

Title 5

BUSINESS LICENSES AND REGULATIONS

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Chapters:

Chapter 5.04 PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

Sections:

5.04.010 Purpose.

The purpose of this chapter is to protect residents of the city against fraud, unfair competition and intrusion into the privacy of their homes by licensing and regulating peddlers, solicitors and transient merchants.

(Ord. 800 § 2 (part), 2002)

5.04.020 Definitions.

For use in this chapter the following terms are defined:

"Peddler" means any person carrying goods or merchandise who sells or offers for sale for immediate delivery such goods or merchandise from house-to-house or upon the public street.

"Solicitor" means any person who solicits or attempt to solicit from house-to-house or upon the public street in order for goods, subscriptions or merchandise to be delivered at a future date.

"Transient merchant" means any person, firm or corporation who engages in a temporary or itinerant merchandising business and in the course of such business hires, leases or occupies any building or structure whatsoever. Temporary association with a local merchant, dealer, trader or auctioneer, or conduct of such transient business in connection with, as a part of, or in the name of any local merchant, dealer, trader or auctioneer shall not exempt any person, firm or corporation from being considered a transient merchant.

(Ord. 800 § 2 (part), 2002)

5.04.030 License required.

Any person engaging in peddling, soliciting, or in the business of a transient merchant in the city without first obtaining a license as herein provided shall be in violation of this chapter.

(Ord. 800 § 2 (part), 2002)

5.04.040 License exemptions.

The following are excluded from the application of this chapter.

- (1) Newspapers. News boys and girls.
- (2) Club Members. Members of local Boy Scout, Girl Scout, Campfire Girls, 4-H Clubs, Future Farmers of America and similar organizations.
- (3) Farmers. Farmers who offer for sale products of their own raising.
- (4) Students. Student representing area schools conducting projects sponsored by organization recognized by the school.
- (5) Food Delivery. Food delivery persons who only incidentally solicit additional business or make special sales.
- (6) Resale or Institutional Use. Persons customarily calling on businesses or institutions for the purpose of selling products for resale or institutional use.

(Ord. 800 § 2 (part), 2002)

5.04.050 Religious and charitable organizations.

Authorized representatives of religious and charitable organizations desiring to solicit money or to distribute literature shall be exempt from the operations of Section 5.04.060 through 5.04.140. All such organizations shall be required to submit in writing to the police chief the name and purpose of the cause for which such activities are sought, names and addresses of the officers and directors of the organization, the period during which such

activities are to be carried on, and whether any commissions, fees, or wages are to be charged by the solicitor and the amount thereof. If the police chief shall find that the organization is a bona fide charity or religious organization the police chief shall issue, free of charge, a license containing the above information to the applicant.
(Ord. 800 § 2 (part), 2002)

5.04.060 Application for license.

An application in writing shall be filed with the police chief for a license under this chapter. Such application shall set forth the applicant's name, permanent and local address, business address if any, physical description, recent photograph, and right thumb print. The application shall also set forth the applicant's employer, if any, and the employer's address, the nature of the applicant's business, the last three places of such business and the length of time sought to be covered by the license. An application fee of ten dollars shall be paid at the time of filing such application to cover the cost of investigating the facts stated therein.

(Ord. 800 § 2 (part), 2002)

5.04.070 License fees.

The following license fees shall be paid to the police chief prior to the issuance of any license.

- (1) Solicitors. In addition to the application fee for each person actually soliciting (principal or agent), a fee for the principal of twenty-five dollars per year.
- (2) Peddlers or Transient Merchants.
 - A. For one week or less \$25.00
 - B. For one year or major part thereof 50.00

(Ord. 800 § 2 (part), 2002)

5.04.080 Bond required.

Before a license under this chapter shall be issued to a transient merchant, an application shall provide to the police chief evidence that the applicant has filed a bond with the Secretary of State in accordance with Chapter 9C of the code of Iowa.

(Ord. 800 § 2 (part), 2002)

5.04.090 License issued.

If the police chief finds the application is completed in conformance with the requirements of this chapter, the facts stated therein are found to be correct and the license fee paid, a license shall be issued immediately.

(Ord. 800 § 2 (part), 2002)

5.04.100 Display of license.

Each solicitor or peddler shall, at all times while doing business in the city, keep in such person's possession the license provided for in Section 5.04.090 and shall, upon the request of prospective customers, exhibit the license as evidence of compliance with all requirements of this chapter. Each transient merchant shall display publicly such merchant's license in the merchant's place of business.

(Ord. 800 § 2 (part), 2002)

5.04.110 License not transferable.

Licenses issued under the provisions of this chapter are not transferable in any situation and are to be applicable only to the person filing the application.

(Ord. 800 § 2 (part), 2002)

5.04.120 Time restriction.

All peddler's and solicitor's licenses shall provide that said licenses shall be in force and effect only between the hours of eight o'clock a.m. and ten o'clock p.m.

(Ord. 800 § 2 (part), 2002)

5.04.130 Revocation of license.

After notice and hearing, the city council may revoke any license issued under this chapter for the following reason:

- (1) Fraudulent Statements. The licensee has made fraudulent statements in the application for the license or in the conduct of the business.
- (2) Violation of Law. The licensee has violated this chapter or has otherwise conducted the business in an unlawful manner.
- (3) Endangered Public Welfare, Health or Safety. The licensee has conducted the business in such a manner as to endanger the public welfare, safety, order or morals.

(Ord. 800 § 2 (part), 2002)

5.04.140 Notice.

The clerk shall send a notice to the licensee at the licensee's local address, not less than ten days before the date set for the hearing on the possible revocation of a license. Such notice shall contain particulars of the complaint against the licensee, the ordinance provisions or State statutes allegedly violated, and the date, time and place for hearing on the matter.

(Ord. 800 § 2 (part), 2002)

5.04.150 Hearing.

The city council shall conduct a hearing at which both the licensee and any complainants shall be present to determine the truth of the facts alleged in the complaint and notice. Should the licensee, or authorized representative, fail to appear without good cause, the city council may proceed to a determination of the complaint.

(Ord. 800 § 2 (part), 2002)

5.04.160 Record and determination.

The city council shall make and record findings of fact and conclusions of law, and shall revoke a license only when upon review of the entire record the city council finds clear and convincing evidence of substantial violation of this chapter or state law.

(Ord. 800 § 2 (part), 2002)

5.04.170 Effect of revocation.

Revocation of any license shall bar the licensee from being eligible for any license under this chapter for a period of one year from the date of the revocation.

(Ord. 800 § 2 (part), 2002)

Chapter 5.08 TAXICABS AND LIMOUSINES

Sections:

5.08.010 Definitions.

For use in this chapter, the following terms are defined:

- (1) "Taxi" and "limousine" mean any motor vehicle that is used on the streets of the city for the purpose of carrying passengers for hire, and which follows no regular route or time schedule.
- (2) "Operator" means any person, firm, partnership, corporation or other association, whether or not said entity is the owner of a taxi, that will profit financially by the operation of a taxi, but not including hired to drive a taxi.

(Ord. 768 § 2 (part), 2000)

5.08.020 License required.

It is unlawful to operate a taxi or limousine without a valid license issued under this chapter. Taxis and limousines that are operated and licensed principally in other cities that use the streets of the city only on isolated occasions need not have a license under this chapter.

(Ord. 768 § 2 (part), 2000)

5.08.030 License application.

A taxi or limousine operator shall apply in writing to the council for a license for each taxi or limousine. The application shall be filed with the city clerk. The application shall include the name, residential and business address of the operator and the make, model, and license plate number of each taxi or limousine as well as the name, address, and a current photograph of each person who will serve as driver of a taxi or limousine. The application shall be accompanied by a twenty-five dollar annual per vehicle license fee for the operator and a ten dollar annual license fee for each driver.

(Ord. 768 § 2 (part), 2000)

5.08.040 License issuance.

For the council's hearing on the issuance of the license, the city manager shall inspect the taxi or limousine to be licensed for possible violations of the state motor vehicle laws of this chapter, and shall report these matters to the council.

(Ord. 768 § 2 (part), 2000)

5.08.050 Insurance.

Before the council shall issue a license, the applicant or operator shall file with the clerk a certificate of insurance in an amount not less than fifty thousand dollars coverage for personal injury to any one person, or one hundred thousand dollars coverage for personal injury in the aggregate for any one event, and twenty-five thousand dollars property damage to cover possible liabilities arising from the operation of each taxi. Said certificate of insurance shall provide that the city receive notice in the event of cancellation. Upon cancellation of operator's insurance the operator's license issued hereunder shall be immediately suspended and a hearing set as per Section 5.08.080 of this chapter.

(Ord. 768 § 2 (part), 2000)

5.08.060 Issuing a license.

The council shall review each application properly, and shall issue a license if it finds that issuance will be consistent with the safety, health, welfare, comfort and convenience of its residents. After issuance of a license, no license fee or portion thereof will be refundable. Each taxi that is in service must be licensed and registered with the city.

(Ord. 768 § 2 (part), 2000)

5.08.070 Licenses.

Taxi and limousine licenses shall be valid for one year from the date of issuance. An operator's license, when issued, shall be signed by the mayor and clerk, shall identify the vehicle's license, and shall state the date of issuance, the operator to whom issued, and the period of time for which the license is valid. A driver's license, when issued, shall be signed by the mayor and clerk, shall identify the driver of the vehicle, shall include a photograph of the driver, shall state the date of issuance and the period of time for which the license is valid. All licenses shall be displayed within the taxi in full view of the passengers at all times.

(Ord. 768 § 2 (part), 2000)

5.08.080 Revocation of license.

The council may revoke or suspend any license issued under this chapter for the following reasons:

- (1) Fraudulent Statements. If the operator has made fraudulent statements in the application for the license or in the conduct of business;
- (2) Violation of Law Ordinance. If the operator has substantially violated the requirements of this chapter or the state motor vehicle laws;
- (3) Operation as to Safety, Health or Welfare. If the operator has conducted business in a manner that substantially endangers the public safety, health or welfare;

(4) Cancellation of Operator's Liability Coverage.

The council shall conduct a hearing before revoking or suspending a license. The operator shall be given notice of the hearing at least five and not more than thirty days before the date of the hearing. The notice shall be in writing and shall be deemed delivered when sent to the operator's last known mailing address, registered mail, return receipt requested. The notice shall state the time and place of the hearing and the reasons for the intended revocation or suspension. Upon revocation an operator shall immediately surrender all licenses issued hereunder.

(Ord. 768 § 2 (part), 2000)

5.08.090 Supervision.

The city manager shall have the power at any time to investigate the conduct of any taxi or limousine business in the operation of the licensed limousines and taxis, and to inspect the licensed limousines and taxis for possible violations. Every driver of a licensed taxi or limousine shall possess a valid driver's license as required by the Iowa Department of Transportation for operation of such vehicles in a commercial manner.

(Ord. 768 § 2 (part), 2000)

5.08.100 Rates.

The operator shall display within the taxi a schedule of rates in full view of passengers. On request of a passenger, the driver shall advise any passengers in advance as to the rate to be charged for transporting that passenger between any two points within the city. The rates shall be recorded on file with the city clerk.

(Ord. 768 § 2 (part), 2000)

Chapter 5.12 SOLICITORS

Sections:

5.12.010 License tax.

There is hereby levied a license tax on each and every itinerant hawker, peddler and seller of goods at retail by sample or by taking orders or otherwise, including itinerant magazine or book agents or salesmen who are engaged in the occupation and business of selling or soliciting orders for the sale of goods, wares, merchandise, magazines, periodicals or books within the city limits, the tax being for the purpose of raising the revenue and being in lieu of customary taxes paid by business with fixed locations in the city.

Each hawker, peddler or seller of goods, wares and merchandise, including books, periodicals and magazines at retail by sample or by taking orders or otherwise shall, before selling, attempting to sell or soliciting any orders of any kind, obtain a license from the city manager and pay the occupation tax as is herein provided.

(Ord. 202 § 1, 1959)

5.12.020 Amount of tax.

All of the aforementioned sellers, agents, or peddlers shall pay as an occupation tax and license the sum of three dollars per day for each person, and in addition thereto, shall obtain a license and comply with the further requisites of this chapter.

(Ord. 202 § 2, 1959)

5.12.030 Application for license.

In order to obtain a license as is provided for in this chapter, applicant shall give his name, the name and address of his employer, the description of what he is selling or peddling and the method whereby he sells his products, whether the same are sold and delivered at the same time the order is taken, and if order is taken whether the articles sold are shipped into the city in interstate commerce or not.

(Ord. 202 § 3, 1959)

5.12.040 Solicitors in interstate commerce.

In the event that the hawker, peddler or seller of goods as is outlined herein conducts his operations in interstate commerce so as to make it impossible for the provisions of this occupation tax to apply to him, the party shall nevertheless be subject to the further provisions of this chapter relative to licensing and qualifying himself for the taking of orders for goods.

In the event that the information obtained at the time the license is issued discloses that the applicant is merely taking orders for the sale of articles within the purview of this chapter which are to be delivered in interstate commerce and thereby is not subject to an occupation tax, the city manager shall before issuing a license communicate with the employer of the applicant as disclosed by the application and ascertain whether or not the applicant is authorized to represent the employer and applicant shall further give a bond with an approved surety company, guaranteeing to any citizen of the city that all money paid as a down payment will be accounted for and applied according to representations of the salesman and further guaranteeing to any citizen of the city who did business with the agent that the property purchased will be delivered according to the representations of the salesman. The bond shall be in the principal sum of one thousand dollars and to be on a form to be provided by the city manager. At the time of obtaining the license, of issuing the license and of investigating the applicant, no license shall be granted by the city manager until investigation has been made and the bond placed as herein provided.

(Ord. 202 § 4, 1959)

5.12.050 Certain acts illegal.

It is illegal for any person to sell, solicit for sale, attempt to sell or take orders for the sale of any goods, wares, service, merchandise, periodicals, books, magazines and personal property of any kind for sale at retail by any person not having an established place of business within the city, without complying with the provision of this chapter.

(Ord. 202 § 5, 1959)

Chapter 5.16 BEER AND LIQUOR

Sections:

5.16.010 Purpose.

The purpose of this chapter is to provide administration of licenses and permits and for local regulations and procedures for the conduct of the sale and consumption of beer and liquor, for the protection of the safety, morals and general welfare of this community.

(Ord. 358 § 1, 1972)

5.16.020 Definitions.

Where words and phrases used in this chapter are defined by state law, such definitions shall apply to their use in this chapter and are adopted by reference. Those definitions so adopted that need further definition or are reiterated, and other words and phrases used herein, shall have the following meanings:

- (1) "Person of good moral character" means any person who meets all of the following requirements:
 - (a) He has such financial standing and good reputation as will satisfy the city council and the director that he will comply with the Iowa Beer and Liquor Control Act and all other laws, ordinances, and regulations applicable to his operations under state law.
 - (b) He does not possess a federal gambling stamp.
 - (c) He is not prohibited by the provisions of Section 5.16.220 from obtaining a liquor license or beer permit.
 - (d) He is a citizen of the United States and a resident of Iowa, or licensed to do business in Iowa in the case of a corporation.
 - (e) He has not been convicted of a felony. However, if his conviction of a felony occurred more than five years before the application for a license or permit, and if his rights of citizenship have been restored by the Governor, the director may determine that he is a person of good moral character notwithstanding such conviction.
 - (f) If such person is a corporation, partnership, association, club, or hotel or motel the requirements of this subsection shall apply to each of the officers, directors, and partners of such person, and to any person who directly or indirectly owns or controls ten percent or more of any class of stock of such person or has an interest of ten percent or more in the ownership or profits of such person. For the purpose of this provision, an individual and his spouse shall be regarded as one person.
- (2) "Club" means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part thereof, membership in which entails the prepayment of regular dues and is not operated for a profit other than such profits as would accrue to the entire membership.
- (3) "Commercial establishment" means a place of business which is at all times equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and the licensed premises of which conform to city ordinances.
- (4) "Grocery store" means any retail establishment, the principal business of which consists of the sale of food or food products for consumption off the premises. The volume of sales of all other items, commodities and materials shall be included with the volume of sales of beer, and sales of beer shall not equal or exceed fifty percent of the dollar volume of all sales made by the establishment to meet the test that food sales must be the principal business thereof.
- (5) "Pharmacy" means a drug store in which drugs and medicines are exposed for sale and sold at retail, or in which prescriptions of licensed physicians and surgeons, dentists or veterinarians are compounded and sold by a registered pharmacist.
- (6) "Hotel" or "motel" means a premises licensed by the State Department of Agriculture and regularly or seasonally kept open in a bona fide manner for the lodging of transient guests, and with twenty or more sleeping rooms.

(7) "Legal age" means twenty-one years of age or more.

(Ord. 358 § 2, 1972)

5.16.030 Liquor license or beer permit—Eligibility.

Upon meeting the requirements imposed by state law and city ordinances, a person who is of good moral character as defined by state law and this chapter, may apply for a liquor control license or a beer permit. In the case of a club, corporation, or partnership, the officers of the club or corporation and the partners of a partnership shall be persons of good moral character as defined by state law and this chapter.

(Ord. 358 § 3, 1972)

5.16.040 Liquor license or beer permit—Premises requirements.

An applicant for a liquor license or beer permit, as a further condition for approval by the city council, must give consent in writing on the application, that members of the fire, police, and health departments and the building inspector may enter upon the premises without warrant to inspect for violations of the provisions of state law and of this chapter.

- (1) No liquor control license or beer permit shall be approved for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations.
- (2) No licensee shall have or maintain any interior access to residential or sleeping quarters unless permission is granted by the state beer and liquor control director in the form of a living quarters permit.
- (3) The premises for which a class "B" beer permit is sought must be located within a business district or an area now or hereafter zoned as a business district and conform to the zoning requirements of this city.
- (4) The premises of a class "B" beer permit shall, at the time of the application, continue to be equipped with sufficient tables and seats to accommodate twenty-five persons at one time.
- (5) No state liquor store shall be located within three hundred feet of a public or private educational institution unless a lesser distance is specifically authorized by ordinance.

(Ord. 358 § 4, 1972)

5.16.050 Beer permits—Classes.

Beer permits shall be classed as follows:

- (1) Class "B": A class "B" beer permit shall allow the holder to sell beer at retail for consumption on or off the premises.
- (2) Class "C": A class "C" beer permit shall allow the holder to sell beer at retail for consumption off the premises only. Such sales shall be in original containers only. No class "C" permit shall be issued to any person except the owner or proprietor of a grocery store or pharmacy.

(Ord. 358 § 5, 1972)

5.16.060 Liquor licenses—Classes.

Liquor control licenses shall be classed as follows:

- (1) Class "A": A class "A" liquor control license issued to a club shall authorize the holder to purchase alcoholic liquors from the department only, and to sell such liquors, and beer, to bona fide members and their guests by the individual drink for consumption on the premises only.
- (2) Class "B": A class "B" liquor control license issued to a hotel or motel shall authorize the holder to purchase alcoholic liquors from the department only, and to sell such liquors, and beer, to patrons by the individual drink for consumption on the premises only, however, beer may also be sold for consumption off the premises. Each such license shall be effective throughout the premises described in the application.
- (3) Class "C": A class "C" liquor control license issued to a commercial establishment must be issued in the name of the individual or individuals who actually own the entire business and shall authorize the holder or holders to purchase alcoholic liquors from the department only, and to sell such liquors, and beer to patrons by the individual drink for consumption on the premises only, however, beer may also be sold for consumption off the premises.

(Ord. 358 § 6, 1972)

5.16.070 Beer permits—Prohibited interest.

It is unlawful for any person or persons to be either directly or indirectly interested in more than one class of beer permit.

(Ord. 358 § 7, 1972)

5.16.080 Beer permits—Separate locations.

Every person holding a class "B" or class "C" permit having more than one place of business where such beer is sold shall be required to have a separate license for each separate place of business, except as otherwise prohibited by state law.

(Ord. 358 § 8, 1972)

5.16.090 Liquor license or beer permit—Application—Bond.

A verified application for the original issuance or the renewal of a liquor control license or a beer permit shall be filed at such time, in such number of copies, and in such form as the State Director of Beer and Liquor Control shall prescribe, on forms prescribed by him. The application shall be accompanied by the required fee and bond and be filed with the city council for approval or disapproval. The bond to be submitted shall be in a form prescribed by the state director and in the following amounts:

- (1) With any liquor control license: five thousand dollars, and conditioned upon the payment of all taxes payable to the state under the provisions of the Iowa Beer and Liquor Control Act and compliance with all provisions of the Act.
- (2) With any beer permit: five hundred dollars, and conditioned upon the faithful observance of the Iowa Beer and Liquor Control Act.

(Ord. 358 § 9, 1972)

5.16.100 Liquor license or beer permit—Applicant investigation.

Upon receipt of an original application for a liquor license or beer permit by the city clerk, it shall be forwarded to the chief of police, who shall conduct an investigation and shall submit a written report on the applicant as to the truth of the facts averred in the application and a recommendation to the city council as to the approval of the license or permit. It shall be the duty of the health inspector, the building inspector, and the fire chief to inspect the premises to determine if they conform to the requirements of the city, and no license or permit shall be approved until or unless an approving report has been filed with the city council by such officers.

(Ord. 358 § 10, 1972)

5.16.110 Liquor license or beer permit—Renewal.

Upon receipt of an application for the renewal of a liquor license or beer permit, it shall be forwarded to the chief of police only, who shall conduct an investigation and shall submit a written report on the applicant as to the truth of the facts answered in the application and a recommendation to the city council as to the approval of the license or permit.

(Ord. 358 § 11, 1972)

5.16.120 Insurance and bond requirements.

Every liquor control licensee and class "B" beer permittee shall furnish proof of financial responsibility either by the existence of a liability insurance policy or by posting bond in such amount as determined by the department.

(Ord. 358 § 12, 1972)

5.16.130 Liquor license or beer permit—Fees—Designated.

The following fees shall be submitted with the respective application:

- (1) For a class "B" beer permit the annual fee shall be two hundred dollars;
- (2) For a class "C" beer permit the annual fee shall be graduated on the basis of the amount of interior floor space which comprises the retail sales area of the premises covered by the permit, as follows:
 - (A) Up to one thousand five hundred square feet: seventy-five dollars,
 - (B) Over one thousand five hundred square feet and up to two thousand square feet: one hundred dollars,
 - (C) Over two thousand and up to five thousand square feet: two hundred dollars,
 - (D) Over five thousand square feet: three hundred dollars;
- (3) For a class "A" liquor license the annual fee shall be:
 - (A) Six hundred dollars,
 - (B) Club, less than 250 members: four hundred dollars,
 - (C) Club which is a post, branch, or chapter of a veterans' organization chartered by the Congress of the United States, if such club does not sell or permit the consumption of alcoholic beverages on the premises more than one day in any week, and if the application for a license states that such

club does not and will not sell or permit the consumption of alcoholic beverages on the premises more than one day in any week: two hundred dollars;

- (4) For a class "B" liquor control license the annual fee shall be: one thousand fifty dollars;
- (5) For a class "C" liquor license the annual fee shall be: nine hundred fifty dollars.

(Ord. 358 § 13, 1972)

5.16.140 Liquor license or beer permit—Restrictions.

A liquor control license or beer permit shall be a purely personal privilege and be revocable for cause. It shall not constitute property nor be subject to attachment and execution nor be alienable nor assignable, and in any case it shall cease upon the death of the permittee or licensee. However, the director may in his discretion allow the executor or administrator of a permittee or licensee to operate the business of the decedent for a reasonable time not to exceed the expiration date of the permit or license. Every permit or license shall be issued in the name of the applicant and no person holding a permit or license shall allow any other person to use same.

(Ord. 358 § 14, 1972)

5.16.150 Action by council.

Action taken by the city council shall be so endorsed on the application and thereafter the application, fee and bond shall be forwarded to the Iowa Beer and Liquor Control Department for such further action as is provided by law.

(Ord. 358 § 15, 1972)

5.16.160 Liquor license or beer permit—Expiration.

All liquor control licenses and beer permits, unless sooner suspended or revoked, shall expire one year from date of issuance. Six or eight month seasonal licenses or beer permits may be issued for a proportionate part of the license or permit fee. No seasonal license or permit shall be renewed except after a period of two months. Seasonal licensing shall be only as permitted by state regulation.

(Ord. 358 § 16, 1972)

5.16.170 Liquor license or beer permit—Fees—Refund.

Any such licensee or permittee, or his executor, administrator, or any person duly appointed by the court to take charge of and administer the property or assets of the licensee or permittee for the benefit of his creditors, may voluntarily surrender such license or permit to the department and when so surrendered the department shall notify the city, and the department and the city, or the city by itself in the case of a retail beer permit, shall refund to the person so surrendering the license or permit a proportionate amount of the fee paid for such license or permit as follows: If surrendered during the first three months of the period for which the license or permit was issued the refund shall be three-fourths of the amount of the fee; if surrendered more than three months but not more than six months after issuance the refund shall be one-half of the amount of the fee; if surrendered more than six months but not more than nine months after issuance the refund shall be one-fourth of the amount of the fee. No refund shall be made, however, for a liquor control license or beer permit surrendered more than nine months after issuance. No refund shall be made to any licensee or permittee, upon the surrender of his license or permit, if there is at the time of the surrender a complaint filed with the department or the city, charging him with a violation of this chapter or provisions of the Iowa Beer and Liquor Control Act. If upon hearing on any such

complaint the license or permit is not revoked or suspended, then the licensee or permittee shall be eligible, upon surrender of his license or permit, to receive a refund as herein provided. But if his license or permit is revoked or suspended upon such hearing he shall not be eligible for the refund of any portion of his license or permit fee. No refund shall be made for seasonal licenses or permits.

(Ord. 358 § 17, 1972)

5.16.180 Liquor license or beer permit—Transfers.

The council will, in its discretion, authorize a licensee or permittee to transfer the license or permit from one location to another within the city, provided that the premises to which the transfer is to be made would have been eligible for a license or permit in the first instance and such transfer will not result in the violation of any law or ordinance.

(Ord. 358 § 18, 1972)

5.16.190 Prohibited sales, acts.

No person or club holding a liquor license or beer permit nor his agents or employees shall do any of the following:

- (1) Sell, dispense, or give to any intoxicated person, or one simulating intoxication, any alcoholic liquor or beer;
- (2) Sell or dispense any alcoholic liquor or beer on the premises covered by the license or permit, or permit the consumption thereon between two a.m. and six a.m. on any weekday, and between two a.m. and twelve noon on Sunday and between ten p.m. on Sunday and six a.m. on the following Monday;
- (3) Sell alcoholic liquor or beer to any person on credit, except with a bona fide credit card. This provision shall not apply to sales by a club to its members nor to sales by a hotel or motel to bona fide registered guests;
- (4) Employ any person under the age of eighteen years old in the sale or serving of alcoholic liquor or beer for consumption on the premises where sold. Persons between the ages of eighteen and twenty-one shall be allowed to serve or clear alcoholic liquor or beer as an incident to a meal if the business of selling food or other services constitutes more than fifty percent of the gross business of the licensee or permittee;
- (5) Sell, give, or otherwise supply any alcoholic beverage or beer to any person knowing or having reasonable cause to believe him to be under legal age, or permit any person knowing or having reasonable cause to believe him to be under legal age, to consume any alcoholic beverage or beer;
- (6) In the case of a retail beer permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer or any other beverage in or about his place of business;
- (7) Keep, or allow to be kept, gambling devices of any kind or description on the premises or place of business of the license or permit holder.

(Ord. 377 § 1, 1973; Ord. 358 § 19, 1972)

5.16.200 Where beer brand signs prohibited.

No signs or other matter advertising any brand of beer shall be erected or placed upon the outside of any premises occupied by a licensee or permittee authorized to sell beer at retail. All such signs formerly erected shall be removed by the owner of same by July 1, 1974.

(Ord. 358 § 20, 1972)

5.16.210 Liquor license or beer permit—Suspension and revocation.

A liquor license or beer permit may be suspended for a period up to one year, or revoked, for violations of law including city ordinances, following notice and hearing, and shall be revoked in accordance with the provisions of state law for any of the following causes:

- (1) Misrepresentation of any material fact in the application for such license or permit;
- (2) Violation of any of the provisions of the Iowa Beer and Liquor Control Act;
- (3) Any change in the ownership or interest in the business operated under a class "A," class "B," or class "C" liquor control license, or any beer permit which change was not previously reported to and approved by the city and the department;
- (4) An event which would have resulted in disqualification from receiving such license or permit when originally issued;
- (5) Any sale, hypothecation, or transfer of such license or permit;
- (6) The failure or refusal on the part of any licensee or permittee to render any report or remit any taxes to the department under the state act.

(Ord 358 § 21, 1972)

5.16.220 Liquor license or beer permit—Effect of revocation.

Any liquor control licensee or beer permittee whose license or permit is revoked under the Iowa Beer and Liquor Control Act shall not thereafter be permitted to hold a liquor control license or beer permit in the state of Iowa for a period of two years from the date of such revocation. The spouse and business associates holding ten percent or more of the capital stock or ownership interest in the business of a person whose license or permit has been revoked shall not be issued a liquor control license or beer permit, and no liquor control license or beer permit shall be issued which covers any business in which such person has a financial interest for a period of two years from the date of such revocation. In the event a license or permit is revoked the premises which had been covered by such license or permit shall not be relicensed for one year.

(Ord. 358 § 22, 1972)

5.16.230 Liquor license or beer permit—Appeal and hearing.

The right of appeal to the hearing board shall be afforded a liquor control licensee or beer permittee whose license or permit has been suspended or revoked. Any applicant who feels aggrieved by a decision of the director or city disapproving, suspending, or revoking issuance of a liquor control license or beer permit may, provided he has exercised his right of appeal to the hearing board as provided by state law, appeal from the decision within ten days of the district court of the county wherein the premises covered by the application are situated. The city may appeal a decision of the hearing board within ten days to the district court of the county wherein the premises covered by the application are situated.

(Ord. 358 § 23, 1972)

5.16.240 Consumption in public places—Intoxication.

It is unlawful for any person to use or consume alcoholic liquors or beer in any public place, including public streets, highways, buildings, parks, and real estate, except premises covered by a valid liquor control license, and no person shall be intoxicated nor simulate intoxication in such a public place. Any person violating any provisions of this section shall be fined not to exceed one hundred dollars or sentenced not to exceed thirty days' imprisonment.

(Ord. 463 § 2, 1978)

5.16.250 Sale or gift to persons under legal age.

No person shall sell, give, or otherwise supply alcoholic liquor or beer to any person knowing or having reasonable cause to believe him to be under legal age, and no person or persons under legal age shall individually or jointly have alcoholic liquor or beer in his or their possession or control; except in the case of liquor or beer given or dispensed to a person under legal age within a private home and with the knowledge and consent of the parent or guardian for beverage or medicinal purposes or as administered to him by either a physician or dentist for medicinal purposes and except to the extent that a person under legal age may handle alcoholic beverages and beer during the regular course of his or her employment by a liquor control licensee or beer permittee under state law.

(Ord. 358 § 25, 1972)

5.16.260 Violation—Penalty.

- (1) The conviction of any liquor control licensee or beer permittee for a violation of any of the provisions of Section 5.16.190(1—6) inclusive, shall, subject to subsection (2) of this section, be grounds for the suspension or revocation of the license or permit by the department or the city. However, if any liquor control licensee is convicted of any violation of subsection (2), paragraphs "a," "d," or "e," of Section 49, or any beer permittee is convicted of a violation of subsection (2), paragraph "a" of Section 49 of the Iowa Beer and Liquor Control Act, the liquor control license or beer permit shall be revoked and shall immediately be surrendered by the holder, and the bond of the license or permit holder shall be forfeited to the department of beer and liquor control.
- (2) If any licensee, beer permittee, or employee of such licensee or permittee shall be convicted of a violation of Section 5.16.190(5), or a retail beer permittee shall be convicted of a violation of Section 5.16.190(6), the city shall, in addition to the other penalties fixed for such violations by this section, assess a penalty as follows:
 - (a) Upon a first conviction, the violator's liquor control license or beer permit shall be suspended for a period of fourteen days.
 - (b) Upon a second conviction within a period of two years, the violator's liquor control license or beer permit shall be suspended for a period of thirty days.
 - (c) Upon a third conviction within a period of five years, the violator's liquor control license or beer permit shall be suspended for a period of sixty days.
 - (d) Upon a fourth conviction within a period of five years, the violator's liquor control license or beer permit shall be revoked.

(Ord. 736 § 2(part), 1998; Ord. 358 § 26, 1972)

Chapter 5.20 CATV*

Sections:

Article I. Definitions

5.20.010 Definitions.

The following words and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meanings ascribed to them in this section:

- (1) "Cable television system" means any facility that, in whole or in part, receives, directly or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals, by wire or cable, to subscribing members of the public who pay for such services.
- (2) "Channel" means the segment of the electromagnetic spectrum to which a source of television transmission is assigned.
- (3) "City" means the city of Chariton, Iowa. When the context so requires, "city" means and includes the city, its officers, agents, employees, servants and independent contractors.
- (4) "FCC" means the Federal Communications Commission.
- (5) "Franchise" means the rights, privileges and authority granted by the city to the grantee hereunder and shall include all of the terms and conditions of this chapter.
- (6) "Grantee" means Heritage Cablevision, Inc., a corporation organized and existing under the laws of the state, its successors and assigns. When the context so requires, "grantee" means and includes the grantee, its officers, agents, employees, servants and independent contractors.
- (7) "Person" means any individual, or any corporation, business or mixed, owned by a private person, including property owned by a public utility not owned or operated by the city.
- (8) "Property of the grantee" means all property, real, personal or mixed, owned or used by the grantee however arising from or related to or connected with the franchise.
- (9) "Public property" means all property, real, personal or mixed, owned or used by the city, including property owned or used by a public utility owned or operated by the city.

(Ord. 597 § 1, 1988)

5.20.020 Use of property.

The grantee may use public property within the city and, with the written consent of the owner thereof, private property within the city, in furtherance of such activities within the city as may now or hereinafter be consistent with generally accepted principles applicable to the operation of a cable television system subject, however, to the following restrictions:

- (1) The grantee shall comply with all governmental laws, ordinances, rules or regulations as may now or hereafter be applicable thereto.

- (2) The grantee shall not use or occupy or permit public property or private property to be used or occupied or do or permit anything to be done on or about public property or private property which will, in any manner:
 - (A) Impair the owner's interest in or title thereto;
 - (B) Impair the mortgage or lease as may now or hereinafter be applicable thereto;
 - (C) Adversely affect the then value or character thereof;
 - (D) Cause or be likely to cause structural damage thereto, or any part thereof;
 - (E) Cause or be likely to cause any damage or injury to any utility service available thereto;
 - (F) Create a public or private nuisance, cause any offensive or obnoxious vibration, noise, odor or undesirable effect or interfere with the safety, comfort or convenience of the owner thereof, and persons lawfully on or about the same;
 - (G) Violate the rules, regulations and requirements of any person furnishing utilities or services thereto; or
- (H) Make void or voidable any insurance then in force affecting the same or cause an increase in the rates applicable thereto.

(Ord. 597 § 2, 1988)

5.20.030 Taxes.

The grantee shall pay all real estate taxes, special assessments, personal property taxes, license fees, permit fees and other charges of a like nature which may be taxed, charged, assessed, levied or imposed upon the property of the grantee and upon any services rendered by the grantee.

(Ord. 597 § 3, 1988)

5.20.040 Insurance.

The grantee shall, at all times during the term of the franchise, carry and require their contractors to carry:

- (1) Insurance in such forms and in such companies as shall be approved by the city to protect the city and grantee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation and maintenance of any structure, equipment or appliance in connection with the cable television system. The amount of such insurance shall be not less than one hundred thousand dollars as to any one person, three hundred thousand dollars as to any one occurrence for injury or death to persons, and one hundred thousand dollars for damages to property, with, as to grantee, so-called umbrella coverage of at least five million dollars. The city shall be shown as an additional insured.
- (2) Workmen's Compensation Insurance as provided by the laws of the state as amended.
- (3) Automobile insurance with limits of not less than one hundred thousand/three hundred thousand dollars of public liability coverage and automobile property damage insurance with a limit of not less than one hundred thousand dollars covering all automotive equipment, with, as to grantee, so-called umbrella coverage of at least five million dollars.

- (4) All of said insurance coverage shall provide a thirty-day notice to the city in the event of material alteration or cancellation of any coverage afforded in said policies prior to the commencement of operations or the expiration of prior policies, as the case may be.
- (5) A certificate of insurance for all policies required hereunder shall be furnished and filed with the city prior to the commencement of operations or the expiration of prior policies, as the case may be.
- (6) The grantee shall pay all reasonable expenses incurred by the city in defending itself with regard to all damages, penalties or other claims resulting from the acts of the grantee.

(Ord. 597 § 4, 1988)

5.20.050 Repairs.

- (a) During the term of the franchise, the grantee shall, at its own expense, make all necessary repairs and replacement to the property of the grantee.
- (b) Such repairs and replacements, interior and exterior, ordinary as well as extraordinary, and structural as well as nonstructural, shall be made promptly, as and when needed.

(Ord. 597 § 5, 1988)

5.20.060 Hold harmless.

During the term of the franchise, the grantee assumes and agrees to pay the city for, and the grantee indemnifies the city against, and agrees to hold and save the city harmless from, any and all damage, injury, costs, expenses, liability, claims, settlements, judgments, decrees and awards of every kind and nature whatsoever, including attorney's fees, costs and disbursements, that may ever be claimed against the city by any person whatsoever, or on account of any actual or alleged loss, damage or injury to any person or property whatsoever, arising from or related to or connected with, directly or indirectly, the performance or nonperformance by grantee of its duties and obligations under the franchise.

(Ord. 597 § 6, 1988)

5.20.070 Assignment.

- (a) The grantee may assign or transfer any right granted under this chapter to any other person, company, or corporation with the prior consent of the city council, except that consent shall not be necessary when grantee assigns or transfers its rights to any affiliate, subsidiary or parent company of grantee.
- (b) Consent for assignment or transfer shall not be unreasonably withheld by the city council.

(Ord. 597 § 7, 1988)

5.20.080 Insolvency of grantee.

In the event that the grantee shall become insolvent, or be declared a bankrupt, or the property of the grantee shall come into the possession of any receiver, assignee or other officer acting under an order of court, and any such receiver, assignee or other such officer shall not be discharged within sixty days after taking possession of such property, the city may, at its option, terminate the franchise by giving written notice thereof to the grantee.

(Ord. 597 § 8, 1988)

5.20.090 Default of grantee.

- (a) In the event the grantee shall fail to comply with any of the terms and conditions of the franchise within thirty days after receipt of notice in writing from the city specifying the failure or default, the city may, at its option, terminate the franchise by giving written notice thereof to the grantee. This section shall not apply to failures or defaults beyond the reasonable control of the grantee.
- (b) If grantee is diligently working to cure a default, but, that cure shall take more than thirty days to cure, the city may not terminate the franchise until the appropriate cure period has ended.

(Ord. 597 § 9, 1988)

Article II. Construction, Installation and Maintenance

5.20.100 Compliance with applicable laws.

During the term of the franchise, the grantee shall comply with all governmental laws, ordinances, rules or regulations as may now be hereinafter applicable to the construction, operation, maintenance, repair, replacement, renewal, reconstruction and removal of a cable television system, the sale and supply of audio and video communications services, the use of public property and private property and the engagement in such further activities as may now or hereinafter be consistent with generally accepted principles applicable to the operation of a cable television system.

(Ord. 597 § 10, 1988)

5.20.110 Installation and maintenance of property of the grantee.

During the term of the franchise, the property of the grantee shall be constructed, operated, maintained, repaired, replaced, renewed, reconstructed and removed in accordance with generally accepted engineering principles so as not to endanger or interfere with the lives of persons or to interfere with improvements which the city may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic or use of public property or private property.

(Ord. 597 § 11, 1988)

5.20.120 Interference.

The grantee's cable television system shall be so designed, engineered and maintained so as not to interfere with the radio and television reception of persons who are not subscribers of the grantee.

(Ord. 597 § 12, 1988)

5.20.130 Installation of cables.

The grantee shall have the right, privilege and authority to lease, rent or in any other manner obtain the use of wooden poles with overhead lines, conduits, trenches, ducts, lines, cables and other equipment and facilities from any and all holders of public licenses and franchises within the city, and to use such poles, conduits, trenches, ducts, lines and cables in the course of its business. The grantee shall install its cable on the existing poles owned by other holders of public licenses and franchises with the city whenever possible for the installation of its cable. When installation of cable on poles is insufficient, or when holders of other public licenses or franchises have both installed underground cable, then in that event, the cable used by the grantee shall be installed underground.

(Ord. 597 § 13, 1988)

5.20.140 Restoration of ground surface.

In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the city, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good a condition as before said work was commenced.

(Ord. 597 § 14, 1988)

5.20.150 Alteration of grade.

In the event that, during the term of the franchise, the city shall elect to alter or change the grade of any street, alley or public way, the grantee, upon reasonable notice by the city, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(Ord. 597 § 15, 1988)

5.20.160 Temporary removal of cables.

The grantee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its cables to permit the moving of buildings. The expense of such temporary removal, raising or lowering of cables shall be paid by the person requesting the same and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than five days advance notice to arrange for such temporary cable changes.

(Ord. 597 § 16, 1988)

5.20.170 Tree trimming.

The grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the city so as to prevent the branches of such trees from coming in contact with the cables of the grantee. All trimming shall be done at the expense of the grantee.

(Ord. 597 § 17, 1988)

5.20.180 Line extensions.

- (a) It shall be the obligation of company to serve all residents of the city except to the extent that density of homes, adverse terrain or other factors render providing service impracticable, technically unfeasible or economically noncompensatory. For purposes of determining compliance with the provisions of this section, and to provide for a reasonable and nondiscriminatory policy governing extensions of cable service within the city, company shall extend service to new subscribers, at the normal installation charge and monthly rate for customers of that classification where there are an average of fifty homes per each linear mile of new cable construction.
- (b) In the event the requirements of subsection (a) of this section are not met, extensions of service shall be required only on a basis which is reasonable and compensatory.

(Ord. 597 § 18, 1988)

Article III. Service

5.20.190 Service requirements.

- (a) During the term of the franchise, the grantee shall furnish reasonable, adequate and efficient cable television service to subscriber terminals.
- (b) The foregoing requirement may be temporarily suspended due to circumstances beyond the reasonable control of the grantee.

(Ord. 597 § 19, 1988)

5.20.200 Performance standards.

The grantee shall produce a picture in black and white or in color that is of high quality accompanied by proper sound on typical standard television sets in good repair. The grantee shall also transmit signals of adequate strength to produce good pictures with good sound at all subscriber terminals throughout the city without causing cross modulation in the cables or interfering with other electrical or electronic systems.

(Ord. 597 § 20, 1988)

5.20.210 Channel capacity and performance.

During the term of the franchise, the cable television system of the grantee shall conform to the channel capacity and performance requirements contained in the then-current regulations of the FCC.

(Ord. 597 § 21, 1988)

5.20.220 Installation and maintenance of subscriber terminals in city buildings and schools.

During the franchise, the grantee shall, at its sole cost, install and maintain a subscriber terminal in such buildings owned or used by the city, and in such buildings owned or used by recognized educational authorities within the city, both public and private, as may be designated by the governing body having jurisdiction thereof. Such subscriber terminals shall be placed in such location within such buildings as may be designated by the governing body having jurisdiction thereof. This provision is meant to apply only to those buildings readily accessible to grantee's system.

(Ord. 597 § 22, 1988)

5.20.230 Channel capacity committed to city.

- (a) The city of Chariton shall have the right, at its own expense, to use one channel of Grantee's basic channel capacity for governmental, educational, local or public access programming. Grantee's current lease of one channel to the Chariton newspaper shall be deemed to meet this local access requirement at this time.
- (b) Grantee further commits to the city for its use one megahertz or band width, which shall be used at the city's discretion except that it shall not be used to provide any service which might be deemed to compete with grantee's cablevision service. It shall be the obligation of the city to provide the necessary technical equipment and funds to operate its services on the grantee's committed band width.

(Ord. 597 § 23, 1988)

5.20.240 Telecast of educational activities.

The grantee shall not cablecast, tape, reproduce or otherwise convey to its subscribers the activities of any recognized educational authority, public or private, without the written consent of the governing body of such authority.

(Ord. 597 § 24, 1988)

5.20.250 Program alteration.

Any signal received by the grantee from a television broadcast station shall be cablecast by the grantee in its entirety, as received, without alteration.

(Ord. 597 § 25, 1988)

Article IV. Subscriber Rates and Service Agreements

5.20.260 Subscriber rates and charges.

Grantee shall have the right, privilege and authority to charge reasonable rates and charges to its subscribers for its services.

(Ord. 597 § 26, 1988)

5.20.270 Service rules and regulations.

- (a) The grantee shall have the right to prescribe reasonable service rules and regulations and operating rules for the conduct of its business.
- (b) Such rules and regulations shall be consistent with the terms and conditions of the franchise.

(Ord. 597 § 27, 1988)

5.20.280 Service agreements.

- (a) The grantee shall have the right to prescribe a reasonable form of service agreement for use between the grantee and its subscribers.
- (b) Such service agreement shall be consistent with the terms and conditions of the franchise.

(Ord. 597 § 28, 1988)

Article V. Crimes and Penalties

5.20.290 Injury to property of the grantee.

No person shall wrongfully or unlawfully injure the property of the grantee.

(Ord. 597 § 29, 1988)

5.20.300 Intercepting signals of the grantee.

No person shall wrongfully or unlawfully intercept the signals of the grantee.

(Ord. 597 § 30, 1988)

5.20.310 Violation—Penalty.

Any person violating any of the provisions of Section 5.20.290 or 5.20.300 of this chapter shall, upon conviction, be subject to a fine of not to exceed one hundred dollars or imprisonment not exceeding thirty days.

(Ord. 597 § 31, 1988)

Article VI. Franchise Fee

5.20.320 Franchise fee.

- (a) The grantee shall pay to the city four percent of its annual basic cable television service revenue for service rendered to customers located within the city.
- (b) For purposes of this section, "basic service" is defined as the entry level purchase necessary to become a cable television subscriber.
- (c) All payments as required by the grantee to the city shall be made annually and shall be due forty-five days after the close of the calendar year. The city shall notify the grantee if franchise fee payments are late. If payment is not made within thirty days after this written notice is mailed, interest shall begin accruing at a rate of three-quarters of one percent per month.

(Ord. 597 § 32, 1988)

Article VII. Miscellaneous

5.20.330 Access.

The grantee shall and does hereby grant to the city the right to enter upon the property of the grantee, upon reasonable notice, at any and all reasonable times to inspect the same for purposes pertaining to the rights of the city.

(Ord. 597 § 33, 1988)

5.20.340 Discrimination prohibited.

The grantee shall not grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage with respect to rates, charges, services, service facilities, rules, regulations or in any other respect.

(Ord. 597 § 34, 1988)

5.20.350 Arbitration.

- (a) Any controversy between the city and the grantee regarding the rights, duties or liabilities of either party under the franchise shall be settled by arbitration.
- (b) This section shall not apply to termination proceedings under Section 5.20.100.

- (c) Such arbitration shall be before three disinterested arbitrators, one named by the city, one named by the grantee and one named by the two thus chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the state.

(Ord. 597 § 35, 1988)

5.20.360 Reservations.

The right is reserved to the city council or its successor or equivalent to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power.

(Ord. 597 § 38, 1988)

Chapter 5.24 CABLE TELEVISION RATES

Sections:

5.24.010 Definitions.

In this chapter:

"Basic cable rates" means the monthly charges for a subscription to the basic service tier and the associated equipment.

"Basic service tier" means a separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all must-carry signals, all PEG channels, and all domestic television signals other than superstations.

"Benchmark" means a per channel rate of charge for cable service and associated equipment which the FCC has determined is reasonable.

"Cable Act of 1992" means the Cable Television Consumer Protection and Competition Act of 1992.

"Cable operator" means any person or group of persons:

- (1) Who provide cable service over a cable system and directly or through one or more affiliates owns a significant interest in such a cable system; or
- (2) Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

"Channel" means a unit of cable service identified and selected by a channel number or similar designation.

"Cost of service showing" means a filing in which the cable operator attempts to show that the benchmark rate or the price cap is not sufficient to allow the cable operator to fully recover the costs of providing the basic service tier and to continue to attract capital.

"FCC" means the Federal Communications Commission.

"Initial basic cable rates" means the rates that the cable operator is charging for the basic service tier, including charges for associated equipment, at the time the city notifies the cable operator of the city's qualification and intent to regulate basic cable rates.

"Must-carry signal" means the signal of any local broadcast station (except superstations) which is required to be carried on the basic service tier.

"PEG channel" means the channel capacity designated for public, educational, or governmental use, and facilities and equipment for the use of that channel capacity.

"Price cap" means the ceiling set by the FCC on future increases in basic cable rates regulated by the city, based on a formula using the GNP fixed weight price index, reflecting general increases in the cost of doing business and changes in overall inflation.

"Reasonable rate standard" means a per channel rate that is at, or below, the benchmark or price cap level.

"Superstation" means any nonlocal broadcast signal secondarily transmitted by satellite.

(Ord. 673 § 1, 1993)

5.24.020 Initial review of basic cable rates.

- (a) Notice. Upon the adoption of the ordinance codified in this chapter and the certification of the city by the FCC, the city shall immediately notify all cable operators in the city, by certified mail, return receipt requested, that the city intends to regulate subscriber rates charged for the basic service tier and associated equipment as authorized by the Cable Act of 1992.
- (b) Cable Operator Response. Within thirty days of receiving notice from the city a cable operator shall file with the city its current rates for the basic service tier and associated equipment and any supporting material concerning the reasonableness of its rates.
- (c) Expedited Determination and Public Hearing.
 - (1) If the city council is able to expeditiously determine that the cable operator's rates for the basic service tier and associated equipment are within the FCC's reasonable rate standard, as determined by the applicable benchmark, the city council shall:
 - (A) Hold a public hearing at which interested persons may express their views; and
 - (B) Act to approve the rates within thirty days from the date the cable operator filed its basic cable rates with the city.
 - (2) If the city council takes no action within thirty days from the date the cable operator filed its basic cable rates with the city, the proposed rates will continue in effect.
- (d) Extended Review Period.
 - (1) If the city council is unable to determine whether the rates in issue are within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the city council shall, within thirty days from the date the cable operator filed its basic cable rates with the city and by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:
 - (A) Ninety days if the city council needs more time to ensure that a rate is within the FCC's reasonable rate standard; or
 - (B) One hundred fifty days if the cable operator has submitted a cost-of-service showing seeking to justify a rate above the applicable benchmark.
 - (2) If the city council has not made a decision within the ninety or one hundred fifty-day period, the city council shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate and on whose behalf the amounts are paid.

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- (e) Public Hearing. During the extended review period and before taking action on the proposed rate, the city council shall hold at least one public hearing at which interested persons may express their views and record objections.
- (f) Objections. An interested person who wishes to make an objection to the proposed initial basic rate may request the city secretary to record the objection during the public hearing or may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the city secretary with the objector's name and address.
- (g) Benchmark Analysis. If a cable operator submits its current basic cable rate schedule as being in compliance with the FCC's reasonable rate standard, the city council shall review the rates using the benchmark analysis in accordance with the standard form authorized by the FCC. Based on the city council's findings, the initial basic cable rates shall be established as follows:
 - (1) If the current basic cable rates are below the benchmark, those rates shall become the initial basic cable rates and the cable operator's rates will be capped at that level.
 - (2) If the current basic cable rates exceed the benchmark, the rates shall be the greater of the cable operator's per channel rate on September 30, 1992, reduced by ten percent, or the applicable benchmark, adjusted for inflation and any change in the number of channels occurring between September 30, 1992 and the initial date of regulation.
 - (3) If the current basic cable rates exceed the benchmark, but the cable operator's per channel rate was below the benchmark on September 30, 1992, the initial basic cable rate shall be the benchmark, adjusted for inflation.
- (h) Cost-of-Service Showings. If a cable operator does not wish to reduce the rates to the permitted level, the cable operator shall have the opportunity to submit a cost-of-service showing in an attempt to justify initial basic cable rates above the FCC's reasonable rate standard. The city council will review a cost-of-service submission pursuant to FCC standards for cost-of-service review. The city council may approve initial basic cable rates above the benchmark if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in rates below the benchmark or below the cable operator's September 30, 1992 rates minus ten percent, will prescribe the cable operator's new rates.
- (i) Decision.
 - (1) By Formal Resolution. After completion of its review of the cable operator's proposed rates, the city council shall adopt its decision by formal resolution. The decision shall include one of the following:
 - (A) If the proposal is within the FCC's reasonable rate standard or is justified by a cost-of-service analysis, the city council shall approve the initial basic cable rates proposed by the cable operator; or
 - (B) If the proposal is not within the FCC's reasonable rate standard and the cost-of-service analysis, if any, does not justify the proposed rates, the city council shall establish initial basic cable rates that are within the FCC's reasonable rate standard or that are justified by a cost-of-service analysis.
 - (2) Rollbacks and Refunds. If the city council determines that the initial basic cable rates as submitted exceed the reasonable rate standard or that the cable operator's cost-of-service showing justifies lower rates, the city council may order the rates reduced in accordance with subsection (g) or (h) above, as applicable. In addition, the city council may order the cable operator to pay to subscribers, refunds of the excessive portion of the rates with interest (computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments), retroactive to September 1, 1993. The

method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the city council's decision resolution.

- (3) Statement of Reasons for Decision and Public Notice. If rates proposed by a cable operator are disapproved in whole or in part, or if there were objections made by other parties to the proposed rates, the resolution must state the reasons for the decision and the city council must give public notice of its decision. Public notice will be given by advertisement once in the official newspaper of the city.
- (j) Appeal. The city council's decision concerning rates for the basic service tier or associated equipment, may be appealed to the FCC in accordance with applicable federal regulations.

(Ord. 673 § 2, 1993)

5.24.030 Review of request for increase in basic cable rates.

- (a) Notice. A cable operator in the city who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the city and notify all subscribers at least thirty days before the cable operator desires the increase to take effect. This notice may not be given more often than annually and not until at least one year after the determination of the initial basic cable rates.
- (b) Expedited Determination and Public Hearing.
 - (1) If the city council is able to expeditiously determine that the cable operator's rate increase request for basic cable service is within the FCC's reasonable rate standard, as determined by the applicable price cap, the city council shall:
 - (A) Hold a public hearing at which interested persons may express their views; and
 - (B) Act to approve the rate increase within thirty days from the date the cable operator filed its request with the city.
 - (2) If the city council takes no action within thirty days from the date the cable operator filed its request with the city, the proposed rates will go into effect.
- (c) Extended Review Period.
 - (1) If the city council is unable to determine whether the rate increase is within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the city council shall, by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:
 - (A) Ninety days if the city council needs more time to ensure that the requested increase is within the FCC's reasonable rate standard as determined by the applicable price cap; and
 - (B) One hundred fifty days if the cable operator has submitted a cost-of-service showing seeking to justify a rate increase above the applicable price cap.
 - (2) The proposed rate increase is tolled during the extended review period.
 - (3) If the city council has not made a decision within the ninety or one hundred fifty-day period, the city council shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate increase and on whose behalf the amounts are paid.

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- (d) Public Hearing. During the extended review period and before taking action on the requested rate increase, the city council shall hold at least one public hearing at which interested persons may express their views and record objections.
- (e) Objections. An interested person who wishes to make an objection to the proposed rate increase may request the city secretary to record the objection during the public hearing or may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the city secretary with the objector's name and address.
- (f) Delayed Determination. If the city council is unable to make a final determination concerning a requested rate increase within the extended time period, the cable operator may put the increase into effect, subject to subsequent refund if the city council later issues a decision disapproving any portion of the increase.
- (g) Price Cap Analysis. If a cable operator presents its request for a rate increase as being in compliance with the FCC's price cap, the city council shall review the rate using the price cap analysis in accordance with the standard form authorized by the FCC. Based on the city council's findings, the basic cable rates shall be established as follows:
 - (1) If the proposed basic cable rate increase is within the price cap established by the FCC, the proposed rates shall become the new basic cable rates.
 - (2) If the proposed basic cable rate increase exceeds the price cap established by the FCC, the city council shall disapprove the proposed rate increase and order an increase that is in compliance with the price cap.
- (h) Cost-of-Service Showings. If a cable operator submits a cost-of-service showing in an attempt to justify a rate increase above the price cap, the city council will review the submission pursuant the FCC standards for cost-of-service review. The city council may approve a rate increase above the price cap if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in a rate below the price cap or below the cable operator's then current rate will prescribe the cable operator's new rate.
- (i) Decision. The city council's decision concerning the requested rate increase shall be adopted by formal resolution. If a rate increase proposed by a cable operator is disapproved in whole or in part, or if objections were made by other parties to the proposed rate increase, the resolution must state the reasons for the decision. Objections may be made at the public hearing by a person requesting the city secretary to record the objection or may be submitted in writing at anytime before the decision resolution is adopted.
- (j) Refunds.
 - (1) The city council may order refunds of subscribers' rate payments with interest if:
 - (A) The city council was unable to make a decision within the extended time period as described in subsection (c) of this section; and
 - (B) The cable operator implemented the rate increase at the end of the extended review period; and
 - (C) The city council determines that the rate increase as submitted exceeds the applicable price cap or that the cable operator failed to justify the rate increase by a cost-of-service showing, and the city council disapproves any portion of the rate increase.
 - (2) The method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the city council's decision resolution.
- (k) Appeal. The city council's decision concerning rates for the basic service tier or associated equipment may be appealed to the FCC in accordance with applicable federal regulations.

(Ord. 673 § 3, 1993)

5.24.040 Cable operator information.

- (a) City May Require.
- (1) In those cases when the cable operator has submitted initial rates or proposed an increase that exceeds the reasonable rate standard, the city council may require the cable operator to produce information in addition to that submitted, including proprietary information, if needed to make a rate determination. In these cases, a cable operator may request the information be kept confidential in accordance with this section.
 - (2) In cases where initial or proposed rates comply with the reasonable rate standard, the city council may request additional information only in order to document that the cable operator's rates are in accord with the standard.
- (b) Request for Confidentiality.
- (1) A cable operator submitting information to the city council may request in writing that the information not be made routinely available for public inspection. A copy of the request shall be attached to and cover all of the information and all copies of the information to which it applies.
 - (2) If feasible, the information to which the request applies shall be physically separated from any information to which the request does not apply. If this is not feasible, the portion of the information to which the request applies shall be identified.
 - (3) Each request shall contain a statement of the reasons for withholding inspection and a statement of the facts upon which those reasons are based.
 - (4) Casual requests which do not comply with the requirement of this subsection shall not be considered.
- (c) City Council Action. Requests which comply with the requirements of subsection (b) of this section will be acted upon by the city council. The city council will grant the request if the cable operator presents by a preponderance of the evidence, a case for nondisclosure consistent with applicable federal regulations. If the request is granted, the ruling will be placed in a public file in lieu of the information withheld from public inspection. If the request does not present a case for nondisclosure and the city council denies the request, the city council shall take one of the following actions:
- (1) If the information has been submitted voluntarily without any direction from the city, the cable operator may request that the city return the information without considering it. Ordinarily, the city will comply with this request. Only in the unusual instance that the public interest so requires will the information be made available for public inspection.
 - (2) If the information was required to be submitted by the city council, the information will be made available for public inspection.
- (d) Appeal. If the city council denies the request for confidentiality, the cable operator may seek review of that decision from the FCC within five working days of the city council's decision, and the release of the information will be stayed pending review.

(Ord. 673 § 4, 1993)

5.24.050 Automatic rate adjustments.

- (a) Annual Inflation Adjustment. In accordance with FCC regulations, the cable operator may adjust its capped base per channel rate for the basic service tier annually by the final GNP-PI index.
- (b) Other External Costs.
 - (1) The FCC regulations also allow the cable operator to increase its rate for the basic service tier automatically to reflect certain external cost factors to the extent that the increase in cost of those factors exceeds the GNP-PI. These factors include retransmission consent fees, programming costs, state and local taxes applicable to the provision of cable television service, and costs of franchise requirements. The total cost of an increase in a franchise fee may be automatically added to the base per channel rate, without regard to its relation to the GNP-PI.
 - (2) For all categories of external costs other than retransmission consent and franchise fees, the starting date for measuring changes in external costs for which the basic service per channel rate may be adjusted will be the date on which the basic service tier becomes subject to regulation or February 28, 1994, whichever occurs first. The permitted per channel charge may not be adjusted for costs of retransmission consent fees or changes in those fees incurred before October 6, 1994.
- (c) Notification and Review. The cable operator shall notify the city at least thirty days in advance of a rate increase based on automatic adjustment items. The city shall review the increase to determine whether the item or items qualify as automatic adjustments. If the city makes no objection within thirty days of receiving notice of the increase, the increase may go into effect.

(Ord. 673 § 5, 1993)

5.24.060 Enforcement.

- (a) Refunds. The city may order the cable operator to refund to subscribers a portion of previously paid rates under the following circumstances:
 - (1) A portion of the previously paid rates have been determined to be in excess of the permitted tier charge or above the actual cost of equipment; or
 - (2) The cable operator has failed to comply with a valid rate order issued by the city.
- (b) Fines. If the cable operator fails to comply with a rate decision or refund order, the cable operator shall be subject to a fine of one hundred dollars for each day the cable operator fails to comply.

(Ord. 673 § 6, 1993)

Chapter 5.34 RAGBRAI—Miscellaneous Permits

Sections:

5.34.010 Commercial booth—Permit required.

No person, club, group, organization, corporation or entity of any kind shall provide or sell food to the public in Chariton, Iowa after July 24, 2019, unless said person or entity shall first obtain a commercial booth permit from the City of Chariton, Iowa, through the Chamber of Commerce located at 104 North Grand Street in Chariton, Iowa. However, any person or entity which is a resident of Lucas County and in possession of a valid permit issued by the State of Iowa for the sale of food to be consumed on its premises as of June 30, 2019, or in possession of a

current Iowa retail sales tax permit, shall be exempt from the requirements of this section. This section does not allow for the addition or expansion of an existing business or of a preexisting location without a permit. For purposes of this section, the Lucas County Pork Producers and the Lucas County Cattleman's Association shall each be deemed to be a resident of Chariton, Iowa.

(Ord. No. 849, § 2, 4-20-2009; Ord. No. 913, § 3, 6-17-2019)

5.34.020 Commercial booth fees.

The fee for a Chariton, Iowa, commercial booth permit shall be one hundred dollars, and fifty dollars for non-profit applicants. Commercial booth permits issued to vendors whose residence is outside of Lucas County shall be three hundred dollars. Non-resident vendors (allowance) will be determined by the RAGBRAI committee on July 1, 2019. The fee for an additional ten by ten space shall be one hundred dollars. No electricity will be provided to the booth sites.

(Ord. No. 849, § 2, 4-20-2009; Ord. No. 913, § 3, 6-17-2019)

5.34.030 Commercial booth location.

A vendor who has been granted a Chariton, Iowa, commercial booth permit shall locate its temporary sale facility at a location to be determined by the official Chariton, Iowa, RAGBRAI Committee.

(Ord. No. 849, § 2, 4-20-2009)

5.34.040 Health regulations.

A person or entity issued a commercial booth permit pursuant to this chapter (a RAGBRAI commercial booth permittee herein) shall comply with the Iowa Department of Health and Lucas County Department of Health rules and regulations pertaining to the sale and dispensing of food for consumption on its premises.

(Ord. No. 849, § 2, 4-20-2009)

5.34.050 Commercial booth non-food—Permit required.

No person, club, group, organization, corporation or entity of any kind which is in business in Chariton, Iowa, shall sell merchandise to the public after July 24, 2019, at a location other than their regularly-established place of business unless said person or entity shall first obtain a commercial booth non-food permit from the City of Chariton, Iowa through the Chamber of Commerce located at 105 North Grand Street in Chariton, Iowa, Iowa 50049. Those Chariton, Iowa, businesses that operate only from their regularly established locations are exempt from the requirements of this section.

(Ord. No. 849, § 2, 4-20-2009; Ord. No. 913, § 3, 6-17-2019)

5.34.060 Reserved.

Editor's note(s)—Ord. No. 913, § 2, adopted June 17, 2019, repealed § 5.34.060, which pertained to commercial booth non-food fees and derived from Ord. No. 849, § 2, adopted Apr. 20, 2009.

5.34.070 Commercial booth non-food location.

A commercial booth non-food permittee who has been granted a Chariton, Iowa, commercial booth non-food permit shall locate its temporary facility at a location to be determined by the official Chariton, Iowa, RAGBRAI Committee.

(Ord. No. 849, § 2, 4-20-2009)

5.34.080 Glass containers.

To promote safety during RAGBRAI, all beverages sold in Chariton, Iowa, by commercial booth permittees, after July 24, 2019, shall be sold in non-glass containers only. This requirement shall also apply to any existing business, restaurant, service station, grocery store or other establishment selling beverages on its premises in an outdoor setting open to the public.

(Ord. No. 849, § 2, 4-20-2009; Ord. No. 913, § 3, 6-17-2019)

5.34.090 Nuisance.

The sale of food or the erection of a temporary facility for the sale of food or other merchandise without a Chariton, Iowa commercial booth permit or Chariton, Iowa commercial booth non-food permit after July 24, 2019, in violation of the provisions of this chapter shall be considered a nuisance, as defined by Chapter 9.04 of this Code. If this type of nuisance is determined to exist, an emergency abatement procedure pursuant to Section 9.04.080 of this Code is hereby authorized and may be executed by any peace officer or those acting at their direction by dismantling and removing the nuisance without notice. However, if the only nuisance or violation of this chapter is the offender's failure to obtain the necessary permit, the RAGBRAI committee, in lieu of immediate abatement, may allow the person or organization to immediately purchase a necessary permit as provided by this chapter.

(Ord. No. 849, § 2, 4-20-2009; Ord. No. 913, § 3, 6-17-2019)

5.34.100 Violations—Penalties.

Selling or supplying food or merchandise to any person without a Chariton, Iowa, commercial booth permit or Chariton, Iowa, commercial booth non-food permit after July 24, 2019, or any violation of this chapter shall be a simple misdemeanor punishable by a maximum fine of one thousand fifty dollars and/or a maximum of thirty days in jail. Furthermore, any violation of this chapter shall constitute a municipal infraction, as set forth in Title 9 of this Code, and, therefore, any civil penalties may likewise be assessed and enforced as set forth.

(Ord. No. 849, § 2, 4-20-2009; Ord. No. 913, § 3, 6-17-2019)

5.34.110 Effective period.

The provisions of this chapter shall be effective for July 24, 2019.

(Ord. No. 849, § 2, 4-20-2009; Ord. No. 913, § 3, 6-17-2019)

5.34.120 Street closings.

During the effective dates of this chapter and without prior council approval regarding the blocking of any city streets, any Chariton, Iowa, police officer, or those at their direction, may place barricades or road blocks in

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any city street, alley or roadway, to redirect vehicular traffic in order to enhance the proper and safe flow of bicycle and vehicular traffic within the city limits of the City of Chariton, Iowa.

(Ord. No. 849, § 2, 4-20-2009)