

CHAPTER 11

LICENSES: OCCUPATION TAXES: REGULATIONS

Article

1. Licenses.

(a) General Provisions. 11-1-1 to 11-1-2.

11-1-3 to 11-1-5. Reserved.

(b) Alcoholic Liquor. 11-1-6 to 11-1-24.

11-1-25 to 11-1-27. Reserved.

(c) Bingo. 11-1-28 to 11-1-31.

11-1-32 to 11-1-35. Reserved.

(d) Carnivals. 11-1-36 to 11-1-47.

11-1-48 to 11-1-51. Reserved.

11-1-60 to 11-1-64. Reserved.

(e) Repealed.

(f) Pawnbrokers. 11-1-65 to 11-1-70.

11-1-71 to 11-1-75. Reserved.

(g) Public Dances. 11-1-76 to 11-1-81.4.

(h) Alcoholic Liquor; License Application; Hearing.

11-1-82 to 11-1-88.

11-1-89 to 11-1-90. Reserved.

(i) Peddling. 11-1-91 to 11-1-96.

11-1-97 to 11-1-100. Reserved.

(j) Solicitations. 11-1-101.

2. Occupation Taxes. 11-2-1 to 11-2-10.

3. Miscellaneous Provisions. 11-3-1 to 11-3-7.

4. Gas Rate Regulation. 11-4-1 to 11-4-10.

5. Cable Television. 11-5-1 to 11-5-46.

ARTICLE 1

LICENSES

(a) GENERAL PROVISIONS

Section

11-1-1 Licenses; term; generally. Reserved.

11-1-2 Violations; classification.

11-1-3 to Reserved.

11-1-5

(b) ALCOHOLIC LIQUOR

11-1-6 Definitions.

<u>11-1-7</u>	<u>License; required.</u>
11-1-8	Repealed.
11-1-9	Repealed.
<u>11-1-10</u>	<u>Sales; hours; generally.</u>
<u>11-1-11</u>	<u>Same; Sunday.</u>
<u>11-1-12</u>	<u>Closed hours; presence during.</u>
<u>11-1-13</u>	<u>Same; notice of; display.</u>
<u>11-1-14</u>	<u>Premises; design; area.</u>
<u>11-1-15</u>	<u>Same; interior view; obstructions; prohibited; lighting; required.</u>
<u>11-1-16</u>	<u>License; display.</u>
<u>11-1-17</u>	<u>Liquor; sale in original package.</u>
<u>11-1-18</u>	<u>Minors; sales by; prohibited.</u>
<u>11-1-19</u>	<u>Non-beverage user, alcoholic; disposition; beverage purposes; prohibited.</u>
<u>11-1-20</u>	<u>Officers; directors; managers; agents; employees, violations by; liability.</u>
<u>11-1-21</u>	<u>Premises; entry; inspection; police officers; power.</u>
<u>11-1-22</u>	<u>Same; health officer, power.</u>
<u>11-1-23</u>	<u>Nudity; sexual acts or simulated sexual acts; prohibited.</u>
<u>11-1-24</u>	<u>Licensee or Employees; Drinking While on Duty Prohibited.</u>
11-1-25 to	Reserved.
11-1-27	

(c) BINGO

<u>11-1-28</u>	<u>Definitions.</u>
<u>11-1-29</u>	<u>Permit</u>
<u>11-1-30</u>	<u>Tax; when due.</u>
<u>11-1-31</u>	<u>Report; when due; contents.</u>
11-1-32 to	Reserved.
11-1-35	

(d) CARNIVALS

<u>11-1-36</u>	<u>Carnival, civic organization; permit.</u>
11-1-37	Restrictions.
<u>11-1-38</u>	<u>Permit; application; time.</u>
<u>11-1-39</u>	<u>Permit; application; contents.</u>
<u>11-1-40</u>	<u>Permit; decision; time.</u>
<u>11-1-41</u>	<u>Permit; insurance; bond.</u>
<u>11-1-42</u>	<u>Permit; denial.</u>
<u>11-1-43</u>	<u>Permit; contents.</u>
<u>11-1-44</u>	<u>Alternate permit.</u>
<u>11-1-45</u>	<u>Permit; notice.</u>
<u>11-1-46</u>	<u>Permittee; compliance.</u>
<u>11-1-47</u>	<u>Permit; revocation.</u>
11-1-48 to	Reserved.

11-1-51

(e) REPEALED

11-1-60 to Reserved.
11-1-64

(f) PAWNBROKERS

11-1-65 Definitions.
11-1-66 Permit; application; bond; required.
11-1-67 Same; issuance; term.
11-1-68 Same; revocation.
11-1-69 Property receivable; from person not owner, prohibited.
11-1-70 Statutory requirements; compliance; required.
11-1-71 to Reserved.
11-1-75

(g) PUBLIC DANCES

11-1-76 Public dances; license; required; exception.
11-1-77 Public dance; defined.
11-1-78 Public dances; license; required; exception.
11-1-79 Licenses may not be assigned.
11-1-80 License; application; form; contents.
11-1-81 Issued; when; referral to City Manager.
11-1-81.1 Decision by City Manager.
11-1-81.2 Revocation or suspension of license.
11-1-81.3 Hearing by City Manager; notice.
11-1-81.4 Conduct of hearing; decision.

(h) ALCOHOLIC LIQUOR; LICENSE APPLICATION; HEARING

11-1-82 Licenses; proceedings of City Council.
11-1-83 Notice of hearing.
11-1-84 Hearing; form; presiding officer, appearance of applicant.
11-1-85 Same; testimony; other evidence, cross-examination.
11-1-86 Same; order of proceeding.
11-1-87 Liquor application; retail licensing standards.
11-1-88 Agent for special designated license.
11-1-89 to
11-1-90 Reserved.

(i) PEDDLING

<u>11-1-91</u>	<u>Peddling; regulating; permit; required; exceptions.</u>
<u>11-1-92</u>	<u>Application.</u>
<u>11-1-93</u>	<u>Same; investigation; permit; issuance.</u>
<u>11-1-94</u>	<u>Same; fees.</u>
<u>11-1-95</u>	<u>Same; permit; denial.</u>
<u>11-1-96</u>	<u>Same; permit; revocation.</u>
11-1-97 to	Reserved.
11-1-100	

(j) SOLICITATIONS

<u>11-1-101</u>	<u>Soliciting; statement, filing; exceptions.</u>
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(a) GENERAL PROVISIONS

11-1-1. Licenses; term; generally.

No license granted under any provision of the Municipal Code shall continue in force or effect after the expiration of the municipal year in which such license was granted, unless otherwise specifically directed by ordinance, resolution or motion of the City Council, or unless such license is palpably permanent in nature and so intended to be, as indicated by the enabling action taken by the City. (Ord. 1116)

11-1-2. Violations; classification.

A violation of any provision of this Article is a Class II violation.

11-1-3 to 11-1-5. Reserved.

(b) ALCOHOLIC LIQUOR

11-1-6. Definitions.

Unless the context otherwise requires, the words and phrases used in this subdivision (b) of this Article shall have the meaning as defined in the Nebraska Liquor Control Act. (Ord. 1116)

11-1-7. License; required.

It shall be unlawful for any person to manufacture for sale, sell, keep for sale or to barter, or exchange, under any pretext any alcoholic liquor within the City unless such person shall have in full force and effect a license therefor as provided by the Nebraska Liquor Control Act. (Ord. 1116)

11-1-8. Repealed.

11-1-9. Repealed.

11-1-10. Sales; hours; generally.

No alcoholic liquors, including beer, shall be sold at retail or dispensed on any day between the hours of 1:00 A.M. and 6:00 A.M. (Ord. 3004, 1986)

11-1-11. Same; Sunday.

In addition to the restriction set forth in section 11-1-10, no alcoholic liquor, other than beer or wine, shall be sold at retail or dispensed on Sunday between the hours of 6 a.m. and 12 noon. Alcoholic liquor may be sold at retail or dispensed on Sunday after 12 noon. (Ord. 3235, 1992)

11-1-12. Closed hours; presence during.

It shall be unlawful for any person to be or remain, or for any person holding a license to sell alcoholic liquor at retail, or any officer, director, agent or employee of such person, to permit any person to be or remain on the licensed premises later than fifteen (15) minutes after the time when such liquor may lawfully be sold and prior to the time when it again may be lawfully sold on the premises. Provided, this section shall not be construed to prohibit presence on the premises during such period of the person holding the license, or of any officer, director, agent or employee of such person, while such person is lawfully engaged in some aspect of the business authorized by the license, or to the owners or employees of other businesses while making business deliveries to the premises or performing business services on the premises. Provided, further, this section shall not apply to restaurants, clubs, or hotels as defined in the Nebraska Liquor Control Act, or to motels, billiard or pool halls, bowling alleys or grocery stores. (Ord. 1767, 1969; Ord. 1116)

11-1-13. Same; notice of; display.

Every holder of a license for the sale of alcoholic liquor at retail shall keep displayed in a conspicuous place upon the licensed premises a notice to the public of the hours during which alcoholic liquor may not be sold and, as the case may be, consumed on the licensed premises. (Ord. 1767, 1969; Ord. 1116)

11-1-14. Premises; design; area.

No person holding a license for the sale of alcoholic liquor at retail within the City shall sell, or permit the consumption of, alcoholic liquor in any room not provided with a public entrance at the front thereof, opening upon a public street; provided, this restriction shall not apply to restaurants, clubs, or hotels as defined in the Nebraska Liquor Control Act, or to motels or grocery stores. The room required by this section shall contain a minimum of five hundred (500) square feet of area available for the use of customers exclusively. (Ord. 1767, 1969; Ord. 1116)

11-1-15. Same; interior view; obstructions; prohibited; lighting; required.

In premises within the City upon which the sale of alcoholic liquor for consumption on the premises is licensed, other than restaurants, hotels or clubs, no screen, blind, curtain, partition, article or thing shall be permitted in the windows or upon the doors of such premises, and no booth, screen, wall, partition, or other obstruction, nor any arrangement of lights shall be permitted in or about the interior of such licensed premises which shall prevent a full and clear view of the entire interior of such premises from the streets, road or sidewalks. All rooms wherein alcoholic liquors are sold shall be continuously lighted during business hours by natural or artificial light. (Ord. 1116)

11-1-16. License; display.

Every licensee under the Nebraska Liquor Control Act within the City shall cause his license or licenses to be framed and hung in plain public view in a conspicuous place on the licensed premises. (Ord. 1116)

11-1-17. Liquor; sale in original package.

It shall be unlawful for any person to have in his possession within the City any alcoholic liquor for sale in bottles, casks or other containers, except the original package with unbroken mark and stamp for tax as provided by law. (Ord. 1767, 1969; Ord. 1116)

11-1-18. Minors; sales by; prohibited.

Minors shall not be permitted to participate in the sale or dispensing of any beer or other alcoholic beverage, except as permitted by the Nebraska Liquor Control Act. (Ord. 3571, 1998)

11-1-19. Non-beverage user; alcoholic; disposition; beverage purposes; prohibited.

No non-beverage user shall sell, give away or otherwise dispose of any alcohol purchased under a license as such non-beverage user, in any form fit for beverage purposes. (Ord. 1116)

11-1-20. Officers; directors; managers; agents; employees; violations by; liability.

Every act or omission of whatsoever nature constituting a violation of any of the provisions of this subdivision (b) of this Article, by any officer, director, manager or other agent or employee of any licensee, if such act is committed or omission is made with the authorization, knowledge or approval of the licensee, shall be deemed and held to be the act of such employer or licensee, and such employer or licensee shall be punishable in the same manner as if such act or omission had been done or omitted by him or her personally. (Ord. 1116)

11-1-21. Premises; entry; inspection; police officers; power.

All police officers of the City are hereby authorized to enter at any time upon any premises of any licensee under the Nebraska Liquor Control Act within the City to determine whether any of the provisions of such Act or of this subdivision (b) of this Article, or any rules or regulations adopted by the City or by Nebraska Liquor Control Commission have been or are being violated and at such time to examine sufficiently such premises of such licensee in connection therewith. (Ord. 1116)

11-1-22. Same; health officer; power.

Any premises of any licensee under the Nebraska Liquor Control Act shall be open to inspection by any health officer of the City at any time during which such premises are open to the public for business. (Ord. 1116)

11-1-23. Nudity; sexual acts or simulated sexual acts; prohibited.

(1) It shall be unlawful for any licensee under the Nebraska Liquor Control Act to appear or to allow any live person to appear, in any licensed premises in a state of nudity while providing entertainment, providing service, acting as hostess, manager or owner, or serving as an employee in any capacity. For the purpose of this subsection the term “nudity” shall mean the showing of the human male or female genitals, pubic area, or buttocks, or the human female breast including the nipple or any portion below the nipple with less than a full opaque covering.

- (2) It shall be unlawful for any licensee under the Nebraska Liquor Control Act to perform or to allow any live person to perform on the licensed premises acts of or acts which simulate:
- (a) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
 - (b) The touching, caressing or fondling on the breast, buttocks, anus or genitals.
 - (c) The displaying of the pubic hair, anus, vulva or genitals.
- (3) It shall be unlawful for any licensee under the Nebraska Liquor Control Act to show or allow to be shown on the licensed premises any film, video, still picture, electronic reproduction, or other visual reproductions depicting:
- (a) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any other sexual acts;
 - (b) Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals.
 - (c) Scenes wherein a person displays the vulva or the anus or the genitals.
 - (d) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.
- (Ord. 3610, 1999)

11-1-24. Licensee or Employees; Drinking While on Duty Prohibited.

It shall be unlawful for any licensee, manager or employee of any licensee to consume any alcoholic liquor during the time such person is on duty and in the conduct of their business; and it shall be unlawful for any licensee, manager or employee to serve or sell alcoholic liquor while under the influence of such liquor. (Ord. 3967, 2008; 4045, 2011)

11-1-25 to 11-1-27. Reserved.

(c) BINGO

11-1-28. Definitions.

The purposes of this Article the words “bingo,” “gross receipts,” “license” and “licensed organization” shall have the same meaning as those terms are defined in the Nebraska Bingo Act.

11-1-29. Permit.

Bingo shall not be conducted within the City except by an organization licensed by the State of Nebraska to conduct bingo. A licensed organization licensed to conduct bingo within the City shall first obtain a bingo permit from the City Clerk. An annual permit fee in the amount provided in Chapter 6, Article 6 shall be paid prior to the issuance of a bingo permit. All permits shall expire on September 30th of each year. The bingo permit shall be displayed conspicuously at the place where bingo is conducted at all times during the conduct thereof. (Ord. 3629, 1999)

11-1-30. Tax; when due.

There is hereby imposed a tax of 2% on the gross receipts received from the conducting of bingo within the city. This tax shall be credited to the general fund of the City. Each licensed organization conducting bingo within the City shall pay the amount of the tax to the City Clerk on a quarterly basis, not later than thirty days from the close of the preceding calendar quarter. All deficiencies of the tax

shall accrue interest and be subject to a penalty as required for sales and use taxes in the Nebraska Revenue Act of 1967. If any person fails to pay the tax when due, the City may recover the same in a civil action brought against such person. This remedy shall be cumulative with any other remedy provided by law.

11-1-31. Report; when due; contents.

The licensed organization shall submit written reports to the City Clerk. Each report shall cover the immediately preceding calendar quarter and shall be due not less than thirty days from the close of the preceding quarter. The report shall include a detailed financial statement of each separate session of bingo conducted under the permit for the period of the report, declared on a form which may be prescribed by the Governor of Nebraska, but which in any event shall be sufficiently detailed so that an examination thereof will permit a determination of whether the provisions of this Article have been complied with. It shall be unlawful for any person to submit a false report.

11-1-32 to 11-1-35. Reserved.

(d) CARNIVALS

11-1-36. Carnival, civic organization; permit.

It shall be unlawful for any person, firm, association or corporation, to set up, show or operate within the City any combination of rides, shows and exhibits, commonly known as a “carnival,” except under contract with and the general supervision of a nonprofit civic organization which has its principal office within the City and holds a permit from the City Manager to conduct the carnival. (Ord. 2294, 1977; Ord. 1116)

11-1-37. Restrictions.

No carnival may be conducted unless as determined by the City Manager as provided in this Article:

- (1) the carnival will not substantially interrupt the safe and orderly movement of vehicular and pedestrian traffic on any street or part of a street adjacent to the premises on which the carnival is to be conducted,
- (2) the carnival will not require the diversion of so great a number of police officers of the City to properly police the area so as to prevent normal police protection to the City,
- (3) the concentration of persons, equipment, vehicles and merchandise will not unduly interfere with proper fire and police protection of, or ambulance service to, the area or other areas of the City,
- (4) adequate public toilet facilities are available, and
- (5) the carnival is not reasonably likely to cause injury to persons or property, or to disturb the peace and quiet of the occupants of residence areas, or to provoke disorderly conduct or create a disturbance. (Ord. 2294, 1977; Ord. 1116)

11-1-38. Permit; application; time.

A civic organization seeking a permit for a carnival shall file an application with the City Manager on forms provided by such officer. The application shall be filed not less than fourteen (14) days nor more than sixty (60) days before the date on which it is proposed to commence the carnival: provided, the City Manager, where good cause is shown therefore, may consider an application which has been

filed less than fourteen (14) days before the date the carnival would commence. (Ord. 2294, 1977; Ord. 1116)

11-1-39. Permit; application; contents.

The application for a carnival permit shall set forth:

- (1) the name, address and telephone number of the association or organization seeking to conduct the carnival,
- (2) the name, address and telephone number of the person who will be the carnival chairman and who will be responsible for its conduct,
- (3) the date(s) when the carnival is to be conducted,
- (4) the location(s) at which the carnival will be conducted,
- (5) the name and address of the owner of the carnival and a description, in such form as the City Manager shall prescribe, of the carnival,
- (6) the name and address of the owner and lessee, if any, of the premises on which the carnival is to be conducted, and
- (7) such additional information as the City Manager shall find reasonably necessary to a fair determination as to whether a permit should issue. (Ord. 2294, 1977; Ord. 1116)

11-1-40. Permit; decision; time.

The City Manager shall act upon the application for a carnival permit within ten (10) days after the filing thereof. (Ord. 2294, 1977; Ord. 1116)

11-1-41. Permit; insurance; bond.

No permit to conduct a carnival shall issue until the applicant shall furnish to the City Clerk written evidence that a public liability insurance policy in amounts of not less than eight hundred thousand dollars (\$800,000.00) for one person, two million dollars (\$2,000,000.00) for any one accident, and two hundred thousand dollars (\$200,000.00) for injuries to property; including as a beneficiary the City; and containing such other provisions as the City Council may prescribe, shall be in force during, and for twenty-four (24) hours before and after, the carnival.

In addition, no permit to conduct a carnival shall issue until the applicant shall deposit with the City Clerk a surety bond to the City, to be approved by the City Clerk, in the sum of two thousand five hundred dollars (\$2,500.00), or in lieu thereof cash in that amount, conditioned that no damage will be done to streets or to sewer, water, electrical or other equipment or property of the City, and that no dirt, paper, litter or other debris will be permitted to remain upon the sidewalk, streets or alleys or any adjacent private property.

11-1-42. Permit; denial.

If the City Manager denies the application, he shall mail or deliver to the applicant on the date of the denial a notice in writing of the denial, stating the reasons therefor. (Ord. 2294, 1977; Ord. 1116)

11-1-43. Permit; contents.

Each carnival permit shall state the following:

- (1) the date(s) of the carnival,
- (2) the location of the carnival, and

(3) such other information as the City Manager shall determine to be necessary or desirable in order to effect compliance with this Article. (Ord. 2294, 1977; Ord. 1116)

11-1-44. Alternate permit.

The City Manager, upon denying an application for a carnival permit, shall be empowered to authorize the conduct of the carnival on a date, at a time or place, or on other conditions different from those specified in the application. An applicant desiring to accept an alternate permit shall, within twenty-four (24) hours after notice of the action of the City Manager, file a written notice of acceptance with the City Manager. An alternate carnival permit shall conform to the requirements for, and shall have the effect of a carnival permit under, this Article. (Ord. 2294, 1977; Ord. 1116)

11-1-45. Permit; notice.

Immediately upon the issuance of a carnival permit, the City Manager shall so inform the Police Chief and the Fire Chief, and he shall so inform the City Council at its next regular meeting. (Ord. 2294, 1977; Ord. 1116)

11-1-46. Permittee; compliance.

The association or organization to which a carnival permit has been issued shall comply with all permit directions and conditions and with all applicable laws and ordinances. (Ord. 1194, 1977; Ord. 1116)

11-1-47. Permit; revocation.

The City Manager shall have authority to revoke a carnival permit if he finds that the standards for issuance set forth in this Article will not, or probably will not, be substantially met, or that the permittee has wilfully or negligently failed to comply with the requirements of this Article in any substantial respect. The City Manager, on the date of revocation of a permit, shall deliver or mail to the permittee a notice in writing of the revocation, stating the reason therefor. (Ord. 2294, 1977; Ord. 1116)

11-1-48 to 11-1-51. Reserved.

(e) Repealed

11-1-60 to 11-1-64. Reserved.

(f) PAWNBROKERS

11-1-65. Definitions.

Any person engaged in the business of lending money upon chattel property for security and requiring possession of the property so mortgaged on condition of returning the same upon payment of a stipulated amount of money, or purchasing property on condition of selling it back at a stipulated price, shall be deemed to be a pawnbroker. (Ord. 2873, 1984)

11-1-66. Permit; application; bond; required.

It shall be unlawful for any person in the City to engage in the business of pawnbroking without having first obtained a permit, and given a bond in the sum of five thousand dollars (\$5,000.00) as required

in section 69-202 of the Nebraska Statutes as now existing or hereafter amended, provided, if the pawnbroker also is engaged in a business other than that of a pawnbroker as defined in this Article, which other business is of a type that would constitute the person, firm or corporation so engaged a dealer in second-hand goods within the meaning of that term as defined in section 11-1-52, the pawnbroker, at his or her election, may in lieu of giving both a bond as a pawnbroker as provided above and a separate bond as a dealer in second-hand goods as provided in Section 11-1-66, give a single bond in the aggregate amount of six thousand dollars (\$6,000.00), conditioned, to the extent of five thousand dollars (\$5,000.00) as provided in section 69-202 of the Nebraska Statutes, as now existing or hereafter amended. and also conditioned, to the extent of one thousand dollars (\$1,000.00), as provided in section 11-1-66. The fee for a pawnbroker's permit, which shall be payable also on renewal of the permit, shall be as provided in Chapter 6, Article 6. If a permit holder moves the location of the business a new permit may be issued authorizing the permit holder to engage in the business of pawnbrokering at the new address. Such a permit shall be referred to as a new address permit and shall expire on the same date that the original permit would have expired. The fee for a new address permit shall be as provided in Chapter 6, Article 6. (Ord. 3462, 1995)

11-1-67. Same; issuance; term.

Upon the filing and approval of the bond, the City Clerk shall issue a permit, signed by such Clerk and attested by the seal of the City, which shall, unless revoked, remain in effect until the 30th day of April next following. (Ord. 2873, 1984)

11-1-68. Same; revocation.

In the event any holder of such a permit, or an agent or employee of such holder, shall violate or neglect or refuse to comply with any of the provisions of this subdivision (g) of this Article, the permit may be revoked by the City Council after reasonable notice and hearing. (Ord. 2873, 1984)

11-1-69. Property receivable; from person not owner; prohibited.

It shall be unlawful for any pawnbroker knowingly to receive or pawn or deposit any personal property of any kind from any person not the owner thereof. (Ord. 1116)

11-1-70. Statutory requirements; compliance; required.

It shall be the duty of all persons who engage in business as pawnbrokers to comply with all requirements, applicable to such persons, which are prescribed in the Nebraska Statutes as now existing or hereafter amended, in addition to the requirements specified in this subdivision (g) of this Article of the Municipal Code. (Ord. 2888, 1984)

11-1-71 to 11-1-75. Reserved.

(g) PUBLIC DANCES

11-1-76. Public dance; defined.

A public dance is a social gathering where dancing is permitted and to which the public is admitted. (Ord. 3976, 2008)

11-1-77. Public dances; license; required; exception.

No person, shall sponsor, or permit on premises of which he or she has possession, any public dance without first obtaining therefor a license as hereinafter provided. Provided, this requirement shall not apply to (1) any person who has an appropriate license issued pursuant to the Nebraska Liquor Control Act to sell and offer for sale at retail alcohol or beer for use or consumption on the premises and (2) any charitable, religious, educational, fraternal, civic, or other nonprofit organizations or associations not formed for the purpose of evading this section.(Ord. 3976, 2008)

11-1-78. No licenses in “R” zones.

No license for a public dance shall be issued for premises within any “R” zone.(Ord. 3976, 2008)

11-1-79. License may not be assigned.

All such dance licenses shall be purely personal privileges and shall not be assignable. (Ord. 3976, 2008)

11-1-80. License; application; form; contents.

Application for such license shall be made to the City Clerk setting forth the name of the applicant, the dates upon which a dance or dances are to be held, a description of the premises upon which said dance or dances will be held, together with the statement of the applicant that he or she will not violate or permit the violation of any law of the State of Nebraska, or any provision of this municipal code upon the licensed premises. The application shall be accompanied by the fee provided in Chapter 6, Article 6. The license may be for one (1) or more days, for a period of six (6) months, or for a period of one (1) year. (Ord. 3976, 2008)

11-1-81. Issued; when; referral to City Manager.

- (A) The City Clerk shall issue such license only after: 1) The Chief Building Inspector or his or her designee certifies that the premises in regard to which such application is made are in conformity with the fire, sanitation, health, and safety ordinances and regulations of the city; 2) The Police Chief certifies that he or she has no objection to the granting of the license; and 3) the City Clerk has received from the public no objections to the proposed license or complaints about previous public dances at the premises for which the license is requested or sponsored by the applicant for the license.
- (2) If the City Clerk cannot issue such license for any reason specified in the proceeding paragraph other than failure to pay the fee, the City Clerk shall refer the matter to the City Manager who shall decide whether or not to issue the license. (Ord. 3976, 2008)

11-1-81.1. Decision by City Manager

- (A) The City Manager shall issue the license when and only when, from a consideration of the application and from such other information as may otherwise be obtained, he or she finds that the conduct of the public dance is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct or create a disturbance, or directly or indirectly causes any unreasonable annoyance to other persons in the neighborhood of such premises. In making this decision the City Manager may consider (1) the recommendations of the Police Chief, (2) past history of public dances at the premises for which the license is requested or sponsored by the applicant for the license, (3) comments by members of the public, and (4) any other information reasonably related to the propriety of issuing the license.

(B) If the City Manager denies the application, he or she shall mail or deliver to the applicant, on the date of the denial, a notice in writing of the denial, stating the reasons therefor. The notice shall state that the applicant may have a hearing before the City Manager, and that if a hearing is desired the request for a hearing shall be made in writing and must be delivered to the City Manager or the City Clerk within ten days after the City Manager mailed or delivered the notice of the denial.

11-1-81.2. Revocation or suspension of license.

(1) Any license issued under this article may be revoked or suspended by the City Manager upon finding that a dance on the licensed premises caused injury to persons or property, provoked disorderly conduct or created a disturbance, or directly or indirectly caused any unreasonable annoyance to other persons in the neighborhood of such premises.

(2) If the City Manager revokes or suspends a license, he or she shall mail or deliver to the applicant, on the date of the revocation or suspension, a notice in writing of the revocation or suspension. Such notice shall state the reasons therefor. The notice shall state that the applicant may have a hearing before the City Manager, and that if a hearing is desired the applicant, the request for a hearing shall be made in writing and must be delivered to the City Manager or the City Clerk within ten days after the City Manager mailed or delivered the notice of the denial. (Ord. 3976, 2008)

11-1-81.3. Hearing by City Manager; notice.

(1) Upon receipt of a timely written request for hearing as provided in this Article, either on the subject of the refusal to grant a license or the subject of the revocation or suspension of a license, the City Manager shall set a date, time and place for a hearing, and shall give notice to the applicant who requested the hearing. Such notice shall be given no less than seven days before the date of the hearing. Such notice shall advise the applicant:

- (a) Of the date, time, and place of the hearing.
- (b) That he or she may be represented by an attorney.
- (c) That at the hearing the City and the interested party may present evidence relevant to the question of whether the license should be granted or revoked or suspended, as the case may be. (Ord. 3976, 2008)

11-1-81.4. Conduct of hearing; decision.

The City Manager shall preside at such hearing. The interested party who requested a hearing may be represented by an attorney. If deemed necessary or appropriate by the City Manager, the City Attorney or Deputy City Attorney shall represent the City. The City shall first present the reasons supporting the refusal to grant the license, or the revocation or suspension, as the case may be. The applicant may then present evidence in opposition to such order and determination. The Nebraska Evidence Rules shall not be in effect at such hearing. The City Manager may allow the parties or their attorneys to argue the matter after the reception of evidence. The City Manager shall make a written decision within seven days after the conclusion of the hearing and shall notify the parties of such decision in writing. Any appeal from the decision of the City Manager shall be to a court of competent jurisdiction. (Ord. 3976, 2008)

**(h) ALCOHOLIC LIQUOR;
LICENSE APPLICATION HEARING.**

11-1-82. Licenses; proceedings of City Council.

The sections in this subdivision (i) of this Article shall apply to proceedings before and by the Council on applications for a license to sell alcoholic liquors at retail within the City, for upgrading of a license, or for expansion or change in location of the premises, pursuant to provisions of the Nebraska Liquor Control Act. (Ord. 3130, 1989)

11-1-83. Notice of hearing.

The City Clerk, in addition to causing a notice of the hearing on the application by the City Council to be published as provided in the Nebraska Liquor Control Act, shall cause a copy of such notice to be delivered to applicant, or mailed to applicant in a postage prepaid envelope addressed to applicant at the applicant's address shown in the application, not later than the date on which the notice is published. Two or more proceedings which the City Clerk determines to be legally or factually related may be set for hearing together, unless any party thereto (including the City) makes a showing sufficient to satisfy the City Council that prejudice would result therefrom. (Ord. 2973, 1986)

11-1-84. Hearing, form; presiding officer; appearance of applicant.

The hearing shall be informal, conducted as an inquiry into facts and not as an adversary proceeding. The Mayor, or in event of his or her absence or disability, the Vice-President of the City Council shall preside at the hearing. The presiding officer shall have full authority to control the procedures of the hearing, including the admission or exclusion of testimony or other evidence, unless the City Council prior to the hearing's being called to order shall vote that the presiding officer shall have a more limited authority specified in the motion. The applicant shall appear at the hearing prepared to answer questions relevant to the application. Such appearance shall be made personally by the following:

- (1) if applicant is an individual, by such individual,
- (2) if applicant is a partnership, by not less than one of the partners, or
- (3) if applicant is a corporation, by not less than one managing officer of the corporation whose authority will extend over the business to be licensed;

and failure to make such an appearance, unless the failure results from circumstances reasonably beyond the control of the applicant (as determined by the City Council), shall constitute grounds for denying the application. (Ord. 2977, 1986)

11-1-85. Same; testimony; other evidence; cross-examination .

(1) The City Council and the parties shall not be bound by the strict rules of evidence, but all witnesses shall be sworn. Testimony by a sworn witness may be presented in narrative fashion or by question and answer. Evidence may be received which possesses probative value and is commonly accepted by reasonably prudent individuals. However, the presiding officer may limit, or refuse to receive, testimony or other evidence which does not appear to meet such a requirement, or which is otherwise irrelevant or unduly repetitious.

(2) If there is opposition to the application (other than by a member or members of the City Council or by the City's administration), and such opponent(s) desire(s) an opportunity to testify or to present other evidence, to present arguments or to cross-examine applicant and any witnesses favoring the application, such opponents shall so notify the presiding officer prior to the hearing and,

if there shall be more than one such opponent, they shall select a single spokesperson to present their arguments, or make such cross-examination, and shall notify the presiding officer of such representation prior to the hearing.

(3) Any member of the City Council, the City Attorney on behalf of the City's administration, or special attorney authorized to act in the stead of the City Attorney, may question any witness, call witnesses, or request information. (Ord. 2973, 1986)

11-1-86. Same; order of proceeding.

The order of proceeding shall be as follows:

(1) exhibits will be marked in advance by the City Clerk or, if the proceedings are being transcribed by a court reporter, by such reporter, and shall be presented to the presiding officer during the presentation,

(2) presentation of evidence and witnesses by applicant,

(3) testimony of any other citizens who favor the proposed license,

(4) cross examination of applicant, witnesses or citizens by spokesperson for opposition, if any,

(5) presentation of evidence and witnesses by opposition,

(6) testimony of any other citizens in opposition to the proposed license,

(7) presentation of evidence by City and non-City law enforcement personnel,

(8) cross examination by applicant,

(9) rebuttal evidence, and

(10) summation by applicant; by opposition spokesperson, if any; if City Council shall have retained special counsel to advise them, by the City Attorney; or, if the City Attorney is functioning as an adviser to the City Council and a special attorney shall have been authorized to act on behalf of the City's administration, by such special attorney. (Ord. 2973, 1986)

11-1-87. Liquor application; retail licensing standards.

For the purpose of taking any actions authorized by state statute, in particular Neb. Rev. Stat. §53-134, the City Council or its agent shall consider those criteria established by the Nebraska Liquor Control Act, in particular by Neb. Rev. Stat. §§ 53-124.11 and 53-134. In order to assist the City Council or its agent in the consideration of those criteria, the City Police Department and Development Services Department shall prepare reports to the City Council covering all of the criteria and other matters which may be considered by the City Council or its agent, and those reports shall be filed with the City Clerk prior to any public hearings, and shall become a part of the record of the public hearing.

11-1-88. Agent for special designated license.

The City Council now designates the City Manager as the agent to determine whether a special designated license is to be approved or denied. The determination of the agent shall be considered the determination of the City Council unless otherwise provided by the City Council.

11-1-89 to 11-1-90 Reserved.

(i) PEDDLING

11-1-91. Peddling; regulating; permit; required; exceptions.

It shall be unlawful for any person traveling by foot, wagon, automotive or other type of vehicle from place to place, house to house, or street to street, carrying or transporting goods, meats, fish, vegetables fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from an automotive vehicle, railroad car, or other vehicle, or for anyone who solicits orders and as a separate transaction makes deliveries to purchasers, without first obtaining a permit therefor as provided for in this Article. Provided, the provisions of this section shall not apply:

- (1) to properly authorized selling on behalf of established and organized churches or other established and organized religious organizations, of any educational institution or organized charity, or of societies incorporated under the laws of the State of Nebraska, or
- (2) to transactions exempt as constituting interstate commerce. Such carrying or transporting shall be done only between the hours of 6:00 A.M. to 10:00 P.M. (Ord. 1116)

11-1-92. Same; application.

Applicants for a permit required by section 11-1-91 shall file with the City Clerk a sworn application in writing, on a form prescribed by the City Clerk, which shall include the following information:

- (1) name, description and address of applicant,
- (2) a brief description of the nature of the business and the goods to be sold and, in the case of products of farm or orchard, whether produced or grown by the applicant,
- (3) if employed, the name and address of the employer, and
- (4) identification of any automotive vehicle to be used.

11-1-93. Same; investigation; permit issuance.

Upon receipt of such application, the Police Chief may cause such investigation of the applicant's moral character in business dealings to be made as it deems necessary for the protection of the public with whom the applicant may deal. If, as a result of such investigation, the applicant is found to be a person who is of good moral character in business dealings, the Police Chief shall issue a permit, addressed to the applicant, for the carrying on of the business applied for and cause the permit, together with the application, to be transmitted to the City Clerk, who shall, upon payment of the prescribed permit fee, deliver the permit to the applicant. Such permit shall contain the signature of the issuing officer and shall show the name and address of the applicant, the kind of goods permitted to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the permit shall be operative, and the license number and other identifying description of any vehicle used in such peddling. The Clerk shall keep a permanent record of all permits issued.

11-1-94. Same; fees.

The fee for a permit for peddling shall be as provided in Chapter 6, Article 6. (Ord. 3341, 1994)

11-1-95. Same; permit; denial.

If, as a result of such an investigation, the applicant is found not to be a person who is of good moral character in business dealings, the Police Chief shall cause to be endorsed upon the application the finding to that effect, together with a statement of the reasons therefor, and shall cause the application so endorsed to be transmitted to the City Clerk, who shall notify the applicant that the application has been denied and that the requested permit will not be issued.

11-1-96. Same; permit; revocation.

Permits issued under the provisions of this Article may be revoked by the City Manager, after notice and hearing, for any of the following causes:

- (1) fraud, misrepresentation, or false statement contained in the application or made in the course of carrying on the permitted business as peddler,
- (2) any violation of this Article,
- (3) conviction of any crime or misdemeanor involving moral turpitude (whether occurring before or after the permit is issued), or
- (4) conducting the business of peddling in an unlawful manner, or in such manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public. Notice of the hearing for revocation of a license shall be given in writing, shall set forth specifically the grounds of complaint and the time and place of hearing, and shall be mailed, postage prepaid, to the permittee at his last known address at least five (5) days prior to the date set for hearing.

11-1-97 to 11-1-100. Reserved.

(j) SOLICITATIONS

11-1-101. Soliciting; statement, filing; exceptions.

It shall be unlawful for any person, persons, firm, corporation or association to solicit or collect any money or other contributions within the City without first filing with the City Clerk a written statement, in a form prescribed by the City Clerk, stating the purposes for which such moneys or contributions are to be solicited or collected. If the person soliciting or collecting money or contributions is acting for another person, association or corporation, a written authorization by the person or corporation for whom the same are solicited or collected shall be filed with the statement. The City Clerk shall provide to the solicitor or collector a certified copy of the statement, which shall be carried by such person during solicitations and exhibited, upon request, to any person being solicited or to any law enforcement officer. It shall be unlawful to file a false statement as to the purposes for which any money or contribution is solicited or collected or concerning the identity of the person or corporation for which the solicitation or collection is to be made. Provided, the provisions of this section shall not apply to properly authorized solicitors:

- (1) of established and organized churches or other established and organized religious organizations,
- (2) of any educational institution or organized charity, or
- (3) of societies incorporated under the laws of the State of Nebraska.

ARTICLE 2

OCCUPATION TAXES

Section

<u>11-2-1</u>	<u>Occupation tax; levied; general scope; exceptions.</u>
<u>11-2-2</u>	<u>Occupations taxes; rates.</u>
<u>11-2-3</u>	<u>Tax; by whom payable.</u>
<u>11-2-4</u>	<u>Tax; term; when due; generally.</u>
<u>11-2-5</u>	<u>Same; Class C liquor licenses.</u>
<u>11-2-6</u>	<u>Payment; procedure; Clerk's receipt; effect.</u>
<u>11-2-7</u>	<u>Tax moneys; disposition.</u>
<u>11-2-8</u>	<u>Refund; prohibited.</u>
<u>11-2-9</u>	<u>Nonpayment; distress proceedings.</u>
<u>11-2-10</u>	<u>Same; civil action.</u>

Nebraska Statutes

For statutory provisions on city occupation taxes, see R.R.S. § 16-205.

11-2-1. Occupation tax; levied; general scope; exceptions.

For the purpose of raising revenue, there is hereby levied an occupation tax upon certain occupations, professions and businesses within the City; provided, such tax is not levied upon any occupation, profession or business which is interstate, or which is done or conducted by any department of the government of the United States, the State of Nebraska, any county or subdivision of this State, or the City, or by the officers of any such government or governmental subdivision in the course of its or their official duties. The requirements of this Article are in addition to, and not in lieu of, the requirements of this or any provision of the municipal code pertaining to licenses. (Ord. 1116)

11-2-2. Occupations taxes; rates.

The tax referred to this Article shall be upon each of the following occupations and businesses in the amounts provided in Chapter 6, Article 6.

11-2-3. Tax; by whom payable.

Such tax shall be payable by the person, persons, partnership, association, firm or corporation carrying on the occupation or business subject to the tax. (Ord. 1116)

11-2-4. Tax; term; when due; generally.

Except as provided in the provisions of this Article pertaining to Class C liquor licenses, on all occupations and businesses upon which such tax is levied at a yearly rate the year for such tax shall be deemed to begin with the first day of May of each year and shall end on the last day of April following; and such tax for each year shall be due and payable, in advance, on the first day of May of every year, and thereafter such tax shall be delinquent. The whole amount of every occupation tax levied at a daily or yearly rate must be paid in one (1) payment before the occupation or business is commenced, whether payment is made at the beginning of the day or year, or at any time thereafter; and no payment made at the beginning of the day or year shall be for any certain time less than such

day or year. The whole amount of the tax on the manufacture, distribution or sale of alcoholic liquor shall be paid immediately after the final issuance of a license to the applicant under the Nebraska

Liquor Control Act. Provided, however, when there is a purchase of an existing licensed business and a new license of the same class is issued, or upon the issuance of a new license for a location which has not been previously licensed, the license fee and occupation taxes shall be prorated on a quarterly basis as of the date of issuance.(Ord. 3835, 2005)

11-2-5. Same; Class C liquor licenses.

The term for the tax on the doing of business under a Class C liquor license shall be deemed to be the twelve-month period beginning with the first day of November of each year and ending on the last day of October following. During the license year, no license shall be issued for a sum less than the amount of the annual license fee as fixed in this Chapter, regardless of the time when the application for such license has been made, except that (a) when there is a purchase of an existing licensed business and a new license of the same class is issued, or (b) upon the issuance of a new license for a location which has not been previously licensed, the license fee and occupation taxes shall be prorated on a quarterly basis as of the date of the issuance.(Ord. 3835, 2005)

11-2-6. Payment; procedure; Clerk's receipt; effect.

The tax herein levied shall be paid to the City Clerk. Upon payment of the tax, the City Clerk shall issue a receipt therefor to the person, persons, partnership, association, firm or corporation paying the same, properly dated and specifying on behalf of whom and for what the sum is paid; and the City Clerk shall keep a proper account of such taxes. (Ord. 2933 1985)

11-2-7. Tax moneys; disposition.

All money so collected shall be paid over forthwith by the City Clerk to the City Treasurer, who shall credit the same to the general fund of the City; and such money shall be and remain under the control of the City Council for such use and purpose as other moneys belonging to the general fund. (Ord. 1116)

11-2-8. Refund; prohibited.

No person, persons, partnership, association, firm or corporation paying such occupation tax shall be entitled to a refund of any part of the tax so paid. (Ord. 1116)

11-2-9. Nonpayment; distress proceedings.

Upon the failure of any person, persons, partnership, association, firm or corporation to pay such tax when demand is made by the City Clerk or other person designated by the City Manager, the City Clerk is hereby authorized to issue a distress warrant over the corporate seal, directed to the Police Chief and commanding him forthwith to collect, by distress and sale of goods and chattels of the person, persons, partnership, association, firm or corporation in such warrant named, the occupation tax due and unpaid. The Police Chief for his services shall be entitled to such fees out of the property distrained and sold as sheriffs receive for making levy and sale under execution. The costs created by reason of the distress sale shall be paid out of the property levied upon, in addition to the amount due on the occupation tax. (Ord. 1116)

11-2-10. Same; civil action.

Should any person, persons, partnership, association, firm or corporation fail to pay such tax when demand is made by the City Clerk or other person authorized by the City Manager, the City may recover the same in a civil action brought against such person, persons, partnership, association, firm or corporation. This remedy shall not be exclusive of any other type of proceeding available to the City, but shall merely be cumulative. (Ord. 1116)

ARTICLE 3

MISCELLANEOUS PROVISIONS

Section

<u>11-3-1</u>	<u>Guns; sale at retail; records; reports.</u>
<u>11-3-2</u>	<u>Second-hand guns; purchase; by dealer; records; reports.</u>
<u>11-3-3</u>	<u>Public utilities; annual statements; required; form; contents</u>
<u>11-3-4</u>	<u>Same; violations; penalty; franchise; revocation.</u>

11-3-1. Guns; sale at retail; records; reports.

Every person selling guns at retail in the City shall hereafter keep a written record of all guns sold, which records shall show the name of each purchaser, the make, kind and serial number of each gun sold. Such records shall be retained a period of ten years, and shall be kept accessible to the Police Chief at all times. (Ord. 1116)

11-3-2. Second-hand guns; purchase; by dealer; records; reports.

All dealers within the City, buying secondhand guns for resale shall keep a record of all guns so purchased, showing the make, kind, caliber, and serial number of each gun, the name and address of the person selling the gun, and the date when purchased. Such records shall be retained a period of ten years, and shall be kept accessible to the Police Chief at all times. (Ord. 1116)

11-3-3. Public utilities; annual statements; required; form; contents.

It is hereby made the duty of every person, firm or corporation now operating under, or hereafter procuring, a franchise or permit from the City to conduct and carry on any public utility service for hire in said City, to file with the City Clerk annually on or before the tenth day of January a statement showing the money actually invested therein, the gross yearly earnings thereof, the operating expense and other necessary expenditures for the year last past. Such statement shall be itemized and in plain and concise form, and shall be verified by the oath of the officer or person in charge. (Ord. 1116)

11-3-4. Violations; franchise; revocation.

A violation of any provision of this Article is a Class II violation. A conviction under this section shall be deemed just and sufficient cause to revoke and cancel any franchise or permit of such violator. (Ord. 1116)

ARTICLE 4

GAS RATE REGULATION

Section

<u>11-4-1</u>	<u>Rate change; Rate Filing; fee; general requirements.</u>
<u>11-4-2</u>	<u>Rate Filing; cost of service.</u>
<u>11-4-3</u>	<u>Same; rate of return; rate base.</u>
<u>11-4-4</u>	<u>Same; costs; rate base items; allocation.</u>
<u>11-4-5</u>	<u>Same; information to be provided.</u>
<u>11-4-6</u>	<u>Same; notices.</u>
<u>11-4-7</u>	<u>Experts; engagement by City; expenses.</u>
<u>11-4-8</u>	<u>Expenditures; allowance.</u>
<u>11-4-9</u>	<u>Proposed rates; temporary; final determination.</u>
<u>11-4-10</u>	<u>Rate Filings; number.</u>

11-4-1. Rate change; Rate Filing; fee; general requirements.

In the event a utility maintaining and operating a natural gas distribution system within the City desires to change its rates for retail noncontract firm natural gas service within the City, other than to reflect an adjustment for the cost of purchased gas, the utility shall file with the City Clerk an application for a change of rates by the City Council, which shall be signed by the president or other officer authorized by the board of directors of the utility. Commencing on June 3, 1987, a filing fee in the amount of \$1,000.00 shall be paid to the City Clerk with the Rate Filing. The Rate Filing shall be deemed filed upon receipt of the same, together with the filing fee, by the City Clerk. (Ord. 3056, 1987)

11-4-2. Rate Filing; cost of service.

The rates proposed to be charged for noncontract firm natural gas service within the City shall be based upon the utility's cost of providing service to the City or the representative costs in that part of utility's service area which includes the City. The period for which the cost of service is to be recognized shall be a projected twelve (12) month period commencing not later than the proposed effective date of the increase. The cost of service shall be determined in a manner consistent with regulated public utility practices and shall include:

- (1) appropriate costs as defined and set forth in the Federal Energy Regulatory Commission Uniform System of Accounts Prescribed for Natural Gas Companies FERC Accounts, and
- (2) a reasonable return on the utility's rate base. (Ord. 2962, 1986)

11-4-3. Same; rate of return; rate base.

In determining a reasonable return, a rate (percentage) shall be employed that is representative of the cost of debt, preferred stock, and common equity capital. The rate base shall consist of the applicable net investment in utility plant (as defined in the FERC Accounts), allowance for working capital, and such other items as may reasonably be included, less such investment as may, unless otherwise prevented by law, be attributed to other than investor capital. (Ord. 2962, 1986)

11-4-4 Same; costs; rate base items; allocation.

The utility's appropriate costs and items of rate base shall include allocated or apportioned expenses and rate base items when such allocations or apportionments are reasonably representative of assigned common costs, and arise from the manner in which the utility's operations are conducted or from an avoidance of excessive and costly financial record keeping. (Ord. 2962, 1986)

11-4-5. Same; information to be provided.

The utility shall provide, in its Rate Filing, three copies of the most recent annual report to the stockholders and of completed and signed copies of the "SUMMARY OF PROPOSED RATE CHANGE" sheets. In addition, three (3) copies of the following information shall, on request by City, be provided by the utility:

- (1) a financial summary, showing aggregate rate base, operating revenues, operating expenses, return on rate base, and rate of return, including:
 - (a) actual for the most recent calendar year preceding the date of submission,
 - (b) for the projected twelve (12) month period, using natural gas rates currently in effect, and
 - (c) or the projected twelve (12) month period, using the proposed natural gas rates.
- (2) rate base schedules, on an original cost basis, showing for the most recent twelve month period available and for the projected 12-month period:
 - (a) for utility plant and accumulated depreciation and amortization components - the beginning and end of period balances by account, explanations of changes in balances during the period, and the calculated rate base amounts,
 - (b) for cash working capital - the manner in which rate base amounts are calculated,
 - (c) for other rate base components - beginning and end of period amounts, explanations of changes in balances during the period, and calculated rate base amounts, and
 - (d) explanations and calculations of allocated amounts included in (a), (b) and (c) above.
- (3) operating expense schedules, showing:
 - (a) expenses by FERC accounts for the most recent calendar year, including filing fees and occupation taxes paid to City,
 - (b) explanation and calculations of allocated amounts included in (a),
 - (c) expenses by FERC accounts or their equivalent for the projected twelve (12) month period,
 - (d) explanation of methods employed to develop projected expenses, and
 - (e) explanations and calculations of allocated amounts included in (c).
- (4) rate of return/cost of capital schedules showing debt, preferred stock, and common equity amounts at the beginning and end of the projected twelve (12) month period, explanations of changes during the period, and methods used to calculate or otherwise determine cost of capital.
- (5) operating revenue schedules, showing:
 - (a) number of customers, volume of sales, and operating revenue by customer classes for the most recent calendar year,
 - (b) number of customers and volume of sales by customer classes for the projected twelve (12) month period,
 - (c) explanation of methods employed to determine data in (b),
 - (d) operating revenues by rate schedules for the projected twelve (12) month period, using current rates,

- (e) operating revenue by customer classes for the projected twelve (12) month period, using proposed rates, and
- (f) detailed rates and calculations for (d) and (e), including customer usages (consumption analysis) data, peak demand and load factor data by customer class, allocation methods and justifications, and so forth,
- (6) informational schedules, showing for City as a whole:
 - (a) cost of utility plant, and
 - (b) number of customers, volume of sales, and operating revenue by customer classes, and
- (7) a clear designation, as part of the utility's expenses, of all expenditures for business gifts and entertainment, institutional, consumption inducing, and other advertising or public relations expenses, and legislative-advocacy expenses. (Ord. 2962, 1986)

11-4-6. Same; notices.

The utility shall cause notice of the Rate Filing to be given by publication by placing a notice to the public of the proposed change in a newspaper having general circulation in the City. Provided, notwithstanding the above, instead of such publication, the utility may provide notice to the public by mailing such notice by United States mail, postage prepaid, to the billing address of each directly affected customer, or by including the notice in such customer's bill in a conspicuous form. The notice shall be in the following form:

NOTICE OF RATE INCREASE

The (name of the utility) proposes to increase your rates by (amount of total annual increase requested) dollars per year, which is an overall increase of (percentage of increase over all revenues during the applicable test year) percent and is an increase in base rates of (percentage of increase over all revenues during the applicable test year which are not subject to escalation through some form of automatic adjustment clause) percent. Further information may be obtained from (name and address of utility official) or the application on file with the City Clerk.

An affidavit signed by an official of the utility, containing a copy of the notice and describing the method of publication or, as the case may be, mailing of the notice shall be filed with the City Clerk. (Ord. 2962, 1986)

11-4-7. Experts; engagement by City; expenses.

The City Council shall have a right to select and engage rate consultants, accountants, auditors, attorneys, engineers and other experts as deemed necessary or desirable to advise and represent the City in evaluating any proposed rate change. The utility shall reimburse the City within ninety (90) days of the presentation of a bill by the City for the reasonable costs of those services to the extent that such costs, as determined by the City Manager with approval of the City Council, exceed the filing fee for the Rate Filing. Should the filing fee paid by the utility exceed such costs, as so determined, the amount of the excess shall be refunded to the utility. (Ord. 2962, 1986)

11-4-8. Expenditures; allowance.

City may not allow inclusion as costs or expenses for rate making purposes of any expenditures of a type referred to in paragraph (7) of section 11-4-5 which City determines not to be in the public interest, and the utility has the burden of showing these expenses to be in the public interest. (Ord. 2962, 1986)

11-4-9. Proposed rates; temporary; final determination.

If the proposed rates sought by the utility in its Rate Filing have not been passed on final reading by the City Council within ninety (90) days after it was filed or as such time may be extended by agreement between the utility and the City in order to supply additional information if requested by the City, the proposed rates shall be put into effect as interim rates and shall be collected subject to refund pursuant to the Nebraska statutes. Such interim rates shall remain in effect pending final determination by the City (which determination shall be made within one (1) year) or, in the event of litigation, pending final rate determination by the courts. (Ord. 2962, 1986)

11-4-10. Rate Filings; number.

Rate Filings, not including changes reflecting the cost of gas, shall be limited to a maximum of one (1) in any twelve (12) calendar month period. (Ord. 2962, 1986)

ARTICLE 5

CABLE TELEVISION

Section

<u>11-5-1</u>	<u>Purpose.</u>
<u>11-5-2</u>	<u>Definitions.</u>
<u>11-5-3</u>	<u>Administration; delegation of powers and authority.</u>
<u>11-5-4</u>	<u>Cable operator; applicability.</u>
<u>11-5-5</u>	<u>Same; exemptions.</u>
<u>11-5-6</u>	<u>Same; request for relief by non-exempt cable operator.</u>
<u>11-5-7</u>	<u>Noncompliance not excused for failure to enforce.</u>
<u>11-5-8</u>	<u>Compliance with law.</u>
<u>11-5-9</u>	<u>Inconsistencies with federal or state law.</u>
<u>11-5-10</u>	<u>Retained rights and authorities.</u>
<u>11-5-11</u>	<u>Notices.</u>
<u>11-5-12</u>	<u>Indemnity.</u>
<u>11-5-13</u>	<u>Liability insurance.</u>
<u>11-5-14</u>	<u>Performance bond.</u>
<u>11-5-15</u>	<u>Furnishing of reports.</u>
<u>11-5-16</u>	<u>Books and records.</u>
<u>11-5-17</u>	<u>Local office; office hours; telephone availability.</u>
<u>11-5-18</u>	<u>Installations, outages and service calls.</u>
<u>11-5-19</u>	<u>Notifications to subscribers.</u>
<u>11-5-20</u>	<u>Billing practices.</u>

<u>11-5-21</u>	<u>Billing credit or refunds for service outages, interruptions, or unsolicited service.</u>
<u>11-5-22</u>	<u>Special service requirements.</u>
<u>11-5-23</u>	<u>Preferential or discriminatory practices prohibited.</u>
<u>11-5-24</u>	<u>Service inquiry logs.</u>
<u>11-5-25</u>	<u>Restoration of a subscriber's property.</u>
<u>11-5-26</u>	<u>Voluntary disconnections and downgrades.</u>
<u>11-5-27</u>	<u>Protection of subscriber privacy.</u>
<u>11-5-28</u>	<u>Use of public ways.</u>
<u>11-5-29</u>	<u>Construction standards.</u>
<u>11-5-30</u>	<u>System expansion.</u>
<u>11-5-31</u>	<u>Emergency alert system; standby power.</u>
<u>11-5-32</u>	<u>Franchise required.</u>
<u>11-5-33</u>	<u>Franchise agreement.</u>
<u>11-5-34</u>	<u>Extent of grant of franchise.</u>
<u>11-5-35</u>	<u>Franchise term and renewal.</u>
<u>11-5-36</u>	<u>Franchise application.</u>
<u>11-5-37</u>	<u>Franchise fees.</u>
<u>11-5-38</u>	<u>Assignment of franchise.</u>
<u>11-5-39</u>	<u>Educational and governmental access.</u>
<u>11-5-40</u>	<u>Public service.</u>
<u>11-5-41</u>	<u>Technical standards.</u>
<u>11-5-42</u>	<u>Default.</u>
<u>11-5-43</u>	<u>Federal legislation rules and regulations; franchise subject to amendment.</u>
<u>11-5-44</u>	<u>Inter-Governmental cooperation.</u>
<u>11-5-45</u>	<u>Tampering and unauthorized reception of certain signals.</u>
<u>11-5-46</u>	<u>Severability.</u>

11-5-1. Purpose.

The purpose of this Article is to:

1. establish a local policy concerning cable television;
2. establish Franchise procedures and standards which encourage the growth and development of Cable Systems which assure that Cable Systems are responsive to the needs and interests of the City;
3. establish guidelines for the exercise of local authority with respect to the regulation of Cable Systems;
4. establish an orderly process for Franchise renewal which protects Cable Operators against unfair denials of renewal where an Operator's past performance and proposal for future performance meet the standards set by the FCC and this Article;
5. promote competition in cable communications and minimize unnecessary regulations that would impose undue burdens on Cable Systems;
6. create a set of regulations, standards and procedures for Cable Operators;
7. create a comprehensive customer service and consumer protection policy for Cable Operators;

8. provide for access and inspection of a Cable Operator's books and records in order to monitor compliance with local, State and Federal laws, and any franchise agreement;
9. provide a construction and installation policy for a Cable Operator's system;
10. provide for the health, safety and welfare of the citizens of the City in light of the Cable Operator's construction, operation and maintenance;
11. provide for emergency override capability, so that citizens of the City may be warned of a potential, imminent, or actual Emergency situation that exists in the area;
12. create a procedure for collecting and monitoring Franchise Fees; and
13. create a default and revocation procedure for Cable Operators. (Ord. 4011, 2010)

11-5-2. Definitions.

As used in this Article or in any Franchise issued pursuant to this Article, the following terms shall have the following definitions:

1. "City" means the City of Scottsbluff, Nebraska and includes any areas annexed to the City after this date. "Council" means the City Council of the City of Scottsbluff. "Mayor" means the Mayor of the City of Scottsbluff. "City Manager" means the City Manager of the City of Scottsbluff.
2. "Affiliate" means another person or entity who owns or controls, is owned or controlled by, or is under common ownership or control with, the person or Entity.
3. "Applicant" means a person or Entity submitting an application or proposal to the City for a Franchise to operate a Cable System under the terms and conditions of this Article and any State or Federal regulations.
4. "Auxiliary Equipment" means equipment supplied by a Cable Operator which enhances or assists in the reception or provision of Cable Service.
5. "Basic Cable Service" means any Service Tier which includes the retransmission of local television broadcast signals, the PEG Channels, and any other signals required by Federal Law or the FCC.
6. "Cable Act" means the Cable Communications Policy Act of 1982, codified as 47 U.S.C. §521 et seq., or corresponding legislation in any future Federal communications legislation.
7. Except as otherwise provided for in this Article, "Cable Operator" means any person or Entity which:
 - a. provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in that Cable System; or
 - b. otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.
8. Unless otherwise defined in the Cable Act, "Cable Service" means:
 - a. the one-way transmission to Subscribers of Video Programming or Other Programming Service; and
 - b. Subscriber interaction, if any, which is required for the selection or use of Video Programming or Other Programming Service.
9. "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 the Community; provided, however, this shall not include:
 - a. a facility that serves only to retransmit the television signals of 1 or more television broadcast stations;

- b. a facility that serves Subscribers without using any Public Way;
 - c. a facility of a common carrier which is subject , in whole or in part, to the provisions of title II of the Cable Act, except that the facility shall be considered a Cable System to the extent the facility is used in the transmission of video programming directly to Subscribers;
 - d. any facilities of any electric utility used solely for operating its electric utility systems; or
 - e. any system exempted under the Cable Act.
10. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as defined by the FCC); provided, however, if the definition of Channel is modified by Federal law or the FCC, then such revised definition shall apply.
11. "Charge" means a one-time or non-regularly occurring cost paid by the Subscriber, and which is associated with the installation, maintenance, service or repair of the Cable Service.
12. "Community" shall mean the geographic area within the municipal limits of Gering, Scottsbluff, and Terrytown, Nebraska and any portions of Scotts Bluff County which are served by a Cable System serving any portion of those municipalities.
13. "Converter" means any device, separate and apart from a Subscriber's receiver, that is necessary for a Subscriber to view or otherwise use signals delivered by a Cable System.
14. "Emergency" means an imminent, impending, or actual natural or humanly induced situation where the health, safety or welfare of all, or a representative portion, of the residents of the City is threatened. An Emergency (by illustration) may include a snowstorm, flood, tornado, severe thunderstorm, hazardous waste infiltration, petroleum, munitions or nuclear explosion, or aircraft crash.
15. "Easement" means and shall include any public easement or other compatible use created by dedication or by other means, to the City for public utility or other purposes including cable television. "Easement" shall include a private easement used for the provision of Cable Service.
16. "Entity" shall mean a partnership, joint venture, corporation, limited liability company or such other form of conducting business authorized by State law.
17. "FCC" means the Federal Communications Commission or any successor governmental entity.
18. "Franchise" means the authorization issued by the City which authorizes the construction and operation of a Cable System.
19. "Franchise Fee" includes any tax, fee, or assessment of any kind imposed by the City on a Cable Operator or Subscriber, or both, solely because of their status as such. "Franchise Fee" does not include:
- a. any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their services but not including a tax fee, or assessment which is unduly discriminatory against Cable Operators or Subscribers);
 - b. Capital costs which are required by a Franchise to be incurred by the Cable Operator for PEG, or governmental access facilities;
 - c. requirements or charges incidental to the awarding or enforcing of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

- d. any fee imposed under title 17, United States Code..
- 20. "Gross Revenue" means:
 - a. all revenues, as determined in accordance with generally accepted accounting principles, received from the operation of a Cable System attributable to Subscribers within the City including but not limited to revenues received from Subscriber Rates, Service Tiers, installations, and the sale or lease of Auxiliary Equipment ("Subscriber Revenues"); and
 - b. any and all compensation in whatever form (except as exempted by this definition or otherwise by law), exchange or otherwise derived from all Cable Services, cable operations, and Cable Service related activities within the City including but not limited to revenues received from advertising, rebates or commissions received from services carried or provided on the Cable System, or commercial access ("Non-Subscriber Revenues").

Gross Revenue does not, however, mean (i) any taxes, fees or assessments of general applicability collected by a Cable Operator from imposed and/or assessed collected by law on Subscribers for pass-through to a government agency (including sales taxes, Franchise Fees or FCC user fees); (ii) unrecovered bad debt or bona fide credits, refunds and deposits paid to Subscribers; and (ii) revenues from activities exempted under the Cable Act or by the FCC.

21. "Other Programming Service" means information that a Cable Operator makes available to all Subscribers generally.

22. "PEG Channel" means a public, educational or governmental Channel which is carried on a Cable System.

23. "Permit" means a written authorization issued to a Cable Operator by the City, other than a Franchise.

24. "Public Way" means any public street, public place, public Easement or right-of-dedicated to the public use.

25. "Rate" means the periodic price paid by a Subscriber in order to receive Cable Service.

26. "Reporting Quarter" shall mean a Cable Operator's fiscal quarter as reported to the City. If a Cable Operator does not report to or notify the City concerning the dates of its fiscal quarters, then the "Reporting Quarters" for a Cable Operator shall be considered to be the periods ending on the last day of March, June, September and December of each calendar year.

27. "Service Tier" means a category of Cable Service provided by a Cable Operator, and for which a separate Rate is charged.

28. "State" means the State of Nebraska.

29. "Subscriber" means a person lawfully receiving Cable Service delivered by a Cable Operator.

30. "User" means a person or organization utilizing a Cable System and/or its equipment for purposes of production and/or transmission.

31. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. (Ord. 4011, 2010)

11-5-3. Administration; delegation of powers and authority.

Unless prohibited by Federal or State law, the Council may delegate its powers and authorities with respect to a Cable Operator to one or more duly authorized representatives of the City, including the Mayor, the City Manager, a Cable Advisory Committee or an outside consultant; provided, however, the Council may never delegate its power to franchise or to revoke a franchise to another person.. (Ord. 4011, 2010)

11-5-4. Cable operator; applicability.

Unless exempted entirely or in part from this Article or any of its provisions, or granted relief by the Council from any of its provisions, then this Article shall be applicable to a Cable Operator. (Ord. 4011, 2010)

11-5-5. Same; exemptions.

In recognition of the inherent technological differences between various types of providers of Video Programming, and taking into account legal, financial, operational and maintenance considerations, the following providers of Video Programming are exempted from complying with this Article:

1. a person or Entity which provides Cable Service to fewer than 50 Subscribers; or
2. a person or Entity which provides Cable Service to, or in conjunction with operating one hotel, motel, time-share facility, or recreational vehicle park (but not including service to a mobile home or manufactured home park), and which does not use any Public Way; or
3. a person or Entity which does not cross a Public Way in providing Cable Service to Subscribers; or
4. a person or Entity which is exempted from this Article as a result of an applicable judicial ruling.

An exempted person or Entity remains exempted only as long as it meets one or more of the specifications of this section. In addition, the extent of the exemption is only for this Article. An exempted person or Entity is expected to abide by, and comply with, any other applicable City, County, State and Federal laws and regulations, including any applicable Federal or State consumer protection or consumer service laws and regulations. (Ord. 4011, 2010)

11-5-6. Same; request for relief by non-exempt cable operator.

Any Cable Operator may file a written petition, at any time, with the City requesting relief from one or more provisions of this Article. The relief requested may specifically include the delay in implementation (as to the petitioning Cable Operator only) of one or more provisions of this Article. In order to receive any relief from one or more of the provisions of this Article, a Cable Operator must satisfactorily demonstrate to the Council that at least one of the following facts exist:

1. the provision and/or requirement is expressly prohibited by Federal law, the FCC or State law; or
2. that the provision in question materially affects, and is in conflict with an expressed right that is specifically noted in an existing Franchise agreement (but only for the term of the existing Franchise); or
3. that the imposition of the provisions and/or requirements will create an undue economic hardship on the Cable Operator so as to imperil or eliminate the Cable Operator's ability to provide Cable Service to a majority of current Subscribers.

4. As an alternative to requesting relief, a Cable Operator may petition for clarification as to the precise intent and effect that one or more provisions or sections of this Article has on the petitioning Cable Operator.

The Council may charge the petitioning Cable Operator with the actual costs for processing the petition, including any costs incurred by outside consultants who are retained by the City to review a Cable Operator's petition; provided, however, such costs shall not exceed the total amount that the City may charge to a Cable Operator considering the Federal limit on Franchise Fees. If the Council grants relief to a Cable Operator, then the Franchise agreement shall be amended to reflect the extent of the relief. (Ord. 4011, 2010)

11-5-7. Noncompliance not excused for failure to enforce.

A Cable Operator shall not be excused from complying with any of the requirements of this Article by any failure of the City on any one or more occasions to seek, or insist upon compliance with this Article. (Ord. 4011, 2010)

11-5-8. Compliance with law.

Any Cable Operator, its assignee, or transferee shall be subject to, and expected to comply with:

1. all ordinances in effect within the City including this Article, to the extent that the Cable Operator has not received exemption or relief.
2. all Federal and State Laws, and all rules and regulation issued by all applicable regulatory agencies.
3. all lawful exercise of the City's police power.

Nothing contained in this section shall prevent a Cable Operator from exercising any, and all, of its administrative and legal rights as to the constitutionality, applicability, and enforceability of this Article or any later amendments. (Ord. 4011, 2010)

11-5-9. Inconsistencies with federal or state law.

If any provision or section of this Article is inconsistent with any provision or section of a Federal or State rule, regulation, or law, then the Federal or State rule, regulation, or law shall control. (Ord. 4011, 2010)

11-5-10. Retained rights and authorities.

Subject to preemption by the FCC or any other Federal or State governmental entity or agency, the City retains the authority for:

1. the regulation of any Cable System within the geographical limits of the City, and within the limits prescribed by applicable law;
2. the award and grant of a Franchise subsequent to review of an application or proposal by the Council;
3. subject to the provisions of this Article entitled "Compliance with Law" and any relief or exemption granted with respect to those provisions, the amendment or repeal of all or part of this Article; and
4. the amendment of a Franchise by mutual agreement of the Council and the holder of the Franchise.

5. the regulation of Rates and Charges as permitted by law.
6. the enforcement of all laws and regulations relating to cable customer service practices and consumer protection.(Ord. 4011, 2010)

11-5-11. Notices.

Each Franchise shall designate the City's and the Cable Operator's contact person to receive notices, filings, reports, records, documents and other correspondence. All notices shall be delivered to each party's contact person either by personal service with signed receipt of delivery, certified or registered mail, return receipt requested, or by recognized overnight delivery service with receipt verification. All other filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to: Personal service, overnight mail, email or facsimile. Delivery shall be deemed to have occurred at the time of receipt. (Ord. 4011, 2010)

11-5-12. Indemnity.

Each Cable Operator shall defend, indemnify, and hold harmless the City, its officials, authorized agents and employees from any and all penalty, damage, or loss arising out of claims, suits, demands, causes of action, or award of damages which might be claimed now or in the future, which arise out of, or are caused by, the construction, erection, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of the Cable System within the City by a negligent act or omission of the Cable Operator, its authorized agents or employees, contractors, or authorized representatives; provided, however, the Cable Operator shall not be obligated to indemnify the City for any penalty, damage or loss resulting from the willful misconduct or negligence of the City or from any use of the Cable System by the City (to include the use of PEG channels). Reasonable attorney's fees, consultants fees, expert witness fees and other expenses of litigation are included as those costs which may be recovered by the City. With respect to any request for indemnification made to a Cable Operator by the City:

1. The City shall give the Cable Operator written notice of its obligation to indemnify the City within 30 days of receipt of written notification of a claim or action.

2. The Cable Operator shall then have the right to defend, settle or compromise any such claims at the Cable Operator's expense and with the assistance of counsel of the Cable Operator's choice. The City shall provide reasonable cooperation in connection with the defense subject to the Cable Operator's obligation to reimburse the City for actual out-of-pocket expenses incurred by the City as the result of a request by the Cable Operator.

3. If the Cable Operator fails to defend a claim within a reasonable time, the City shall be entitled to assume the defense and the Cable Operator shall be bound by the results and shall be liable to the City for the damages incurred by the City to include the costs referred to above as recoverable by the City.

4. If a Cable Operator obtains counsel for the City, and/or its officials, agents and employees, then any one of them shall have the right to approve counsel, which approval shall not be unreasonably withheld. The City, its officials, agents and employees shall have the right to retain counsel of their own at their own expense. (Ord. 4011, 2010)

11-5-13. Liability insurance.

A Cable Operator shall secure and maintain, for as long as it provides Cable Service, insurance coverage (the "Insurance") as follows:

1. The coverage shall provide for at least the following limits:

General Commercial Liability: \$2,000,000 per occurrence;
\$2,000,000 aggregate.
Umbrella Liability: \$2,000,000 aggregate

2. The Insurance shall specifically include the City and its officials, agents, and employees as additional insureds with respect to any liability arising out of the Cable Operator's performance.

3. The Insurance shall be issued by one or more companies licensed to do business in the State.

4. The Insurance shall contain an endorsement obligating the insurance company to furnish the City with at least 30 days written notice in advance of the cancellation of the insurance.

5. Before a Cable Operator provides Cable Service, the Cable Operator shall deliver the policies or certificates representing the Insurance to the City. Renewal or replacement policies or certificates shall be delivered to the City prior to the expiration of the then existing Insurance.

6. If the State permits a Cable Operator to self-insure, then the Cable Operator may exercise its right and self-insure as long as the minimal insurance amounts outlined in this section are met and maintained. (Ord. 4011, 2010)

11-5-14. Performance bond.

A Cable Operator shall comply with the following bonding requirements:

1. A performance or security bond in an amount of at least \$50,000 executed by a surety licensed to do business in the State shall be delivered to the City. The purpose of the performance bond is to ensure performance of any requirements imposed by this Article and any applicable Franchise. The purpose is also to guarantee that should the Cable Operator not fulfill any obligations imposed by this Article or a Franchise held by the Cable Operator, then the surety will make whole (to the extent of the policy) any monetary losses incurred by the City.

2. A construction/completion bond shall be furnished prior to the time that a Cable Operator commences a construction, upgrade, rebuild, or repair/maintenance project that has a capital construction cost or outlay exceeding \$50,000 in value where the construction takes place in one or more Easements or in the Public Way; provided, however, the following shall not be considered in determining whether a project exceeds \$50,000: (i) the cost attributable to any portion of the construction that utilizes aerial facilities consisting of existing poles owned by the Cable Operator or other utilities, or (ii) construction within a new subdivision where the construction of facilities is coordinated with the developer of the subdivision. The amount of the bond shall equal at least 90% of the projected capital construction cost or outlay, but shall not exceed \$250,000. The construction/completion bond shall remain in force at all times until one year after completion of construction as determined by the City, unless relief is granted or a reduction schedule is detailed in an agreement between the City and the Cable Operator.

3. Any construction/completion bond shall specifically guarantee that a Cable Operator will timely abide by its construction, upgrade, rebuild, or repair/maintenance schedule for the Cable System and/or any time table for technical and service improvements or additions to the Cable System as may be committed to, or agreed upon, from time to time by the City and the Cable Operator.

4. If the City draws on a bond as a result of a Cable Operator's failure to timely discharge its obligations, or failure to construct and activate the Cable System, or failure to complete a Cable

System upgrade or rebuild or repair/ maintenance project, then the Cable Operator shall replenish the bond within 30 days to the level required in this section.

5. The Council may authorize a Cable Operator to substitute a Cash Deposit, Letter of Credit, or a Guaranty of another person or Entity for any of the bonds provided for in this section; provided, however, the person or Entity providing a Letter of Credit or Guaranty, and the form of the Letter of Credit or Guaranty, shall be subject to the approval of the City Council in its sole discretion. (Ord. 4011, 2010)

11-5-15. Furnishing of reports.

Upon written request of the City, a Cable Operator shall furnish, at no cost to the City, copies of any or all filings with the FCC and the United States Copyright Office within 30 days of the request. (Ord. 4011, 2010)

11-5-16. Books and records.

A Cable Operator shall keep complete and accurate books of accounts and records concerning the business and operations of the Cable System. In addition:

1. The City by its authorized representatives shall have the right, on reasonable advance written notice, to review at the Cable Operator's local office all records pertaining to a Cable Operator's cable operations with respect to the City which are necessary to the enforcement of this Article or the Cable Operator's Franchise. Any review, unless mutually agreed upon or judicially ordered, should occur within the Cable Operator's regular office hours. Non-revenue financial records will only be requested in the aggregate on a summary prepared by the Cable Operator. The City acknowledges the sensitivity of these records, and will request this information only on as needed basis, and will treat this information as confidential and proprietary to the fullest extent allowed by law. The Cable Operator shall not be required to produce any records in violation of the Cable Act or any other applicable law.

2. The City shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the books and records of a Cable Operator pertaining to revenue information.

3. A false entry in the books and/or records of a Cable Operator of a material and substantial fact shall constitute a material violation of this Article. Erroneous entries shall not constitute a material violation if made in good faith.

4. If after a review or audit of a Cable Operator's records, it is discovered that the Cable Operator has underpaid the City by an amount that exceeds the greater of (i) \$500, or (ii) 3% of the total amount paid for any Reporting Quarter, then the City may require the Cable Operator to reimburse the City for the actual cost of the audit, in addition to the amount of underpayment. (Ord. 4011, 2010)

11-5-17. Local office; office hours; telephone availability.

In order to facilitate the needs of Subscribers, a Cable Operator shall maintain a customer service office which is easily accessible to Subscribers, and is located within the Community. The customer service office should have an adequate and knowledgeable staff in order to handle the vast majority of Subscriber service inquiries, including but not limited to billing inquiries, refunds, service outages, equipment service and repair, payment of bills and other Charges, and inquiries from disabled or physically impaired Subscribers. In addition:

1. The Cable Operator will maintain a local, toll-free telephone access line which will be available to its Subscribers 24 hours a day, seven days a week.
 - a. Trained company representatives will be available to respond to Subscriber telephone inquiries during normal business hours which must include some evening or weekend hours.
 - b. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.
2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis.
3. A Cable Operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
4. Under normal operating conditions, the Subscriber will receive a busy signal less than 3 percent of the time.

The customer service office shall be open during regular hours as published to Subscribers. (Ord. 4011, 2010)

11-5-18. Installations, outages, and service calls.

Under normal operating conditions, each of the following four standards will be met no less than 95 percent of the time measured on a quarterly basis.

1. Standard installations will be performed within 7 business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.
2. Excluding conditions beyond its control, a Cable Operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. A Cable Operator must begin actions to correct other service problems the next business day after notification of the service problem. Once begun, a Cable Operator shall diligently pursue the necessary repairs.
3. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. A Cable Operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of a Subscriber.
4. Except for conditions beyond its control, a Cable Operator may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.
5. If a Cable Operator representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber. (Ord. 4011, 2010)

11-5-19. Notifications to subscribers.

A Cable Operator shall provide written information to Subscribers as follows:

1. Subscribers will be notified of any changes in Rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of 30 days in advance of such changes if the change is within the control of the Cable Operator. In addition, the Cable Operator shall notify subscribers 30 days in advance of any significant changes in the other information required by Section 76.1602 of the FCC Rules;

2. In addition to the requirement of subparagraph (1), a Cable Operator shall give 30 days advance written notice to both Subscribers and the City before implementing any change in Rate or Charge. Such notice shall state the precise amount of any change. When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts;

3. A Cable Operator shall provide written notice to a Subscriber of any increase in the price to be charged for Basic Cable Service or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the City;

4. To the extent a Cable Operator is required to provide notice of Cable Service and Rate changes to Subscribers, the Cable Operator may provide such notice using any reasonable written means;

5. Notwithstanding any other provision of the FCC Rules, a Cable Operator shall not be required to provide prior notice of any change in Rate or Charge that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or the City on the transaction between a Cable Operator and a Subscriber. (Ord. 4011, 2010)

11-5-20. Billing practices.

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

1. In case of a billing dispute, the Cable Operator must respond to a written complaint from a Subscriber within 30 days.

2. Refund checks will be issued promptly, but no later than either:

- a. the Subscriber's next billing cycle following resolution of the request or 30 days, whichever is earlier, or
- b. the return of the equipment supplied by the Cable Operator if service is terminated.

3. Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. (Ord. 4011, 2010)

11-5-21. Billing credit or refunds for service outages, interruptions, or unsolicited service.

A Cable Operator shall provide a Subscriber with a credit or rebate where the Subscriber's entire Cable Service suffers a service outage or interruption exceeding eight hours in duration beyond the time that the Subscriber notified the Cable Operator of the outage. The credit for purposes of determining the amount of the credit or rebate, shall be deemed to be equivalent to or the same as a twenty-four

hour service outage. No credit or rebate shall be required where the outage was due to matters beyond the reasonable control of the Cable Operator. In addition:

1. For notifications by a Subscriber after hours, these credit refund requirements shall only apply if three Subscribers have provided notice in a given area.

2. In the case of a regional or area outage, all affected Subscribers shall be due a credit or refund if the Cable Operator is able to reasonably determine the Subscribers affected. If the Cable Operator is not able to reasonably determine the Subscribers affected by a regional or area outage, a credit or refund shall be given to all Subscribers affected by the outage who make a claim for credit or refund within 30 days of the outage.

3. In the case of a Charge for unsolicited service, a Cable Operator shall provide a Subscriber with an adjustment or billing credit on the next available billing statement, and the Subscriber shall not be considered delinquent for failure to pay a Charge for unsolicited service; provided, however, no such adjustment shall be made where the service was not authorized by the Cable Operator. (Ord. 4011, 2010)

11-5-22. Special service requirements.

A Cable Operator shall comply with all Federal and State laws and regulations concerning special service requirements for disabled, sight or hearing impaired or ambulatory impaired Subscribers. (Ord. 4011, 2010)

11-5-23. Preferential or discriminatory practices Prohibited.

A Cable Operator shall not deny Cable Service, deny access, or otherwise discriminate, nor subject any person to prejudice or disadvantage on the basis of age, race, creed, color, sex, national origin, handicap, religious affiliation or location of residence. Cable Operators shall not deny Cable Service, or the extension of Cable Service, to any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides. The provisions of this section shall not, however, prohibit a Cable Operator from:

1. offering a promotional or incentive discount Rate or Charge.
2. denying service based on location of residence, if that residence is outside the parameters for line extension as provided for in this Article or the Cable Operator's Franchise.
3. making agreements or entering into Cable Service agreements with multiple dwelling unit owners, including hotel, motel, and mobile park owners, to provide Cable Service under a bulk billing or other type of arrangement. (Ord. 4011, 2010)

11-5-24. Service inquiry logs.

In order to assist the City in assessing the resolution of Subscriber service requests, inquiries and complaints, a Cable Operator shall be required to keep and maintain service logs, subject to any limitations imposed by State or Federal law (including any Subscriber privacy limitations). At a minimum, the service inquiry logs should contain the date and time of the initial receipt of a service request, inquiry or complaint, together with the date and time of the initial response; the nature of the matter; and the precise action taken by a Cable Operator in order to resolve the matter. In addition to any other right of inspection that the City may possess, it shall have the right to review and inspect a compilation of the logs. The City shall not have the right of review or inspection for any logs or any information contained within the logs that are otherwise protected by State or Federal law. (Ord. 4011, 2010)

11-5-25. Restoration of a subscriber's property.

At any time a Cable Operator disturbs the property of a Subscriber, the Cable Operator shall ensure that the Subscriber's property is returned, replaced and/or restored to a substantially similar condition as that in existence prior to the disturbance by the Cable Operator. The costs associated with both the disturbance and the return, replacement and/or restoration shall be borne by the Cable Operator. The requirements imposed upon the Cable Operator extend to any subcontractor or independent contractor employed by the Cable Operator. (Ord. 4011, 2010)

11-5-26. Voluntary disconnection and downgrades.

A Subscriber may at any time request that a particular Service Tier or the entire Cable Service be disconnected. In addition, where different levels of service are offered by a Cable Operator, a Subscriber may request a downgrade from a particular level of service to a less comprehensive or less expensive level of service. Disconnections or downgrades shall be effective as per the Cable Operator's policies, to include any applicable charges for the change in service. Any refund due a Subscriber after downgrade or disconnection (both for non-payment and voluntary) shall be made within 45 days after the downgrade or disconnection. (Ord. 4011, 2010)

11-5-27. Protection of subscriber privacy.

A Cable Operator shall abide by any, and all, Subscriber privacy rules or regulations of the Federal or State governments. (Ord. 4011, 2010)

11-5-28. Use of public ways.

All facilities of a Cable Operator shall be located, installed and maintained so as not to endanger or unnecessarily interfere with usual and customary use, traffic and travel upon Public Ways and Easements, and according to any Public Way or Easement use standards established by the City. In addition:

1. A Cable Operator shall obtain all required Permits from the City before commencing any work requiring a Permit, including the opening or disturbance of any Public Way.
2. All facilities of a Cable Operator shall be installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Cable Operator shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
3. A Cable Operator shall use existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on Public Ways without obtaining all Permits required by the City. Any poles or other fixtures placed in any public way by the Cable Operator shall be placed in such a manner as not to interfere with the usual travel on such public way.
4. The Cable Operator shall, at its own expense, restore any damage or disturbance caused to the Public Way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Public Way immediately prior to such damage or disturbance.
5. If a Cable Operator's system creates a hazardous or unsafe condition or an unreasonable interference with property, then the Cable Operator shall at its own expense voluntarily, or upon

request of the City, remove or move, as appropriate, that part of the system that creates the hazardous condition.

6. A Cable Operator shall not place equipment where it will interfere with the rights of property owners or with other public utility services or any other service facility that benefits the City or its residents' health, safety or welfare.

7. A Cable Operator shall, at its expense, protect Public Ways and Easements, and support or temporarily disconnect or relocate in the same Public Way, any property of the Cable Operator when necessitated by reason of: traffic conditions, public safety, a street closing, street construction or resurfacing, change or establishment of a street grade, installations of other City utility services, or any improvement, construction or repair related to health, safety or welfare. Except in case of Emergency, the City shall provide at least 10 days written notice to the Cable Operator of the need for a relocation or temporary disconnection. In addition, the City shall have the right to remove any of the Cable Operator's facilities in the event of Emergency, and no charge shall be made by the Cable Operator to the City for restoration and repair, unless such acts amount to gross negligence by the City.

8. A Cable Operator shall, at the request of any person holding a building moving Permit, temporarily remove, raise or lower the cable wires to allow the moving of the building. The expense of temporary removal shall be paid by the person requesting it. The Cable Operator may require payment in advance. The affected Cable Operator shall be given not less than 10 business days notice of a contemplated move to arrange for temporary wire changes.

9. A Cable Operator shall have the authority to trim trees in the Public Way at its own expense as may be necessary to protect its wires and facilities.

10. The City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Cable Operator in any street or right of way, provided the use by the City does not interfere with the Cable Operator's use. The City shall indemnify and hold the Cable Operator harmless from all claims, demands, causes of action, suits, actions, proceedings, damages, costs or liabilities of every kind whatsoever arising out of the City's such use of the Cable Operator's poles or conduits.

11. In those areas of the City where transmission or distribution of both telephone and power companies are underground or are later placed underground, a Cable Operator's feeder and subscriber drops shall also be placed underground. To the extent reasonably possible, a Cable Operator shall coordinate the joint use of facilities with the telephone and power companies.(Ord. 4011, 2010)

11-5-29. Construction standards.

A Cable Operator shall construct, operate, maintain and repair its Cable System in compliance with all current technical codes adopted by the City, the State and the FCC, as are customary to the cable television industry. Methods of construction, installation or maintenance and repair of any Cable System shall comply with the most current editions of the National Electrical Safety Code, and the National Electric Code, as affects the construction, installation and maintenance of electrical supply and communications line and attachments and supports. To the extent that these are inconsistent with other provisions of a Franchise, or State or local law, then the more stringent shall govern in order to protect the public health, safety and welfare. (Ord. 4011, 2010)

11-5-30. System expansion.

Each Franchise may provide for a build-out and density standard under which the Cable Operator shall extend Cable Service within the City at a charge which does not exceed the Cable Operator's normal rate for standard installations, so long as the installation is financially and technically feasible. The Cable Operator may extend service to Subscribers which do not meet the density standard if the Subscriber(s) are willing to pay or share the capital costs of expanding the Cable System along with the Cable Operator's normal rate for standard installations. (Ord. 4011, 2010)

11-5-31. Emergency alert system; standby power.

In order that Subscribers may be alerted in the event of an impending, imminent or actual Emergency, and in addition to the Federal emergency alert standards, a Cable Operator shall ensure that its system is designed to permit the override of the audio portion of all Channels by authorized personnel at the Central Communications Center operated by Scotts Bluff County. In addition, a Cable Operator shall:

1. maintain all Channel video blanking ability to facilitate the needs of hearing and sight-impaired Subscribers;
2. test the Subscriber override system at the request of the Central Communications Center which shall not be more frequent than once a month; and
3. cooperate with the City on the use and operation of the emergency override system.

(Ord. 4011, 2010)

11-5-32. Franchise required.

No person or Entity, other than the City, shall be permitted to construct, operate or maintain a Cable System where any part of the Cable System's facilities to occupy or cross Public Ways without first having entered into a Franchise.

1. The City may award one or more non-exclusive Franchises.
2. An Applicant shall be selected as part of a public proceeding and hearing which affords due process to both the City and the Cable Operator. If the Applicant is selected as a Cable Operator, then the Applicant will enter into a Franchise agreement with the City.
3. Unless prohibited by law, the City reserves the right to construct, operate or maintain its own Cable System within the City limits. The City shall not be required to submit a proposal for, or receive, a Franchise in order to do so. (Ord. 4011, 2010)

11-5-33. Franchise agreement.

If the Council awards a Franchise to an Applicant in all or part of the City, or approves a proposal for renewal of a Franchise, then a Franchise agreement shall be entered into. A newly franchised Cable Operator may not lay any cable until the Franchise agreement is executed by the Cable Operator and the City. At a minimum, a Franchise agreement shall contain provisions for the following:

1. the term or duration of the Franchise;
2. an agreement to comply with this Article;
3. any applicable construction, upgrade or rebuild schedule; and
4. any applicable build-out and density standard. (Ord. 4011, 2010)

11-5-34. Extent of grant of franchise.

Upon entering into a Franchise, a Cable Operator may construct, install, maintain, operate, repair, replace, remove, or restore a Cable System within the City. In so doing:

1. The Cable Operator may utilize the Public Ways and those Easements dedicated to the public use.

2. The Cable Operator shall be responsible for obtaining its own Easements for private property and pole attachment agreements with other utilities. (Ord. 4011, 2010)

11-5-35. Franchise term and renewal.

The term of a Franchise may be for a period not to exceed 10 years from the date that a Franchise, or a Franchise renewal, is approved by the Council. Proceedings for the renewal of a Franchise shall be governed by the applicable provisions of the Cable Act. (Ord. 4011, 2010)

11-5-36. Franchise application.

The City may develop rules and regulations with respect to the submission and processing of applications for a Franchise. The rules and regulations shall primarily be aimed at determining the legal, financial, technical and character qualifications of the applicant. (Ord. 4011, 2010)

11-5-37. Franchise fees.

Each Cable Operator shall pay to the City a Franchise Fee equal to 4% of the Gross Revenues of the Cable Operator. The City reserves the right at any time upon 90 days notice to all Cable Operators to amend this section so as to increase the Franchise Fee to the maximum rate allowable under Federal law. It is intended that the Franchise Fees will promote the health, safety and welfare of the citizens of the City. Accordingly, the Franchise Fee shall be deposited into the general revenues of the City, unless otherwise specified.

1. The Franchise Fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise, consistent with Federal law.

2. Within 45 days after the end of each Reporting Quarter, a Cable Operator shall file with the City a detailed financial and revenue report showing the Gross Revenues received by the Cable Operator for operations within the City during the preceding Reporting Quarter. The report shall be in a form approved by the City. The report shall include Gross Revenue from all sources upon which a Franchise Fee is payable, directly or indirectly derived from the operation of the Cable System, or the provision of any Cable Service by or to the Cable System. Gross Revenue may be reported in the aggregate by general service type or source.

3. In the event that payment is not made within 60 days after the end of a Reporting Quarter, then the Cable Operator may be declared in default of the Franchise, and the City may take action against the Cable Operator as authorized in this Article.

4. The acceptance of any payment shall not be construed as a release of, or an accord or satisfaction of, any claim that the City might have for further or additional sums payable under the terms of this Article, or for any other performance or obligation of a Cable Operator.

5. Payments of compensation made by a Cable Operator to the City pursuant to this Article shall be considered in addition to any and all taxes of general applicability owed to the City by the Cable Operator that are not included as Franchise Fee under Federal law.

6. A Franchise Fee shall not be payable on any Gross Revenue source(s) which are excluded by Federal law. (Ord. 4011, 2010)

11-5-38. Assignment of franchise.

A Cable Operator's Franchise may not be assigned in whole or in part without the City's prior written approval. For purposes of this paragraph, "Assigned" or "Assignment" shall mean the transfer, sale, or any other form of assignment of a Cable System, to include any transaction or action which effectively or actually changes ownership from one person or Entity to another to include the transfer of 50% or more of the ownership interest of an Entity or the parent of an Entity. Any attempted Assignment without prior written approval shall constitute a default in the Franchise. A proposed Assignment shall be subject to the following:

1. At least 120 days before a proposed Assignment is scheduled to become effective, the Cable Operator shall make a written request to the Council for the City's approval of the proposed Assignment.

2. The City will not unreasonably withhold its consent to an Assignment. However, in making its determination, the Council may consider the following criteria:

- a. qualifications of the proposed assignee;
- b. financial ability and stability of the proposed assignee;
- c. the experience of the proposed assignee which may include conducting an investigation of the proposed assignee's service record in other communities;
- d. legal integrity of the proposed assignee or transferee;
- e. if requested by the Council, submittals from the proposed assignee concerning any changes it intends to make in the operation and maintenance of the present Cable System;
- f. the corporate connection, if any, between the Cable Operator and the proposed assignee;
- g. the economic viability or non-viability of the Cable System in the future, based upon certain factors including the impact of the purchase price on the City and/or the proposed assignee; and
- h. any other aspect of the proposed assignee's background which could affect the health, safety and welfare of the citizenry of the City as it relates to the operation of the Cable System.

3. Nothing in this section shall restrict the City from considering other criteria, and in particular, any criteria established under State or Federal law, rule or regulation.

4. Before an Assignment is approved by the City, the proposed assignee shall sign a statement indicating that it has read, understands, and intends to abide by any existing Franchise agreement.

5. The City may include certain amendment(s) to the Franchise or this Article as a condition to the Assignment; provided, however, any such amendment(s) shall either (i) be by mutual agreement between the City and the proposed assignee, or (ii) shall not have a material adverse effect on the rights and obligations of the Cable Operator under the Franchise.

6. In the event of any approved Assignment, the assignee shall assume all obligations and liabilities of the former Cable Operator.

7. The City's consent to an Assignment shall not relieve the former Cable Operator of its liability under the Franchise agreement until the Assignment actually takes place unless specifically relieved by Federal or State law or by the Council at the time an Assignment is approved. In the event of an Assignment, the former Cable Operator shall remain liable for any Franchise Fees incurred as

of the time that the Assignment is effective for the period governed by the applicable statute of limitations.

8. If the Cable Operator has provided the City with all information as required by this section or the FCC in a timely manner, and the City has not taken action on the Cable Operator's request for transfer within 120 days after receiving such request, consent by the City shall be deemed given

Consent shall not be required for an Assignment to a wholly-owned subsidiary Entity of a Cable Operator or the current parent Entity of a Cable Operator, whether the ownership is direct or indirect, such as through other wholly-owned intermediate subsidiaries. In addition, consent shall not be required for the granting of a security interest in the Cable Operator's system including its Franchise. However, if the holder of the security interest repossesses, forecloses or takes other action concerning its collateral, it shall dispose of the Cable System within a reasonable period of time and the disposition by the holder of the security interest shall be considered an Assignment subject to the provisions of this section. (Ord. 4011, 2010)

11-5-39. Educational and governmental access.

To the extent permitted by law, and in order to fulfill a public, educational and governmental access policy that will facilitate the long range needs of the Community, each Cable Operator shall provide at its own expense PEG Channels as follows:

1. Two twenty-four hour per day educational Channels shall be provided within the Community, one for the use of the City of Scottsbluff schools and one for the City of Gering schools.

2. One twenty-four hour per day PEG Channel shall be provided within the Community for use by various governmental subdivisions. If at any time, 90% of the total time allocated for this PEG Channel is consistently used 5 days a week for a period of 6 months, then the Cable Operator shall provide an additional PEG Channel. The use of this additional Channel may be reviewed every 6 months at the request of the Cable Operator. If after any 6 month period, the combined use of the original and added PEG Channel has dropped so that if the two Channels were combined, the usage would not justify more than one Channel under this subsection, the requirement for the additional PEG Channel shall cease until the criteria for the additional PEG Channel is met once again.

3. A Cable Operator shall provide up to six hours of technical assistance within a calendar year for each school or political subdivision without charge. Additional technical assistance shall be provided at the Cable Operator's cost.

The provision of PEG Channels shall include the installation of one modulator per each governmental User of a PEG Channel. Installation shall be considered as complete when the governmental User's system is operational. (Ord. 4011, 2010)

11-5-40. Public service.

A Cable Operator shall furnish, upon request, one outlet for each public school building, municipal office building, public library, fire station, police station and courthouse which is passed by the Cable Operator's Cable System. Basic Cable Service and the next additional Service Tier shall be provided at no charge. An initial connection will be made at no charge with additional connections to be made for the cost of time and materials only. If necessary for a television with a standard digital tuner to receive the service level provided at no charge, then one Converter shall be provided for each such

television within these public buildings, up to a maximum of five Converters per building. With respect to this service:

1. The Cable Service provided pursuant to this section shall not be used for commercial purposes and shall not generally be available for public viewing. The City shall take reasonable precautions to prevent any use of the Cable System that results in the inappropriate use or any loss or damage to the Cable System.
2. The City shall hold the Cable Operator harmless from any and all liability or claims arising out of the provision and use of Cable Service to City buildings.
3. The Cable Operator shall not be required to provide an outlet to any such building where a standard drop of more than 125 feet is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary extension or installation. (Ord. 4011, 2010)

11-5-41. Technical standards.

A Cable Operator shall comply with any rules and regulations of the FCC concerning technical operation, signal quality and consumer electronics equipment compatibility. Unless a Cable Operator can demonstrate that it is both technologically and economically unfeasible, programming services shall be delivered by the use of addressable technology allowing Cable Service levels to be changed without the expense (either to the Operator or a Subscriber) of a separate trip or call. (Ord. 4011, 2010)

11-5-42. Default.

When a Cable Operator violates a provision of this Article, or acts so as to compromise the or legal, financial or technical integrity and/or stability of the Cable System or the Cable Operator itself, in either case, to a degree that the interests of the Subscribers and Users are negatively affected, then a Cable Operator shall be considered in default of this Article.

1. Examples of a default shall include, but are not limited to: bankruptcy (except for a reorganization as long as the Cable Operator is in compliance with an approved plan or other court order), insolvency, failure to pay taxes or Franchise Fees, failure to receive written City approval for an Assignment, or failure to substantially abide by the terms and conditions of the Franchise agreement or this Article. Events in the nature of force majeure or conditions which cannot be corrected because they are matters beyond the immediate control of the affected Cable Operator shall not be considered a default.
2. In the event that a default occurs, the City shall provide written notice of the default to the affected Cable Operator. The notice of default shall specify the violation(s).
3. The Cable Operator shall have 30 days from the receipt of the written notice to bring itself into compliance so that it is no longer in default of its Franchise or this Article, as the case may be; provided, however, if by the nature of default, the default cannot be cured within this 30 day period, the Cable Operator shall initiate reasonable steps to remedy the default and notify the City of the steps being taken and the projected date that they will be completed.
4. If the Cable Operator fails to cure its default within the time period provided for above, the matter shall be set for public hearing before the Council to be held within 75 days after the notice of default was mailed to the Cable Operator. Written notice of the time and place of the public hearing shall be sent to the Cable Operator at least 15 days prior to the date of the hearing.
5. At the hearing, the Cable Operator shall have an opportunity to state its position on the matter, present evidence and question witnesses. If the Cable Operator fails to attend the hearing

where a continuance of the hearing has not been granted by the Council, then the Cable Operator may be declared in default of the Franchise agreement.

6. If the default has not been resolved by the time of or as a result of the hearing, the Council may, after the public hearing, direct the Cable Operator to take corrective action within a specified period of time, or may declare the Cable Operator in default of the Franchise agreement, and revoke or terminate the Franchise. The Council's action shall be delivered to the Cable Operator in writing within 15 days of the Council's action.

7. If the Council directs corrective action to be taken and the Cable Operator does not rectify the default within the time specified, then the Council may without further notice declare the Cable Operator to be in default and revoke or terminate the Franchise.

8. If the Cable Operator fails to comply with any determination by the Council, which determination is not stayed or overturned by order of an appropriate court, then the City shall have any and all remedies available to it by law. (Ord. 4011, 2010)

11-5-43. Federal legislation, rules and regulations; franchise subject to amendment.

In addition to any requirements contained within this Article, all Cable Operators shall be expected to comply with all applicable provisions of the Cable Act and all other laws directed at controlling or regulating Cable Operators, and any rules and regulations issued pursuant to those laws. In addition, any Franchise issued pursuant to this Article shall be subject to amendment to incorporate any applicable Federal legislation, rules or regulations which become effective after the date of the Franchise. (Ord. 4011, 2010)

11-5-44. Inter-Governmental cooperation.

In the event that a Cable System serves areas outside the jurisdiction of the City (to include the Community), then the various jurisdictions or governmental subdivisions shall have the right to enter into one or more agreements concerning the matters covered by this Article. By way of example, it is contemplated that the members of the Community may enter into one or more agreements to assist them in regulating Cable Operators. These agreements may include, but shall not be limited to, the following general areas:

1. Allocation of the total Franchise Fee collected from the Cable System between the various governmental subdivisions.
2. The Review and evaluation of (i) proposals to provide Cable Television Service, or (ii) requests for renewal of existing Franchises.
3. Evaluations of a Cable Operator's performance.
4. PEG Channel use.

Except as may be prohibited by law, a Cable Operator shall honor any agreements entered into pursuant to this section. (Ord. 4011, 2010)

11-5-45. Tampering and unauthorized reception of certain signals.

No person shall intercept or receive, or assist in intercepting or receiving, any communications service offered over a Cable System, unless specifically authorized to do so by a Cable Operator, or as may otherwise be specifically authorized by law.

1. For purposes of this section, the term "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor for the unauthorized reception of Cable Service.

2. Without securing permission from a Cable Operator, or making payment to a Cable Operator, then no person shall be authorized to make any connection with any part of a Cable System for the purpose of receiving or intercepting, or assisting others to receive or intercept any Cable Service provided lawfully by a Cable Operator.

3. No person shall be authorized to willfully tamper with, remove or damage any facilities used for the distribution of Cable Service.

4. Any violation of this section is a Class I violation. (Ord. 4011, 2010)

11-5-46. Severability.

The provisions of this Article will be deemed severable, and if any provision of this Article is held illegal, void, or invalid under applicable law, that provision may be changed to the extent reasonably necessary to make the provision legal, valid and binding. If any provision of this Article is held illegal, void or invalid in its entirety, the remaining provisions of this Article will not be affected. (Ord. 4011, 2010)