

**TITLE XI: BUSINESS REGULATIONS**

Chapter

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## CHAPTER 110: PLACES OF AMUSEMENT; BUSINESS REGULATIONS

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*ELECTRONIC GAMING OPERATIONS***§ 110.01 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*ELECTRONIC GAMING OPERATIONS.*

(1) Any business enterprise, whether as a principal or an accessory use, where persons utilize electronic machines, including, but not limited to, computers and gaming terminals, to conduct games of chance, including sweepstakes, and where cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds.

(2) This does not include any lottery endorsed by the state.

*INTERESTED PARTY.* Any person who is an applicant for a license or who is an employee of any applicant for a license, any person who is a partner in a partnership which is an applicant for a license and any person, partnership, or corporation which is an officer, director, or principal stockholder of an entity which is an applicant for a license.

(Ord. 139, passed 6-29-2010)

**§ 110.02 PURPOSE.**

It is hereby found and declared that the reasonable regulation of electronic gaming establishments is necessary to protect the health, safety, and welfare of the people of the town, and the provisions herein are ordained for the purpose of regulating and restricting certain activities of establishments engaged in electronic gaming operations.

(Ord. 139, passed 6-29-2010)

**§ 110.03 ALLOWABLE LOCATIONS.**

(A) Computer gaming establishments shall be limited to the following zoning districts and no others:

- (1) HBD Highway Business District; and
- (2) GBD General Business District.

(B) Computer gaming establishments shall be allowed to have a maximum of two terminals, computers, machines, or gaming stations when located in any other zoned district.

(C) In all zoning districts where computer gaming establishments are authorized, they may not be placed within 300 feet of any church, any public or private school, any licensed day care facility or of any other building within which an existing electronic gaming establishment is located.  
(Ord. 139, passed 6-29-2010)

**§ 110.04 ACCESS.**

All electronic gaming terminals, computers, machines, and gaming stations shall be open and visible from the front interior of the establishment. At all times while open for business and while patrons are on the premises, electronic gaming operations shall be open for direct, unobstructed access by police officers, Fire Department personnel, and emergency response personnel. Entrance doors shall remain unlocked at all times while patrons are on the premises. Police officers, Fire Department personnel, and emergency response personnel shall have direct access to the premises without requiring assistance from an employee, agent, or owner of the establishment.  
(Ord. 139, passed 6-29-2010)

**§ 110.05 HOURS OF OPERATION.**

No person or entity engaged in electronic gaming operations defined herein shall engage in the business before 10:00 a.m. or after 2:00 a.m. No playing on any computer subject to this chapter shall be allowed during the times when computer gaming establishments are required by this chapter to remain closed.  
(Ord. 139, passed 6-29-2010) Penalty, see § 110.99

**§ 110.06 AGE RESTRICTIONS.**

No electronic gaming establishment shall allow, permit, or condone any person under the age of 18 to engage in electronic gaming operations or supervise operation of machines.  
(Ord. 139, passed 6-29-2010) Penalty, see § 110.99

**§ 110.07 SIGNAGE.**

Electronic gaming establishments shall prominently post the rules of the sweepstakes games.  
(Ord. 139, passed 6-29-2010)

**§ 110.08 OPERATIONS.**

(A) If food or beverages (including alcoholic beverages) are served, the establishment must meet the requirements of the County Health Services and/or appropriate state agency requirements.

(B) Firearms are prohibited in electronic gaming establishments.  
(Ord. 139, passed 6-29-2010) Penalty, see § 110.99

#### **§ 110.09 MAXIMUM NUMBER OF MACHINES.**

The maximum number of terminals, computers, machines, and gaming stations within an electronic gaming establishment is 20.  
(Ord. 139, passed 6-29-2010)

#### **§ 110.10 SERIAL NUMBERS REQUIRED.**

(A) As part of the licensing procedure, the operator shall provide the serial number of each and every terminal, computer, machine, and gaming station in the establishment. The serial numbers of equipment placed into service after the license is granted (and the additional regulatory license fees) shall be provided to the Town Revenue Collections Supervisor prior to any use of the equipment.

(B) Computers or machines that are removed from the establishment shall be reported, with the serial number, to the Town Revenue Collections Supervisor; any replacement computer shall be reported, with the serial numbers of the original and replacement machines, to the Town Revenue Collections Supervisor.  
(Ord. 139, passed 6-29-2010)

#### **§ 110.11 ISSUANCE AND DISPLAY OF LICENSE.**

(A) Upon approval of the application for a license required by the Town Council, the Finance Officer shall issue a regulatory license to the applicant.

(B) It shall be the responsibility of all interested parties to ensure that the license required by this subchapter be prominently displayed within the business. If possible, the license must be affixed to the electronic machine, computer, or terminal.  
(Ord. 139, passed 6-29-2010)

#### **§ 110.12 NOTIFICATION OF CHANGE IN APPLICATION INFORMATION.**

Any change of any of the facts stated in an application filed under this subchapter must be reported immediately to the Finance Officer.  
(Ord. 139, passed 6-29-2010)

**§ 110.13 VOIDANCE; EXCEPTION.**

A license issued pursuant to this subchapter shall become void if the licensee moves or ceases to operate for a period of 180 days at the location required to be stated in the application for the license. (Ord. 139, passed 6-29-2010)

**§ 110.14 GROUNDS FOR REVOCATION.**

A regulatory license issued pursuant to this chapter shall be revoked by action of the Town Council if the Council determines that:

(A) The licensee or any interested party has violated any provisions of this subchapter or other applicable code provision;

(B) The licensee or interested party is convicted of illegal sale of intoxicating beverages, narcotic drugs, marijuana, or any illegal drugs of any kind on the licensed premises or elsewhere;

(C) The licensee or any interested party violates any zoning, building, or other code or ordinance as the same applies to the premises;

(D) The licensee or any interested party suffers or permits any activity in violation of G.S. Ch. 14, Art. 37;

(E) The licensee or any interested party suffers or permits the licensed premises to become disorderly or permits any profane, obscene, or indecent language thereon;

(F) The licensee or any interested party suffers or permits any illegal sale of intoxicating beverages, narcotic drugs, marijuana, or any illegal drugs of any kind to be sold or kept or consumed on the licensed premises; or

(G) The licensee or any interested party employs, in carrying on the business, any person who has been convicted of violating any gambling laws of the state or of any other state. (Ord. 139, passed 6-29-2010)

**§ 110.15 NOTICE AND HEARING PRIOR TO REVOCATION OR DENIAL.**

Before the Town Council revokes a license issued pursuant to this chapter, or the Town Council determines that reasonable grounds exist to deny an application for a license pursuant to this chapter, the Town Council shall cause a written notice to be sent by certified mail or other appropriate means to the licensee or applicant affected, at the address stated in the license or application. The notice shall advise the affected party of a right to appear before the Town Council, with or without legal counsel, at a stated

time and place, for the purpose of presenting any evidence, examining any evidence submitted, and examining or cross-examining any person providing evidence.

(Ord. 139, passed 6-29-2010)

### *POOL ROOMS AND GAME ROOMS*

#### **§ 110.30 POOL ROOMS.**

It shall be unlawful for any person under 16 years of age to loiter or shoot pool without written permission to do so. This written permission must be presented to the owner, in person, by the parent or guardian of the child and kept on file by the poolroom owner for the inspection by police officers whenever people under 16 years of age are found on the premises.

(Ord. 39, passed 8-4-1969) Penalty, see § 110.99

#### **§ 110.31 POOL ROOMS, NIGHT CLUBS, AND THE LIKE.**

It shall be unlawful for any person to operate a game room, pool halls, dance halls, carnivals, circuses, cocktail lounges, night clubs, beer halls, and similar establishments in the town.

(Ord. 63, passed 10-5-1981) Penalty, see § 110.99

#### **§ 110.32 GAME ROOMS PROHIBITED.**

(A) As used in this subchapter, *GAME ROOM* is any place of business that operates, or permits to be operated, therein or thereon more than two video or other mechanical games for which charge is made either directly or indirectly.

(B) It shall be unlawful for any person to operate a game room in the town.

(Ord. 73, passed 4-6-1992) Penalty, see § 110.99

### *GENERAL BUSINESS REGULATIONS*

#### **§ 110.45 CONVENIENCE STORE HOURS.**

(A) As used in this section, *CONVENIENCE STORE* means a business establishment which customarily offers for sale to the public gasoline or other motor fuels and grocery or food and beverage items for consumption on or off the premises.

(B) It shall be unlawful for any individual, corporation, or other person to maintain or operate a convenience store business open for business within the corporate limits of the town on Sunday mornings between the hours of 2:00 a.m. and 4:30 a.m., local time.  
(Ord. 75, passed 6-1-1992) Penalty, see § 110.99

**§ 110.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Each violation of §§ 110.01 to 110.15 shall be subject to a civil penalty in the amount of \$500 for each violation. Each day any single violation continues shall be considered a separate violation and subject to a civil penalty in the amount of \$500. Any recurring violation on the same property within a 36-month period shall be considered a repeat offense and subject to an immediate civil penalty in the amount of \$500 for each violation. No warning period shall be granted for repeat offenses since proper notice was given for the initial violation.

(C) Violation of § 110.32 shall constitute a misdemeanor punishable by a fine of up to \$50 and imprisonment for up to 30 days.

(D) (1) If any person shall violate § 110.45, such person shall be guilty of a misdemeanor and shall be fined not more than \$500, or imprisoned for not more than 30 days, or both.

(2) Each day that § 110.45 is violated shall constitute a separate offense.  
(Ord. 73, passed 4-6-1992; Ord. 75, passed 6-1-1992; Ord. 139, passed 6-29-2010)



## CHAPTER 111: BUSINESS LICENSING

### Section

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**GENERAL PROVISIONS**

**§ 111.001 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BUSINESS.** Includes each trade, occupation, profession, business, and franchise taxed under this chapter.

**PERSON.** Includes any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.

**SEASONAL BUSINESS.** A business is “seasonal” in nature when it is conducted for profit six months out of the year or less.  
(Ord. 137, passed 5-3-2010)

**§ 111.002 INTERPRETATION OF CHAPTER.**

This chapter is enacted for revenue purposes only. Therefore, it should be construed to require payment of the maximum tax permitted under its terms. In addition, issuance of a license in accordance

with this chapter does not excuse a licensee from compliance with any other applicable ordinance or statute. This chapter does not prevent the town from imposing license taxes on additional businesses, from increasing or decreasing the amount of any license tax, or from regulating any business taxed. (Ord. 137, passed 5-3-2010)

#### § 111.003 LEVY OF TAX.

An annual privilege tax is hereby levied on each business conducted within this town listed in § 111.075 in the amounts set forth in that section. (Ord. 137, passed 5-3-2010)

#### § 111.004 APPLICATION.

Each person who conducts a business within this town is subject to this chapter. A person **CONDUCTS BUSINESS** when he or she engages in one act of business taxed under this chapter. He or she conducts business **WITHIN THE TOWN** if he or she maintains a business location within the town. (Ord. 137, passed 5-3-2010)

#### § 111.005 PERIOD OF LICENSE; DUE DATE.

(A) *Annual licenses.* Unless the section of this chapter levying the privilege license tax applicable to a particular business provides otherwise, a license issued in accordance with this chapter is good for the 12-month period beginning July 1 and ending June 30. The tax is due on July 1 of each year. However, if a person begins a business after July 1 of a year, the tax for that year is due before the business is begun.

(B) *Licenses for periods shorter than one year.* If the section of this chapter levying the privilege license tax applicable to a particular business so provides, a license may be issued for a period of one day, one week, or some comparable period of less than a full license year. A person may not commence a business conducted within the city and taxed under such a provision until the privilege license tax is paid and may not continue such a business beyond the period for which the license is issued. (Ord. 137, passed 5-3-2010) Penalty, see § 111.999

#### § 111.006 PRORATION OF TAX.

If a business is begun after January 31 and before July 1, the amount of tax due is half the amount otherwise due. If a business is seasonal in nature and if the amount of tax is not based on gross receipts, the amount of tax due is half the amount otherwise due. (Ord. 137, passed 5-3-2010)

**§ 111.007 REFUNDS.**

If for any reason a licensee discontinues his or her business during the license year, he or she is not entitled to a refund.

(Ord. 137, passed 5-3-2010)

**§ 111.008 SEPARATE BUSINESSES.**

A separate license is required and a separate privilege license tax must be paid for each place of business unless two or more places of business under common ownership are contiguous to each other, communicate directly with and open into each other, and are operated as a unit. In addition, a separate privilege license tax must be paid for each business taxable under this chapter conducted by the taxpayer at any one location; however, the Town Finance Officer may issue a single license for all taxable business conducted at one location by a single taxpayer.

(Ord. 137, passed 5-3-2010)

**§ 111.009 COMPUTATION OF TAX BASED ON GROSS RECEIPTS.**

(A) Whenever this chapter levies a privilege license tax computed on the basis of gross receipts, **GROSS RECEIPTS** means the amount reported as gross receipts on a business's state income tax return, or the federal income tax return files with the state income tax return if the state return does not separately state gross receipts for the most recently completed tax year.

(B) If a business has not been in operation long enough for the information required in division (A) above to be available, the Town Finance Officer shall estimate gross receipts for the business on the basis of gross receipts of comparable businesses, or any other information that the Town Finance Officer considers useful.

(C) On or before July 31, immediately after the license year, each licensee who paid the tax for the past license year based on estimated gross receipts shall submit to the Town Finance Officer a sworn final report showing the amount of gross receipts for the license year. If the amount shown is more than estimated gross receipts, the licensee shall pay the amount of additional tax that would have been due had the estimate been accurate. If the amount shown is less than estimated gross receipts, the town shall refund to the licensee the difference between the actual tax paid and the amount of tax that would have been due had the estimate been accurate.

(Ord. 137, passed 5-3-2010)

**§ 111.010 EXCEPTIONS.**

(A) *Application.* Generally, except as otherwise provided in this section or by state law, no person is exempt from the payment of a privilege license tax levied by this chapter.

(B) *Charitable organizations.* A person who operates a business for a religious, educational, civic, patriotic, charitable, or fraternal purpose, when the entire gross income of the business is used for such a purpose, is exempt from paying any privilege license tax levied by this chapter.

(C) *Blind persons and members of the armed forces and merchant marine.* Blind persons and persons who serve in the United States Armed Forces or the merchant marine are exempt from paying any privilege license tax levied by this chapter to the extent provided by G.S. §§ 105-249 and 105-249.1.

(D) *Must obtain license.* A person exempt from paying a privilege license tax levied by this chapter shall nevertheless obtain a license from the Town Finance Officer. The license shall state that licensee is exempt from paying the privilege license tax.

(Ord. 137, passed 5-3-2010)

## LICENSES

### § 111.025 APPLICATION.

(A) A person shall apply to the Finance Officer for each license required by this chapter no less than 30 days before the date the tax is due.

(B) The application, which shall be submitted on forms provided by the Town Finance Officer, shall contain:

(1) The name of the applicant and whether the applicant is an individual, a partnership, a corporation, or some other entity;

(2) The nature of the business;

(3) Where the business is conducted;

(4) An address where notices and statements may be mailed as required by this chapter;

(5) Whether the business is regulated by a state occupational licensing board subject to G.S. Ch. 93B, and if so, the serial number of the state license the applicant currently holds; and

(6) Any other information the Town Finance Officer determines to be necessary to compute the amount of tax due.

(Ord. 137, passed 5-3-2010)

**§ 111.026 REASONS FOR REFUSAL OR REVOCATION OF A LICENSE.**

The Town Finance Officer shall refuse to issue a license or shall revoke a license for either of the following reasons.

(A) The applicant misrepresents a fact relevant to the amount of tax due or his or her qualifications for a license.

(B) The applicant refuses to provide information necessary to compute the amount of tax due or provide any other information requested in the license application.

(Ord. 137, passed 5-3-2010)

**§ 111.027 UNQUALIFIED APPLICATIONS; RIGHT TO A CONFERENCE.**

(A) After receipt of the completed application, if the Town Finance Officer believes that a reason exists for refusing a license under § 111.026, the Finance Officer shall refuse to accept payment of the tax and shall not issue the license. At the applicant's request, the Finance Officer shall, in accordance with § 111.036, give the applicant a written statement of the reason for refusing the license. The applicant may, within ten days after the day the statement is received, request a conference to discuss the refusal. In the request the applicant shall specify why the application for a license should not be refused. The Town Finance Officer shall arrange the conference within a reasonable time.

(B) If the Town Finance Officer refuses to issue a license, the applicant may reapply for a license at any time thereafter. If the reason for which the application was refused no longer exists, and if no other reason exists for refusing to issue a license, the Finance Officer shall issue the license in compliance with § 111.028.

(Ord. 137, passed 5-3-2010)

**§ 111.028 TOWN FINANCE OFFICER TO ISSUE LICENSE; PAYMENT OF TAX A PREREQUISITE.**

After receipt of the completed application, if the Town Finance Officer believes that no reason exists for refusal of a license under § 111.026, the Town Finance Officer shall determine the amount of tax due and notify the applicant of that amount. The Town Finance Officer shall not issue a license until the tax is paid.

(Ord. 137, passed 5-3-2010)

**§ 111.029 AMOUNT OF TAX DISPUTED.**

If disputes arise over the amount the Town Finance Officer determines to be due, the applicant may either refuse to pay and request a conference with the Town Finance Officer to discuss the determination

or pay the amount and request a conference to discuss the right to a refund. If a conference is requested, the Town Finance Officer shall arrange it within a reasonable time.  
(Ord. 137, passed 5-3-2010)

**§ 111.030 REVOCATION.**

(A) The Town Finance Officer shall revoke a license if a reason exists to revoke it as set forth in § 111.026. Before revoking a license, the Finance Officer shall give the licensee written notice of the grounds for revocation, in accordance with § 111.036. The licensee may, within ten days after the day on which notice is provided, request a conference with the Finance Officer in writing. The request shall specify the reasons why the license should not be revoked. The Town Finance Officer shall arrange the conference within a reasonable time.

(B) If the licensee fails to request a conference within ten days after the day on which notice is provided, the Finance Officer shall revoke the license. If the licensee requests a conference, the Finance Officer may not revoke the license until after the conference.

(C) If the Town Finance Officer revokes a license, the former licensee may apply for a new license at any time thereafter. If the reason for which the license was revoked no longer exists and if no other reason exists for refusing to issue a license, the Collections Supervisor shall issue the license in accordance with § 111.028.  
(Ord. 137, passed 5-3-2010)

**§ 111.031 FORM AND CONTENTS OF LICENSE.**

A license shall show the name of the person licensed, the place where the business is conducted (if it is to be conducted at one place), the nature of the business licensed, the period for which the license is issued, and the amount of tax paid. In addition, if a machine is licensed, the license shall show the serial number of the machine. The Town Finance Officer shall keep a copy of each license issued.  
(Ord. 137, passed 5-3-2010)

**§ 111.032 ASSIGNMENTS.**

A license may be assigned if a business licensed under this chapter and carried on at a fixed place is sold as a unit to any person, and the purchaser is to carry on the same business at the same place. Such a change shall be reported to the Finance Officer in accordance with § 111.033. Otherwise, each license issued under this chapter is a personal privilege and is not assignable.  
(Ord. 137, passed 5-3-2010)

**§ 111.033 CHANGES IN THE BUSINESS CONDUCTED BY LICENSEE DURING THE TAX YEAR.**

(A) A licensee or an assignee shall report a change in the information contained in the license application to the Town Finance Officer within ten days after the change occurs.

(B) If information shown on the license itself is affected, the licensee or assignee shall surrender the license to the Town Finance Officer when reporting the change.

(1) *Changes affecting the amount of tax due.* If there are no reasons for revoking the license under § 111.026 and the change results in the imposition of a separate or additional tax, the Town Finance Officer shall reissue a license reflecting the change upon payment of the separate or additional tax.

(2) *Changes not affecting the amount of tax due.* If there are no reasons for revoking the license under § 111.030 and the change does not result in an imposition of a separate or additional tax, the Town Finance Officer shall reissue a license reflecting the change upon payment of a fee of \$5.

(3) *Change requiring refusal of a license.* If there is a reason for revoking the license under § 111.026, the Town Finance Officer shall refuse to reissue a license and shall instead begin proceedings to revoke the license in accordance with § 111.026.

(Ord. 137, passed 5-3-2010)

**§ 111.034 TOWN FINANCE OFFICER TO FURNISH DUPLICATES.**

Upon satisfactory proof that a license has been lost or destroyed, the Town Finance Officer shall furnish a duplicate for a fee of \$5.

(Ord. 137, passed 5-3-2010)

**§ 111.035 RECORD OF CONFERENCES.**

The Town Finance Officer shall maintain for three years a record of each conference held in accordance with this chapter. The record shall contain the applicant's or licensee's name, the date of the conference, and a brief statement of the issues discussed and the result reached. After three years, the Finance Officer shall dispose of the record in accordance with G.S. § 121-5.

(Ord. 137, passed 5-3-2010)

**§ 111.036 PROVIDING NOTICE TO AN APPLICANT OR LICENSEE.**

Whenever this chapter requires the Town Finance Officer to give written statement of notice to an applicant or a licensee, the Town Finance Officer may do so in one of three ways:

(A) By personally delivering the statement or notice to the applicant or licensee;

(B) By mailing the statement or notice by registered or certified mail and returning the receipt requested to the address specified for that purpose in the license application; or

(C) By causing the statement or notice to be served on the applicant or licensee in accordance with the procedures for service of process under Rule 4, North Carolina Rules of Civil Procedure.  
(Ord. 137, passed 5-3-2010)

*ENFORCEMENT AND COLLECTION*

**§ 111.050 DUTY TO DETERMINE WHETHER TAX DUE.**

Each person has the duty to determine whether the business he or she conducts is taxed under this chapter, and if so, whether that tax has been paid for the current year.  
(Ord. 137, passed 5-3-2010)

**§ 111.051 FINANCE OFFICER TO INVESTIGATE.**

If the Town Finance Officer has reason to believe that a person is conducting a business in the town in violation of this chapter, the Town Finance Officer shall conduct an investigation to determine the person's tax liability.  
(Ord. 137, passed 5-3-2010)

**§ 111.052 DUTY TO KEEP BOOKS.**

Each person who conducts a business taxed under this chapter shall keep all records and books necessary to compute the tax liability. If a person fails to keep books and records as required, the Town Finance Officer shall make a determination of that person's tax liability from the information available.  
(Ord. 137, passed 5-3-2010)

**§ 111.053 DUTY TO PERMIT INSPECTION.**

Each person who conducts business in the town shall permit the Town Finance Officer to inspect the business premises during normal business hours to determine the nature of the business conducted there and to examine the books and records to determine the nature and amount of business transacted.  
(Ord. 137, passed 5-3-2010)

**§ 111.054 DUTY TO POST LICENSE.**

A licensee shall post the license or licenses conspicuously in the place of business licensed. If the licensee has no regular place of business, the license must be kept where it may be inspected at all times by the proper town officials. If a machine is licensed, the license shall be affixed to the machine.  
(Ord. 137, passed 5-3-2010)

**§ 111.055 NOTICE OF DEFICIENCY.**

If the Town Finance Officer determines that a person has not paid the full amount of tax due under this chapter, either for the current license year or for a prior license year, the Town Finance Officer shall give the person written notice of the deficiency, in accordance with § 111.036. The notice of deficiency shall specify the total amount of tax due, the section of this chapter upon which the tax is based, the amount of tax paid, any interest due, the balance owed, the manner and time period in which the person may respond to the notice of the deficiency, and the consequences of failing to respond as specified.  
(Ord. 137, passed 5-3-2010)

**§ 111.056 REQUEST FOR A CONFERENCE.**

(A) The person may, within ten days after the day on which notice is provided, request a conference in writing. The request shall specify the person's objections to the notice of deficiency.

(B) By way of illustration, but not limitation, a person who receives notice of a deficiency may object on the following grounds:

(1) The tax due has already been paid;

(2) The Town Finance Officer miscalculated the amount of tax due;

(3) The Town Finance Officer based the calculation on incorrect or insufficient information concerning either the nature or the amount of business conducted; or

(4) The Town Finance Officer based the determination on an erroneous interpretation of a section of this chapter that establishes a category of business subject to a particular tax.

(Ord. 137, passed 5-3-2010)

**§ 111.057 DEFICIENCY TO BECOME FINAL.**

If the taxpayer fails to request a conference under § 111.056, the deficiency becomes final and the Town Finance Officer shall proceed to collect the deficiency.

(Ord. 137, passed 5-3-2010)

**§ 111.058 CONFERENCE HELD.**

If the taxpayer requests a conference, the Town Finance Officer shall not proceed to collect the deficiency until hearing the taxpayer's objections and determining that the deficiency should become final. The Town Finance Officer shall maintain a record of each conference held for three years in accordance with § 111.056. The record shall contain the name of the taxpayer, the date of the conference, a brief statement of the issues discussed, and the results of the discussion. After three years, the Town Finance Officer shall dispose of the record in compliance with G.S. § 121-5.

(Ord. 137, passed 5-3-2010)

**§ 111.059 COLLECTION OF DEFICIENCY.**

(A) The Town Finance Officer may use any of the following methods to collect a deficiency:

(1) Criminal prosecution in accordance with § 111.999(B)(1);

(2) Equitable relief in accordance with § 111.999(B)(2);

(3) The remedies of levy, sale, attachment, and garnishment in accordance with G.S. § 160A-207; and/or

(4) The remedies of levy and sale of real and personal property of the taxpayer within the town in accordance with the provisions of G.S. § 105-109.

(B) Any person who commences or continues to conduct a business taxed under this chapter without payment of the tax is liable for the additional tax of 5% every 30 days as imposed by G.S. § 105-109. (Ord. 137, passed 5-3-2010)

**§ 111.060 MEETING WITH COUNCIL PRIOR TO GRANTING LICENSE.**

(A) Any person, firm, or corporation desiring to engage in any business, trade, or vocation, or do anything mentioned in this chapter, may be required to appear in person before the Town Council for a license stating the place at which it is proposed to conduct the business, the name of the owner of the business, or if the owner be a firm, the names of all members of such firm, or if the owner be a corporation, the names of the officers including the manager. The Town Council shall also have the right to require the owner, proprietor, manager, or other person interested in or connected with such business to give evidence, upon oath, touching the manner in which such business has been or is to be conducted as well as any other facts which the Town Council may deem necessary. This section shall apply to the following:

(1) Owners and drivers of for-hire vehicles and public conveyance;

(2) Any adult entertainment establishment;

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(3) Any peddler; a person who travels from place to place with an inventory of goods; and

(4) A license may be refused for any business enumerated in this section unless the Town Council shall be satisfied that the applicant or the proposed manager is a person of good moral character, and a fit and proper person to conduct such a business. The Town Council must also be satisfied that the place proposed is a suitable place for the conduct of such business.

(B) Any adult entertainment establishment is required to receive a certificate of zoning compliance from the Planning and Zoning Department before a license can be issued.  
(Ord. 137, passed 5-3-2010)

**FEES AND EXCEPTIONS**

**§ 111.075 SCHEDULE OF LICENSE TAXES.**

The town adopts the state’s maximum tax privilege rate for each business the state regulates. This schedule will be automatically updated from time to time to conform to changes in the state privilege tax rates. Any business not described in this schedule is considered a “general business” and is taxed on the basis of gross receipts.

<i>Town License Tax</i>	
<i>Category</i>	<i>Tax</i>
<i>Abattoir or slaughterhouse</i>	\$25
<i>Adult entertainment establishment.</i> Includes videos, books, bars, nightclubs, and massage parlors.	\$3,000
<i>Advertising</i> (G.S. § 105-86). Every person, firm, or corporation, who or which is engaged in the business of outdoor advertising by means of signboards, posterboards, or printed bulletins or any other outdoor advertising devices erected upon grounds, walls, or roofs of buildings, and/or other outdoor advertising.	\$35
<i>Antique dealers.</i> Every person, firm, or corporation engaged in the business of selling antique furniture or other articles of antique property.	\$50
<i>Automotive service station and/or repair garage</i> (G.S. § 105-89). Engaging in the business of servicing, storing, painting, repairing, welding, or upholstering motor vehicles, trailers, semi-trailers; or retail selling or delivering of any tires, tools, batteries, electrical equipment, automotive accessories, radios designed for exclusive use in automobiles, supplies, motor fuels, lubricants, or any such commodities.	\$12.50
<i>Automotive equipment and supplies at wholesale</i> (G.S. § 105-89). Engaging in the business of buying, selling, distributing, exchanging, or delivering automotive accessories, including radios designed for exclusive use in automobiles, parts, tires, tools, batteries, other automotive equipment or supplies, or any such commodities at wholesale (applies to manufacturers, jobbers, and others who sell to retail dealers, except manufacturers of batteries).	\$37.50

<i>Category</i>	<i>Tax</i>
<i>Automotive dealers</i> (G.S. § 105-89). Engaging in the business of buying, selling, distributing, servicing, storing, or exchanging motor vehicles, trailers, semi-trailers, tires, tools, batteries, electrical equipment, lubricants, or automotive equipment, radios designed for exclusive use in automobiles, and supplies.	\$25
<i>Bakeries</i> . Engaging in the business of making and baking breads or cakes or other like articles.	\$37.50
<i>Barbershops and beauty salons</i> (G.S. § 105-75.1). Engaging in the business of conducting a barbershop, beauty salon, or parlor, manicurist, or other shop of like kind.	\$2.50 per booth
<i>Beer and wine</i> (G.S. § 105-113.77). Engaging in the sale of beer or wine. On-premises malt Off-premises malt Wholesale beer On-premises wine Off-premises wine Wholesale wine	 \$15 \$ 5 \$62.50 \$15 \$10 \$37.50
<i>Bicycles</i> (G.S. § 105-102.5). Selling bicycles, bicycle supplies, or bicycle accessories.	\$25
<i>Bowling alleys</i> (G.S. § 105-102.5). Operating a bowling alley or alleys of like kind.	\$10 per alley
<i>Cabinet maker</i> . Engaging in the business of making or manufacturing cabinets.	\$30
<i>Chain or branch stores</i> (G.S. § 105-98). Engaging in the business of operating or maintaining in this state: (a) two or more stores or mercantile establishments under the same general management, supervision, or ownership where goods, wares, or merchandise are sold or offered for sale, or from which such goods, wares, or merchandise are sold or distributed at wholesale or retail; or (b) controlling by lease, either as lessor or lessee or by contract, the manner in which any such store or stores are operated, or the varieties, character, or brands of merchandise which are sold therein. Exemptions: Retail or wholesale dealers in motor vehicles and automotive equipment and supply dealers at wholesale who do not sell other items taxable under the chain store tax; retail stores of nonprofit organizations engaged exclusively in the sale of merchandise processed by handicapped persons employed by nonprofit organizations in the state.	\$50
<i>Check cashing business</i> (G.S. § 105-88).	\$100
<i>Child care centers</i> (G.S. § 105-60). Operating a day care facility as defined in G.S. § 110-86(3), which defines such a facility as “any child day care center or child care arrangement which provides day care for more than five children, not including the operator’s after-school children, under the age of 13, on a regular basis of at least once per week for more than four hours but less than 24 hours per day.” 50 children or less 50-99 children 100-149 children 150-200 children More than 200 children	 \$50 \$100 \$200 \$300 \$400
<i>Christmas trees</i> . Dealers in Christmas trees and perishable Christmas decorations. Each lot. Not prorated. Exempt: religious, charitable, and civic organizations.	\$50

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<i>Category</i>	<i>Tax</i>
<i>Circuses</i> (G.S. § 105-38). Exhibiting performances, such as a circus, menagerie, wild west show, dog or pony shows, or any other similar show, exhibition, or performance not taxed in other sections of § 111.076.	\$25 per day
<i>Collection agencies</i> (G.S. § 105-45). Engaging in the business of operating a collecting agency defined as collecting for a profit, claims, accounts, bills, notes, or other money obligations for others. Exemption: licensed attorneys who collect bills as part of their practices.	\$50
<i>Contractors</i> (G.S. § 105-54). Offering or bidding for a fixed price, commission, fee, or wage to construct any building, highway, street, sidewalk, bridge, culvert, sewer or water system, draining or dredging system, electric or steam railway, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure.	\$10
<i>Coupon books</i>	\$200
<i>Dances</i> (G.S. § 105-37.1). Giving or managing any dance or athletic contest of any kind that charges an admission fee in excess of \$0.50. Exemption: High school and elementary school athletic contests; dances promoted and managed by civic organizations, by private and public secondary schools, offered or given on the Cherokee Indian reservation, authorized to be given there, and paying the tribal gross receipts levy to the tribal council; teen centers exempt from the state income tax; and centers for the performing arts (see G.S. § 105-37 for definition).	\$25 per location
<i>Directories</i> . Engaging in preparing or publishing a directory.	\$50
<i>Electricians</i> (G.S. § 105-91). Engaging in the business of an electrician, installing electrical equipment, or offering to perform such services. Exemption: a person engaged exclusively in a business licensed under this section is not liable for a license tax levied under G.S. § 105-54 (contractors) or G.S. § 105-55 (installing elevators and sprinkler systems).	\$50
<i>Electronic gaming operations</i> . A regulatory license fee for each of the first two electronic gaming machines computers, terminals, gaming stations, or any combination thereof at the location. The fee for additional electronic gaming machines, computers, terminals, or gaming stations or any combination thereof. No interested party shall allow a computer to be operated until the appropriate regulatory license fees have been paid for the machine.	\$2,000 \$3,000 per device
<i>Electronic video games</i> (G.S. § 105-66.1). Owning or operating machines that play electronic video games when a coin or other thing of value is deposited in the machine. The license is not transferable from one machine to another.	\$100 per machine
<i>Elevators and sprinkler systems</i> (G.S. § 105-55). Engaging in the business of selling or installing elevators or automatic sprinkler systems. Exemption: a person engaged in a business taxed by this section if the person does not maintain an established place of business in the city.	\$100
<i>Entertainment</i> (G.S. § 105-37.1). Giving, offering, or managing any form of entertainment or amusement for which an admission is charged and not otherwise taxed or specifically exempted in § 111.076. Exemption: high school and elementary school athletic contests, dances promoted and managed by civic organization, by private and public secondary schools, offered or given on the Cherokee Indian reservation, authorized to be given there, and paying the tribal gross receipts levy to the tribal council; teen centers exempt from the state income tax; and centers for the performing arts (see G.S. § 105-37 for definition).	\$25

Category	Tax
<p><i>Firearms and other weapons</i> (G.S. § 105-80).</p> <p><i>Firearms.</i> Engaging in the business of selling or offering for sale firearms. Exemptions: dealers in antique firearms and weapons of mass death and destruction (G.S. §§ 14-409.11 and 14-288.8) and persons who make occasional sales, purchases, or exchanges for the enhancement of a personal collection of firearms.</p> <p><i>Other weapons.</i> Engaging in the business of selling or offering for sale bowie knives, dirks, daggers, leaded canes, iron or metallic knuckles, or similar weapons.</p>	<p>\$50</p> <p>\$200</p>
<p><i>Fish and oyster dealers.</i> Engaging in the business of selling fish or oysters.</p>	<p>\$25</p>
<p><i>Fitness, tanning beds, and related business.</i></p>	<p>\$50</p>
<p><i>Florist.</i> Every person, firm, or corporation doing a florist business in the town.</p>	<p>\$50</p>
<p><i>Fortune-tellers</i> (G.S. § 105-58). Engaging in the business of telling or pretending to tell fortunes, practicing the art of palmistry, clairvoyance, and other crafts of a similar kind for a reward.</p>	<p>\$500</p>
<p><i>Funeral services</i> (G.S. § 105-46). Engaging in the business of burying the dead or the retail sale of coffins. Exemption: cabinetmaker who is not in the funeral service business but make coffins to order.</p>	<p>\$50</p>
<p><i>Gunsmith</i></p>	<p>\$50</p>
<p><i>Health massage/body works therapist</i></p>	<p>\$50</p>
<p><i>Heating contractors</i> (G.S. § 105-91). Engaging in the business of a heating contractor, installing steam or gas fitter, or hot air heating systems, or offering to perform such services. Exemption: a person engaged exclusively in a business licensed under this section is not liable for a license tax levied under G.S. § 105-54 (contractors) or G.S. § 105-55 (installing elevators and sprinkler systems).</p>	<p>\$50</p>
<p><i>Hotels</i> (G.S. § 105-61). Operating a hotel, motel, tourist court, tourist home, or similar place advertising in any manner or soliciting for transient patronage. A <b>HOTEL</b> is defined as a building or group of buildings providing lodging and usually meals, entertainment, and various personal services for the public. A <b>MOTEL</b> is a building or group of buildings where rooms are directly accessible from an outdoor parking area and are used primarily as lodging for the public. In computing the number of rooms, the lobby, the clubroom, the office, the dining room, the kitchen, and the rooms occupied by the owner or lessee of the business for his or her private use or the use of his or her family shall not be counted. Any tax on the sale of food by a hotel or motel under G.S. § 105-62 is separate from and in addition to the tax levied under this section.</p>	<p>\$1 per room \$25 minimum</p>
<p><i>Ice cream dealers at retail</i> (G.S. § 105-102.5). Selling at retail ice cream including frozen custards, sherbets, water ices, yogurt, and similar frozen products.</p>	<p>\$2.50</p>
<p><i>Ice cream vendors.</i> Retail from a cart or vehicle, per vehicle fee.</p>	<p>\$75</p>

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Category	Tax
<p><i>Itinerant merchant</i> (G.S. § 105-53). Engaging in the business of <i>ITINERANT MERCHANT</i>, defined as a merchant, other than a merchant with an established retail store in the town, who transports an inventory of goods to a building, vacant lot, or other location in a town and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. A merchant who sells goods, other than farm products, in the town for less than six consecutive months is considered an itinerant merchant unless he or she stopped selling goods in the town because of his or her death or disablement, the insolvency of his or her business, or destruction of his or her inventory by fire or other catastrophe. Exemptions:</p> <ul style="list-style-type: none"> <li>A. Sellers of farm or nursery products they produced;</li> <li>B. Sellers of crafts or goods they or their household produced;</li> <li>C. Nonprofit charitable, educational, religious, scientific, or civic organization;</li> <li>D. Sellers of printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes or pies;</li> <li>E. Licensed automobile dealers;</li> <li>F. A specialty market vendor at a licensed specialty or at a specialty market operated by the state or local government;</li> <li>G. A merchant who locates at a farmers market;</li> <li>H. A merchant who is part of the state fair or an agricultural fair licensed by the Commissioner of Agriculture; and</li> <li>I. A merchant who sells goods at an auction conducted by an auctioneer licensed in compliance with G.S. Ch. 85B.</li> </ul>	\$100
<i>Interior decorators</i>	\$50
<i>Janitorial service</i> . Washing or cleaning windows or cleaning buildings.	\$50
<i>Jewelry stores</i> . Buying and selling jewelry or trinkets.	\$50
<i>Laundries</i> (G.S. § 105-85). Engaging in the business of operating a laundry, including wet- or damp-wash laundries and businesses known as laundrettes, launderalls, and similar types of businesses; or engaging in the business of supplying or renting clean linen or towels or wearing apparel.	\$50
<i>Loan agencies</i> (G.S. § 105-88). Engaging in the regular business of making loans or lending money. Exemptions: banks, industrial credit unions, installment paper dealers (G.S. § 105-83), pawnbrokers, insurance premium finance companies, the negotiation of loans on real estate, and real estate mortgage brokers.	\$100
<i>Manufacturers</i> . Engaging in the business of manufacturing any type of product(s) in the town.	\$50
<i>Marble yards</i> . Dealers in tombstones and monuments.	\$50
<i>Merchants retail</i> . Doing any kind of business at retail. Shall pay for each store or place of business.	\$50
<i>Merchants wholesale</i> . Doing any kind of business at wholesale. Shall pay for each store or place of business.	\$50
<i>Miscellaneous</i> . In those cases where the privilege license tax amount cannot be determined by any other means, the Town Finance Officer shall determine the tax amount due using the following basis:	
1-5 full- or part-time employees at any one time during the year;	\$25
6-15 full- or part-time employees at any one time during the year;	\$50
16-25 full- or part-time employees at any one time during the year; and	\$75
26+ full- or part-time employees at any one time during the year.	\$100

Category	Tax
<i>Mobile home parks.</i>	\$50
<i>Motorcycle dealers</i> (G.S. § 105-89). Engaging in the business of buying, selling, distributing, or exchanging motorcycles, motorcycle supplies, or any of such commodities.	\$12.50
<i>Music box or machines</i> (G.S. § 105-65). Operating, maintaining, or placing on location any machine or machines that play records or produce music. If the town tax, interest, or penalty is not paid or the license is not attached to the machine, local officials are authorized to “seize, remove, and hold such machines until all such defaults have been remedied”.	\$5 per machine
<i>Newspapers.</i> Engaging in the business of selling newspapers or selling advertising.	\$50
<i>Nightclubs.</i> See adult entertainment.	
<i>Packing houses</i> (G.S. § 105-70). Operators of meat packing houses, and wholesale dealers in meat packinghouse products who own, lease, or operate a cold-storage room or warehouse in connection with the wholesale business.	\$100
<i>Pawn shops</i> (G.S. § 105-50). Engaging in the business of pawnbroker, defined as lending or advancing money or other things of value for a profit, and taking as a pledge for such loans specific articles of personal property to be forfeited if payment is not made within a definite time.	\$275
<p><i>Peddlers</i> (G.S. § 105-53). Engaging in the business of <b>PEDDLER</b>, defined as a person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods he or she carries with him or her.</p> <ul style="list-style-type: none"> <li>A. Peddler of farm products.</li> <li>B. Peddler on foot.</li> <li>C. Peddler with vehicle.</li> </ul> <p>The following persons and firms are exempt from the peddler’s tax:</p> <ul style="list-style-type: none"> <li>A. Sellers of farm or nursery products they produced;</li> <li>B. Sellers of crafts or goods they or their household produced;</li> <li>C. Nonprofit charitable, educational, religious, scientific, or civic organizations;</li> <li>D. Sellers of printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes or pies;</li> <li>E. Licensed automobile dealers;</li> <li>F. Peddlers who maintain a fixed permanent location from which they make at least 90% of their sales; and</li> <li>G. Peddlers who comply with G.S. § 25a-38 through G.S. § 25a-42 (consumer credit sales at residences with right to cancel) or G.S. § 14-401.13 (off-premises sales of consumer goods or services of \$25 or more).</li> </ul>	<p>\$25</p> <p>\$10</p> <p>\$25</p>
<i>Pianos and organs</i> (G.S. § 105-102.5). Selling, offering, or ordering for sale, repairing, or servicing pianos, organs, record players, records, tape players, tape cartridges designed for use in tape players, television sets, television accessories and repair parts, radios (including radios designed for exclusive use in motor vehicles), and radio accessories and repair parts.	\$5
<i>Pinball machines and similar amusements</i> (G.S. § 105-102.5). Operating a bagatelle table, merry-go-round, or other riding device; hobbyhorse; switchback railway; shooting gallery; other amusements of a like kind; or a place for other games or play with or without name at a permanent location.	\$25
<i>Plumbers</i> (G.S. § 105-91). Engaging in the business of a plumber, installing plumbing fixtures, piping, or equipment, or offering to perform such services. Exemption: a person engaged exclusively in a business licensed under this section is not liable for a license tax levied under G.S. § 105-54 (contractors) or G.S. § 105-55 (installing elevators and sprinkler systems).	\$50

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Category	Tax
<i>Pool tables</i> (G.S. § 105-102.5). Requires Council approval. Operating billiard or pool tables, whether by slot (coin) or otherwise. Exemption: the following organizations with tables: fraternal organizations having a national charter, American Legion posts and posts of other local veterans' organizations chartered by Congress or organized and operating on a statewide or national basis; YMCA's; YWCA's; and nonstick, nonprofit, charitable recreational corporations, foundations, or centers to which a city or county contributes any portion of the operating funds.	\$25
<i>Printing establishments/lithograph.</i>	\$50
<i>Pressing clubs</i> (G.S. § 105-74). Engaging in the business of operating a cleaning plant, pressing club, or hat-blocking establishment. Exemptions: bona fide college students who operate a pressing or dry-cleaning business at their college during the school term.	\$50
<i>Promotions, exhibits, shows.</i>	\$100
<i>Radios, record players, and/or tv or accessories</i> (G.S. § 105-102.5). Selling, offering, or ordering for sale, repairing, or servicing pianos, organs, record players, records, tape players, tape cartridges designed for use in tape players, television sets, television accessories and repair parts, radios (including radios designed for exclusive use in motor vehicles), and radio accessories and repair parts.	\$5
<i>Restaurants</i> (G.S. § 105-62). Operating a restaurant, café, cafeteria, hotel with dining service on the European plan, drugstore, or other place where prepared food is sold. Exemptions: Cafés or cafeterias in industrial plants that are maintained for the convenience of employees and are nonprofit. Seating capacity of four or less. Seating capacity of five or more.	\$25 \$42.50
<i>Service business.</i> Operating a business where a service is offered.	\$100
<i>Shoe repair and/or shine shops.</i> Engaging in the business of repairing shoes.	\$25
<i>Skating rinks/swimming pools</i> (G.S. § 105-102.5). Operating a swimming pool or skating rink or other like amusement.	\$25
<i>Special event license.</i> Operating a business in the town for a time period of one weekend or less.	\$30
<i>Specialty market operators</i> (G.S. § 105-53). Engaging in the business of operating a <b>SPECIALTY MARKET</b> defined as "a person who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail".	\$50
<i>Sundries</i> (G.S. § 105-102.5). A. The sale of sandwiches in drugstores or other stands or places not licensed and taxed as a restaurant under G.S. § 105-62; B. Operating, maintaining, or placing on location fewer than five of the following types of dispensers or machines: cigarettes or other tobacco products, soft drinks, food or other merchandise, or weighing machines; C. Retailing soft drinks; or D. Retailing or jobbing cigarettes or other tobacco products.	\$4
<i>Taxicabs.</i> Requires Council approval. Owners and drivers of for-hire vehicles. Approval by Police Department - license runs January 1 - December 31 - penalty begins January 2. Taxicab company responsible for tax if not paid by January 23.	\$15 per car

<i>Category</i>	<i>Tax</i>
<i>Telegraph companies.</i> Operation of a telegraph company in the town.	\$20
<p><i>Theaters</i>                      Inside (G.S. § 105-37). Operation of a movie theater for compensation. For any movie theater operated three days or less each week, the town tax is \$100 per room.                      Outdoor (drive-in) (G.S. § 105-36.1). Operating an outdoor or drive-in movie theater for compensation.</p>	<p>\$200 per room</p> <p>\$100</p>
<i>Video rental or sale</i> (G.S. § 105-102.5). Selling, leasing, furnishing, and/or distributing movies, including video movies, for use in places where no admission fee is charged or in schools or other institutions of learning.	\$25
<i>Watch and jewelry repair.</i> Engaging in the business of repairing jewelry or watches.	\$25
<p><i>Yard sales.</i>  <i>Restriction.</i> No person, firm, or corporation shall conduct more than four yard or garage sales at any given address in one fiscal year.  <i>Enforcement.</i> Police officers are empowered to enforce this section, including the issuance of citations.  <i>Penalties.</i>                      First offense: a citation for \$25;                      Second offense: a citation for \$50; and                      Third or any subsequent offense: a citation for \$100. If the citation is unpaid, it may be enforced by a criminal summons or a civil action suit. The use of citations shall not preclude the city from exercising any other remedy by the immediate issuance of a criminal summons or the securing of an injunction, nor shall it prohibit a police officer from exercising any of his or her lawful authority.</p>	\$5
<p>Gross receipts. All town classifications that are based on gross sales/receipts are computed as follows:                      Rate of 0.15 per \$1,000 in sales (i.e., \$1,200,000 sales = 1,200,000 x 0.15/1000 = \$180                      The minimum tax is \$50. The maximum tax is \$3,000.                      Any business taxed on the basis of gross receipts that does not provide the required information will be taxed at the maximum amount.</p>	

(Ord. 137, passed 5-3-2010; Ord. 139, passed 6-29-2010)

**§ 111.076 BUSINESSES EXCLUDED FROM TOWN LICENSE TAX.**

<i>Town License Tax - Prohibited by Law</i>	
<i>Category</i>	<i>G.S. Section</i>
<i>Alcoholic beverage businesses</i>	
Malt beverage, brewery	105-113.70(d)
Unfortified wines, winery	105-110.70(d)
Fortified wines, winery	105-113.70(d)

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<i>Category</i>	<i>G.S. Section</i>
<i>Amusements</i>	
Motion pictures; manufacture, sale, lease, furnishing, and distribution	105-36
<i>Dealers in various types of merchandise</i>	
Automatic machines	105-102.5
Burglar alarms, dealers	105-51.1
Household appliances, dealers Refrigerators, washing machines, vacuum cleaners	105-102.5
Office equipment, dealers Cash registers, typewriters, adding, or bookkeeping machines. Check protectors, addressograph machines, duplicating machines, and assorting and tabulating machine	105-102.5
<i>Occupations and professions: subject to Licensing Board</i>	
Accountants	105-41
Architects	105-41
Attorneys	105-41
Auctioneers	85B-6
Chiropodist	105-41
Dentists	105-41
Embalmers	105-41
Engineers, professional	105-41
Healers, professional	105-41
Land surveyors	105-41
Landscape architects	105-41
Morticians	105-41
Ophthalmologists	105-41
Opticians	105-41
Optometrists	105-41
Osteopaths	105-41
Pest control applicators	106-65.40
Photographers	105-41
Physicians	105-41

<i>Category</i>	<i>G.S. Section</i>
Private detectives	105-41
Real estate agents	105-41
Real estate appraisers	105-41
Surgeon	105-41
Veterinarians	105-41
<i>Utilities</i>	
Bus companies	105-120.1
Pullman, sleeping car, chair car, dining car, operators	105-117
Telephone company	105-120(d)
Trucking companies (licensed by state)	20-97(b)
<i>Other businesses and occupations</i>	
Banks	105-102.3
Cooperative-marketing associations	105-102.1
Corporations, domestic and foreign	105-122(g)
Credit bureaus	105-57
Installment paper dealers	105-83
Insurance companies	105-228.10
Motor fuel, wholesale, sale, or distribution	105-99
Production credit association	105-102.1
Saving and loan association	105-113.50A
Soft drinks: manufacture, production, bottling, and/or distribution	105-113.50A
Vending machines	105-65.1

(Ord. 137, passed 5-3-2010)

**TAXICABS****§ 111.090 CERTIFICATE OF CONVENIENCE AND NECESSITY REQUIRED.**

It shall be unlawful for any person to operate a taxicab upon and over the streets of the town without first having applied for and secured from the Town Council a certificate of convenience and necessity as herein set forth.

(Ord. 52, passed 1-7-1975) Penalty, see § 111.999

**§ 111.091 ISSUANCE OF CERTIFICATE.**

The Town Council shall have the power to order certain certificates issued or to refuse to issue certain certificates or to issue certificates for a partial exercise only of the privileges sought. It may attach to the exercise of the rights granted by such certificates such terms and conditions as in its judgment the public convenience and necessity may require.

(Ord. 52, passed 1-7-1975)

**§ 111.092 CERTIFICATES SUBJECT TO TOWN REGULATIONS.**

All certificates issued and the operation of all taxicabs pursuant to the issuance of a certificate shall be subject to the terms of this chapter and of ordinances, rules, and regulations as are adopted from time to time by the Town Council.

(Ord. 52, passed 1-7-1975)

**§ 111.093 TERM OF CERTIFICATE.**

Certificates shall be issued for a term ending on December 31 of the year in which the certificate is issued unless a shorter period of time is specified in the certificate. Unless the certificate provides otherwise, all certificates shall be renewed automatically on December 31 of each year for a term of one year unless the Town Council by ordinance, resolution, or other action determines in its judgment that the public convenience and necessity requires that such certificate not be renewed.

(Ord. 52, passed 1-7-1975)

**§ 111.999 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) (1) *Criminal remedies.* Conducting business within the town without having paid the privilege license tax imposed by this chapter or without posting a license in compliance with § 111.054 is a misdemeanor, punishable as provided in G.S. § 105-109. Each day that a person conducts business in violation of this chapter is a separate offense. Payment of a fine imposed in criminal proceedings in accordance with this section does not relieve a person of the liability for taxes imposed under this chapter.

(2) *Equitable remedies.* In addition to the criminal remedies set forth in division (B)(1) above and in compliance with G.S. § 160A-75(d), the town may seek an injunction against any person who conducts a business in violation of this chapter.

(Ord. 137, passed 5-3-2010)



## CHAPTER 112: ADULT-ORIENTED ESTABLISHMENTS

### Section

- 112.01 Definitions
- 112.02 License requirement
- 112.03 Application for license
- 112.04 Standards for issuance of license
- 112.05 Fees
- 112.06 Display of license
- 112.07 Renewal of license
- 112.08 Revocation of license
- 112.09 Physical layout of establishments
- 112.10 Responsibilities of the operator
- 112.11 Location regulations
- 112.12 Exclusions
- 112.13 Enforcement
  
- 112.99 Penalty

### § 112.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ADULT BOOKSTORE.*** An establishment having as its stock in trade for sale, rent, lease, inspection, or viewing books, films, video cassettes, magazines, or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to “specific sexual activities” or “specific anatomical areas”, as defined herein and in conjunction therewith, have facilities for the presentation of adult entertainment as herein defined, including adult-oriented film, movies, or live performances, for observation by patrons therein.

***ADULT CABARET.*** A cabaret which features topless dancers, strippers, male or female impersonators, or similar entertainers.

***ADULT ENTERTAINMENT.*** Any exhibition of any motion pictures, live performance, display, or dance of any type which has as its dominate theme or is distinguished or characterized by an emphasis

on any actual or simulated “specific sexual activities” or “specified anatomical areas”, as herein defined, or the removal of articles of clothing or appearing partially or totally nude.

***ADULT MINI-MOTION PICTURE THEATER.*** An enclosed building with a capacity of less than 50 persons used for presenting material having as its dominate theme or distinguished or characterized by an emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas”, as herein defined, for observation by patrons therein.

***ADULT MOTION PICTURE THEATER.*** An enclosed building with a capacity of 50 or more persons used for presenting material having as its dominant theme or distinguished or characterized by an emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas”, as defined herein, for observation by patrons therein.

***ADULT-ORIENTED ESTABLISHMENT.*** Includes, but is not limited to, adult bookstores, adult motion picture theaters, adult mini-motion picture establishment, or adult cabaret and further means any premises to which public patrons or members are invited or admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments, or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or wherein an entertainer provides adult entertainment to a member of the public, a patron, or a member, whether or not such adult entertainment is held, conducted, operated, or maintained for a profit, direct or indirect.

***OPERATORS.*** Any person, partnership, or corporation operating, conducting, maintaining, or owning any adult-oriented establishment.

***SPECIFIED ANATOMICAL AREAS.*** Includes:

- (1) Less than completely and opaquely covered human genitals, public region, buttocks, and female breast below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernible turgid state, even if opaquely covered.

***SPECIFIED SEXUAL ACTIVITIES.*** Simulated or actual:

- (1) Showing of human genitals in a state of sexual stimulation or arousal;
- (2) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio, or cunnilingus; and/or
- (3) Fondling or erotic touching of human genitals, public region, buttock, or female breasts.

***TOWN COUNCIL.*** The Town Council of the Town of Norwood, North Carolina.  
(Ord. 84, passed 5-5-1997)

**§ 112.02 LICENSE REQUIREMENT.**

(A) Except as provided in division (D) below, from and after the effective date of this chapter, no adult-oriented establishment shall be operated or maintained in the town without first obtaining a license to operate issued by the town.

(B) A license may be issued only for one adult-oriented establishment located at a fixed and certain place. Any person who desires to operate more than one adult-oriented establishment must have a license for each.

(C) No license or interest in a license may be transferred to any person.

(D) All adult-oriented establishments existing at the time of the passage of this chapter must submit an application for a license within 90 days of the passage of this chapter. If an application is not received within such 90-day period, then such existing adult-oriented establishment shall cease operations. (Ord. 84, passed 5-5-1997) Penalty, see § 112.99

**§ 112.03 APPLICATION FOR LICENSE.**

(A) Any persons desiring to secure a license shall make application to the town. The application shall be filed in triplicate with and dated by the Town Clerk. A copy of the application shall be distributed promptly by the Town Clerk to the Town Police Chief and to the applicant.

(B) The application for a license shall be upon a form provided by the Town Clerk. An applicant for a license, which shall include all partners or limited partners of a partnership applicant; all officers or directors of a corporate applicant; all stockholders holding more than 5% of the stock of a corporate applicant; or any other person who is interested directly in the ownership or operation of the business shall furnish the following information under oath:

- (1) Name and address, including all aliases;
- (2) Written proof that the individual is at least 18 years of age;
- (3) All residential addresses of the applicant for the past ten years;
- (4) The applicant's height, weight, and color of eyes and hair;

(5) The business, occupation, or employment of the applicant for ten years immediately preceding the date of application;

(6) Whether the applicant previously operated in this or any other county, town, or state under an adult-oriented establishment license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to suspension or revocation;

(7) All criminal statutes, whether federal or state, or town or county ordinance violation convictions, forfeiture of bond, and pleadings of nolo contendere on all charges, except minor traffic violations.

(8) Fingerprints and two portrait photographs at two inches by two inches of the applicant;

(9) The address of the adult-oriented establishment to be operated by the applicant; and

(10) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agent, the name and address of all shareholders owning more than 5% of the stock in such corporation, and all officers and directors of the corporation.

(C) Within 90 days of receiving an application for a license, the Town Clerk shall notify the applicant whether the application is granted or denied.

(D) Whenever an application is denied, the Town Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten days of receipt of notification of denial, a public hearing shall be held within 30 days thereafter before the Town Council as hereinafter provided.

(E) Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding such application, or his or her refusal to submit to or cooperate with any investigation required by this section shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the Town Council.

(Ord. 84, passed 5-5-1997)

#### § 112.04 STANDARDS FOR ISSUANCE OF LICENSE.

A license to operate an adult-oriented establishment shall be approved by the Town Council, and an applicant must meet the following standards.

(A) If the applicant is an individual:

(1) The applicant shall be at least 18 years of age;

(2) The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application; and

(3) The applicant shall not have been found to have previously violated this section within five years immediately preceding the date of the application.

(B) If the applicant is a corporation:

(1) All officers, directors, and stockholders required to be named under division (C)(2) below shall be at least 18 years of age;

(2) No officer, director, or stockholder required to be named under division (C)(2) below shall have been convicted of or pleaded nolo contendere to a felony or any crime involving mortal turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application; and

(3) No officer, director, or stockholder required to be named under division (C)(2) below shall have been found to have previously violated this section within five years immediately preceding the date of the application.

(C) If the applicant is a partnership, joint venture, or any other type of organization where two or more persons have a financial interest:

(1) All persons having a financial interest in the partnership, joint venture, or other type of organization shall be at least 18 years of age;

(2) No person having a financial interest in the partnership, joint venture, or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application; and

(D) No license shall be issued unless the Police Chief has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the Town Clerk no later than 14 days after the date of the application, and the Town Clerk shall thereafter submit the application to the Town Council at its next regular meeting.

(Ord. 84, passed 5-5-1997)

**§ 112.05 FEES.**

A license fee of \$500 shall be submitted with the application for a license. If the application is denied, half of the fee shall be returned.

(Ord. 84, passed 5-5-1997)

**§ 112.06 DISPLAY OF LICENSE.**

The license shall be displayed in a conspicuous public place in the adult-oriented establishment.

(Ord. 84, passed 5-5-1997) Penalty, see § 112.99

**§ 112.07 RENEWAL OF LICENSE.**

(A) Every license issued pursuant to this section will terminate at the expiration of one year from the date of issuance unless sooner revoked and must be renewed by the Town Council before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the Town Clerk. The application for renewal must be filed not later than 90 days before the license expires. The application for renewal shall be filed in triplicate with and dated by the Town Clerk. A copy of the application for renewal shall be distributed promptly by the Town Clerk to the Town Police Chief and to the operator. The application for renewal shall be upon a form provided by the Town Clerk and shall contain such information and data given under oath or affirmation as is required for an application for a new license.

(B) A license renewal fee of \$500 shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of \$100 per day shall be assessed against the applicant who files for a renewal less than 90 days before the license expires. If the application is denied, half of the total fees collected shall be returned.

(C) If the Town Police Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the Town Clerk.

(D) The Town Council shall renew the license if the provisions of this chapter have been complied with during the preceding year of operation.  
(Ord. 84, passed 5-5-1997)

**§ 112.08 REVOCATION OF LICENSE.**

(A) The Town Council shall revoke a license or permit for any of the following reasons:

(1) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application; or

(2) The operator or any employee of the operator violates any provision of this chapter or any rule or regulation adopted by the Board pursuant to this chapter, provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of 30 days if the Board shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

(B) The Town Council, before revoking or suspending any license or permit, shall give the operator at least ten days' written notice of the charges against him or her and the opportunity for a public hearing before the Town Council as hereinafter provided.

(C) The transfer of a license or any interest in a license shall automatically and immediately revoke the license.

(D) Any operator whose license is revoked shall not be eligible to receive a license for one year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for six months from the date of revocation of the license.

(Ord. 84, passed 5-5-1997)

**§ 112.09 PHYSICAL LAYOUT OF ESTABLISHMENTS.**

Any adult-oriented establishment having available for customers, patrons, or members any booth, room, or cubicle for the private viewing of any adult entertainment must comply with the following requirements.

(A) *Access.* Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the adult-oriented establishment and shall be unobstructed by any door, lock, or other control type devise.

(B) *Construction.* Every booth, room, or cubicle shall meet the following construction requirements.

(1) Each booth, room, or cubicle shall be separated from adjacent booths, rooms, and cubicles and any non-public areas by a wall.

(2) Have at least one side totally open to a public, lighted aisle so that there is an unobstructed view at all times of anyone occupying same.

(3) All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light colored, nonabsorbent, smooth textured, and easily cleanable.

(4) The floor must be light colored, nonabsorbent, smooth textured, and easily cleanable.

(5) The lighting level of each booth, room, or cubicle, when not in use, shall be a minimum of ten foot candles at all times as measured from the floor.

(Ord. 84, passed 5-5-1997)

**§ 112.10 RESPONSIBILITIES OF THE OPERATOR.**

(A) The operator shall maintain a register of all employees, showing the name and aliases used by the employee, home address, age, birth date, sex, height, weight, color of hair and eyes, phone numbers, Social Security number, date of employment, and termination and duties of each employee. The above information on each employee shall be maintained in the register on the premises for a period of three years following termination.

(B) The operator shall make the register of employees available immediately for inspection by police upon demand of a member of the town's Police Department at all reasonable times.

(C) Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator if such act or omission occurs, either with the authorization, knowledge, or approval of the operator or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(D) Any act or omission of any employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, or renewed.

(E) No employee of an adult-oriented establishment shall allow any minor to loiter around or to frequent an adult-oriented establishment or to allow any minor to view adult entertainment herein.

(F) The operator shall maintain the premises in a clean and sanitary manner at all times.

(G) The operator shall maintain at least ten foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room, or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles provided, however, at no time shall there be less than one foot candle of illumination in such aisles as measured from the floor.

(H) The operator shall ensure compliance of the establishment and its patrons with the provisions of this section.

(Ord. 84, passed 5-5-1997) Penalty, see § 112.99

#### § 112.11 LOCATION REGULATIONS.

(A) No adult-oriented establishment shall be located within 1,000 feet of any other adult-oriented facility.

(B) No adult-oriented establishment shall be located within 1,000 feet of any public park or recreational facility.

(C) No adult-oriented establishment shall be located within 1,500 feet radius of any school, library, or teaching facility, whether public or private, governmental or commercial.

(D) No adult-oriented establishment shall be located within 1,500 feet radius of any area zoned primarily for residential use.

(E) No adult-oriented establishment shall be located within a radius of 2,000 feet of any church, synagogue, or permanently established place of religious services.

(Ord. 84, passed 5-5-1997) Penalty, see § 112.99

**§ 112.12 EXCLUSIONS.**

All private and public schools are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum.  
(Ord. 84, passed 5-5-1997)

**§ 112.13 ENFORCEMENT.**

The town's Police Department shall have the authority to enter any adult-oriented establishment at all reasonable times to inspect the premises and enforce this chapter.  
(Ord. 84, passed 5-5-1997)

**§ 112.99 PENALTY.**

(A) Any person who is found to have violated this chapter shall be guilty of a misdemeanor and such conviction shall result in the revocation of any license.

(B) Each violation of this chapter shall be considered a separate offense and any violation continuing more than one day shall be considered a separate offense.  
(Ord. 84, passed 5-5-1997)



## CHAPTER 113: ELECTRIC POWER COMPANIES

### Section

- 113.01 Title
- 113.02 Definitions
- 113.03 Ratification of existing permits
- 113.04 Levy of tax
- 113.05 Period for which tax due
- 113.06 Report and payment of tax
- 113.07 Refunds
- 113.08 Administration
- 113.09 Confidentiality of records
- 113.10 Provisions cumulative
- 113.11 Notice to electric power companies
  
- 113.99 Penalty

### § 113.01 TITLE.

This chapter shall be known and may be cited as the “Town of Norwood’s Franchise Tax on Electric Power Ordinance”, and shall be codified herein as Chapter 113.  
(Ord. 101, passed 6-17-2002)

### § 113.02 DEFINITIONS.

(A) *General definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**REVENUE ACT.** Is G.S. Ch. 105, Subch. 1.

**SECRETARY OF REVENUE.** The Secretary of Revenue of the State of North Carolina.

**STATE FRANCHISE TAX.** The franchise or privilege tax imposed on an electric power company engaged in the business of furnishing electricity, electric lights, current, or power as provided in G.S. Ch. 105, Art. 3, entitled “Franchise Tax”.

**STATE FRANCHISE TAX ACT.** Is G.S. Ch. 105, Art. 3.

**TAX COLLECTOR.** The department of the town government or the official agency of the state designated by law and authorized by law to administer the collection of the tax herein levied.

**TAXPAYER(S).** Any electric power company liable for the taxes imposed by this chapter.

**TOWN.** The Town of Norwood.

**TOWN FRANCHISE TAX.** The franchise enacted by this chapter.

(B) *Adopted by reference.* Except as otherwise provided in this chapter, the definitions of words, terms, and phrases set forth and/or applied in G.S. Ch. 105, Art. 3 are hereby adopted by reference and made a part hereof. Reference to any provisions in the General Statutes shall include the same as may be from time to time amended, modified, supplemental, revised, or superceded.  
(Ord. 101, passed 6-17-2002)

#### § 113.03 RATIFICATION OF EXISTING PERMITS.

All valid and subsisting permits to do business issued by the Secretary of Revenue pursuant to the Revenue Act, as for the purposes of this chapter, are hereby ratified, conformed, and adopted in lieu of any requirement for an additional town permit for the same purpose.  
(Ord. 101, passed 6-17-2002)

#### § 113.04 LEVY OF TAX.

A franchise tax is hereby levied and imposed for the period(s) designated in § 113.05 upon the electric power companies engaged in the business of furnishing electricity, electric lights, current, or power within the corporate limits of the town. The tax shall be 3.09% of the companies' taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. It is intended that taxable gross receipts hereunder shall be the same as those taxable under the State Franchise Tax Act.  
(Ord. 101, passed 6-17-2002)

#### § 113.05 PERIOD FOR WHICH TAX DUE.

When a distribution to the town, as required under the State Franchise Tax Act, shall not be made, the town franchise tax shall be levied for the periods herein described. A period for which the tax shall be due shall begin on the first of the first calendar month following the month during which a distribution under the State Franchise Tax Act was due, but not made, to the town and shall continue from month to month until such time as a distribution as required under the State Franchise Tax Act shall be made.

The town shall notify taxpayers within a reasonable time after a required distribution is or is not made by the Secretary of Revenue.

(Ord. 101, passed 6-17-2002)

**§ 113.06 REPORT AND PAYMENT OF TAX.**

The tax shall be paid to the tax collector at the time and in the form and manner provided for the payment of sales and use taxes pursuant to and in accordance with G.S. § 105-164.16 as the same applied to a taxpayer who is consistently liable for more than \$100 but less than \$10,000 a month. As applicable to sales and use taxes, such a taxpayer must file a return and pay the taxes due on a monthly basis. The tax shall be due and payable when a return is required to be filed.

(Ord. 101, passed 6-17-2002)

**§ 113.07 REFUNDS.**

Upon the resumption of distributions by the Secretary of Revenue, as required under the State Franchise Tax Act, a refund may be due to a taxpayer as specified in this section. A refund in the amount indicated herein below shall be due to a taxpayer within 30 days after presentation to the town by the taxpayer of a written certification made by the Secretary of Revenue stating that portion of the town's percentage distribution amount of the state franchise tax that was paid by the taxpayer and allocable to the calendar quarter for which the most recent distribution was made. The amount of a refund shall equal the portion of the percentage distribution amount designated by the Secretary of Revenue.

(Ord. 101, passed 6-17-2002)

**§ 113.08 ADMINISTRATION.**

In addition to the provisions herein and to the extent that the same are not inconsistent with the provisions of this chapter, the levy and collection of taxes herein imposed shall be otherwise administered in the same manner as the State Franchise Tax Act as contained in G.S. Ch. 105, Art. 9, Subch. 1.

(Ord. 101, passed 6-17-2002)

**§ 113.09 CONFIDENTIALITY OF RECORDS.**

The confidential and privileged nature of the records and files concerning the administration of the town franchise tax is legislatively recognized and declared, and to protect the same, the provisions of G.S. Ch. 105 are adopted by reference and made fully effective and applicable to administration of the tax levied herein as if set forth in full.

(Ord. 101, passed 6-17-2002)

**§ 113.10 PROVISIONS CUMULATIVE.**

The provisions hereof shall be cumulative and in addition to any and all other taxing provisions of town ordinances.

(Ord. 101, passed 6-17-2002)

**§ 113.11 NOTICE TO ELECTRIC POWER COMPANIES.**

The town shall serve a copy of this chapter upon the registered agent for any electric power companies affected hereby.

(Ord. 101, passed 6-17-2002)

**§ 113.99 PENALTY.**

The provisions with respect to remedies and penalties applicable to the State Franchise Tax Act, as contained in G.S. Ch. 105, Art. 9, shall be applicable in like manner to the tax authorized to be levied and collected under this chapter, to the extent that the same are not inconsistent with the provisions hereof. The governing body of the town may exercise any power the Secretary of Revenue may exercise in collecting the state franchise tax.

(Ord. 101, passed 6-17-2002)

## CHAPTER 114: CABLE TELEVISION

### Section

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- 
- 114.999 Penalty

## *GENERAL PROVISIONS*

### **§ 114.001 TITLE.**

This chapter shall be known as the "Town of Norwood Cable Television Ordinance".  
(Ord. 65, passed 7-6-1982)

### **§ 114.002 PURPOSE.**

It is the purpose and intent of this chapter to provide for the incorporated areas of the town a cable television system which will serve present and future needs of the citizens and general public of the town, government, public institutions, commercial enterprises, and lawful public and private organizations, all for the public interest and for the promotion of the public health, safety, and welfare and convenience and pursuant to statutory authority contained in G.S. §§ 160A-311 and 160A-319, and

specifically, in furtherance of the policies of the state as set forth in G.S. Ch. 143B et seq., known as the Public Telecommunications Act. Said system in its establishment, construction, operation, maintenance, and regulation shall be subject to and in compliance with the terms herein and the franchise agreement referred to herein and all pertinent laws, rules, regulations, orders, and policies of the Federal Communications Commission, the state, the town, and all governmental agencies having jurisdiction over the same.

(Ord. 65, passed 7-6-1982)

### § 114.003 DEFINITIONS.

(A) For the purpose of this chapter, and unless the franchise agreement otherwise requires or a different definition appears below, the terms used in this chapter shall have the meaning ascribed to them in applicable regulations of the Federal Communications Commission. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.

(B) The following definitions shall be used in interpreting this chapter.

**ACCESS CHANNELS.** Those channels required by Federal Communication Commission regulations which, by terms of this chapter or the franchise agreement, are required to be kept available by the franchisee for partial or total dedication to public access, education access, local government access or leased access.

**CABLE TELEVISION SYSTEM.** Any system which operates for hire the service of receiving and amplifying programs broadcast by one or more television and/or radio stations, and any other programs or signals transmitted by the energized cable originated by a cable television company or by another party and distributing such programs by wire, cable, microwave and other means to persons who subscribed to such service.

**CATV.** Community antenna television.

**CONVERTER.** An electronic device used at a subscriber's terminal, which converts signals to a frequency not susceptible to interference and distortion within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all delivered signals at designated dial locations.

**FCC REGULATIONS.** The present and future valid rules and regulations promulgated by the Federal Communications Commissioner (FCC) and applicable to cable systems presently in force or as hereafter amended.

**FRANCHISE and FRANCHISE AGREEMENT.** Authorization granted pursuant to the terms of this chapter to construct, operate, and maintain a cable television system within all or a specified area in the town. The **FRANCHISE** shall be granted in the form of a **FRANCHISE AGREEMENT** which is separate and distinct from any license or permit required for the franchise ordinance, and together with

this chapter shall contain the terms and conditions upon which a cable television system may be operated in the incorporated areas of the town and the privilege of transacting and carrying on business within the town as required by other ordinances and laws of the town.

**FRANCHISE AREA.** All of the area within the corporate limits of the town including any areas annexed in the future.

**FRANCHISEE.** The person, firm, or corporation granted a franchise by the Town Council under this chapter and the lawful successor, transferee, or assignee of said person, firm, or corporation.

**GROSS RECEIPTS.** Any and all compensation and other consideration in any form whatever and any contributing grant or subsidy received directly or indirectly by the franchisee from subscribers or users in payment for any and all cable services in the town (including all forms of consideration, such as initial lump sum payments).

**MONITORING.** Observing a one-way communications signal or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means for any purposes whatsoever.

**PERSON.** Any person, firm, partnership, association, corporation, company, or organization of any kind.

**PROGRAMMER.** Any person, firm, corporation or entity who or which produces or otherwise provides program material for transmission by video, audio, digital or other signals, either live or from recorded tapes, to subscribers, by means of the cable television system.

**PROPERTY OF FRANCHISEE.** All property owned, installed, or used within the town by a franchisee in the conduct of a cable television system business under the authority of a franchise granted pursuant to this chapter.

**SERVICE, BASIC.** The total of the following:

- (a) The transmission of all broadcast radio and video channel signals provided for herein to subscriber terminal, excluding those services described in the definition of **SERVICE, NON-BASIC** below;
- (b) The transmission of the public, educational, local government, and leased access channel signals;
- (c) The transmission of the local origination channel signals;
- (d) The transmission of such other cable castchannel signals as are required by the FCC to match the number of broadcast signals being transmitted;
- (e) The installation and reconnection of subscriber service outlets;

(f) Transmission of color television signals which is received in color; and

(g) All broadcast signals which may be carried pursuant to the applicable federal regulations.

**SERVICE, NON-BASIC.** Any communications service other than basic service provided over its system by the franchisee directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in communications.

**SHALL and MUST.** Are mandatory; whereas **MAY** is permissive.

**STREET.** The surface of and the space above and below any public street, right-of-way, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, or communications or utility easement, now or hereafter existing as such within the franchise area.

**SUBSCRIBER or USER.** Any person or entity receiving, for any purpose, any service of the franchisee's cable television system, including but not limited to the conventional cable television broadcasts, radio signals, franchisee's original cablecasting, and the local government, education and public access channels; and other services such as leasing of channels, data and facsimile -transmission, pay television and police, fire and similar public service communication.

**SUBSCRIBER SERVICE DROP.** Such extension wiring from the franchisee's distribution lines to a subscriber's building.

**TAPPING.** Observing a two-way communications signal exchange, where the observer is neither of the communicating parties, whether the communications signal exchange is observed by visual or electronic means for any purpose whatsoever.

**TOWN ADMINISTRATOR.** The town's chief administrative officer or any designee thereof.

**TOWN COUNCIL.** The present governing board of the town or any future board constituting the governing body of the town.

**TOWN OF NORWOOD.** The incorporated areas of the Town of Norwood, North Carolina. (Ord. 65, passed 7-6-1982)

#### § 114.004 RIGHTS RESERVED TO THE TOWN.

(A) *Rights to purchase the system.* The town shall have the right to purchase the system as specified elsewhere in this chapter.

(B) *Right to inspect records.* The town shall have the right to inspect all books and records and examine officers and employees as specified in § 114.168 of this chapter.

(C) *Right to inspect construction.* The town reserves the right, but shall not have the duty, to inspect plans and construction of any facility to be used in connection with the cable system irrespective of its location.

(D) *Right to intervention.* The franchisee shall not oppose intervention by the town in any suit or proceeding to which the franchisee is a party.

(E) *Right to require removal of property.* The town reserves the right not inconsistent with any other provision of this chapter, to require the franchisee to remove any of its property from publicly-owned property at the franchisee's own expense.

(Ord. 65, passed 7-6-1982)

#### **§ 114.005 RIGHTS RESERVED TO THE FRANCHISE.**

Franchisee shall have the right to appeal any provision, requirement, or ruling of the Town Administrator to the Town Council.

(Ord. 65, passed 7-6-1982)

#### **§ 114.006 RIGHTS OF INDIVIDUALS PROTECTED.**

(A) *Sale of subscriber lists prohibited.* Franchisee shall be prohibited from using or allowing the use of subscriber lists for any purpose unconnected with the provision of service over the system.

(B) *Monitoring.* No monitoring of any terminal connected to the system shall take place without specific written authorization by the user of the terminal in question on each occasion. Provided, however, the franchisee may provide for system-wide, non-individually addressed "sweeps", or the franchisee acquisition of information for purposes of verifying system integrity, controlling return path transmissions, and billing for pay services.

(C) *Cable tapping.* It shall be unlawful to tap or monitor a system without authorization from the parties whose communication might be overheard. Provided, however, the franchisee may provide for system-wide, non-individually addressed "sweeps", or the franchisee's acquisition of information for purposes of verifying system integrity, controlling return path transmissions or billing for pay services.

(D) *Discriminatory or preferential practices prohibited.* The franchisee shall not, in its rates or charges, or in making available the services or facilities of its system, or in its rules or regulations, or in any other respect, make or grant preferences or advantages to any subscriber or potential subscriber to the system, or to any user or potential user of the system, and shall not subject any such persons to any prejudice or disadvantage. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscriptions to the system or other legitimate uses thereof; nor shall it be deemed to prohibit the establishment of a graduated scale of charges, and classified rate schedules to which any customer coming within such classification shall be entitled.

(E) *Open access.* The entire system of the franchisee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios, and other services to all citizens, businesses, public agencies, or other entities having a legitimate use for the system, and no one shall be arbitrarily excluded from its use. Allocation of use of said facilities shall be made according to the rules or decisions of regulatory agencies affecting the same, and where such rules or decisions are not effective to resolve a dispute between conflicting users or potential users, the matter shall be submitted for resolution to the Town Administrator, subject to appeal to the Town Council.

(F) *Equal opportunity employment and affirmative action.*

(1) In the carrying out of the construction, maintenance, and operation of the CATV system, the franchisee shall not discriminate against any employee or applicant for employment because of race, creed, color, marital status, age, sex, or national origin.

(2) The franchisee shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

(3) The franchisee shall in all solicitations or advertisements for employees placed by or on behalf of the franchisee, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, marital status, age, or national origin.

(G) *Individual right of appeal.* Any affected individual, partnership, or corporation shall have the right to appeal any provision, requirement, or ruling of the Town Administrator to the Town Council. (Ord. 65, passed 7-6-1982)

#### **§ 114.007 COMPLIANCE WITH LAWS.**

Franchisee agrees to comply fully with all local ordinances, state and federal laws, and with all rules issued by all regulatory agencies now or hereafter in existence. (Ord. 65, passed 7-6-1982)

#### **§ 114.008 CAPTIONS.**

The captions to sections are inserted solely for information and shall not affect the meaning or interpretation of this chapter. (Ord. 65, passed 7-6-1982)

**§ 114.009 NO RECOURSE AGAINST THE TOWN.**

The franchisee shall have no recourse whatsoever against the town or its officers, boards, commissions, agents or employees for any loss, cost, expense or damage arising out of any provision or requirement of this franchise or because of its enforcement.

(Ord. 65, passed 7-6-1982)

**§ 114.010 NON-ENFORCEMENT.**

The franchisee shall not be relieved of its obligation to comply promptly with any of the provisions of the franchise by any failure of the town to enforce prompt compliance.

(Ord. 65, passed 7-6-1982)

**§ 114.011 REGULATORY ENTITY.**

(A) The Town Council reserves the option to designate a regulatory commission to promote and develop access to the CATV system. Membership, term, and functions of that Commission shall be established by resolution when the Town Council chooses to exercise the option.

(B) In the absence of a regulatory commission, the Town Council requires of the Town Administrator performance of the following functions:

(1) Advise the Town Council on applications for franchisees, unless the Town Council shall otherwise provide for the handling of this function;

(2) Advise the Town Council on matters which might constitute grounds for revocation of the franchise in accordance with this chapter;

(3) Resolve disagreements among franchisees, subscribers, and public and private users of the system; such decisions of the Town Administrator shall be appealable to the Town Council;

(4) Advise the Town Council on the regulation of rates in accordance with this chapter. The said advisory function shall be in the form of a written report to the Town Council, which shall include recommendations to the Town Council and the facts upon which the said recommendations are based;

(5) Coordinate franchisee and town activities for the best use of public facilities and channels of the system;

(6) Advise the Town Council regarding general policy relating to the services provided subscribers and the operation and use of public channels, with a view to maximizing the diversity of programs and services to subscribers. The use of public channels shall be allocated on a first come, first served basis, subject to limitations on monopolization of system time or prime time;

(7) Require an audit of all franchisee records required by this chapter and, in his or her discretion, require the preparation and filing of information additional to that required herein; and

(8) Make an annual report to the Town Council including: an account of franchise fees received and distributed, the total number of hours of utilization of public channels and hourly subtotals for various programming categories, and a review of any plans submitted during the year by the franchisee for development of new services; and

(9) Conduct evaluations of the system at least every five years with the franchisee, and pursuant thereto, make recommendations to the Town Council for amendments to this chapter or the franchise agreement.

(Ord. 65, passed 7-6-1982)

#### **§ 114.012 FRANCHISE APPLICATION.**

The Town Council may, by advertisement or any other means, solicit and call for applications for CATV system franchises, and may determine and fix any date upon or after which the same shall be received by the town, or the date before which the same must be received, or the date after which the same shall not be received, and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making, and receiving of such applications.

(Ord. 65, passed 7-6-1982)

### ***GRANT OF FRANCHISE***

#### **§ 114.020 NECESSITY OF FRANCHISE.**

No person, natural or corporate, or any other entity shall own or operate a cable television system (CATV) or other system as defined herein, in the town, except by a franchise granted by the town to the franchisee, which shall comply with all the provisions of this chapter.

(Ord. 65, passed 7-6-1982)

#### **§ 114.021 NATURE OF THE GRANT.**

The franchise agreement shall grant to the franchisee the right, privilege, and franchise to construct, operate, and maintain a CATV system in the town for a period of up to 15 years. Said franchise shall not be exclusive, and the town reserves the right to grant a similar franchise to any persons, company, corporation, or any other entity, at any time during the period of the franchise issued pursuant to this chapter.

(Ord. 65, passed 7-6-1982)

**§ 114.022 PROVISION OF SERVICE MANDATORY.**

Upon award of the franchise by the Town Council and following execution of the franchise agreement, it shall be mandatory for the franchisee diligently and expeditiously to pursue the construction and operation of a CATV system for the citizens of the incorporated areas of the town; and following construction of the system, it shall be mandatory for the franchisee to provide continuous regular service to its subscribers.

(Ord. 65, passed 7-6-1982)

**§ 114.023 FRANCHISE AGREEMENT REQUIRED.**

(A) The franchise agreement, together with the provisions of this chapter, shall constitute the terms and conditions upon which the franchisee may exercise the rights described herein. In the event this chapter or the franchise agreement conflicts with mandatory regulations of the FCC, or other governmental body having jurisdiction, the same shall, only insofar as such conflict shall exist, be deemed of no effect and the remaining provisions of this chapter and said agreement shall remain in full force and effect. The franchise agreement shall contain such representations, warranties, and agreements as shall be agreed upon between the town and the franchisee. The applicant awarded a franchise by the Town Council resolution shall execute a franchise agreement agreeing to the terms and provisions of the franchise ordinance, the proposal, and any conditions or provisions that may be negotiated between the town and the franchisee. In no event shall the terms of the franchise agreement conflict with any provision of this chapter, FCC regulations or other law.

(B) At the minimum, the franchise agreement shall contain representations by the franchisee that:

(1) It accepts and agrees to all of the provisions of this chapter and any supplementary specifications, as to construction, operation, or maintenance of the system, which the town may include in the franchise agreement;

(2) It has examined all of the provisions of this chapter and waives any claims that any provisions hereof are unreasonable arbitrary or void;

(3) It recognizes the right of the town to make reasonable amendments to the franchise ordinance or franchise agreement during the term of the franchise, provided that no such change shall compromise the franchisee's ability to perform satisfactorily its obligations or rights under this chapter or the franchise agreement. It further recognizes and agrees that the town shall in no way be bound to renew the franchise at the end of any franchise term; and

(4) It acknowledges that its rights hereunder are subject to the police power of the town to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws enacted by the town pursuant to such power.

(C) In addition, the franchise agreement may contain specific standards that will be met related to signal quality and technical standards of construction, operation, and maintenance of the system.  
(Ord. 65, passed 7-6-1982)

#### § 114.024 POLE USE.

The franchisee is obligated to obtain pole space and other facilities from town private utilities, and other lawful users at its own expense and costs.  
(Ord. 65, passed 7-6-1982)

#### § 114.025 STATE OF THE ART.

The franchisee shall exert its best efforts to upgrade its facilities, equipment, and service so that its system is as advanced as the current state of production technology will allow within the rate structure then existing, and shall be upgraded as necessary to be no less advanced than other systems of comparable age, size, and density, provided that said upgrading is economically feasible without a rate increase.  
(Ord. 65, passed 7-6-1982)

### *TERM, RENEWAL, RENEGOTIATION, AND TRANSFER OF FRANCHISE*

#### § 114.035 TERM.

The franchise and rights therein granted shall take effect and be in force for a period of up to 15 years from and after the grant and acceptance date of the franchise agreement which shall occur not more than 30 days from the adoption of a resolution by the Town Council designating the franchisee unless such time is extended by the Town Council.  
(Ord. 65, passed 7-6-1982)

#### § 114.036 TERMINATION OF FRANCHISE.

Upon termination of the franchise for whatever reason, including expiration or revocation, the town shall have the right to determine whether the franchisee shall be eligible to continue to operate and maintain the CATV system.  
(Ord. 65, passed 7-6-1982)

**§ 114.037 EXPIRATION OF FRANCHISE.**

(A) Upon the expiration of the term of the franchise and subject to the approval by the Town Council, the franchisee may negotiate renewal of its franchise for an additional period not inconsistent with FCC rules and regulations.

(B) The franchisee shall notify the town in writing no less than one year in advance of the expiration date of its desire to renew or not to renew the franchise. The town may propose certain franchise modifications to the franchisee and make any given renewal contingent upon acceptance of such modifications. Renewal shall be preceded by a public hearing held at least 30 days in advance of decision by the Town Council. A renewal may be granted not more than two years prior to the expiration of any existing term. The Town Council may determine whether or not the franchisee has performed satisfactorily its obligations under the franchise by reviewing the following:

- (1) Technical developments and performance of the system;
- (2) Programming;
- (3) Other services offered;
- (4) Cost of service;
- (5) Compliance with any requirement in the ordinance or in FCC regulations;
- (6) Annual and other reports made to the town or the FCC;
- (7) Extension of service; and
- (8) Other matters of concern.

(C) New applicants may be sought and evaluated by the Town Administrator and Town Council and a franchise award may be made according to application and award procedures set forth herein.

(D) Upon failure to renew the franchise following expiration of the term of the franchise, the town shall have the right of first refusal to purchase the CATV system. Should the town decide to purchase the system, it shall do so at a price not to exceed its then fair market value. In determining the fair market value of the system, the original cost of all tangible and intangible property, as well as the salvage value, the book value, the replacement costs, cash flow and other factors, including outstanding debts of the system to be assumed by the town, may be considered. Under no circumstances shall any valuation be made for good will or any right or privilege, granted by this chapter. Should a dispute arise over the determination of the fair market value of the system, the dispute shall be resolved by arbitration as provided in § 114.038 of this chapter.

(Ord. 65, passed 7-6-1982)

**§ 114.038 REVOCATION OF FRANCHISE.**

(A) The Town Council may terminate the franchise conferred under this chapter at any time prior to a date, of expiration upon a finding that the franchisee has failed to cure one or more of the following defects:

(1) Material breach, whether by act or omission, of any terms or conditions of this franchise ordinance or franchise agreement;

(2) Material misrepresentation of fact in the application for or negotiation of the franchise;

(3) Insolvency of the franchisee, or inability or unwillingness of the franchisee to pay its just debts when they accrue, or application of the franchisee for adjudication as bankrupt;

(4) Failure to provide subscribers or users with adequate service in the best interest of the public convenience and welfare;

(5) Failure to have obtained authorization from all required governmental agencies and acceptable pole attachment agreements within 12 months after execution of the franchise agreement, provided the period of 12 months may be extended by the Town Council if the franchisee is diligently pursuing such authorization and the delay is not caused by any fault of the franchisee or results from strikes, natural disaster, or other occurrences over which the franchisee would have no control; or

(6) Failure to have full service available as provided in § 114.056 of this chapter.

(B) The franchisee shall have 60 days to remedy defects following written notice by the Town Administrator to the franchisee of such a defect. If any defect continues beyond the 60 days (or any extension thereof granted by the Town Council) without written proof that corrective action has been taken or is being actively and expeditiously pursued, the Town Council shall call a public hearing on the termination of the franchise. Immediately following the public hearing, the Town Council may, by resolution, declare that the franchise be terminated. At least ten days prior to the Town Council meeting at which the public hearing will be held, the Town Administrator shall cause to be served upon the franchisee a written notice of the public hearing on the question of termination. The notice shall state the time and place of the meeting. In the event that the town revokes the franchise, the town shall have the right of first refusal to purchase the CATV system at its fair market value not to exceed its depreciated book value (that is, original costs of property less accumulated depreciation). The book value shall be determined by the town in accordance with generally accepted appraisal and accounting principles. Under no circumstances shall any valuation be made for good will or any right or privilege granted by this permit. Should any dispute arise over the determination of the fair market value of the system, the dispute shall be resolved by a panel of three appraisers: one to be selected by the town, one to be selected by the franchisee and the third to be selected by the other two appraisers. Should the town and the franchisee fail to agree on the third appraiser, the choice shall be made by the senior resident Judge of Superior Court of the judicial district in which the town is located.

(C) Should the town revoke the franchise and fail to purchase the system, new applicants may be sought and evaluated by the Town Administrator and Town Council and a franchise award may be made according to application and award procedures set forth herein.

(Ord. 65, passed 7-6-1982)

#### **§ 114.039 FORECLOSURE.**

Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the franchisee shall notify the Town Council of such fact, and such notification shall be treated as a notification that a transfer in control of the franchise has taken place, and the provisions of § 114.041 of this chapter governing the consent of the Town Council to such change in control of the franchise shall apply.

(Ord. 65, passed 7-6-1982)

#### **§ 114.040 RECEIVERSHIP.**

The Town Council shall have the right to cancel this franchise 120 days after the appointment of a receiver, or trustee, to take over and conduct the business of the company, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have vacated prior to the expiration of said 120 days, or unless:

(A) Within 120 days after his or her election of appointment, such receiver or trustee shall have fully complied with all the provisions of this chapter and remedied all defaults hereunder; and

(B) Such receiver or trustee, within said 120 days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes to be bound by each and every provision of this chapter and the certification granted to the company.

(Ord. 65, passed 7-6-1982)

#### **§ 114.041 TRANSFER OF CONTROL.**

(A) No transfer of effective ownership or control of the CATV system may take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance, or any other form of disposition, without prior notice to and approval by the Town Council. The notice shall include full identifying particulars of the proposed transaction, and the Town Council shall act by resolution.

(B) The franchisee shall not issue any additional capital stock and shall not permit the transfer of more than 10% of its presently outstanding shares without the prior written consent of the Town Council. No sale, lease, assignment, or transfer shall be effective until the vendee, leasee, assignee, or transferee has filed with the town its acceptance of this grant.

(C) In the absence of extraordinary circumstances, the Town Council will not approve any such transactions before completion of construction of energized cable passing before each dwelling unit, as specified in § 114.057 of this chapter.

(D) Prior approval of the Town Council shall be required where ownership or control of more than 10% of the right of control of or interest in the franchise is acquired by a person or a group of persons acting in concert, none of whom already own or control 10% or more of such right of control or interest, singularly or collectively. Provided, however, that such Town Council approval shall not be unreasonably withheld after proper application is made therefor.

(E) "Transfer of effective ownership of control" shall not include:

(1) Pledge or hypothecation or mortgage, or similar instrument, transferring conditional ownership of all or part of the system's assets to a lender or creditor in the ordinary course of business so long as the lender does not thereby acquire the right to control the system's operations; but no such transfer of conditional title can be made absolute or become effective without prior approval of the Town Council;

(2) The disposition of facilities or equipment no longer required in the conduct of business; or

(3) The transfer, alteration, substitution, or conveyance of shares within the parent or holding corporation, between or among subsidiaries, or corporations in the control of franchisee or franchisee's parent corporation. The above shall apply when more than 10% of the capital stock is transferred to any entity outside the control of the parent corporation.

(F) Franchisee may hypothecate its interest under this chapter and the franchise agreement and in the CATV system to be constructed pursuant thereto for the purpose of securing a loan, the entire proceeds of which will be utilized in construction and operation of its CATV system in the franchise area. All terms and conditions contained in the hypothecation agreement shall be subject to the prior written approval of the town; provided, however, that the terms of such agreement shall provide that the identity of any successor in interest shall be subject to the prior approval of the town and that such successor in interest shall own and operate the CATV system subject to all provisions of this chapter and the franchise agreement.

(G) By its acceptance of the franchise, the franchisee specifically concedes and agrees that any acquisitions or transfers as set forth in this section without prior approval of the Town Council, as may be required, shall constitute a violation of the franchise agreement and this chapter by the franchisee. (Ord. 65, passed 7-6-1982) Penalty, see § 114.999

#### **§ 114.042 CONTINUING OF SERVICE MANDATORY.**

The franchisee shall be required to provide continuous service to all subscribers in return for payment of the established fee. If the franchise agreement becomes void for whatever reason, including normal expiration, revocation, or foreclosure, the franchisee is required, at the option of the town as a

part of this franchise to continue to operate the system until an orderly change of operation is effected. In the event the franchisee fails to operate the system or allows a lapse in service without prior approval of the Town Council, the town or its agents may operate the system until such time that a new operator is selected. If the town operates the system, the franchisee shall reimburse the town for any costs or damages that are the result of the franchisee's failure to perform.

(Ord. 65, passed 7-6-1982)

#### **§ 114.043 SALE OF SYSTEM MANDATORY.**

In the event the town elects to revoke the franchise or fails to renew the franchise, and providing the town elects not to purchase the system, the town may require that the system be sold to a franchisee designated by the Town Council at a purchase price that shall be equivalent to the fair market value determined in the same manner described in § 114.037 of this chapter.

(Ord. 65, passed 7-6-1982)

#### **§ 114.044 PERIODIC REVIEW.**

(A) Because of the regulatory, technical, financial, marketing, and legal uncertainties associated with cable communications, the franchisee shall agree to the following review provisions in order to provide for a maximum degree of flexibility in this franchise and to help achieve a continued advance and modern system for the town.

(1) The town and the franchisee shall hold scheduled review sessions within 30 days of the fifth and tenth anniversary dates of the franchisee's obtaining the franchise.

(2) Special review sessions may be held in the Town Hall at any time during the terms of the franchise upon reasonable notice by either party to the other. A special review session shall be held in the event any clause or section of this chapter is voided, nullified, deleted, or modified by the authority of any regulatory agency including the FCC, and the franchisee will comply with the FCC rules within one year from the adoption of the new rule.

(B) The following topics may be discussed at every scheduled review session: service, rate, structures, free or discounted services, application of new technologies, state of the art, system performances, services provided, programming offered, customer complaints, privacy in human rights, amendments to this chapter, undergrounding provisions, judicial and FCC rulings, and extension of service. In addition, order topics may be discussed as determined by the town.

(C) At either a scheduled or special review session, a public hearing may be called if and as determined by the Town Council.

(Ord. 65, passed 7-6-1982)

*FRANCHISE AREA AND EXTENSION OF SERVICE***§ 114.055 FRANCHISE TERRITORY.**

The franchise is for all of the town inside the corporate limits, as now and hereafter located.  
(Ord. 65, passed 7-6-1982)

**§ 114.056 SERVICE.**

(A) The franchisee agrees to make available CATV service to all residents of the town within the service area, subject to the provisions of § 114.058 of this chapter. The franchisee shall begin to provide service to all subscribers who reside in the service area within the first year after receiving authority to begin construction. Thereafter, the franchisee shall serve not less than:

- (1) Fifty percent at the end of the first year; and
- (2) One hundred percent at the end of the second year.

(B) Once construction is commenced, such construction shall be diligently continued until service is available to all residents in the service area. After initial construction is complete, additional or new subscribers shall be served promptly upon application for service and payment of proper fees.  
(Ord. 65, passed 7-6-1982)

**§ 114.057 EXTENSION OF SERVICE.**

The franchisee may negotiate with any citizen or group of citizens outside the corporate limits for the extension of CATV. Service may be extended to areas outside the corporate limits, provided there is no deterioration of service to citizens inside the corporate limits that results from such extension, and provided all residents of the town have service available if they desire it. Negotiations for extension of service shall in no way result in any change in rate schedules.  
(Ord. 65, passed 7-6-1982)

**§ 114.058 SERVICE AREA.**

The franchisee shall provide its service to all residents of the town and the franchisee shall adhere to the schedule set out in § 114.056 of this chapter.  
(Ord. 65, passed 7-6-1982)

*REGULATION OF RATES*

**§ 114.070 FRANCHISE FEE.**

See § 114.091 of this chapter.  
(Ord. 65, passed 7-6-1982)

**§ 114.071 LIMITATIONS ON RATES.**

The charges made to subscribers for services of the franchise hereunder shall be fair and reasonable. The franchisee shall receive no consideration for any service whatsoever from its subscribers other than in accordance with this section, without approval of the Town Council. The franchisee shall not charge rates in excess of the rate schedule appearing in the franchise agreement.  
(Ord. 65, passed 7-6-1982)

**§ 114.072 ADJUSTMENT TO RATES.**

The grantee may establish rates for service from time to time not greater than the rates for equivalent service charged under the franchise granted by the City of Albemarle, or under the franchise granted by the county, whichever is less.  
(Ord. 65, passed 7-6-1982; Ord. passed 9-10-1984)

**§ 114.073 REFUNDS TO SUBSCRIBERS AND USERS.**

(A) If any subscriber terminates any monthly service during the first six months of said service because of failure of a franchisee to render the service offered, the franchisee shall refund to such subscriber a prorata portion of all prepaid charges paid by the subscriber during the period in which no service was received. Said refund shall reflect the percentage of any such service not actually received by the subscriber.

(B) If any subscriber terminates for any reason any monthly service prior to the end of a prepaid period, a prorata portion of any prepaid subscriber service fee shall be refunded to the subscriber by the franchisee. A full refund for less than 15 days in a single month shall be the basis for periods less than one month, provided that a subscriber may utilize the benefits of this provision only once during the term of this franchise.  
(Ord. 65, passed 7-6-1982)

**§ 114.074 ADVANCE CHARGES AND DEPOSITS.**

A franchisee may require subscribers to pay the installation charge in advance and to pay for each month of service in advance at the beginning of each month. No other advance payment or deposit of any kind shall be required by a franchisee for subscriber service. Other than for a converter, nothing in this provision shall be construed to prohibit charges for or waiver for charges for initial installation or reconnection.

(Ord. 65, passed 7-6-1982)

**§ 114.075 INSTALLATION AND RECONNECTION.**

Except as otherwise provided elsewhere in this chapter, a franchisee may make a charge to subscribers for the installation of service outlets and for the reconnection of service outlets. The rates for such connection or reconnection shall be as authorized in the rate schedule (§ 114.071 of this chapter).

(Ord. 65, passed 7-6-1982)

**§ 114.076 OTHER GOVERNMENTAL REGULATION OF RATES.**

If, in the future, the state or the United States government or any regulatory agency thereof regulates the rates of the franchisee for the service provided for in the franchise, this section shall be of no effect during such regulation to the extent of any conflict therewith.

(Ord. 65, passed 7-6-1982)

**§ 114.077 PUBLIC SERVICE INSTALLATION.**

(A) The franchisee shall, without charge for installation, maintenance, or service, make single installations of its standard CATV service facilities to those public buildings operated by the town when the building is located on the franchisee's system when the system is constructed consistent with the requirements of this chapter. Such installations shall be made at such reasonable locations as shall be requested by the Town Administrator. Any charge for relocation of such installation shall, however, be charged as actual cost. Additional installations at the same location may be made at normal charge. No monthly service charges shall be made for distribution of the franchisee's signals within such publicly owned buildings.

(B) The free public services mentioned herein shall only constitute basic service, as defined in § 114.003, and shall only apply to areas where the franchisee's system has already been extended to within 100 feet of the public building to be serviced. Provided further that the franchisee shall extend free of charge basic service to any public building within the franchise area whether or not the franchisee's system is extended to within 100 feet of said building, provided that the franchisor shall pay all costs for line extension and the like into said public building.

(C) In addition, the franchisee shall, without charge for installation, maintenance, or service, make single installations of its standard community service facilities at any other county-owned facility identified in the franchise agreement as herein above. Further, no installation to any of the above-mentioned locations shall be made until requested in writing by the Town Administrator. Provided further, that the public service installation referred to in § 114.077 of this chapter shall consist only of basic service as defined in § 114.003 of this chapter.

(Ord. 65, passed 7-6-1982)

#### **§ 114.078 CHARGES FOR PUBLIC ACCESS.**

Charges to users of the franchisee's production facilities for public access programming shall not exceed actual costs incurred. Such charges shall be publicly posted and made available at no cost to anyone upon request. Charges shall be clearly and completely stated in the operating rules for public access programming. Such charges may be amended only upon approval by the Town Council. The franchisee shall furnish standard playback facilities and labor at actual costs incurred for the public access channel.

(Ord. 65, passed 7-6-1982)

### ***FINANCIAL PROVISIONS***

#### **§ 114.090 EXPENSE REIMBURSEMENT TO TOWN.**

The franchisee shall pay the town a sum of money which will, when added to application fees received, reimburse all costs and expenses incurred by it in connection with preparation of this chapter, the franchise agreements, and the granting of a franchise, including, but not limited to, consultant fees, attorneys' fees, publication fees, travel expenses, and all other direct costs; provided, however, that the town shall submit a detailed schedule of all such costs. Such payment shall be made within 30 days after the town furnishes the franchisee with a written statement of such expenses.

(Ord. 65, passed 7-6-1982)

#### **§ 114.091 PAYMENT TO TOWN.**

As compensation for the authorization granted herein and in consideration for permission to use the easements which the town controls for the construction, operation, and maintenance of a CATV system within the town, the franchisee shall pay to the town annually on or before January 1 for the preceding year an amount equal to 3% of the gross receipts. This payment shall be in addition to any other fees or payments made to the town by the franchisee, such as pole rental, business licenses, and other fees not based on gross revenues. Payment shall be accompanied upon request by a certified report showing the basis for the computation and such other relevant facts as may be required by the town. No acceptance of any payment shall 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 town may have for further or additional sums payable under the provisions of this chapter. All amounts paid shall be subject to recomputation by the town within 60 days of the receipt of the franchisee annual report. This time limitation shall not apply should the franchisee provide false or erroneous information. In the event that recomputation results in additional revenue to be paid to the town, such amount shall be subject to an interest charge at the highest rate permitted by law. Nothing in this provision shall limit the franchisee's liability to pay other local taxes and charges.

(Ord. 65, passed 7-6-1982)

### *INSURANCE AND ENFORCEMENT*

#### **§ 114.105 LIABILITY AND INDEMNIFICATION OF TOWN.**

The franchisee shall indemnify and hold harmless the town at all times during the term of the franchise granted hereby and specifically agrees that it will pay all damages and penalties which the town may legally be required to pay as a result of granting the franchise. Such damages and penalties shall include, but not be limited to, damages arising out of copyright infringements and other damages arising out of the installation, operation, or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchisee. In case suit shall be filed against the town either independently or jointly with the franchisee to recover for any claim or damages, the franchisee, upon notice of it by the town, shall defend the town against the action and, in the event of a final judgment being obtained against the town, either independently or jointly with the franchisee arising out of the granting of the franchise or by reason of the acts of the franchisee, the franchisee will pay said judgment and all costs and hold the town harmless therefrom. As used in this section, the term "town" shall include the town, its elected and other officials, Town Administrator, and employees acting within the scope of their employment.

(Ord. 65, passed 7-6-1982)

#### **§ 114.106 INSURANCE.**

The franchisee shall be required to maintain insurance in such forms and in such companies as shall be approved by the town with the town and, if practicable, its elected and other officials, the Town Administrator, and employees acting within the scope of their employment, named as the co-insured, such approval not to be unreasonably withheld, to protect the town and franchisee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation or maintenance of any aspect of the system. The amount of such insurance shall not be less than the following.

<i>General Liability Insurance</i>	
Bodily injury per person	\$500,000
Bodily injury per occurrence	\$1,000,000
Property damage per occurrence	\$500,000

<i>Automobile Insurance</i>	
Bodily injury per person	\$100,000
Bodily injury per occurrence	\$300,000
Property damage per occurrence	\$300,000

(B) The town may require the foregoing insurance coverage to be changed from time to time during the term of the franchise.

(C) Worker’s compensation insurance shall also be provided as required by the laws of the state, as amended.

(D) All said insurance coverage shall provide a 30-day notice to the Town Administrator in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective.

(E) A certificate of coverage for all policies required hereunder shall be furnished to and filed with the Town Administrator, prior to the commencement of operations or expiration of prior policies, as the case may be.

(Ord. 65, passed 7-6-1982)

**§ 114.107 NON-WAIVER.**

Neither the provisions of this section, nor any bonds accepted by the town pursuant hereto, nor any damage recovered by the town hereunder, shall be construed to excuse unfaithful performance by the franchisee or limit the liability of the franchisee under this chapter or the franchise for damages, either to the full amount of the bond or otherwise.

(Ord. 65, passed 7-6-1982)

**§ 114.108 FAITHFUL PERFORMANCE BOND.**

The franchisee, concurrently with its acceptance of its franchise, shall file with the Town Administrator and at all times thereafter maintain in full force and effect for a period of five years at franchisee’s sole expense, a corporate surety bond in a responsible company licensed to do business in the state and approved by the town in the amount of \$50,000 as performance bond, which bond shall be

reduced to a \$5,000 surety bond upon completion of 90% of the franchise, which surety bond shall be renewable annually, and conditioned upon the faithful performance of the franchisee, and in accordance with the provisions of this chapter and upon the further condition that in the event franchisee shall fail to comply with any one or more of the provisions of the franchise, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the town as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment or any property of the franchisee as prescribed hereby, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, said condition to be a continuing obligation for a period of five years. The bond shall provide that at least 30 days prior written notice of intention not to renew, cancellation or material change be given to the town by filing same with the Town Administrator. Notwithstanding the above provisions of this section, the Town Council may, in its sole discretion, waive said bond or reduce the required amount thereof after two years of operation of a system under the franchise, by the franchisee, its successors or assigns which, in the sole opinion of the Town Council, has been satisfactory. Failure to keep a performance bond in force at all times as herein provided shall constitute an event of default.

(Ord. 65, passed 7-6-1982)

#### **§ 114.109 DEPOSIT IN LIEU OF BOND.**

In lieu of the performance bond by a surety company as herein provided, the franchisee may file and deposit with the town a performance bond without a corporate surety but secured by a certificate of deposit in some bank or savings and loan association in the town, in the sum of \$100,000, conditioned in the same manner as the performance bond of a surety company hereinbefore described. The income from such deposit shall be payable to the franchisee. As an alternative, the franchisee may provide such other security as may be approved by the Town Council, but absent such approval it shall provide a bond or deposit in lieu thereof as above provided.

(Ord. 65, passed 7-6-1982)

### ***SYSTEM DESIGN PROVISIONS***

#### **§ 114.120 EMERGENCY OVERRIDE.**

The cable system shall include an "emergency alert" capability which will permit the Mayor or his or her designee to override, by remote control, the video and/or audio of all channels simultaneously programming in the case of public emergencies. The franchisee shall designate a channel which will be used for emergency broadcasts.

(Ord. 65, passed 7-6-1982)

**§ 114.121 STANDBY POWER.**

The franchisee shall maintain equipment capable of providing standby powering for headend. The equipment shall be constructed so as to notify automatically the cable office when it is in operation and to revert automatically to the standby mode when the AC power returns.

(Ord. 65, passed 7-6-1982)

**§ 114.122 SYSTEM STANDARDS.**

The franchisee shall install and maintain a cable system which shall be in accordance with the highest and best accepted standards of the industry to the end that subscribers shall receive the best possible service. In addition, the franchisee shall comply with all requirements of all duly constituted regulatory agencies having jurisdiction over cable television or the operator of the cable system.

(Ord. 65, passed 7-6-1982)

**§ 114.123 SYSTEM CARRIAGE.**

(A) (1) At all times the signal carriage and channel utilization shall conform to the regulations of the FCC, state, and other regulatory agencies which are not in conflict therewith. The operation shall provide at least one access channel for each of the following activities:

- (a) Public access;
- (b) Educational access;
- (c) Government access; and
- (d) Leased access.

(2) Each of the above channels are defined under FCC regulations. Under the test of utilization as prescribed by FCC rules, the operator shall make available additional educational access channels of each type for local use activated on a schedule as provided in the applicable FCC rules.

(B) Franchisee shall provide for four access channels as provided within this section and shall make the same available to the town as follows.

(1) All public access channels shall be combined into one channel until 80% of all available time between 8:00 a.m. to 10:00 p.m. has been utilized, at which time a second access channel shall be opened.

(2) All public access channels shall be combined into two channels until 80% of all available time between 8:00 a.m. to 10:00 p.m. has been utilized on both channels, at which time a third channel shall be opened.

(3) All public access channels shall be combined into four channels until 80% of all available time between 8:00 a.m. to 10:00 p.m. has been utilized, but in no event shall franchisee be required to provide more than four access channels.

(Ord. 65, passed 7-6-1982)

### ***CONSTRUCTION PROVISIONS***

#### **§ 114.135 CONSTRUCTION SCHEDULE.**

The franchisee shall be diligent in obtaining all documents necessary to prompt initiation of construction.

(Ord. 65, passed 7-6-1982)

#### **§ 114.136 CHANGES REQUIRED BY PUBLIC IMPROVEMENT.**

A franchisee shall, at its expense, protect, support, temporarily disconnect, or relocate in the same street or other public place to remove from the road or other public place, any property of the franchisee when required by the town or state by reason of traffic conditions, public safety, road vacation, road construction, change or establishment of road grate, installation of sewers, drains, and water pipes, power lines, or any other type of structure or improvement by public agencies.

(Ord. 65, passed 7-6-1982)

#### **§ 114.137 USE OF EXISTING POLES OR CONDUITS.**

Nothing in this chapter, or any franchise granted hereunder, shall authorize the franchisee to erect and maintain in the town new poles where existing poles are servicing the area. The franchisee shall obtain permission from the town before erecting any new poles or underground conduit where none exists at the time the franchisee seeks to install his or her network.

(Ord. 65, passed 7-6-1982)

#### **§ 114.138 FACILITIES NOT TO BE HAZARDOUS OR INTERFERE.**

All wires, conduits, cable, and other property and facilities of the franchisee shall be so located, constructed, installed, and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, and travel upon the roads and public places of the town. The franchisee shall keep and maintain all of its property in good condition, order, and repair. The franchisee shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested

by the town in the section dealing with reports. A franchisee shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric or telephone fixtures, or with any water hydrants or mains.  
(Ord. 65, passed 7-6-1982)

#### **§ 114.139 METHODS OF INSTALLATION.**

All wires, cables, amplifiers and other property shall be construed and installed in an orderly and workmanlike manner consistent with all applicable requirements of the National Electric Code, state and local electric codes, and all pole attachment agreements. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety considerations. All installations shall be underground in those areas of the town where electric service is underground at the time of installation. In areas where electric utility facilities are above ground at the time of the installation, the franchisee may install its service above ground with the understanding that at such time as those facilities are required to be placed underground by the town, the franchisee shall likewise place its services underground without additional cost to the subscribers or the town. It shall be the policy of the town that underground installation, even when not required, is preferable to the placement of additional poles.

(Ord. 65, passed 7-6-1982)

#### **§ 114.140 SUBSCRIBER'S UNDERGROUND INSTALLATION OPTION.**

Should any subscriber wish to have underground service in an area normally provided service via overhead (aerial) construction, the subscriber requesting such underground service shall pay the excess of costs over aerial costs if the subscriber could be serviced by aerial. The franchisee shall provide underground service without charge to any subscriber whose power lines are underground.

(Ord. 65, passed 7-6-1982)

#### **§ 114.141 PROHIBITION OF SIGNAL DISTRIBUTION BY OTHERS.**

No equipment, cable, or other apparatus shall be connected between the franchisee's CATV system and the subscriber's receiver except as furnished and installed by the franchisee.

(Ord. 65, passed 7-6-1982)

#### **§ 114.142 REQUESTS FOR REMOVAL OR CHANGE.**

The franchisee shall, on the request of any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of said building. The expense of such temporary removal,

raising or lowering of wires shall be paid by the person requesting the same, and the franchisee shall have the authority to require the payment in advance. The franchisee shall be given not less than five days' advance notice of any move contemplated to arrange for temporary wire changes.  
(Ord. 65, passed 7-6-1982)

#### **§ 114.143 CONSTRUCTION STANDARDS; CLEARANCE ABOVEGROUND.**

The franchisee's distribution system in the public roads shall comply with all applicable laws, regulations, and ordinances, and all its wires and cables suspended from poles in the roads shall comply with the minimum clearance above ground required for telephone lines, cables, wires, and conduits.  
(Ord. 65, passed 7-6-1982)

#### **§ 114.144 MAINTENANCE AND ALTERATION OF THE SYSTEM AFTER CONSTRUCTION.**

Franchisee shall maintain, improve, and upgrade the system (including, without limitation, the increasing of channel capacity, the two-way transmission), provided that the fee structure awarded pursuant to this franchise be sufficient to support any and all such improvements or upgrading. The franchisee shall maintain the best equipment and service as is feasible under the rate structure. The Town Council may request any improvements or alterations of the fee structure as is necessary to support said improvements or upgradings. No change contained hereunder shall comprise the franchisee's ability to perform satisfactorily its obligations or rights under this chapter or the franchise agreement.  
(Ord. 65, passed 7-6-1982)

### ***OPERATIONS AND MAINTENANCE***

#### **§ 114.160 CONSUMER COMPLAINT RESPONSE.**

The franchisee shall maintain an office in the county that is open during all business hours, has a publicly listed telephone number, and is so operated that complaints and requests for repairs or adjustments may be received on a 24-hour basis. The franchisee shall have a resident manager and engineer in the county and shall have office, marketing, technical, and studio staffs professionally trained in the cable communications industry.  
(Ord. 65, passed 7-6-1982)

#### **§ 114.161 INTERRUPTION OF SERVICE TO SUBSCRIBERS.**

Whenever it is necessary to interrupt service to subscribers for the purpose of maintenance, alteration, or repair, the franchisee shall make every effort to do so at a time that will cause the least

amount of subscribed inconvenience and unless the interruption is unforeseen and immediately necessary, the franchisee shall give reasonable advance notice thereof to the affected subscribers.  
(Ord. 65, passed 7-6-1982)

**§ 114.162 SERVICE FORCE REQUIRED.**

The franchisee shall provide a service force seven days a week for all complaints and requests for adjustments. Such force shall be capable of responding to subscriber complaints within 24 hours of receipt of the complaint for total loss of service. Total loss of service attributable to the cable system shall be cleared within 24 hours, except to the extent that restoration of services is prevented by strikes, fires, injunction, or other cause beyond the franchisee's control. Complaints other than total loss of service shall be responded to by the next regular business day.  
(Ord. 65, passed 7-6-1982)

**§ 114.163 COMPLAINT LOG.**

The franchisee shall keep computer records of all complaints and trouble calls received from its subscribers. This log shall include appropriate identification of the subscriber and service affected, the time, date, and nature of the report, the action taken to clear trouble or satisfy the complaint, and the date and time of final disposition. This log shall be kept on computer records for one year and shall be available for inspection by the Town Administrator upon request at any time within this period.  
(Ord. 65, passed 7-6-1982)

**§ 114.164 COMPLAINTS REGARDING SERVICE DEFICIENCIES.**

For recurrent complaints regarding service deficiencies other than total or partial loss of service, such as "ghosting", weak audio signal, distortion, and the like, the Town Administrator may require the franchisee to investigate and report to him or her the causes and cures thereof, and the Town Administrator may also conduct his or her own investigation. Thereafter, the Town Administrator may order specified remedial action to be taken within reasonably feasible time limits. If such action is not taken, or is ineffective, or if within 30 days the franchisee files with the Town Council a notice of objection to the order, the Town Council may conduct a hearing and may, if the evidence warrants a finding of fault on the part of the franchisee, take appropriate action pursuant to the terms of this chapter.  
(Ord. 65, passed 7-6-1982)

**§ 114.165 COMPLAINT REVIEW PROCEDURES.**

A franchisee shall ensure that all subscribers, programmers and members of the general public have recourse to a satisfactory hearing of any complaint. The town shall work closely with a franchisee and members of the public to establish procedures for handling and settling complaints. A franchisee shall present to the Town Council for its approval, no later than six months after the execution of the franchise

agreement, a set of rules, regulations, and procedures reasonably designed for the prompt handling and settling of complaints.

(Ord. 65, passed 7-6-1982)

#### **§ 114.166 SALE AND SERVICE OF RECEIVERS PROHIBITED.**

The franchisee shall not engage in the sale, service, repair, rental, or leasing of television receivers, radio receivers, parts of accessories, and shall not require or attempt to influence its subscribers to deal with any particular person in regard thereto. Further, the franchisee shall not require the removal nor offer to remove any existing antenna as a condition of providing cable service.

(Ord. 65, passed 7-6-1982)

#### **§ 114.167 USE OF PRODUCTION EQUIPMENT.**

A user of cablecast facilities may not be required to use the franchisee's production equipment but must be allowed to use any other production equipment that is compatible with the franchisee's facilities. The franchisee is encouraged to use standard quality equipment.

(Ord. 65, passed 7-6-1982)

#### **§ 114.168 OPEN BOOKS AND RECORDS.**

(A) The franchisee shall keep complete and accurate books of accounts and records of its business under and in connection with its franchise. The town shall have access to all such books and records at any time during reasonable business hours, and may examine officers and employees informally or under oath in respect thereto. Access shall also be given to the town, on request, to all supplementary or underlying financial and engineering records and reports.

(B) In lieu of the above, franchisee shall keep complete computer records of its books in accordance with division (A) above and shall afford the town access to such records.

(Ord. 65, passed 7-6-1982)

#### **§ 114.169 CURRENT REPORTS.**

The following must be filed with the Town Administrator upon request of the Town Administrator:

(A) Any instrument of change in or transfer of an interest in the franchisee or its assets or franchise;

(B) Any change in or addition to the directors or officers of the franchise;

(C) Any contract or transaction with an affiliated company, regarding the cable system, together with full particulars and a copy of any written agreement or a written summary of any verbal agreement; and

(D) Any changes in the franchisee's rules and regulations governing the conduct of its business.  
(Ord. 65, passed 7-6-1982)

**§ 114.170 PERMITS AND AUTHORIZATION.**

The franchisee shall diligently apply for all necessary permits, agreements, authorizations and contracts required in the conduct of its business and shall diligently pursue the acquisition thereof, including necessary pole attachment contracts and necessary authorizations from the Federal Aviation Administration to construct such receiving antenna towers as may be required and any necessary authorization or waivers from the FCC, and shall furnish same to the Town Administrator upon request.  
(Ord. 65, passed 7-6-1982)

**§ 114.171 FILINGS AND COMMUNICATIONS WITH REGULATORY AGENCIES.**

Copies of all communications, including petitions, applications, pleadings and reports, as well as official correspondence sent to or received from the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting CATV operations authorized pursuant to this franchise, shall also be submitted simultaneously to the Town Administrator.  
(Ord. 65, passed 7-6-1982)

**§ 114.172 QUARTERLY REPORTS.**

If requested, the franchisee shall file with the Town Administrator on a quarterly basis:

(A) Construction progress reports until the system is complete;

(B) Consolidated quarterly financial reports;

(C) Complete consolidated unaudited financial statements, including operating statements, source and application of funds, and balance sheets for the quarterly accounting period then ended; and

(D) In lieu of the above, franchisee may furnish any other suitable financial data acceptable to the Town Administrator.

(Ord. 65, passed 7-6-1982)

**§ 114.173 ANNUAL REPORTS.**

If requested, the following reports shall be filed by the franchisee with the Town Administrator annually, no later than February 1, except where otherwise provided:

(A) A summary of complaints received during the preceding calendar year showing the nature of the complaint, area of the town, disposition, and complaints subsequent to disposition;

(B) A total facilities report, together with a current system map, showing the location and total miles of plant and equipment installed and/or operating at the close of the preceding calendar year;

(C) A map of system;

(D) One copy of each type of agreement currently offered to subscribers and to users;

(E) A complete set of current rules and regulations of the operator incorporating the latest amendments filed with the town;

(F) A complete financial audit statement including a statement of income of the system of which the town is a part to be certified by a public accountant, to be submitted no later than 90 days after the end of the preceding fiscal year of the franchise;

(G) Such other financial reports or reports on other topics as the Town Council may reasonably direct; and

(H) In lieu of above, the franchisee may submit any other suitable financial documents acceptable to Town Administrator.

(Ord. 65, passed 7-6-1982)

**§ 114.174 GENERAL REPORTS.**

A franchisee shall prepare and furnish to the town, at the time and in the form prescribed by the Town Administrator or Town Council, such reports with respect to its operation, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the functions of the town in connection with this chapter.

(Ord. 65, passed 7-6-1982)

**§ 114.999 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) A breach by the franchisee of the franchise agreement, in addition to constituting a breach of contract, shall constitute a violation of this chapter. The costs of any litigation incurred by the town to enforce this chapter or the franchise granted pursuant hereto, or the franchise agreement or in relation thereto, or in relation to the cancellation or termination of a franchise, shall be reimbursed to the town by the franchisee. Such costs shall include filing fees, costs of deposition, discovery and expert witnesses, all other expenses of suit and a reasonable attorney's fee.

(C) Prior to any action mentioned herein, the town shall provide notice to franchisee by certified letter, stating in detail the alleged violation or breach of this chapter and shall afford to franchisee a 15-day period in which to respond.

(D) Violation of material provisions of this chapter shall subject the franchisee to the following penalties.

(1) Failure of the franchisee to meet performance standards, as determined by the Town Administrator, to which it has agreed, may result in a rebate of rates or charges to subscribers affected, provided that the Town Administrator shall provide ten days' written notice of the failure of the franchisee. Any rebate may be charged to the performance bond.

(2) For failure to provide data and reports as requested by the Town Administrator or the Town Council, and as required by this chapter, the penalty shall be \$50 per day for each day not delivered. This penalty may be chargeable to the performance bond.

(3) For failure to complete construction and installation of the cable system, unless the Town Council approves the delay because of reasons beyond the control of the franchisee, the franchise term may be reduced one year for each three months' delay. The Town Administrator shall notify the franchisee during the first three-month period that the system has failed to meet performance standards.

(4) The franchisee may appeal any penalty which is considered unreasonable to the Town Council.

(Ord. 65, passed 7-6-1982)

