of ownership before and after the proposed transaction; show that the entity that will hold the franchise will be legally, financially, and technically qualified to do so; attach complete information on the proposed transaction, including the contracts or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein; and attach any shareholder reports or filings with the Securities and Exchange Commission ("SEC") that discuss the transaction.

(3) For the purposes of determining whether it shall consent to a transfer, the City or its agents may inquire into all qualifications of the prospective transferee and such other matters as the City may deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned. If the transferee or franchisee refuse to provide information, or provide incomplete information, the request for transfer may be denied.

(b) Determination by City.

(1) In deciding whether a transfer application should be granted, denied or granted subject to conditions, the City may consider the legal, financial, and technical qualifications of the transferee to operate the OVS; whether the incumbent OVS operator is in compliance with its OVS agreement and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other OVS or cable system in the City, and whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in the City; and whether operation by the transferee or approval of the transfer would adversely affect subscribers, the public, or the City's interest under this chapter, the OVS agreement, or other applicable law.

(2) In order to obtain approval of a transfer, an applicant must show, at a minimum, that: the transferee is qualified; the transfer will not adversely affect the interests of subscribers, the public, or the City; and that non compliance issues have been resolved. No application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this chapter and the franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous franchisee for all purposes. The proposed transferee shall pay all reasonable costs incurred by the City in reviewing and evaluating the applications.

Section 4-11.29. Minimum requirements.

(a) PEG access. No OVS operator shall be issued a franchise, or may commence construction of an OVS system, until;

(1) It agrees to match in all respects the highest PEG obligations borne by any cable operator in the City;

or

(2) It agrees to PEG obligations acceptable to the City.

(b) Institutional network. Any OVS operator that constructs an I Net must match in all respects the highest I Net obligations borne by any cable operator in the City, unless it agrees to alternative I Net obligations acceptable to the City.

(c) Construction provisions. Every OVS agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the OVS. The schedule shall provide for prompt completion of the project, considering the amount and type of construction required.

(d) Testing. Each OVS operator shall perform at its expense such tests as may be necessary to show whether or not the franchisee is in compliance with its obligations under this chapter or a franchise.

(e) Consumer protection provisions. Every franchisee must satisfy customer service consumer protection requirements established from time to time under state or local law and applicable to OVS.

Section 4-11.30. Special termination rules.

If a franchisee's FCC certification is revoked or otherwise terminates as a result of the passage of time or as a matter of law, the City may revoke the OVS franchise after a hearing. The OVS franchise may also be revoked if federal regulations or statutory provisions governing OVS are declared invalid or unenforceable, or are repealed.

Section 4-11.31. Rate regulation.

The City may regulate a franchisee's rates and charges except as prohibited by law, and may do so by amendment to this chapter, separate ordinance, by amendment to an OVS Agreement, or in any other lawful manner.

Section 4-11.32. Fee in lieu of franchise fee.

(a) OVS operators. In lieu of the franchise fee required an OVS franchisee shall pay a fee of five percent (5%) of the gross revenues of the franchisee, its affiliates or any OVS operator of the OVS.

(b) Persons leasing OVS capacity.

(1) A person leasing capacity from an OVS operator, other than a person whose revenues are included in the payment made under Section 43-16 shall pay the City a fee in lieu of the franchise fee required by Chapter 2 of five percent (5%) of the gross revenues of such person.

(2) Notwithstanding the foregoing, where franchisee charges a person, other than an affiliate, to use its OVS (the "use payments"); and that person recovers those use payments through charges to its subscribers that are included in that person's gross revenues; and that person fully recovers the use payments through the charges to its subscribers and pays a fee on those charges pursuant to Section 4-11.16 and 4-11.22, then franchisee may deduct from its gross revenues the use payments it receives from that person.

Section 4-11.33. Exclusive contracts.

A franchisee may not require a subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing service, nor may a franchisee enter into any arrangement that would effectively prevent other persons from using the OVS to compete in the delivery of cable services with a franchisee or its affiliates.

Section 4-11.34. Captions.

The captions to sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this chapter. Such captions shall not affect the meaning or interpretation of this chapter.

Section 4-11.35. Calculation of time.

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this chapter or any franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

Section 4-11.36. Severability.

If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding on the franchisee and the City.

Section 4-11.37. Connections to cable system; use of antennae.

(a) Subscriber right to attach. To the extent consistent with Federal law, subscribers shall have the right to attach VCR's, receivers, and other terminal equipment to a franchisee's cable system. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment.

(b) Removal of existing antennae. A franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the subscriber or potential subscriber, or prohibit installation of a new antenna, provided that such antenna is connected with an appropriate device and complies with applicable law.

Section 4-11.38. Discrimination prohibited.

(a) No retaliatory actions. A cable communications system operator shall not discriminate among persons or the City or take any retaliatory action against a person or the City because of that entity's exercise of any right it may have under Federal, State, or Local Law, nor may the operator require a person or the City to waive such rights as a condition of taking service.

(b) Employment and hiring practices. A cable communications system operator shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or

privileges of employment because of race, color, creed, national origin, sex, age, disability, religion, ethnic background, or marital status. A cable system operator shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, and hiring practices, as the same may be amended from time to time.

Section 4-11.39. Transitional provisions.

(a) Persons operating without a franchise. The operator of any facility installed as of the effective date of this chapter, for which a franchise is required under this chapter and for which a previous franchise has not been granted, shall have three months from the effective date of this chapter to file one or more applications for a franchise. Any operator timely filing such an application under this section shall not be subject to a penalty for failure to have such a franchise so long as said application remains pending; provided, however, nothing herein shall relieve any cable communications system operator of any liability for its failure to obtain any permit or other authorization required under other provisions of the Santa Maria Municipal Code, and nothing herein shall prevent the City from requiring removal of any facilities installed in violation of the Santa Maria Municipal Code.

(b) Persons holding franchises. Any person holding an existing franchise for a cable communications system may continue to operate under the existing franchise to the conclusion of its present term (but not any renewal or extension thereof) with respect to those activities expressly authorized by the franchise; and provided further that, such person shall be subject to the other provisions of this chapter to the extent permitted by law.

(c) Persons with pending applications. Pending applications shall be subject to this chapter. A person with a pending application shall have thirty (30) days from the effective date of this chapter to submit additional information to comply with the requirements of this chapter governing applications.

Appendix A Customer Service Standards

1. Office availability.

1.1. Each franchisee will maintain offices at a convenient locations in the City that will be open for walk in traffic at least nine (9) hours per day (except legal holidays) Monday through Friday, with some evening hours, and at least five (5) hours on Saturday to allow subscribers to pay bills, drop off equipment and to pick up equipment.

1.2. Each franchisee will perform service calls, installations, and disconnects at least ten (10) hours per day Monday through Saturday, except legal holidays, provided that a franchisee will respond to outages twenty four (24) hours a day, seven (7) days a week.

2. Telephones.

2.1. Each franchisee will establish a publicly listed local toll free telephone number. Customer service representatives must answer the phone at least ten (10) hours per day, Monday through Saturday, except legal holidays, for the purpose of receiving requests for service, inquiries, and complaints from subscribers. After such business hours the phone will be answered so that customers can register complaints and report service problems on a twenty-four (24) hour per day, seven (7) day per week basis, and so that the franchisee can respond to service outages as required herein.

2.2. Telephone answering time will not exceed thirty (30) seconds or four (4) rings, and the time to transfer the call to a customer service representative (including hold time) will not exceed an additional thirty (30) seconds.

2.3. Under normal operating conditions customers will receive a busy signal less than three percent (3%) of the time.

2.4. Under normal operating conditions, the standards set out in Section 2.2 2.3 will be met ninety (90) percent of the time, measured quarterly.

3. Scheduling work.

3.1. All appointments for service, installation, or disconnection will be specified by date. Each franchisee will specify a specific time at which the work will be done, or offer a choice of time blocks, which will not exceed four (4) hours in length. A franchisee may also, upon request, schedule service installation calls outside normal business hours, for the express convenience of the customer.

3.2. If at any time an installer or technician is late for an appointment and believes a scheduled appointment time will be missed, an attempt to contact the customer will be made before the time of appointment and the appointment rescheduled at a time convenient to the customer, if rescheduling is necessary. It is the operator's burden to prove it met the appointment.

3.3. The franchisee will offer and fully describe to subscribers who have experienced a missed appointment (where the missed appointment was not the subscriber's fault) that the subscriber may choose between the following options:

3.3.1. Installation or service call free of charge, if the appointment was for an installation or service call for which a fee was to be charged;

3.3.2. One (1) month of the most widely subscribed to service tier free of charge for other appointments; and

3.3.3. An opportunity to elect remedies under California Civil Code 1722, if applicable.

4. Service standards.

4.1. Under normal operating conditions, requests for service, repair, and maintenance must be acknowledged by a trained customer service representative within twenty four (24) hours, or before the end of the next business day, whichever is earlier.

4.2. A franchisee will respond to all other inquiries (including billing inquiries) within five (5) business days of the inquiry or complaint.

4.3. Under normal operating conditions, repairs and maintenance for outages or service interruptions must be completed within twenty four (24) hours after the outage or interruption becomes known to franchisee where the franchisee has adequate access to facilities to which it must have access in order to remedy the problem.

4.4. Under normal operating conditions, work to correct all other service problems must be begun by the next business day after notification of the service problem, and must be completed within five (5) business days from the date of the initial request.

4.5. When normal operating conditions do not exist, a franchisee will complete the work in the shortest time possible.

4.6. A franchisee will not cancel a service or installation appointment with a customer after the close of business on the business day preceding the scheduled appointment.

4.7. Requests for additional outlets, service upgrades or other connections (e.g., DMX, VCR, and A/B switch) separate from the initial installation will be performed within seven (7) business days after an order has been placed.

4.8. Under normal operating conditions, the service standards set out in Sections 4.1 4.7 will be met at least ninety five (95) percent of the time, measured on a quarterly basis.

4.9. The failure of the franchisee to hire sufficient staff or to properly train its staff will not justify a franchisee's failure to comply with this provision.

5. Disabled services. With regard to subscribers with disabilities, upon subscriber request, each franchisee will arrange for pickup and/or replacement of converters or other franchisee equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage prepaid mailer).

6. Notice to subscribers regarding service. A franchisee will provide each subscriber at the time service is installed, and annually thereafter, clear and accurate written information:

6.1. On placing a service call, filing a complaint, or requesting an adjustment (including when a subscriber is entitled to refunds for outages and how to obtain them);

6.2. Showing the telephone number of City office responsible for administering the cable television franchise;

6.3. Providing a schedule of rates and charges (which listing must identify any discounts offered), channel positions, services provided, a copy of the service contract, delinquent subscriber disconnect and reconnect procedures; notifying subscribers of the availability of parental control devices, and the conditions under which they will be provided and the cost (if any) charged; and

6.4. Describing conditions that must be met to qualify for discounts;

6.5. Describing any other of the franchisee's policies in connection with its subscribers; and

6.6. Describing any discounts, services, or specialized equipment available to subscribers with disabilities; explaining how to obtain them; and explaining how to use any accessibility features.

7. Notices to City. Franchisee will provide City with copies of all notices provided to its subscribers pursuant to this article.

8. Changes in noticed information. Franchisee will provide the City Manager (or designee) at least sixty (60) days, and all subscribers at least thirty (30) days, written notice of any material changes in the information required to be provided under this article, except that, if Federal law establishes a shorter notice period and preempts this requirement, the federal requirement will apply.

9. Truth in advertising. Each franchisee will take appropriate steps to ensure that all written franchisee promotional materials, announcements, and advertising of residential cable service to subscribers and the general public, where price information is listed in any manner, clearly and accurately discloses price terms. In the case of telephone orders, a franchisee will take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers in advance of taking the order.

9.1. Each franchisee will maintain a file open for public inspection containing all notices provided to subscribers under these customer service standards, as well as all promotional offers made to subscribers. The notices and offers will be kept in the file for at least one (1) year from the date of such notice or promotional offer.

10. Interruptions of service. A franchisee will provide forty eight (48) hours prior notice to subscribers and City before interrupting service for planned maintenance or construction; provided, however, that planned maintenance that does not require more than two (2) hours' interruption of service and that occurs between the hours of 12:00 midnight and 6:00 a.m. will not require such notice to subscribers, and notice to City must be given no less than twenty four (24) hours before the anticipated service interruption.

11. Prorated billing. A franchisee's first billing statement after a new installation or service change will be prorated as appropriate and will reflect any security deposit.

12. Billing statement.

12.1. A franchisee's billing statement must be clear, concise, and understandable; must itemize each category of service and equipment provided to the subscriber; and must state clearly the charges therefor.

12.2. A franchisee's billing statement must show a specific payment due date not earlier than the later of

12.2.1. Fifteen (15) days after the date the statement is mailed, or

12.2.2. The tenth (10th) day of the service period for which the bill is rendered.

12.3. A late fee or administrative fee (collectively referred to below as a "late fee") may not be imposed for payments earlier than twenty seven (27) days after the due date specified in the bill.

12.4. A late fee may not be imposed unless the subscriber is provided written notice at least ten (10) days prior to the date the fee is imposed that a fee will be imposed, the date the fee will be imposed and the amount of the fee that will be imposed if the delinquency is not paid. A late fee may not be imposed unless the outstanding balance exceeds ten dollars (\$10).

12.5. Subscribers will not be charged a late fee or otherwise penalized for any failure by a franchisee, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made. Payments will be considered timely if postmarked on the due date.

12.6. A franchisee's bill must permit a subscriber to remit payment by mail or in person at the franchisee's local office.

13. Credit for service impairment.

13.1. A subscriber's account will be credited a prorated share of the monthly charge for the service upon subscriber request if a subscriber is without service or if service is substantially impaired for any reason for a period exceeding four (4) hours during any twenty four (24) hour period; or automatically if the loss of service or impairment is for twenty four (24) hours or longer.

13.2. A franchisee need not credit subscriber where it establishes that a subscriber will obtain a refund for a loss of service or impairment caused by the subscriber or by subscriber owned equipment (not including, for purposes of this section, in home wiring installed by the franchisee).

14. Billing complaints. Franchisee will respond to all written billing complaints from subscribers within thirty (30) days.

15. Billing refunds. Refunds to subscribers will be issued no later than:

15.1. The earlier of the subscriber's next billing cycle following resolution of the refund request, or thirty (30) days; or

15.2. The date of return of all equipment to franchisee, if cable service has been terminated.

16. Credits for cable service. Credits for cable service will be issued no later than the subscriber's next billing cycle after the determination that the credit is warranted.

17. Disconnection/Downgrades.

17.1. A subscriber may terminate service at any time.

17.2. A franchisee will promptly disconnect from the franchisee's cable system or downgrade any subscriber who so requests. No charges for service may be made after the subscriber requests disconnection. No period of notice before voluntary termination or downgrade of cable service may be required of subscribers by any franchisee. There will no charge for disconnection, except for the collection fee authorized by state law, and any downgrade charges will conform to Applicable Law.

18. Security deposit. Any security deposit and/or other funds due a subscriber that disconnects or downgrades service will be returned to the subscriber within thirty (30) days or in the next billing cycle, whichever is later, from the date disconnection or downgrade was requested except in cases where the subscriber does not permit the franchisee to recover its equipment, in which case the amounts owed will be paid to subscribers within thirty (30) days of the date the equipment was recovered, or in the next billing cycle, whichever is later.

19. Disconnection due to nonpayment.

19.1. A franchisee may not disconnect a subscriber's cable service for nonpayment unless:

19.1.1. The subscriber is delinquent in payment for cable service;

19.1.2. A separate, written notice of impending disconnection, postage prepaid, has been sent to the subscriber at least twenty (20) days before the date on which service may be disconnected, at the premises where the subscriber requests billing, which notice must identify the names and address of the subscriber whose account is delinquent, state the date by which disconnection may occur if payment is not made, and the amount the subscriber must pay to

avoid disconnection, and a telephone number of a representative of the franchisee who can provide additional information concerning and handle complaints or initiate an investigation concerning the services and charges in question;

19.1.3. The subscriber fails to pay the amounts owed to avoid disconnection by the date of disconnection; and

19.1.4. No pending inquiry exists regarding the bill to which franchisee has not responded in writing.

19.2 If the subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the franchisee will not disconnect service. Service may only be terminated on days in which the customer can reach a representative of the video provider either in person or by telephone.

19.3. After disconnection (except as noted below), upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the franchisee will promptly reinstate service.

20. Immediate disconnection. A franchisee may immediately disconnect a subscriber if:

20.1. The subscriber is damaging, destroying, or unlawfully tampering with or has damaged or destroyed or unlawfully tampered with the franchisee's cable system;

20.2. The subscriber is not authorized to receive a service, and is facilitating, aiding or abetting the unauthorized receipt of service by others; or

20.3. Subscriber installed or attached equipment is resulting in signal leakage that is in violation of FCC rules.

20.4. After disconnection, the franchisee will restore service after the subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and all amounts owed the franchisee for damage to its cable system or equipment. Provided that, no reconnection fee may be imposed on a subscriber disconnected pursuant to this article if the leakage was the result of the franchisee's acts or omissions; or in any case unless the franchisee notifies the subscriber of the leakage at least three (3) business days in advance of disconnection, and the subscriber has failed to correct the leakage within that time.

21. Franchisee's property. Except as Applicable Law may otherwise provide a franchisee may remove its property from a subscriber's premises within thirty (30) days of the termination of service. If a franchisee fails to remove its property in that period, the property will be deemed abandoned unless the franchisee has been denied access to the subscriber's premises, or the franchisee has a continuing right to occupy the premises under Applicable Law.

22. Deposits. A franchisee may require a reasonable, non discriminatory deposit on equipment provided to subscribers. Deposits will be placed in an interest bearing account, and the franchisee will return the deposit, plus interest earned to the date the deposit is returned to the subscriber, less any amount the franchisee can demonstrate should be deducted for damage to such equipment.

23. Parental control option. Without limiting a franchisee's obligations under Federal law, after March 1, 1999, a franchisee must provide at the request of the subscriber and at no charge channel blockage of any channel(s) requested by subscriber. In addition, without limiting a franchisee's obligations under Federal law, after March 1, 1999, a franchisee must provide at the request of the subscriber parental control devices that enable the subscriber to block the video and audio portion of any channel or channels of programming. franchisee may charge for such parental control devices.

24. Penalties.

24.1. Pursuant to California Government Code § 63088.2, and any successor statute or regulation, penalties will be assessed against a franchisee for any breach of Sections 1 23 of these customers service standards.

25. Notwithstanding the requirements of this article, the City Manager is authorized to relieve a franchisee of its obligations under this article if:

25.1. Franchisee shows that there is an alternative standard that is substantially similar to that established by this article;

25.2. The City Manager determines that there is sufficient competition among cable operators that renders application of these standards unnecessary; or

25.3. In light of the number of customers served by a cable operator, the requirements of this article are, in the City Manager's sole discretion, unduly burdensome and there is an alternative way to serve the same interest.

Appendix B Application for OVS Franchise

(a) Please provide the following information on a separate attachment:

(1) The name and address of the applicant.

(2) Identify who owns and controls the applicant. Your answer should list the names and addresses of the ten (10) largest holders of an ownership interest in the applicant the names and addresses of all persons in the applicant's direct ownership chain, showing their relation to one another. If there are contracts for the management and operation of the OVS, or arrangements for use of the OVS by an affiliate, the entities involved and their ownership, and their relationship to the applicant should be described.

(b) Please provide information sufficient to show that you have the technical resources to construct and maintain the proposed OVS. Identify the companies and personnel that will be involved in the construction and maintenance, and references for the entities identified.

(c) Please answer the following questions:

(1) Is applicant willing to comply with the provisions of the City Municipal Code and other applicable laws: and to comply with such requirements of an OVS Agreement as the City may lawfully require?

(2) Does applicant, or its affiliates hold a cable franchise system franchise for the City of Santa Maria or have a pending request for a cable system franchise, renewal, or transfer?

(3) Has applicant had a request for a cable system franchise or an OVS franchise denied by the City of Santa Maria?

(4) If so, did denial occur, or was challenge to the denial resolved adversely to applicant in the last thirty-six (36) months?

(5) Has applicant had a cable or OVS franchise revoked by the City of Santa Maria?

(6) If so, did the revocation occur, or was a challenge to the revocation resolved adversely to the applicant within the past thirty-six (36) months?

(7) Does applicant have the necessary authority under California and Federal law to operate an OVS? (If yes, please provide proof of the authorization).

(8) During the ten (10) years preceding the submission of this application, was applicant found guilty of violating a consumer protection law, or laws prohibiting anti-competitive acts, fraud, or other similar conduct?

(9) Does an elected official of the City of Santa Maria hold a controlling interest in the applicant or an affiliate of the applicant?

If the answer to any of the questions above is in the affirmative, please provide a detailed explanation of the reasons for the response.

(d) Please provide a statement prepared by a Certified Public Accountant showing that applicant has the financial resources necessary to construct and operate the OVS as proposed.

(e) Please identify the area of the City that will be served by the OVS, with accompanying maps.

(f) Provide a schedule for construction of the OVS, including an estimate of plant mileage and its location; whether or not an institutional network will be constructed; information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities; and a description, where appropriate, of how services will be converted from existing facilities to new facilities.

(g) Describe in detail the channels, facilities, and other support you propose to provide for public, educational, and government use of the system.

The undersigned hereby certifies the truth and accuracy of the information in the Application, and all attachments thereto, acknowledges the enforceability of Application commitments, and certifies that the Application meets all the requirements of applicable law.

FOR: _____

BY: _____

ITS: _____

Subscribed and sworn before me this _____ day of _____, _____.

{Notary seal and signature }

CHAPTER 4-11A STATE VIDEO FRANCHISES

Section 4-11A.01. Purpose and Application.

(a) This Chapter 4-11A is intended to be applicable to State franchise holders who have been awarded a State video franchise under the California Public Utilities Code section 5800 et seq. (the Digital Infrastructure and Video Competition Act of 2006 ["DIVCA"]), to serve any location(s) within the incorporated boundaries of the City. It is the purpose of this Chapter to implement within the incorporated boundaries of the City the provisions of DIVCA and the rules of the California Public Utilities Commission promulgated there under that are applicable to a "local franchising entity" or a "local entity" as defined in DIVCA.

(b) Rights Reserved.

(1) The rights reserved to the City under this Chapter 4-11A are in addition to all other rights of the City, whether reserved by Section 4-11A.01 or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.

(2) Nothing contained in this Chapter 4-11A shall ever be construed so as to exempt a State franchise holder from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are consistent with this Chapter or California Public Utilities Code section 5800 et seq. (Ord. 2008-05, eff. 4/17/08)

Section 4-11A.02. Definitions.

(a) Definitions Generally -- Interpretation of Language.

For purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein and those included in Public Utilities Code Section 5830 and related law established by Assembly Bill 1715 in 2007. Words not defined herein shall have the same meaning as established in (1) The DIVCA, and if not defined therein, (2) Commission rules implementing the DIVCA, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47 USC § 521 et. seq., and if not defined therein (4) their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and "including" and "include" are not limiting. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

(1) "Access," "PEG access," "PEG use," or "PEG" shall have the same meaning as in Public Utilities Code Section 5870. These terms mean the availability of a cable or State franchise holder's system for public, educational, or governmental use by various agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to acquire, create, and distribute programming not under a State franchise holder's editorial control.

(2) "Gross revenues" shall have the same meaning as in Public Utilities Code Section 5860.

(3) "State franchise holder" or "holder" or "franchisee" or "State Franchisee" means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the incorporated limits of the City. (Ord. 2008-05, eff. 4/17/08)

Section 4-11A.03. Notification to City of State Video Franchise Application.

(a) Each State franchise holder or applicant for a State franchise shall file with the City a copy of all applications or notices that the State franchise holder or applicant is required to file with the California Public Utilities Commission (PUC) within the time frames required by Public Utilities Code §5840(n).

(b) Unless otherwise specified in this Chapter, all notices or other documentation that a State franchise holder is required to provide to the City under this Section or the California Public Utilities Code shall be provided to both the City Manager and the City staff person in charge of cable and telecommunications, or their successors or designees. (Ord. 2008-05, eff. 4/17/08)

Section 4-11A.04. State Video Franchise Fees and PEG Fees.

(a) State Franchise Fees.

(1) Any State franchise holder operating within the incorporated areas of the City shall pay to the City a State franchise fee equal to five percent (5%) of gross revenues, as required by Public Utilities Code Section 5840 and Section 5860.

(2) Payment of Franchise Fees. The State franchise fee required shall each be paid quarterly, in a manner consistent with California Public Utilities Code Section 5860. The State franchise holder shall deliver to the City, by check or other means, which shall be agreed to by the City, a separate payment for the State franchise fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the City.

(3) Late Payments. In the event a State franchise holder fails to make payments required by this section on or before the due dates specified in this section, the City shall be authorized to impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%), as required by Public Utilities Code Section 5860 (h).

(b) PEG Fees and Institutional Networks.

(1) Any State franchise holder operating within the incorporated areas of the City shall pay to the City, or if directed by the City, pay to the City's designated PEG provider, a PEG support fee equal to three percent of gross revenues, as allowed by Section 5870(n) of the DIVCA.

(2) A State franchisee shall remit the PEG support fee to the City, or if directed by the City, to the City's designated PEG provider on a quarterly basis, within forty-five days after the end of each calendar quarter, as required by Public Utilities Code 5870. Each payment made shall be accompanied by a report, in a format approved by the City of Santa Maria, detailing how the PEG support fee was calculated.

(3) If a State franchisee fails to pay the PEG support fee when due, or underpays the proper amount due, the State franchisee shall pay a late payment charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

In addition, any State franchisee that has held a locally issued franchise agreement shall, consistent with Public Utilities Code §5870, continue to fully provide and support PEG channel facilities and institutional networks and to provide cable services to community buildings to the maximum extent permitted by law. (Ord. 2008-05, eff. 4/17/08)

Section 4-11A.05. PEG Channel Capacity, Interconnection, Signal Carriage Requirements.

(a) PEG Channel Capacity.

(1) A State franchisee that has been authorized by the California Public Utilities Commission to provide video service in the City shall designate and activate three PEG channels within three months from the date that the City requests that the State franchisee designate and activate these PEG channels. However, this three-month period shall be tolled for such a period, and only for such a period, during which the State franchisee's ability to designate or provide such PEG capacity is technically infeasible, as set forth in Sections 5870(a), 5870(c) and 5870(h) of the California Public Utilities Code.

(2) A State franchisee shall provide an additional PEG channel when the standards set forth in Section 5870(d) of the California Public Utilities Code are satisfied by the City or any entity designated by the City to manage one or more of the PEG channels.

(b) PEG Signal Carriage and Interconnection.

(1) As set forth in Sections 5870(b) and 5870(g)(3) of the California Public Utilities Code, State franchisees shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a State franchisee shall be of similar quality and functionality to that offered by commercial channels, shall be capable of carrying a National Television System Committee (NTSC) quality television signal, and shall be carried on the State franchisee's lowest cost tier of service. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the lowest cost tier of service and the channel numbers for the PEG channels shall be the same channel numbers used by any incumbent cable operator, unless prohibited by law. After the initial designation of the PEG channel numbers, the channel numbers shall not be changed without the agreement of the City unless law requires the change.

(2) As set forth in Section 5870(h) of the California Public Utilities Code, the holder of a State franchise and an incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. If a State franchisee and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the City shall require the incumbent cable operator to allow the State franchisee to interconnect its network with the incumbent cable operator's network at a technically feasible point on the State franchisee's network as identified by the State franchisee. If no technically feasible point of interconnection is available, the State franchisee shall make interconnection available to each PEG channel originator programming a channel in the City and shall provide the facilities necessary for the interconnection. The

cost of any interconnection shall be borne by the State franchisee requesting the interconnection unless otherwise agreed to by the parties. In no case shall the City be required to incur any cost as a result of this section. (Ord. 2008-05, eff. 4/17/08)

Section 4-11A.06. Audit Rights.

(a) Not more than once annually, the holder of a State video franchise in the City shall submit to the City Manager or his designee business records for the purpose of examination and audit to ensure compliance with this Chapter, in a manner consistent with California Public Utilities Code Section 5860(i).

(b) The holder shall keep all business records reflecting any gross revenues, even if there is a change in ownership, for at least four years after those revenues are recognized by the holder on its books and records; See Public Utilities Code Section 5860(i). If the examination discloses that the holder has underpaid franchise fees by more than five percent (5%) during the examination period, the holder shall pay all of the reasonable and actual costs of the examination. If the examination discloses that the holder has not underpaid franchise fees, the City shall pay all of the reasonable and actual costs of the examination. In every other instance, each party shall bear its own costs of the examination. Any claims by a local entity that compensation is not in compliance, and any claims for refunds or other corrections to the remittance of the holder of a State franchise, shall be made within three years and 45 days of the end of the quarter for which compensation is remitted, or three years from the date of the remittance, whichever is later. (Ord. 2008-05, eff. 4/17/08)

Section 4-11A.07. Customer Service Standards and Penalties.

(a) A State franchise holder shall comply with Sections 53055, 53055.1, 53055.2 and 53088.2 of the California Government Code; the FCC customer service and notice standards set forth in Sections 76.309, 76.1602, 76.1603, and 76.1619 of Title 47 of the Code of Federal Regulations; Section 637.5 of the California Penal Code; the privacy standards of Section 551 of Title 47 of the United States Code; and all other applicable State and Federal customer service and consumer protection standards pertaining to the provision of cable service or video service, include any such standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this paragraph shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

(b) Penalties for Violations of Standards. The City shall have the authority to enforce the compliance of State franchisees with respect to the State and Federal customer service and consumer protection standards set forth in this ordinance. When enforcing, the City will provide a State franchisee with a written notice of any material breaches of applicable customer service or consumer protection standards, and will allow the State franchisee 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following penalties to be imposed by the City Manager:

(1) No monetary penalties shall be assessed for a material breach if it is out of the reasonable control of the State franchise holder. See Public Utilities Code Section 5900 (d).

(2) For the first occurrence of a material breach that is within the reasonable control of the State franchise holder, a fine of \$500 may be imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation. See Public Utilities Code Section 5900(d).

(3) For a second material breach of the same nature within 12 months, and if the City has provided notice and a penalty has been assessed, the penalties may be increased by the City to a maximum of \$1,000 for each day that the material breach remain in effect, , not to exceed \$3,000 for each violation. See Public Utilities Code Section 5900(d).

(4) For a third material breach of the same nature within those same 12 months, and if the City has provided notice and a penalty has been assessed, the penalties may be increased to a maximum of \$2,500 for each day the violation remains in effect, not to exceed \$7,500 for each violation. See Public Utilities Code Section 5900(d).

(c) Any penalties imposed by the City shall be imposed in a manner consistent with California Public Utilities Code Section 5900. (Ord. 2008-05, eff. 4/17/08)

Section 4-11A.08. Emergency Alert Systems.

(a) Each State franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the State franchise holder's network.

(b) To the extent consistent with California Public Utilities Code section 5880, each State franchisee shall provide the system capability to transmit an emergency alert signal to all participating subscribers, in the form of an emergency override capability to permit the City to interrupt and cablecast an audio message on all channels simultaneously in the event of a disaster or public emergency. (Ord. 2008-05, eff. 4/17/08)

CHAPTER 4-12 BUS FRANCHISES

Section 4-12.01. Statutory authority.

The provisions of this chapter are adopted pursuant to the California Constitution and the Franchise Act of 1937, comprising Sections 6001 and following of the California Public Utilities Code. (Prior Code § 14B-1)

Section 4-12.02. Definitions.

For the purposes of this chapter the following terms shall have the meanings respectively ascribed to them by this section, unless from the particular context it clearly appears that some other meaning is intended:

(a) "Bus" means every motor-driven vehicle by means of which passengers are transported for compensation upon the streets of the City over predetermined routes and between fixed terminals.

(b) "Driver" means every person in immediate charge or control of or operating a bus as agent, employee or otherwise of the owner or operator as defined in this chapter.

(c) "Fare" means the compensation paid to the driver of a bus by a member of the public for transportation in the bus from one point to another.

(d) "Franchise" means the franchise approved and granted by the resolution of the City Council pursuant to the terms of this chapter, authorizing the owner or operator of a bus or buses to engage in the business of operating such bus or buses upon the public streets of the City for the purpose of transporting passengers for hire, and shall be effective at the time specified and under the term specified in this chapter. The franchise shall be nonexclusive.

(e) "Owner" means every person having the ownership, use or control, whether by lease or other device of any bus, who operates or who proposes to operate any bus, as a business within the City.

(f) "Rated capacity" means the number of individuals a bus is authorized and equipped to carry by the manufacturers of such vehicle, including standing capacity, provided the bus is equipped with appropriate devices for the carriage of passengers while standing.

(g) "Street" means any place or thoroughfare commonly used for the purpose of vehicular travel within the City. (Prior Code § 14B-2)

Section 4-12.03. Required.

It is unlawful for any person to operate or cause or permit to be operated any bus or buses in this city unless such person has first procured pursuant to this chapter a license to operate a bus, issued pursuant to the terms of and upon the terms prescribed in this chapter. This prohibition applies to any person operating an intercity bus system to the extent that the person operates the same upon the streets of Santa Maria in any case where such operation involves bus stops on streets. (Prior Code § 14B-3)

Section 4-12.04. Authority to grant.

The City Council is empowered to grant by resolution a nonexclusive franchise to any person to operate a bus under and in accordance with the terms of this chapter. (Prior Code § 14B-4)

Section 4-12.05. Application.

(a) All applications for a franchise shall be addressed to the City Council and filed with the City Clerk.

(b) All persons desiring to operate a bus or buses in this City shall make application for a license, which application shall contain the following information:

(1) Name, business address, residence address, business telephone number, and residence telephone number of the applicant;

(2) The number of buses owned and proposed to be operated on the date of the application, if any;

(3) The number of buses for which such a license is desired;

(4) The make, type, year of manufacture and rated capacity of each bus for which a certificate is desired, or if the buses have not been procured, the anticipated data with regard thereto;

(5) The description of the proposed color scheme, insignia, trade style and any other distinguishing characteristics of the proposed buses;

(6) A description of the proposed routes, stops, schedules of operation and terminals of routes desired by the applicant;

(7) The schedule of fares proposed to be charged;

(8) A general statement that the applicant has complied or will comply prior to the date of the commencement of his operation with all of the provisions of this chapter, including conditions imposed by the City Manager by the authority vested in him under the terms of this chapter;

(9) In the case of an applicant who is operating an intercity bus service anywhere in the State, a statement informing the Council that the applicant is so doing, and affirming that the applicant has applied for a certificate of public convenience and necessity from the Public Utilities Commission of the State to operate an intercity bus system in Santa Maria, and setting forth the date of the application and the date of hearing thereon;

(10) A statement under penalty of perjury in the proper form prescribed by the laws of the State, that the statements made in the application are true, together with the date of the application and the signature of the applicant subscribed thereto;

(11) A statement agreeing to provide such additional information as the City Manager may require; and

(12) A list of all persons to be permitted by the applicant, if the franchise is granted to him, to drive a bus upon any street in the City. The list shall include the name and address of all such persons, indicate the type of operator's license which such person holds, together with the number of that license, and the statement of the applicant that upon request by the City Manager all persons so listed will appear at the Police Department of the City for fingerprinting and other identification procedures, and that any persons not so listed will be so identified to the City Manager and will appear at the Police Department for the same purpose prior to any such person being permitted to drive a bus on the streets of the City. (Prior Code § 14B-5)

Section 4-12.06. Investigation and Council consideration.

(a) Upon receipt of an application for a franchise for the operation of a bus line in the City, the City Clerk shall refer the same to the City Manager, who shall investigate the application, including but not limited to the following matters, and make recommendations thereon to the City Council:

(1) The financial responsibility and experience of the applicant;

(2) The character and fitness of the applicant;

(3) The probable effect of granting the application with the routes, schedules and stops set forth therein upon traffic and parking conditions and upon public safety; and

(4) The number, kind, color, markings and trade style of proposed buses in relation to any bus lines already in operation.

(b) Upon completion of the City Manager's report he shall forward the application to the City Council with his recommendations as to the location of the routes, the schedules which the bus line should be required to maintain, and the location where the bus stops should be permitted, and the effect on the traffic in the City in general. If any are found to be objectionable as not in the best interests of the community or of the health, safety or welfare of its citizens, and under applicable law the applicant is required to obtain a certificate of convenience and necessity for the operation of an intracity bus system within the City of Santa Maria, the City Attorney or other person specially designated thereto by the Council, upon order of the Council, shall appear before the Public Utilities Commission at the time of hearing for the applicant's certificate of public convenience and necessity as set forth in his application, and request the Commission's consideration of the needs of the City.

(c) Upon receipt of the report on the application from the City Manager, the City Council will take steps, in accordance with the procedures set forth in this chapter, to deny or grant such franchise. If, in due course, the issuance of the franchise is approved, the Council shall determine such terms and conditions in addition to those required by this chapter, upon which the franchise is to be issued, such terms and conditions not to conflict with any applicable regulations of the Public Utilities Commission, but to be limited to those matters within the City's lawful powers, the terms and conditions to be embodied in a resolution passed by the Council at the time it approves the grant of the franchise. (Prior Code § 14B-6)

Section 4-12.07. Call for bids.

(a) Applications for a franchise to operate a bus system may be received and steps initiated with regard thereto, prior to the effective date of the ordinance codified in this chapter, but there shall be no opening of bids or grant of franchise prior to the effective date of the ordinance codified in this chapter.

(b) Following the report of the City Manager upon the application, as set forth in Section 4-12.06, the City Clerk upon the direction of the City Council shall prepare a notice stating the intention of the Council to grant a franchise to the applicant, calling for bids for a franchise under this chapter to be filed with the City Clerk on or before a date certain to be determined by the City Council. The date shall in no event be less than twenty (20) days, nor more than thirty (30) days following the completion of the publication, as required in this chapter. The clerk shall take such additional steps necessary to advertise for such bids as may be requested by the City Council in its discretion, in order to give the widest publicity thereto. (Prior Code § 14B-7 (part))

Section 4-12.08. Bid specifications.

(a) All bids shall include all information required in this chapter in the case of an application, shall state that the bid is made in accordance with and subject to all the terms and conditions of this chapter, and that the applicant will meet all the terms and conditions of any resolution granting a franchise under this chapter.

(b) All bids shall be cash bids. (Prior Code § 14B-7 (a), (b))

Section 4-12.09. Public hearing.

The public hearing shall be held with regard to the bids called for under Section 4-12.07, and notice of the hearing, setting the date thereof to be the time of opening of the bids and consideration thereof, shall be included in the notice described in Section 4-12.07 (b), to be published by the City Clerk calling for bids, and shall be published in a newspaper of general circulation published within the City not less than once a day for ten (10) successive days, excluding Sundays, giving the time and place of such public hearing and opening of bids, which shall be not less than twenty (20), nor more than thirty (30) days following the last date of such publication. (Prior Code § 14B-7 (d))

Section 4-12.10. Award to bidder.

(a) The City Council upon the date set forth in the notice published by the clerk shall open all bids and shall award the same to the highest responsible bidder. In determining such responsibility, the City Council may give consideration to, but shall not necessarily be limited to, the following factors: The financial responsibility, experience and past record of the applicant, as well as the degree and extent of the services proposed, having regard for the maximum service for the benefit of the residents of the City.

(b) The Council, in granting a franchise to the highest responsible bidder, as provided in this chapter, shall do so by resolution, and shall in such resolution provide such additional terms and conditions as it deems reasonable and necessary in the interest of the public health, safety and welfare. (Prior Code § 14B-7 (c), (e))

Section 4-12.11. Acceptance: Transfer or assignment.

A franchise granted, as provided in this chapter, shall not be effective until the grantee files his written acceptance thereof with the City Clerk, which acceptance must be so filed within thirty (30) days after the date of the resolution. By such acceptance the grantee shall be bound by, and subject to, all of the provisions of this chapter, and of the resolution granting the franchise. Any such franchise shall be a privilege to be held in personal trust by the original grantee. It shall in no event be sold, transferred, leased, assigned or disposed of by any means whatever without the prior consent of the Council expressed by resolution, and then only under such conditions as may be in the resolution prescribed. Application for approval of a transfer or assignment by any means of the franchise shall be by written application addressed to the City Council and filed with the City Clerk, and the proposed transferee or assignee shall provide the City Manager with such information as he may require in order to report to the City Council as to the desirability of approving such transfer or assignment. (Prior Code § 14B-7 (f))

Section 4-12.12. Open bidding at hearing.

At the public hearing at the time of the opening of the bids, any responsible person present or represented may bid for the franchise a sum not less than ten percent (10%) above the highest sealed bid therefor, and the bids so made may be raised not less than ten percent (10%) by any other responsible bidder, and the bidding may so continue until the franchise is finally awarded to the highest responsible bidder therefor in lawful money of the United States. (Prior Code § 14B-7 (g))

Section 4-12.13. Bid deposit.

Each sealed bid shall be accompanied with cash or a certified check payable to the treasurer of the City for the full amount of the bid, and no sealed bid shall be considered unless the cash or check is enclosed therewith. In the case of a bid made at a hearing, above the amount of the highest sealed bid, the successful bidder shall deposit at least ten percent (10%) of the amount of his bid with the City Clerk during the hearing, and before the franchise may be awarded to him. If he fails to make the deposit immediately, bid shall be void and the franchise shall then and there be awarded to the second highest bidder, subject to the same conditions as to deposit. The successful bidder must thereafter deposit with the City Clerk within not more than twenty-four (24) hours of the acceptance of his bid, the remaining ninety percent (90%) of the amount thereof. If he fails to do so, the award to him of the franchise shall be set aside and regarded as void. The ten-percent (10%) deposit made by him shall be forfeited and no further proceedings for award of the franchise shall be had unless it is again re-advertised and offered for bid in the manner provided in this chapter. (Prior Code § 14B-7 (h))

Section 4-12.14. Scope: Commencing service.

(a) Any franchise granted pursuant to the provisions of this chapter shall permit the grantees to engage in the business of operating a bus system on the City streets in the City for a period of twenty (20) years, in accordance with the application made by the franchise as to the number of buses, routes, frequency of service and rates to be charged therefor, and to maintain at the places designated in the application bus stops permitting the stopping and starting of buses for the purpose of loading and unloading passengers, which shall be suitably marked and closed to other parking during the hours of bus operation. Additional buses, routes, hours and frequency of service, and bus stops, may be provided by the franchisee upon written approval thereof by the City Manager, and subject to such conditions as the City Manager may prescribe in granting such approval. Reduction or elimination of the numbers of buses, hours of operation, routes or bus stops may not be made without the approval of the City Council expressed by resolution, upon written application by the franchisee, which application shall be made not less than twenty (20) days prior to such approval.

(b) The grantee shall commence service with the full number of buses, routes, hours of service and bus stops set forth in his application within not more than thirty (30) days following his written acceptance of the franchise as provided in this chapter. (Prior Code § 14B-8)

Section 4-12.15. Revocation.

(a) Any franchise granted under the terms of this chapter may be revoked by the City Council for violation of any of the terms of this chapter, or for any failure on the part of the franchisee to maintain all of the service, including but not limited to the numbers of buses, hours of operation, routes, maintenance of bus stops or changes in the rate schedule, and any and all other terms or conditions of this chapter, the resolution granting the franchise or subsequent orders, terms or conditions established by the Council or the City Manager under the terms of this chapter.

(b) Any franchise granted under this chapter may be revoked upon the grounds stated in subsection (a) of this section, upon not less than twenty (20) days' written notice, mailed to the franchisee at the business address stated by him in his application, ordering him to appear and show cause on a date certain, at a hearing before the Council, why the franchise should not be revoked. (Prior Code § 14B-9 (part), (a))

Section 4-12.16. No recourse to City.

The grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any provision or requirement of this chapter, the resolution granting the franchise, or the enforcement of any of the terms or conditions thereof or made pursuant thereto. (Prior Code § 14B-9 (b))

Section 4-12.17. Public costs.

The franchisee shall pay to the City on demand the cost of all repairs to public property made necessary by any of its operations, in addition to such other costs which the franchisee may be required to pay under the terms and conditions of this chapter or the resolution granting the franchise. (Prior Code § 14B-9 (c))

Section 4-12.18. Change of routes or stops.

In any case when the public health, safety or welfare require, the franchisee may be required by the City Manager to change routes or the location of bus stops, and to pay any cost which may be involved therein within ten (10) days after the receipt of such written request from the City Manager. The franchisee may appeal from the request in writing to the City Council, which may in its discretion rescind the request, modify the same or uphold the request. In this regard the decision of the City Council shall be final and conclusive. (Prior Code § 14B-9 (d))

Section 4-12.19. Free service to mail carriers.

The franchisee shall permit and allow mail carriers in the employ of the United States Government, at all times while engaged in the actual discharge of their duties, to ride on the buses of the bus system so enfranchised, without paying any sum of money whatever, for fare or otherwise. (Prior Code § 14B-9 (e))

Section 4-12.20. Drivers and operation.

(a) The owner or driver of a bus for hire must obey all laws of the state and ordinances of this City dealing with motor vehicles, and comply with all regulations of the Public Utilities Commission.

(b) The operator of a bus for hire must report immediately to the Chief of Police any lost or mislaid property found by him in such vehicle.

(c) All drivers of buses must wear a distinctive cap, suitable to the occupation of a driver of a bus, that wearing apparel to be uniform in color, make and design for all of the drivers employed by a single owner.

(d) Every driver of a bus for hire must wear a numbered badge attached to the cap. (Prior Code § 14B-10 (a, b, d, e))

Section 4-12.21. Adherence to route.

(a) The driver of any bus shall not deviate from the route along which a certificate to operate the same has been granted, or stop and turn back before reaching the terminus of the route, except that if the regular traffic over the street on which the route of the bus exists has been diverted or detoured by proper authority due to construction or maintenance work on the street, or any other lawful reason, in which event the driver of the bus traveling on the route may follow the established detour route; provided, however, that any bus may deviate not more than five (5) blocks from the route to a church or school, or to any public attraction or demonstration; provided further, that the City Council may, upon application, where it appears necessary, issue a temporary authority to deviate from the established route. In any case of deviation from its authorized route, except pursuant to diversion or detour by proper authority, a bus must return at once to the point of diversion and proceed from that point in the same direction in which it was going before such deviation, until a terminus of the route is reached.

(b) No driver of a bus shall stop for the purpose of picking up or discharging passengers at points along the established route for the bus other than at the regularly designated stops specified in his application as the same was finally approved at the time of granting the franchise. (Prior Code § 14B-10 (f, g))

Section 4-12.22. Refusal to pay fare.

It is unlawful for any person to refuse to pay the lawful charge for transportation in a bus for hire after employing or hiring the same. (Prior Code § 14B-10 (c))

Section 4-12.23. Buses.

(a) Every bus shall be painted in the colors and according to the trade style specified in the license issued to the owner.

(b) Every bus shall have displayed within full view of all passengers, a conspicuous card indicating the name and badge number of the driver.

(c) Every bus shall have displayed a sign within conspicuous view of the passengers therein, showing the streets traversed by the bus, the termini of its route, the route number and the amount of the charge for riding therein. (Prior Code § 14B-11)

Section 4-12.24. Franchise fee.

(a) Any person, firm, association or corporation carrying on the business of bus service in the City shall pay an annual franchise fee equal to two percent (2%) of the total gross annual receipts of the grantee arising from the operation of such bus service by the grantee within the City.

(b) The grantee shall file with the City Clerk, within three (3) months after the expiration of the first calendar or fiscal year as required in the resolution granting the franchise to the grantee, and within three (3) months after the expiration of each and every calendar or fiscal year thereafter, a financial statement prepared by a Certified Public Accountant, showing in detail the total gross receipts of such grantee during the preceding calendar or fiscal year, for all bus service rendered within the City. It shall be the duty of the grantee, its successors or assigns, to pay to the City within fifteen (15) days after the time for filing of such statement, in lawful money of the United States, the specified percentage of its gross receipts for the calendar or fiscal year or any fractional part of the calendar or fiscal year covered by such statement. Any neglect, omission or refusal of the grantee to file such verified statement, or to pay the percentage at the times or in the manner provided in this section, shall be grounds for forfeiture of the franchise and all rights thereunder.

(c) The right is reserved to the City to audit and recompute any and all amounts payable under this chapter, and no acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this chapter or for the performance of any other obligation under this chapter. The bond required in this chapter shall secure the payment of the franchise fee. (Prior Code § 14B-12 (a))

* Editor's Note: Section 4-12.24 was amended by request of the City Attorney.

Section 4-12.25. Ownership of equipment immaterial.

Performance of the duty of rendering compensation under any franchise granted pursuant to this chapter and of any or every other obligation under the franchise shall not be excused by the fact that the grantee may utilize under any arrangement whatsoever any buses, equipment or facilities required by it in maintaining its services and operations from any other person or entity. The grantee, by accepting the franchise as provided in this chapter, agrees that its obligations under the franchise, including the day of payment of compensation thereunder, shall apply to all such buses, equipment and facilities so utilized, whether owned by it or not, whenever such buses, equipment or facilities constitute all or any part of the bus system operated within the City by the grantee, including any buses, equipment and facilities installed or maintained outside the City, but which form a part of the grantee's bus system operation within the City, including but not limited to such facilities as maintenance shops or standby equipment. (Prior Code § 14B-12 (b))

Section 4-12.26. Business license.

The gross receipts fee paid by the franchisee in accordance with the provisions of Section 4-12.24 is a payment for the privilege of operating a bus system on the City streets and is not a business license fee. The franchisee must therefore pay a business license fee in accordance with the terms of Chapter 4-1; provided, however, that after the first five years of operation the payment of the franchise fee by the applicant shall be regarded as a sufficient payment in lieu of a business license fee, and thereafter no business license fee shall be charged the applicant for operating the business in accordance with the franchise granted under this chapter. (Prior Code § 14B-13)

Section 4-12.27. Bond.

(a) The grantee shall, concurrently with the acceptance of any franchise granted under this chapter, file with the City Clerk, and at all times thereafter maintain in full force and effect for the term of the franchise, at its sole expense, a corporate surety bond, issued by a surety licensed to issue such bonds in this state, and in a form to be approved by the City Attorney, in an amount approved by the Council, renewable annually and conditioned upon the faithful performance by the grantee of all obligations imposed by such franchise and this chapter and all applicable laws, and specifically including the payment of the annual franchise fees and business license fees as provided in this chapter.

(b) Neither the provisions of this section, nor the acceptance of any bond by the City pursuant to this section, nor any damages actually recovered by the City, shall be construed to excuse faithful performance by the grantee or limit the liability of the grantee for damages for any act or omission violating the terms of this chapter or of any provision of this Code or the resolution granting the franchise, or any law of the state. (Prior Code § 14B-14)

Section 4-12.28. Indemnification of City: Insurance.

(a) The grantee shall indemnify and hold harmless the City and its officers, employees and agents from any and all liability for damages resulting from any operations under its franchise, and agree that at all times during the existence of the franchise it will maintain in force, furnish and file with the City, at its own expense, a general comprehensive liability insurance policy, provided by a company authorized to do business in the state, in the form approved by the City Attorney, protecting the City, its Council, board, commissions, members thereof, and all officers, employees and agents against liability for loss or damages for personal injury, death and property damage occasioned by the operations of the grantee, with minimum liability limits of one hundred thousand dollars (\$100,000.00) for personal injury or death of any one (1) person, and three hundred thousand dollars (\$300,000.00) for personal injury or death of two (2) or more persons in any one occurrence, and fifty thousand dollars (\$50,000) for damage to property resulting from any one (1) occurrence.

(b) The policies described in subsection (a) of this section shall name the City, its Council, boards, commissions, members thereof, officers, employees and agents as co-insured, and shall also contain a provision that a written notice of any cancellation or reduction in coverage of the policy shall be delivered to the City thirty (30) days in advance of the effective date thereof. No franchise granted under this chapter shall be effective unless and until each of the policies of insurance, as required in this section, and bonds, as required by Section 4-12.27, have been delivered to the City. (Prior Code § 14B-15)

Section 4-12.29. Compliance with law: Conflicting laws.

(a) Any person operating a bus under a franchise granted under the terms of this chapter shall be required to comply with all applicable laws and regulations of the state and the United States Government in addition to the requirements of this chapter and of the resolution granting the franchise and orders and conditions imposed upon the franchisee under the terms of this chapter.

(b) Any part of this chapter in conflict with the laws or regulations of the state or the United States, or of any lawfully established regulatory body, commission or agency of either of them, or which may be brought in conflict therewith by the amendment of such laws or regulations shall be void, but such invalidation shall not affect the remainder of the terms of this chapter, it being the intent of the Council in enacting this chapter that it shall supplement and complement the laws and regulations mentioned in this section so as to protect the interests of the City and its properties and to protect the health, safety and welfare of the inhabitants of this City with regard to all bus operations permitted under this chapter. (Prior Code § 14B-16)

Section 4-12.30. Disqualification of sexual psychopaths and certain criminals.

No person holding a franchise issued under the terms of this chapter shall permit a bus to be driven by any individual who has been convicted of a crime of moral turpitude at any time within ten (10) years preceding the time when it is proposed that the person drive such a bus, and in no event shall permit any individual who has at any time been convicted of a sexual offense under the laws of the state, or found under the laws of the state to have been a sexual psychopath. (Prior Code § 14B-17)

Section 4-12.31. Violations.

Any person, firm, association or corporation violating any of the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punishable as provided in Chapter 1-6. Upon such conviction the franchise issued to such person, firm, association or corporation may be revoked in the discretion of the City Council. (Prior Code § 14B-18)

CHAPTER 4-13 CLOSING-OUT SALES

Section 4-13.1. Definition of closing-out sale.

“Closing-out sale” means any sale or offer to sell (including advertisement of) goods, wares or merchandise in connection with a declared purpose to cease business at a location listed for that business on a City business license. “Closing-out sale” includes, but is not limited to, sales denominated “moving sale.” (Ord. 89-34 § 2 (part), eff. 2/1/90)

Section 4-13.2. Closing-out sales permitted; Requirements.

No person may publish or conduct a closing-out sale unless and until each of the following requirements are met:

(a) The person notifies the City Director of Administrative Services in writing of the sale, of the facts stated in subsection (c), and of the dates the advertising and sale will begin, and pays a twenty-five dollar (\$25) administrative charge;

(b) The business has maintained a valid business license at the location where business will cease for at least one (1) year before the sale will begin;

(c) The person, either alone or in association with others, has not published or conducted a closing-out sale within two (2) years before the sale will begin, at any location in the City;

(d) No later than the first day of the sale, the person surrenders the business license for that location to the Director of Administrative Services. A special business license, valid for the period of the sale, will be issued to the person;

(e) The sale lasts for no more than thirty (30) consecutive days; and

(f) The Director of Administrative Services may grant an extension of time not to exceed thirty (30) additional days if the applicant can demonstrate that the applicant's business inventory on hand, at the time the original application is filed, is of such an amount that it would be improbable that a thirty (30) day sale would substantially reduce the inventory at the store. (Ord. 89-34 § 2 (part), eff. 2/1/90) (Ord. 95-6, eff. 05/04/95)

Section 4-13.3. Additions to sale merchandise prohibited.

Upon commencement of a closing-out sale, no person may add additional items of merchandise to the sale. City staff may, upon receiving legally sufficient information, seek a search or inspection warrant under provisions of state law to verify whether prohibited additions have been made. (Ord. 89-34 § 2 (part), eff. 2/1/90)

Section 4-13.4. Effect of closing-out sale.

Upon commencement of the time period or periods listed in subsection (d) of Section 4-13.2, the business license for that location shall become void. (Ord. 89-34 § 2 (part), eff. 2/1/90)

CHAPTER 4-14 PEDDLERS AND SOLICITORS

Section 4-14.01. Compliance with no-peddlers signs.

It is unlawful for any peddler, selling or pretending to sell, or offering for sale, or demonstrating goods, wares or merchandise of any kind or character, or any article, material or substance, to ring the bell, or knock on the door of any residence, dwelling, flat or apartment whereon a sign bearing the words "No Peddler" is painted or affixed or exposed to public view, or to attempt to gain admittance thereto. (Prior Code § 17-11 (part))

Section 4-14.02. Compliance with no-solicitors signs.

It is unlawful for any solicitor selling or pretending to sell, or offering for sale, or demonstrating or taking orders for, or soliciting orders for goods, wares or merchandise of any kind or character, or any article, material or substance, to ring the bell, or knock on the door of any residence, dwelling, flat or apartment wherein a sign bearing the words "No Solicitors" is painted or affixed or exposed to public view or to attempt to gain admittance thereto. (Prior Code § 17-11 (part))

Section 4-14.03. Compliance with other prohibitory signs.

It is unlawful for any peddler or solicitor selling, or pretending to sell, or offering for sale, or demonstrating or taking orders for, or soliciting orders for, goods, wares or merchandise of any kind or character, or any article, material or substance, to ring the bell, or knock on the door of any residence, dwelling, flat or apartment whereon a sign bearing the words "No Peddlers or Solicitors," or words of similar import indicating that peddlers or solicitors are not wanted on such premises is painted or affixed or exposed to public view, or to attempt to gain admittance thereto. (Prior Code § 17-11 (part))

Section 4-14.04. Invited peddlers or solicitors exempted.

Anything in this chapter notwithstanding, this chapter shall not apply to any peddler or solicitor who knocks at any door, or rings any bell at the invitation or with the consent of some member of the household at which he so applies for admission. (Prior Code § 17-11 (part))

CHAPTER 4-15 SATELLITE PARIMUTUEL WAGERING

Section 4-15.01. City receipt of allocated share.

Pursuant to the provisions of Business and Professions Code Sections 19610.3 or 19610.4, the City elects to receive a distribution of the proceeds of pari-mutuel satellite wagers made at the Santa Barbara County Fairgrounds. This City share is set at 0.33 of one percent (1%) but shall be adjusted automatically as the percentage is changed by state law or regulation. (Ord. 87-21 § 1 (part), eff. 10/29/87) (Ord. 96-5, eff. 05/16/96)

Section 4-15.02. Tax and fee exemption of racing association.

Any racing association which conducts the racing meeting at the Santa Barbara County Fairgrounds shall be, with respect to any racing event conducted by that racing association, exempt from levy or payment of any City license or excise tax or fee, including, but not limited to, any admission, parking or business tax, or any tax or fee levied solely upon the racing association conducting a racing meeting or satellite wagering or any patron. (Ord. 87-21 § 1 (part), eff. 10/29/87) (Ord. 96-5, eff. 05/16/96)

Section 4-15.03. Payment of taxes to County of Santa Barbara.

At such time after January 1, 1996, as the County of Santa Barbara elects to impose or imposes a license tax, possessory interest tax, excise tax, or fee as described in Business and Professions Code Sections 19610.3 or 19610.4, then this ordinance shall no longer be operative until such time as the payment of possessory interest taxes assessed after January 1, 1996, on which the county has a right to levy as an escape assessment, are satisfied as provided in Sections 19610.3 or 19610.4 of the Business and Professions Code, and there are not other license taxes, excise taxes, or fees assessed by the governmental entity receiving a distribution pursuant to Business and Professions Code Sections 19610.3 or 19610.4. (Ord. 96-5, eff. 05/16/96)

Section 4-15.04. Applicability of Ordinance.

This ordinance shall supersede and repeal any other ordinance adopted prior to January 1, 1996, for the purposes of Sections 19610.3 or 19610.4 of the Business and Professions Code and is expressly made retroactive to and its operative date shall be September 28, 1987, in order that its operative date shall coincide with Chapter 1274 of the Statutes of 1987 as amended by Chapter 959 of the Statutes of 1995. (Ord. 96-5, eff. 05/16/96)

Section 4-15.05. Validity of Ordinance.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid. (Ord. 96-5, eff. 05/16/96)

CHAPTER 4-16 FILMING ACTIVITIES

Section 4-16.1. Purpose of chapter.

It is the purpose of this chapter to provide rules governing the issuance of permits for filming activities on location within the City. The intent of this chapter is to ensure that still photographers and motion picture, television, commercial, and non-theatrical filming companies will be encouraged to use locations for filming activities within the City so long as those activities are consistent with the public safety and the protection of property. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.2. Definitions as used in this chapter.

(a) "Applicant" means the person, organization, corporation, association, or other entity applying for a permit to film in the City of Santa Maria.

(b) "City" means the City of Santa Maria.

(c) "Film development office" means the office designated to coordinate filming and issue film permits in the City of Santa Maria.

(d) "Filming activity" means the activity required for the staging, shooting, filming, videotaping, photographing, or other similar process conducted for the making of still photographs, motion pictures, television programs, commercial, and non-theatrical film productions.

(e) "Film permit" means written authorization from the City to conduct the filming activity described in the permit.

(f) "News purposes" means a filming activity conducted for the purpose of reporting on persons, events, or scenes which are in the news for newspapers, television news, and other media.

(g) "Permittee" means the person, organization, corporation, association, or other entity issued a film permit.

(h) "Public street" means any street or road maintained by the City and located within the City limits.

(i) "Still photography" means and includes all activity attendant to staging or shooting commercial still photographs.

(j) "Student filming activity" means filming activity conducted to fulfill a course requirement by a student enrolled at a public or private school.

(k) "Studio" means a fixed place of business where filming activities are regularly conducted upon the premises. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.3. Permit required--City property--Private property.

(a) It is unlawful to conduct a filming activity within the City as defined in Section 4-16.2 without first obtaining a film permit from the film development office. The recreation and parks department is designated as the film development office.

(b) A permit is issued by the film development office for the purpose of filming on City-owned, City-leased, or City-controlled real property including City streets. This permit does not constitute or grant permission to use or occupy property not owned, leased, or controlled by the City of Santa Maria. This permit must be in the possession of the permittee at all times while on location in Santa Maria.

(c) An applicant shall obtain the private property owner's permission, consent and/or lease for use of property not owned or controlled by the City. Proof of such permission shall be provided to the City prior to the issuance of a permit. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.4. Permit exemptions.

The provisions of this chapter shall not apply to any of the following activities; provided, that the activity will not require the closure of a public street or substantially impede vehicular traffic thereon:

(a) Filming activities conducted for news purposes as defined in Section 4-16.2(6);

(b) Filming activities conducted at a studio as defined in Section 4-16.2(11);

(c) Filming activities conducted for use in a criminal investigation or civil or criminal court proceeding;

(d) Noncommercial filming activities conducted on public or private property solely for private or family use;

(e) Commercial still photography or staging thereof, when conducted to the exclusion of any other filming activity as defined in Section 4-16.2, when the still photography, or staging thereof, will not be conducted on City property; or

(f) Filming activities conducted by or for the City. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.5. Processing of applications.

(a) Applications shall be filed at the film development office. Departments will strive to process the application the same day it is received.

(b) Applicants are encouraged to submit applications at the earliest advance date possible in order to facilitate coordination between City departments.

(c) Upon such showing of good cause, the film development office shall consider applications which are filed after the filing deadline if there is sufficient time to process and investigate the application, and for City staff to prepare for the filming activity. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.6. Application requirements.

Each applicant shall provide the following:

(a) Completed application form;

(b) Consent form for property owner(s) whose property will be used for filming activity (sample form attached to the ordinance codified in this chapter);

(c) Map(s) drawn to scale showing the filming location and auxiliary facilities (i.e., dressing rooms, large vehicles, sanitation facilities);

(d) Name, address, and telephone number of person in charge of filming on location;

(e) Filming location(s), dates and approximate daily call times of proposed filming activity;

(f) Description of scenes to be filmed including details of any hazardous filming activity employing firearms, explosives, the use of open flame, other pyrotechnical effects, animals, stunts, filming of moving motor vehicles, watercraft or aircraft;

(g) Description of the types and number of motor vehicles which will be parked on public streets, and description of any equipment to be placed on public property;

(h) Filming insurance and indemnification agreement. Evidence of adequate insurance certification shall be demonstrated with a copy(ies) of such certifications attached to the application;

(i) A business license shall not be required unless the applicant plans to sell products or services within the City; and

(j) Such other relevant information as the film development office may require. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.7. Permit approval/denial.

(a) The application shall be approved or denied within one (1) business day of receipt of the application unless the proposed filming activity requires extensive review by other City departments or other affected agencies. The film development office shall process the application and secure the necessary permits and clearances from required City departments (i.e., fire permit, parade permit). The permit applicant shall obtain any necessary encroachment permits from Cal Trans and coordinate any required approvals from utility companies. The film permit shall be approved by the film development office unless determined from consideration of the application or other pertinent information, that any of the following conditions exist:

(1) The filming activity will substantially disrupt traffic or interfere with the operation of emergency vehicles in the proposed permit area;

(2) The location of the filming activity will substantially interfere with street maintenance work or a previously authorized excavation permit;

(3) The proposed permit location is on City property or easements and the filming activity will substantially interfere with other previously authorized activities, contracts, or safety of the public or employees while on City property;

(4) The proposed permit location is on City property or easements and the filming activity will substantially interfere with municipal functions or the scheduled maintenance of City facilities;

(5) The filming activity creates a substantial risk of injury to persons or damage to property;

(6) The applicant failed to complete the application after being requested to do so, or the information contained in the application is found to be false in any material detail;

(7) The particular filming activity would violate federal, state, or local law including licensing or permit requirements; and/or

(8) Neighborhood disruption or significant neighborhood protest due to filming activities.

(b) When the grounds for permit denial can be corrected by imposing reasonable permit conditions, the film development office may impose such conditions rather than denying the permit. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.8. Permit conditions.

The film development office may condition the issuance of a film permit by imposing reasonable requirements concerning the time, place, manner and duration of filming activities as referenced in Attachment D to the ordinance codified in this chapter, "Film Permit Terms and Conditions," attached to the film permit, including but not limited to the following:

- (a) Requirements for the presence of employees of the City or other public agencies at the applicant's expense, when required for the particular filming activity;
- (b) Requirements concerning posting of no parking signs, placement of traffic control devices, and employment of traffic and crowd control monitors at the applicant's expense;
- (c) Requirements concerning posting of the outer boundaries of the filming activity, and providing advance notice to affected property owners/businesses;
- (d) Requirements concerning the cleanup and restoration of public streets, City property, and private property employed in the filming activity;
- (e) Requirements concerning obtaining permission from any property owner(s) if filming activity will occur on private property;
- (f) Requirements concerning the use of public property for filming activities;
- (g) Requirements for the identification and parking of production vehicles;
- (h) Requirements for the provision of sanitation facilities;
- (i) Restrictions concerning the use of City or other public agency employee services, vehicles, and other equipment in the filming activity;
- (j) Requirement that the permittee notify all tenants and property owners within up to three hundred (300) feet of the area in which filming will occur. The film development office shall determine when such mail notice is necessary;
- (k) Requirements that the applicant pay all fees and obtain all permits and licenses required for the filming activity under local, state and Federal law;
- (l) Restrictions on the use of firearms, explosives, and other noise-creating, flammable, or hazardous devices;
- (m) Restrictions on the use of stunts involving pyrotechnics, open flame, vehicle crashes, or other hazardous materials;
- (n) Requirements concerning coverup of police, fire, and other official uniforms worn by actors when the actors are not on camera;
- (o) Restrictions concerning the use of City and other public agencies' logos, insignias, badges, or decals for filming purposes;
- (p) Restrictions on the daily hours the filming activity may be conducted within the City;
- (q) Requirements concerning the City's or other public agencies' receipt of proper acknowledgment for any assistance provided in making feature, television, or commercial productions; and
- (r) Requirements concerning affirmative action and nondiscriminatory practices for employment. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.9. Fees.

- (a) No application fee shall be charged when an application is filed.
- (b) The permittee shall pay all costs incurred by the City during filming activity. All fees shall be due and payable within ten (10) working days after an invoice from the City is received. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.10. Change of filming activity date.

Upon reasonable notice by the permittee in advance of the filming activity, the film development office is authorized to change the date for which the film permit has been issued without requiring a new application or permit. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.11. Insurance required.

The applicant for a film permit shall procure and maintain for the duration of the film activity insurance in the forms, types, and amounts prescribed by the City Manager. Prior to the issuance of the film permit, the permit applicant must sign and file the filming insurance and indemnification agreement. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.12. Liability and indemnification.

Prior to the issuance of the film permit, the permit applicant must agree in writing to comply with the film permit terms and conditions. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.13. Duties of permittee.

The permittee, and all agents, employees, and contractors of the permittee at the filming activity site within the City, shall comply with the following requirements:

- (a) The permittee shall comply in writing with all film permit terms and conditions.
- (b) The permittee shall not conduct a filming activity within the City not authorized by the filming permit.
- (c) The permittee shall comply with the requirements established by the Santa Maria Police Department regarding security, ground and traffic control measures.
- (d) The permittee shall comply with the requirements established by the Santa Maria Fire Department regarding special effects, pyrotechnics, explosives, hazardous materials, or other unsafe fire/life safety acts.
- (e) The permittee shall comply with instructions made by City employees assigned to regulate the filming activity site.
- (f) The permittee shall clean and restore all City-owned property and privately-owned property utilized during the filming activity to the same condition as existed prior to the filming activity.
- (g) The permittee shall comply with this chapter and all other policies and ordinances of the City of Santa Maria and state and Federal law. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.14. Street closures.

The applicant for a film permit may request that the City authorize a street closure on the film permit application. The City engineer may require a traffic control plan; the permittee shall pay for any preparation costs. A parade permit shall be granted by the City Manager or his designee. The film development office shall coordinate the granting of this permit with the Public Works Department. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.15. Pyrotechnics.

During the filming of any special effect or stunt requiring the use of pyrotechnics or any material deemed hazardous, including but not limited to fireworks, open flames, or explosives, a fire permit must be issued by the Santa Maria Fire Department. The film development office shall coordinate the granting of this permit with the Fire Department. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.16. Permit revocation or suspension.

(a) Permit Revocation. The film development office may revoke the film permit if the permittee, or any agents, employees or contractors of the permittee fail to comply with the requirements set forth in this chapter, or if the film development office determines after the permit is issued that the permit application was false in any material detail.

(1) Notice of the grounds for revocation of the film permit shall be provided in writing by the film development office to the permit applicant or person in charge at the location of the filming activity.

(2) Appeals of the permit revocation shall be conducted in the manner specified in Section 4-16.17.

(b) Permit Suspension. The Santa Maria Police Department and/or Santa Maria Fire Department may suspend the film permit when the filming activity poses an immediate hazard to persons or property and the location manager will not or cannot prevent the hazard after being instructed to do so by the officer(s).

(1) The grounds for the permit suspension shall be provided in writing by the film development office to the permittee within one (1) business day of the suspension.

(2) Appeals of the permit suspension shall be conducted in the manner specified in Section 4-16.17. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.17. Appeals--Hearings.

(a) The permit applicant or permittee may appeal a permit denial, revocation, suspension, permit condition, insurance/fees requirement or the film development office's decision not to waive a deadline set forth in this chapter. Such appeal shall be filed with the City Manager's office not later than five (5) business days after the date written notice of the decision is made. Failure to file timely appeal shall result in a waiver to the right to appeal.

(b) The appeal shall be heard by the City Manager or his designee. The City Manager or his designee shall hold a hearing no later than five (5) business days after the filing of the appeal and shall render his decision not later than two (2) business days after the appeal hearing. The decision of the City Manager shall be final. (Ord. 92-9 (part), eff. 7/2/92)

Section 4-16.18. Penalties.

The violation of any provisions of this chapter shall constitute a misdemeanor. (Ord. 92-9 (part), eff. 7/2/92)

CHAPTER 4-17 CURB PAINTING

Section 4-17.1. Curb address painting; unlawful without consent.

It shall be unlawful for any person to paint, write, or otherwise inscribe on any street, curb, sidewalk or in any portion of the right-of-way, any address or sign which identifies the address of property without the prior written consent of the owner or occupant of the property which would be identified by such address or sign. The written consent shall state the name, street address, telephone number, and business license number of the contractor. (Ord. 98-10, eff. 11/05/98)

Section 4-17.2. Unlawful to alter curb address without consent.

It shall be unlawful for any person to change, erase or in any manner alter, any street address painted on any curb without the prior consent of the owner of the property identified by such street address. (Ord. 98-10, eff. 11/05/98)

Section 4-17.3. Limitation of curb address signs.

It shall be unlawful for any person to paint, mark or otherwise inscribe any sign identifying the address of property on any portion of the right-of-way, except on a portion of the curb abutting the property. (Ord. 98-10, eff. 11/05/98)

Section 4-17.4. Exceptions.

This chapter is not applicable to the United States, State of California or the City of Santa Maria, or their contractors, from painting, writing, or otherwise inscribing on any street, curb or sidewalk public signs of any nature or property identification signs on any right-of-way. For purposes of this section, public sign is any sign authorized by the United States, State of California or the City of Santa Maria of whatever nature; this section is not applicable to the owner or occupant of property who desires to paint any street address on a portion of the curb abutting the property for purposes of identifying the street address of the property. (Ord. 98-10, eff. 11/05/98)

CHAPTER 4-18 MASSAGE

Section 4-18.101. Definitions.

For purposes of this chapter:

(a) "Approved school" or "approved massage school" means a facility that meets minimum standards for training and curriculum in massage and related subjects and that is approved by the Bureau For Private Postsecondary And Vocational Education pursuant to Section 94915 of the Education Code, by an institution accredited pursuant to paragraph (7) of subdivision (b) of Section 94739 of the Education Code, by colleges or universities of the state higher education system as defined in Section 100850 of the Education Code, or by a school of equal or greater training that is approved by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.

(b) "Chief" means the Chief of Police, or his or her designee.

(c) "Director" means the Director of Administrative Services, or his or her designee.

(d) "Massage" means the application of a system of structured touch, pressure, movement, and holding to the soft tissues of the human body with the purpose of positively affecting the health and well-being of the client. The practice includes the external application of water, heat, cold, lubricants, salt scrubs, or other topical preparations, and the use of devices that mimic or enhance the actions of the hands. Massage does not include the prescription of legend drugs or controlled substances, the diagnosis of illness or disease, or any treatment for which a license to practice medicine, chiropractic, physical therapy, or podiatry, or any other profession is required. Massage specifically does not include moving a joint beyond an individual's normal physiological range of motion, or using a fast, low amplitude thrust.

"Massage" does not include touching that meets either of the following criteria: (1) It is done as part of movement education, energy balancing, or any other technique, profession, or modality in which any soft tissue manipulation is incidental to, and not the central aim of, the practice. (2) It is done while engaging in the practice of another somatic technique, profession, or modality with established standards and ethics in which a practitioner is qualified, provided that those services are not designated or implied to be massage or massage therapy.

(e) "Massage establishment" means a fixed place of business where more than one person engages in or carries on, or permits to be engaged in or carried on, the practice of massage.

(f) "Massage practitioner" means any individual who, for any monetary consideration whatsoever, engages in the practice of massage. The terms "massage practitioner," "bodywork practitioner" and "massage and bodywork practitioner" are equivalent.

(g) "Non-profit organization" means any fraternal, charitable, religious, benevolent, or any other nonprofit organization having a regular membership association primarily for mutual social, mental, political, and civic welfare, to which admission is limited to the members and guests and revenue accruing therefrom to be used exclusively for the benevolent purposes of said organization and which organization or agency is exempt from taxation, under the Internal Revenue Laws of the United States as a bona fide fraternal, charitable, religious, benevolent, or non-profit organization.

(h) "Outcall massage service" means any business, not permitted as a massage establishment or solo practitioner massage establishment under the provisions of this Chapter, wherein the primary function of such business is to engage in or carry on massage not at a fixed location but at a location designated by the client or customer.

(i) "Permittee" means the owner, proprietor, manager, or operator of a massage establishment, outcall massage service, or solo practitioner massage establishment.

(j) "Person" means any individual, partnership, firm, association, joint stock company, corporation, or combination of individuals of whatever form or character.

(k) "Solo practitioner massage establishment" means a fixed place of business where a person holding a massage practitioner permit engages in or carries on, or permits to be engaged in or carried on, the practice of massage. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.102. Permit required for massage practitioner; exemptions.

(a) It shall be unlawful for any individual to engage in the practice of massage without first obtaining a permit from the Director.

(b) An individual may receive a permit as a massage practitioner, as provided in Section 4-18.104.

(c) A permit is not required where the individual is a licensed or certificated health care practitioner practicing massage as part of his or her health care practice. For purposes of this Section, "health care practitioner" shall mean

any person whose activities are licensed or regulated under Division 2 of the California Business and Professions Code or any initiative act referred to in that division.

(d) A permit is not required where the individual is a barber, cosmetologist, esthetician, or manicurist licensed or certificated pursuant to Division 3, Chapter 10, of the California Business and Professions Code, practicing massage as part of his or her work as a barber, cosmetologist, esthetician, or manicurist and within the scope of any relevant state restrictions on the practice of massage by members of those professions.

(e) An individual practicing massage under the direction of a non-profit organization, and the organization itself is exempt from permit and license fees under this Chapter, but the individual and the organization must obtain the necessary permits and licenses and otherwise comply with all relevant requirements.

(f) A permit is not required where the individual is currently certified under the terms of preemptive State law. (Ord. 2007-10, eff. 7/5/07; Ord. 2008-01, eff. 3/20/08)

Section 4-18.103. Application for massage practitioner permit; general and advanced practitioners.

(a) Every applicant for a massage practitioner permit shall file an application with the Director upon a form provided by the Director, and shall pay a non-refundable application fee, as set forth in a resolution adopted pursuant to Section 4-18.126.

(b) The application for a massage practitioner permit shall set forth, under penalty of perjury, the following:

- (1) Name and residence address of the applicant;
- (2) A unique identifying number from at least one government-issued form of identification, such as a social security card, a state driver's license or identification card, or a passport;
- (3) Written evidence that the applicant is at least 18 years of age;
- (4) Applicant's height, weight, and color of hair and eyes;
- (5) Business, occupation, or employment of the applicant for the five years immediately prior to the date of application; this information shall include, but not be limited to, a statement as to whether or not the applicant, in working as a massage practitioner or bodywork technician or similar occupation under a permit or license, has had such permit or license revoked or suspended, and the reasons therefor; and
- (6) All felony or misdemeanor convictions.

(c) An applicant for a massage practitioner permit shall provide, as part of the application, one of the following:

- (1) Evidence of certification under preemptive State law.
- (2) Evidence of not less than 200 hours of instruction from any approved massage school.
- (3) If applying for a temporary massage practitioner permit during the first two years after the effective date of this ordinance, the name and address of the approved school for massage attended, the dates attended, and the original of the diploma or certificate of graduation awarded the applicant showing that the applicant has completed not less than 100 hours of instruction.

(d) the Director is hereby authorized to require in the application any other information including, but not limited to, any information necessary to discover the truth of the matters set forth in the application. (Ord. 2007-10, eff. 7/5/07; Ord. 2007-22, eff. 12/6/07)

Section 4-18.104. Issuance of massage practitioner permit.

(a) Within 14 days following a hearing, or, if no hearing is held, within 60 business days following receipt of a completed application for a massage practitioner permit, the Director shall either issue the permit or mail a written statement of his or her reasons for denial thereof to the applicant. If the Director takes neither action, the permit shall be deemed issued.

(b) No massage practitioner permit shall be issued if the Director finds:

- (1) The applicant has provided materially false documents or testimony; or
- (2) The applicant has not complied fully with the provisions of this Chapter; or
- (3) Within five years immediately prior to the date of application, the applicant has had any license or permit related to the practice of massage revoked; or
- (4) The applicant has been convicted of any of the following offenses or convicted of an offense outside the State of California that would have constituted any of the following offenses if committed within the State of California:
 - (i) Any felony involving the use of coercion or force and violence upon another person; or
 - (ii) Any misdemeanor sexual battery; or

- (iii) Any offense involving sexual misconduct with children; or
- (iv) Any offense requiring registration pursuant to Section 290 of the California Penal Code.

(c) If an application for a massage practitioner permit is denied, within 30 days of the date of receipt of the notice of denial, the applicant may appeal the decision by notifying the Director in writing. The notice shall set forth in detail the ground or grounds for the appeal. Within 30 days of receipt of the notice of appeal, the Director shall conduct a hearing to consider the appeal. At least 10 days prior to the hearing, the Director shall notify the applicant of the time and place of the hearing. The Director shall oversee the hearing, provide the applicant an opportunity to speak at the hearing, and issue a ruling within 30 days of its conclusion. The Director's ruling shall be final. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.105. Temporary massage practitioner permit; trainee permit.

(a) Upon completion and submission of an application for a massage practitioner permit as required in Section 4-18.103 of this Chapter, and upon payment of all fees for the permit, an applicant may request a temporary massage practitioner permit. If requested, the Director shall issue the temporary massage practitioner permit which is valid for the period during which the application is under review, but in no event for more than 60 days unless extended in writing by the Director before 60 days have elapsed. An extended permit is valid for the period indicated on the extension, which period may not exceed 2 years.

(b) The Director may adopt rules and procedures for issuing trainee permits, not to exceed three months in duration, to persons who have otherwise completed an application for a massage practitioner permit and who are currently registered in an approved school of massage to fulfill the training requirement. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.106. Massage practitioner license tax.

For the annual business license tax for massage practitioners, see Section 4-3.326(a).

Section 4-18.107. Revocation of massage practitioner permit.

(a) The Chief may revoke or suspend any massage practitioner permit, after a public hearing, if the Chief finds:

- (1) The massage practitioner willfully violated any of the provisions of this Chapter; or
- (2) The massage practitioner has provided materially false documents or testimony; or
- (3) Within five years immediately prior to the date of application, the massage practitioner has had any license or permit related to the practice of massage revoked; or
- (4) The massage practitioner has violated a rule, procedure or regulation adopted by the Director or Chief pursuant to Sections 4-18.105 or 4-18.125.

(b) Before any hearing is conducted under this Section, the Chief shall provide the massage practitioner at least 20 days written notice. The notice shall include the time, place, and grounds for the hearing. If requested by the massage practitioner, the Chief shall make available all documentary evidence against him or her no later than 15 days prior to the hearing. At the hearing, the massage practitioner shall be provided an opportunity to refute all evidence against him or her. The Chief shall oversee the hearing and issue a ruling within 20 days of its conclusion. The Chief's ruling shall be final.

(c) The Chief may suspend summarily any massage practitioner permit issued under this Chapter, including but not limited to a temporary massage practitioner permit, pending a noticed hearing on revocation or suspension when in the opinion of the Chief the public health or safety requires such summary suspension. Any affected permittee shall be given notice of such summary suspension in writing delivered to said permittee in person or by certified letter at the address specified in the permittee's application for massage practitioner permit. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.108. Permit required for a massage establishment, solo practitioner massage establishment, or outcall massage service, exemptions.

(a) It shall be unlawful for any person to engage in, conduct, or carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises in the City the operation of a massage establishment, solo practitioner massage establishment, or outcall massage service without first obtaining a permit from the Director.

(b) Hospitals, nursing homes, and other State-licensed health care facilities providing massage services to their patients shall not be required to obtain a permit under this Section, where the services are provided by a licensed or certificated health care practitioner or an individual practicing massage under the direction of a health care practitioner. For purposes of this Section, "health care practitioner" shall mean any person whose activities are licensed or regulated under Division 2 of the California Business and Professions Code or any initiative act referred to in that division.

(c) A permit shall not be required under this Section where the services are provided on the premises (1) by a licensed or certificated health care practitioner or (2) by a barber, cosmetologist, esthetician, or manicurist, licensed or certificated pursuant to Division 3, Chapter 10, of the California Business and Professions Code, practicing massage as part of his or her work as a barber, cosmetologist, esthetician, or manicurist, and within the scope of any relevant state restrictions on the practice of massage by members of those professions.

(d) A non-profit organization providing massage services on its premises, and the individuals providing the massage services, are exempt from permit and license fees under this Chapter, but the organization and the individuals must obtain the necessary permits and licenses and otherwise comply with all relevant requirements. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.109 Application for massage establishment, solo practitioner massage establishment, or outcall massage service permit.

(a) Every applicant for a massage establishment, solo practitioner massage establishment, or outcall massage service permit shall file an application with the Director upon a form provided by the Director and pay a non-refundable application fee, as set forth in a resolution adopted pursuant to Section 4-18.126.

(b) The application shall set forth, under penalty of perjury, the following:

- (1) The exact nature of the services to be rendered;
- (2) The address of the proposed place of business and facilities thereof
- (3) The number of individuals to be employed by the business, and, in the case of a solo massage practitioner establishment, the names of any massage practitioners who shall operate under that permit;
- (4) The name, residence address, and date of birth of each applicant;
- (5) Any history of previous massage permits or licenses in Santa Maria or elsewhere, including whether any such permit or license has been revoked and the reasons therefor, for each applicant; and
- (6) All felony or misdemeanor convictions for the applicant.

(c) The Director is hereby authorized to require in the application any other information including, but not limited to, information related to the health, hygiene, and sanitation of the premises and any information necessary to confirm the accuracy of the matters set forth in the application.

(d) If an applicant for a massage establishment or outcall massage service permit is a corporation, the name of the corporation shall be set forth exactly as shown in its Articles of Incorporation together with the names and residence addresses of each of the officers, directors, and each stockholder holding more than 10 percent of the stock of the corporation. If the application is a partnership, the application shall set forth the name and the residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this Section pertaining to corporate applicants applies. The same permit and criminal history information required of individual applicants shall be provided for each officer, director, and stockholder holding more than 10 percent of the stock of the corporation, or for each partner, including limited partners.

(e) In addition to the information required under subsections (b) and (c), an applicant for a solo practitioner massage establishment permit shall provide proof that he or she holds a current, valid massage practitioner permit issued by the Director under Section 4-18.104.

(f) Applicants shall also submit proof of compliance with any applicable requirements of this Code, including but not limited to Titles 9 and 12, relating to planning, building and fire safety. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.110. Facilities necessary for massage establishment.

No permit to conduct a massage establishment shall be issued unless an inspection by the City's Building Official (or that person's designee) reveals that the massage establishment complies with each of the following requirements:

(a) Construction of rooms used for toilets, tubs, steam baths, and showers shall be made waterproof with hard nonabsorbent materials which are easily cleaned and shall be installed in accordance with the applicable, current building code requirements. Plumbing fixtures shall be installed in accordance with the applicable, current building code requirements.

(1) For toilet rooms, toilet room vestibules, and rooms containing bathtubs, there shall be a waterproof floor covering, which will be carried up all walls to a height of at least five inches. Floors shall be coved at the juncture of the floor and wall with a 3/8 inch minimum radius coving.

(2) Steam rooms and shower compartments shall have waterproof floors, walls, and ceilings approved by the Building Official/designee.

(3) Floors of wet and dry heat rooms shall be adequately pitched to one or more floor drains properly connected to the sewer. Dry heat rooms with wooden floors need not be provided with pitched floors and floor drains.

(4) A source of hot water must be available within the vicinity of dry and wet heat rooms to facilitate cleaning.

(b) Toilet facilities shall be provided in convenient locations. When five or more employees or patrons of different genders are on the premises at the same time, separate toilet facilities shall be provided. A single toilet shall be provided for each 1.5 or more persons of the same gender on the premises at any one time. Urinals may be substituted for toilets after one toilet has been provided. Doors to toilet rooms shall open inward and be self-closing, unless otherwise required to provide access to persons with a disability. Toilet rooms shall be designated as to the gender accommodated therein.

(c) Lavatories or wash basins with both hot and cold running water shall be installed in either the toilet room or the vestibule. Lavatories or wash basins must have soap in a dispenser and sanitary towels.

(d) All portions of the massage establishment shall be provided with adequate light and ventilation by means of windows or skylights with an area of not less than 1/8 of the total floor area, or shall be provided with an approved artificial light and a mechanical operating ventilating system. When windows or skylights are used for ventilation, at least 1/2 of the total required window area shall be operable. To allow for adequate ventilation, cubicles, rooms, and areas provided for the use of patrons not served directly by a window, skylight, or mechanical system of ventilation shall be constructed so that the height of the partitions does not exceed 75 percent of the floor-to-ceiling height of the area in which they are located.

(e) All electrical equipment shall be installed and maintained in accordance with the requirements of the applicable, current building code requirements. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.111. Facilities necessary for solo practitioner massage establishment.

No permit to conduct a solo practitioner massage establishment shall be issued unless an inspection by the City's Building Official (or that person's designee) reveals that the solo practitioner massage establishment complies with each of the following requirements:

(a) Toilet facilities shall be provided for patrons.

(b) Rooms used for toilets, tubs, steam baths, and showers, including the floors, walls, and ceilings of those rooms, shall be constructed from hard, durable, and nonabsorbent materials which are easily cleaned.

(c) Handwashing facilities shall be provided within or adjacent to toilet rooms and shall be equipped with an adequate supply of hot and cold running water under pressure.

(d) Handwashing facilities shall be readily accessible to the massage practitioner and shall be equipped with an adequate supply of hot and cold running water under pressure.

(e) A room, enclosure, or designated area shall be provided where patrons may change and store their clothes.

(f) Toilet and dressing rooms and massage rooms shall be provided with at least 108 lux (10 footcandles) of light.

(g) Smooth and cleanable containers shall be provided for soiled linens.

(h) Adequate and suitable space shall be provided for storage of clean linens, including towels, apparel, etc.

(i) All portions of the facility used by patrons shall be provided with adequate ventilation. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.112. Referral of permit application to other departments.

The Director, within 10 days of receiving an application for a permit to operate a massage establishment or solo practitioner massage establishment permit, shall refer the application to the police, fire and community development departments. Said departments shall inspect the premises proposed to be operated as a massage establishment or a solo practitioner massage establishment and shall make written findings to the Director concerning compliance with codes that they administer.

The Director shall notify the police, fire and community development departments of all approved permit applications. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.113. Issuance of massage establishment, solo practitioner massage establishment, or outcall massage service permit.

(a) Within 14 days following a hearing, or, if no hearing is held, within 60 business days, following receipt of a completed application for a massage establishment, solo practitioner massage establishment, or outcall massage service permit, the Director shall either issue a permit or temporary permit, or mail a written statement of his or her

reasons for denial thereof to the applicant. If the Director takes neither action, the permit or temporary permit shall be deemed issued.

(b) No massage establishment, solo practitioner massage establishment, or outcall massage service permit shall be issued if the Director finds:

(1) The applicant has provided materially false documents or testimony; or

(2) The operation as proposed by the applicant would not comply with all applicable laws including, but not limited to, the City's planning, building and fire codes or any rule or regulation adopted by the Director pursuant to this Chapter; or

(3) Within five years immediately prior to the date of application, the applicant has had any license or permit related to the practice of massage revoked; or

(4) The applicant, owner of a building proposed to house a massage establishment or solo practitioner massage establishment, or any other individual who will be directly engaged in the management and operation of the massage establishment, solo practitioner massage establishment, or outcall massage service has been convicted of any of the following offenses or convicted of an offense outside the State of California that would have constituted any of the following offenses if committed within the State of California:

(i) Any felony involving the use of coercion or force and violence upon another person; or

(ii) Any misdemeanor sexual battery; or

(iii) Any offense involving sexual misconduct with children;

(iv) Pimping or pandering; or

(v) Any offense requiring registration pursuant to Section 290 of the California Penal Code.

(c) The Director may refuse to issue any permit authorized under this Section in any case where there is reasonable grounds to determine that the premises or the business will be or are being managed, conducted, or maintained in such a manner as to endanger the health or safety of the employees or patrons thereof or to coerce any employee to engage in any illegal conduct.

(d) If an application for a permit authorized under this Section is denied, within 30 days of the date of receipt of the notice of denial, the applicant may appeal the decision by notifying the Director in writing. The notice shall set forth in detail the ground or grounds for the appeal. Within 30 days of receipt of the notice of appeal, the Director shall conduct a hearing to consider the appeal. At least 10 days prior to the hearing, the Director shall notify the applicant of the time and place of the hearing. The Director shall oversee the hearing, provide the applicant an opportunity to speak at the hearing, and issue a ruling within 30 days of its conclusion. The Director's ruling shall be final. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.114. Operating requirements for massage establishment.

(a) Every portion of a massage establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.

(b) A room, enclosure, or designated area, which is separate from the toilet, massage room, steam room, or other common areas shared by the patrons shall be made available for each employee. Individual lockers within this room shall be made available to each employee. Doors to dressing rooms shall open inward and be self closing.

(c) Every massage establishment shall provide clean laundered sheets and towels and shall launder them after each use and store them in a sanitary manner. No towels or sheets shall be laundered or dried in any massage establishment unless such massage establishment is provided with laundry facilities for such laundering and drying. The massage establishment shall provide appropriately labeled receptacles for the storage of soiled linens and paper towels. The massage establishment shall appropriately bag and dispose of soiled refuse.

(d) Every massage establishment shall thoroughly clean its wet and dry heat rooms, shower compartments, and toilet rooms each business day. Bathtubs shall be thoroughly cleaned and sanitized after each use.

(e) Any room in which a massage establishment provides massage services shall not be used for residential sleeping purposes. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.115. Responsibility for massage practitioner permit.

It shall be the responsibility of every permittee for a massage establishment or outcall massage service, or the employer of any individual purporting to act as a massage practitioner, or the owner of property used for massage, to ensure that such person has obtained a permit pursuant to this Chapter. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.116. Register of employees and those acting as massage practitioners.

The operator of a massage establishment, solo practitioner massage establishment, or outcall massage service must maintain a register of all individuals employed or acting as massage practitioners at the establishment or

service and their permit numbers. Such register shall be available for inspection by the police department at all times during regular business hours. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.117. Employment of persons under the age of 18 prohibited.

It shall be unlawful for any person or any permittee to employ or hire any individual who is not at least 18 years of age to engage in the practice of massage or otherwise perform work for a massage establishment or outcall massage service. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.118. Display of permit; hours of operation.

(a) Every permit to operate a massage establishment or solo practitioner massage establishment shall be displayed in a conspicuous place within the establishment so that the permit may be readily seen by individuals entering the premises. Every permit to operate an outcall massage service must be made available for inspection by the police department at all times while providing massage services.

(b) No massage establishment, solo practitioner massage establishment, or outcall massage service shall operate or provide massage services during the hours between midnight and 7:00 a.m. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.119. Inspection.

(a) Any member of a department responsible for the administration or enforcement of this Chapter may make an inspection of any massage establishment or solo practitioner massage establishment in the City for the purpose of determining that the establishment is in compliance with the provisions of this Chapter or for the purpose of providing health and safety information to employees of the establishment. The Building Official and Director may adopt regulations under Section 4-18.125 governing the use of double doors or other structural devices that interfere with reasonable inspections and do not have legitimate safety or security purposes.

(b) Nothing in this Section shall limit or restrict the authority of a police officer to enter premises licensed under this Chapter: (i) pursuant to a search warrant signed by a magistrate and issued upon a showing of probable cause to believe that contraband is present or that a crime has been committed or attempted, (ii) without a warrant in the case of an emergency or other exigent circumstances, or (iii) as part of any other lawful entry in connection with a criminal investigation or enforcement action. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.120. Massage establishment, solo practitioner massage establishment, or outcall massage service license tax.

For the annual business license tax for massage establishments, solo practitioner massage establishment, or outcall massage service practitioners, see Section 4-3.326(a). (Ord. 2007-10, eff. 7/5/07)

Section 4-18.121. Revocation of massage establishment, solo practitioner massage establishment, or outcall massage service permit.

(a) The Chief may revoke or suspend any massage establishment, solo practitioner massage establishment, or outcall massage service permit, after a hearing, if the Chief finds:

(1) The permittee has violated any of the provisions of this Chapter; or

(2) The permittee has refused to permit any duly authorized City employee to inspect the premises or the operations therein; or

(3) The permittee has engaged in any conduct in connection with the operation of the business that violates any state or local laws, or, in the case of a massage establishment or outcall massage service permit, any employee of the permittee has engaged in any conduct that violates any state or local laws at permittee's place of business, and the permittee had or should have had actual or constructive knowledge by due diligence of the illegal conduct; or

(4) In the case of a solo practitioner massage permit, the permittee no longer holds a current, valid massage practitioner permit issued by the Director or other applicable authority; or

(5) The Chief determines by clear and convincing evidence that such business is being managed, conducted, or maintained without regard for public health or the health of patrons, customers, or employees, or without due regard to proper sanitation and hygiene; or

(6) The permittee has violated a rule or regulation adopted pursuant to Section 4-18.125.

(b) Before any hearing is conducted under this Section, the Chief shall provide the permittee at least 20 days' written notice. The notice shall include the time, place, and grounds for the hearing. If requested by permittee, the Chief shall make available all documentary evidence against permittee no later than 15 days prior to the hearing. At the hearing, the permittee shall be provided an opportunity to refute all evidence against him or her. The Chief shall oversee the hearing and issue a ruling within 20 days of its conclusion. The Chief's ruling shall be final.

(c) The Chief may suspend summarily any massage establishment, solo practitioner massage establishment, or outcall massage service permit issued under this Chapter pending a noticed hearing on revocation or suspension when in the opinion of the Chief the public health or safety requires such summary suspension. Any affected permittee shall be given notice of such summary suspension in writing delivered to said permittee in person or by certified letter. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.122. Hearings.

The Director may fix a time and place for a hearing on any application for a permit under this Chapter, which shall not be held more than 45 days after the receipt of the completed application, or, in the case of a permit to operate a massage establishment or solo massage practitioner establishment, more than 30 days after receiving the findings required under Section 4-18.112 of this Chapter. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.123. Transfer of permit.

No permit issued under this Chapter shall be transferable. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.124. Existing permits.

(a) All persons who possess outstanding permits concerning massage on the effective date of this ordinance must surrender and exchange any such permits for new permits within 90 days of the effective date of this ordinance. Any such surrender and exchange shall be without fee to the permittee. From and after the 91st day after the effective date of this ordinance, all permits not surrendered and exchanged for new permits shall be void and continuance of operation under any such void permits shall be a violation of this Chapter. However, until issuance of the new permit, all existing permits are subject to the rules and regulations in effect at the time of the issuance of the permits.

(1) A person who possesses an outstanding permit to conduct massage on the effective date of this ordinance may exchange that permit for a massage practitioner permit.

(2) A person who possesses an outstanding massage establishment permit on the effective date of this ordinance may exchange that permit for a massage establishment permit under this Chapter.

(b) Any person practicing massage without a permit on the effective date of this ordinance, or who has done so prior to that date, shall be eligible to receive a massage practitioner permit upon satisfying the requirements of Sections 4-18.103, 4-18.104 and 4-18.106; or a massage establishment, solo practitioner massage establishment, or outcall massage service permit upon satisfying the requirements of the applicable sections of this Chapter. Such applicants shall not be disadvantaged or penalized in the permitting process for having practiced massage without a permit prior to the effective date of this ordinance. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.125. Rules and regulations

The Director, Building Official or Chief, after a noticed public hearing, may adopt rules and regulations to carry out the provisions of this Chapter. Such rules and regulations shall take effect 15 days after the meeting. Violation of any such rule or regulation may be grounds for administrative action against the permittee, including suspension or revocation of the permit as provided in Sections 4-18.107 and 4-18.121, an administrative fine as provided in Title 1, Chapter 9, or an administrative penalty as provided in Title 1, Chapter 8, but the Chief shall whenever possible give the permittee a reasonable opportunity to cure the violation before seeking penalties. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.126. Fees.

The City Council may by resolution set application fees for the administration of this Chapter. The amount of such fees shall not exceed the cost to provide the service for which the fee is imposed. (Ord. 2007-10, eff. 7/5/07)

Section 4-18.127. Violations and penalties.

The City Council finds that a violation of this Chapter constitutes a public nuisance and, in addition to any other remedy provided by law, is enforceable by means of an injunction sought by the City Attorney. The above notwithstanding, violation of any provision of this chapter shall be a misdemeanor, punishable as provided in Title 1, Chapter 6 of this Code. (Ord. 2007-10, eff. 7/5/07)