

TITLE 5, BUSINESS REGULATION
CHAPTER 40, REGULATION OF SPECIFIC BUSINESS ACTIVITIES
ARTICLE 1, PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

40.0101 **PURPOSE.** The purpose of this article is to protect the residents of the city against fraud by registering and licensing peddlers, solicitors and transient merchants.

40.0102 **DEFINITIONS.** For use in this article the following terms are defined:
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-0101] [Town of Scranton vs. Henson, 151 Iowa 221, 130 N.W. 1079 (1911); Davenport vs. Rice, 75 Iowa 74, 39 N.W. 191 (1888); 68 Iowa 678 (1886)]

40.0102.1 **"Peddler":** shall mean any person without a fixed, permanent business facility within the city, carrying goods or merchandise, or offering services, who sells or offers for sale for immediate delivery such goods, services or merchandise from house-to-house, business-to-business, office-to-office or upon the public street.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0102(1)]

40.0102.2 **"Solicitor":** shall mean any person without a fixed, permanent business facility within the city, who solicits or attempts to solicit from house-to-house, business-to-business, office-to-office, by telephone from a location within the city limits, or upon the public street an order for goods, services, subscriptions or merchandise to be delivered at a future date.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0102(2)]

40.0102.3 **"Transient Merchant":** except as provided below, shall mean any person, firm or corporation who engages in a temporary or itinerant merchandising business in person or by telephone and in the course of such a business hires, leases or occupies any permanent building or permanent structure or part thereof, including a motel or hotel room, within the city limits, for any period of less than sixty (60) days. Temporary association with a local merchant, dealer, trader or auctioneer, or conduct of such transient business in connection with, as 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. The following persons are not transient merchants: all persons, firms or corporations who engage in such temporary or itinerant merchandising businesses (a) outside any permanent building or permanent structure on private or government property with the property owner's written consent, (b) within the common area of any commercial mall with the written consent of the manager of such commercial mall, or (c) within any permanent building or permanent structure owned, leased or controlled by any civic, service, charitable, benevolent or religious organization with the written consent of said organization.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0102(3)]

40.0103 **LICENSE REQUIRED.** Any person engaging in peddling, soliciting or in the business of a transient merchant in this city without first obtaining a license as herein provided shall be in violation of this article.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0103] [Easterly vs. Inc. Town of Irwin, 99 Iowa 694, 68 N.W. 919 (1896)]

40.0104 **LICENSE EXEMPTIONS.** The following are excluded from the application of this article.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0104] [State of Iowa vs. Garbroski, 111 Iowa 496, 82 N.W. 959 (1900)]

40.0104.1 **Newspapers.** Newspaper carriers.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0104(1)]

40.0104.2 **Club Members.** Members of local Boy Scout, Girl Scout, Campfire Girls, 4-H Clubs, Future Farmers of America and similar organizations.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0104(2)]

40.0104.3 **Farmers and Gardeners.** Farmers and Gardeners who offer for sale products of their own raising.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0104(3)]

40.0104.4 **Students.** Students representing the Newton Community Schools District and the Newton Christian Schools conducting projects sponsored by organizations recognized by the schools.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0104(4)]

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40.0104.5 Milk Delivery. Milk delivery persons who only incidentally solicit additional business or make special sales.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0104(5)]

40.0104.6 Resale or Institutional Use. Persons customarily calling on the businesses or institutions for the purpose of selling products for resale or institutional use.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0104(6)]

40.0105 RELIGIOUS AND CHARITABLE ORGANIZATIONS. Authorized representatives of religious and charitable institutions desiring to solicit money or to distribute literature shall be exempt from the operation of §7-1.0106 through § 7-1.-0110 of this article. All such organizations shall be required to submit in writing to the clerk the name and purpose of the cause for which activities are being 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 for his efforts and the amount thereof. If the clerk shall find that the organization is a bona fide charity or religious organization the clerk shall issue a license containing the above information to the applicant.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0105]

40.0106 APPLICATION FOR LICENSE. An application in writing shall be filed with the clerk for a license under this article. Such application shall consist of a photocopy of the applicant's current Iowa State Sales Tax Permit and a complete list of the names and permanent home and business addresses of the person or persons engaged in peddling, soliciting or transient merchandising. If the applicant claims to be an entity exempt from collecting Iowa State Sales Tax but not otherwise exempt under the provisions of this ordinance, the application shall consist of a form to be supplied by the city clerk containing all of the information required on an application for an Iowa State Sales Tax Permit and a complete list of the names and permanent home and business addresses of the person or persons engaged in peddling, soliciting or transient merchandising.

40.0107 LICENSE FEES. Licenses shall be issued without fee.

40.0108 LICENSE ISSUED. If the clerk finds the application is completed in conformance with Section 7-1.0106 of this article, a license shall be issued immediately.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0108]

40.0109 DISPLAY OF LICENSE. Each solicitor or peddler shall at all times while doing business in this city, keep in his possession the license provided for in Section 7-1.0108 of this article, and shall, upon the request of prospective customers, exhibit the license as evidence that he has complied with all requirements of this article. Each transient merchant shall display publicly his license in his place of business.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0109]

40.0110 LICENSE NOT TRANSFERABLE. License issued under the provisions of this article are not transferable in any situation and are to be applicable to the person filing the application.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0110]

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CHAPTER 40, REGULATION OF SPECIFIC BUSINESS ACTIVITIES
ARTICLE 2, MASSAGE ESTABLISHMENTS

40.0201 **DEFINITIONS.** For the purposes of this article, the following words and phrases shall have the meanings herein set forth, unless it is apparent from the context that a different meaning is intended.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0201]

40.0201.1 **Applicant.** The term applicant means any person defined in §1.0102 of this code applying for a license to operate or conduct a massage business and in addition thereto shall include all partners in a partnership and all stockholders of a corporation where the controlling interest of the corporation is held by five (5) or less persons or legal entities.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0201(1)]

40.0201.2 **Permit Clerk.** The term means the city clerk of the city or the duly authorized representative.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0201(2)]

40.0201.3 **Massage Establishment.** The term massage establishment means any place of business wherein any of the treatments, techniques, or methods of treatment referred to in §40.0201.4 are administered, practiced, used, given or applied.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0201(3)]

40.0201.4 **Massage or Massage Service.** The term massage or massage service means any method of treating the external parts of the body, consisting of rubbing, stroking, kneading, tapping, or vibrating; such treatments being performed by the hand or any other body parts, or by any mechanical or electrical instrument.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0201(4)]

40.0201.5 **Massage Patron.** The term "massage patron" means any person who receives, or pays to receive, a massage or massage services from a massage technician for value.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0201(5)]

40.0201.6 **Massage Technician.** The term massage technician means any person who engages in the business of performing massage services on or for other persons by use of any or all of the treatments, techniques or methods of treatment referred to in §40.0201.4.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0201(6)]

40.0201.7 **Person of Good Moral Character** as used in this article shall mean any person who meets all of the following requirements:
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0201(7)]

40.0201.7(A) That the person has such financial standings and good reputation as will satisfy the issuing authority that the person will comply with this article and all laws, ordinances, and regulations applicable to their operations under this article.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0201(7A)]

40.0201.7(B) That the person has not held a license under this article which has been revoked during the last year preceding the date of application.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0201(7B)]

40.0201.7(C) Has not been convicted of a felony involving moral turpitude. However, if this conviction of a felony occurred more than five (5) years before the date of the application for a license, and if the rights of citizenship have been restored by the governor, the issuing authority may determine that the person is a person of good moral character notwithstanding such conviction.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0201(7C)]

40.0202 **COMPLIANCE WITH ARTICLE REQUIRED.** No person, firm or corporation shall operate, conduct, carry on or permit to be operated, owned, conducted or carried on any massage establishment of any type or kind including, but not limited to, massage parlor, massage service business or any massage business or service offered in conjunction with or as part of any health club, health spa, resort or health resort, gymnasium, athletic club, or other business, without compliance with the provisions of this article. No person shall perform the services, duties or work of a massage technician except in compliance with the provisions of this article.

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[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-0202]

40.0203 **EXEMPTIONS.** The following persons and institutions are excluded from the operation of this article:

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0203]

40.0203.1 **Licensed Professional.** Persons licensed by the State of Iowa under the provisions of Chapters 148, 148A, 148B, 150, 150A, 151, 152, 152C, 157 or 158 of the Iowa Code, when performing massage therapy or massage services as a part of the profession or trade for which licensed .

[Ord. No. 1805 Eff. Date 11-29-94] [1987 Code of Ordinances §7-1.0203(1)]

40.0203.2 **Under Supervision.** Persons performing massage therapy or massage services under the direct supervision of a person licensed as described in §40.0203.1 hereinabove.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0203(2)]

40.0203.3 **Hospital or Care Facility.** Nurse's aides, technicians, and attendants at any hospital or health care facility licensed pursuant to chapters 135B or 145A of the Iowa Code, in the course of their employment and under the supervision of the administrator thereof or of a person licensed as described in §40.0203.1 hereinabove.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0203(3)]

40.0203.4 **Athletic Coach or Trainer.** An athletic coach or trainer,

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0203(4)]

40.0203.4(A) In any accredited public or private secondary school, junior college, college or university, or

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0203(4A)]

40.0203.4(B) Employed by a professional or semiprofessional athletic team or organization, in the course of their employment as such coach or trainer.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0203(4B)]

40.0204 **LICENSES FOR MASSAGE BUSINESS.**

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204]

40.0204.1 **No person, firm or corporation shall** operate, own, conduct, carry on or permit to be operated, owned, conducted or carried on any massage business in the city unless the premises at which such business is located meet the minimum standards set forth in §40.0209 of this chapter and unless a license to operate a massage establishment is obtained from the city in compliance with the provisions of this chapter.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(1)]

40.0204.2 **Application procedures.** Any person, firm or corporation seeking a license to operate a massage establishment shall make application to the city permit clerk. The permit clerk shall cause an investigation of such application to be made by the police department to determine if such applicant is of good moral character. The permit clerk shall also cause an investigation to be made by the fire department, health department and building department to determine that all requirements of this subchapter have been satisfied and that the applicant has fully complied with all applicable ordinances and regulations relating to buildings, zoning, fire and health.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(2)]

40.0204.3 **Application Contents.** The application shall contain the following:

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3)]

40.0204.3(A) The full name, address and social security number of the applicant.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3A)]

40.0204.3(B) The full name of the business and the address of the premises for which the application is being made.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3B)]

40.0204.3(C) The criminal record of the applicant, if any.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3C)]

40.0204.3(D) A statement that the applicant is of good moral character.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3D)]

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- 40.0204.3(E)** A statement that the contents of the application are true.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3E)]
- 40.0204.3(F)** Proof that the applicant is an adult.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3F)]
- 40.0204.3(G)** The type of business entity such as sole proprietorship, partnership or corporation and, in the case of a corporation, the names and addresses of all officers and directors of the corporation.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3G)]
- 40.0204.3(H)** Submission of any applicant to fingerprinting by the Newton Police Department for purposes of background investigation.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3H)]
- 40.0204.3(I)** All information required herein of any applicant shall also be provided for every person, who, directly or indirectly, has any right to participate in the management or control of the business to be conducted at the premises of the proposed massage establishment.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3I)]
- 40.0204.3(J)** The name and address of the owner of the building where such massage business will be located.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3J)]
- 40.0204.3(K)** Certified copies of any lease or rental agreements governing the applicant's rights in said building.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3K)]
- 40.0204.3(L)** The signature of the applicant or applicants or, if the application is in the name of a corporation, the signature of each officer of the corporation.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(3L)]
- 40.0204.4** **License Fees.** The following fees shall be charged for massage establishment licenses:
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(4)]
- 40.0204.4(A)** For establishments with one (1) or two (2) treatment rooms or massage enclosures as set by City Council resolution.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0204(4A)]
- 40.0204.4(B)** For establishments with three (3) or more treatment rooms or massage enclosures as set by City Council resolution.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0204(4B)]
- 40.0204.5** **Issuance of License.** The building, fire, health, and police departments shall make written reports of their investigations and shall submit such reports to the city permit clerk within forty-five (45) days of the date of the application, who shall place the matter before the city council. If the city council finds that the applicant has fully complied with all requirements of this subchapter and all applicable ordinances and codes regulating fire, building, health and zoning, and that the applicant is of good moral character, the city council shall authorize the issuance of a license to conduct a massage business at the location designated in the application. Said license shall expire one (1) year from the date of issuance.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(5)]
- 40.0204.6** **Separate License For Each Place of Business.** Each massage business shall have a separate license for each place of business, which shall be valid only for the business conducted at that location.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(6)]
- 40.0204.7** **License to be Displayed.** Each massage business shall display its license conspicuously in the lobby or waiting room area where such license may be readily observed by all persons entering such premises.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(7)]
- 40.0204.8** **Sale or Transfer.** No massage establishment license shall be sold or transferred. The purchaser or purchasers of any massage business or of the majority of the stock of any corporation operating a massage business shall obtain a new license before operating such business at the location for which the license has been issued.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0204(8)]

40.0205 SUSPENSION OR REVOCATION OF PERMITS.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0205]

40.0205.1 Grounds. The massage establishment license of any such license may be suspended or revoked for violation of the provisions of this subchapter, or for failure to comply with applicable fire regulations, building regulations, or health ordinances, or for permitting massage technicians, who are either employed by the licensee or who are allowed by the licensee to perform the services or work of a massage technician upon the premises of the licensee, to violate the provisions of the subchapter.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0205(1)]

40.0205.2 Investigation. In the event the city clerk is apprised of information indicating that grounds for suspension or revocation of a massage establishment license may exist, the city clerk shall cause an investigation of such grounds to be made by the appropriate city department or departments and shall advise the city council in writing of the results of the investigation. If the city council determines that the report reveals the probable existence of grounds for suspension or revocation, it shall direct written notice by ordinary mail to the licensee named on the application at the massage establishment address informing such person of its intention to hold a public hearing on the question of whether such license should be suspended or revoked and the grounds therefor, stating the date and time of said hearing. Upon said hearing, if the city council shall determine that such cause does exist:

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0205(2)]

40.0205.2(A) If the determination is the first such for that licensee, it may suspend the license for up to one (1) month, and thereupon such license shall cease massage business at that location or any other location for the period of suspension;

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0205(2A)]

40.0205.2(B) If the determination is the second such for that licensee, it may revoke the license at that location, and no massage establishment license shall issue nor shall such business be conducted at that location for a period of one (1) year, nor shall the licensee be permitted to conduct such business in the city for that period.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0205(2B)]

40.0206 MASSAGE TECHNICIAN LICENSE.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0206]

40.0206.1 License Required. No person shall perform the services or work of a massage technician at a massage establishment without first securing a massage technician license from the license clerk. Such license shall not be required for the owner of a licensed massage establishment who performs the services, duties or work of a massage technician in the owner's own establishment provided such person provided the information required in §§40.0206.3(D) & (F) hereof on the application for massage establishment license, and states that such owner will be a massage technician at such establishment.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0206(1)]

40.0206.2 Application Procedures. Any person seeking a massage technician license shall apply to the permit clerk. The permit clerk shall cause an investigation of such applicant by the police department to determine if such person is of good moral character.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0206(2)]

40.0206.3 Application Contents. The application shall contain the following information:

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0206(3)]

40.0206.3(A) The full name, address, age and social security number of the applicant.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0206(3A)]

40.0206.3(B) The criminal record of the applicant, if any.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0206(3B)]

40.0206.3(C) A statement that the applicant is of good moral character.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0206(3C)]

40.0206.3(D) Proof that the applicant is an adult.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0206(3D)]

40.0206.3(E) A list of all training in massage that the applicant has received.

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Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0206(3E)]

40.0206.3(F) A statement that the contents of the application are true.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1 0206(3F)]

40.0206.3(G) A certificate issued by a licensed physician stating that the applicant is free from communicable diseases and venereal diseases such as syphilis and gonorrhea, executed within one (1) week preceding the date of the application.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0206(3G)]

40.0206.3(H) The name of the licensed massage establishment where the applicant will be employed.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1 0206(3H)]

40.0206.4 Issuance of the License. The police department shall make a written report of its investigation to the permit clerk within thirty days of the date of the application. The permit clerk may, upon presentation of the certificate described in §40.0206.4 hereinabove, issue a temporary massage technician permit to the applicant if the application is otherwise proper and pending receipt of the written police report. Upon receipt of the police report and the certificate, the permit clerk shall place the matter before the city council. If the city council finds that the applicant has fully complied with all requirements of this subchapter, and that the applicant is of good moral character, the city council shall authorize the issuance of a permanent massage technician license to the applicant. The license shall expire one (1) year from the date of issuance.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1 0206(4)]

40.0206.7 License Valid Only for Establishment Listed on the Application. The massage technician license, when issued, shall be valid only for the massage establishment listed on the application. A massage technician changing place of employment shall have their license amended by the permit clerk to show that the establishment proposing such employment holds a valid massage establishment license before commencing work for the new employer.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1 0206(5)]

40.0206.8 License to be Kept at Place of Employment. All massage technicians having licenses issued pursuant to this subchapter shall keep said licenses at their place of employment as massage technicians.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0206(6)]

40.0206.9 License Fee. The license fee for a massage technician license and the fee for listing a change of massage establishment shall be set by City Council resolution.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0206(7)]

40.0207 SUSPENSION OR REVOCATION OF MASSAGE TECHNICIAN LICENSES.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0207]

40.0207.1 Grounds for Suspension. The massage technician license of each massage technician may be suspended or revoked for any violation of this subchapter.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0207(1)]

40.0207.2 Suspension Procedures. The city clerk may, upon receipt of information alleging that grounds exist to suspend or revoke the massage technician license of any license holder under this subchapter, report the circumstances to the city council, which shall in such case cause a notice to be sent by ordinary mail to the licensee which notice shall state that a suspension or revocation hearing has been set before the city council, the grounds for the proposed suspension or revocation, the date and time of the hearing and the place where the hearing will be conducted. Upon said hearing, if the city council shall determine that such grounds do exist, it may suspend or revoke the license. In the event such license is revoked, no massage technician license shall issue to that licensee for a period of one (1) year.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0207(2)]

40.0208 HOME MASSAGE TREATMENTS. Massages may be administered in the patron's home by any massage technician having a permit issued in accordance with this ordinance provided massages are prescribed in writing by a physician duly licensed to practice medicine in the State of Iowa and such physician certifies that the patron is unable for medical reasons to obtain such in a massage establishment. No massage technician shall administer any massage services at a location which does not conform to or comply with the standards set forth in §40.0209 of this chapter, except as set forth in this section.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0208]

40.0209 HEALTH STANDARDS.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209]

40.0209.1 No massage establishment shall be established, maintained or operated in the city that does not conform to or comply with the following standards.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1)]

40.0209.1(A) Each room or enclosure where massage services are performed on patrons shall be provided with a minimum of four (4) feet candles as measured four (4) feet above the floor.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1A)]

40.0209.1(B) The premises shall have adequate equipment for disinfecting and sterilizing non-disposable instruments and materials used in administering massage services. Such materials and instruments shall be disinfected after each use.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1B)]

40.0209.1(C) Hot and cold running water shall be provided at all times.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1C)]

40.0209.1(D) Closed cabinets shall be provided and used for the storage of all equipment, supplies and clean linens. All used disposable materials and soiled linens and towels shall be kept in covered containers or cabinets, which containers or cabinets shall be kept separate from clean storage cabinets.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1D)]

40.0209.1(E) Clean linen and towels shall be provided for each massage patron. No common use of towels or linens shall be permitted.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1E)]

40.0209.1(F) All massage tables, bathtubs, shower stalls, sauna booths, steam or bath areas and all floors shall have surfaces which may be readily disinfected.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1F)]

40.0209.1(G) Oils, creams, lotions or other preparations used in administering massages shall be kept in clean, closed containers or cabinets.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1G)]

40.0209.1(H) Adequate bathing, dressing, locker and toilet facilities shall be provided for all patrons served at any given time. All patron lockers shall be lockable. In the event male and female patrons are to be served simultaneously, separate bathing, dressing, locker, toilet and massage room facilities shall be provided.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1H)]

40.0209.1(I) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs and showers shall be thoroughly cleaned after each use.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1I)]

40.0209.1(J) Each massage technician shall wash their hands in hot running water using soap or disinfectant before and after administering a massage to each patron.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1J)]

40.0209.1(K) The premises shall be equipped with a service sink for custodial services which sink shall be located in a janitorial room or custodial room separate from massage service room.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1K)]

40.0209.1(L) No person shall consume food or beverages in massage work areas.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1L)]

40.0209.1(M) Animals, except for seeing-eye dogs, shall not be permitted in massage establishments.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1M)]

40.0209.1(N) All massage establishments shall continuously comply with all applicable building, fire or health ordinances and regulations.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(1N)]

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40.0209.2 No message technician shall administer a message:

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(2)]

40.0209.2(A) If said message technician believes, knows, or should know that they are not free of any contagious or communicable disease or infection.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(2A)]

40.0209.2(B) To any message patron exhibiting any skin fungus, skin infection, skin inflammation or skin eruption; provided, however, that a physician duly licensed to practice in the State of Iowa may certify that such person may be safely massaged prescribing the conditions therefor.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(2B)]

40.0209.2(C) To any person who is not free of communicable disease or infection or whom the message technician believes or has reason to believe is not free of communicable disease or infection.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0209(2C)]

40.0210 UNLAWFUL ACTS.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0210]

40.0210.1 No person receiving a massage shall caress or fondle the message technician administering the massage.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0210(1)]

40.0210.2 No message technician shall masturbate or fondle the genital area of a message patron.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0210(2)]

40.0210.3 No message technician shall administer a message unless such technician's sexual and genital body parts are completely covered by opaque clothing.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0210(3)]

40.0210.4 No massages shall be administered to persons of different sexes in the same room or enclosure at the same time.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0210(4)]

40.0210.5 No message technician shall administer any message services other than at a message establishment covered by a license issued in accordance with this chapter, except in ordinance with §40.0208 of this chapter.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0210(5)]

40.0210.6 No message established licensee shall allow or knowingly permit message technicians in the licensee's employ to administer message services at any location other than a message establishment covered by a license issued in accordance with this subchapter, except in accordance with §40.0208 of this chapter.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0210(6)]

**TITLE 5, BUSINESS REGULATION
CHAPTER 40 REGULATION OF BUSINESS AND VOCATIONS
ARTICLE 3, JUNK YARDS**

40.0301 JUNK DEALER DEFINED. The term "junk dealer" as used in this article shall include any person who shall keep, maintain, operate or use a building, lot, parcel of ground or other place for assembling, collecting, dumping, wrecking, storing or keeping, depositing or removing any old iron, junked automobiles, junked machinery or accessories thereto, or any refuse, junk or waste material for the purpose of salvage or sale.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0301]

40.0302 ENCLOSURES REQUIRED. Each junk yard shall be enclosed by a substantial enclosure of not less than eight (8) feet nor more than ten (10) feet high, constructed of galvanized corrugated sheet iron or such other suitable material as may be approved by the council. Such enclosure shall at all times be painted and maintained in a good clean condition.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0302]

40.0303 JUNK TO BE KEPT WITHIN ENCLOSURE. Any junk placed in any junk yard shall be so piled as to remain within the enclosure and shall not be piled higher than the top of the enclosure. No junk or materials of any kind shall be kept on the outside along the outer perimeter of the fence of any junk yard.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0303]

40.0304 GATES REQUIRED. All ways of ingress and egress to junk yards shall have gates thereon and the same shall remain closed at all times except when materials are being conveyed in or out of the premises.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-1.0304]

**TITLE 5, BUSINESS REGULATION
CHAPTER 40, REGULATION OF SPECIFIC BUSINESS ACTIVITIES
ARTICLE 4, PUBLIC DANCES & DANCE HALLS**

40.0401 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0401]

40.0402 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0402]

40.0403 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0403]

40.0404 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0404]

40.0405 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0405]

40.0406 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0406]

40.0406.1 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0406(1)]

40.0406.2 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0406 (2)]

40.0406.3 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0406(3)]

40.0407 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0407]

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40.0408 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0408]

40.0409 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0409]

40.0410 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0410]

40.0411 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0411]

40.0412 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0412]

40.0413 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0413]

40.0414 Deleted Per Ordinance 1916, Eff. 10-01-98.
[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0414]

40.0415 Deleted Per Ordinance 1916, Eff. 10-01-98.

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[Ord. No. 1916 Eff. Date 10-01-98] [1987 Code of Ordinances §7-1.0415]

TITLE 5, BUSINESS REGULATION
CHAPTER 40, REGULATION OF SPECIFIC BUSINESS ACTIVITIES
ARTICLE 5, PAWNBROKING

40.0501 PURPOSE. The purpose of this chapter is to regulate the business of pawnbroking in the city because of the facility such business furnishes for the commission or concealment of crime whereby such a business belongs to a class of businesses as to which the strictest police regulation shall be imposed by the city.
[Ord. No. 1510 Eff. Date 07-11-86]

40.0502 DEFINITION. Unless otherwise expressly stated, or the context clearly indicates a different intention, the following terms shall, for the purpose of this chapter, have the meanings in this article:
[Ord. No. 1510 Eff. Date 07-11-86]

40.0502.1 Pawnbroker. Every person or entity who makes loans or advancements upon pawn, pledge or deposit of personal property, or who receives an actual possession of personal property as security for loans, with or without a mortgage, or bill of sale thereon, except any person or entity subject to truth in lending and all other federal credit reporting acts, or who by advertisement, sign or otherwise holds himself or herself out as a pawnbroker, is a pawnbroker within the meaning of this chapter.
[Ord. No. 1510 Eff. Date 07-11-86]

40.0503 COMPLIANCE WITH CHAPTER PROVISIONS.
[Ord. No. 1510 Eff. Date 07-11-86]

40.0503.1 No person shall engage in, or carry on the business of pawnbroker in the city, without first paying the fee and procuring the license provided for in this chapter, nor shall any person carry on such business in any manner contrary to the provisions of this chapter.
[Ord. No. 1510 Eff. Date 07-11-86]

40.0503.2 Every clerk, agent or employee of any pawnbroker shall be subject to, and bound by all chapter provisions, as is the employer or principal for any violation thereof.
[Ord. No. 1510 Eff. Date 07-11-86]

40.0504 LICENSE. Every pawnbroker shall pay each year to the city clerk a license fee as set by City Council resolution.
[Ord. No. 1916 Eff. Date 10-01-98]

40.0505 ISSUANCE AND CONTENTS OF LICENSE. Upon receiving the license fee, the city clerk shall issue a license to the person applying therefor. The license shall state the name and place of residence of the person licensed, the business to be transacted and the place where it is to be carried on, the date when issued, and the time when it will expire.
[Ord. No. 1510 Eff. Date 07-11-86]

40.0506 EXPIRATION DATE OF LICENSE. All pawnbroker's licenses shall expire on the last day of December next after they are issued.
[Ord. No. 1510 Eff. Date 07-11-86]

40.0507 SEPARATE LICENSE FOR EACH PLACE OF BUSINESS. Any person conducting several or separate places of business shall pay the license fee and procure a license for each place. The proprietor's license shall be sufficient for all clerks, agents, and employees engaged or employed at the place named in the license. A license issued under the provisions of this chapter is not transferable in any situation.
[Ord. No. 1510 Eff. Date 07-11-86]

40.0508 SUSPENSION OR REVOCATION OF LICENSE. The city council, after notice and hearing, may suspend or revoke any license issued under this chapter where the licensee in the application for the license, or in the course of conducting the licensee's business has made fraudulent or incorrect statements or has violated this chapter or has otherwise conducted the business in an unlawful manner.
[Ord. No. 1510 Eff. Date 07-11-86]

40.0509 RECORDS.

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40.0509.1 **Every pawnbroker shall** keep a register at each place of business in which the pawnbroker shall accurately and intelligently enter, in ink, in the English language, at the time of purchasing or receiving personal property:

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.1(A) The name, social security number, birthday, height and weight, sex, telephone number, and motor vehicle license plate number of each person from whom property is purchased or received and that person's place of residence;

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.1(B) A particular, detailed and accurate description of each article, including any serial number, model number, or identifiable markings;

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.1(C) The estimated value of each article;

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.1(D) The amount paid, advanced, or loaned;

40.0509.1(E) The date and hour of any transactions;

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.1(F) The time when the article is to be redeemed or brought back;

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.1(G) Any mortgage or bill of sale taken, or pawn ticket given;

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.1(H) When or by whom, an article was disposed of, if redeemed;

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.1(I) When, to whom and how, an article was disposed of, if not redeemed.

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.2 **The pawnbroker's license and the register shall** at all times be open to examination by any police officer, sheriff, deputy sheriff, county or city attorney.

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.3 **Any person shall be guilty of a misdemeanor who shall:**

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.3(A) Fail to keep such record;

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.3(B) Fail to make the required entries therein;

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.3(C) Intentionally or knowingly make any false or unintelligible entry, or any entry that person has reason to believe untrue;

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.3(D) Failure to make the inquiries necessary to enable that person to make such entries or any of them;

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.3(E) Fail to produce that person's license or register when requested by any person having authority to examine it;

[Ord. No. 1510 Eff. Date 07-11-86]

40.0509.3(F) Destroy or negligently permit such register to be destroyed or lost.

[Ord. No. 1510 Eff. Date 07-11-86]

40.0510 **DAILY REPORTS TO CHIEF OF POLICE: INFORMATION TO BE SHOWN.** Every pawnbroker who shall purchase or receive from any person any discarded or second hand copper, brass, lead,

zinc, or babbitt metal, or article made therefrom, any article of jewelry or precious stones, or any secondhand sheet copper or brass, or brass, copper or brass wire, lead (sheet or pipe), plumbing or plumbing materials or fixtures: electric bells, hinges or other door fixtures, window locks, bolts, weights, curtain rods and hooks, and other window fixtures, nickel or nickel plated articles, silver-plated articles, any guns, pistols, tools, instruments or implements, or parts thereof, or any used bicycle or automobile, or parts thereof, or who shall purchase or receive, except from the manufacturer thereof, any bicycle, motorcycle, or automobile tube, tire or other accessory shall within twenty-four (24) hours after purchasing or receiving such articles report the same in writing to the chief of police on forms supplied by the police department for that purpose which require the information set out in the previous section of this chapter.
[Ord. No. 1510 Eff. Date 07-07-86]

40.0511 DESTROYING, DISPOSING OR DISMANTLING ARTICLES FOR FIFTEEN (15) DAYS.

No person purchasing or receiving any article described in the proceeding section shall melt, destroy or dispose of the same without making the report required in the preceding section or within fifteen (15) days after the report is made, except upon written permit from the chief of police. No person purchasing, or receiving any used bicycle, motorcycle, automobile or any bicycle, motorcycle or automobile tube, or tire or other accessory shall sell or dispose of the same without making such report, or within fifteen (15) days after such a report is made, except upon written permit from the chief of police. Every bicycle, motorcycle, or automobile purchased or received shall be left intact for a period of fifteen (15) days unless permission to dismantle the same has been obtained in writing from the chief of police.
[Ord. No. 1510 Eff. Date 07-07-86]

40.0512 CHANGE OR MUTILATION OF JEWELRY. No article of jewelry shall be changed in its form or altered or mutilated in any way within the time fixed for sale and redemption.

[Ord. No. 1510 Eff. Date 07-07-86]

40.0513 PURCHASES FROM MINORS. No pawnbroker shall purchase or receive any personal property from any minor without first receiving consent in writing of the parent or guardian, a copy of which must be filed with the chief of police at the time of filing the report required in §40.0510 of this chapter.

[Ord. No. 1510 Eff. Date 07-07-86]

40.0514 HOURS WHEN PROPERTY MAY BE PURCHASED OR RECEIVED ON PLEDGE.

Property shall be received as a pledge or purchased by any pawnbroker only between 7:00 a.m. and 9:00 p.m. on any day of the week.

[Ord. No. 1510 Eff. Date 07-07-86]

40.0515 CONCEALING ARTICLES TO PREVENT IDENTIFICATION. No pawnbroker shall conceal, secrete or destroy for the purpose of concealing, any article purchased or received by the pawnbroker for the purpose of preventing identification thereof by an officer or any person claiming to own the same.

[Ord. No. 1510 Eff. Date 07-07-86]

40.0516 SALES DURING REDEMPTION PERIOD. No pawnbroker shall sell or otherwise dispose of any article during the time any person has the right to buy back or redeem the same.

[Ord. No. 1510 Eff. Date 07-07-86]

40.0517 HOLDING ARTICLES OF CLOTHING. All articles of clothing taken in pawn or purchased outright shall be held in the same condition in which they were received for fifteen (15) days following, and during this period shall not be cleaned, repaired, dyed or altered in any manner whatsoever.

[Ord. No. 1510 Eff. Date 07-07-86]

40.0518 SEARCH FOR STOLEN PROPERTY. Whenever any police officer shall have reason to believe that any pawnbroker has in the pawnbroker's possession or on the pawnbroker's premises any stolen property, the police officer shall have the right and duty to enter and search the premises or such person for the purpose of discovering stolen property.

[Ord. No. 1510 Eff. Date 07-07-86]

40.0519 EXAMINATION OF PREMISES BY OFFICERS. No pawnbroker or any person shall refuse, resist or attempt to prevent any police officer, with or without warrant, from examining the premises occupied by the pawnbroker for the purpose of discovering stolen property.

[Ord. No. 1510 Eff. Date 07-07-86]

40.0520 DISPOSING OF STOLEN GOODS OR GOODS FOR WHICH THERE IS AN ADVERSE CLAIM.

No pawnbroker shall sell, or permit to be redeemed, or otherwise disposed of any article which the pawnbroker has reason to believe has been stolen, or which is adversely claimed by any person, in which the

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pawnbroker has been notified not to sell, release or otherwise dispose of by any police officer, without first obtaining a permit in writing from the chief of police.
[Ord. No. 1510 Eff. Date 07-07-86]

TITLE 5, BUSINESS REGULATION
CHAPTER 40, REGULATION OF SPECIFIC BUSINESS ACTIVITIES
ARTICLE 6, FARMER'S OR PUBLIC MARKET

40.0601 **PURPOSE.** The purpose of this chapter is to regulate the business of the Farmer's Market in the City held during the summer and fall months of the year.

40.0602 **DEFINITIONS.** Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this chapter, have the following meanings in this section.

40.0602.1 **"Farmers or Public Market":** means a sale of products, the majority of which have been produced in the State of Iowa, including but not limited to, raw fresh vegetables, fruit, honey, herbs, flowers, plants, nuts, baked goods or handcrafted items which conform to all applicable city, county or state health and safety provisions, particularly Iowa Department of Agriculture Regulations, and which are offered for sale by any person, persons, business or organization on a portion of, or entirely on a public street, sidewalk, alley, park or public place during set hours, no more than two days per week within a one year period.

40.0602.2 **"Market Manager":** means a person or organization which holds a farmer's or public market permit and who organizes the participants of the market, promulgates regulations for the conduct of the market consistent with Section 40.0610 below, and generally is responsible for the operation of the market.

40.0603 **PERMIT REQUIRED -- FARMER'S OR PUBLIC MARKET.** No person or organization shall conduct a farmer's or public market as defined in Section 40.0602, without first having obtained a permit as provided in Sections 40.0604 and 40.0605.

40.0604 **APPLICATION FOR PERMIT--FARMER'S OR PUBLIC MARKET.** Any person or organization applying for a permit to conduct a farmer's or public market shall make written application to the Police Chief or designee at least 30 days prior to the first proposed date for the market. If the farmer's or public market is to be held in a public park, the applicant must first receive preliminary approval from the Parks Director. No permit shall be issued unless an application containing the following information is first completed.

40.0604.1 **The name, address and phone number** of the applicant and/or market manager he or she represents.

40.0604.2 **The name of businesses** that the market will be adjacent to.

40.0604.3 **The proposed dates of the market** and its hours of operation.

40.0604.4 **Identity of all participating vendors** with their permanent address and their display location during market activities.

40.0604.5 **Type of merchandise to be sold.**

40.0604.6 **Copy of written rules and procedures** for those involved with market activities including participating vendors.

40.0604.7 **A Certificate of Insurance issued by an insurance company** licensed to do business in this state, providing comprehensive or commercial liability insurance with a minimum of \$500,000 combined single limit coverage for the injury or death of any person, for the damage to property of others and for acts of negligence by the permittee, permittee's agent(s), or employees, in the operation of the market. Said Certificate shall require notice to the City, in conformity with general City standards for Certificates of Insurance, in the event the underlying policy of insurance is canceled for any reason. Termination of insurance coverage, as required by this section, shall result in immediate termination of permit.

40.0604.8 **A Certificate of Insurance issued by an insurance company** licensed to do business in the state, providing comprehensive or commercial liability insurance with a minimum of \$500,000 combined single limit coverage for the injury or death of any person, for the damage to property of others and for acts of negligence by the vendor, vendor's agent(s), or employees, while participating in market activities. Said Certificate shall require notice to the City, in conformity with general city standards for Certificates of Insurance, in the event the underlying policy of insurance is canceled for any reason. Termination of insurance coverage, as required by this section, shall immediately revoke vendor, vendor's agent(s) or vendor's employees right to operate under this ordinance.

40.0605 ISSUANCE OF PERMIT. Upon meeting the conditions of section 40.0604 by a person or organization applying for a permit, the Police Chief, the Public Works Director and in the case of a market held in a park, the Parks Director and Park Board, agree that the proposed sale will not reasonably disrupt pedestrian and vehicular traffic or any other previously scheduled event in the area of the market; that no other application has been submitted which proposes a similar geographic location for the market; that the ordinances of the City will be obeyed in the conduct of the market; and upon payment of the appropriate fees, the Police Chief or designee will issue a permit to conduct a farmer's or public market. In the event of a denial of the permit, the Police Chief or designee will state the reason therefore on the face of the application and inform the applicant. No farmer's or public market permit will be issued for a market within any residential zone of the City.

40.0606 APPEAL TO THE CITY COUNCIL. Any farmer's or public market permit denial may be appealed to the City Council within 10 days of the denial by submitting a written request for appeal to the City Clerk. The City Council shall consider the denial at its next regular meeting and either affirm the denial or direct the Police Chief or designee to issue the permit upon receipt of the appropriate fees. The City Council shall base its decision upon a review of the application, the reasons for denial, and any statements from interested parties. In the event that more than one application has been submitted which proposes a farmer's or public market in similar geographic locations, the City Council will consider the following criteria to determine which application to grant:

1. Experience in managing a farmer's or public market
2. For what purpose the proceeds of the farmer's or public market will be used.

40.0607 DURATION OF PERMIT. The permit shall be issued in the name of the market manager and contain the dates of the sale and shall be valid through December 31 of the year in which the market is held.

40.0608 PERMIT FEE -- FARMER'S OR PUBLIC MARKET. The applicant shall pay a permit fee in the amount of \$75 to the Police Department at the time of filing the application. In the event the application is denied either initially or on appeal, such fee shall be retained by the City to defray the administrative costs incurred.

40.0609 MARKET MANAGER'S RESPONSIBILITIES.

40.0609.1 To obtain any required and applicable permits and to arrange for appropriate signs and/or barriers to control traffic and/or parking in the area of the market.

40.0609.2 To create and administer appropriate written rules and procedures for those involved with market activities including participating vendors.

40.0609.3 To ensure adequate trash container(s) are present in the market and that the market area is reasonably free of trash during and at the close of the market.

40.0609.4 To notify the Police Department of additions and/or deletions of participating vendors and their display location during market activities.

40.0609.5 To require and have on file a current Certificate of Insurance from each vendor meeting the requirements of 40.0604(8) prior to participating in market activities.

40.0610 CONDUCT OF FARMER'S OR PUBLIC MARKET. A farmer's or public market permittee as well as all agents, employees or representatives, shall comply with the following provisions in conducting a farmer's or public market.

40.0610.1 No person shall conduct a farmer's or public market from 9:00 p.m. until 7:00 a.m. the following day.

40.0610.2 No person shall erect booths, tables or display merchandise in such a manner as to block pedestrian or vehicular traffic.

40.0610.3 No person shall erect booths, tables or display merchandise or in any other manner participate in a farmer's or public market without the express consent of the market manager.

40.0611 OTHER REQUIREMENTS. Any Peddler, Solicitor or Transient Merchant as defined by Title 5, Chapter 40, Article 1, shall not operate within 600 feet of a farmer's or public market unless an actual participant of the farmer's or public market. This ordinance shall supersede any other ordinances of the City of Newton Code of Ordinances.

40.0612 PENALTY. Failure to comply with any of the above provisions shall be punishable as a municipal infraction and where applicable may result in the revocation of the farmer's or public market permit.

**TITLE 5, BUSINESS REGULATION
CHAPTER 41, CIGARETTE PERMITS
ARTICLE 1, APPLICATION FOR AND ISSUANCE OF CIGARETTE PERMITS**

41.0101 DEFINITIONS. For use in this chapter, the definitions established in §§ 453A.1 & 453A.42, Code of Iowa, are hereby adopted by reference the same as if fully set out herein.
[Ord. No. 1997 Eff. Date 05-25-01]

41.0102 PERMIT REQUIRED. Permits shall be required as specified in, §453A.13 Code of Iowa, and shall be issued in accordance with the terms of Chapter 453A., Code of Iowa, the provisions of which are hereby adopted by reference the same as if fully set out herein. The permit shall be displayed publicly in the place of business so that it can be seen easily by the public. No permit shall be issued to a minor.
[Ord. No. 1997 Eff. Date 05-25-01]

41.0103 APPLICATION. A completed application on forms provided by the state department of revenue and accompanied by the fee provided in §41.0104 shall be filed with the clerk. Renewal applications shall be filed at least ten (10) days prior to the last regular meeting of the council in June.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-2.03] [O.A.G., 1922, p.460] [Code of Iowa, §98.13(5 & 9)]

41.0104 FEES. The fee for issuing or renewing a cigarette permit shall be as provided in §453A.13, Code of Iowa, the provisions of which are hereby adopted by reference the same as if fully set out herein. For the purposes of the fee section, the City of Newton's population is greater than 15,000 citizens.
[Ord. No. 1997 Eff. Date 05-25-01]

41.0105 ISSUANCE. The council shall issue or renew a permit upon a determination that such issuance or renewal will not be detrimental to the public health, safety or morals.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-2.05]

41.0106 PERMITS NOT TRANSFERABLE. A permit shall not be transferable to another place of business or retailer. However, if a retailer who holds a valid permit changes the retailer's place of business, the council, if it decides to issue a new permit to retailer, shall not charge any additional fee for the unexpired term of the original permit if the retailer has not received a refund for surrender of the original permit.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-2.06]

41.0107 EXPIRATION. Permits expire on June 30 of each year.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-2.07]

41.0108 REFUNDS. A retailer may surrender an unrevoked permit and receive a refund from the city as provided in §453A.13 Code of Iowa, the provisions of which are hereby adopted by reference the same as if fully set out herein.
[Ord. No. 1997 Eff. Date 05-25-01]

41.0109 REVOCATION – SUSPENSION – CIVIL PENALTY. A. If a cigarette permit holder has willfully violated section 453A.2, the Council shall revoke the permit upon notice and hearing. If the cigarette permit holder violates any other provision of this article, provisions of Chapter 453A Code of Iowa or a rule adopted under Chapter 453A Code of Iowa, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the department may revoke the permit issued to the person, after giving the permit holder an opportunity to be heard upon ten days' written notice stating the reason for the contemplated revocation and the time and place at which the person may appear and be heard. The hearing before the Council may be held at a site in the City of Newton as the Council may direct. The notice shall be given by mailing a copy to the permit holder's place of business as it appears on the application for a permit. If, upon hearing, the Council finds that the violation has occurred, the Council may revoke the permit.
B. If a retailer or employee of a retailer has been convicted of violating section §453A.2, §453A.36, subsection 6, or 453A.39, [which said code sections are hereby adopted by reference the same as if fully set out herein] the Council,

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in addition to the other penalties fixed for such violations in this article, shall assess a penalty upon the same hearing and notice as prescribed in subsection A as follows:

1. For a first violation, the violator shall be assessed a civil penalty in the amount of three hundred dollars. Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period time until the penalty is paid.

2. For a second violation, within a period of two years, the violator's permit shall be suspended for a period of thirty days.

3. For a third violation within a period of three years, the violator's permit shall be suspended for a period of sixty days.

4. For a fourth violation within a period of three years, the violator's permit shall be revoked.

C. If a permit is revoked a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the Council.

[Ord. No. 1997 Eff. Date 05-25-01]

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**TITLE 5, BUSINESS REGULATIONS
CHAPTER 42, FAIR HOUSING CODE
ARTICLE 1, FAIR HOUSING REGULATIONS**

42.0101 **DECLARATION OF POLICY.** It is hereby declared to be the policy of the City of Newton in the exercise of its police power for the public safety, public health and general welfare to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, sex or national origin, and, to that end, to prohibit discrimination in housing by any persons.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.01]

42.0102 **DEFINITIONS.** When used herein:

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.02]

42.0102.1 **Real Property:** shall mean buildings, structures, lands, tenements, leaseholds, cooperatives and condominiums.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.02(1)]

42.0102.2 **Discrimination or Discriminatory Housing Practices:** shall mean any difference in treatment based upon race, color, religion, sex or national origin or any act that is unlawful under this chapter.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.02(2)]

42.0102.3 **Person:** shall mean individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.02(3)]

42.0102.4 **Owner:** shall mean a lessee, sub-lessee, co-tenant, assignee, managing agent or other person having the right of ownership or possession, or the right to sell, rent or lease any housing accommodation .

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.02(4)]

42.0102.5 **Financial Institution:** shall mean any person, as defined herein, engaged in the business of lending money or guaranteeing losses.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.02(5)]

42.0102.6 **Real Estate Broker or Real Estate Salesperson:** shall mean any individual qualified by law who, for a fee, commission, salary or for other valuable consideration, or who, with the intention or expectation of receiving or collecting same, lists, sells, purchases, rents, or leases any housing accommodations, including options thereupon, or who negotiates or attempts to negotiate such activities; or who advertises or holds themselves out as engaged in such activities, or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance, upon transfer of any housing accommodation; or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby the broker or salesperson undertakes to promote the sale, purchase, rental or lease of any housing accommodation through its listing in a publication issued primarily for such purposes; or an individual employed by or acting on behalf of any of these.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.02(6)]

42.0102.7 **"Housing Accommodation or Dwelling":** shall mean any building, mobile home or trailer, structure, or portion thereof which is occupied as or designed or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, mobile home or trailer, structure, or portion thereof or any real property as defined herein, used or intended to be used for any of the purposes set forth in this subsection.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.02(7)]

42.0102.8 **"Mortgage Broker":** shall mean an individual who is engaged in or who performs the business or services of a mortgage broker as the same are defined by Iowa statutes

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.02(8)]

42.0102.9 **"Open Market":** shall mean the market which is informed of the availability for sale, purchase, rental or lease of any housing accommodation, whether informed through a real estate broker or by advertising by publication, signs or by any other advertising methods directed to the public or any portion thereof, indicating that the property is available for sale, purchase, rental or lease.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.02(9)]

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42.0103 UNLAWFUL PRACTICES. In connection with any of the transactions set forth in this section which affect any housing accommodation on the open market or in connection with any public sale, purchase, rental or lease of any housing accommodation, it shall be unlawful within the city for a person, owner, financial institution, real estate broker or real estate salesman or any representative of the above to:
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03]

42.0103.1 Withhold Housing. Refuse to sell, purchase, rent or lease or deny to or withhold any housing accommodation from a person because of that person's race, color, religion, ancestry, national origin, sex, or place of birth.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(1)]

42.0103.2 Discrimination in Terms. Discriminate against a person in the terms, conditions or privileges of the sale, purchase, rental or lease of any housing accommodation, or in the furnishing of facilities or services in connection therewith.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(2)]

42.0103.3 Refusal to Transmit Offer. Refuse to receive or transmit a bona fide offer to sell, purchase, rent, or lease any housing accommodation from or to a person because of that person's race, color, religion, ancestry, national origin, sex or place of birth.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(3)]

42.0103.4 Refusal to Negotiate. Refuse to negotiate for the sale, purchase, rental or lease of any housing accommodation to a person because of that person's race, color, religion, ancestry, national origin, sex or place of birth.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(4)]

42.0103.5 Misrepresent Availability. Represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation because of that person's race, color, religion or national origin, sex or place of birth.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(5)]

42.0103.6 False Information. Make, publish, print, circulate, post or mail or cause to be made, published, printed, circulated, posted or mailed, any notice, statement or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation, which indicates any discrimination or any intent to make a discrimination.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(6)]

42.0103.7 Subject to Discrimination. Offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or lease with the understanding that a person may be subjected to discrimination in connection with such sale, purchase, rental or lease, or in the furnishing of facilities or services in connection therewith.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(7)]

42.0103.8 Unfavorable Effects. Induce directly or indirectly or attempt to induce directly or indirectly the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of persons of any particular race, color, religion, sex or national origin or place of birth in the area to be affected by such sale, purchase, rental or lease will or may result in either:
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(8)]

42.0103.8(A) The lowering of property values in the area.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(8A)]

42.0103.8(B) An increase in criminal or antisocial behavior in the area.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(8B)]

42.0103.8(C) A decline in the quality of schools serving the area.
[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(8C)]

42.0103.9 Attempting to Induce Listing. Make any representations concerning the listing for sale, purchase, rental or lease, or the anticipated listing for any of the above, or the sale, purchase, rental or lease of any housing accommodation in any area in the city for the purpose of including or attempting to induce any such

listing or any of the above transactions.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(9)]

42.0103.10 Coercion. Engage in, or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest or create or play upon fear, with the purpose of either discouraging or inducing, or attempting to induce the sale, purchase, rental or lease, or the listing for any of the above, of any housing accommodation.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(10)]

42.0103.11 Retaliate or Discriminate. Retaliate or discriminate in any manner against a person because that person has opposed a practice declared unlawful by this chapter, or because that person has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this chapter.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(11)]

42.0103.12 Prevent Compliance. Aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this chapter; or to obstruct or prevent any person from complying with the provisions of this chapter or any order issued thereunder.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(12)]

42.0103.13 Canvassing to Commit Unlawful Practices. Canvassing to commit any unlawful practices prohibited by this chapter.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(13)]

42.0103.14 Otherwise Withhold. Otherwise to deny to or withhold any housing accommodation from a person because of that person's race, color, religion, ancestry, national origin, sex or place of birth.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(14)]

42.0103.15 Deny Financing. For any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against that person in the fixing of the amount, interest rate, duration or other terms or conditions of such loans or other financial assistance, because of the race, color, religion, sex, or national origin of such person or of any person associated with that person in connection with such loan or other financial assistance or of the present or prospective owners, lessees, tenants or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(15)]

42.0103.16 Deny Participation. Deny any qualified person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings or to discriminate against that person in the terms or conditions of such access, membership or participation on account of race, color, religion, sex or national origin.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.03(16)]

42.0104 EXEMPTIONS. This chapter shall not apply to:

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.04]

42.0104.1 Religious Organizations. A religious organization, association or society or any non-profit institution or organization operating, supervised or controlled by, or in conjunction with a religious organization or society which limits the sale, rental or occupancy of dwellings which it owns or operates for other than commercial purposes to persons of the same religion, or which gives preference to such persons, unless membership in such a religion is restricted on account of race, color, religion, sex or national origin.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.04(1)]

42.0104.2 Private Club. A private club not in fact open to the public which, as an incident to its primary purpose of purposes, provides lodgings which it owns or operates for other than a commercial purpose, and which limits the rental or occupancy of such lodgings to its members or gives preference to its members.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.04(2)]

42.0104.3 Single Family Dwelling. Any single family house sold or rented by an owner, provided that such private individual owner does not own more than three (3) such single family houses at any one time and provided further that in the case of the sale of any such single family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such prior to such sale, the

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exemption granted by this subsection shall apply only with respect to one (1) such sale within any twenty-four (24) month period; provided further that such bona fide private individual owner does not own any interest in, nor is there owned or served on the owner's behalf under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three (3) such single family houses at any one time; provided further the sale or rental of any such single family house shall be excepted from the application of this chapter only if such house is sold or rented:

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.04(3)]

42.0104.3(A) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman or person.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.04(3A)]

42.0104.3(B) Without the publication, posting or mailing, after notice of any advertising or written notice in violation of the provisions of 42 United States Code §3604(c) or of **Section ?** of this chapter; but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies, and other such professional assistance as necessary to perfect or transfer the title.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.04(3B)]

42.0104.4 **Owner Occupied.** Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one of such living quarters as the owner's residence.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.04(4)]

42.0105 **COMPLAINT PROCEDURE.** Any person aggrieved by an unlawful practice prohibited by this chapter may file a complaint with the city attorney within thirty (30) days after the aggrieved person becomes aware of the alleged unlawful practice, and in no event more than sixty (60) days after the alleged unlawful practice occurred. The city attorney or a duly authorized representative shall investigate each complaint and attempt to resolve each complaint. Failure to achieve a resolution acceptable to both parties and compliance with this chapter shall cause the city attorney to forward the complaint and the city attorney's findings to appropriate state and federal officials.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.05]

42.0106 **OTHER REMEDIES.** Nothing herein contained shall prevent any person from exercising any right or seeking any remedy to which that person might otherwise be entitled or from filing such person's complaint with any appropriate government agency.

[Ord. No. 1538 Eff. Date 08-06-87] [1987 Code of Ordinances §7-3.06]

TITLE 5, BUSINESS REGULATION
CHAPTER 43, FRANCHISES
ARTICLE 1, NATURAL GAS FRANCHISE

43.0101 There is hereby granted to Peoples Natural Gas, a division of UtiliCorp Inc., a Delaware corporation, its successors and assigns ("Company"), the right, franchise and privilege for a period of twenty-five (25) years from and after the effective date hereof, to acquire, construct, operate and maintain in the City of Newton, Iowa ("City") as provided herein, the necessary facilities for the distribution, transmission and sale of natural gas for public and private use and to construct and maintain over, upon, across and under the streets, highways, avenues, alleys, bridges and public places the necessary facilities, fixtures and equipment for such purposes, provided however, that based upon the provisions of Section 43.0109 hereof this franchise at the option of the City may be terminated upon its tenth anniversary.

43.0102 The facilities, fixtures and equipment for the distribution, transmission and sale of natural gas within the City shall be placed and maintained so as not to unnecessarily or unreasonably interfere with the travel on the streets, highways, avenues, alleys, bridges and public places in the City, nor shall such facilities, fixtures and equipment unnecessarily or unreasonably interfere with the proper use of the same, including ordinary drainage, or with the sewer or water systems, underground pipe or other property of the City. In the event that facilities, fixtures and equipment of the Company located within a public right-of-way must be relocated because of paving, road construction, or road reconstruction, sewer or water systems construction or reconstruction, or the construction or reconstruction of public drainage systems or similar public works, such relocation, at the written request of the City, shall be timely completed by the Company at its cost. The Company shall obtain a permit for the construction of facilities, fixtures and equipment within the public right-of-way. The City shall advise the Company of any conflict such construction may have with planned or anticipated public improvements, but failure of the City to so advise the Company will not relieve the Company of its obligations under this Section.

The City shall reserve to itself the right to determine upon which side of a street the Company's facilities, fixtures and equipment shall be located, but shall only reserve this right in those instances where there is sufficient right-of-way to utilize either side of the paved or otherwise maintained street surface. If the City determines there is insufficient right-of-way, then the Company will be responsible for obtaining necessary access. The Company shall remove its above-ground facilities, fixtures and equipment as they are abandoned. Any below-ground abandoned facilities, fixtures and equipment that become in conflict with planned or anticipated public improvements shall be removed at the Company's expense.

The Company agrees for and in behalf of itself, its lessees, successors and assigns that all authority and rights in this franchise agreement shall at all times be subject to all rights, power and authority now or hereafter possessed by the City including Section 50.0111 of the Newton Code of Ordinances and all subsequent amendments thereto to regulate the manner in which the Company shall use the streets, alleys, bridges and public places of Newton and concerning the manner in which the Company shall use and enjoy the franchise herein granted.

43.0103 The Company shall indemnify and hold the City harmless from all loss, claims or damages on account of injury to or death of persons, or injury to property arising from the Company's erection, maintenance or operation of its facilities, fixtures or equipment within the City. The Company shall, at its own expense, defend any action at law, in equity or in an administrative proceeding brought against the City on account of Company's erection, maintenance or operation of its facilities, fixtures or equipment within the City. The City shall give the Company prompt notice of the filing of any such claim or suit and extend its full cooperation in the defense thereof. The City assigns to the Company the right to assert all defenses which the City could itself raise in any such action on behalf of itself or others.

43.0104 This franchise shall not be exclusive and shall not restrict in any manner the right of the City Council or any other governing body of the City in the exercise of any governmental power which it may now have or hereafter be authorized or permitted by laws of the State of Iowa.

43.0105 The Company's system authorized by this franchise shall be modern and up-to-date and shall be of sufficient capacity to supply all reasonable demands of said City and the inhabitants thereof and shall be kept in a modern up-to-date condition.

43.0106 The Company will maintain a work center in the City for a minimum of ten (10) years. The work center shall include a lock box for payment dropoff and be staffed to address emergencies in Newton and the surrounding areas according to the rules and regulations of the Iowa Utilities Board and Section 192.615 of the Department of Transportation rules and regulations addressing emergency response.

43.0107 If the Company shall be in default in the performance of any of the terms and conditions of this franchise and shall continue in default for more than thirty (30) days after receiving notice from the City of such default, the City may by ordinance duly passed and adopted, terminate all rights granted under this franchise to the Company. The said notice of default shall specify the provision or provisions in the performance of which it is claimed the Company is in default. Said notice shall be in writing and served in the manner provided by the laws of the State of Iowa for the service of original notices in civil actions.

43.0108 The Company shall pay all costs of the election and preparation of this franchise agreement.

43.0109 Section 1 hereof notwithstanding the City may terminate this franchise agreement on the tenth (10th) anniversary of the effective date of this agreement by giving the Company notice in writing of its intent to terminate this franchise agreement at least one year prior to such anniversary. Failure to give such notice abrogates the right of the City to terminate this franchise agreement on the tenth anniversary date, provided, however, in the event notice is given this franchise agreement shall terminate on the tenth anniversary unless the parties otherwise agree to extend the term of the franchise agreement on mutually satisfactory terms and conditions.

43.0110 Written notice to the Company under this agreement shall be effectuated by letter sent by ordinary or other mail to the registered agent or any executive officer of the Company.

43.0111 All ordinances or parts of ordinances in conflict with the provisions of this agreement are hereby repealed.

43.0112 If any section, provision or part of this agreement shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the agreement as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**TITLE 5, BUSINESS REGULATION
CHAPTER 43, FRANCHISES
ARTICLE 2, ELECTRIC FRANCHISE**

43.0201 There is hereby granted to Iowa Southern Utilities Company, a corporation, its successors and assigns ("Company"), the right, franchise and privilege for a period of twenty-five (25) years from and after the effective date hereof, to acquire, construct, operate and maintain in the City of Newton Iowa ("City") as provided herein, the necessary facilities for the distribution, transmission and sale of electric energy for public and private use and to construct and maintain over, upon, across and under the streets, highways, avenues, alleys, bridges and public places the necessary facilities, fixtures and equipment for such purposes, provided however, that based upon provisions of §§43.0210 hereof this franchise at the option of the City may be terminated upon its tenth anniversary.
[Ord. No. 1767 Eff. Date 09-08-93]

43.0202 The facilities, fixtures and equipment for the distribution, transmission and sale of electric energy within the City shall be placed and maintained so as not to unnecessarily or unreasonably interfere with the travel on the streets, highways, avenues, alleys, bridges and public places in the City, nor shall such facilities, fixtures and equipment unnecessarily or unreasonably interfere with proper use of the same, including ordinary drainage, or with the sewer or water systems, underground pipe or other property of the City. In the event that facilities, fixtures and equipment of the Company located within a public right-of-way must be relocated because of paving, road construction or road reconstruction, sewer or water systems construction or reconstruction, or the construction or reconstruction of public drainage systems or similar public works, such relocation, at the written request of the City, shall be timely completed by the Company at its cost. The Company shall obtain a cost-free permit for the construction of facilities, fixtures and equipment within the public right-of-way. The City shall advise Company of any conflict such construction may have with planned or anticipated public improvements, but failure of the City to so advise the Company will not relieve the Company of its obligations under this Section.

In the event of any construction or reconstruction of any electric lines within the City, the Company shall consider all options for this construction or reconstruction. The options shall include relocation, overhead construction, underground construction and other options which may apply, provided that the Company shall comply with City subdivision ordinances requiring underground construction of utilities in new subdivisions with costs to be governed by Company tariffs in effect at the time of subdivision.

The City may reserve to itself the right to determine upon which side of a street an underground line shall be buried, but shall only reserve this right in those instances where there is sufficient right-of-way to utilize either side of the paved or otherwise maintained street surface.
[Ord. No. 1767 Eff. Date 09-08-93]

43.0203 The Company shall indemnify and hold the City harmless from all loss, claims or damages on account of injury to or death of persons, or injury to property arising from the erection, maintenance or operation of its facilities, fixtures or equipment within the City. The Company shall, at its own expense, defend, without regard to fault of City, any action at law, in equity or in an administrative proceeding brought against the City on account thereof. The City shall give the Company prompt notice of the filing of any such claim or suit and extend its full cooperation in the defense thereof. The City assigns to the Company the right to assert all defenses which the City could itself raise in any such action on behalf of itself or others.
[Ord. No. 1767 Eff. Date 09-08-93]

43.0204 This franchise shall not be exclusive and shall not restrict in any manner the right of the City Council or any other governing body of the City in the exercise of any governmental power which it may now have or hereafter be authorized or permitted by laws of the State of Iowa.
[Ord. No. 1767 Eff. Date 09-08-93]

43.0205 Within ten (10) years of the effective date of this ordinance, all electric distribution lines serving the Underground Service Area (USA) within the North Central Urban Renewal Area identified on Exhibit "A", attached hereto, shall be placed underground at Company's sole expense on a phased schedule jointly developed not later than July 1 of each year, through regular communication between the City and the Company, to timely fulfill electric service requirements identified in redevelopment agreements executed between developers and the City. Individual customer service lines within said USA shall be placed underground with costs to be governed by Company tariffs in effect at the time of installation.
[Ord. No. 1767 Eff. Date 09-08-93]

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43.0206 The Company will permit the City, at its expense, to install brackets on Company poles in agreed upon locations for promotional banners. Bracket design and placement of the poles must meet Company safety standards and the City shall indemnify Company consistent with the indemnity provided to the City under §43.0203 hereof.

[Ord. No. 1767 Eff. Date 09-08-93]

43.0207 The Company's system authorized by this ordinance shall be modern and up-to-date and shall be of sufficient capacity to supply all reasonable demands of said City and the inhabitants thereof and shall be kept in a modern up-to-date condition.

[Ord. No. 1767 Eff. Date 09-08-93]

43.0208 The Company will maintain a business facility in the City for a minimum of ten (10) years.

[Ord. No. 1767 Eff. Date 09-08-93]

43.0209 The Company shall pay all costs of the election and preparation of this franchise ordinance.

[Ord. No. 1767 Eff. Date 09-08-93]

43.0210 Section 43.0201 hereof notwithstanding the City may terminate this franchise ordinance on the tenth (10th) anniversary of the effective date of this ordinance by giving the Company notice in writing of its intent to terminate, naming this franchise ordinance, not more than sixty (60) nor less than thirty (30) days prior to such anniversary. Failure to give such notice abrogates the right of the City to terminate this franchise ordinance on the tenth anniversary date, provided, however, in the event notice is given, this franchise ordinance shall terminate on the tenth anniversary unless the parties otherwise agree to extend the term of the franchise agreement on mutually satisfactory terms and conditions.

[Ord. No. 1767 Eff. Date 09-08-93]

43.0211 Written notice to the Company under this ordinance shall be effectuated by letter sent by ordinary or other mail to the registered agent or any executive officer of the Company.

[Ord. No. 1767 Eff. Date 09-08-93]

43.0212 All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

[Ord. No. 1767 Eff. Date 09-08-93]

43.0213 If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

[Ord. No. 1767 Eff. Date 09-08-93]

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**TITLE 5, BUSINESS REGULATION
CHAPTER 43, FRANCHISES
ARTICLE 3, TELEPHONE FRANCHISE**

EDITOR'S NOTE

General Telephone (GTE) operates under an 1873 Legislative Franchise which grants them Perpetual or Indeterminate Franchise Rights. Section 1324 of the Code of Iowa 1873 is the reference for this Legislative Franchise.

**TITLE 5, BUSINESS REGULATION
CHAPTER 43, FRANCHISES
ARTICLE 4, CABLE TV FRANCHISE**

1. Terms
2. Term of Franchise
3. Effective Date of Franchise
4. Compliance To Cable Franchise Regulatory Ordinance
5. System Design
6. Capital Equipment Grant – Community Programming
7. Activated Channels
8. Service Area
9. Franchise Nonexclusive
10. Police Powers
11. Transfer of Franchise
12. Emergency Alert System
13. Franchise Fee
14. Review Sessions
15. Annual Report
16. Enforcement and Termination of Franchise
17. Indemnification
18. Insurance Coverage and Notification
19. Faithful Performance Bond
20. Severability
21. Adoption
22. Notices
23. Entire Agreement

Exhibit A – Franchise Fee Payment Worksheet

FRANCHISE AGREEMENT

This Franchise Agreement (this “Franchise”) is between the City of Newton, Iowa hereinafter referred to as “Franchising Authority” or “City” or “Grantor” and MCC Iowa LLC hereinafter referred to as “Grantee”.

The Franchising Authority, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction and operation of a Cable System on the terms set forth herein.

1. TERMS

For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense shall include the future tense and words in the plural number shall include the singular number, and words in the singular number shall include the plural number:

- A. “Basic Cable” is the lowest priced tier of service that includes the retransmission of local broadcast television signals and any public, educational, and governmental access channels.
- B. “Cable Act” collectively means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended. Any reference to the Cable Act shall mean the most current version of the Cable Act.
- C. “Cable Operator” shall be defined as in the Cable Act.
- D. “Cable Service” shall be defined as in the Cable Act.
- E. “Cable System” shall be defined as in the Cable Act.
- F. City means the City of Newton and the geographical area within the corporate boundaries of the city.
- G. “FCC” means Federal Communications Commission, or successor governmental entity thereto.
- H. “Franchise” shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System.

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- I. "Franchising Authority" or "Grantor" means the City Council of the City of Newton or the lawful successor, transferee, or assignee thereof.
- J. "Grantee" means any person, firm, corporation, or other entity granted a franchise hereunder, or the lawful successor, transferee, or assignee thereof.
- K. "Gross Revenue" mean any and all revenue received by the Grantee from the operation of the Cable System to provide cable service to Subscribers in the Service Area, provided, however, that such phrase shall not include any fees or franchise fees or taxes which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.
- L. "Headend" shall mean the land, electronic processing equipment, antennas, tower, building, and other appurtenances normally associated with and located at the starting of a cable system.
- M. "House drop" or "drop" means a cable that connects each building or home to the nearest feeder line of the cable network.
- N. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve subscribers. In all cases, "Normal Business Hours", as a minimum, shall mean those hours when the Newton City Hall is open to serve citizens.
- O. "Normal Operating Conditions" shall mean those service conditions, which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, strikes, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, and maintenance or upgrade of the Cable System.
- P. "Outlet" shall mean the point of connection of the cable or wire to a television.
- Q. "Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.
- R. "Private Property" means all property, real, personal or mixed, owned or used by the Grantee, however arising from or related to or connected with the franchise.
- S. "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.
- T. "Public Access Channel" means channel capacity designated for non-commercial public access use.
- U. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way lane, public way, drive circle, or other public right-of-way, including but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the system. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.
- V. "Service Area" means the present municipal boundaries of the Franchising Authority.
- W. "Service Interruption" means the loss of video or audio on one or more channels.
- X. "Service Tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charges by the cable operator.
- Y. "Shall" and "Will" are mandatory; "may" is permissive.
- Z. "Subscriber" means a person or user of the system who elects to lawfully receive cable service and other authorized services there from with the Grantee's expressed permission. [Ord. No. 2058 Eff. Date 09-10-03]

2. TERM OF FRANCHISE. MCC Iowa, LLC, its successors and assignees are hereby granted a renewal of their non-exclusive right, franchise and authority for a period of ten (10) years to erect, maintain, and operate a Cable System in Newton, Iowa, and to sell and supply individuals, firms and corporations within the corporate limits of the City of Newton, Iowa cable service and other services in, along, among, above, over, under, or in any manner connected with public ways within the service areas and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across, or along any public way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system, subject to the conditions and restrictions provided and subject to the Cable Franchise Regulatory Ordinance, passed and adopted on September 2, 2003 and all applicable law of the State of Iowa and United States of America. [Ord. No. 2058 Eff. Date 09-10-03]

3. EFFECTIVE DATE OF FRANCHISE. This Franchise and all rights there under shall become effective after final passage and publication and subject to Grantee's acceptance thereof. Within sixty (60) days after final passage and adoption of this franchise renewal, the Grantee shall file with the Clerk an acceptance in writing of this franchise renewal and pay all publication costs under the laws of the State of Iowa. [Ord. No. 2058 Eff. Date 09-10-03]

4. COMPLIANCE TO CABLE FRANCHISE REGULATORY ORDINANCE. The Grantee shall comply with all of the conditions and provisions of the Cable Franchise Regulatory Ordinance passed and adopted on September 2, 2003, unless an exemption or modification is so specified in this Franchise Agreement. In the event of a conflict or ambiguity between the Franchise Agreement and the Regulatory Ordinance, the terms of the Franchise Agreement shall control.

The Grantee shall be exempted from compliance with the following sections of the Cable Franchise Regulatory Ordinance:

- 2.5 Application for Franchise
- 3.10 Local Office
- 4.5 Access Equipment and Facilities Fees
- 8.8 Security Fund

No future transferees or assigns of this franchise, other than entities controlled by Mediacom Communications Corporation, including MCC Iowa LLC, shall be so exempt.

MCC Iowa LCC and any other entities controlled by Mediacom Communications Corporation shall be exempt from Section 5.8, City's Right to Purchase, in the Cable Franchise Regulatory Ordinance for a period not to exceed seven (7) years from the commencement date of this agreement. [Ord. No. 2058 Eff. Date 09-10-03]

5. SYSTEM DESIGN

- a. As of the effective date of this franchise, the Grantee will make available a minimum capacity of 110 channels.
- b. The system will be designed so as to be two-way capable, and will be constructed in a manner that will meet or exceed FCC specifications to all parts of the City of Newton on the effective date of this Franchise.
- c. The Grantee shall provide for the installation and operation of an emergency alert system pursuant to FCC regulations on or before July 1, 2003.
- d. The Grantee shall provide an "upstream capability" to allow live broadcast on or before July 31, 2004 on the education and government channel from the following locations – Newton City Hall, Newton School Administration Building, and Newton Senior High School.
- e. The Grantee will provide one channel to be used for public access. The Grantee will provide one channel to be used for Public access. The Grantee will activate this channel from the Newton City Hall and purchase all of the necessary equipment and modulators to activate the return.
- f. In addition to one (1) public access channel, the Grantee shall provide one channel to be used for educational access and one channel to be used for governmental access. The Grantee shall activate these channels from Newton City Hall and other designated locations and purchase all of the necessary equipment and modulators to activate the return. Whenever any of the specially designated channels is in use during seventy percent (70%) of the weekdays (Monday – Friday) for seventy percent (70%) of the time between the hours of 7:00 a.m. and 11:00 p.m. for six consecutive weeks showing locally produced original programming or programs of particular interest, and there is a demand for use of an additional channel for the same purposes as the channel meeting the above criteria, the Grantor may request an additional PEG channel. The Grantee shall have six (6) months from the request of the Grantor to make such channel available. Notwithstanding the foregoing, the Grantee shall not be required to provide more than four (4) PEG access channels during the term of the franchise. For the purpose of this section, programming shown after 5:00 p.m. may be repeated the following day and be defined as locally produced original programming necessary to calculate the seventy percent threshold.
 - If the PEG channels are not programmed a minimum of twenty (20%) of the weekdays between the hours of 9:00 a.m. to 5:00 p.m. for twenty-six (26) consecutive weeks showing local original programming (not character generation), the Grantor may utilize the channel for commercial programming with no less than six (6) months notice to the Grantor.
- g. The Grantee shall maintain the return path capability in a manner that shall meet or exceed all FCC technical standards.
- h. Drop Maintenance. Grantee shall maintain and replace subscriber drops during its normal operation of the Cable System that do not meet the standards of the National Electric Safety Code. The Cable System shall be designed to allow each Subscriber drop to provide service to three (3) outlets.
- i. Service to Public Buildings. The Grantee shall, upon request provide without charge, one outlet of Basic Service and Expanded Basic Service to the following locations: [Ord. No. 2058 Eff. Date 09-10-03]

- i. City Hall
- ii. Public Library
- iii. Police Station
- iv. Fire Station
- v. Newton Senior High School
- vi. Berg Middle School
- vii. Aurora Heights Elementary School
- viii. Berg Elementary School
- ix. Emerson Hough Elementary School
- x. Woodrow Wilson Elementary School
- xi. Thomas Jefferson Elementary School
- xii. County Annex Building
- xiii. Jasper County Emergency Management Disaster Services Office
- xiv. City Street Department Building
- xv. Park and Recreation Building
- xvi. Locations of PEG Channels
- xvii. Newton Christian School

The outlets of Basic Service shall not be used to distribute or sell services in or throughout such buildings, nor shall such outlets be used for commercial purposes. [Ord. No. 2058 Eff. Date 09-10-03]

J. Liquidated Damages. The Grantor may access the Grantee a liquidated damage amount of one hundred dollars (\$100) per day for failure to meet the construction requirements of this Franchise Agreement provided that the Grantor has followed the due process and enforcement provisions contained in Section 16 of this agreement. [Ord. No. 2058 Eff. Date 09-10-03]

6. CAPITAL EQUIPMENT GRANT – COMMUNITY PROGRAMMING

No later than January 31, 2004 the Grantee will provide the City with \$15,000 for the purchase of up-front capital equipment and/or facilities for PEG access, as the Grantor deems necessary. The Grantor agrees that this initial grant may be passed through to subscribers, as allowed by federal law. [Ord. No. 2058 Eff. Date 09-10-03]

7. ACTIVATED CHANNELS

Upon the completion of the system upgrade, the Grantee's channel line-up shall be revised to include all the FCC "must carry" broadcast channels if the broadcaster elects "must carry" status and all local access or PEG channels on the basic tier of service. [Ord. No. 2058 Eff. Date 09-10-03]

8. SERVICE AREA

The Grantee shall, at its expense, promptly extend its system to have service available to all potential subscribers of:

- i. The corporate limits of the City of Newton and newly annexed areas to the City, not currently served by the Cable System, where the average density is at least eight (8) potential subscribers per lineal one quarter (1/4) mile of the proposed trunk and feeder cable route.
- ii. Any new single-family dwelling unit, commercial establishment, or potential subscriber within two hundred (200) feet of the existing distribution system in the City, upon request of the potential subscriber.

No customer shall be refused service arbitrarily. However, for unusual circumstances, such as (1) existence of more than 200 feet of distance from the distribution cable to the connection point of service to the customers, or a (2) density of less than eight (8) potential subscribers per 1320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction to be borne by the Grantee and the customers in the area in which construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in the aid of construction to be borne by the Grantee and the customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per one quarter (1/4) mile, multiplied by a fraction whose numerator equals the actual number of residence per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals eight (8) potential subscribers. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of the construction borne by such potential customers be paid in advance. [Ord. No. 2058 Eff. Date 09-10-03]

9. FRANCHISE NONEXCLUSIVE.

This Franchise shall not be construed as any limitation upon the right of the Grantor to grant to other persons rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other streets, alleys, or other public ways or public places. The Grantor specifically reserves the right to grant at any time during

the term of this Franchise or renewal thereof, if any, such additional Franchises for a Cable System as it deems appropriate. The Franchising Authority shall not permit any person to provide services similar to those provided by the Grantee in the Service Area without first having secured a non-exclusive franchise from the Franchising Authority. The Franchising Authority agrees that any grant of additional franchises or other authorizations including OVS authorizations by the Franchising Authority to provide services similar to those provided by the Grantee pursuant to this Agreement to any other entity shall cover the entire Service Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein. In any renewal of this Franchise, the Franchising Authority, should it seek to impose increased obligations previously granted and find that the proposed increased obligations in the renewal are not burdensome and/or less favorable than Franchise (s) or authorizations. [Ord. No. 2058 Eff. Date 09-10-03]

10. POLICE POWERS

In accepting this Franchise, Grantee acknowledges that its rights hereunder are subject to the police powers of the Grantor to adopt and enforce general ordinances necessary for the safety and welfare of the public and it agrees to comply with all generally applicable laws and ordinances lawfully enacted by the Grantor pursuant to such powers. [Ord. No. 2058 Eff. Date 09-10-03]

11. TRANSFER OF FRANCHISE

The Grantee's right, title, or interest in the franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity, controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, as stipulated in Section 5.5 of the Cable Franchise Regulatory Ordinance as passed concurrently with the passage of this agreement. [Ord. No. 2058 Eff. Date 09-10-03]

12. EMERGENCY ALERT SYSTEM

The Grantee shall, in the case of any emergency or disaster, make its entire Cable System available without charge to the Grantor or to any other governmental or civil defense agency that the Grantor shall designate. The Cable System shall be engineered to provide an audio and video alert system to allow authorized officials to automatically override the audio and video signal on all channels and transmit and report emergency information pursuant to FCC regulations. The Franchising Authority shall hold the Grantee, its agents, employees, officers, and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorney's fees and costs, provided that the emergency alert system is in good repair and is operational as required by FCC regulations and the Franchise Agreement. The Grantee will install and maintain a back up generator at its head end that will provide the needed power to generate the head end in the event of a power outage. [Ord. No. 2058 Eff. Date 09-10-03]

13. FRANCHISE FEE.

A. Franchise Fee Payment. In consideration for the use of the streets and public ways of the City for the construction, operation, maintenance, and reconstruction of a Cable System within the City, a Grantee shall pay to the Grantor an annual amount equal to five (5%) percent of the Grantee's Gross Revenues as defined in Section 1 of this Agreement.

B. Quarterly Payments. Payment due to the Grantor under the Franchise Agreement shall be made quarterly at the City Clerk's office not later than forty-five (45) days following March 31, June 30, September 30 and December 31 of each year. Any fee not paid when due shall bear interest at a rate of one and one-half percent (1 1/2%) per month from the date due. Each payment shall be accomplished with a detailed report, as shown in Exhibit A, showing the basis for the computation, and shall include but not limited to, a specific breakdown of the following charges, installation charges, reconnection fees, premium channel revenues, shopping service revenue, revenue from other sources such as contracted or subleased cable services, pay per view, miscellaneous revenue, and such other relevant facts as may be required by the Grantor necessary to determine the accuracy of the franchise payment as specified in of this Ordinance. The acceptance of any payment shall not be construed, as an accord that the amount paid is, in fact, the correct amount; nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for additional sums payable by the Grantee. The Grantee agrees to permit the City, upon request with reasonable notice, to review at Grantee's local office its gross revenue records as may be necessary to monitor compliance with section 5.1 of this Ordinance. All amounts paid shall be subject to audit and recomputation by the Grantor.

C. Franchise Fee Audit. A Grantee will fully cooperate with a franchise fee audit performed by a professional firm that is chosen by the Grantor. The costs associated with the audit will be paid by the Grantor, except that the Grantee shall pay for the costs if the audit shows an underpayment of franchise fees in excess of five percent (5%) or more for a reporting period.

D. Franchise Fee Increases. The Grantor may request an increase in franchise fees at any time during the term of the franchise, equal to the maximum percentage allowed by federal law. However, such request shall be made in writing and the Grantee will not be liable for said increase until proper notice, as defined by federal law, is given to its subscriber. Prior to making a final decision regarding an increase in franchise fees, the Grantor shall conduct a public hearing and shall grant an opportunity to the Grantee to discuss the proposed increase in franchise fee.

E. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be five years from the date on which payment by a Grantee is due. [Ord. No. 2058 Eff. Date 09-10-

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14. REVIEW SESSIONS.

a. Purpose of Review Sessions

In recognition of the fact that a great many technical, financial, marketing and legal uncertainties are associated with all aspects of cable communications at the present time, it is the intent of the City to provide for a maximum feasible degree of flexibility in a Franchise throughout its term to achieve an advanced and modern cable system for the City. The principal means for accomplishing this flexibility will be the scheduled review sessions provided for in this Ordinance. It is intended that such review sessions will serve as a means of cooperatively working out solutions to problems that develop. Further more, such review sessions shall be two-way processes. For example, if either party has perceived that some major problem has developed, the session shall be devoted primarily to working out solutions acceptable to both parties.

b. Topics to be Covered

The Grantor and the Grantee shall hold scheduled review sessions on the third, sixth, and ninth anniversary dates of the effective date of a Franchise Agreement. All such review sessions shall be open to the public and notice thereof shall be published once, not less than four (4) days or more than twenty (20) days before each review session, as provided by law. The published notice shall specify the topics to be discussed. The review sessions may be canceled by mutual agreement of the Grantor and Grantee. The following topics may be discussed at every scheduled review session:

Recent and Developing Judicial and Federal Communications Rulings
Service Rate Structures
Free and Discounted Services
Application of New Technology or New Developments
Cable System Performance
Cable System Extension Policy
Services Provided
Programming Offered
Customer Complaints Review
Community Development and Education
Interconnection
New Services
Subscriber Privacy Abuse Issues
New Developments
Franchise Fees

Other topics, in addition to those listed, may be added by either party. Members of the general public may also request additional topics. [Ord. No. 2058 Eff. Date 09-10-03]

15. ANNUAL REPORT

No later than ninety (90) days after the close of a Grantee's fiscal year, and upon written request, the Grantee shall submit a detailed written informative report to the City, including the following information:

- a. A summary of the previous year's activities in development of the Cable System, including, but not limited to, services begun or dropped and newly served geographic areas within the City limits.
- b. A summary of complaints, identifying the number and specific nature of complaints and their disposition.
- c. A list of key management for the Newton franchise along with their addresses and job titles.
- d. The annual report of the parent company, if a public corporation. Such report shall be construed to mean the report of the previous year.

The total estimated annual value of the potential revenue from cable services provided in the Service Area without charge or provided under a barter arrangement, along with the total estimated number of persons who are provided cable services in the Service Area without charge or under a barter arrangement. [Ord. No. 2058 Eff. Date 09-10-03]

16. ENFORCEMENT AND TERMINATION OF FRANCHISE

- a. Notice of Violation. In the event that the Grantor believes that the Grantee has not complied with the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance.
- b. Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Section 16A (a) to respond to the Franchising Authority, contesting the assertion

of noncompliance, or (b) to cure such default, or (c) in the event that, by the nature of

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default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the step being taken and the projected date that they will be completed.

- c. Public Hearing. In the event that the Grantee fails to respond to the notice described in Section 16A pursuant to the procedures set forth in Section 16B, or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to 16B above, the Franchising Authority shall schedule a public hearing to investigate the default. The Franchising Authority shall notify the Grantee in writing of the time and place if such meeting no less than five business days in advance and provide the Grantee with an opportunity to be heard.
- d. Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any provisions of the Franchise, the Franchising Authority may:
 - i. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;
 - ii. Commence an action at law for monetary damages or seek other equitable relief; or
 - iii. In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the procedures outlined in this section.

The Franchising Authority shall give written notice to the Grantee of its intent to revoke the franchise on the basis of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reason for such objection. In the event the Franchising Authority has not received a response satisfactory from the Grantee, it may then seek termination of the Franchise at a Public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination.

At the designated meeting, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reserve such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action, which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise. [Ord. No. 2058 Eff. Date 09-10-03]

17. INDEMNIFICATION

Any Grantee shall defend, indemnify, protect, and hold harmless the Grantor from and against any and all liability, losses, and damage to property or bodily injury or death to any person, including payments made under workman's compensation laws, which may arise out of or be caused by the erection, construction, replacement, removal, maintenance, or operation of Grantee's Cable System and caused by any act or failure to act on the part of the Grantee, its agents, officers, servants, or employees. The Grantor shall give the Grantee written notice of its obligation to indemnify within 30 days following service of a petition or similar pleading. If the Grantor determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Grantor. [Ord. No. 2058 Eff. Date 09-10-03]

18. INSURANCE COVERAGE AND NOTIFICATIONS

A Grantee shall maintain insurance in such amounts and kinds of coverage's as may be specified by the Grantor in the Franchise Agreement. Such coverage may be reasonably adjusted by the Grantor with ninety (90) day notification, provided that the Grantor demonstrates the need for increases in coverage's. The Grantee shall maintain such insurance with insurance underwriters authorized to do business in the State of Iowa. All policies shall name the Grantor, its employees, servants, agents, and officers as additional insured parties. Each policy shall provide that it may not be canceled nor the amount of coverage altered until thirty (30) days after receipt by the City Clerk of a registered mail notice of such intent to cancel or alter coverage.

The Grantee shall provide a certification of insurance designating the Grantor as an "additional insured". The Grantee shall maintain and provide to the Grantor proof of public liability insurance for not less than the following amounts: [Ord. No. 2058 Eff. Date 09-10-03]

\$1,000,000	Any 1 Occurrence, Bodily Injury or Property Damage
\$1,000,000	Products/Completed Operations Annual Aggregate Liability
\$1,000,000	General Aggregate

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19. FAITHFUL PERFORMANCE BOND

Upon acceptance of the Franchise, Grantee shall submit and maintain throughout the term of the Franchise, a faithful performance bond in the amount of one hundred thousand dollars (\$100,000.00). The bond shall insure compliance with all applicable laws, regulations, ordinances, shall provide for recoverable loss or damages, compensation, indemnification, reasonable attorney fees, cost of removal or abandonment of Grantee's property. [Ord. No. 2058 Eff. Date 09-10-03]

20. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Franchise Agreement Ordinance shall be held invalid or unenforceable or unconstitutional, the remaining provisions shall remain in full force and effect. [Ord. No. 2058 Eff. Date 09-10-03]

21. ADOPTION

This Franchise renewal agreement was awarded by the City Council on September 2, 2003 and was published as required on September 10, 2003. Therefore, this franchise renewal shall expire on September 10, 2013. [Ord. No. 2058 Eff. Date 09-10-03]

22. NOTICES

Unless otherwise agreed between the parties, every notice or response required by this Franchise to be service upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid.

The notices or responses to the Franchising Authority shall be addressed as follows:

City Administrator
City Hall – P.O. Box 399
City of Newton
Newton, Iowa 50208

The notices or responses to the Grantee shall be addresses as follows:

MCC Iowa LLC
Attn: Director of Government Relations
6300 Council Street NE
Cedar Rapids, IA 52402

With a copy to:
MCC Iowa LLC
Legal Department
100 Crystal Run Road
Middletown, NY 10941

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

Passed, adopted and effective this 10th day of September 2003, subject to applicable federal, state and local law.

22. ENTIRE AGREEMENT

This Franchise Agreement constitutes the entire understanding and agreement between the Franchising Authority and Grantee and supersedes all prior franchise agreements. This Franchise may only be modified, amended or supplemented with the mutual written consent of the Franchising Authority and the Grantee. The Franchising Authority may, from time to time, amend the Cable Regulatory Ordinance pursuant to its lawful police powers; provided, however, such amendments shall not serve to impair the rights nor increase the obligations of the Grantee pursuant to this Franchise except if any said amendments are required by Federal Law.

IN WITNESS WHEREOF, the parties hereto have entered into this Franchise Agreement on September 10, 2003.
[Ord. No. 2058 Eff. Date 09-10-03]

**TITLE 5, BUSINESS REGULATION
CHAPTER 43, FRANCHISE
ARTICLE 5, CABLE TELEVISION REGULATIONS**

CABLE FRANCHISE REGULATORY ORDINANCE

The Franchising Authority, after having determined that the financial, legal, and technical ability of the Grantee is reasonable sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, may grant a Franchise Agreement to qualified Grantees for the construction and operation of a cable system on the terms set forth herein.

**SECTION 1
DEFINITION OF TERMS AND FRANCHISE REQUIRED**

1.1 TERMS

For the purpose of this Franchise, the following terms, phrases, words, and abbreviations have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense shall include the future tense and words in the plural number shall include the singular number, and words in the singular numbers shall include the plural number:

- A. "Basic Cable" is the lowest priced tier of service that includes the retransmission of both broadcast television signals and any public, educational, and governmental access channels.
- B. "Cable Act" collectively means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended. Any reference to the Cable Act shall mean the most current version of the Cable Act.
- C. "Cable Operator" shall be defined as in the Cable Act.
- D. "Cable Service" shall be defined as in the Cable Act.
- E. "Cable System" shall be defined as in the Cable Act.
- F. City means the City of Newton and the geographical area within the corporate boundaries of the City.
- G. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- H. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System.
- I. "Franchising Authority" or "Grantor" means the City Council of the City of Newton or the lawful successor, transferee, or assignee thereof.
- J. "Grantee" means any person, firm, corporation, or other entity granted a franchise hereunder, or the lawful successor, transferee, or assignee thereof.
- K. "Gross Revenues" mean any and all revenue received by the Grantee from the operation of the Cable System to provide cable service to Subscribers in the Service Area, provided however, that such phrase shall not include any fees or franchise fees or taxes which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.
- L. "Headend" shall mean the land, electronic processing equipment, antennas, tower, building, and other appurtenances normally associated with and located at the starting point of a cable system.
- M. "house drop" or "drop" means a cable that connects each building or home to the nearest feeder line of the cable network.

N. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve subscribers. In all case, "Normal Business Hours", as a minimum shall mean those hours when the Newton City Hall is open to service citizens.

O. "Normal Operating Conditions: shall mean those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee included by limited to, natural disasters, strikes, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee included, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

P. "Outlet" shall mean the point of connections of the cable or wire to a television.

Q. "Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

R. "Private Property" means all property, real, personal or mixed, owed by a private person, including property owned by a public utility not owned or operated by the City.

S. "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.

T. "Public access channel" means channel capacity designated for non-commercial public access use.

U. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way lane, public way, drive circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the system. Public Way shall also mean any easement now or hereafter held by the Franchising Authority with the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, sire, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the Cable System.

V. "Service Area" means the present municipal boundaries of the Franchising Authority.

W. "Service Interruption" means the loss of video or audio on one or more channels.

X. "Service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.

Y. "Shall" and "will" are mandatory, "may" is permissive.

Z. "Subscriber" means a person or user of the system who elects to lawfully received cable services and other authorized services there from with the Grantee's expressed permission. [Ord. No. 2057 Eff. Date 09-10-03]

1.2 FRANCHISE REQUIRED

AA. Subject to federal and sate law, no person, firm, company, corporation or association shall construct, install, maintain or operate within any public street in the City or within any public property of the City, any equipment or facilities for the distribution of television signals over a Cable System to the any Subscriber, unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of this Ordinance, and unless such franchise is in full force and effect. [Ord. No. 2057 Eff. Date 09-10-03]

SECTION 2
GRANT OF FRANCHISE

2.1 PURPOSE

BB. The purpose of this Ordinance is to specify requirements for the establishment, construction, operation, and maintenance of a Cable System in the City pursuant to Chapter 364, Code of Iowa and applicable federal law. If a new applicant submits a proposal acceptable to then Grantor, meets the requirements of this Ordinance and those of the FCC, and applicable state law, the Grantor may then proceed to enter into a non-exclusive one. If the incumbent operator submits a proposal acceptable under the terms of the Cable Act as amended, and meets the requirements of the FCC, the City shall proceed to fulfill its obligations under section 626 of the Telecommunications Act of 1996. [Ord. No. 2057 Eff. Date 09-10-03]

2.2 LENGTH OF FRANCHISE

CC. The term of a franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall be determined by the Grantor in the Franchise Agreement. [Ord. No. 2057 Eff. Date 09-10-03]

2.3 SIGNIFICANCE OF FRANCHISE

1. Franchise Nonexclusive. Any franchise granted here under by the City shall not be exclusive and the City reserves the right to grant a similar franchise to any qualified person at any time.

2. Privileges Must Be Specified. No privilege of exemption shall be inferred from the granting of any franchise, unless it is specifically prescribed.

3. Authority Granted. Any franchise granted hereunder shall give to the Grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, above, over and under Streets and Public Ways, as defined in Section 1.1. herein, which has been or may hereafter be dedicated and open to public use in the City, towers, antennas, poles, cables, electronic equipment, and other network appurtenances necessary for the operation of a Cable System in the City, subject to the requirements of this Ordinance.

4. Subject to Other Regulatory Agencies Rules and Regulations. The Grantee shall at all times during the life of any franchise granted hereunder be subject to all generally applicable ordinances promulgated pursuant to the lawful exercise of the police power by the Grantor.

5. Pole Use Agreements Required. Any franchise granted hereunder shall not relieve the Grantee of any obligation involved in obtaining pole or conduit-use agreements from the gas, electric and the telephone companies or others maintaining poles or conduits in the streets of the City.

6. Ordinance Revisions. Any franchises granted under this Ordinance are made subject to the lawful revisions of this Ordinance and the City code of ordinances of the Grantor, provided that such revisions do not materially alter or impair the rights or the obligations of Grantee set forth in any Franchise Agreement and are mutually agreed to by the Grantor and Grantees. [Ord. No. 2057 Eff. Date 09-10-03]

2.4 RIGHTS RESERVED TO THE GRANTOR

1. Right of Amendment Reserved to Grantor. The Grantor may from time to time add to, modify or delete provisions of this Ordinance as it shall deem necessary in the exercise of its lawful police powers and as may be mutually agreed to by the Grantor and Grantee. Such additions or revisions shall be made only after a public hearing for which the Grantee shall have received written notice at least thirty (30) days prior to such hearing.

2. No Impairment of City's Rights. Nothing herein shall be deemed or construed to impair or affect in any way to any extent any right of the Grantor pursuant to Iowa law.

3. Grantee Agrees to City's Rights. The Grantor reserves every right and power which is required to be reserved or provided by an ordinance of the Grantor, and the Grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any lawful action or requirements of the Grantor in its exercise of such rights or powers which have been or will be enacted or established subject to the provisions of 2.4(1).

4. Police Powers of the Grantor. Neither the granting of any franchise nor any provision governing the franchise shall constitute a waiver of any lawful governmental right or power of the Grantor.

5. Grantor Transfer of Functions. Any administrative right or power in or administrative duty imposed upon any elected official of the City shall be subject to transfer by the Grantor to any other elected official, officer, employee, department or board.

6. Grantor Right of Inspection. The Grantor reserves the right, during the life of any franchise granted hereunder, to inspect and oversee all construction or installation work performed in the public right-of-way.

7. Grantor Right of Network Installation. The Grantor reserves the right during the life of any franchise granted hereunder to install and maintain for a reasonable charge upon the poles of the Grantee and pole fixtures necessary for municipal networks on the condition that such installation and maintenance thereof does not interfere with the operation of the Grantee. The Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement or other authorization relating to the service area and such use shall be non-commercial and may not be supplied for any municipal use directly competing with the Grantee. [Ord. No. 2057 Eff. Date 09-10-03]

2.5 APPLICATION FOR FRANCHISE

No initial franchise may be granted unless the applicant has successfully completed the application procedure in accordance with the following filing instructions promulgated by the Grantor.

1. Filing Fee. Payment of a non-refundable filing fee to the Grantor of one hundred dollars (\$100.00) which sum shall be due and payable at the time with the submission of the application.
2. Content. All applicants must complete an application which shall include, but not be limited, to the following:
 - A. Name and Address of Applicant. The name and business address of the applicant, date of application, and signature of applicant or appropriate corporate officer(s).
 - B. Description of Proposed Operation. A general description of the applicant's proposed operation, including but not limited to business hours, operating staff, maintenance procedures beyond those required in the chapter, management and marketing staff policies and procedures, and, if available, the rules of operation for public access.
 - C. Signal Carriage. A statement of the television and radio services to be provided, included both off the air and locally originated signals.
 - D. Special Services. A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the Grantee for the public, governmental and educational channels required to be made available by the provisions of this Ordinance.
 - E. Corporate Organization. A statement detailing the corporation organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.
 - F. Stockholders. A statement identifying the number of authorized outstanding shares of applicants' stock including a current list of the names and current addresses of its shareholders holding five percent (5%) or more of the applicant's outstanding stock.
 - G. Inter-Company Relationships. A statement describing all inter-company relationships of the applicant, including parent, subsidiary or affiliated companies.
 - H. Agreements and Understandings. A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other person with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time of proposal submittal.
 - I. Financial Statement. A copy of the financial statements for the two (2) previous years.
DD. [Ord. No. 2057 Eff. Date 09-10-03]

J. Financial Projection. A five (5) year operations pro forma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber penetration. Costs and revenues anticipated for voluntary services hall, if presented, be incorporated in the pro forma as required in this Ordinance, but shall be separately identified in the pro forma.

K. Financial Support. Suitable written evidence from a recognized financing institution, addressed to both applicant's financial ability and planned operation and that the financing institution is prepared to make the required funds available to applicant if it is awarded a franchise. If the planned operation is to be internally financed, a board resolution shall be supplied authorizing the obtainment and expenditure of such funds as are required to construct, install and operate the cable television system contemplated hereunder.

L. Construction Timetable. A description of system construction including the timetable for provision and extension of service to different parts of the City.

M. Technical Description. A technical description of the type of system proposed by the applicant, including but not limited to system configuration, (i.e. hub, dual cable), system capacity, two-way capability, etc.

N. Existing Franchises. A statement of existing franchises held by the applicant indicating when the franchises were issued and when the Cable Systems were constructed and the present state(s) of the Cable System(s) in each respective governmental unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant.

O. Convictions. A statement as to whether the applicant or any of its officers or directors or holders of five percent (5%) or more of its voting stock has in the past ten (10) years been convicted of or has any charges pending for any crime other than a routine traffic offense and the disposition of each such case.

P. Operating Experience. A statement detailing the prior cable television experience of the applicant, including that of the applicant's officers, management and staff to be associated, where known, with the proposed franchise.

Q. Supplementation to Applications. The Grantor reserves the right to require such supplementary, additional or other information that the Grantor deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the Grantor.

R. Incorporation of Proposals. The Grantee, by the acceptance of any initial franchise awarded hereunder, agrees that the matters contained in the Grantee's applications for franchise, except as inconsistent with the FCC rules and regulations, law or ordinance, shall be incorporated into the franchise as though set out verbatim.

S. Forfeiture of proposal bond: Should the Grantee fail to comply with Subsection 2.5 above, it shall acquired no rights, privileges or authority under this article whatever, and the amount of the proposal bond or certified check in lieu thereof, submitted with its application, shall be forfeited in full to the Grantor as liquidated damages. [Ord. No. 2057 Eff. Date 09-10-03]

2.6 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE

1. Franchise Acceptance, Procedures. Any initial franchise awarded hereunder or franchise renewal and the rights, privileges and authority granted thereby shall take effect and be in force from and after the award thereof, provided that the Grantee shall file with the Grantor the following:

A. A statement by the Grantee of the unconditional acceptance of the franchise.

B. A certificate of insurance as set forth in Section 7.2.

C. Reimbursement to the Grantor for the costs of publication of the franchise ordinance and the holding of the election connected therewith, if required by law.

2. Grantee To Have No Recourse. In accordance with Section 635.A of the Cable Act the Grantee shall have no monetary recourse whatsoever against the Grantor for any loss, cost expense, or damage arising out of any provision or requirement of this ordinance or its regulation. This shall not include negligent acts of the Grantor, its agents or employees, which are performed outside the regulatory or franchise awarding authority hereunder.

3. Acceptance of Power and Authority of Grantor. The Grantee expressly acknowledges that in accepting any franchise awarded hereunder, it has relied upon its own investigation and understanding of the power and authority of the Grantor to grant this franchise.

4. Inducements Not Offered. The Grantee, by acceptance of any franchise awarded hereunder, acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or in behalf of the Grantor concerning any term or condition of this franchise that is not included in this Ordinance and the Franchise Agreement.

5. Grantee Accepts Terms of Franchise. The Grantee acknowledges by the acceptance of the franchise and the terms herein and in this Ordinance that it has carefully read said terms and conditions and it is willing to and does accept all other obligations of such terms and conditions and further agrees that it will not claim that any provision of this ordinance as adopted, or any franchise granted hereunder, is unreasonable or arbitrary. [Ord. No. 2057 Eff. Date 09-10-03]

SECTION 3
STANDARDS OF SERVICE

3.1 GEOGRAPHICAL COVERAGE

The Grantee shall provide a Cable System in such manner as to pass and provide adequate tap off facilities for every single family dwelling unit, multiple dwelling unit or other residential unit within the Service Area, subject to the provisions of the Franchise Agreement. [Ord. No. 2057 Eff. Date 09-10-03]

3.2 CONDITIONS OF STREET OCCUPANCY

All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways. A Grantee shall first obtain a permit from the Grantor prior to commencing construction on the streets, alleys, public grounds or places and shall be on a form provided by the Grantor. A Grantee shall not open or disturb the surface of any street, sidewalk, driveway or public place for any purpose without having first obtained a permit to do so in the manner provided by ordinance. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public. [Ord. No. 2057 Eff. Date 09-10-03]

3.3 RESTORATION OF PUBLIC WAYS

If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any public way by the Grantee, it shall, at its expense, replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance, consistent with the Grantor's permitting process and applicable law. [Ord. No. 2057 Eff. Date 09-10-03]

3.4 RELOCATION AT REQUEST OF THE FRANCHISING AUTHORITY

Upon its receipt of reasonable advance notice, not to be less than ten (10) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way, or remove from the public way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any person using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall provide notice to the Grantee of the Grantor's application for such funds and shall allow the Grantee to apply on its own behalf for such funds. [Ord. No. 2057 Eff. Date 09-10-03]

3.5 SAFETY REQUIREMENTS

Construction, installation, and maintenance of the system shall be performed in an orderly and worker like manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the service area. [Ord. No. 2057 Eff. Date 09-10-03]

3.6 UNDERGROUND AND OVERGROUND INSTALLATION REQUIREMENTS

1. Pole Agreements

The Grantee may lease, rent, or in any other manner by mutual agreement obtain the use of towers, poles, lines, cables, and other equipment and facilities from utility companies operating within the City, and use towers, poles, lines, cables, and other equipment and facilities for the system. When and where practicable, the poles used by the Grantee's distribution system shall be those erected and maintained by such utility companies operating with the City, provided mutually satisfactory rental agreements can be reached. It is the Grantor's desire that all holders of public franchises in the City cooperate with the Grantee and allow the Grantee the use of their poles and pole line facilities whenever possible so that the number of new or additional poles installed in the City may be minimized.

2. Grantee's Poles

The Grantee shall have the right to erect, install, and maintain its own towers, poles, guys, anchors, underground conduits, and manholes as may be necessary for the proper construction and maintenance of the antenna site, headend, and the distribution system, providing that the Grantee has at the worksite the necessary Grantor permit(s) or copy thereof, for scheduled work, obtained in advance from the appropriate Department of the Grantor.

3. Rent Of Grantee's Poles

A grantee shall have the right to establish terms, conditions, and specifications governing the form, type, size, quantity, and location of equipment of others on its poles, and shall the further right to charge a fair rental for attachment space or spaces occupied by the said equipment and plant of others, except that no rent shall be paid by the Grantor for its attachment to the Grantee's poles and such use shall be non-commercial and may not be supplied for any municipal use directly competing with the Grantee. The Grantor shall pay any costs incurred by a Grantee in providing space for a Grantor's attachments, including any necessary rearrangements of a Grantee's equipment and plant to provide room for Grantor's attachments. Upon expiration, termination, or revocation of a franchise, or should a Grantee wish to dispose of any of its poles, conduit or manholes, being used by the Grantor, the Grantor shall have the option to purchase them in place for their fair market value.

4. Underground Facilities

In those areas of the City where transmission or distribution facilities of both telephone and power companies are underground or hereafter may be placed underground, the Grantee shall likewise construct, operate, and maintain all of its transmission and distribution facilities underground to the maximum extent the then existing technology permits, in accordance with the most recent National Electrical Code, and its successor document, as well as in conformance with all applicable state and municipal ordinances and codes. If and when necessary, amplifiers and/or transformers in the Grantee's transmission and distribution lines shall be in appropriate housings on the surface of the ground. The Grantee shall obtain a permit from the Grantor for such underground construction of all work required or pursuant to this section. Even when not required, underground installation is preferable to the placing of additional poles.

5. Compliance To Codes

All transmission and distribution structures, lines, and equipment erected by the Grantee in the City shall be located so as not to endanger or interfere with the normal use of streets, alleys, or other public ways and places so as to cause minimum interference with the rights or reasonable convenience of the general public and adjoining property owners and so as not to interfere with existing public utility installations and so as to comply with the most recent National Electrical Code, as amended, as well as in conformance with all applicable state and municipal ordinances and codes of general applicability.

In the case of any disturbance by the Grantee or its equipment of pavement, sidewalks, driveway, lawn, or other surfacing the Grantee shall, at its expense and in the manner required by the Grantor, promptly replace and restore all such surfacing to a reasonably comparable condition.

The construction, installation, operation, maintenance, and/or removal of the Cable Communications System shall meet all the following safety, construction, and technical specifications and codes and standards:

- * Occupational Safety and Health Administration Regulations (OSHA)
- * National Electric Code
- * National Electrical Safety Code (NESC)
- * All Federal, State and Municipal Construction Requirements, including FCC Rules and Regulations
- * All Building and Zoning Codes, as the same exist or may be amended hereafter
- * City Standard Specifications

6. Interference With Other Utilities

The Grantee shall not place poles, conduits, or other fixtures above or below ground where the same shall interfere with any prior placement of gas, electric, telephone fixtures, water hydrants or other utilities, and all such poles, conduits, or other fixtures above or below ground shall be so placed as to comply with all the lawful requirements of the Grantor.

7. Moving Permits

The Grantee shall, on request of any persons holding a moving permit issued by the Grantor, temporarily move its wires or fixtures to permit the moving of buildings. The expense of such temporary removal shall be paid in advance by the person requesting the same, and the Grantee shall be given not less than seven (7) business days advance notice to arrange for such temporary changes.

8. Authority To Trim Trees and Shrubbery

The Grantee shall have the authority under the supervision and direction of the Grantor to trim trees or other natural growth overhanging any of its Cable System in the street or alley right-of-way so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. The Grantee shall reasonably compensate the Grantor or property owner for any damages caused by such trimming, or shall, in its sole discretion, and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the cable system undertaken by Grantee. Such replacements shall satisfy any and all obligations Grantee may have to the Grantor pursuant to the terms of this section.

9. Service Area

The Grantee shall design and construct the Cable System in such a manner as to pass by and provide adequate tap-off facilities for every single family dwelling, multiple family dwelling, apartment, school and government building located within the city limits of Newton, Iowa based upon the corporate boundaries at the time of the granting of the Franchise, provided that such locations meet the density requirements pursuant to section 3.7 - Extension of Service.

10. Underground Construction

Grantee shall participate in and use Iowa One Call and ensure that cable is buried pursuant to standards established by Iowa One Call or any state mandated successor agency.

11. Temporary Drops

Temporary drops shall be buried within two months of installation, except during the winter months, which shall be defined as November 15th to April 1st. In the event that the Grantee fails to bury any cable drops, within the two-month period, the Grantee shall provide basic and expanded basic cable service without charge to the affected cable subscriber from the last date that the drop was to have been buried to that actual date that it is buried.

12. Closing of Streets

The Grantee shall not be entitled to damages from the Grantor sustained by the virtue of the closing, vacation, or relocation of any streets or alleys.

13. Private Easements

No cable, line, wire, amplifier, converter or other pieces of equipment owned by the Grantee shall be installed by the Grantee within private easements without first securing the written permission of the owner, lessee or tenant of the property involved, unless a private easement is determined to be available for use by the Grantee in accordance with applicable law.

[Ord. No. 2057 Eff. Date 09-10-03]

3.7 EXTENSION OF SERVICE

Any Franchise granted pursuant to this Ordinance shall require that a Grantee shall, at its expense, promptly extend its system to have service available to all potential subscribers of:

1. The corporate limits of the City of Newton and newly annexed areas to the City and then served by a Cable System, where the average density is at least eight (8) potential subscribers per lineal one quarter (1/4) mile of the proposed trunk and feeder cable route.
2. Any new single-family dwelling unit, commercial establishment, or potential subscriber within two hundred (200) feet of the existing distribution system in the City, upon request of the potential subscriber.
3. No customer shall be refused service arbitrarily. However, for unusual circumstances such as (1) existence of more than 200 feet of distance from the distribution cable to the connection point of service to the customers, or a (2) density of less than eight (8) potential subscribers per 1320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in the aid of construction to be borne by the Grantee and the customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per one-quarter (1/4) mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals eight (8) potential subscribers. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of the construction borne by such potential customers be paid in advance. [Ord. No. 2057 Eff. Date 09-10-03]

SERVICE TO PUBLIC BUILDINGS

Any Grantee shall provide, without charge, one outlet of basic service and expanded basic service to those public buildings identified in the Franchise Agreement in accordance with the terms set forth in the Franchise Agreement. [Ord. No. 2057 Eff. Date 09-10-03]

CUSTOMER SERVICE STANDARDS - FCC MODEL

Any Grantee of a Cable Television Franchise shall adhere to the FCC's customer service standards. A copy of such standards effective as of the date of the passage of this Ordinance is attached as Exhibit "A." [Ord. No. 2057 Eff. Date 09-10-03]

LOCAL OFFICE

A grantee shall establish a local office conveniently located within the City, which shall be one during normal business hours, and adequately staffed to accept subscriber payments and respond to service requests and complaints. [Ord. No. 2057 Eff. Date 09-10-03]

DEPOSITS

If required by federal law, a Grantee shall bear interest at the minimum lending rate required by law on any subscriber deposit or a rate equal to that paid by the Grantor for municipal water and/or sewer deposits. [Ord. No. 2057 Eff. Date 09-10-03]

SUBSCRIBER'S ANTENNAS

A Grantee shall not require the removal of any potential or existing subscriber's antenna as a condition of provision of service, except with the consent of the cable subscriber. [Ord. No. 2057 Eff. Date 09-10-03]

DISCONNECTIONS

There shall be no charge for a disconnection of cable service. If any subscriber fails to pay a fee or charge, a Grantee may disconnect the subscriber's service. Such disconnection shall not be effected until the subscriber has been given then (10) days advance written notice of the intention to disconnect. After disconnection, upon payment of any required delinquent fee or reconnecting charge, the Grantee shall reinstate the subscriber's service. [Ord. No. 2057 Eff. Date 09-10-03]

RECONNECTIONS

A Grantee shall restore service to customers wishing restoration of service provided customer shall first satisfy any previous obligations owed. [Ord. No. 2057 Eff. Date 09-10-03]

3.15 DOWNGRADES

Subscribers shall have the right to have cable service disconnected or downgraded in accordance with FCC rules. The reduced billing for such service will be effective immediately and such disconnection or downgrade shall be made as soon as practicable. A refund or unused service charges shall be paid to the customer within thirty (30) days from the date of termination of service. [Ord. No. 2057 Eff. Date 09-10-03]

3.16 TERMINATION OF SERVICE

Within 30 days of termination of service to any subscriber for any reason, a Grantee may, upon the subscriber's written request, promptly remove all its aerial facilities and equipment from the Subscriber's premises, pursuant to FCC rules and regulations. [Ord. No. 2057 Eff. Date 09-10-03]

3.17 NOTIFICATION TO GRANTOR OF SERVICE INTERRUPTIONS

A Grantee shall promptly notify the Grantor, in writing, or, if appropriate, by oral communication, of any significant interruption in the operation of the system. For the purposes of this section, a "significant interruption in the operation of the system" shall mean any interruption of audio or video on one (1) or more channels for a duration of at least one (1) hour to at least 500 subscribers, or an interruption of audio or video on at least one (1) or more channels initiated by the Grantee of at least four (4) hours to any single subscriber. The Grantee shall not be required to provide specific notice to the Grantor of service interruptions in case of a cable system upgrade. [Ord. No. 2057 Eff. Date 09-10-03]

3.18 SUBSCRIBER CREDIT FOR SERVICE INTERRUPTIONS

Upon service interruption of subscriber's cable service, except in the case of a cable system upgrade, the following shall apply:

1. For service interruptions of over four (4) hours and up to seven (7) days, the Grantee shall provide, at the subscriber's verbal or written request, a credit on one-thirtieth (1/30) of one month's fees for affected services for each 24-hour period service is interrupted for four (4) or more hours for all affected subscribers.
2. For interruptions of fifteen (15) days or more in one month, the Grantee shall provide, at the subscriber's request, a full month's credit for affected services for all affected subscribers, except in situations beyond the control of the Grantee. [Ord. No. 2057 Eff. Date 09-10-03]

3.19 SERVICE REPAIR STANDARDS.

A Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled service interruptions, insofar as possible, shall occur during periods of minimum use of the Cable System. A written log or an equivalent stored in computer memory and capable of access and reproduction, shall be maintained for all service interruptions, as required by this Ordinance. [Ord. No. 2057 Eff. Date 09-10-03]

3.20 REFUNDS TO SUBSCRIBERS

1. If a Grantee fails to provide any material service requested by a subscriber in accordance with the current FCC standards, the Grantee shall, after adequate notification and being afforded the opportunity to provide the service, promptly refund all deposits or advance charges paid for the service in question by the subscriber. [Ord. No. 2057 Eff. Date 09-10-03]
2. If any subscriber terminates for any other reason, a Grantee shall refund the unused portion of any prepaid subscriber service fee on a daily pro rata basis. The effective date used to pro rate such refunds shall be the date that the subscriber contacts the Grantee or a mutually agreed upon date. [Ord. No. 2057 Eff. Date 09-10-03]
3. Any disputes arising under this section shall be resolved in accordance with Section 6.5 of this Ordinance. [Ord. No. 2057 Eff. Date 09-10-03]

3.21 CHANNEL CARD

The Grantee shall distribute to all subscribers via direct mail or bill stuffers no less than annually an accurate and up-to-date channel card listing the cable channels and services available over the Cable System. A revised channel card shall be distributed via a newspaper of record within thirty (30) days after change or addition in channels or services offered affecting three (3) or fewer channels. Whenever changes in channels or services have affected four (4) or more channels since the last channel card distributed via direct mail or bill stuffers, then a new channel card shall be distributed to every subscriber within thirty (30) days via direct mail or bill stuffers. [Ord. No. 2057 Eff. Date 09-10-03]

3.22 CUSTOMER HANDBOOK

A grantee shall provide written customer policies of a handbook to all new subscribers and thereafter, upon request. Grantee's written customer policies or handbook shall, at a minimum comply with all notice requirements in this Ordinance and those promulgated by the FCC. The Grantee's operating rules are changed; subscribers shall be notified in a timely manner. [Ord. No. 2057 Eff. Date 09-10-03]

3.23 SUBSCRIBER PRIVACY

Any Grantee shall abide by current Federal law and FCC regulations and Section 631 of the Cable Act regarding protection of Subscriber privacy. [Ord. No. 2057 Eff. Date 09-10-03]

3.24 DISCRIMINATORY OF PREFERENTIAL PRACTICES

A Grantee shall not, in making available the services or facilities of its Cable System, or in its rules or regulations, or in any other manner, make a grant preferences or advantages to any subscriber or potential subscriber, or to any user or potential user, and shall not subject any person to any prejudice or disadvantage, based on their race, color, national origin or gender. This provision shall not prohibit promotional campaigns to stimulate subscriptions to the Cable System or other legitimate uses thereof, nor the establishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classification shall be entitled. [Ord. No. 2057 Eff. Date 09-10-03]

3.25 IDENTIFICATION OF EMPLOYEES

Every field service and installation employee of the Grantee shall be clearly identified by an identification card, badge or uniform shirt. All employees of Grantee shall display proper identification upon request of a subscriber, provided that the Grantor requires all utilities operating in the City to do the same. Every field service and installation vehicle of the Grantee shall be clearly marked by logo or decals. [Ord. No. 2057 Eff. Date 09-10-03]

SECTION 4
SYSTEM DESIGN AND EQUIPMENT REQUIREMENTS

4.1 ALL CHANNELS EMERGENCY ALERT SYSTEM

In accordance with the provisions of FCC Regulations and as such provisions may from time to time be amended, and as set forth in the Franchise agreement, a Grantee shall provide an Emergency Alert System (EAS) for use in transmitting emergency alert signals to all subscribers. [Ord. No. 2057 Eff. Date 09-10-03]

4.2 SWITCHING DEVICE

A grantee, upon request from any subscriber, shall install at a reasonable charge a switching device to permit a subscriber to continue to utilize the subscriber's television antenna. The Grantee shall not require the removal, or offer to remove, any subscriber's antenna lead-in wire. [Ord. No. 2057 Eff. Date 09-10-03]

4.3 PARENTAL CONTROL DEVICES

Upon request, and within one hundred twenty (120) days, Grantee shall provide at a reasonable charge to subscribers, parental control devices that allow any channel or channels to be locked out. Such devices shall block both the video and the audio portion of such channels to the extent that both are unintelligible. The lockout device described herein shall be made available to all subscribers requesting it beginning on the first day that any cable service is provided. [Ord. No. 2057 Eff. Date 09-10-03]

4.4 PUBLIC, EDUCATIONAL AND GOVERNMENTAL CHANNELS

A Grantee shall provide public, educational and governmental channels, as stipulated in the Franchise Agreement. [Ord. No. 2057 Eff. Date 09-10-03]

4.5 ACCESS EQUIPMENT AND FACILITIES FEE

If authorized by the Grantor, and after sixty (60) days notice from the Grantor to a Grantee, a Grantor shall provide ongoing support for public, educational, and governmental access equipment and facilities in the amount of not to exceed one dollar (\$1.00) per subscriber per month for the entire term of this Franchise payable in the same manner as the franchise fee payment pursuant to Section 4.1 hereof. The Grantor acknowledges that this amount shall not be considered gross revenues subject to the payment of franchise fees pursuant to Section 5.1 hereof. Furthermore, payments of this ongoing support shall not be deemed to be "franchise fees" within the meaning of Section 622 of the Cable Act and such payment shall not be deemed to be "payments-in-kind" or any involuntary payments chargeable against the compensation to be paid to the Grantor by a Grantee pursuant to Section 5.1 hereof. A Grantee shall be allowed to collect such fee as a pass through to cable subscribers. This fee shall be revised on an annual basis in accordance with the consumer price index. [Ord. No. 2057 Eff. Date 09-10-03]

4.6 LEASED ACCESS CHANNELS

Any Grantee shall make a portion of the remaining unused channels available for lease as required by Section 612 of the Cable Act. [Ord. No. 2057 Eff. Date 09-10-03]

4.7 INTERFERENCE

The Grantee's Cable System shall be designed, engineered, and maintained so as not to interfere with the television and radio reception of residents of the City who are not subscribers on the Cable System. [Ord. No. 2057 Eff. Date 09-10-03]

4.8 ADDITIONAL SERVICES

The Grantee is encouraged to make available such additional video, audio, radio, digital, point-to-point service, and other services as are requested by subscribers and programmers who are willing to pay for such services, provided that such services are technologically and economically feasible. If no applicable rate exists when such a service is requested, the rate change procedures established in Section 5.2 shall be followed. [Ord. No. 2057 Eff. Date 09-10-03]

4.9 TECHNICAL STANDARDS

The Cable System shall be operated and maintained in compliance with FCC Rules and Regulations Technical Standards K of Part 76 of Chapter 1 of Title 47 of the Code of Federal Regulations, as revised or amended from time to time and attached as Exhibit B. FCC proof of performance test results shall be delivered to the Grantor annually or upon written request of the Grantor. Grantee shall file a copy of test results performed by the FCC or other governmental regulatory agencies on the Cable System with the Grantor. [Ord. No. 2057 Eff. Date 09-10-03]

4.10 FILING OF MAPS

Upon request of the Grantor, the Grantee shall file with the Grantor strand maps, showing the location of all property and facilities of the Grantee within the City. All maps supplied by the Grantee shall be considered confidential and proprietary. [Ord. No. 2057 Eff. Date 09-10-03]

SECTION 5 **REGULATIONS BY THE FRANCHISING AUTHORITY**

FRANCHISE FEE

1. **Franchise Fee Payment.** In consideration for the use of the streets and public ways of the City for the construction, operation, maintenance, and reconstruction of a Cable System within the City, a Grantee shall pay to the Grantor an annual amount equal to five (5) percent of the Grantee's Gross Revenues as defined in Section 1.1 of this Ordinance. [Ord. No. 2057 Eff. Date 09-10-03]

2. **Quarterly Payments.** Payment due to the Grantor under the Franchise Agreement shall be made quarterly at the City Clerk's office not later than forty-five (45) days following March 31, June 30, September 30 and December 31 of each year. Any fee not paid when due shall bear interest at a rate of one and one-half percent (1-1/2%) per month from the date due. Each payment shall be accompanied with a detailed report, as shown in Exhibit C, showing the basis for the computation, and shall include but not be limited to, a specific breakdown of the following items: basic tier service charges, expanded basic service charges, installation charges, reconnection fees, premium channel revenues, shopping service revenue, revenue from other sources such as contracted or subleased cable services, pay per view, miscellaneous revenue, and such other relevant facts as may be required by the Grantor necessary to determine the

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accuracy of the franchise payment as specified in of this Ordinance. The acceptance of any payment shall not be construed as an accord that the amount paid is, in fact, the correct amount nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for additional sums payable by the Grantee. The Grantee agrees to permit the City, upon request with reasonable notice, to review at Grantee's local office its gross revenue records as may be necessary to monitor compliance with section 5.1 of this Ordinance. All amounts paid shall be subject to audit and recomputation by the Grantor. [Ord. No. 2057 Eff. Date 09-10-03

3. Franchise Fee Audit. A Grantee will fully cooperate with a franchise fee audit performed by a professional firm that is chosen by the Grantor. The costs associated with the audit will be paid for by the Grantor, except that the Grantee shall pay for the costs if the audit shows an underpayment of franchise fees in excess of five percent (5%) or more for a reporting period. [Ord. No. 2057 Eff. Date 09-10-03

4. Franchise Fee Increases. The Grantor may request an increase in franchise fees at any time during the term of the franchise, equal to the maximum percentage allowed by federal law. However, such request shall be made in writing and the Grantee will not be liable for said increase until proper notice, as defined by federal law, is given to its subscriber. Prior to making a final decision regarding an increase in franchise fees, the Grantor shall conduct a public hearing and shall grant an opportunity to the Grantee to discuss the proposed increase in franchise fee. [Ord. No. 2057 Eff. Date 09-10-03

5. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be five years from the date on which payment by a Grantee is due. [Ord. No. 2057 Eff. Date 09-10-03

5.2. RATES AND CHARGES.

1. The Franchising Authority may regulate rates for the provision of basic cable and equipment as permitted by the Cable Act.

2. Any rate adjustments shall be filed with the City Clerk not later than 30 days prior to the implementation of the adjustment. [Ord. No. 2057 Eff. Date 09-10-03

5.3 FRANCHISE RENEWAL

Any proceedings undertaken by the Franchising Authority that relate to the renewal of a Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law. [Ord. No. 2057 Eff. Date 09-10-03

5.4 CONDITIONS OF SALE

If a renewal or extension of a Grantee's franchise is denied or the franchise is lawfully terminated, and the franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another person, any such acquisition or transfer shall be at a price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

In the case of a final determination of a lawful revocation of the Franchise, at the Grantee's request, which shall be made in its sole discretion, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its System to a qualified third party. During such a period, the Franchise Authority shall authorize the Grantee to continue to operate pursuant to the terms of its prior Franchise. However, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its System which his reasonably acceptable to the Franchise Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. The Grantee may continue to operate of its System during the six-month period and it shall not be deemed to be a waiver or extinguishments of any right of either the Franchising Authority or the Grantee. [Ord. No. 2057 Eff. Date 09-10-03

5.5 TRANSFER OF FRANCHISE

1. Transfer of Franchise. Any franchise granted under this Ordinance shall be a privilege to be held for the benefit of the public. Any franchise so granted cannot, in any event, be sold transferred, leased, assigned or disposed of, including, but not limited to, by forced or voluntary sale, except to entity controlling, controlled by or under common control with the Grantee, without the prior written consent of the Franchising Authority. Such consent as required by the Franchising Authority, shall be given or denied no later than one hundred twenty (120) days following any request [Ord. No. 2057 Eff. Date 09-10-03

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and shall not be unreasonably withheld. Prior consent shall not be required when transferring the franchise between wholly-owned subsidiaries of the same entity. Nor shall such consent be required for a transfer in trust, by mortgage, by other hypothecation or assignment of any rights, title, or interest of the Grantee in the Cable System in order to secure indebtedness.

2. Ownership or control. In the event that the Grantee sells or otherwise transfers ownership in the Cable System, such sale or transfer shall conform with Section 617 of the Cable Act. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Franchising Authority may in accordance with Section 617 inquire into the qualifications of the prospective controlling party, and the Grantee shall assist the Franchising Authority in any such inquiry. In seeking the Grantor's consent to any change in ownership or control, the transferee shall have the responsibility:

a) To show to the satisfaction of the Franchising Authority whether the proposed purchaser, transferee, or assignee (the proposed transferee), which in the case of a corporation, shall include all directors and all persons having a legal or equitable interest of fifty percent (50%) or more of the voting stock:

- Has ever been convicted or held liable for acts involving moral turpitude including but not limited to, any violation of Federal, State or local law or regulations, or is presently under an indictment, investigation or complaint charging such acts;

- Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against it, her, him, or them by any court of competent jurisdiction; or

- Has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a Cable System. The Franchising Authority retains the right to withhold approval of the transfer until the transferee has provided the information required in this subsection 2 (a).

b) To establish the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee and such other data to determine the legal, financial, and technical qualification of the transferee.

c) To establish that the technical capability of the proposed transferee is such as shall enable it to maintain and operate the cable system for the remaining term of the franchise under the existing franchise terms.

3. Any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Franchising Authority that the financial institution, or its designee, as approved in writing by the Franchising Authority, shall take control and operate the cable system in the event of a Grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the Cable System for a period exceeding one (1) year, unless extended by the Franchising Authority at its discretion, but during said period of time it shall have the right to petition the Franchising Authority to transfer the franchise to another Grantee. Except insofar as the enforceability of this subsection may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors rights generally, and further subject to applicable federal, state or local law, if the Franchising Authority finds that such transfer, after considering the legal, financial, character, technical and other public interest qualities of the proposed transferee, is satisfactory, the Franchising Authority shall transfer and assign the right and obligations of such franchise as in the public interest.

4. The consent or approval of the Franchising Authority to any transfer by the Grantee shall not constitute a waiver or release of the rights of the Franchising Authority in and to the _____ and any transfer shall by its terms, be expressly subject to the terms and conditions of any franchise.

5. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory of the Franchise Agreement.

6. The Franchising Authority may approve the transfer or deny the transfer pursuant to Section 617 of the Cable Act.

7. When the Grantor approves a transfer under this section, the new Grantee shall indicate acceptance of the franchise as specified in Section 2.6, including the filing of all necessary bonds, funds, proofs of insurance and certifications.

The restrictions of this section shall be effective immediately upon execution of a franchise agreement.

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5.6 RIGHT OF INSPECTION OF CONSTRUCTION

The Grantor shall have the right to visually inspect all construction or installation work performed subject to the provisions of the Ordinance and to make such visual inspections as it shall find necessary to ensure compliance with the terms of this Ordinance and other pertinent provision of law. [Ord. No. 2057 Eff. Date 09-10-03

5.7 NEW DEVELOPMENTS

The Grantee is encouraged to upgrade its facilities, equipment, and service so that its Cable System is advanced. New developments shall be a topic of discussion at all review sessions and shall be a factor to be considered in connection with requests for rate adjustments, pursuant to FCC rules and regulations. [Ord. No. 2057 Eff. Date 09-10-03

5.8. CITY'S RIGHT TO PURCHASE SYSTEM

The City shall be entitled to a right of first refusal of any bona fide offer to purchase the Cable System made to Grantee if the Cable System is being sold separately and such sale is not linked in any way to the sale of any other cable system in a separate franchise area. Bona fide offer as used in this Section means a written offer, which has been accepted by Grantee subject to the City's rights under this Ordinance. The City shall notify Grantee of its interest in purchasing the Cable System within thirty (30) days of the City's receipt from Grantee of copy of the written bona fide offer. Payment shall be made upon closing in readily available funds within one hundred twenty (120) days of the City's receipt from Grantee of a copy of the written bona fide offer. The price to be paid by the City shall be the fair market value of the Cable System or the actual price, which has been negotiated at arms length between the parties, whichever is greater the amount offered in the bona fide offer. [Ord. No. 2057 Eff. Date 09-10-03

SECTION 6
COMPLIANCE AND MONITORING

6.1 TESTING FOR COMPLIANCE

The Grantee shall meet or exceed all FCC minimum performance and technical standards. The Grantor shall have the right to compel the Grantee to provide results of Grantee's testing of the Cable System. In the event that the Grantor has evidence of non-compliance, the Grantor may also perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Such tests may be undertaken only after giving the Grantee reasonable notice thereof, not to be less than ten business days, and providing a representative of the Grantee has an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that the Grantee has substantially complied with such material provision hereof, the cost of such testing shall be borne by the Franchising Authority. Except in emergency circumstance, the Franchising Authority agrees that such testing shall be undertaken no more than once a year, and that the results thereof shall be made available to the Grantee.

Any such special performance tests or measurements required by the Grantor shall be reported to the Grantor within fourteen (14) business days after such test or measurements are performed. Such report shall include the following information: the nature of the complaint which precipitated the special tests; what system component was tested, the equipment used and procedures employed in said testing; the results of such tests; and the method in which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

[Ord. No. 2057 Eff. Date 09-10-03

6.2 BOOKS AND RECORDS

The Franchising Authority or its certified public accountant upon reasonable notice to the Grantee may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information, which it reasonably deems to be proprietary or confidential in nature under state and federal rules of evidence. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide subscriber information in violation of Section 631 of the Cable Act.

[Ord. No. 2057 Eff. Date 09-10-03

6.3 COMMUNICATIONS WITH REGULATORY AGENCIES

Copies of all petitions, applications, communications, reports, and all other documents pertaining to the Newton Cable System and franchise submitted by the Grantee or its parent companies to the FCC, Securities Exchange Commission, or any other Federal or State regulatory commission or agency shall be made available to the Grantor upon written request to the Grantee. [Ord. No. 2057 Eff. Date 09-10-03]

6.4 COMPLAINT RECORDS

A written log or an equivalent stored in computer memory and capable of access and reproduction shall be maintained for all service interruptions or complaints regarding system service problems. The Grantee shall maintain detailed logs setting forth the date and substance of each service interruption or complaint regarding the system service problems received by phone, mail or other means during the preceding calendar month, and the date and nature of action taken by the Grantee to respond to such complaints, or, if still pending, the status thereof. Such logs shall be available to the Grantor for review for two years thereafter. A "complaint" used herein shall be a written or oral complaint from a subscriber regarding signal quality or service, but not regarding programming or rates which, in the case of oral complaints is not resolved within the original telephone call or visit from the subscriber. [Ord. No. 2057 Eff. Date 09-10-03]

6.5 CITY ROLE IN COMPLAINTS

Unresolved complaints concerning the system or its operation or maintenance may be directed to the City Administrator. The procedure to handle complaints shall be as follows:

A. Within 30 days from the occurrence of the facts and circumstances giving rise to a complaint or grievance, the complainant shall state his complaint or grievance to the Grantee in writing. In the event such a complaint or grievance is received by the Grantor, the same shall be forwarded to Grantee in writing.

B. Within five (5) business days from the receipt by the Grantee of a complaint from the Grantor, the Grantee shall state to complainant its intentions with respect to the complaint in writing.

C. Unresolved complaints concerning the system or its operation or maintenance shall be directed to the City. The City shall promptly forward the complaint to the Grantee or shall bring the question up by correspondence with the Grantee. Within such time as may be reasonably prescribe by the City, the Grantee shall resolve the complaint or advise the City of its refusal or inability to do so. When the Grantee resolves the complaint, it shall so notify the City. If a complaint has not been resolved, may take any appropriate action authorized by this Ordinance.

D. All Subscribers shall be notified by the Grantee of these complaint procedures in writing at the time of their initial installation and on the cable bills on an annual basis, provided that the Grantor provides similar notice on the Government access channel.

E. Nothing herein shall limit or alter the requirement or requirements contained in this Ordinance for customer service standards as contained in Exhibit A.

F. The Grantor shall be notified of action taken to resolve grievances or complaints.
[Ord. No. 2057 Eff. Date 09-10-03]

6.6 PERFORMANCE TESTING

Grantee shall perform all Cable System tests and maintenance procedures as required by the FCC and this Ordinance.
[Ord. No. 2057 Eff. Date 09-10-03]

6.7 REVIEW SESSIONS

A. Purpose of Review Sessions

In recognition of the fact that a great many technical, financial, marketing and legal uncertainties are associated with all aspects of cable communications at the present time, it is the intent of the City to provide for a maximum feasible degree of flexibility in a Franchise throughout its term to achieve an advanced and modern cable system for the City. The principal means for accomplishing this flexibility will be the scheduled review sessions provided for in this Ordinance. It is intended that such review sessions will serve as a means of cooperatively working out solutions to problems that develop. Furthermore, such review sessions shall be two-way processes. For example, if either party

has perceived that some major problem has developed, the session shall be devoted primarily to working out solutions acceptable to both parties.

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B. Topics to be Covered

The Grantor and the Grantee shall hold scheduled review sessions on the third, sixth and ninth anniversary dates of the effective date of a Franchise Agreement. All such review sessions shall be open to the public and notice thereof shall be published once, not less than four (4) days or more than twenty (20) days before each session, as provided by law. The published notice shall specify the topics to be discussed. The review sessions may be canceled by mutual agreement of the Grantor and Grantee. The following topics may be discussed at every scheduled review session:

Recent and Developing Judicial and Federal Communications Rulings
Service Rate Structures
Free and discounted Services
Application of New Technology or New Developments
Cable System Performance
Cable System Extension Policy
Services Provided
Programming Offered
Customer Complaints Review
Community Development and Education
Interconnection
New Services
Subscriber privacy abuse issues

New developments
Franchise Fees

Other topics, in addition to those listed, may be added by either party. Members of the general public may also request additional topics. [Ord. No. 2057 Eff. Date 09-10-03]

6.8 REGULATORY RESPONSIBILITY

The Franchising Authority, acting alone or acting jointly with other Franchising Authorities, may exercise or delegate the following responsibilities:

1. Administering the provision of a Cable System Franchise(s),
2. Coordinating the operation of a local access channel and facilities,
3. Providing technical, programming and operational support to public agency users, such as government departments, schools and health care institutions,
4. Establishing jointly with a Grantee, or as otherwise specified in the Franchise Agreement, procedures, and standards for use of channels dedicated to public use and the sharing of public facilities, if provided for in any Franchise Agreement.
5. Planning the expansion and growth of public benefit cable service.
6. Analyzing the possibility of integrating cable systems with other local, regional or national telecommunications networks,
7. Formulating and recommending long-range telecommunications policy.

[Ord. No. 2057 Eff. Date 09-10-03]

6.9 ANNUAL REPORT

No later than ninety (90) days after the close of a Grantee's fiscal year, and upon written request, the Grantee shall submit a detailed written informative report to the City, including the following information.

- A. A summary of the previous year's activities in development of the Cable System, including but not limited to, services begun or dropped and newly served geographic areas within the City limits.
- B. A summary of complaints, identifying the number and specific nature of complaints and their disposition.

- C. A list of key management for the Newton franchise along with their addresses and job titles.

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D. The annual report of the parent company, if a public corporation. Such report shall be construed to mean the report of the previous year.

E. The total estimated annual value of the potential revenue from cable services provided in the Service Area without charge or provided under a barter arrangement, along with the total estimated number of persons who are provided cable services in the Service Area without charge or under a barter agreement.

[Ord. No. 2057 Eff. Date 09-10-03]

SECTION 7
INSURANCE AND INDEMNIFICATION

7.1 INDEMNIFICATION

Any Grantee shall defend, indemnify, protect, and hold harmless the Grantor from and against any and all liability, losses, and damage to property or bodily injury or death to any person, including payments made under workmen's compensation laws, which may arise out of or be caused by the erection, construction, replacement, removal, maintenance, or operation of Grantee's Cable System and caused by any act or failure to act on the part of the Grantee, its agents, officers, servants, or employees. The Grantor shall give the Grantee written notice of its obligation to indemnify, within 30 days following service of a petition or other similar pleading. If the Grantor determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Grantor. [Ord. No. 2057 Eff. Date 09-10-03]

7.2 INSURANCE COVERAGES AND NOTIFICATIONS

A Grantee shall maintain insurance in such amounts and kinds of coverages as may be specified by the Grantor in the franchise Agreement. Such coverages may be reasonably adjusted by the Grantor with ninety (90) day notification, provided that the grantor demonstrates the need for increases in coverage. The Grantee shall maintain such insurance with insurance underwriters authorized to do business in the State of Iowa. All policies shall name the Grantor, its employees, servants, agents, and officers as additional insured parties. Each policy shall provide that it may not be canceled nor the amount of coverage altered until thirty (30) days after receipt by the City Clerk of a registered mail notice of such intent to cancel or alter coverage.

The Grantee shall provide a certificate of insurance designating the Grantor as an "additional insured." The Grantee shall maintain and provide to the Grantor proof of public liability insurance for not less than amounts specified in the Franchise Agreement. [Ord. No. 2057 Eff. Date 09-10-03]

7.3 INSURANCE FOR CONTRACTORS AND SUBCONTRACTORS

Any Grantee shall require coverage for any contractor or subcontractor involved in the construction, installation, maintenance or operation of its Cable System by either obtaining the necessary endorsements to its insurance policies or requiring such contractor or subcontractor to obtain appropriate insurance coverage consistent with this section and appropriate to the extent of its involvement in the construction, installation, maintenance or operation of the Grantee's Cable System. [Ord. No. 2057 Eff. Date 09-10-03]

7.4 FORECLOSURE

A foreclosure or other judicial sale of all or part of the system shall be treated as a change in control of the Grantee and the provision of Section 8.7 of this Ordinance shall apply. [Ord. No. 2057 Eff. Date 09-10-03]

7.5 RECEIVERSHIP

The City shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceedings, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or less:

A. Within one hundred twenty (120) days after being elected or appointed, such receiver or trustee shall have fully complied with all provisions of this Ordinance and remedied all defaults there under; and

B. Shall have executed an agreement, approved by the court having jurisdiction, whereby such receiver or trustee agrees to be bound by this Ordinance and the franchise granted to the Grantee.

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7.6 CONTINUITY OF SERVICE

1. Right to continuous service. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the Cable System, or the Franchising Authority gives notice in accordance with the Franchise or this Ordinance of intent to terminate or fails to renew this franchise, the Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service for 6 months. In the event of a change of Grantee, or in the event a new operator acquires the Cable System, the original Grantee shall cooperate with the Franchising Authority, a new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenue for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

2. Right of Franchising Authority to operate Cable System. In the event Grantee fails to operate the system for seven (7) consecutive days without prior approval of the Franchising Authority or without just cause, the Franchising Authority may, working in conjunction with any financial institution have a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Franchising Authority or a permanent operator is selected. If the Franchising Authority is required to fulfill this obligation for the Grantee, then during such period as the Franchising Authority fulfills such obligation, the Franchising Authority shall be entitled to a reasonable management fee. [Ord. No. 2057 Eff. Date 09-10-03

7.7 FRANCHISE PUBLICATION COSTS

1. Initial franchises. For an initial franchise awarded, the costs to be borne by the Grantee shall include, but shall not be limited to, all costs of publication of notices prior to any public meeting, publication of relevant ordinances and franchise agreements, incurred by the Franchising Authority.

2. Franchise Renewal. For a franchise renewal, the Grantee shall reimburse the Franchising Authority cost of publication of notices, publication of relevant ordinances, and publication of franchise agreements.

3. Franchise Transfer. For a franchise transfer, the transferee shall reimburse the Franchising Authority the cost of publication of notices, publication of relevant ordinances and publication of franchise agreements. The Franchising authority reserves the right to withhold approval of such transfer until all such costs have been reimbursed by the transferee.

4. Other Costs. The publication costs provided for in this Section shall be in addition to any other inspection or permit fee or other fees due to Franchising Authority under any other ordinance of general applicability.
[Ord. No. 2057 Eff. Date 09-10-03

7.8 TAXES

Subject to Federal and State law, the Grantee shall pay all real estate taxes, special assessments, personal property taxes, license fees, permit fees and other generally applicable 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. No. 2057 Eff. Date 09-10-03

SECTION 8
ENFORCEMENT AND TERMINATION OF FRANCHISE

8.1 NOTICE OF VIOLATION

In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance. [Ord. No. 2057 Eff. Date 09-10-03

8.2 GRANTEE'S RIGHT TO CURE OR RESPOND

The Grantee shall have thirty (30) days from receipt of the notice described in Section 8.1; (a) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (b) to cure such default, or(c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

[Ord. No. 2057 Eff. Date 09-10-03

8.3 PUBLIC HEARING

In the event that the Grantee fails to respond to the notice described in Section 8.1 pursuant to the procedures set forth in Section 8.2, or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to 8.2 above, the Franchising authority shall schedule a public hearing to investigate the default. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting no less than five business days in advance and provide the Grantee with an opportunity to be heard. [Ord. No. 2057 Eff. Date 09-10-03]

8.4 ENFORCEMENT

Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the procedures outlined in this section.

The Franchising Authority shall give written notice to the Grantee of its intent to revoke the franchise on the basis of noncompliance by the Grantee, including one or more instance of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response satisfactory from the Grantee, it may then seek termination of the Franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination.

At the designated meeting, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

[Ord. No. 2057 Eff. Date 09-10-03]

8.5 PROMPT COMPLIANCE

The Grantee shall not be relieved of its obligation to comply with this Ordinance by reason of the Grantor's failure to enforce prompt compliance. [Ord. No. 2057 Eff. Date 09-10-03]

8.6 IMPOSSIBILITY OF PERFORMANCE

A Grantee shall not be held in default under or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults are caused by circumstances reasonably beyond its control including, but not limited to, strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storms, hurricane, tornado, or other catastrophic acts of nature, labor disputes, governmental, administrative or judicial or regulation. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable and/or equipment is attached, as well as unavailability of materials and/or labor to perform the work necessary. [Ord. No. 2057 Eff. Date 09-10-03]

8.7 TERMINATION OF FRANCHISE

1. Grounds for Revocation. The Grantor reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:

- If the Grantee should default in the performance of any of its material obligations under this Ordinance or the franchise and fails to cure the default within sixty (60) days after receipt of written notice of the default from the Grantor, or such longer time as specified by the Grantor.
- If a petition is filed by or against the Grantee under the Bankruptcy Act or any other insolvency or creditors' rights law, state or federal, and the Grantee shall fail to have it dismissed.
- If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of the Grantee's assets.
- If the Grantee makes an assignment for the benefit of creditors.
- If the Grantee violates any order or ruling of any State or Federal regulatory body having jurisdiction over the Grantee, unless the Grantee or any party similarly affected is lawfully contesting the legality or applicability of such order or ruling and has received a stay from a Court of appropriate jurisdiction.
- If the Grantee evades any of the provisions of this Ordinance or the Franchise Agreement.
- If the Grantee practices any intentional fraud or deceit upon the Grantor or cable subscribers.
- If the Grantee materially misrepresents facts in the application for a franchise.
- If the Grantee ceases to provide services over the cable system for seven (7) consecutive days for any reason within the control of the Grantee.

2. Restoration of Property. In removing its plant, structures and equipment, the Grantee shall refill at its own expense any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee's removal of its equipment and appliances, without affecting the electric or telephone cables, wires or attachments. The Grantor shall inspect and approve the condition of the public ways and public places and cables, wire, attachments and poles after removal. Liability insurance indemnity provided in Section 7.2 and the performance bond in Section 8.9 shall continue in full force and effect during the period of removal.

3. Reimbursement of Costs Pursuant to Subsections 1 and 2 of this Section. In the event of a failure by the Grantee to complete any work as required by law or ordinance within the time established and to the reasonable satisfaction of the Grantor, after due notice and opportunity to cure, the City may cause such work to be done and the Grantee shall reimburse the Grantor the costs thereof within thirty (30) days after receipt of an itemized list of such costs or the grantor may recover such costs as provided in Section 8.8.

[Ord. No. 2057 Eff. Date 09-10-03]

8.8 SECURITY FUND

A. Within then (10) days after execution of the Franchise Agreement, a Grantee shall deposit with the City Clerk, and maintain on deposit through the term of the Franchise, the sum of \$10,000.00 as security for the faithful performance by it of all the provisions of the Franchise and compliance with all orders, permits, and directions of any agency of the Grantor having jurisdiction over its acts or defaults under the Franchise, and the payment by a Grantee of any claims, liens, and taxes due the Grantor which arise by reason of the construction, operation or maintenance of the system.

B. Within ten (10) days after notice that any amount has been withdrawn from the security fund deposited pursuant to subdivision (A) of this section, a grantee shall pay to, or deposit with, the City Clerk a sum of money sufficient to restore such security fund to the original amount of \$10,000.00.

[Ord. No. 2057 Eff. Date 09-10-03]

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C. If a Grantee fails to pay to the Grantor any compensation within the time fixed herein; or fails after ten (10) days notice to pay to the Grantor any taxes due and unpaid; or fails to repay to the Grantor within such ten (10) days, any damages, costs, or expenses which the Grantor shall be compelled to pay by reason of any act or default of a Grantee in connection with the Franchise; or fails after three (3) days notice of such failure by the Grantor to comply with any provision of the Franchise which the Grantor reasonably determines can be remedied by an expenditure of the security, the City Clerk may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the City Clerk shall notify a Grantee of the amount and date thereof.

D. The security fund deposited shall become the property of the Grantor in the event that the Franchise is canceled by reason of the default of the Grantee. A Grantee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the expiration of the term of the Franchise, provided that there is then no outstanding default on the part of a Grantee. Interest earned by the investment of the security fund will accrue to a Grantee.

E. The rights reserved to the Grantor with the respect to the security fund are in addition to all other rights of the Grantor; whether reserved by the Franchise or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right the Grantor may have. [Ord. No. 2057 Eff. Date 09-10-03]

8.9 FAITHFUL PERFORMANCE BOND

Upon acceptance of a Franchise, a Grantee shall submit and maintain throughout the term of the Franchise, a faithful performance bond in the amount of one hundred thousand dollars (\$100,000.00). The bond shall insure compliance with all applicable laws, regulations, ordinances and provisions of the Franchise and this Ordinance, shall provide for recoverable loss or damages, compensation, indemnification, reasonable attorney fees, cost of removal or abandonment of Grantee's property, and shall cover penalties for failure to meet the construction requirements, as many be outlined in the Franchise Agreement. [Ord. No. 2057 Eff. Date 09-10-03]

8.10 VIOLATIONS AND PENALTIES

If a Grantee fails to comply with the requirements of this cable franchise regulatory ordinance, and a cable franchise agreement, then the City may invoke and secure compliance in accordance with Chapter 13 of Title 2 Municipal Infractions - of the City Code of Ordinances for the City of Newton, Iowa and as authorized by Section 364.22 of the Code of Iowa. [Ord. No. 2057 Eff. Date 09-10-03]

SECTION 9 **MISCELLANEOUS PROVISIONS**

9.1 ACTIONS OF PARTIES

In any action by the Franchising Authority or a Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.
Ord. No. 2057 Eff. Date 09-10-03

9.2 EQUAL PROTECTION

In the event the Franchising Authority enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the Franchising Authority's streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. Ord. No. 2057 Eff. Date 09-10-03

9.3 NOTICES

Unless expressly otherwise agreed between the parties, every notice or response required by a Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid or express mail service.
Ord. No. 2057 Eff. Date 09-10-03

9.4 DESCRIPTIVE HEADINGS

The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein. Ord. No. 2057 Eff. Date 09-10-03

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9.5 SEVERABILITY

In any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise, or any renewal or renewals thereof. In the event that the Federal Communications Commission declared any section invalid, then such section or sections may be renegotiated by the Franchising Authority and the Grantee. Ord. No. 2057 Eff. Date 09-10-03

9.6 EFFECTIVE DATE

This Ordinance shall be effective upon the passage, approval and publication as provided by law.
Ord. No. 2057 Eff. Date 09-10-03

9.7 CONFLICTING ORDINANCES REPEALED

All ordinances or part of ordinances in conflict herewith, including, but not limited to, ordinances, are hereby repealed to the extent of any such conflict. Ord. No. 2057 Eff. Date 09-10-03

Passed, adopted and effective this 18th day of August 2003, subject to applicable federal, state and local law.

WITNESS:

CITY OF NEWTON, IOWA

Candice J. Brown, City Clerk

David L. Aldridge, Mayor

FOR FUTURE USE