

TITLE XI: BUSINESS REGULATIONS

Chapter

- 110. CABLE TELEVISION**
- 111. COMMERCIAL BUILDINGS; WINDOW COVERING REQUIREMENTS**
- 112. TAXICABS**
- 113. TRANSIENT MERCHANTS**

CHAPTER 110: CABLE TELEVISION

Section	franchises	
<i>General Provisions</i>		
110.001 Short title		
110.002 Definitions	2001 S-5	3
110.003 Agreement and incorporation of application by reference		
<i>Terms of Franchise</i>		
110.015 Rights and privileges of grantee	110.055 System construction	
110.016 Franchise territory	110.056 Construction and technical standards	
110.017 Duration and acceptance of franchise	110.057 Use of streets	
110.018 Franchise renewal	110.058 Removal of cable system	
110.019 Franchise review and modification	<i>Service Requirements</i>	
110.020 Police powers	110.070 Operational standards	
110.021 Franchise required	110.071 Customer service standards	
110.022 Use of grantee facilities	110.072 Continuity of service mandatory	
110.023 Initial franchise costs	110.073 Service availability and record request	
110.024 Applicants' bids for initial franchise	110.074 Required services and facilities	
110.025 Letter of credit and cash security deposit	110.075 Rate change procedures	
110.026 Performance bond	110.076 Performance evaluation sessions	
110.027 Transfer of ownership or control	110.077 Public notice	
110.028 Rules and regulations	110.078 Rights of individuals	
110.029 Forfeiture and termination	110.079 Complaint procedure	
110.030 Foreclosure	110.080 Grantee rules and regulations	
110.031 Receivership	110.081 Theft of service	
110.032 Compliance with state and federal laws	<i>Insurance Requirements; Indemnification</i>	
110.033 Notices	110.090 Indemnification	
<i>Fees; Reporting Requirements</i>		
110.040 Franchise fee	110.091 Liability and insurance	
110.041 Availability of books and records	110.092 Force majeure	
110.042 Other petitions and applications	<i>Enforcement</i>	
110.043 Fiscal reports	110.100 Procedures	
110.044 Financial, contractual, shareholder, and system disclosure for	110.101 Limits on grantee recourse	
	110.102 Nonenforcement by municipality	

- 110.103 Rights and remedies
- 110.104 Waiver
- 110.105 Time is of the essence
- 110.106 Delegation of powers
- 110.107 Severability
- 110.108 Governing law

110.999 Penalty

Appendix A: Infrastructure specifications and standards

GENERAL PROVISIONS

§ 110.001 TITLE.

This chapter shall be known and may be cited as the “Town of Lowell Cable Television Franchise Ordinance.”
(Ord. 2000-10, passed 4-10-00)

§ 110.002 DEFINITIONS.

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

ACT or CABLE ACT. The Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as may be now or hereafter amended.

ADDITIONAL SERVICE. Any subscriber service provided by the grantee for which a special charge is made based on program or service content, time, or spectrum space usage.

BASIC SERVICE. All subscriber services provided by the grantee in one or more service tiers for an established regular monthly fee, which includes at a minimum the delivery of local

broadcast stations, and public, educational and government access channels. **BASIC SERVICE** does not include optional program and satellite service tiers, a la carte services, per channel, per program, or auxiliary services for which a separate charge is made. However, grantee may include other satellite signals on the “basic service” tier.

BOARD. The Lowell Town Council.

CABLE OPERATOR. Any person or group of persons:

(1) Who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or

2001 S-5

(2) Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system. A cable operator shall include any person or persons who own or operate an open video system as defined by 47 U.S.C. 573, or who are a multichannel video provider whose service is transmitted on leased telecommunications lines located within a public street or a public way.

CABLE SERVICE. The one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the

selection or use of such programming or other programming service. This definition does not authorize, and shall not be construed, interpreted, or applied to authorize, the use of the cable system for telephone, data, or voice communication services, which services are not authorized by this chapter.

CABLE SYSTEM or CABLE TELEVISION SYSTEM. A system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video, and other forms of electronic, electrical or optical signals, which includes cable television service, and which is located in the municipality. The definition shall not include any such facility that serves or will serve only subscribers without using municipal rights-of-way. The definition of "cable system" shall not be construed, interpreted, or applied to authorize telephone or voice communication services, and no such telephone or voice communication services are authorized by this chapter. In addition, the definition of "cable system" shall not be deemed to circumscribe any valid authority of any governmental body, including the municipality, to regulate the activities of telephone or telegraph companies, or the provision of any service over the cable system that is not a "cable service" as such term is defined herein.

COMPLAINT. Any correspondence, whether in writing or verbal in nature, whether in person, by telephone, or by electronic mail, from any individual, business, unit of government, or institution to the franchising authority concerning an unresolved alleged problem with the service or other function of the cable system or the franchise.

Cable Television

5

CONTROL or CONTROLLING INTEREST. Actual working control or ownership of a system in whatever manner exercised. A rebuttable presumption of the existence of control or a

controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or entity (except underwriters during the period in which they are offering securities to the public) of

5% or more of a cable system or the franchise under which the system is operated. A change in the control or controlling interest of an entity which has control or a controlling interest in a grantee shall constitute a change in the control or controlling interest of the system under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one person or group of persons.

CONVERTER. An electronic device which converts signals to a frequency not susceptible to interference, within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view more than 14 channels delivered by the system at designated converter dial locations.

DWELLING UNIT. A single-family or multi-family residential place of occupancy or a business place of occupancy.

FCC. The Federal Communications Commission, and any legally appointed, designated or elected agent or successor.

FRANCHISE. The non-exclusive right and privilege granted through the authority of a franchise agreement between the municipality and any grantee hereunder which allows the grantee to own, operate, construct, reconstruct, relocate, test, use, and maintain a cable system within the corporate boundaries of the municipality.

FRANCHISE AGREEMENT. That certain written agreement entered into between a grantee and the municipality wherein the franchise and the terms thereof are conferred upon the grantee.

2001 S-5

FRANCHISE FEE. Any assessment imposed herein by the municipality on a grantee solely because of its status as a grantee. The term "franchise fee" does not include any tax, fee, or assessment of general applicability (including any

such tax, fee, or assessment imposed on both utilities and cable operators or their services) but not including a tax, fee, or assessment which is unduly discriminatory against the grantee or cable subscribers; capital costs which are required by the franchise to be incurred by the grantee for the establishment of public, educational, or governmental access facilities; requirements or charges incidental to the awarding, reviewing, enforcing, or transferring, of the franchise, including payments for professional, legal, or technical assistance, bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; any fee imposed under Title 17, U.S. Code.

FRANCHISING AUTHORITY. The corporate authorities of the city/town/village, its Mayor/Village President, or his designee, City Council/Town Council/Village Board, or any of its designated municipal officers or staff having responsibility over the supervision of the city's cable television franchise.

GRANTEE. A person or entity to whom or to which a franchise under this chapter is granted by the municipality, along with the lawful successors or assigns of such person or entity.

GROSS REVENUES. All revenue collected directly or indirectly by the grantee, arising from or attributable to the provision of cable service by the grantee within the franchise area, including, but not limited to: fees charged subscribers for any basic, optional, premium, per-channel or per-program service; franchise fees; installation and re-connection fees; leased channel fees; game channel fees; converter, remote control, or modem rentals, including any Internet services as defined by the FCC as being subject to Title VI of the Telecommunications Act of 1996 and bandwidth leased to unaffiliated internet service providers to the extent permitted by

law; program guide revenues; studio or production equipment rentals; late or administrative fees; upgrade, downgrade or other change-in-service fees; advertising revenues, including commissions; revenues from "infomercials", home shopping and bank-at-home channels; revenues from the sale, exchange, use or cable cast of any programming developed on the system for community or institutional use; and any value (at retail price levels) of any non-monetary remuneration received by grantee in consideration of the performance of advertising or any other service of the system which are treated as revenues. Gross revenues shall include revenue received by any other entity other than the grantee where necessary to prevent evasion or avoidance of the obligation under this franchise to pay the franchise fees. Those gross revenues whose source cannot be specifically identified with a particular subscriber shall be allocated among the units of government served by the grantee from the cable system headend serving the franchise area in proportion to the number of subscribers in each.

GROSS REVENUES shall not include any bad debts, copyright fees, or taxes on services furnished by the grantee herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the grantee on behalf of the governmental unit.

INSTALLATION. The connection of the system from feeder cable to subscribers' terminals.

LAKE COUNTY, INDIANA CATV CONSORTIUM or **CONSORTIUM.** An Indiana agency formed by intergovernmental agreement between its members, local government subdivisions of the State of Indiana and the State of Illinois. The consortium may be delegated the authority to enforce cable television franchises and cable system operations for its member communities.

MAY. Is permissive.

MULTICHANNEL VIDEO PROVIDER.

Any system distributing video programming to subscribers which use all or part of a municipality's right-of-way in order to distribute such video programming or

2001 S-5

which distributes such programming to subscribers over the lines of a common carrier which are located in all or part of the municipality's right-of-way.

MUNICIPALITY. The Town of Lowell, Lake County, Indiana.

NORMAL BUSINESS HOURS. Those hours during which businesses are normally open to serve customers. In all cases, normal business hours must include some evening hours at least one night per week, and some weekend hours. For the purpose of this chapter, the term "some evening hours" shall mean at least one to four hours during which customers may be served by a grantee on one or more evenings from Monday through Friday, and the term "some weekend hours" shall mean at least one to eight hours during which customers may be served by a grantee on Saturday and/or Sunday.

NORMAL OPERATING CONDITIONS. Those service conditions that are within the control of the grantee. Those conditions that are not within the control of the grantee are defined in § 110.092 of this chapter.

PERSON. Any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity or organization, whether for-profit or not-for-profit, but excluding the municipality.

PUBLIC STREET. Except where expressly limited by this chapter or a franchise and, in any event, only to the extent necessary to permit the installation and maintenance of a cable system, the surface, the air space above the surface, and the

area below the surface of any public street, highway, court, road, freeway, lane, path, sidewalk, alley, boulevard, drive, bridge, or tunnel now or hereafter held by, or dedicated to the municipality in which the rights and title of the municipality are such as to entitle the municipality and the grantee to the use thereof for the purpose of installing and maintaining the grantee's cable system.

Cable Television

7

No reference in this chapter to "public street" shall be deemed to be a representation or guarantee by the municipality that its title or interest in any property is sufficient to permit its use for such purpose, and a franchise shall, by the use of such term, be deemed to grant only such rights to use property in the municipality as the municipality may have the right and power to grant in such franchise.

PUBLIC WAY. Except where expressly limited by this chapter or a franchise and, in any event, only to the extent necessary to permit the installation and maintenance of a cable system, the surface, the air space above the surface, and the area below the surface, of any conduit, park, parkway, waterway, utility easement (as defined in Section 541 of the Cable Act) or other public right-of-way now or hereafter held by, or dedicated to, the municipality in which the rights and title of the municipality are such as to entitle the municipality and the grantee to the use thereof for the purpose of installing and maintaining the grantee's cable system. No reference in this chapter to "public way" shall be deemed to be a representation or guarantee by the municipality that its title or interest in any property is sufficient to permit its use for such purpose, and a franchise shall, by the use of such term, be deemed to grant only such rights to use property in the municipality as the municipality may have the right and power to grant in such franchise.

SERVICE AREA. All areas within the municipality as defined in the franchise agreement.

SERVICE INTERRUPTION. The loss of either picture or sound or both for any channel for single or multiple subscriber(s).

SHALL. Is mandatory.

SUBSCRIBER. Any person, firm, grantee, corporation, or association lawfully receiving cable service provided by a grantee pursuant to this chapter.

TOWN COUNCIL. The Town Council of the Town of Lowell, Lake County, Indiana.

2001 S-5

TOWN MANAGER or ADMINISTRATOR. The Town Manager or the Director of Administration of the Town of Lowell.

USER. A party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.
(Ord. 2000-10, passed 4-10-00)

§ 110.003 AGREEMENT AND INCORPORATION OF APPLICATION BY REFERENCE.

(A) The execution of a franchise agreement by

the grantee shall be the agreement and acknowledgment of the grantee to be bound by all the terms and conditions contained in this chapter now, and as the same may be amended from time to time hereafter.

(B) In the event that a cable operator has provided an application for a new franchise or in the event that a grantee has provided an application for the renewal of an existing franchise, on a form either prescribed by the municipality in the case of a new franchise, or in an application document created by a grantee as a response to a Request For a Renewal Proposal (RFRP), a grantee shall provide all services specifically set forth in its application and shall provide cable service within the boundaries of the municipality; and by its acceptance of the franchise, a grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise.

(Ord. 2000-10, passed 4-10-00)

TERMS OF FRANCHISE**§ 110.015 RIGHTS AND PRIVILEGES OF GRANTEE.**

Any cable television franchise granted by the municipality shall grant to the grantee the right and privilege to erect, construct, operate, and maintain in, upon, along, across, above, over, and under the streets now in existence and as may be created or established during its terms any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a cable system, but only in strict compliance with the provisions of such franchise and this chapter. Each such franchise shall include, but not necessarily be limited to, the following terms:

(A) A franchise fee not less than the fee required pursuant to § 110.040 of this chapter;

(B) Performance security not less than the security required pursuant to § 110.025 of this chapter;

(C) A franchise term not longer than the maximum term provided in § 110.017 of this chapter; and

(D) Specially designated noncommercial channels for use by local governmental, educational, and public authorities as provided in § 110.074 of this chapter.

(Ord. 2000-10, passed 4-10-00)

§ 110.016 FRANCHISE TERRITORY.

Each franchise shall be for the incorporated areas within the municipality defined in the franchise agreement.

(Ord. 2000-10, passed 4-10-00)

2001 S-5

§ 110.017 DURATION AND ACCEPTANCE OF FRANCHISE.

Any franchise and the rights, privileges and authority hereby authorized shall take effect and be in force from and after the approval and execution of a franchise agreement by the municipality, as provided by applicable law, and shall continue in force and effect for a term which shall be agreed upon by the parties as part of a franchise agreement; provided, however, that such franchise shall have no force or effect and shall be null and void unless the grantee, within 30 days after the date of the municipality's approval of the franchise, files with the municipality its unconditional acceptance of the franchise and promise to comply with and abide by all of its provisions, terms and conditions and the provisions of this chapter, now, and as hereafter amended from time to time. Such acceptance and promise shall be in writing duly executed and sworn to, by, or on behalf of the grantee before a notary public or other officer authorized by applicable law to administer oaths. Such franchise shall be non-exclusive and revocable.

(Ord. 2000-10, passed 4-10-00)

§ 110.018 FRANCHISE RENEWAL.

(A) To the extent applicable, current federal procedures and standards pursuant to 47 U.S.C. Section 546 shall govern the renewal of any franchise awarded by the approval and passage of this chapter.

(B) In the event that any or all of the applicable provisions of federal law are repealed or otherwise modified, and to the full extent consistent with such applicable provisions then in effect, the following section(s) shall apply:

(1) At least 30 months prior to the expiration of the franchise, the grantee shall notify, in writing the municipality of its intent to seek renewal of the franchise.

(2) The grantee shall submit a written proposal for renewal which demonstrates:

Cable Television

9

(a) That it has been and continues to be in substantial compliance with the terms, conditions, and limitations of this chapter, as amended from time to time, and its franchise;

(b) That its system has been installed, constructed, maintained and operated in accordance with the accepted standards of the industry, and this chapter, as amended from time to time, and its franchise;

(c) That it has the legal, technical, financial, and other qualifications as set forth in this chapter a franchise agreement, to provide the services, facilities, and equipment set forth in its proposal; and

(d) That it has made a good faith effort to provide services and facilities which accommodate the demonstrated needs and interests of the community as may be reasonably ascertained by the municipality, with public input; and that it has made a good faith effort to maintain, operate, and extend its system as the state of the art progresses so as to assure its subscribers high quality service, balanced against the costs of such needs and interests.

(3) The municipality shall proceed to determine whether the grantee has satisfactorily performed its obligations under the franchise. To determine satisfactory performance, the municipality shall consider all relevant criteria, including, but not limited to, technical

developments, performance of the system and the quality of the operator's service, including signal quality, response to customer complaints, billing practices, and the level of cable services or other services provided over the system. The municipality shall also consider the grantee's reports made to the municipality and to the FCC, and the municipality may require the grantee to make available specified records, documents, and information for this purpose, and may inquire specifically whether the grantee will supply services sufficient to meet community needs and interests in light of the costs of such needs and interests. Provision shall be made for public comment with adequate prior notice of at least ten days.

2001 S-5

(4) The municipality shall then prepare any amendments to this chapter and the franchise that it believes necessary.

(5) In the event that the municipality finds the grantee's performance satisfactory, and finds the grantee's technical, legal, and financial abilities acceptable, and finds the grantee's renewal proposal meets the future cable-related needs of the community, balanced against the costs of meeting these needs and interests, a new franchise shall be granted pursuant to this chapter as amended for a

period to be determined by the municipality.

(6) In the event that the grantee is determined by the municipality to have performed unsatisfactorily, new applicants may be sought and evaluated and a franchise award shall be made by the municipality according to franchising procedures adopted by the municipality.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

§ 110.019 FRANCHISE REVIEW AND MODIFICATION.

(A) To the extent applicable, the modification provisions of Section 625 of the Cable Act, as the same may be amended from time to time, shall govern the procedures and standards for modification of a franchise. The grantee may file a request for modification of a franchise with the municipality in accordance with said modification provisions at any time during the term of the franchise.

(B) To the extent that the modification provisions of the Cable Act, as the same may be amended from time to time, are repealed or otherwise not applicable, a franchise may be modified to the extent permitted by applicable law, according to the standards set forth in division (C) below and in other applicable provisions of this chapter.

(C) It shall be the policy of the municipality to amend a franchise with the consent of the grantee when necessary to enable the grantee to take

advantage of technological advancements that will afford the grantee an opportunity to more effectively, efficiently, or economically serve the subscribers; provided, however, that this division shall not be construed to require the municipality to

adopt any such amendment.

(Ord. 2000-10, passed 4-10-00)

§ 110.020 POLICE POWERS.

(A) In accepting a franchise, the grantee acknowledges that its rights thereunder are subject to the police power of the municipality to adopt and enforce general ordinances necessary for the health, safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the municipality pursuant to such power.

(B) Any conflict between the provisions of a franchise and any other present or future lawful exercise of the municipality's police powers affecting the public health, safety, and welfare, shall be resolved in favor of the latter.
(Ord. 2000-10, passed 4-10-00)

§ 110.021 FRANCHISE REQUIRED.

No cable television system owned or operated by a cable operator as hereinabove defined shall be allowed to operate or to occupy or use any public street or public way for system operation, installation, construction, reconstruction, and maintenance purposes without a franchise.
(Ord. 2000-10, passed 4-10-00)

§ 110.022 USE OF GRANTEE FACILITIES.

The municipality shall have the right to install and maintain upon the poles of the grantee any wire or pole fixtures that do not unreasonably interfere with the cable television system operations of the grantee. The municipality shall indemnify and hold harmless the grantee from any claim that might arise due to or as a result of the municipality's use.
(Ord. 2000-10, passed 4-10-00)

2001 S-5

§ 110.023 INITIAL FRANCHISE COSTS.

The grantee shall pay all costs and charges incidental to the awarding or enforcing of its initial franchise, including but not limited to: administrative, engineering, legal and consulting expenses, all costs of publications of notices prior

to any public meeting or public hearing provided for pursuant to this chapter, as amended from time to time, and any costs not covered by application fees incurred by the municipality in its study, preparation of proposal documents, evaluation of all applications, and examinations of the applicant's qualifications.
(Ord. 2000-10, passed 4-10-00)

§ 110.024 APPLICANTS' BIDS FOR INITIAL FRANCHISE.

(A) All bids received by the municipality from the applicants for an initial franchise will become the sole property of the municipality.

(B) The municipality reserves the right to reject any and all bids and waive informalities and/or technicalities where the best interest of the municipality may be served.

(C) All questions regarding the meaning or intent of this chapter or application documents shall be submitted to the municipality in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the municipality as having received the application documents. The municipality reserves the right to make extensions of time for receiving bids as it deems necessary. Questions received less than 14 days prior to the date for the opening of bids will not be answered. Only replies to questions by written addenda will be binding. All bids must contain an acknowledgment of receipt of all addenda.

(D) Bids must be sealed, and submitted at the time and place indicated in the application documents for the public opening. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the applicant's bid must be executed. No bid shall be opened or inspected before the public opening.

(E) Before submitting a bid, each applicant shall be expected to do the following:

(1) Examine this chapter and the application documents thoroughly;

(2) Familiarize itself with local conditions that may in any manner affect performance under the franchise;

(3) Familiarize itself with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise; and

(4) Carefully correlate the bid with the requirements of this chapter and the application documents.

(F) The municipality may make such investigations as it deems necessary to determine the ability of an applicant to perform under the franchise, and the applicant shall furnish to the municipality all such information and data for this purpose as the municipality may request. The municipality reserves the right to reject any bid if the evidence submitted by, or investigation of, such applicant fails to satisfy the municipality that such applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional bids will not be accepted.

(G) All bids received shall be placed in a secure depository approved by the municipality and shall not be opened nor inspected prior to the public opening.

(Ord. 2000-10, passed 4-10-00)

§ 110.025 LETTER OF CREDIT AND CASH SECURITY DEPOSIT.

(A) Within 15 days after the award of an initial franchise, the grantee shall deposit with the municipality either an irrevocable letter of credit from a financial institution acceptable to the Board or a cash security deposit in the amount of \$100,000. The form and content of such letter of credit shall be determined

by the municipality's attorney. No interest shall be paid on any cash deposit.

2001 S-5

(B) Within 15 days after the award of a renewal franchise, the grantee shall deposit with the municipality an irrevocable letter of credit from a financial institution acceptable to the municipality in the amount of \$50,000 and a cash security deposit in the amount of \$15,000. The form and content of such letter of credit shall be determined by the municipality's attorney. No interest shall be paid on any cash security deposit.

(C) The letter of credit and cash security deposit shall be used to ensure the faithful performance of the grantee of all provisions of this chapter, as may be amended from time to time, and to ensure compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the municipality having jurisdiction over its acts or defaults under this chapter, and to ensure the payment by the grantee of any claims, liens, and taxes and penalties assessed pursuant to § 110.999 of this chapter due the municipality which arise by reason of the construction, operation or maintenance of the cable system.

(D) The letter of credit and cash security deposit shall be maintained at the amount established herein for the entire term of the franchise, even if amounts have to be withdrawn pursuant to this chapter. The grantee shall promptly replace any amounts withdrawn from the letter of credit or security deposit.

(E) In the event that the grantee fails to pay to the municipality any compensation within the time fixed herein; or fails to pay to the municipality any penalties assessed on taxes due and unpaid; or fails to repay the municipality any damages, costs or expenses which the municipality incurs as a result of the grantee's failure to comply with all rules, regulations, orders, permits, and other directives of the municipality issued pursuant to a franchise or which the municipality is compelled to pay by reason of any act or default of the grantee in connection with a franchise; or fails to properly and adequately restore any public street, public way, public property or private property disturbed by the grantee's activities; or fails to pay any costs incurred by the municipality in connection with the award of any initial

franchise or renewal franchise; or otherwise fails to
f a i t h f u l l y

perform the duties and responsibilities of a franchise, then the municipality may withdraw money from the letter of credit or cash security fund in accordance with the procedures set forth in division (F) below.

(F) The municipality shall provide grantee with written notice informing grantee that such amounts are due to the municipality. The written notice shall describe, in reasonable detail, the reasons for the assessment. The grantee shall have 15 days subsequent to receipt of the notice within which to cure every failure cited by the municipality or to notify the municipality that there is a dispute as to whether grantee believes such amounts are due the municipality. Such notice by the grantee to the municipality shall specify with particularity the basis of grantee's belief that such monies are not due the municipality.

(G) The rights reserved to the municipality with respect to the letter of credit and cash security deposit are in addition to all other lawful rights of the municipality, whether reserved by the franchise or authorized by applicable law, and no action, proceeding or exercise of a right with respect to such letter of credit and security deposit shall waive or otherwise affect any other lawful right the municipality may have.

(H) The letter of credit shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit may not be canceled by the issuer bank nor the intention not to renew be stated by the issuer bank until 45 days after receipt by the municipality, by registered mail, of a written notice of such intention to cancel or not to renew."

(I) Receipt of the 45 day notice by the municipality shall be construed as a default granting the municipality the right to immediate payment from the issuer bank of the entire amount of the letter of credit.

(J) The municipality, at any time during the term of a franchise, may waive, in writing, grantee's requirement to maintain a letter of credit or cash security deposit.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

2001 S-5

§ 110.026 PERFORMANCE BOND.

(A) Prior to being approved for an initial installation of a cable system, the grantee shall file with the municipality a construction bond in the amount of not less than 110% of the costs to install the system in the service area contained in the application or renewal proposal in favor of the municipality. This bond shall be maintained throughout the construction period and until such time as determined by the municipality, unless specified in the franchise agreement.

(B) Prior to being approved for an upgrade of the system that involves significant excavation or other disturbance of a public street or public way, the grantee shall file with the municipality a performance bond in the amount of not less than \$150,000. This bond shall be maintained throughout the upgrade period and until such time as determined by the municipality, unless specified in the franchise agreement.

(C) In the event that the grantee fails to diligently pursue and complete the construction required for the installation or upgrade of its cable system, or fails to observe, fulfill and perform each term and condition of this chapter or of the franchise as it relates to construction, installation or upgrade of the system, then there shall be recoverable, jointly and severally, from the principal and surety of the bond, the cost of completing such construction and any damages or loss suffered by the municipality as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorney's fees, including the municipality's legal staff, and all costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in § 110.025(E).

(D) The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until 45 days after receipt by the municipality, by registered mail, a written notice of such intent to cancel or not to renew."

(E) Receipt of the 45 day notice by the municipality shall be construed as default granting the municipality the right to immediate payment from the issuer of the bond of the entire amount of the bond.

(F) The municipality, at any time during the term of this ordinance, may, in writing, waive or reduce grantee's requirement to maintain a performance bond. (Ord. 2000-10, passed 4-10-00)
Penalty, see § 110.999

§ 110.027 TRANSFER OF OWNERSHIP OR CONTROL.

(A) Except as provided in division (F) below, a franchise shall not be assigned, transferred, pledged, leased, sublet, hypothecated, or mortgaged, either in whole or in part, in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written approval of the municipality. The grantee may, however, transfer or assign the franchise to a parent or wholly owned subsidiary of the grantee and such parent or subsidiary may transfer or assign the franchise back to the grantee without such consent, providing that such assignment is without any release of liability of the grantee. Any proposed assignee must show legal, technical and financial responsibility as determined by the municipality, and must agree, in writing, to comply with all provisions of the franchise. The grantee shall submit a petition to the municipality requesting the municipality's approval at least 90 days before the grantee takes any action in furtherance of accomplishing any such assignment, transfer, pledge, lease, sublet, hypothecation, or mortgage, containing or accompanied by such information as is required in accordance with FCC regulations and by the municipality. The municipality shall have 120 days to act upon any request for approval of any such assignment, transfer, pledge, lease, sublet, hypothecation, or mortgage. The municipality shall be deemed to have consented to a proposed assignment, transfer, pledge, lease, sublet, hypothecation, or mortgage if it fails to render a final decision within 120 days following receipt of said petition and receipt of all necessary information as to

public, unless the requesting party and the municipality agree to an extension of time. The municipality shall not unreasonably withhold consent to a proposed transfer and shall promptly notify grantee of any action taken on such a request. Where the municipality deems to have found the petition to be incomplete or requiring further information, the municipality shall request further information from the grantee within 30 calendar days from the receipt of the petition.

(B) The grantee shall promptly notify the municipality of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the grantee. The word "control" as used herein is not limited to major stockholders but also includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons (excluding any parent or subsidiary thereof) of 5% or more of the of grantee or the franchise under which the cable system is operated. Change, transfer or acquisition of control of the grantee without the municipality's consent shall make the franchise subject to cancellation unless and until the municipality shall have consented thereto, which consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the municipality may inquire into the qualifications of the prospective controlling party, and the grantee shall assist the municipality in such inquiry.

(C) The consent or approval of the municipality to any transfer of the grantee shall not constitute a waiver or release of the rights of the municipality in and to any public street or public way, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of the franchise.

(D) In the absence of extraordinary circumstances, the municipality shall not be required to approve any transfer or assignment of a new franchise prior to substantial completion of construction of the proposed system.

(E) In no event shall a transfer of ownership or control be approved without the successor(s) in interest to the franchise agreement becoming a signatory to the franchise agreement.

(F) Nothing in this section shall be deemed to prohibit any assignment, pledge, lease, sublease, mortgage, or other transfer of all or any part of the grantee's cable system, or any right or interest therein, solely for financing purposes, provided that each such assignment, pledge, lease, sublease, mortgage, or other transfer shall be subject and subordinate to the rights of the municipality pursuant to this chapter, the franchise agreement, and applicable law.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

§ 110.028 RULES AND REGULATIONS.

(A) In addition to the inherent powers of the municipality to regulate and control any cable television franchise, and those powers expressly reserved by the municipality, or agreed to and provided for herein, the right and power is hereby reserved by the municipality to promulgate such additional regulations as it shall find necessary in the exercise of its lawful police powers as referenced in § 110.020 above, in furtherance of the terms and conditions of the franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, any franchise agreement, or applicable state and federal laws, rules and regulations.

(B) The municipality may also adopt such regulations at the request of grantee upon application. (Ord. 2000-10, passed 4-10-00)

§ 110.029 FORFEITURE AND TERMINATION.

(A) In addition to all other rights and powers retained by the municipality under this chapter or otherwise, the municipality reserves the right to terminate the franchise and all rights and privileges of the grantee hereunder in the event of a breach of its terms and conditions. A breach by the grantee shall include, but shall not be limited to the following:

(1) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the municipality made pursuant to the franchise;

(2) Attempt to evade any provision of the franchise or to practice any fraud or deceit upon the municipality or its subscribers or customers;

(3) Failure to begin or complete system construction or system extension as provided under § 110.055;

(4) Failure to provide the services promised in the grantee's initial application;

(5) Failure to restore service after 96 consecutive hours of interrupted service, except when approval of such interruption is obtained from the municipality;

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

(7) Failure to pay any fees or other consideration when due pursuant to the franchise or this chapter.

(B) The municipality shall make a written demand that the grantee comply with any such provision, rule, order or determination under or pursuant to the franchise. In the event that the violation by the grantee continues for a period of 30 days following such written demand without written proof satisfactory to the municipality that the corrective action was initiated immediately and thereafter has been completed or has been continuously, actively, and expeditiously pursued, the municipality may place the issue of termination of the franchise before the Board. The municipality shall cause to be served upon the grantee, at least 20 days prior to the date of such meeting, a written notice of intent to request such termination and the time and place of the meeting.

(C) The Board shall hear and consider the issues and shall hear any person interested therein and shall determine in its discretion whether any violation by the grantee has occurred. The grantee shall be

afforded an opportunity to be heard at the hearing, including an opportunity to present all relevant evidence and witnesses and to question witnesses presented against the grantee. The grantee may, at its own expense, make a transcript of any such hearing.

(D) In the event that the Board determines that the violation by the grantee was the fault of the grantee and within its control, and the grantee is not taking actions to correct such violation if such violation could not be corrected within the 30 day time frame mentioned above, then the Board may, by resolution stating the violation or violations on which the decision is based, declare that the franchise of the grantee shall be forfeited and terminated immediately or within such period as the Board in its sole discretion may fix, unless there is compliance.

(Ord. 2000-10, passed 4-10-00)
Penalty, see § 110.999

§ 110.030 FORECLOSURE.

Upon the foreclosure or other judicial sale of all or a substantial part of the cable system, or upon the termination of any lease covering all or a substantial part of the cable system, the grantee shall notify the municipality of such fact, and such notification shall be treated as a notification that a change in control of the grantee has taken place, and the provisions of the franchise governing the consent of the municipality to such change in control of the grantee shall apply.

(Ord. 2000-10, passed 4-10-00)

§ 110.031 RECEIVERSHIP.

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

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

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

(Ord. 2000-10, passed 4-10-00)

§ 110.032 COMPLIANCE WITH STATE AND FEDERAL LAWS.

(A) Notwithstanding any other provisions of the franchise to the contrary, the grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the grantee to perform any service, or shall permit the grantee to perform any service, or shall prohibit the grantee from performing any service, in conflict with the terms of the franchise or of any law or regulation of the municipality, then as soon as possible following knowledge thereof, the grantee shall notify the municipality of the point of conflict believed to exist between such regulation or law and the laws or regulations of the municipality or the franchise.

(B) In the event that the municipality determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the municipality shall modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter in accordance with then applicable law.

(Ord. 2000-10, passed 4-10-00)

§ 110.033 NOTICES.

All notices from the grantee to the municipality pursuant to any franchise shall be sent to the office of the Town Administrator or Manager. The Grantee shall maintain with the municipality, throughout the term of the franchise, an address for service of notices by mail. The grantee shall maintain a central office to address any issues relating to operating under this chapter.

(Ord. 2000-10, passed 4-10-00)

FEES; REPORTING REQUIREMENTS**§ 110.040 FRANCHISE FEE.**

(A) A grantee shall pay to the municipality a franchise fee of not less than 5% of the grantee's gross revenues or such other maximum amount as allowed by law.

(B) The franchise fee payment shall be in addition to any other tax or payment owed to the municipality by the grantee and shall not be construed as payment in lieu of municipal property taxes or other state, municipality or local taxes.

(C) The franchise fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the municipality within 30 days after the end of each quarter. The grantee shall also file a complete and accurate verified statement of all gross receipts as previously defined within said 30 days.

(D) The municipality shall have the right to inspect and copy the grantee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter. Any additional amount due the municipality as a result of an audit shall be paid within 30 days following written notice to the grantee by the municipality, which notice shall include a copy of the audit report. If any audit discloses an underpayment of a franchise fee by an amount in excess of 4 % of the applicable fee, then the grantee shall pay the full cost of the audit. The grantee shall maintain books and records of its operations within and related to the municipality and the grantee's cable system in sufficient detail to show gross revenue, by service category, consistent with generally accepted accounting principles. Said books and records shall be retained in accordance with the grantee's document retention policies, but in no event less than five years.

(E) If any franchise payment or re-computed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at an annual rate of 12%.

2001 S-5

(F) The acceptance by the municipality of any franchise fee payment shall not in any way be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of any

payment be construed as a release of any claim the municipality may have for further or additional sums payable under the provisions of the franchise. All franchise fee payments shall be subject to audit and re-computation by the municipality in accordance with this section.

(G) The grantee shall acknowledge as follows:

(1) The franchise fee is not a tax;

(2) The franchise fee shall be in addition to any and all taxes, other applicable fees or charges that the grantee or any affiliate shall be required to pay to the municipality or to any State or Federal agency or authority, all of which shall be separate and distinct obligations of the grantee and its affiliates;

(3) Neither the grantee nor any affiliate shall have or make any claim for any deduction or other credit of all or any part of the franchise fee from or against any of said municipality taxes or other fees or charges that the grantee or any affiliate is required to pay to the municipality except as may be identified and authorized by federal or state law;

(4) Neither the grantee nor any affiliate shall apply or seek to apply all or any part of the franchise fee as a deduction or other credit from or against any of said municipality taxes or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the grantee and its affiliates;

(5) Except as authorized by applicable law, if the grantee or any affiliate applies or seeks to apply all or any part of the amount of the franchise fee as a deduction or other credit from or against any municipality tax or other fee or charge, or if the grantee or any affiliate applies or seeks to apply all or any part of any such tax or other fee or charge as a deduction or other credit from or against the franchise fee, then, in any such event, such action will be deemed a violation of this chapter subject to the provisions of § 110.029 herein.

(H) The municipality may increase the franchise fee if and to the extent that the maximum allowable franchise fee is increased by the FCC. If the municipality desires to increase the franchise fee in that event, then the municipality shall provide at least 30 days written notice to the grantee. If, within 30 days after the municipality's notice, the grantee so requests, the municipality shall conduct a public hearing on the franchise fee increase. The effective date of the proposed franchise fee increase shall be delayed until the expiration of the 30 day notice period, if within that period, the grantee does not request a hearing, or if a hearing is requested, until the conclusion of the public hearing conducted pursuant to this division.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

§ 110.041 AVAILABILITY OF BOOKS AND RECORDS.

(A) The grantee shall fully cooperate in making available at reasonable times, and the municipality shall have the right to inspect, where reasonably necessary for the enforcement of the franchise, books, records, maps, plans and other like materials of the grantee applicable to the cable system, at any time during normal business hours; provided where volume and convenience necessitate, the grantee may require inspection to take place on the grantee premises.

(B) The following records and/or reports shall be sent to the municipality, but no more frequently than on a quarterly basis if so mutually agreed upon by the grantee and the municipality:

(1) A quarterly review and resolution or progress report submitted by the grantee to the municipality;

(2) Periodic preventive maintenance reports;

(3) Any copies of FCC Form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;

2001 S-5

(4) Subscriber inquiry/complaint resolution data and the right to review documentation concerning

these inquiries and/or complaints periodically; and

(5) Periodic construction update reports including, where appropriate, the submission of as-built maps.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

§ 110.042 OTHER PETITIONS AND APPLICATIONS.

Upon request, copies of all petitions, applications, communications and reports submitted by the grantee to the Federal Communications Commission, to the Securities and Exchange Commission, or to any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise or received from such agencies shall be provided to the municipality within ten working days of the municipality's request.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

§ 110.043 FISCAL REPORTS.

The grantee shall annually, within 90 days after the close of the grantee's fiscal year, prepare in accordance with generally accepted accounting principles, and submit to the municipality, a statement of gross revenues audited by a certified public accountant and covering the grantee's operations in and relating to the municipality and the grantee's cable system.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

§ 110.044 FINANCIAL, CONTRACTUAL, SHAREHOLDER, AND SYSTEM DISCLOSURE FOR FRANCHISES.

(A) No franchise will be granted to any applicant unless all requirements and demands of the municipality regarding financial, contractual, shareholder and system disclosure have been met.

(B) Applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any person, firm, group, association or corporation with respect to the franchise and the proposed cable television system. The grantee of a franchise shall disclose all other contracts to the municipality as the contracts are made. This section shall include, but not be limited to, any agreements between local applicants and national companies.

(C) Applicants, including all shareholders and parties with any interest in the applicant, shall submit all requested information as provided by the terms of this chapter or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the applicant.

(D) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.

(E) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other cable systems within the States of Indiana and Illinois in which they hold an interest of any nature, including, but not limited to, the following:

- (1) Locations of all other franchises and the dates of award for each location;
- (2) Estimated construction costs and estimated completion dates for each system;
- (3) Estimated number of miles of construction and number of miles completed in each system as of the date of this application; and
- (4) Date for completion of construction as promised in the application for each system.

2001 S-5

(F) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents

regarding pending applications for other cable systems, including, but not limited to, the following:

- (1) Location of other franchise applications and date of application for each system;
 - (2) Estimated dates of franchise awards;
 - (3) Estimated number of miles of construction; and
 - (4) Estimated construction costs.
- (Ord. 2000-10, passed 4-10-00)
Penalty, see § 110.999

CONSTRUCTION REQUIREMENTS

§ 110.055 SYSTEM CONSTRUCTION.

(A) *New construction timetable.*

(1) Within two years from the date of the award of an initial franchise, the grantee must make cable television service available to every dwelling unit within the service area.

(a) The grantee must make cable service available to at least 20% of the dwelling units within the service area within six months from the date of the award of the franchise.

(b) The grantee must make cable service available to at least 50% of the dwelling units within the service area within one year from the date of the award of the franchise.

(2) The grantee, in its application, may propose a timetable of construction which will make cable service available in the service area sooner than the above minimum requirements, in which case said schedule will be made part of the franchise agreement, and will be binding upon the grantee.

(3) Any delay beyond the terms of this timetable, unless specifically approved by the municipality, will be considered a violation of this chapter for which the provisions of either § 110.029 or § 110.999 shall apply, as determined by the municipality.

(4) In special circumstances and for good cause shown by the grantee, the municipality, in the exercise of its sole discretion, may waive 100% completion within the two year time frame, provided that substantial completion is accomplished within the allotted time frame, substantial completion to be not less than 95%. Justification for less than 100% must be submitted subject to the approval of the municipality.

(5) Where the grantee is rebuilding, reconstructing, or upgrading its cable system, such rebuilding, reconstruction, or upgrade of the cable system must be completed within 18 months from the issuance of the initial permit for construction. The grantee and the municipality may agree to a lesser or greater period of time for reconstruction, rebuilding, or upgrading in a franchise agreement.

(B) *Line extensions.*

(1) In areas of the franchise territory not initially served, a grantee shall be required to extend its system pursuant to the following requirements:

(a) No customer shall be refused service arbitrarily. To expedite the process of extending the cable system into a new subdivision, the municipality will forward to the grantee an approved engineering plan of each project. Subject to the density requirements, the grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the municipality that the first home in the project has been approved for a building permit, the grantee shall have a maximum of three months to complete the construction/activation process within the applicable project phase, barring any unforeseen adverse weather or ground conditions.

provides otherwise, a grantee must make cable service available to every unserved structure within the franchise area. The grantee shall extend service to any annexed areas according to the following schedule:

1. For areas of territory annexed to the city of five acres or more, the grantee shall extend service to such areas within three months of the date of annexation; or

2. For those areas of less than five acres, the grantee shall extend service to such annexed areas within one month of the date of annexation. Where unserved structures located within the franchise area have been previously annexed into the municipality prior to the effective date of a franchise agreement, the grantee shall extend service to such areas within 12 months for areas of less than five acres and within 18 months for areas of five acres or more.

(c) The grantee shall extend and make cable service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard 125 foot drop line.

(2) The franchising authority may contract with owners of real property for the installation of cable service and the construction of cable system lines within the municipality or within one and one-half miles in order to provide service for the area in which the real property of the owners is located. The contract must provide, for a term not to exceed that agreed upon between the grantee and the franchising authority in a franchise agreement, for the payment to the owners and their assigns by any owner of real property who:

(a) Did not contribute to the original cost of the wiring of cable service to the area in which the real property of the owners is located; and

(b) Subsequently obtains a subscription for cable service and is served by the wiring of cable service to the area in which the real property of the owners is located;

of a pro-rata share of the cost of the construction of the cable system subject to the conditions of this chapter, the franchise agreement, and applicable law and notwithstanding any other law relating to the functions of local government entities. However, the contract does not apply to any owner of real property who is not a party to it unless it has been recorded in the office of the recorder of Lake County before the owner has received installation of the cable system. The franchising authority may provide that the pro-rata share of the cost of construction include interest at a rate not exceeding the amount of interest allowed on judgments, and the interest shall be computed from the date that the extension of the cable system was approved by the franchising authority to the date payment is made to the municipality. The contract must include, as part of the consideration running to the municipality, the release of the right of the parties to the contract and their successors in title to remonstrate against pending or future annexations of the municipality of the area served by the cable system. Any person who is connected to the cable system and receives cable service contracted for is considered to waive his/her rights to remonstrate against the annexation of the area served by the cable system. The aforementioned does not apply if the costs of extension of or connection to the cable system are paid by a person other than the landowner or the municipality.

(3) This section shall apply when:

(a) Any part of the cost of a cable system is to be assessed against the owners of real property;

(b) The proposed cable system is to be connected into the cable system referenced under this chapter or a franchise agreement;

(c) The owners did not contribute to the cost of the extension of the cable system.

estimate submitted to the franchising authority and the assessments, a sum equal to the amount provided in or computed from the contract as the fair pro-rata share due from the owners upon and for the contracted extension of the cable system, including any interest owed. The sum included in the grantee's estimate must be separately itemized.

(5) In cases of new construction or property development where utilities are to be placed underground, all cable system facilities also shall be placed underground, except as otherwise specifically approved in advance by the municipality. In the event that the grantee receives notice of such new construction or property development, including the date on which open trenching is available for the grantee's work (the "Notice"), then the grantee shall provide, to the developer or property owner and to the municipality, the specifications for its trenching, and the grantee shall install its conduit, pedestals and vaults, and laterals within five working days after the trenches first become available to the grantee for such work. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; provided, however, that if the grantee fails to install its conduit, pedestals and vaults, and laterals within said five working days, then the cost of any new trenching, and easements if necessary, shall be borne by the grantee. The notice may be given to the grantee at the address stated in the franchise agreement or to the local general manager or system engineer of the grantee. Written or oral notice from the developer, property owner, or municipality shall be sufficient to qualify as the notice.

(C) Nothing herein shall be construed to prevent the grantee from serving areas of the service area not covered under this section upon agreement with developers, property owners, residents, or businesses, provided that all applicable fees are paid by the grantee to the municipality therefor, including without limitation the franchise fee provided in this chapter, as may be amended from time to time.

(4) There shall be included in the grantee's

(D) A grantee, in its new or renewal application, may propose a line extension policy that will result in serving more residents of the service area than as required above, in which case the grantee's policy will be incorporated into the franchise agreement and will be binding on the grantee.

(E) Any violation of this section shall be considered a violation of this chapter for which the provisions of either § 110.029 or § 110.999 shall apply, as determined by the municipality.
(Ord. 2000-10, passed 4-10-00)

§ 110.056 CONSTRUCTION AND TECHNICAL STANDARDS.

(A) The grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, the grantee shall provide the municipality, upon request, a written report of the results of the grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.

(B) The following additional specifications shall apply:

(1) Construction, installation and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(2) The grantee shall at all times comply with the most recent version adopted by the municipality of:

(a) National Electrical Safety Code (National Bureau of Standards);

(b) National Electrical Code (National Bureau of Fire Underwriters);

2001 S-5

(c) Bell System Code of Pole Line

Construction; and

(d) All other applicable FCC or other federal, state and local regulations.

(3) In any event, the system shall not endanger or interfere with the safety of persons or property in the service area or other areas where the grantee may have equipment located.

(4) Any antenna structure used in the system shall comply with construction, marking, and lighting of antenna structure as required by the United States Department of Transportation.

(5) All working facilities and conditions used during construction, installation and maintenance of the system shall comply with the standards of the Occupational Safety and Health Administration.

(6) The grantee shall regularly check radio frequency leakage at reception locations for emergency radio services to prove and verify that no interference signal combinations are possible which may disrupt municipal public works, police, fire, or administrative communications, or township, county, or state communications. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. All applicable FCC rules and regulations shall govern.

(7) The grantee shall maintain equipment capable of providing standby power for headend, transportation and trunk amplifiers for a minimum of four hours.

(8) All towers, antennas, satellite receive stations, cable wiring, service connections, and other exposed equipment located within the service area shall be properly grounded in accordance with the National Electrical Safety Code and the National Electrical Code as now or hereafter amended. Grantee shall also comply with any local ordinance pertaining to the establishment of electrical grounding standards, and with any additional grounding

standards established by electric and telephone companies if grantee has arranged to lease pole space from said companions. In the event that grantee has erected wiring and related appurtenances upon poles owned by private parties other than electric or telephone companies, grantee shall comply with provisions of the National Electrical Code. The grantee, at its discretion may properly ground said equipment in such a manner that exceeds normal engineering requirements, provided, however, that such grounding is in compliance with the National Electrical Code.

(9) In all areas of the municipality where the cables, wires and other like facilities of public utilities are placed underground, all cables, wires and other like facilities of the grantee installed after the effective date of the grantee's franchise shall be placed underground. When public utilities relocate their facilities from pole to underground, the grantee shall concurrently do so at no expense to the municipality.

(10) Where the grantee places cabling underground as part of a relocation of cabling, or as an element of new construction or reconstruction of the cable system, the grantee shall utilize directional boring wherever possible.

(C) *Plans and permits.*

(1) *Right to review; briefings.*

(a) The municipality shall have the right to review the grantee's construction plans and specifications prior to the commencement of any new construction to assure compliance with the standards specified in this chapter and to inspect all aspects of cable system construction. The municipality shall not, however, be required to review or approve such plans and specifications or to make such inspections, and the municipality specifically disclaims such obligation. The grantee shall be solely responsible for taking all steps necessary to assure compliance with such standards and to ensure that the cable system is installed in a safe manner and pursuant to the terms and conditions of this chapter and the franchise agreement.

of, or on any part of, the cable system, the grantee's chief engineer or designated individual shall meet with the municipal administrator, manager or designated individual to provide and explain the grantee's construction plans and work program in detail. Similar briefings shall be held from time to time as deemed necessary by either the municipality or the grantee until the work is completed.

(2) The grantee shall, within 90 days after the effective date of its franchise, furnish to the municipality complete "as-built" plans of the cable system and shall, thereafter, furnish to the municipality amendments to such plans within 45 days after completion of any extension or modification of the cable system. If so requested by the grantee, the municipality shall keep such as-built plans confidential to the extent allowable by law, and shall show such plans only to those employees, contractors or municipality officials who need to see them as a part of their responsibilities to the municipality, or pursuant to their responsibilities for locating utilities. Upon implementation of a municipal Geographic Information System (GIS), the grantee shall provide said "as-built" plans in a digital format which is compatible to the computer systems of the grantee and the municipality.

(3) The grantee shall obtain permits from the municipality before commencing any new construction of or within the cable system, with specific permission being required for the opening or disturbance of any public street or public way within the municipality. The permit application shall include a plan drawn in sufficient detail to demonstrate to the municipality that the cable system will be constructed in accordance with all applicable codes and ordinances. Where cable is to be installed on existing poles, the permit application shall include a drawing showing the existing poles and additional poles, if requested. Without characterizing the violation of other provisions of this chapter, the failure to obtain said permits shall constitute a material violation of this chapter. The grantee also, before the commencement of new construction of, or on any part of, the cable system, shall become and remain a member of the

J.U.L.I.E. system, or the utility locating system serving Lake County, Indiana ("Holey Moley"). The grantee may redact any information which it deems proprietary.

(D) All work involved in the construction, operation, maintenance, repair, and removal of the cable system, or any part thereof, shall be performed in a workmanlike manner using materials of good and durable quality. If, at any time, it is determined by the municipality or any other agency or authority of competent jurisdiction that any part of the cable system, including without limitation any means used to distribute signals over or within the cable system, is harmful to the health or safety of any person, then the grantee, at its sole cost and expense, shall promptly correct all such conditions. Any contractor, subcontractor, or other person proposed to be employed for the installation, maintenance, relocation, or repair of cable system equipment or facilities shall be licensed in accordance with applicable laws and shall be thoroughly experienced in the work for which he or she is retained.

(E) The grantee shall at all times comply with the rules and regulations for infrastructure specifications as found in Appendix A of this chapter and any and all rules and regulations enacted or to be enacted by the municipality with reference to construction activity in public streets or public ways. All poles, wires, conduits, cables, equipment, pipes, appurtenances, structures, and other facilities of the cable system shall be installed and located in compliance with all applicable municipal codes and ordinances and the applicable provisions of the franchise so as to cause minimum interference with the rights and reasonable convenience of the general public, all as determined by the municipality in its sole and absolute discretion. Unless the municipality shall in writing waive its right to review plans, no construction or other work relating to such facilities within the public streets and public ways of the municipality shall be commenced until the municipality shall have approved and issued a permit on the plans, specifications and methods for such work. Any such permit may be so conditioned or restricted as deemed necessary by the municipality to

safe condition and in good order and repair.

(F) *Location of pedestals and vaults.*

(1) *Pedestals and similar above ground appurtenances.*

(a) The municipality has determined that pedestals and similar aboveground appurtenances located on a public street or public way (other than in an alley or as provided in division (c) below or on public property will adversely affect the appearance of the municipality and of the property therein and, accordingly, pursuant to Section 541(a)(2) of the Cable Act, the grantee shall not under any circumstances install or locate a pedestal or any similar above ground appurtenance on any public street or public way (other than in an alley or as provided in division (c) below) or on any public property as a part of any new construction or any relocation or reinstallation.

(b) Pedestals or similar above ground appurtenances may be installed on private property only with the express, prior written consent and permission of the affected property owner or his or her authorized agent, or the duly elected or appointed representative of the affected property; provided, however, that such pedestals or above ground appurtenances shall comply with all applicable provisions of the Municipal Code.

(c) Notwithstanding division (b) above, pedestals or similar above ground appurtenances may be installed within certain utility easements on private property without the consent or permission of the affected property owner provided that:

1. The grantee is lawfully authorized to use such utility easement pursuant to applicable state or federal law;

2. No such pedestal or similar above ground appurtenance may be installed unless, at the time of the desired installation, there exists within the utility easement, a similar above ground appurtenance of another utility company or entity;

3. The grantee's pedestal or similar above ground appurtenance shall be located as close as is practicable to said existing above ground appurtenance; and

4. In the event of an emergency, the grantee shall attempt to contact the property owner or legal tenant in person and shall leave a door hanger notice in the event personal contact is not made.

(2) *Vaults.*

(a) The grantee shall not install underground vaults on any public street or public way after the effective date of this franchise, except in accordance with and pursuant to the provisions of division (2)(d) below. All underground vaults shall be flush mounted with the surface of the land area.

(b) The grantee shall inform the owner of any private property in the municipality where the grantee contemplates placing a vault on the parkway immediately adjacent to said private property, that the owner has the right to elect between the construction and installation of an underground vault on the owner's private property or on the public street or public way (including, without limitation, the parkway) immediately adjacent to the owner's property. Said notice shall be in writing, in form and substance acceptable to the Municipal Administrator or Manager, and delivered by certified mail or personal delivery to said owner at least 30 days immediately before the commencement of construction on or around the owner's property.

(c) In the event that the owner elects to allow construction and installation of an underground vault on the owner's property, then the owner shall be required to grant the grantee an easement, in form reviewed and approved by the municipality's attorney, allowing for such construction and installation.

(d) In the event that the owner:

1. Elects not to allow construction and installation of an underground vault on the owner's property; or

2. Fails to respond to the election notice delivered by the grantee pursuant to division (2)(b) above within 45 days after the owner receives the notice; or

3. Refuses to grant the grantee the easement pursuant to division (2)(c) above within 30 days after the owner's receipt of an easement document, then the grantee shall be entitled to construct and install an underground vault on the public way (including, without limitation, the parkway) that is immediately adjacent to the owner's property.

(G) *Trenching Requirements.* The grantee shall excavate all trenches at a depth no less than that required by the National Electrical Code for the installation of drop cable, feeder cable and trunk cable. All open trenches in which work is being performed shall be covered at the end of each working day, and when the trench is not occupied by a work crew, with a wooden covering in a public way, or with a metal covering where work is being performed in a public street. Coverings shall be adequately secured in order to prevent movement of the trench cover which would expose the trench opening.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

§ 110.057 USE OF STREETS.

(A) The grantee's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable convenience of property owners who adjoin any of the public streets and public ways, or interfere with any improvements the municipality may make, or hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

(B) *Erection, removal and common uses of poles.*

(1) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the municipality with regard to location,

height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the municipality determines that the public convenience would be enhanced thereby.

(2) Where poles or other wire-holding structures already existing for use in serving the municipality are available for use by the grantee, but it does not make arrangements for such use, the municipality may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(3) Where the municipality or a public utility serving the municipality desires to make use of the poles or other wire-holding structures of the grantee, but agreement thereof with the grantee cannot be reached, the municipality may require the grantee to permit such use for such consideration and upon such terms as the municipality shall determine to be just and reasonable, if the municipality determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operations.

(C) If at any time during the period of the franchise the municipality shall elect to alter, or change the grade of any public street or other public ways or utilities, the grantee, upon reasonable notice by the municipality, shall promptly remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(D) The grantee shall, on the request of any person holding a building moving permit issued by the municipality, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 48 hours advance notice to arrange for such temporary wire changes.

2001 S-5

(E) The grantee shall not use road cuts for the

laying of cable or wires without the prior approval of the municipality. Any cabling placed beneath a public street shall be buried in conduit.

(F) The right of the grantee to use and occupy the public streets and public ways shall not be exclusive. The municipality reserves the right to grant any right or use of such public streets or public ways to any person at any time during the term of the franchise or any other franchise subsequently granted to any other person.

(G) If any public street or public way or portion thereof used by the grantee shall be vacated by the municipality, or the use thereof is discontinued by the municipality or the grantee, during the term of the franchise, then the grantee shall forthwith at its sole cost and expense remove its facilities therefrom unless specifically permitted to continue to use the same and, on the removal thereof, the grantee shall restore, repair, or reconstruct the public street or public way in accordance with the specifications and requirements found in Appendix A. In the event of any failure, neglect, or refusal by the grantee, after 30 days written notice from the municipality to repair, improve, or maintain such public street or public way, the municipality may, but shall be under no obligation to, conduct such work, or cause it to be conducted, and the actual cost thereof shall be paid by the grantee in the time and manner as directed by the municipality. Collection may be made by resort to the letter of credit or cash security deposit established pursuant to § 110.025 of this chapter, or by court action, or otherwise.

(Ord. 2000-10, passed 4-10-00)

§ 110.058 REMOVAL OF CABLE SYSTEM.

At the expiration of the term for which the franchise is granted or when any renewal is denied, or upon its termination as provided herein, the grantee shall forthwith, upon notice by the municipality, remove at its own expense all portions of the cable system designated by the municipality from all streets and public property within the municipality. In the event that the grantee fails to do so, the municipality may perform the work at the grantee's expense. Upon

such notice of removal, a bond shall be furnished by the grantee in an amount sufficient to cover this expense as determined by the municipality. In the event that the grantee is utilizing the plant of the cable system for telecommunications services as defined by the Telecommunications Act of 1996, and the grantee's franchise has been terminated, denied renewal, or nullified due to expiration, then the grantee shall not be required to remove its cable system plant. However, the grantee shall be prohibited from offering or providing cable services as defined herein.
(Ord. 2000-10, passed 4-10-00)

SERVICE REQUIREMENTS

§ 110.070 OPERATIONAL STANDARDS.

(A) The grantee shall maintain all parts of the cable system in good condition throughout the entire franchise period.

(B) Upon the reasonable request for service by any person located within the service area, the grantee shall, within 30 days, furnish the requested service to such person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this division if no trunk line installation capable of servicing that person's block has been installed.

(C) *Temporary service drops.*

(1) Unless otherwise agreed to in a franchise agreement, the grantee shall put forth every effort to bury temporary drops within ten working days after placement. Any delays for any other reason than listed shall be communicated to the municipality.

(2) Upon request of the municipality the grantee shall provide a monthly report to the municipality on the number of drops pending.

make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

(E) Where an installation or a service call has taken place at the residence of a subscriber, the cable operator's personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

(F) The grantee shall not allow its cable or other operations to interfere with television reception of subscribers or persons not served by the grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the municipality nor shall other utilities interfere with the grantee's system.

(Ord. 2000-10, passed 4-10-00)
Penalty, see § 110.999

§ 110.071 CUSTOMER SERVICE STANDARDS.

(A) Nothing in this chapter shall be construed to prohibit the enforcement of any federal, state or local law or regulation concerning customer service or consumer protection that imposes customer service standards or consumer protection requirements that exceed the customer service standards set out in this chapter or that address matters not addressed in this chapter.

(B) The Grantee shall maintain a local or toll-free telephone access line which is available to its subscribers and shall have courteous, knowledgeable, and qualified representatives available to respond to customer telephone inquiries regarding billing, service, and repair, 24 hours per day, seven days per week, including legal holidays. Under normal operating conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed 30 seconds. This standard shall be met no less than 90% of the time as measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than 3% of the time, measured quarterly.

(D) The grantee shall render efficient service,

(C) Customer service centers and bill payment locations shall be open for walk-in customer transactions a minimum of eight hours per day Monday through Friday, unless there is a need to modify those hours because of the location or customers served. Where the grantee has located a bill payment or customer service center within the service area, the grantee and municipality by mutual consent shall establish supplemental hours on weekdays and weekends as fits the needs of the community.

(D) Under normal operating conditions, each of the following standards will be met no less than 95% of the time as measured on an annual basis.

(1) Standard installations will be performed within seven business days after an order has been placed. A standard installation is one that is within 125 feet of the existing system.

(2) Excluding those situations that are beyond its control, the grantee will respond to any service interruption promptly and in no event later than 24 hours from the time of initial notification. All other regular service requests will be responded to within 36 hours during the normal work week for that system. The appointment window alternatives for installations, service calls and other installation activities shall be "morning" or "afternoon"; not to exceed a four hour "window" during normal business hours for the system, or at a time that is mutually acceptable. The grantee shall schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

(3) In those instances where a technician has conducted a service call in the absence of the subscriber, the technician shall leave a door hanger on the front door of the subscriber's residence or notify the subscriber by phone message of the service call.

(E) In the event of a service interruption, the following standards for subscriber credits shall be applied by the grantee:

2001 S-5

(1) If a subscriber experiences a service interruption totaling four hours or more on one, two, or

three days in any calendar month, then the grantee shall provide a credit to that subscriber equal to 1/30 of one month's total fees paid by that subscriber for each day on which such a service interruption occurs; provided, however, that such credit shall not apply to a subscriber disconnected because of non-payment or excessive signal leakage. Such credit shall be provided by the grantee automatically upon notice from that subscriber of such service interruption, regardless of whether that subscriber requests a credit.

(2) If a subscriber experiences a service interruption totaling four hours or more on four or more days in any calendar month, then the Grantee shall provide a credit to that Subscriber equal to one month's total fees paid by that subscriber; provided, however, that such credit shall not apply to a subscriber disconnected because of non-payment or excessive signal leakage. Such credit shall be provided by the grantee automatically upon notice from that subscriber of the fourth such service interruption, regardless of whether that subscriber requests a credit.

(F) The grantee shall provide written information for each of the following areas at the time of installation and at any future time upon the request of the customer:

- (1) Product and services offered, including its channel lineup;
- (2) Prices and service options;
- (3) Installation and service policies;
- (4) How to use the cable services;
- (5) Customer privacy requirements;
- (6) The cable operator's billing, collection, and disconnection policies;
- (7) Use and availability of A/B switches;
- (8) Use and availability of parental lockout devices;

(9) Special services for customers with disabilities; and

(10) Days, times of operation, and locations of customer service centers.

Copies of all notices provided to the subscriber shall be filed either by U.S. Mail or fax, with the municipality and the consortium.

(G) Bills will be clear, concise and understandable, with all charges for cable services itemized.

(H) A grantee may not impose a late, administrative or other fee on a customer for non-payment of a bill until 30 days have elapsed after the end of the billing cycle which is the subject of the unpaid bill.

(I) Credits will be issued promptly, but no later than the customer's next billing cycle following the resolution of the request and the return of the equipment by the subscriber to the grantee if service has been terminated.

(J) The grantee shall notify customers a minimum of 30 days in advance of any rate or channel change.

(K) The grantee shall maintain and operate its network in accordance with the rules and regulations incorporated herein and as may be promulgated by state or federal regulators.

(L) The grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this chapter and the franchise. In the event that the municipality finds, by resolution, that the grantee has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made, the grantee shall make such improvements. Failure to make such improvements within three months of such resolution will constitute a breach of a condition for which penalties contained in § 110.999 are applicable.

(M) The grantee shall keep a monthly service log which indicates the nature of each service complaint received in the last 24 months, the date and time each complaint was received, the disposition of each complaint, and the time and date thereof. This log shall be sent to the municipality monthly upon request.

(N) The grantee shall provide a copy of the customer service standards included in this § 110.071 to every subscriber via a bill insert at least once every calendar year. The grantee shall also provide a copy of these customer service standards to every new customer within 30 days of connection.

(O) *Services for subscribers with disabilities.*

(1) For any subscriber with a disability, a grantee shall at no charge deliver and pick up converters at subscribers' homes. In the case of a malfunctioning converter, the technician shall provide another converter, install it, and ensure that it is working properly, and shall return the defective converter to the grantee.

(2) The grantee shall provide TDD service with trained operators who can provide every type of assistance rendered by the grantee's customer service requirements for any hearing-impaired customer.

(3) The grantee shall provide free use of a remote control unit to mobility impaired (if disabled, in accordance with division (4), below) subscribers.

(4) Any subscriber with a disability may request the special services described above by providing the grantee with a letter from the subscriber's physician stating the need, or by making the request to the grantee's installer or service technician, where the need for special services can be visually confirmed.

(P) All officers, agents, and employees of the grantee or its contractors or subcontractors who are in contact with cable subscribers shall wear on their outer clothing identification cards bearing their name and photograph. The grantee shall account for all identification cards at all times. Every vehicle of the

grantee shall be clearly visually identified to the public as working for the grantee. Vehicles belonging to contractors or subcontractors of the grantee shall be clearly identified with the name of the contractor or subcontractor and the grantee. Such identification need not be of a permanent nature. All customer service representatives shall identify themselves orally to callers.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

§ 110.072 CONTINUITY OF SERVICE MANDATORY.

(A) It shall be the right of all subscribers to continue receiving service as long as their financial and other obligations to the grantee are honored. If the grantee elects to over build, rebuild, modify or sell the system, or the municipality gives notice of intent to terminate or fails to renew the franchise, the grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances for a period not to exceed six months after the franchise has terminated.

(B) In the event that there is a change of franchise, or if a new operator acquires the system, the grantee shall cooperate with the municipality, new franchisee and operator in maintaining continuity of service to all subscribers. During such period, the grantee shall be entitled to the revenues for any period during which it operates the system.

(C) In the event that the grantee fails to operate the system for three consecutive days without prior approval of the municipality or without just cause, the municipality may, at its option, operate the system or designate an operator until such time as the grantee restores service under conditions acceptable to the municipality or a permanent operator is selected. In the event that the municipality is required to fulfill this obligation for the grantee, the municipality shall be entitled to all revenues for any period during which it operates the system and shall be entitled to draw on the letter of credit and cash security deposit established pursuant to § 110.025 of this chapter to recover all of its costs and damages in excess of such

obligated to reimburse the municipality for all costs or damages incurred by the municipality resulting from the grantee's failure to perform that the municipality does not recover from such revenues or said letter of credit or cash security deposit.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

§ 110.073 SERVICE AVAILABILITY AND RECORD REQUEST.

The grantee shall provide cable television service throughout the entire service area pursuant to the provisions of this chapter and the franchise and shall keep a record for at least three years of all requests for service received by the grantee. This record shall be available for public inspection at the local office of the grantee during regular office hours.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

§ 110.074 REQUIRED SERVICES AND FACILITIES.

(A) The grantee shall make available to all subscribers the option to receive a specific number of channels as shall be stated in a franchise agreement.

(B) The grantee shall maintain at least one specially designated channel for the exclusive use of the municipality and other public authorities in the municipality, one specially designated channel for the use of educational institutions serving the community, and one public access channel available to the community. Unless otherwise stated in a franchise agreement, the grantee shall not make use of any channel reserved for use pursuant to this division (B).

(C) Studios and associated production equipment will be located in a mutually agreed upon site to meet the public's need for public access, and to accommodate the specially designated channels described herein. Financial and technical support and replacement and maintenance of equipment for such facilities shall be separately incorporated into the franchise by agreement.

(D) The grantee shall incorporate into its cable system the capacity to permit the municipality, in times of emergency, to override by remote control the audio, video and/or text of all channels, simultaneously, which the grantee may lawfully override. Emergency override capacity shall be activated by touch-tone telephone, including cellular telephones or Personal Communications System (PCS) telephones. The grantee shall provide emergency broadcast capacity pursuant to FCC rules. The grantee shall cooperate with the municipality in the use and operation of the emergency alert system.

(E) *Interconnection.*

(1) The grantee shall, on request by the municipality, connect its cable system within the municipality to any cable system that is owned or operated by the grantee or any affiliate or subsidiary of the grantee in any contiguous municipality.

(2) The municipality also may request that the grantee interconnect its system with other communication facilities within or contiguous to the municipality. Such interconnection shall be negotiated by the municipality and the grantee. Upon receiving a request from the municipality to so interconnect, the grantee shall immediately initiate negotiations with the other affected system or systems in order that all costs may be shared equally among cable companies for both construction and operation of the interconnection link. The grantee may be granted reasonable extensions of time to interconnect, or the municipality shall rescind its request to interconnect, upon petition by the grantee to the municipality, if the grantee has negotiated in good faith and has arrived at impasse with the operator or franchising authority of the system to be interconnected, or that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates, or that the interconnection is technically infeasible.

(3) The grantee shall cooperate with any interconnection corporation, regional interconnection authority, municipality, or state, or federal regulatory agency that may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the municipality.

(F) The grantee shall provide such additional services and facilities as are agreed upon within a franchise agreement.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

§ 110.075 RATE CHANGE PROCEDURES.

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, the consortium, on behalf of the municipality, is currently certified to regulate the basic service rates charged by grantee, and the rates for equipment and services needed to deliver basic service. Under these rules, the grantee is required to obtain approval from the consortium for a rate increase for any change to the rates for basic service. Should federal or state law permit further rate regulation beyond basic service, the consortium, on behalf of the municipality, may assume such rate regulation and recommend the adoption of appropriate procedures for such regulation by the municipality and its other members.

(Ord. 2000-10, passed 4-10-00)

§ 110.076 PERFORMANCE EVALUATION SESSIONS.

(A) Unless otherwise agreed to in a franchise agreement, the municipality and the grantee may hold scheduled yearly performance evaluation sessions within 30 days of each anniversary date of the grantee's award or renewal of the franchise and as may be required by federal and state law.

(B) Special evaluation sessions may be held at any time during the term of the franchise at the request of the municipality or the grantee.

(C) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. The Grantee shall notify its subscribers of all evaluation sessions by announcements on the Government Access Channel and at least one channel provided by the grantee which cable casts local news between the hours of 7:00 p.m. and 9:00 p.m. for five consecutive days preceding each session.

(D) Topics which may be discussed at any scheduled or special evaluation session may include, but are not limited to: service rate structures; franchise fees, penalties, free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this chapter; judicial and FCC rulings; line extension policies; and grantee or municipality rules.

(E) Members of the general public may add topics either by working through the grantee, the municipality, or by presenting a petition. If such a petition bears the valid signatures of 25 or more residents of the municipality, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.
(Ord. 2000-10, passed 4-10-00)

§ 110.077 PUBLIC NOTICE.

Minimum public notice of any public meeting or public hearing relating to the franchise shall follow applicable state statutory requirements and shall be on the Government Access Channel and at least one channel of local programming operated by the grantee on the grantee's system between the hours of 7:00 p.m. and 9:00 p.m., for five consecutive days prior to the meeting.

(Ord. 2000-10, passed 4-10-00)

§ 110.078 RIGHTS OF INDIVIDUALS.

(A) The Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, access channel users, or general citizens on the basis of race, color, religion, national origin, income, gender, marital status, or age. The grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.

(B) The grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission and of State and Local governments, and as amended from time to time.

(C) The grantee shall, at all times, comply with the privacy requirements of Section 631 of the Cable Act, and of state and federal law.

(D) The grantee shall make cable service available to all residential areas within the service area, provided that all such permission is obtained as may be required from the owner or owners of any affected property is reasonably available, and that service can be provided in accordance with the line extension requirements of § 110.055. Grantee will only be required to provide service to multi-dwelling units so long as the owner of the facility consents to the following:

(1) To grantee's providing of the service to units of the facility;

(2) To reasonable conditions and times for installation, maintenance and inspection of the system on the facility premises;

(3) To reasonable conditions promulgated by grantee to protect grantee's equipment and to encourage widespread use of the system; and

(4) To not demand payment from grantee for permitting grantee to provide service to the facility and to not discriminate in rental charges, or otherwise, between tenants who receive cable service and those who do not.

(Ord. 2000-10, passed 4-10-00)

§ 110.079 COMPLAINT PROCEDURE.

(A) During the term of the franchise and any renewal thereof, the grantee shall maintain a central office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billing, and similar matters. The office

must be reachable by a local and/or toll-free telephone call to receive complaints regarding quality of service, equipment functions and similar matters. The grantee will make good faith efforts to arrange for one or more payment locations in a central location where customers can pay bills or conduct other business activities.

(B) As subscribers are connected or reconnected to the system, the grantee shall, by appropriate means such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local or toll free telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed.

(C) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the municipality, in consultation with the grantee, casts doubt on the reliability or quality of cable service, the municipality shall have the right and authority to require the grantee to test, analyze and report on the performance of the system. The grantee shall fully cooperate with the municipality in performing such testing and shall prepare results and a report, if requested, within 30 days after notice. Such report shall include the following information:

- (1) The nature of the complaint or problem that precipitated the special tests;
- (2) The system component(s) tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method, if any, in which such complaint or problem was resolved;
- (5) Any other information pertinent to the tests and analysis which may be required.

(D) If, after receiving grantee's report, and after the grantee has completed any corrective action identified in the report, the municipality determines that reasonable evidence still exists of inadequate cable system performance, then the municipality may enlist

perform tests and analysis directed toward such suspected failures to meet the requirements of this chapter. Grantee shall cooperate and permit such testing.

(E) The municipality shall require tests, analysis and reports covering specific subjects and characteristics based on complaints or other evidence only when the municipality has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

(Ord. 2000-10, passed 4-10-00)

§ 110.080 GRANTEE RULES AND REGULATIONS.

The grantee shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the grantee to exercise its rights and perform its obligations under the franchise, and to assure uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

(Ord. 2000-10, passed 4-10-00)

§ 110.081 THEFT OF SERVICE.

It shall be unlawful for any person to install, attach, wire, program, or connect, or cause to be installed, attached, wired, programmed, or connected any equipment, device, or computer hardware or software which enables the use of cable television signals transmitted by the grantee without compensation for said cable television signals. No person receiving within the municipality any cable service, program, or signal transmitted by any grantee operating under a franchise issued by the municipality shall resell such service, program, or signal without the expressed written consent of the grantee. Violations of the provisions of this section shall be punishable by a fine of no less than \$500 per day per

occurrence, and where applicable, incarceration as so prescribed by statutory provisions concerning theft of services.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

***INSURANCE REQUIREMENTS;
INDEMNIFICATION***

§ 110.090 INDEMNIFICATION.

(A) The municipality shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of the grantee's cable system or due to the act or omission of any person or entity other than the municipality or those persons or entities for which the municipality is legally liable as a matter of law.

(B) The grantee shall, at its sole cost and expense, indemnify and hold harmless the municipality, all associated, affiliated, allied and subsidiary entities of the municipality now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys and contractors (hereinafter referred to as "indemnitees") from and against:

(1) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any act or omission of the grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way

connected with the construction, installation, operation, maintenance, use or condition of the cable system caused by grantee, its subcontractors or agents or the grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

(2) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which are imposed upon, incurred by or asserted against the indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the cable system. Upon the written request of the municipality, such claim or lien shall be discharged or bonded within 15 days following such request.

(3) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any financing or securities offering by grantee or its affiliates for violations of the common law or any laws, statutes or regulations of the State of Illinois, State of Indiana, or of the United States, including those of the Federal Securities and Exchange Commission, whether by the grantee or otherwise.

(C) The grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any municipality-owned or controlled property, including public rights-of-way and easements, and the grantee hereby agrees to indemnify and hold harmless the indemnitees against and from any claim asserted or liability imposed upon the indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the cable system or the grantee's failure to comply with any federal, state or local statute, ordinance or regulation, except for any claim asserted or liability imposed upon the indemnitees that arises or is related to wanton or willful negligence by the indemnitees.

(D) In the event any action or proceeding shall be brought against the indemnitees by reason of any matter for which the indemnitees are indemnified hereunder, the grantee shall, upon notice from any of the indemnitees, at the grantee's sole cost and expense, resist and defend the same, provided further, however, that the grantee shall not admit liability in any such matter on behalf of the indemnitees without the written consent of the municipality.

(E) The municipality shall give the grantee prompt notice of the making of any written claim or the commencement of any action, suit or other proceeding covered by the provisions of this section.

(F) Nothing in this chapter or in any franchise is intended to, or shall be construed or applied to, express or imply a waiver by the municipality of statutory provisions, privileges or immunities of any kind or nature as set forth in Illinois or Indiana Statutes, including the limits of liability of the municipality as exists presently or as may be increased from time to time by the legislative authorities of each state.
(Ord. 2000-10, passed 4-10-00)

§ 110.091 LIABILITY AND INSURANCE.

(A) The grantee shall maintain and by its acceptance of a franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the grantee and the municipality and the municipality's officers, boards, commissions, elected and appointed officials, agents, and employees, in the minimum amounts of:

(1) \$2,000,000 for bodily injury or death to each person;

(2) \$3,000,000 for bodily injury or death from any one accident;

(3) \$3,000,000 for property damage from any one accident;

(4) \$5,000,000 for general liability coverage, along with umbrella policy coverage;

2001 S-5

(5) \$2,000,000 for all other types of

liability.

(B) The grantee shall carry and maintain in its own name automobile liability insurance with a limit of \$2,000,000 for each person and \$2,000,000 for each accident for property damage with respect to owned and non-owned automobiles for the operation of which the grantee is responsible.

(C) The certificate of insurance obtained by the grantee in compliance with this section must be approved by the municipality's attorney, and such insurance policy certificate of insurance shall be filed and maintained with the municipality during the term of the franchise. The grantee shall immediately advise the municipality's attorney of any litigation that may develop that would affect this insurance.

(D) Neither the provisions of this section, nor any damages recovered by the municipality thereunder, shall be construed to or limit the liability of the grantee under any franchise issued hereunder, or for damages.

(E) Such insurance policies provided for herein shall name the municipality, its officers, boards, commissions, agents and employees as an additional insured, and shall be primary to any insurance carried by the municipality. The insurance policies required by this section shall be carried and maintained by the grantee throughout the term of the franchise and such other period of time during which the grantee operates or is engaged in the removal of its cable system. Each policy shall contain a provision providing that the insurance policy may not be canceled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the municipality, by registered mail, of written notice of such intention to cancel or not to renew.

(Ord. 2000-10, passed 4-10-00)

Penalty, see § 110.999

§ 110.092 FORCE MAJEURE.

Whenever a period of time is provided for in the franchise for either the municipality or the grantee to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, insurrection, rebellion, sabotage, unavoidable casualty or damage to personnel, materials or equipment, fire, flood, storm, earthquake, tornado, or any act of God; provided, however, that said time period shall be extended for only the actual amount of time said party is so delayed. An act or omission shall not be deemed to be "beyond the grantee's control" if committed, omitted, or caused by the grantee, the grantee's employees, officers, or agents or a subsidiary, affiliate, or parent of the grantee, or by any corporation or other business entity that holds a controlling interest in the grantee, whether held directly or indirectly. Further, the failure of the grantee to obtain financing or to pay any money due from it to any person, including the municipality, for whatever reason, shall not be an act or omission "beyond the grantee's control." The failure of the grantee to obtain necessary permits from applicable governmental or utility agencies shall be deemed "beyond the grantee's control" only if the grantee has made a timely and complete request and application for said permit and is diligently pursuing the issuance of said permit.

(Ord. 2000-10, passed 4-10-00)

ENFORCEMENT**§ 110.100 PROCEDURES.**

(A) Whenever the municipality determines that the grantee has violated any term, condition or provision of this chapter or the franchise agreement, and determines it appropriate to impose monetary penalties, a written notice shall be given to the grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the grantee an opportunity to remedy the violation. The grantee shall

notice in which the grantee shall have the opportunity to cure the violation before the municipality may impose penalties unless the violation is, in the opinion of the municipality, of such a nature so as to require more than 30 days and the grantee proceeds, immediately upon receipt of such notice, and continuously, and diligently, to cure the violation. In any case where the violation is not cured within 30 days of notice from the municipality, or such other time to which the grantee and the municipality may mutually agree, the municipality may proceed to impose penalties and to exercise any other remedy provided in this chapter or the franchise agreement.

(B) The grantee may, within ten days of receipt of notice, notify the municipality that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the grantee to the municipality shall specify with particularity the matters disputed by the grantee and shall stay the running of the 30 day cure period pending decision by the governing body as required below. The governing body shall hear the grantee's dispute. The grantee must be given at least five days notice of the hearing. At the hearing, the grantee shall be entitled to the right to present evidence and the right to be represented by counsel. In the event the municipality upholds the finding of a violation, the grantee shall have 15 days thereafter or the remaining time period set in division (A) above, whichever is longer, or such other time period as the grantee and the municipality mutually agree, to correct the violation. In any case where the violation is not cured within 30 days of notice from the municipality, or such other time to which the grantee and the municipality may mutually agree, the municipality may proceed to impose penalties retroactive to the date of notice to cure said violation(s) and to exercise any other remedy provided in this chapter or the franchise agreement.

(C) The rights reserved to the municipality under this section are in addition to all other rights of the municipality whether reserved by this chapter or authorized by law or equity, and no action, proceeding or exercise of a right shall affect any other right the municipality may have.

(Ord. 2000-10, passed 4-10-00)

§ 110.101 LIMITS ON GRANTEE RECOURSE.

(A) The grantee may seek enforcement of the terms of its franchise at law or in equity, but shall have no recourse against the municipality for money damages or for any loss, expense, or damage resulting from the terms and conditions of the franchise nor because of the municipality's enforcement thereof. The grantee shall be deemed to expressly agree that it accepts the franchise relying solely on its own investigation and understanding of the power and authority of the municipality to grant said franchise.

(B) The grantee shall acknowledge that it has not been induced to accept the franchise by any promise, verbal or written, by or on behalf of the municipality or by any third person regarding any term or condition of the franchise not otherwise expressed herein. The grantee shall further be deemed to warrant that no promise or inducement, oral or written, has been made to any municipality employee or official regarding receipt of the franchise, other than as contained in the franchise.

(Ord. 2000-10, passed 4-10-00)

§ 110.102 NONENFORCEMENT BY MUNICIPALITY.

The grantee shall not be excused from complying with any of the terms and conditions of the franchise by any failure of the municipality, on any one or more occasions, to insist on the grantee's performance of, or to seek the grantee's compliance with, any one or more of said terms or conditions.

(Ord. 2000-10, passed 4-10-00)

§ 110.103 RIGHTS AND REMEDIES.

(A) In the event of a violation or an alleged violation of the franchise by the grantee, the municipality, by suit, action, mandamus, or other proceeding, in law or in equity, may enforce or compel the performance of the terms of the franchise to the full allowable extent.

(B) In the event of a judicial proceeding, the prevailing party shall be entitled to reimbursement of all costs and expenses, including reasonable attorneys fees, incurred in connection with such judicial proceeding.

(Ord. 2000-10, passed 4-10-00)

§ 110.104 WAIVER.

(A) A grantee or other person may not be excused from complying with any of the terms and conditions of this chapter or a franchise agreement by any failure of the municipality, upon one or more occasions, to require performance or compliance.

(B) The municipality may, on its own motion or at the request of an applicant for a franchise or a grantee for good cause shown, waive any requirement of this chapter.

(Ord. 2000-10, passed 4-10-00)

§ 110.105 TIME IS OF THE ESSENCE.

Whenever any provision of this chapter or the franchise agreement shall set forth any time for any act to be performed by a grantee, such time shall be deemed to be of the essence. The grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the municipality to invoke an appropriate remedy or penalty, which may include the revocation of the franchise.

(Ord. 2000-10, passed 4-10-00)

§ 110.106 DELEGATION OF POWERS.

Any right, power, or duty of the municipality, the agency or any official of the municipality under this chapter may be transferred or delegated by ordinance, resolution, or other appropriate action of the municipality to an appropriate officer, employee, or department of the municipality, the consortium, or any legal authority created for the purpose of regulating the operation and development of the cable system.

(Ord. 2000-10, passed 4-10-00)

§ 110.107 SEVERABILITY.

The provisions of this chapter are severable, and if any provision or application is held to be illegal, unconstitutional, or invalid by a court of competent jurisdiction, such holding shall not affect the remaining provisions. It is the legislative intent of the municipality that the ordinance would have been adopted if such illegal provision had not been included or any illegal application would not have been made. (Ord. 2000-10, passed 4-10-00)

\$200 per day, per violation, for each day such failure occurs or continues;

(E) Failure to comply with a rate decision or refund order: \$300 per day not stayed, per violation not stayed, for each day such a violation occurs or continues;

(F) Any violations for non-compliance with the customer service standards of §§ 110.070, 110.071, or 110.072: \$250 per day, per violation, for each day that such noncompliance continues;

§ 110.108 GOVERNING LAW.

In any controversy or dispute under this chapter, the laws of the State of Indiana shall apply. (Ord. 2000-10, passed 4-10-00)

(G) Any other violations of this chapter: not less than \$50 per day to a maximum of \$750 per day, per violation, for each day such violation occurs or continues and the governing body of the municipality may determine the amount of the penalty for other violations which are not specified in a sum not to exceed \$750 for each violation, with each day constituting a separate violation.

(Ord. 2000-10, passed 4-10-00)

§ 110.999 PENALTY.

For the violation of any of the following provisions of this chapter, as amended from time to time, or the franchise agreement, penalties may be levied against the grantee and shall be paid by the grantee and, if not so paid, shall be chargeable to the letter of credit or cash security deposit, as follows:

(A) Failure to furnish, maintain, or offer all cable services to any potential subscriber within the municipality upon order of the municipality: \$250 per day, per violation, for each day such failure occurs or continues;

(B) Failure to obtain or file evidence of required insurance, construction bond, performance bond, or other required financial security: \$200 per day, per violation, for each day such failure occurs or continues;

(C) Failure to provide access to data, documents, records, or reports to the municipality as required by this chapter, including without limitation §§ 110.018, 110.041, 110.042, and 110.073: \$150 per day, per violation, for each day such failure occurs or continues;

2001 S-5

(D) Failure to comply with applicable construction, operation, or maintenance standards:

APPENDIX A: INFRASTRUCTURE SPECIFICATIONS AND STANDARDS

**CHAPTER 1: EXCAVATION,
RESTORATION AND CLEAN UP**

**Section 1: Excavation and Backfill for
Underground Conduits**

1-1 Description

For the purpose of this section, underground conduits shall be considered sewer pipe, water main, culverts, or any other pipe conduits indicated on the plans. Wherever the term "pipe" or "pipe line" is used, it shall mean underground conduit.

Excavation and backfill shall include all excavation backfilling, compacting, disposal of surplus material, restoration of all disturbed surface, and all other work incidental to the construction of trenches, including any additional excavation which may be required for manholes or other structures forming a part of the pipe line.

1-2 Construction Details

1-2.01 Surface Removal:

Along the proposed pipe lines as indicated on the plans, the contractor shall remove the surface materials only to such widths as will permit a trench, to be excavated which will afford sufficient room for proper efficiency and proper construction. Where sidewalks, driveways, pavements and curb and gutter are encountered, care shall be taken to protect such against fracture or disturbance beyond reasonable working limits. In areas specified on the plans, the top twelve inches (12") shall be piled separately and preserved so that it may be restored after the remainder of the backfill is replaced.

1-2.02 Excavation by Hand of Machine:

When working space will permit, trenches may be excavated by machine, provided that by so doing, public and private improvements will not be subjected to an unreasonable amount of damage. If, however, excavation by machine methods cannot be made without material damage being done to public and private improvements, hand excavation shall be employed.

1-2.03 Width of Excavation

a. The bottom of the trench at and below the top of the pipe and inside the sheeting and bracing, if used, shall not exceed the following widths:

<u>Pipe Size</u>	<u>Width</u>	<u>Pipe Size</u>	<u>Width</u>	<u>Pipe Size</u>	<u>Width</u>
6"	2'6"	27" 4'3"	66"		9'1"
8"	2'6"	30" 4'7"	72"		9'8"
10"	2'6"	33" 5'4"	78"		10'3"
12"	2'8"	36" 5'8"	84"		10'10"
15"	2'10"	42" 6'3"	90"		11'5"
18"	3'2"	48" 6'10"	96"		12'0"
21"	3'8"	54" 7'11"	102"		12'7"
24"	4'0"	60" 8'6"	108"		13'2"

Note: The strength or class of pipe shall be as indicated on the plans or special provisions.

b. Trench sheeting and bracing or a trench shield shall be used as required by the rules and regulation of O.S.H.A. The bottom of the trench excavation shall conform to the details shown on the plan.

1-2.04 Excavation below Grade:

In cases where the excavation is carried beyond or below the lines and grades given by the Engineer, the Contractor shall refill all such excavated space with suitable granular material.

1-2.05 Rock Excavation**1-2.05A General:**

Whenever "rock" is used as the name of an excavated material, it shall mean boulders or pieces of rock, concrete, or masonry measuring one-half (1/2) cubic yard or more, hard shale or solid ledge rock and masonry which, in the opinion of the Engineer, requires for its removal the continuous use of pneumatic tools or drilling or blasting.

1-2.06 Braced and Sheeted Trenches**1-2.06A General:**

Open-cut trenches shall be sheeted and braced or otherwise protected as required by any governing Federal, State or County laws and municipal ordinances, and as may be necessary to protect life, property, or the work. In any event, the minimum protection shall conform to the recommendations in O.S.H.A. Safety and Health Standards for Construction. A sand box or trench shield may be used in lieu of sheeting as permitted by O.S.H.A. and approved by the Engineer. When close-sheeting is used, it shall be so driven as to prevent adjacent soil from entering the trench either below or through such sheeting.

Where sheeting and bracing are used, the trench width shall be increased accordingly. The Engineer may order the sheeting driven to the full depth of the trench or to such additional depth as may be required for the protection of the work. Where soil in the lower limits of the trench has the necessary stability to meet the O.S.H.A. Standards, the Engineer, at his discretion, may permit the contractor to stop the driving of sheeting at such designated elevation above the trench bottom. The granting of permission by the Engineer, however, shall not relieve the Contractor in any degree from his full responsibility under the Contract. Sheeting and bracing which have been ordered left in place shall be cut off at the elevation ordered by the Engineer. Trench bracing, except that ordered left in place, may be removed when the backfilling has reached the respective levels of such bracing. Sheeting, except that ordered left in place, may be

has been brought to such an elevation as to permit its safe removal.

1-2.07 Trenches With Sloping Sides, Limited:

The Contractor may, at his option, where working conditions and right-of-way permit (as determined by the Engineer), excavate pipeline trenches with sloping sides, but with the following limitations:

In general, only braced and vertical trenches will be permitted in traveled streets, alleys or narrow easements.

Where trenches with sloping sides are permitted, the slopes shall not extend below the top of the sewer, and trench excavations below this point shall be made with vertical sides with widths not exceeding those specified herein before for the various sizes of pipe.

1-2.08 Short Tunnels:

In some instances, trees, fire hydrants, sidewalks and other obstructions may be encountered, the proximity of which may be a hindrance to open-cut excavation. In such cases, the Contractor shall excavate by means of short tunnels in order to protect such obstructions against damage.

1-2.09 Piling Excavated Material:

All excavated material shall be piled in a manner that will not endanger the work and that will avoid obstructing streets, alleys, sidewalks and driveways. Fire hydrants under pressure, valve pit covers, valve boxes, curb stop boxes, or other utility controls shall be left unobstructed and accessible until the work is completed. Gutters shall be kept clear or other satisfactory provisions made for street drainage. Natural watercourses shall not be obstructed.

1-2.10 Removal of Water:

The Contractor shall, at all times during construction, provide and maintain ample means and devices with which to promptly remove and properly dispose of all water entering the excavations or other parts of the work until all work to be performed therein has been completed. No sanitary sewer shall be used for disposal of trench water.

1-2.11 Safety**1-2.11A Barricades, Guards and Safety Provisions:**

To protect persons from injury and to avoid property damage, adequate barricades, construction signs, torches, red lanterns and guards, as required, shall be placed and maintained by the Contractor at his expense during the progress of the construction work and until it is safe for traffic to use the roads and streets. All material piles, equipment and pipe which may serve as obstructions to traffic shall be protected by proper lights when the visibility is poor. The rules and regulations of O.S.H.A. and appropriate authorities respecting safety provisions shall be observed.

1-2.11B Structure Protection:

Temporary support, adequate protection and maintenance of all underground and surface structures, water mains, drains, sewers and other obstructions encountered in the progress of the work shall be furnished by the Contractor under the direction of the Engineer. The structures which may have been disturbed shall be restored upon completion of the work.

1-2.11C Protection of Property and Surface Structures:

Trees, shrubbery, fences, poles and all other property and surface structures shall be protected during construction operations unless their removal for purposes of construction is authorized by the Engineer. Any fences, poles, or other man made surface improvements, which are moved or disturbed by the Contractor, shall be restored to the original conditions, after construction is completed. Any trees,

removal or ordered for removal by the Engineer in order to facilitate construction operations, shall be removed completely, including stumps and roots, by the Contractor. Responsibility for any damage or claims for damage caused by construction operations to shrubbery or other landscape improvements which were not authorized for removal by the Engineer shall be assumed by the Contractor.

1-2.12 Deviations Occasioned by Other Structures or Utilities:

Whenever obstructions are encountered during the progress of the work and interfere to such an extent that an alteration in the plan is required, the Engineer shall have the authority to approve the plans and order a deviation from the line and grade or arrange with the owners of the structures for the removal, relocation or reconstruction of the obstructions. Where gas, water, telephone, electrical, hot water, steam, or other existing utilities are an impediment to the vertical or horizontal alignment of the proposed pipe line, the engineer shall require a change in grade or alignment or shall direct the Contractor to arrange with the owners of the utilities for their removal.

1-2.13 Interruption to Utilities:

The Contractor shall proceed with caution in the excavation and preparation of the trench so that the exact location of underground structures may be determined. Prior to proceeding with trench excavation, the Contractor shall contact all utility companies in the area to aid in locating their underground services.

The Contractor shall take all reasonable precautions against damage to existing utilities. However, in the event of a break in an existing water main, gas main, sewer or underground cable, he shall immediately notify the responsible official of the organization operating the utility interrupted. The Contractor shall lend all possible assistance in restoring services and shall assume all cost, charges, or claims connected with the interruption and repair of such services if the location of said utility was marked by the owner thereof prior to excavation.

2001 S-5

shrubby, or other vegetation, which are approved for

1-2.14 Maintenance of Traffic and Closing of Streets:

The Contractor shall carry on the work in a manner, which will cause a minimum of interruption to traffic, and may not close a street to through travel without the express approval of the Director of Operations. Where traffic must cross open trenches, the Contractor shall provide suitable bridges at street intersections and driveways. The Contractor shall post, where directed by the Engineer, suitable signs indicating that a street is closed and necessary detour signs for the proper, maintenance of traffic. Prior to closing of any driving lanes of a street, the Contractor shall notify responsible municipal authorities; including the Director of Operations, Police, Fire and School.

1-2.164 Construction in Easements:

In easements across private property, the Contractor shall be responsible and liable for all damage outside of the easement area. Trees, fences, shrubbery or other type of surface improvements located in the easements will require protection during construction. The provisions of paragraph 1-2.11C above shall apply to all easement areas as well as to public right-of-way. Precautions shall be taken by adequate sheeting or other approved methods to prevent any cave-in or subsidence beyond the easement limits or damage to improvements within the easement. In general, the easement area is intended to provide reasonable access and working area for efficient operation by the Contractor. Where easement space for the efficient operation is not provided, the Contractor shall be responsible for organizing his operations to perform within the restrictions indicated.

1-2.16 Underground Conduit Constructed in Tunnel**1-2.16A General:**

Where required by the Engineer, pipe lines shall be constructed in tunnel. This work will be conducted in accordance with requirements of any permits obtained by the Owner from railroads or state or county highway departments for tunnel work or in accordance with the following paragraphs:

1-2.16B Materials:

Pipe materials shall be shown on the plans or as described in the special provisions.

1-2.16C Excavation and Laying:

Requirements for excavation, laying, and joints shall be those applicable for the type of pipe line involved, unless otherwise specified.

1-2.16D Methods of Construction:

The tunnel shall be only of sufficient width and height to provide free working space. The sides and roof of the tunnel shall be braced sufficiently to support the external loads and to prevent caving, bulging, and settlement of the earth.

The Contractor shall backfill all tunnels with well-compacted sand, fine gravel or stone screenings as rapidly as the conditions permit.

The backfill material shall be deposited in the tunnel in such a manner as not to injure or disturb the pipe. The filling of the tunnel shall be carried on simultaneously on both sides of the pipe in such a manner that injurious side pressures do not occur. Special care shall be taken to compact the backfill under the haunches of the pipe. The remainder of the tunnel, or such portion of the remainder as maybe possible, shall then be backfilled by one (1) of the following methods, at the option of the Contractor, if in the opinion of the Engineer the method is practicable.

a. The material shall be deposited in uniform layers not to exceed twelve (12") thick (loose measure) and such layer either inundated or deposited in water.

b. The tunnel shall be backfilled with loose material or only partly backfilled at a time. If necessary, and settlement secured in either case by introducing water through holes jetted into the material to a point approximately two feet (2') above the top of the pipe.

If neither of the above methods is practicable or can be used for only a portion of the backfill, the remainder of the tunnel shall be completely backfilled with material carefully deposited in layers and each layer compacted by ramming or tamping with tools approved by the Engineer.

When sheeting and bracing have been used, sufficient bracing shall be left across the trench as the backfilling progresses to hold the sides and top firmly in place without caving or settlement before the backfilling has been placed. This bracing may be removed as soon as practicable.

Any depressions which may develop within the area involved in the construction operations due to settlement of the backfilling material shall be filled in a manner meeting the approval of the Engineer.

1-2.16E Use of Casing Pipe:

The Contractor may, subject to the approval of the Engineer, use metal casing pipe as a tunnel liner in place of timber shoring for tunnel sections. The diameter, gauge and type of such pipe, method of placing and method of installing pipe within it shall be subject to the approval of the Engineer. The entire void space between tunnel liners and pipe shall be filled with compacted sand or other approved material if such method of construction is used.

1-2.16F Jacking or Boring of Pipe:

The Contractor may, subject to the approval of the Engineer, use special cast iron or specially designed reinforced concrete pipe jack and/or bored into position with or without tunnel liners, for tunneled sections of pipe. In such cases, all conditions of performance of the work shall be subject to the approval of the Engineer.

1-2.17 Excavation and Foundation:

The trench shall be excavated to an elevation of four inches (4") below the bottom of the pipe and so that the flow line of the finished sewer will be at the depth and grade specified or established by the Engineer.

at least four inches (4") in depth below the pipe, shall be placed the entire width of the trench and for the length of the pipe. The fine aggregate shall meet the approval of the Engineer and shall be compacted to his satisfaction by ramming or tamping with tools approved by the Engineer.

When pipe having bells or hubs is used, cross trenches, not more than two inches (2") wider than the bell or hub, shall be excavated to provide uniform bearing along the length of the pipe.

If the excavation has been made deeper than necessary, the foundation shall be brought to the proper grade by the addition of well compacted bedding material.

Where a firm foundation is not encountered at the grade established, due to soft, spongy, or other unsuitable soil, all such unsuitable soil under the pipe and for the width of the trench shall be removed and replaced with well compacted bedding material.

Where rock, in either ledge or boulder formation, is encountered, it shall be removed below grade and replaced with a cushion of well compacted bedding material having a thickness under the pipe of not less than eight inches (8").

1-2.17A Concrete Cradle

1-2.17A(1) General:

Where sub-grade conditions, in the opinion of the Engineer, warrant extra precautions for the bedding of pipe, the Engineer may require the construction of a concrete cradle to be installed in conformance with the size and dimensions indicated on the plans. All concrete used in concrete cradle shall have a minimum compressive strength of twenty-five hundred (2,500) psi at twenty-eight (28) days.

1-2.18 Backfill:

As soon as the condition of the pipe will permit, the entire width of the trench shall be backfilled, with moist fine aggregate to a height of at least the elevation of the center of the pipe. The fine aggregate shall be placed longitudinally along the pipe. The elevation of the backfill material on each side of the pipe shall be the same. Special care shall be taken to completely fill the space under the pipe. The fine aggregate backfill material shall be placed in four (4") inch layers, loose measurement, and compacted to the satisfaction of the Engineer by ramming or tamping with tools approved by the Engineer. The fine aggregate used for backfilling shall meet the approval of the Engineer.

The remainder of the trench and excavation shall be backfilled to the natural line or finished surface as rapidly as the condition of the sewer will permit. The backfill material shall consist of the excavated material or trench backfill; as herein specified. All backfill material shall be deposited in the trench or excavation in such a manner as not to damage the sewer. The filling of the trench shall be carried on simultaneously on both sides of the pipe in such a manner that injurious side pressures do not occur. The backfill for trenches and excavation made in the sub-grade of the proposed improvement, and for all trenches outside of the sub-grade where the inner edge of the trench is within two (2') feet of the edge of the proposed pavement, curb, gutter, curb and gutter, stabilized shoulder or sidewalk, shall be made with trench backfill material unless the excavated material meets the requirements of Section 211 of the Indiana State Highway Standard Specifications.

All backfill material up to a height of twelve (12") inches above the pipe shall be carefully deposited in uniform layers not exceeding four (4") inches thick (loose measure). The material in each layer shall be firmly compacted by ramming or tamping with tools approved by the Engineer, in such a manner as not to disturb or injure the pipe. The backfilling above this height shall be done by Method 1, 2 or 3 below.

When required, trench backfill material or excavated material meeting the requirements of Section 211 of the Indiana State Highway Specifications above the

below, or in accordance with Method 1 except that the compacted lifts shall not exceed four inches (4") in thickness.

Method 1: The material shall be deposited in uniform layers not exceeding twelve inches (12") thick (loose measure) and each layer shall be compacted by ramming or tamping with tools approved by the Engineer.

Method 2: The material shall be deposited in uniform layers not exceeding twelve inches (12") thick (loose measure), and each layer shall be either inundated or deposited in water.

Method 3: The trench shall be backfilled with loose material and settlement secured by introducing water through holes jetted into the backfill to a point approximately two feet (2') above the top of the pipe. The holes shall be spaced as directed by the Engineer, but shall not be any further than six (6') feet apart.

The water shall be injected at a pressure just sufficient to sink the holes at a moderate rate of speed. The pressure shall be such that the water will not cut cavities in the backfill material nor overflow the surface. If water does overflow the surface, it shall be drained into the jetted holes by means of shallow trenches. Water shall be injected as long as it will be absorbed by the backfill material and until samples taken from test holes in the trench show a satisfactory moisture content. The Contractor shall bore the test holes not more than fifty feet (50') apart and at such other locations in the trench designated by the Engineer. As soon as the water soaking has been completed, all holes shall be filled with soil and compacted by ramming with a tool approved by the Engineer.

Backfill material which has been water soaked shall be allowed to settle and dry for at least ten (10) days before any surface course or pavement is constructed on it. The length of time may be altered if deemed desirable by the Engineer. Where the inner edge of the trench is within two feet (2') of the edge of the proposed pavement, curb, gutter, or curb and gutter, the provisions of this paragraph shall also apply.

2001 S-5

first twelve (12") inches above the pipe shall be compacted by either Method 2 or Method 3 specified

At the end of the settling and drying period, the crusted top of the backfill material shall be scarified and, if necessary, sufficient backfill material added, as specified in Method 1, to complete the backfilling operations.

The method used for backfilling and compacting the backfilling material will be the choice of the Contractor. However, if the method used does not produce results satisfactory to the Engineer, the Contractor will be required to alter or change the method being used so that the resultant backfill will be satisfactory to the Engineer.

Section II: Restoration of Surfaces

2-1 General:

Restoration of surfaces shall include the removal of the existing surface the disposal of surplus material, and the construction of new surfaces as indicated on the plans or special provisions. The type of surface restoration required shall be shown on the plans or described in the special provisions.

2-2 Construction Details

2-2.01 Temporary Surface Over Trench:

Wherever conduits are constructed under traveled roadways, driveways, sidewalks, or other traveled surfaces, a temporary surface shall be placed over the top of the trench as soon as possible after compaction, as specified above, has been satisfactorily completed. The temporary surface shall consist of a minimum of six inches (6") of coarse aggregate conforming to the current specifications of the Indiana State Highway Specifications for Grade No. 53. The top of the temporary surface shall be smooth and meet the grade of the adjacent undisturbed surface. The temporary surface shall be maintained at the Contractor's expense until final restoration of the street surface is completed as specified. No permanent restoration of street surface shall be initiated until authorized by the Engineer.

2001 S-5

2-2.02 Removal of Pavement, Sidewalk, Driveway and Curb:

Wherever the pipe is located along or across an improved surface, the width of the trench shall be held as nearly as possible to the maximum width specified in Section 1-2.03. Where brick or concrete pavement, sidewalk, driveway or curbing is cut, the width of the cut shall exceed the actual width of the top of the trench by twelve inches (12") on each side or a total of two feet (2'). Exposed surfaces of portland cement or asphaltic concrete shall be cut with a pavement saw before breaking. Care shall be taken in cutting to insure that a straight joint is sawed.

2-2.03 Replacement of Permanent Type Pavement, Sidewalks, Driveways, Curbs, Gutters and Structures

2-2.03A General:

The Contractor shall restore (unless otherwise specified or ordered by the Engineer) all permanent type pavements, sidewalks, driveways, curbs, gutters, shrubbery, fences, poles and other property and surface structures removed or disturbed during or as a result of construction operations to a condition which is equal in appearance and quality to the condition that existed before the work began.

2-2.03B Portland Cement Concrete Pavement Surface:

Where the existing pavement surface is portland cement concrete, the pavement replacement shall consist of ten inch (10") portland cement concrete pavement reinforced the same as adjacent pavement. Portland cement concrete shall conform to the applicable provisions of those specifications and shall have a compressive strength of thirty-five hundred pounds (3,500 lbs.) per square inch at twenty-eight (28) days. Construction methods for portland cement concrete pavement shall conform to Section 501 of the current requirements of the Indiana State Highway specifications for portland cement concrete pavement. Pavement joints in the replacement surface shall conform to and match the joints in the adjacent pavement area.

2-2.03C Bituminous Concrete Pavement Surface-Rigid Base:

Where the existing pavement surface is bituminous concrete and the base consists of a rigid material such as brick, portland cement concrete, soil cement, natural cement or a combination of these materials, the base replacement shall consist of eight-inch (8") portland cement concrete base course reinforced as indicated by the Engineer. Portland cement concrete shall conform to applicable provisions of these specifications and shall have a compressive strength of thirty-five hundred (3,500 lbs.) per square inch at twenty-eight (28) days. Construction methods for portland cement concrete base course shall conform to Section 501 of the current requirements of the Indiana State Highway Specifications for portland cement concrete base course. The surface replacement shall consist of a bituminous prime coat and three inch (3") minimum thickness bituminous concrete surface course conforming to Section 403 of the Indiana State Highway specifications for Bituminous Concrete Surface Course.

2-2.03D Bituminous Plant Mix Pavement or Bituminous Treated Surface Flexible Base:

Where the existing pavement is bituminous plant mix material or bituminous surface treatment and the base consists of a flexible material such as gravel or crushed stone, the base replacement shall consist of an eight-inch (8") compacted thickness of material conforming to aggregate materials as described in the Indiana State Highway Specifications.

Placing and compacting of the base course material shall conform to the methods described in the above-referenced specifications for aggregate base course. The surface replacement shall consist of a bituminous prime coat and a bituminous surface plant mix three inches (3") in thickness conforming to the Indiana State Highway Specifications for Bituminous Surface Plant Mix.

2-2.03E Concrete Sidewalks, Driveways, Curb, Curb and Gutter:

When it is necessary to remove and replace concrete sidewalk, driveways, curb and curb and gutter, replacements shall be made as follows:

Concrete sidewalks, driveways, curbs and curbs and gutter shall be replaced with concrete meeting the applicable provisions of these specifications and having a compressive strength of not less than thirty-five hundred (3,500) psi at twenty-eight (28) days. Minimum thickness shall be five inches (5") for sidewalks and seven inches (7") for driveways.

Curb or curb and gutter dimensions and cross-sections shall conform, as nearly as practicable, with the existing installations. Sidewalks shall be finished to match existing adjacent sidewalk surfaces unless otherwise specified or directed by the Engineer. (See Sidewalks, Chapter 5 and Curb and Gutter, Chapter 3, Section 5-2.01).

2-2.03F Brick Sidewalks and Driveways:

Brick sidewalks or driveways shall be replaced with brick, using salvage materials where in good condition. Where shown on the plans, or directed by the Engineer, brick sidewalks or driveways shall be replaced with concrete in accordance with subparagraph above.

2-2.04 Replacing Existing Temporary Street and Alley Surfaces

2-2.04A General:

For the purpose of this specification, all existing street and alley surfaces shall be considered temporary except:

Concrete or brick pavements;

An asphaltic concrete or a bituminous treated surface over a soil cement, concrete, crushed stone or selected gravel base. Specifically included as temporary street surfaces, shall be compacted earth, cinders, shale, mixtures of gravel and earth or crushed stone and earth, whether or not these respective materials are further stabilized by road oil or bituminous surface treatment.

Where, in the opinion of the Engineer, the conduit is located in the traveled portion of the temporary street or alley traveled surface, a new temporary surface shall be constructed over the trench, as specified in 2-2.01 of this Section. After this surface has been placed, it shall be maintained by the Contractor until final restoration is authorized. Just prior to final restoration, the entire width of the street to be restored shall be scarified. For final surface restoration, the Contractor shall apply a bituminous treatment to the entire width of the traveled surface, as ordered by the Engineer. The bituminous treatment shall consist of the application of a bituminous prime coat and a bituminous surface treatment corresponding to the materials and construction methods described in the Indiana State Highway Specifications for bituminous surface treatment.

The Engineer reserves the right to order the omission of BITUMINOUS SURFACE TREATMENT in any locations where such omission may be, in his opinion, in the public interest.

2-2.05 Seeding and Sodding

2-2.05A General:

At locations indicated on the plans or special provisions or where designated by the Engineer, the Contractor shall prepare seed beds, furnish and spread fertilizers and furnish and spread fertilizers and furnish and plant the seed specified herein on disturbed areas.

2-2.05B Material:

Fertilizer shall be standard commercial 10-8-6 or 10-4-6 grade, uniform in composition, free flowing and suitable for application with approved equipment,

2001 S-5

delivered to the site in bags or other convenient containers each fully labeled, conforming to applicable

State laws.

Lime shall be ground limestone containing all of the finer particles obtained in the grinding process and ground sufficiently fine so that not less than eighty percent (80%) will pass through a No. 8 sieve. The calcium carbonate equivalent by the percent of material passing through the No. 8 sieve will be equal to or in excess of 0.72, the moisture content at the time of shipment must not exceed eight percent (8%).

The classes of Seeding Mixture shall be designated on the plans and shall consist of one or more of the classes listed below. Seeding Mixtures from the specified class shall be designated by the Engineer, based on the season of the year when seeding operations are performed. Spring seeding shall begin January 1 and terminate June 30 and Fall seeding shall begin July 1 and terminate December 31.

SEEDING MIXTURES

Seeds to Use	Lbs./Acre	Season
Class I		
Kentucky Bluegrass	50	Spring
Perennial Ryegrass	20	
Redtop or Creeping Red Fescue	10	Fall
Ladino or White Dutch Clover	5	
Kentucky Bluegrass	50	
Perennial Ryegrass	20	
Redtop or Creeping Red Fescue	10	
Oats, Spring	48	Spring or Fall
Kentucky Bluegrass	70	
Redtop or Creeping Red Fescue	20	
Class II		
Kentucky 31 or Alto Fescue	50	Spring
Perennial Ryegrass	20	
Redtop or Creeping Red Fescue	10	

Seeds to Use	Lbs./Acre	Season
Ladino or White Dutch Clover	5	
Kentucky 31 or Alto Fescue	50	Spring
Perennial Ryegrass	20	
Redtop or Creeping Red Fescue	10	
Oats, Spring	48	
Class III		
Crown Vetch	20	Spring
Perennial Ryegrass	10	
Lespedeza, Ladino, Alfalfa or White Dutch Clover*	5	
Crown Vetch	20	Fall
Winter Vetch	40	

* Lespedeza shall not be sown north of US. 136

The percent purity, germination and weed content shall meet the requirements as set forth in the Indiana State Highway Specifications.

2-2.05C Preparation of Seed Bed:

After the areas to be seeded have been brought to the proper grades and cleared of all stones, boulders and debris, the areas shall be thoroughly tilled to a depth of at least three inches (3") by discing, harrowing or other approved methods acceptable to the Engineer. The incorporation of fertilizer may be a part of the tillage operation specified above.

Fertilizer shall be distributed uniformly at the rate of four hundred pounds (400 lbs.) per acre, over the area indicated to be fertilized, and shall be incorporated into the soil to a depth of at least three inches (3") by discing, harrowing, or other approved methods acceptable to the Engineer. The incorporation of fertilizer may be a part of the tillage operation specified above.

2001 S-5

Lime shall be distributed uniformly on all areas to be

fertilized at the rate of one (1) ton to one (1) acre, and shall be incorporated in the soil to a depth of at least three inches (3") by discing, harrowing, or by other methods acceptable to the Engineer, immediately following or simultaneously with the incorporation of the fertilizing.

2.05D Seeding Methods:

No seed shall be sown during high winds or when the ground is not in a proper condition for seeding, nor shall any seed be sown until the purity test has been completed for the seed to be used, and shows that the seed meets the noxious weed seed requirements. Equipment shall be operated in a manner to insure complete coverage of the entire area to be seeded. When seed or fertilizer is applied with a hydraulic seeder, the rate of application shall be not less than one thousand (1,000) gallons of slurry per acre. This slurry shall contain the proper quantity of seed or fertilizer specified per acre. When using a hydraulic seeder, the fertilizer nutrients and seed shall be applied in two (2) separate operations.

Within twelve (12) hours, all seed areas shall be rolled at right angles to the run-off with an approved type roller or cultipacker to compact the seedbed and place the seed in contact with the soil. On areas seeded with a hydraulic seeder, rolling shall not be required.

The optimum depth for seeding shall be one-quarter inch (1/4").

All legumes (clover, vetch, lespedeza, and alfalfa) shall be inoculated with the proper bacteria in the amounts and manner recommended by the manufacturer of the inoculant before sowing or being mixed with other seeds for sowing. The inoculation shall be furnished by the Contractor and shall be approved by the Engineer. The seed shall be sown, as soon as possible, after inoculation and seed that has been standing more than five (5) hours after inoculation shall be reinoculated before sowing. If legumes are applied by hydro seeder, three (3) times the normal amount of inoculation shall be used. The Contractor shall furnish the inoculant and the cost of furnishing it shall be included in the contract unit price per acre for seeding of the class specified.

2-2.05E Replacement of Sodded Areas:

At locations specified, or shown on the plans, or designated by the Engineer, the Contractor shall remove and carefully store the sod. Upon compaction of the trench in a manner satisfactory to the Engineer, the sod shall be replaced in a neat, workmanlike manner, over a minimum of two inches (2") of topsoil. Any deficiency in sod, necessary to restore the surface to a condition equal or better to that, which existed before construction operations began, will require new sodding to be performed by the Contractor. The Contractor shall maintain sodded areas until certification of completion by the Engineer.

2-2.06 Disposal of Surplus Excavated Material:

Surplus excavated soil, not needed for backfill shall be promptly removed from the site and transported to the Munster Landfill or other approved location.

2-2.07 Cleaning Up:

All surplus materials and all tools and temporary structures shall be removed from the site by the Contractor. The construction site shall be left clean and acceptable to the Engineers at the earliest possible date.

2-2.08 Streets:

All debris, sand, earth, resulting from evacuation, restoration or equipment transportation shall be promptly and thoroughly cleaned from streets, easements, alleys, curbs, driveways, gutters, and sidewalks to the satisfaction of the Engineer, within twenty (20) hours after notice. If such cleaning is not satisfactorily performed in a timely fashion, the Town shall clean the debris, and charge the Contractor accordingly.

Section III: Finishing and Clean-Up for Underground Conduits**3-1 Clean-up:**

Before acceptance of underground conduit construction, all pipes, manholes, catch basins, fire hydrants, and other appurtenances shall be cleaned of all debris and foreign material.

After all backfill has been completed, the ground surface shall be shaped to conform to the contour of adjacent surfaces. General clean up of the entire construction area shall otherwise conform to applicable requirements specified.

CHAPTER 111: COMMERCIAL BUILDINGS; WINDOW COVERING REQUIREMENTS

Section

than 30 days.

- 111.01 Purpose
- 111.02 Definitions
- 111.03 Window coverings required
- 111.04 Enforcement procedure

WINDOW. An opening in the exterior wall of

§ 111.01 PURPOSE.

The purpose of this chapter is to establish a requirement for interior window covering for windows located in the exterior walls of unoccupied commercial buildings within the town. The purpose of this requirement is to protect and promote the public welfare, health and safety of persons within the town and to aid in the development and promotion of business and commerce by providing window covering regulations for unoccupied commercial buildings to eliminate the appearance of vacancy in an effort to reduce vandalism and to improve the overall appearance of economic stability and commercial viability.

('80 Code, § 9.24.010) (Ord. 1987-24, passed 12-14-87)

§ 111.02 DEFINITIONS.

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

UNOCCUPIED COMMERCIAL BUILDING. Any structure within the town limits located on property which is zoned Downtown Business District (D-1), Neighborhood Business District (B-1) or Community Business District (B-2) which is vacant, empty, unoccupied or otherwise not maintained as an active business or other commercial enterprise for a period of more

a commercial building which is covered or enclosed with a transparent material and through which the interior portion of the building may be seen from the exterior of the building.

WINDOW COVERING. Curtains, shades, blinds or other similar coverings but shall not include the following:

(1) Taping or otherwise applying paper, paint, or other similar material directly to the windowpane; or

(2) Taping, stapling, nailing or otherwise affixing plywood, cardboard, cloth sheets, boards or other materials to the inside or outside of the building's exterior walls.

('80 Code, § 9.24.020) (Ord. 1987-24, passed 12-14-87)

§ 111.03 WINDOW COVERINGS REQUIRED.

The owner, or agent thereof, of any unoccupied commercial building shall maintain and/or install interior window coverings for any window located in the exterior walls of the building.

('80 Code, § 9.24.030) (Ord. 1987-24, passed 12-14-87)

§ 111.04 ENFORCEMENT PROCEDURE.

Written notice of a violation of this provision shall be served on the owner of the unoccupied commercial building at the last known address of record as established by the County Auditor's Office. If the violation has not been cured within ten days after receipt of the notice, then the general penalty provisions contained in § 10.99 of this code of ordinances shall apply.

('80 Code, § 9.24.040) (Ord. 1987-24, passed 12-14-87) Penalty, see § 10.99

CHAPTER 112: TAXICABS

Section

limits of the town to destinations designated by the passengers, and not on regular routes.

General Provisions

- 112.01 Definitions
- 112.02 Taxicab operators; specifications
- 112.03 Number of passengers restricted

Licensing

- 112.15 License required
- 112.16 License application; contents
- 112.17 License fee
- 112.18 License fees nonrefundable
- 112.19 Safety inspection required
- 112.20 Liability insurance required
- 112.21 Approval of license by Town Council
- 112.22 Transfer of license
- 112.23 Revocation or suspension of license

GENERAL PROVISIONS

§ 112.01 DEFINITIONS.

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

LICENSE. A document issued by the town, authorizing the holder thereof to operate a taxicab business within the town.

PERSON. Any individual, corporation, partnership, unincorporated association, or any other legal entity.

TAXICAB. Any motor vehicle used for carrying passengers for hire within the corporate

TAXICAB SERVICE. The business or occupation of operating taxicabs and furnishing taxicab service to the public.
(’80 Code, § 5.24.010) (Ord. 7-1978, passed - -78)

**§ 112.02 TAXICAB OPERATORS;
SPECIFICATIONS.**

A person shall not operate a taxicab for hire upon the streets of the town, and a person who owns or controls a taxicab or taxicab service shall not permit it to be so driven, unless the operator of the taxicab shall be 18 years of age, of good moral characters a careful and efficient driver and the holder of a public passenger chauffeur's license issued by the state.
(’80 Code, § 5.24.020 A.) (Ord. 7-1978, passed - -78) Penalty, see § 10.99

**§ 112.03 NUMBER OF PASSENGERS
RESTRICTED.**

A taxicab operator shall not permit more persons to be carried in a taxicab as passengers than the rated seating capacity of the taxicab as stated in the certificate for said vehicle issued by the Town Police Department. A child in arms shall not be counted as a passenger.
(’80 Code, § 5.24.020 B.) (Ord. 7-1978, passed - -78) Penalty, see § 10.99

LICENSING

§ 112.15 LICENSE REQUIRED.

A person shall not engage in the business or occupation of operating a taxicab service or to operate or cause to operate any taxicab on or along any of the

avenues, streets, or alleys within the corporate limits of the town, until such person shall have first obtained a license approved by the Town Council from the town signed by the Clerk-Treasurer to so engage in the business or occupation of operating a taxicab service and to so operate such taxicabs and shall have paid fees as provided for hereinafter.

('80 Code, § 5.24.020 A.) (Ord. 7-1978, passed - -78) Penalty, see § 10.99

a license.

(I) Such further information as the town may

§ 112.16 LICENSE APPLICATION; CONTENTS.

An application for a license to operate a taxicab or taxicab service shall be filed with the Clerk-Treasurer and shall be verified and shall furnish the following information:

(A) Name and address of the applicant.

(B) Names and addresses of all owners and operators of each vehicle for which the applicant is applying for a license.

(C) The business name under which the taxicab or taxicab service will be doing business.

(D) Automobile license number, serial number, vehicle identification number, description, make and model of each vehicle for which the applicant is applying for a license.

(E) Description or identification of a color scheme or insignia to be used to designate the vehicle or vehicles of the applicant.

(F) Location of all proposed depots and/or terminals.

(G) The experience of the applicant in the transportation of passengers.

(H) List of facts and/or reasons which the applicant believes tend to prove that public convenience and necessity require the granting of

require by its rules and regulations.
(’80 Code, § 5.24.020 B.) (Ord. 7-1978,
passed - -78)

§ 112.17 LICENSE FEE.

The initial or qualifying license fee for each person filing an application to operate a taxicab or taxicab service within the town shall be an amount set by Council. Additionally, a vehicle fee in an amount set by Council for each taxicab operated by the person for each calendar year, or part thereof, which shall be due and payable in advance on or before the first business day of each calendar year.
(’80 Code, § 5.24.020 C.) (Ord. 7-1978,
passed - -78) Penalty, see § 10.99

**§ 112.18 LICENSE FEES
NONREFUNDABLE.**

No refund shall be allowed for either the denial of an application nor for any unexpired part of any license fee for the operation of taxicab or taxicab service.
(’80 Code, § 5.24.020 D.) (Ord. 7-1978,
passed - -78) Penalty, see § 10.99

§ 112.19 SAFETY INSPECTION REQUIRED.

Prior to the issuance of a license for the operation of a taxicab or a taxicab service, each vehicle which is sought to be registered for use as a taxicab shall be thoroughly examined and inspected by the Police Department to determine if a vehicle is in safe operating condition. The town may promulgate reasonable rules and regulations governing the cleanliness, condition and maintenance of such vehicles and the periodic inspection thereof. When the Police Department finds that a vehicle has met the standards established by the town the Department shall issue a certificate to that effect which shall also state the authorized seating capacity of the vehicle.
(’80 Code, § 5.24.020 E.) (Ord. 7-1978,
passed - -78)

**§ 112.20 LIABILITY INSURANCE
REQUIRED.**

('80 Code, § 5.24.020 G.) (Ord. 7-1978,
passed - -78)

A license shall not be issued or renewed unless the applicant has, in full force and effect, liability insurance coverage for each vehicle authorized and comprehensive general liability insurance in the amount of \$100,000 for bodily injury to any one person and \$300,000 for injuries to more than one person which are sustained in the same accident; and \$50,000 for property damage resulting in any one accident. The amounts for liability insurance are available for public inspection at the town offices during normal business hours. The insurance shall issue to the benefit of any person injured or who shall sustain damage to property proximately caused by the negligence of the applicant, his servants or agents. The liability insurance shall be written by a responsible insurance company authorized to do business in the state, and a current certificate of insurance shall be filed with the initial application and with each renewal thereof.

('80 Code, § 5.24.020 F.) (Ord. 7-1978,
passed - -78) Penalty, see § 10.99

Cross-reference:

Fee schedule, see § 11.101

**§ 112.21 APPROVAL OF LICENSE BY
TOWN
COUNCIL.**

After an application has been filed with the Clerk-Treasurer requesting a license for the operation of a taxicab or taxicab service, complete with certificates of inspection on each vehicle for which such license is applied for, along with the certificate of liability of insurance coverage, then such application shall be submitted to the Town Council for a determination of whether or not a license should be issued. To the extent the application involves the construction or development of taxicab depots or terminals or the reservation of specified parking spaces, the Town Council may request that the proposed development be reviewed by the Plan Commission.

§ 112.22 TRANSFER OF LICENSE.

A license issued by the town shall not be sold, assigned, mortgaged or otherwise transferred without the written consent of the town.

('80 Code, § 5.24.020 H.) (Ord. 7-1978, passed - -78)

§ 112.23 REVOCATION OR SUSPENSION OF LICENSE.

(A) A certificate issued by the town may be revoked or suspended by the town if the holder thereof has:

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

(2) Discontinued operation for more than 90 days.

(3) Violated any provision of this code or any other ordinance of the town or the laws of the state or the laws of the United States, the violation of which reflect unfavorably on the fitness of the holder to offer public transportation.

(B) Prior to revocation or suspension, the holder shall be given ten days notice of the proposed action to be taken and shall have the opportunity to be present and be heard.

('80 Code, § 5.24.020 I.) (Ord. 7-1978, passed - -78)

CHAPTER 113: TRANSIENT MERCHANTS

Section	of services being sold or offered.
113.01	Purpose
113.02	Definitions
113.03	Exempt persons
113.04	Waiver
113.05	License requirement
113.06	Application: contents
113.07	Fees required
113.08	Expiration of license
113.09	Issuance
113.10	License
113.11	Restrictions
113.12	Regulations
113.13	Records
113.14	Hours of solicitation
113.15	Street vending
113.16	Loud noises and speaking devices
113.99	Penalty

§ 113.01 PURPOSE.

This chapter is enacted for the purpose of regulating all transient vendors or itinerant merchants, commercial solicitors, peddlers and hawkers by requiring licenses to engage in such activity in order to prevent fraud, crime, undue annoyance and harassment and to protect the privacy, safety, health and welfare of the citizens of the town.

§ 113.02 DEFINITIONS.

PARENT ORGANIZATION. The person, firm, corporation, proprietorship or partnership that the vendor is representing and/or is employed by. This definition includes the principal manufacturer and distributor of goods and the primary supplier

TRANSIENT VENDOR or ***ITINERANT MERCHANT***. Any person traveling by foot, wagon, automobile or other type of conveyance within the town, from place to place, residence to residence, or street to street for the sale of goods, wares, personal property or other merchandise or services for immediate or future delivery whether or not such vendor carries or presents such samples for sale.

§ 113.03 EXEMPT PERSONS.

(A) Members of religious or church organizations or not-for-profit organizations are exempt from this chapter provided that they are pursuing legitimate religious activities and provided that such activities are conducted in an orderly manner without annoyance or harassment to the persons solicited.

(B) Parochial, private or public school children attending school within the town, or members of a fraternal or veterans' organization or a not-for-profit organization, so long as that organization operates a chapter, post, lodge, camp or local organization within the town. Individuals under this division are exempt from this chapter only to the extent that they vend or solicit in conjunction with an authorized activity of the organization of which they are members or the schools they attend.

§ 113.04 WAIVER.

The Chief of Police, upon written request and adequate proof that the transient vendor or itinerant merchant is involved in a charity or a charitable-type business operation, may waive requirements of this chapter or any portion thereof. Parties aggrieved by the failure of the Chief of Police to so waive must appeal the decision of the Chief of Police pursuant to §113.09(D) of this chapter.

§ 113.05 LICENSE REQUIREMENT.

It is unlawful for any person within the jurisdiction of this chapter to act as a peddler, vendor or solicitor as defined herein, without first obtaining a license therefore from the town Clerk-Treasurer.

Penalty, see § 113.99

to operate or conduct activities proposed by the applicant must be attached to the application.

(5) *Description of goods.* The applicant shall provide a description of the merchandise or services offered for sale.

§ 113.06 APPLICATION: CONTENTS.

(A) An application for vending or soliciting may be obtained from the town Clerk-Treasurer and upon completion, be submitted to the town Clerk-Treasurer with the appropriate processing fee. The application for an itinerant merchant's license shall include the following information:

(1) *Personal information.* Personal information shall be provided by the applicant including date of birth, driver's license number, state identification or military identification, a copy of the individual's birth certificate, permanent and local address and telephone number, and a physical description including height, weight, color of hair and eyes.

(2) *Parent organization.* The name(s) of the corporation(s), firm(s), or person(s) which the applicant proposes to represent and the name(s) of the person(s) managing or supervising the solicitors; the local and permanent addresses of the aforementioned person(s); and the telephone numbers at which such person(s) can be reached. Where and when the parent organization was established or incorporated shall also be included.

(3) *Authorizations.* The applicant must supply credentials from the parent organization for which the applicant proposes to do business, authorizing the applicant to act as such representative.

(4) *Other required licenses.* Copies of any state or county licenses which are also required

(6) *Previous restraints.* The applicant shall provide information as to whether the parent organization or the solicitor/itinerant merchant has ever been enjoined from soliciting.

(7) *Convictions.* The applicant shall provide information as to whether the solicitor or parent organization named in the application has been convicted of a crime, misdemeanor or violation of any municipal ordinance involving moral turpitude (an example of such crimes being theft, burglary, robbery, fraud, deceit, or any crime of violence) and, if so, a brief description.

(8) *Other solicitors.* The applicant shall list the names and identification information of all individuals who will be working for the applicant within the area. The identification information for these individuals shall include names, local and permanent addresses and phone numbers and a physical description including height, weight, hair and eye colors. Each of the individuals listed in this section are required to obtain a license application and submit it along with the application processing fee subject to investigation and approval or denial.

(9) *Photograph.* A photograph of the applicant who will sell or solicit is required and must have been taken within 60 days immediately prior to the date of the filing of the application, which picture shall be 2" x 2" showing the head and shoulders of the applicant in a clear and distinguishing manner.

(10) *Disclaimer.* The applicant shall sign a disclaimer of town liability relating to any action caused or charged against the applicant.

(B) All individuals soliciting or selling door-to-door or business-to-business must fill out applications for their individual license. The same application information as above must be completed and returned to the town Clerk-Treasurer whereupon an investigation of the individual will occur. A decision will be rendered in relation to the information provided on the individual's application. However, no permit shall be issued until a processing period of five working days has elapsed.

§ 113.07 FEES REQUIRED.

(A) *Application fee.* At the time of filing the application, each individual applicant who will be soliciting shall pay a nonrefundable application fee of \$15 to the town Clerk-Treasurer to cover costs in the administration of this chapter. The application fee must be paid with cash or certified funds. The fees are available for public inspection at the town offices during normal business hours.

(B) *License fee.* If the Chief of Police or his designee, after investigating the application, grants a license, each individual applicant who will be soliciting shall then obtain a license from the town Clerk-Treasurer. Each applicant must pay the fee at the time the license is issued. The license fee must be paid with cash or certified funds.

(C) The fees for the above-stated license shall be as follows:

per year	\$200
every 6 months	120
per month	
50	
per day	25

Cross-reference:

Fee schedule, see § 11.102

§ 113.08 EXPIRATION OF LICENSE.

All licenses hereunder shall expire in accordance with the above license fee schedule.

§ 113.09 ISSUANCE.

(A) If as a result of the investigation of the individual's application, the applicant's character and business responsibility are found to be unsatisfactory by the Chief of Police or his designee, the application shall be denied and a license shall not be issued. If as a result of the investigation, the applicant's character and business

reputation appear to be satisfactory, the Chief of Police shall allow the town Clerk-Treasurer to issue the requested permit.

(B) A license shall not be issued to any applicant where any of the following has been determined during the initial investigation and review of the application:

by the town of the purpose or products involved or of the

(1) The applicant has been convicted of a crime.

(2) The applicant has any previous history relating to the manner in which the applicant made door-to-door sales which resulted in a violation of law.

(3) The applicant has provided false information on the application form.

(4) The applicant has failed to comply with any condition, standard or requirement of this chapter or any town, county or state regulation.

(C) If an applicant is denied a permit, written notice of denial and the reasons therefore upon request shall be given to the applicant when such individual returns to the town Clerk-Treasurer's office seeking the decision regarding the application.

(D) The Chief of Police shall have the authority to approve or deny any application for a license to be issued under this chapter. Any application which is denied by the Chief of Police may be appealed to the Town Council. The Council may accept or reject the decision of the Police Department. All appeals must be made by submitting a formal request of an appeal to the town Clerk-Treasurer, together with a nonrefundable processing fee. The nonrefundable processing fee is \$50.

Cross-reference:

Fee schedule, see § 11.102

§ 113.10 LICENSE.

The license shall bear the number of the license, the date it is issued, the name and address of the parent organization, if any, and the name, address and photograph of the itinerant merchant, the expiration date of said permit and a statement that the license does not constitute an endorsement

persons or of the parent organization conducting the solicitation. All licenses shall be signed by the town Clerk-Treasurer.

§ 113.11 RESTRICTIONS.

(A) *Carrying license.* While carrying on solicitations, an itinerant merchant shall display the license issued under this chapter so that it shall be visible to any person dealing with the itinerant merchant.

(B) *Nontransferable.* Any license issued under this chapter shall be nontransferable and may not be given to any other individual for the purpose of soliciting.

(C) *Misrepresentation of endorsement by town.* No person shall represent that a granting of a license under this chapter is an endorsement by the town and any such representation is hereby declared to be a misrepresentation of fact, a violation of this chapter and subject to revocation of the license.

(D) *Revocation.* Licenses issued under this chapter may be revoked by the town Clerk-Treasurer, after notice and hearing for any of the following causes:

(1) Fraud, misrepresentation or any false statement made in the course of carrying on business as an itinerant merchant.

(2) Fraud, misrepresentation or false statement contained in the application for a license.

(3) Any violation of this chapter.

(4) Conviction of any felony, crime or misdemeanor.

(5) Conducting the business of an itinerant merchant in an unlawful manner or in such a manner as to constitute a menace to the health, safety or general welfare of the public.

(E) *Notice.* Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five days prior to the date set for hearing.

Penalty, see § 113.99

§ 113.12 REGULATIONS.

(A) *Change of information.* Once a license has been issued, an itinerant merchant must report any material changes of information previously provided in the application to the town Clerk-Treasurer within seven calendar days.

(B) *Asked to leave.* No itinerant merchant may remain on private property after the lawful occupant of the premises directs the merchant to leave the premises.

(C) *No interference.* An itinerant merchant shall not, without permission, accost, interfere with or touch any member of the public in any manner, nor shall such merchant interfere with traffic.

(D) *No endorsement by the town.* A license under this chapter shall not be used or represented in any manner as an endorsement by the town, or by any department, officer or employee thereof

(E) *Misrepresentation.* No fraudulent or misleading representations to any person shall be made in connection with any sale or solicitation, including but not limited to, any misleading representation concerning the true product or service involved, the name of the itinerant merchant, the trade name and the nature of the parent organization.

(F) *No solicitation.* Unless invited by the lawful occupant, an itinerant merchant may not sell or solicit door-to-door where “No Solicitors,” “No Trespassing,” or other similar notice is posted. Penalty, see § 113.99

1996 Repl.

§ 113.13 RECORDS.

established within any building for a period of time exceeding 30 days.

(A) The town Clerk-Treasurer shall keep a record of the application, the determination thereon and of all licenses issued pursuant to this chapter. The record shall contain the name and residence of the individual licensee and the amount of licenses that have been revoked.

(B) The town Clerk-Treasurer shall submit a copy of such record to the Chief of Police.

(C) When an itinerant merchant obtains a conviction for violating this chapter, the Chief of Police shall report such to the town Clerk-Treasurer and the town Clerk-Treasurer shall maintain a record for each permit issued and reports of violations.

§ 113.14 HOURS OF SOLICITATION.

Itinerant merchants may operate only from 9:00 a.m. until sunset, Monday through Saturday. Penalty, see § 113.99

§ 113.15 STREET VENDING.

If the business of the applicant is to be carried on by selling goods, wares and merchandise on or from a town sidewalk, the following provisions shall be complied with in addition to the other provisions contained in this chapter:

(A) No more than one transient vendor or itinerant merchant shall occupy each side of a town block.

(B) No transient vendor or itinerant merchant shall offer for sale his or her goods, wares and merchandise wherein 70% of such products is in direct competition with a permanent business within 100 feet of the location wherein said product is being offered for sale or display. For purposes of this chapter, **PERMANENT BUSINESS** shall mean a business which is

(C) There shall be a five foot setback from the curb of a street wherein no merchandise, goods or wares shall be displayed or sold or within which no transient vendor or itinerant merchant may stand or sell such goods, wares or merchandise.

(D) There shall be an unobstructed corner, which is a triangular area on each corner where two town streets intersect wherein no wares or merchandise shall be sold or displayed. For purposes of this chapter, **UNOBSTRUCTED CORNER** shall mean a triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines when extended.

(E) Street vendors must provide receptacles for waste disposal and shall not obstruct storefronts or entrances thereto.

Penalty, see § 113.99

§ 113.16 LOUD NOISES AND SPEAKING DEVICES.

No transient vendor or itinerant merchant under this chapter nor anyone in his or her behalf shall shout, make any outcry, blow a horn, ring a bell or use any other sound device including, but not limited to, any loud speaking radio or amplifying system upon any of the streets, alleys, parks or other public places of the town or upon any private premises in said town where sound of sufficient volume is emitted or produced therefrom capable of being plainly heard on the streets, avenues, alleys or parks, or at other public places, for the purposes of attracting attention to any goods, wares or merchandise which the transient vendor or itinerant merchant purposes to sell.

Penalty, see § 113.99

§ 113.99 PENALTY.

(A) All violations of this chapter shall be misdemeanors and upon conviction thereof shall be

1996 Repl.

punishable by a fine of not more than an amount set by Town Council and subject to amendment by Council from time to time. The current penalty rate is available for public inspection at the town offices during normal business hours.

(B) If the itinerant merchant is convicted and fails to pay the fine, the right to solicit or sell merchandise or services door-to-door will automatically terminate.

1996 Repl.