

Title 5BUSINESS LICENSES AND REGULATIONSChapters:

- 5.04      Liquor License Fees  
5.08      Cable Television Franchise

Chapter 5.04LIQUOR LICENSE FEESSections:

- 5.04.010 Retail liquor license fee.  
5.04.020 Resort liquor license fee.  
5.04.030 Restaurant liquor license fee.  
5.04.040 Effective date and proration.

5.04.010 Retail liquor license fee. Every person holding a retail liquor license shall pay annually in advance to the town of Hanna the sum of seven hundred fifty dollars. (Ord. 200, 1986; Ord. 150 §1, 1982)

5.04.020 Resort liquor license fee. Every person holding a resort liquor license pursuant to §12-4-401, W.S.1981 shall pay annually to the town of Hanna the sum of one thousand dollars. (Ord. 150 §2, 1982)

5.04.030 Restaurant liquor license fee. Every person holding a restaurant liquor license pursuant to §12-4-407, W.S.1981 shall pay annually in advance to the town of Hanna the sum of one thousand dollars. (Ord. 150 §3, 1982)

5.04.040 Effective date and proration. The fees set forth in this ordinance shall be effective from and after the first day of July, 1982. License holders renewing after that date shall be entitled to a credit against the next annual or prorated fee due to the town of Hanna for the excess annual fee last paid, prorated to July 1, 1982. (Ord. 150 §4, 1982)

Title 5

BUSINESS LICENSES AND REGULATIONS

Chapters:

- 5.04      Liquor License Fees
- 5.08      Cable Television Franchise

Chapter 5.04

LIQUOR LICENSE FEES

Sections:

I. DEFINITIONS AND GENERAL PROVISIONS

- 5.04.010. Definitions.
- 5.04.011. Compliance Required.

II. LICENSE APPLICATION

- 5.04.020. Application for Annual License.
- 5.04.021. Restrictions Upon Applicants and License.
- 5.04.022. Grounds for Denial of License.
- 5.04.023. Transfer of Annual License.
- 5.04.024. Term of Annual Licenses.

III. LICENSES AND PERMITS

- 5.04.030. Annual Licenses.
- 5.04.031. Temporary Licenses or Permits.

IV. RESTRICTIONS

- 5.04.040. Hours of Operation.
- 5.04.041. Drive-In Facilities.

V. VIOLATIONS

- 5.04.050. Falsification of Application.
- 5.04.051. Public Consumption or Possession: "Open Container Ordinance".
- 5.04.052. Bottle Clubs.
- 5.04.053. Excessive Drinking.

- 5.04.054. Possession by Underage Persons.
- 5.04.055. Sales to Underage Persons.
- 5.04.056. Use of False Proof of Age and Identity.
- 5.04.057. Dispensing Rooms Restrictions.
- 5.04.058. Suspension of License or Permit.
- 5.04.059. Delivery of Alcoholic and Malt Beverages.

## **I. Definitions and General Provisions**

### Section 5.04.010. Definitions.

- A. Except as otherwise noted below, the definitions used in this ordinance shall be the same as those provided in W. S. § 12-1-101, as amended from time to time;
- B. "Clerk" shall mean the Town Clerk of the Town of Hanna, Wyoming.
- C. "Governing body" and "licensing authority" shall mean the mayor and council of the Town of Hanna, Wyoming.

### Section 5.04.011. Compliance Required.

- A. For the protection of the health, safety and welfare of the citizens of the Town of Hanna, it is hereby declared that the sale, distribution, possession and traffic of alcoholic liquor and malt beverages shall be regulated to the extent that all such activity may be, and the same hereby is, prohibited, except as provided in this ordinance. No sale at retail or possession of such substances shall occur within the jurisdictional limits of the Town except as authorized by this ordinance and the exceptions provided in W. S. § 12-1-101, et seq., reserving, certain powers to the State of Wyoming. It is the intent of this ordinance to comply and coincide with the provisions of W. S. § 12-1-101, et seq., which regulate such substances.
- B. It is not the intent of the Town to regulate, or interfere with the regulation by the State of Wyoming, of limited transportation licenses issued in compliance with provisions of W. S. § 12-2-202. However, nothing in this ordinance shall be construed to limit or impair the authority of the Town to enforce Section 5.04.051, which is commonly known as the "Open container Ordinance."

## **II. License Application**

### Section 5.04.020. Application for Annual License.

- A. Any person desiring an annual license as authorized by this ordinance shall make application to the Town of Hanna by delivering to the Town Clerk, on the form prepared by the Attorney General pursuant to W. S. § 12-4-701 and provided to the

applicant by the Town Clerk, a completed, verified and signed application form. The license fee, or any other fees or costs related to a license, including the publication costs, shall be paid to the Town Clerk at the time the application is filed in cash or certified funds. The Town Clerk shall not commence processing the application until such time as the license fee and any other fees or costs are paid. Renewal of an annual license, application for transfer of ownership and transfer of location shall be made upon the same form and in the same manner as the annual license. The information contained in the application form shall conform to the requirements of W. S. § 12-4-102. All fees and related costs may be deposited into the General Fund of the Town. However, deposit of the funds shall not be and is not a tacit or implied approval of the license application. In the event the license is not approved, the fees deposited with the Town of Hanna will be refunded, excluding the publication costs.

- B. Upon receipt of an application, the Town Clerk shall transmit one copy of the application to the Department of Revenue by certified mail, return receipt requested, and shall promptly prepare a notice of application, place a copy of the notice in a conspicuous place at the location shown in the application and publish the notice in the designated legal newspaper for the Town of Hanna once a week for four (4) consecutive weeks. The notice shall comply with the provisions of W. S. § 12-4-104.
- C. On behalf of the licensing authority, the Town Clerk is authorized to request supporting or clarifying documentation in conjunction with any application filed for a license or permit. Prior to issuance, review and inspection of the proposed licensed premises may be conducted by various Town department representatives as required by the Town Clerk. Representatives of the Town departments may enter licensed and permitted premises during regular business hours to make reasonable inspections.

Section 5.04.021. Restrictions Upon Applicants and License.

- A. Except as provided in subsection B., all permit and license recipients must post the license or permit in a conspicuous place within the licensed dispensing room described in the application.
- B. Any license issued pursuant to W. S. § 12-4-103(a)(iv) shall be held by the Town Clerk in the Town Clerk's office, or other location as designated by the Town Clerk, until the license can be placed in a physically functional building.<sup>1</sup>

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<sup>1</sup>An applicant is granted up to two (2) years to build a structure, plus the governing body may add a third year upon showing of good cause from the licensee. [W. S. § 12-4-103(a)(iv)]

Section 5.04.022. Grounds for Denial of License.

A license shall not be issued, renewed or transferred if the governing body finds from evidence presented at the hearing required under W. S. § 12-4-104 any of the conditions exist which are set forth in W. S. § 12-4-104(b). The holder of an expired annual license, or one due for expiration, has a preference right to a renewal of that license for the same location, but such preference exists only to the extent explicitly authorized under W. S. § 12-4-104(c). No other preference rights are authorized or recognized by the Town of Hanna. The preference right granted under this section shall expire thirty (30) days after the expiration date shown on the most recently issued license or permit.

Section 5.04.023. Transfer of Annual License.

A person seeking to transfer the ownership of an annual license or transfer the license location shall submit a new application form and shall pay to the Town Clerk at the time of such application a non-refundable additional license fee of one hundred dollars (\$100.00) for the remaining term of the license, together with an amount sufficient to cover the costs of publishing notice. The transfer application shall be set for public hearing and otherwise considered by the governing body in a manner consistent with W. S. § 12-4-601.

Section 5.04.024. Term of Annual Licenses.

- A. Annual licenses shall be for a period of one (1) year unless sooner revoked, expiring on July 1 of each year. Annual licenses shall be a personal privilege of the licensee. A
- B. The executor or administrator of the estate of a deceased licensee, when the estate consists in whole or in part of an annual license issued by the Town of Hanna, may exercise the privilege of the deceased licensee under the terms of the license until the expiration date of the license. The license may be renewed by the executor or administrator of the estate, so long as all statutory requirements have been satisfied. T

**III. Licenses and Permits**

Section 5.04.030. Annual Licenses.

- A. The governing body of the Town of Hanna is authorized to issue the following annual licenses pursuant to state law and this ordinance.
  - 1. Retail Liquor License, as defined in W. S. § 12-4-201.
  - 2. Limited Retail Liquor (Special Club) License, as defined in W. S. § 12-4-301.
  - 3. Resort Retail Liquor License, as defined in W. S. § 12-4-401.
  - 4. Restaurant Liquor License, as defined in W. S. § 12-4-407.
  - 5. Microbrewery Permit, as defined in W. S. § 12-4-412.3.

6. Winery Permit, as defined in W. S. § 12-4-412.
  7. Special Malt Beverage Permit for Public Auditoriums, as defined in W. S. §12-4-504.
  8. Motel/Hotel Minibar License, as defined in W.S. § 12-5-201(e).
- B. The annual fee for each license shall be payable at the time of application, shall be paid in cash or certified check, and shall be in the full amount as shown for each class of license below:
1. For a Retail Liquor License, the annual fee shall be Seven Hundred Fifty Dollars (\$750.00).
  2. For a Limited Retail Liquor (Special Club) License, the annual fee shall be Seven Hundred Fifty Dollars (\$750.00).
  3. For a Resort Retail Liquor License, the annual fee shall be Seven Hundred Fifty Dollars (\$750.00).
  4. For a Restaurant Liquor License, the annual fee shall be Seven Hundred Fifty Dollars (\$750.00).
  5. For a Microbrewery Permit, the annual fee shall be Five Hundred Dollars (\$500.00).
  6. For a Winery Permit, the annual fee shall be Five Hundred Dollars (\$500.00).
  7. For a Special Malt Beverage Permit for Public Auditoriums, as defined in W. S. § 12-4-504, the annual fee shall be Seven Hundred Fifty Dollars (\$750.00).
  8. For a Motel/Hotel Minibar License, the annual fee shall be one-half (1/2) of the fee paid for the original license, i.e., Three Hundred Seventy-Five Dollars (\$375.00).
- C. No refund of all or any part of any license fee shall be made at any time following the issuance of the license.
- D. In addition to paying an application fee at the time of application, the applicant shall also pay a non-refundable publication fee in an amount designated by the Town Clerk to cover the cost of publishing the public notices.
- E. Microbrewery Permits:
1. Microbrewery permits authorized. A Microbrewery permit is the authority under which the permittee is allowed to brew malt beverages in the quantities and under the conditions established by law. The permit may be issued by the Town Council and is subject to all restrictions of local, state, and federal law, except for W. S. § 12-4-103(a)(vi) (1977 Repub. Ed., as amended).

2. Permit required. No person may operate a microbrewery within the Town of Hanna unless that person holds a microbrewery permit issued by the Town Council.

3. Application. Each person who wishes to apply for a microbrewery permit shall submit an application in the form and manner set forth in Section 4-3 and pay the annual fee of Five Hundred Dollars (\$500.00), unless the application is for dual ownership of a microbrewery permit and a liquor license. If the application is for dual ownership of a microbrewery permit and a liquor license, the annual fee for both microbrewery permit and liquor license shall be equal to the annual fee for the liquor license held or to be held by the applicant. The Town Clerk shall reject any application which is not completed, signed, and accompanied by the appropriate documentation.
4. Classes of microbrewery permits; attributes of each. The Town Council may issue microbrewery permits in any of the following classes:
  - a) A microbrewery permit. The permittee holding a microbrewery permit (and not a retail liquor license too) may sell its products but shall not sell other alcoholic liquor or malt beverages. All sales shall be made on the site described in the permit. All sales shall be for personal consumption, not for resale. All product sold must be in sealed packaging when delivered to the buyer. No sale may exceed an aggregate volume of two thousand (2,000) ounces.
  - b) A microbrewery permit to be held jointly with a retail liquor license. The permittee holding a retail liquor license may sell its product together with other alcoholic beverages, as allowed by the law governing retail liquor licenses.
  - c) A dual microbrewery permit and restaurant liquor license. The permittee holding a restaurant liquor license may sell its product together with other alcoholic beverages as allowed by the law governing restaurant liquor licenses.
  - d) A dual microbrewery permit and resort liquor license. The permittee holding a resort liquor license may sell its product together with other alcoholic beverages as allowed by the law governing resort liquor licenses.
  - e) The holder of a microbrewery permit under subsections b), c) or d) above may sell malt beverages obtained through licensed wholesale malt beverage distributors in addition to its own production.
5. Loss or transfer of liquor license or permit holder of dual permit and license.



- a) If the holder of both a permit and liquor license under subsection 4. b), c) or d) above shall transfer or lose the retail, restaurant or resort liquor license, the holder's microbrewery permit shall revert to a microbrewery permit only under subsection 4. a) for the balance of its term; unless it too shall have been transferred or lost according to law.
  - b) If the holder of both a permit and liquor license under subsections 4 b), c) or d) above shall transfer or lose the microbrewery permit, the holder shall immediately cease selling its own products and operating the microbrewery. The holder's liquor license shall remain in effect for the balance of its term unless it too shall have been transferred or lost according to law.
6. Transfer of microbrewery permit. Ownership of a microbrewery permit maybe transferred upon proper application, publication, hearing, and approval by the Town Council. No microbrewery permit May be transferred to another location.

F. Winery Permits:

1. Winery permits authorized. A winery permit is the authority under which the permittee is allowed to brew winery beverages in the quantities and under the conditions established by law. The permit may be issued by the Town Council and is subject to all restrictions of local, state, and federal law, except for W. S. § 12-4-103(a)(vi) (1977 Repub. Ed., as amended).
2. Permit required. No person may operate a winery within the Town of Hanna unless that person holds a winery issued by the Town Council.
3. Application. Each person who wishes to apply for a winery permit shall submit an application in the form and manner set forth in Section 4-3 and pays the annual fee of Five Hundred Dollars (\$500.00), unless the application is for dual ownership of a winery permit and a liquor license. If the application is for dual ownership of a winery permit and a liquor license, the annual fee for both winery permit and liquor license shall be equal to the annual fee for the liquor license held or to be held by the applicant. The Town Clerk shall reject any application which is not completed, signed, and accompanied by the appropriate documentation.
4. Classes of winery permits; attributes of each. The Town Council May issue winery permits in any of the following classes:

- a) A winery permit. The permittee holding a winery permit (and not a retail liquor license too) may sell its products but shall not sell other alcoholic liquor or malt beverages. All sales shall be made on the site described in the permit. All sales shall be for personal consumption, not for resale. All product sold must be in sealed packaging when delivered to the buyer. No sale may exceed an aggregate volume of two thousand (2,000) ounces.
  - b) A winery permit to be held jointly with a retail liquor license. The permittee holding a retail liquor license may sell its product together with other alcoholic beverages, as allowed by the law governing retail liquor licenses.
  - c) A dual winery permit and restaurant liquor license. The permittee holding a restaurant liquor license may sell its product together with other alcoholic beverages as allowed by the law governing restaurant liquor licenses.
  - d) A dual winery permit and resort liquor license. The permittee holding a resort liquor license may sell its product together with other alcoholic beverages as allowed by the law governing resort liquor licenses.
  - e) The holder of a winery permit under subsections b), c) or d) above may sell malt beverages obtained through licensed wholesale malt beverage distributors in addition to its own production.
5. Loss or transfer of liquor license or permit by holder of dual permit and license.
- a) If the holder of both a permit and liquor license under subsection 4, b), c) or d) above shall transfer or lose the retail, restaurant, or resort liquor license, the holder's winery permit shall revert to a winery permit only under subsection 4 a) for the balance of its term; unless it too shall have been transferred or lost according to law.
  - b) If the holder of both a permit and liquor license under subsections 4 b), c) or d) above shall transfer or lose the winery permit, the holder shall immediately cease selling its own products and operating the winery. The holder's liquor license shall remain in effect for the balance of its term unless it too shall have been transferred or lost according to law.

6. Transfer of winery permit. Ownership of a winery permit may be transferred upon proper application, publication, hearing, and approval by the Town Council. No winery permit may be transferred to another location.

Section 5.04.031. Temporary Licenses or Permits.

- A. The governing body of the Town of Hanna is hereby authorized to issue the following temporary licenses or permits pursuant to state law and this ordinance:
  1. Malt Beverage Permit, as defined in W. S. § 12-4-502(a).
  2. Catering Permit, as defined in W. S. § 12-4-502(b).
  3. Temporary Dispensing Room Permit, as defined in W. S. § 12-4-504 and W. S. § 12-5-201(f), (g), (h) and (j).
  4. Extended Club Hours Permit, as defined in W. S. § 12-5-101(b).
  5. Open Container Waiver Permit, as defined in Section 5.04.031.C.
- B. The fee for each temporary license or permit shall be payable at the time of application, shall be paid in cash or certified check, and shall be in the full amount as shown for each class of license below:
  1. For a Malt Beverage Permit, the fee shall be Ten Dollars (\$10.00) per twenty-four (24) hour period.
  2. For a Catering Permit, the fee shall be Ten Dollars (\$10.00) per twenty-four (24) hour period.
  3. For a Temporary Dispensing Room Permit, the fee shall be Ten Dollars (\$10.00).
  4. For an Extended Club Hours Permit, there shall be no fee.
  5. For an Open Container Waiver Permit, as defined in Section 5.04.031.C., the fee shall be Ten Dollars (\$10.00).
- C. An open container waiver permit, which allows open containers at a private gathering held in a public place, excluding, in any vehicle upon the public streets, highways, roads, alleys or places open to the public for vehicular traffic, may be issued to any responsible person or organization by the Mayor and Town Council.
- D. No refund of all or any part of any temporary license or permit fee shall be made at any time following the issuance of the license.
- E. In addition to paying an application fee at the time of application, the applicant shall also pay a non-refundable publication fee in an amount designated by the Town Clerk to cover the cost of publishing public hearing notices.

## **IV. Restrictions**

### Section 5.04.040. Hours of Operation.

- A. All licensees and permittees holding an annual or temporary license or permit under this ordinance shall comply with the schedule of hours set forth in subsection C, of this section.
- B. This section shall not apply to licensees holding Limited Retail Liquor (Special Club) licenses who have been authorized by the governing body under W. S. § 12-5-101(b) to have hours of operation other than those set forth by this section.
- C. The hours of operation for all licensees and permittees holding an annual or temporary license or permit, subject to the exceptions in subsection B. of this section, shall be as follows:
  - 1. On all days except Sunday, a licensee or permittee may open the dispensing room no earlier than six o'clock (6:00) a.m. and shall close the dispensing room and cease the sale of alcoholic and malt beverages not later than two o'clock (2:00) a.m. the following day, and the licensee or permittee shall clear the dispensing room of all persons, other than employees, no later than two-thirty o'clock (2:30) a.m.
  - 2. On Sundays, licensees may open the dispensing room no earlier than ten o'clock (10:00) a.m. and shall close the dispensing room and cease the sale of alcoholic and malt beverages not later than twelve o'clock (12:00) a.m. the following day, and the licensee shall clear the dispensing room of all persons, other than employees, no later than twelve-thirty o'clock (12:30) a.m.
- D. The Mayor and Town Council may meet in January of each year to designate jubilees or similar public gatherings when all licensees may operate without restriction as to closing hours, such unrestricted operation not to exceed a total of four (4) days in any one calendar year.

### Section 5.04.041. Drive-In Facilities.

Upon approval of the original application by the governing body, or the renewal thereof, a drive-in area adjacent to or contiguous with the licensed room may be used by the holder of a retail liquor license for taking orders, making delivery of, and receiving payment for alcoholic or malt beverages under the terms and conditions found in W. S. § 12-3-301.

## V. Violations

### Section 5.04.050. Falsification of Application.

It is unlawful for any person or organization to knowingly submit false information or false facts as true, or to submit a fact or piece of information without knowing such to be true or false, on an application for any license or permit authorized by this ordinance. Each application being submitted shall be sworn, to be true to the best of the knowledge by the person submitting the application. The licensing authority, pursuant to W. S. § 12-7-201, may seek revocation of the license or permit for falsification of application.

### Section 5.04.051. Public Consumption or Possession: "Open Container Ordinance".

A. It is unlawful for any person to consume or have in possession any alcoholic or malt beverage in a container that has been open or unsealed from the original factory closure or sealing while in or upon any public place within, the Town of Hanna, or while in any vehicle upon the public streets, highways, roads, alleys or places open to the public for vehicular traffic, except as follows:

1. W  
ithin, the confines of such places where the sale, dispensing or consumption of alcoholic or malt beverages has been licensed or permitted pursuant to W. S. § 12-2-202 or this ordinance.
  - a) For charter transportation services licensed pursuant to W. S. § 12-2-202 by the State of Wyoming, each vehicle operating under the license must have conspicuously displayed in the rear window a copy of the license issued by the State of Wyoming.
2. A  
t such other places and times as may be licensed or permitted by the governing body pursuant to this ordinance.

B. For purposes of this section, "public place" is defined as any place within the jurisdictional limits of the Town of Hanna which is owned by the Town or any other governmental entity, or has been dedicated to the Town, another governmental entity or the public, or private property upon which the public has been invited for vehicular traffic.

### Section 5.04.052. Bottle Clubs.

It is unlawful for any person to operate a bottle club in the Town of Hanna. As used herein, "bottle club" is defined as an operation or enterprise in which no alcoholic liquor or malt

beverages are sold, but where food, soft drinks and mixes are sold, and the safekeeping of alcoholic and malt beverages is provided for individual club members who bring alcoholic and malt beverages upon the premises for their own use and consumption. Income, profits or fees of the

operator of the bottle club are typically derived from sales or furnishing of mixes, ice, food or glasses, or from dues, charges, contributions, membership cards or assessments.

Section 5.04.053. Excessive drinking.

Excessive drinking of alcoholic and malt beverages or disorderly conduct in any place licensed under this ordinance shall not be permitted by the licensee and the violation of which is a misdemeanor. In addition to any penalty provided by the ordinance of the Town of Hanna, permitting excessive drinking of alcoholic or malt beverages or disorderly conduct may be cause for the initiation of suspension and/or revocation of license procedures.

Section 5.04.054. Possession by Underage persons.

It is unlawful for any person under the age of twenty-one (21) years to possess, buy, sell, drink, consume or otherwise solicit the sale or purchase of alcoholic or malt beverages in the Town of Hanna. As used in this section, possession shall also include alcohol which has been consumed and is present within the body at the time of apprehension.

Section 5.04.055. Sales to Underage Persons.

It is unlawful for any person to sell, give or deliver any alcoholic or malt beverage to any person under the age of twenty-one (21) years, provided, however, that such prohibition shall not apply to any parent or guardian providing such to his or her child in the confines of their home.

Section 5.04.056. Use of False Proof of Age or Identity.

It is unlawful for any person under the age of twenty-one (21) years to make, use or possess any identification which falsely indicates the person's age as greater than twenty-one (21) years, whether in the person's correct name or not, or to attempt to obtain any alcoholic or malt beverage using any false identification.

Section 5.04.057. Dispensing Room Restrictions.

- A. It is unlawful for any person under the age of twenty-one (21) years to enter or remain in the dispensing room or brewing area of any premises licensed or permitted under this chapter to dispense or brew alcoholic liquor or malt beverages, except as provided for in this section.
- B. No licensee, permittee or agent, employees or servant of a licensee or permittee shall permit any person under the age of twenty-one (21) Years to enter or remain in a dispensing room or brewing area of a licensed premises owned, operated, leased or managed by them.

- C. This subsection shall not apply to a licensee's employee under the age of twenty-one (21) years when, in the course of his employment, the employee is in the dispensing room and the dispensing room or brewing area is not open for the sale or dispensing of alcoholic beverages or brewing of malt beverages.
- D. This subsection does not apply to a person under the age of twenty-one (21) years if the underage person is in a dining or waiting area within the dispensing room with an adult not later than ten o'clock (10:00) p.m. Used herein, "adult" is defined as a person over the age of twenty-one (21), and "dining or waiting area" means a specifically delineated area which has been submitted with the licensee's application and has been approved by the governing body.

Section 5.04.058. Suspension of License or Permit.

- A. T  
 he governing body may suspend any license or permit issued under this ordinance if the licensee or permittee fails to pay sales taxes and the Wyoming Liquor Division has ceased sales of alcoholic beverages to the licensee or permittee pursuant to W. S. §12-2-306. Upon receipt by the Town Clerk of a certified notice from the State of Wyoming issued pursuant to W. S. § 12-2-306, and upon order from the governing body, the Town Clerk shall notify the licensee or permittee, by certified mail, that the Town of Hanna intends to hold a hearing on whether the license or permit should be suspended. The certified notice from the State of Wyoming and all evidence presented by the State of Wyoming in support of the certified notice will be admitted and considered prima facie evidence of the licensees or permittee's tax delinquency.
- B. I  
 n the event a license or permit is suspended in accordance with this section, the holder of the license or permit may appeal the suspension to the district court in accordance with the provisions of W. S. § 12-7-103, and the appeal proceedings shall be in accordance with the *Wyoming Rules of Appellate Procedures*.
- C. T  
 he suspension of the license or permit shall remain in effect until either the governing body lifts the suspension, a court of competent jurisdiction lifts the suspension, or the Town Clerk receives certified notice from the State of Wyoming that the sales tax liability has been satisfied.
- D. I  
 n the event a suspension occurs, the Town Clerk shall send, by certified mail, one copy each of the suspension notice to the last known addresses of the license or permit holder and to the Director of the Wyoming Liquor Division for the State of Wyoming. Additionally, the Town Clerk shall post one copy of the suspension notice on the licensed or permitted premise. Immediately upon the posting of the suspension notice, the sale, offering to sell, distribution, or traffic of alcoholic or malt beverages shall be unlawful. Farther, the licensee or permittee shall either remove all of the alcoholic and malt beverages from the licensed premises or



secure the alcoholic and malt beverages in a manner approved in writing by the chief of police or his designee.

Section 5.04.059. Delivery of Alcoholic and Malt Beverages.

- A. No retail liquor licensee shall deliver or cause to be delivered any alcoholic or malt beverage to any person whatsoever, except at the licensed premises.
- B. No person shall engage in the conduct of making deliveries of alcoholic liquor or malt beverage from the licensed premises of any retail liquor licensee in the Town of Hanna.

Chapter 5.08

CABLE TELEVISION FRANCHISE

Sections:

ARTICLE I. DEFINITION OF TERMS

5.08.010 Definitions.

ARTICLE II. GRANT OF FRANCHISE

5.08.020 Grant of franchise.

5.08.030 Term of franchise.

ARTICLE III. SERVICE STANDARDS

5.08.040 Operation and maintenance.

5.08.050 Street occupancy conditions.

5.08.060 Restoration of public ways.

5.08.070 Relocation at authority request.

5.08.080 Relocation at third party request.

5.08.090 Trimming of trees and shrubbery.

5.08.100 Authority use of grantee's equipment.

5.08.110 Safety requirements.

5.08.120 Aerial and underground construction.

5.08.130 Required extensions of service.

5.08.140 Subscriber charges for extensions of service in future annexed areas.

5.08.150 Service to public buildings.

5.08.160 Maps.

5.08.170 Basic service.

5.08.180 Change of channel locations.

ARTICLE IV. REGULATION BY FRANCHISE AUTHORITY

5.08.190 Franchise fee.

5.08.200 Rates and charges.

5.08.210 Transfer of franchise.

5.08.220 Renewal of franchise.

ARTICLE V. COMPLIANCE AND MONITORING

5.08.230 Testing for compliance.

5.08.240 Books and records.

5.08.250 Periodic review.

## ARTICLE VI. INDEMNIFICATION AND BONDS OR OTHER SURETY

- 5.08.260 Insurance.
- 5.08.270 Indemnification.

## ARTICLE VII. ENFORCEMENT AND TERMINATION OF FRANCHISE

- 5.08.280 Notice of violation.
- 5.08.290 Grantee's right to cure or respond.
- 5.08.300 Public hearing.
- 5.08.310 Enforcement.
- 5.08.320 Acts of God.

## ARTICLE VIII. UNAUTHORIZED RECEPTION

- 5.08.330 Violation--Misdemeanor.
- 5.08.340 Violation--Penalty.

## ARTICLE IX. MISCELLANEOUS PROVISIONS

- 5.08.350 Preemption.
- 5.08.360 Actions of franchise authority.
- 5.08.370 Notice.
- 5.08.380 Descriptive headings.
- 5.08.390 Acceptance.

## ARTICLE I. DEFINITION OF TERMS

5.08.010 Definitions. As used in this chapter:

- A. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with, grantee.
- B. "Basic service" is the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals and the public, educational and governmental channels, if required by the terms thereof.
- C. "Cable Act" means the Cable Communications Policy Act of 1984, as amended, including amendments thereto which may be made during the term of the franchise and provisions which may become effective after the effective date of the ordinance codified in this chapter.
- D. "Cable service" means:
  1. The one-way transmission to subscribers of video programming or other programming service; and
  2. Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- E. "Cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other

communications equipment that is designed to provide cable service and other service to subscribers in Hanna.

- F. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- G. "Franchise" means the initial authorization, or renewal thereof, issued by the franchise authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise which authorizes construction and operation of the cable system for the purpose of offering cable service or other service to subscribers.
- H. "Franchise authority" means the town of Hanna, Wyoming, or the lawful successor, transferee or assignee thereof.
- I. "Governing body" is the town council of the town of Hanna; the terms "council" and "governing body" may be used interchangeably in this chapter.
- J. "Grantee" is Platte River Cable, an affiliate of James Cable Partners, L.P., in accordance with the provisions of the franchise.
- K. "Gross revenues" means the revenues received by grantee from the operation of the cable system in Hanna; provided, however, that such phrase shall not include revenues received from any national advertising carried on the cable system, nor shall such phrase include any taxes on cable service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the grantee on behalf of such governmental unit or agency.
- L. "Person" means any individual, partnership, association, joint stock company, trust corporation, or governmental entity.
- M. "Public way" means the surface of and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the franchise authority in the service area which shall entitle the franchise authority and the grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. "Public way" means any easement now or hereafter held by the franchise authority in the service area which shall entitle the franchise authority and the grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. "Public way" also means any easement now or hereafter held by the franchise authority within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of way as shall within their proper use and meaning entitle the franchise authority and the grantee to the use thereof for the purposes of installing or transmitting grantee's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the cable system.

- N. "Service area" means the present municipal boundaries of the franchise authority, and includes any additions thereto by annexation or other legal means.
- O. "Service tier" means a category of cable service or other services, provided by grantee and for which a separate charge is made by grantee.
- P. "Subscriber" means a person or user of the cable system who lawfully receives cable services or other service therefrom with grantee's express permission.
- Q. "Town" is the town of Hanna, Wyoming.
- R. "Video programming" means programming provided by or generally considered comparable to programming provided by a television broadcast station. (Ord. 242 §1.1, 1991)

## ARTICLE II, GRANT OF FRANCHISE

5.08.020 Grant of franchise. The town grants to grantee a nonexclusive franchise which authorizes the grantee to construct and operate a cable system and offer cable service and other services in, along, among, upon, across, above, over, under or in any manner connected with public ways within the service area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or along any public way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system. (Ord. 242 §2.1, 1991)

5.08.030 Term of franchise. The franchise shall take effect and be in force and effect from and after the thirtieth day of September, 1991, and shall continue in force and effect, unless sooner terminated as provided herein, or as otherwise provided by law, until September 30, 2001, twelve midnight, M.S.T. (Ord. 242 §2.2, 1991)

## ARTICLE III. SERVICE STANDARDS

5.08.040 Operation and maintenance. Grantee shall at all times maintain technical staff and field force sufficient to ensure prompt maintenance of line, home service and installation, and to ensure that its equipment is working to its capabilities. The office of grantee shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and requests for home service, installation, repairs or adjustments may be received at any time. (Ord. 242 §3.1, 1991)

5.08.050 Street occupancy conditions. All transmission and distribution structures, poles, other lines, and equipment installed or erected by the grantee pursuant to the terms hereof shall be so located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any said public ways. (Ord. 242 §3.2, 1991)

5.08.060 Restoration of public ways. If during the course of grantee's construction, operation, repair or maintenance of the cable system there occurs a disturbance of any public way by grantee, grantee shall at its sole expense, replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance. The franchise authority shall be the sole determiner of whether the restoration is reasonably comparable to the condition of the public way immediately prior to the disturbance. (Ord. 242 § 3.3, 1991)

5.08.070 Relocation at authority request. Upon its receipt of reasonable advance notice, to be not less than five business days, the grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way, or remove from the public way, any property of the grantee when lawfully required by franchise authority by reason of traffic conditions, public safety, street abandonment, roadway, alleyway and/or street construction, repair, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the franchise authority. The grantee shall in all cases have the right of abandonment of its property. (Ord. 242 §3.4, 1991)

5.08.080 Relocation at third party request. The grantee shall, on the request of any person holding a building moving permit issued by the franchise authority, temporarily raise or lower its wires to permit the moving of such building, provided:

1. The expense of such temporary raising or lowering of wires is paid by said person, including, if required by the grantee, making such payment in advance; and
2. The grantee is given not less than ten business days advance written notice to arrange for such temporary wire changes. (Ord. 242 §3.5, 1991)

5.08.090 Trimming of trees and shrubbery. The grantee shall have the authority at no expense to the property owner to trim trees or other natural growth overhanging any of its cable system in the service area so as to prevent branches from coming in contact with the grantee's wires, cable or other equipment. The grantee shall reasonably compensate the franchise authority or property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damages as a result of any construction of the system undertaken by grantee. Such replacement shall satisfy any and all obligations grantee may have to the terms of this article. (Ord. 242 §3.6, 1991)

5.08.100 Authority use of grantee's equipment. Subject to any applicable state or federal regulations or tariffs, the franchising authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the grantee in any public way; provided, that;

- A. Such use by the franchise authority does not interfere with a current or future use by the grantee;
- B. The franchise authority holds the grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorneys' fees and costs; and
- C. At grantee's sole discretion, the franchise authority may be required either to pay a reasonable rental fee or otherwise reasonably compensate grantee for the use of such poles, conduits, or equipment; provided, however, that grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the service area. (Ord. 242 §3.7, 1991)

5.08.110 Safety requirements. Construction, installation and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All such work shall be performed and at all times be in substantial accordance with the National Electrical Safety Code (National Bureau of Fire Standards); National Electric Code (National bureau of Fire Underwriters); Bell System Code and Pipeline Construction; Buried Standards, and applicable FCC and other federal, state, and local regulations and including such generally applicable construction, installation, maintenance and operational standards as may be adopted by the town from time to time. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the service area. (Ord. 242 0.8, 1991)



5.08.120 Aerial and underground construction. In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the grantee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground; provided, that such facilities are actually capable of receiving grantee's cable and other equipment without technical degradation of the cable system's signal quality. In those areas of the service area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, grantee shall have the sole discretion to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this section shall require grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of the ordinance codified in this chapter, grantee shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground. (Ord. 242 §3.9, 1991)

5.08.130 Required extensions of service. The cable system will be constructed so as to be able to serve all residents and persons within the town corporate limits as the limits existed on the effective date of the ordinance codified in this chapter at the usual connection fee, unless this requirement is waived as to certain sections or specific locations of the town by the council. Future annexations to the town shall be served when the density of homes within the annexed area reaches at least fifteen per one thousand three hundred twenty cable-bearing strand feet (one-quarter cable mile) of the trunk or distribution cable. Grantee shall offer cable services to homes in such annexed areas reaching the minimum density at no cost to said homes for system extension, other than the usual connection fees for all subscribers; provided, that such extension is technically feasible, and will not adversely affect the operation, financial condition, or market development of the cable system, or as provided for under Section 5.08.140 of this chapter. (Ord. 242 §3.10, 1991)

5.08.140 Subscriber charges for extensions of service in future annexed areas. No resident, person or subscriber shall be refused service arbitrarily. For unusual circumstances, however, such as a subscriber's request to locate his cable drop underground, existence of more than three hundred feet of distance from distribution cable to connection of service to subscribers, or a density of less than fifteen homes per one thousand three hundred twenty cable-bearing strand feet of trunk or distribution cable in newly annexed areas, cable service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by grantee and subscribers in the area in which cable service may be expanded, grantee will contribute an amount equal to the construction and other costs per quarter mile multiplied by a number whose numerator equals the actual number of potential subscribers per one thousand three hundred twenty cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals fifteen. Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such subscribers be paid in advance. (Ord. 242 §3.11, 1991)

5.08.150 Service to public buildings. The grantee shall provide without charge one outlet of basic service to the franchise authority's office building(s), fire station, police station and each public school building. The outlets of basic service shall not be used to distribute or sell cable services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold grantee harmless from any and all liability or claims rising out of their use of such outlets, including but not limited to, those arising from copyright liability. In the event that additional outlets of basic service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith for such additional outlets, including, but not limited to, labor and materials. (Ord. 242 §3.12, 1991)

5.08.160 Maps. Grantee shall file with the Town Clerk true and accurate maps or plats of all existing and proposed installation. (Ord. 242 § 3.13, 1991)

5.08.170 Basic service. Grantee agrees to provide at a minimum, KCNC, KGWN, KRMA, KMGH, The Family Channel, KUSA, WTBS, Cable Value Network, KCWC and KTWO or stations with comparable program, if these are not available, in its basic service. It is understood that all such transmission shall be subject to, and in compliance with, Federal Communications Commission regulations, continued availability, copyright and legal constraints and other business considerations. All of such transmissions shall, be provided on Channels 1 through 13. (Ord. 242 § 3.14, 1991)

5.08.180 Change of channel locations. Grantee shall provide a good, useable strength signal to each outlet. Grantee shall repair all picture outages within twenty-four hours after such outages are reported to grantee. Grantee will give the franchise authority a minimum of sixty days notice before changing channel location of, any transmission; provided, however, that where programming and channel changes beyond the control of the grantee occur, grantee shall provide notice as soon as reasonably possible. (Ord. 242 §3.15, 1991)

#### ARTICLE IV. REGULATION BY FRANCHISE AUTHORITY

5.08.190 Franchise fee. No franchise fee is assessed by the franchise authority, however, annually, the grantee shall furnish to the franchise authority a financial report certified by an authorized representative of grantee verifying the gross receipts for the year. This report shall be presented to the franchise authority no later than April 15th of each calendar year. (Ord. 242 §4.1, 1991)

5.08.200 Rates and charges. The franchise authority has the right to regulate the rates only to the extent allowed in the Federal Cable Act and FCC regulations. (Ord. 242 §4.2, 1991)

5.08.210 Transfer of franchise. Grantee's right, title or interest in the franchise shall not be sold, transferred, assigned or otherwise encumbered, without the prior consent of the franchise authority. Such consent may be withheld in any reasonable basis. A foreclosure sale to a third party shall for all purposes be deemed to be a transfer subject to the terms and conditions of this article. However, any transferee shall demonstrate to franchise authority its financial, legal and technical ability to provide service. No such consent shall, be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of guarantee in the franchise or cable system in order to secure indebtedness. Consent shall be deemed granted only when the franchise authority acts in conformity with state law at a properly convened public meeting such action to be taken within forty-five days of a written request from grantee. (Ord. 242 §4.3, 1991)

5.08.220 Renewal of franchise. A. During the six-month period which begins with the thirty-sixth month before the franchise expiration, the franchise authority may on its own initiative, and shall at the request of the cable operator, commence proceedings which afford the public in the franchise area appropriate notice and participation for the following purposes:

1. Identifying the future cable-related community needs and interests; and
  2. Reviewing the performance of the cable operator under the franchise during the then current franchise term.
- B. Upon completion of proceeding under subsection A of this section, a cable operator seeking renewal of a franchise may, on its own initiative or at the request of a franchise authority, submit a proposal for renewal. Any such proposal shall contain such material as the franchise authority may require, including proposals for an upgrade of the cable system. The franchise authority may establish a date by which such proposal shall be submitted.
- C. Upon submittal by a cable operator of a proposal to the franchise authority for the renewal of a franchise, the franchise authority shall provide prompt public notice of such proposal and, during the four-month period which begins on the completion of any proceedings under subsection A of this section renew the franchise or issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with subsection D of this section to consider the following:
1. If the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
  2. If the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality, or level of cable services or other services provided over the system, has been reasonable in light of community needs;
  3. If the operator has the financial, legal and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
  4. If the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

- D. In any proceeding hereunder, the cable operator shall be afforded adequate notice and the cable operator and the franchise authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection A of this section), to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.
- E. At the completion of a proceeding under this chapter, the franchising authority shall issue a written decision granting or deny the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.
- F. Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subdivisions 1 through 4 of subsection C, pursuant to the record of the proceeding under subsection C of this section. The franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise, unless the franchise authority has provided the operator with notice and the opportunity to cure, or in any case in which it is documented that the franchise authority has waived its right to object or has effectively acquiesced.
- G. Any decision of a franchise authority on a proposal for renewal shall not be considered final unless all administrative review by the state has occurred or the opportunity therefor has lapsed.
- H. For purposes of this chapter, the term "franchise expiration" means the date of the expiration of the term of the franchise, as provided under this franchise, as it was in effect on the date of the enactment of the ordinance codified in this chapter.
- I. Notwithstanding the provisions of subsections A through H of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchise authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections A through H of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections A through H of this section. (Ord. 242, §4.4, 1991)

## ARTICLE V. COMPLIANCE AND MONITORING

5.08.230 Testing for compliance. The grantee shall comply with all terms, conditions, and requirements set forth by the FCC, including, but not limited to part 76, Subparagraph K and any future rules or regulations adopted by the FCC, and shall submit to the franchise authority, upon request, copies of any tests required thereunder. (Ord. 242 §5.1, 1991)

5.08.240 Books and records. The grantee agrees that the franchise authority may review such of its books and records, during normal business hours and on a nondisruptive basis, as are reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature or where such disclosure is otherwise prohibited by law. The franchise authority, subject to the limitations placed upon it by state law, agrees to use its best efforts to treat any information designated in advance by grantee as confidential on a confidential basis, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. (Ord. 242, §5.2, 1991)

5.08.250 Periodic review. Beginning twelve months after the effective date of the franchise and every twelve months thereafter, the franchise authority may on its own initiative, and shall at the request of the grantee, schedule a public meeting for the purpose of identifying the cable-related community needs and interests and for reviewing the performance of the grantee. These periodic reviews shall include, but not be limited to, the following:

- (1) whether the grantee has substantially complied with the material terms of the franchise and with applicable law;
- (2) whether the quality of the grantee's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality, or level of cable services or other services provided on this system, has been reasonable in light of community needs;
- (3) grantee's performance has demonstrated its financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the franchise agreement; and
- (4) grantee has responded to the cable-related community needs and interests, taking into account review period. If the franchise authority, finds the grantee in default or noncompliance with the franchise agreement, it shall provide notice and the opportunity to cure as provided for in Article VII of this chapter. (Ord. 242 § 5.3, 1991)

ARTICLE VI. INDEMNIFICATION AND BONDS OR OTHER SURETY

5.08.260 Insurance. Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the franchise, general comprehensive liability insurance in the amount of five hundred thousand dollars for bodily injuries, (including accidental death) to any one person and property damage liability insurance in an amount not less than five hundred thousand dollars resulting from any one occurrence. Said insurance shall designate the franchise authority as an additional named insured. Such insurance shall be noncancellable except upon thirty days prior written notice to the franchise authority. (Ord. 242 §6.1, 1991)

5.08.270 Indemnification. The grantee agrees to indemnify, save and hold harmless and defend the franchise authority, its officers, boards and employees and agents, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury; (including accidental death), which arise out of the grantee's construction, operation, or maintenance of its cable system, including, but not limited to, reasonable attorney's fees and costs. (Ord. 242 §6.2, 1991)

ARTICLE VII. ENFORCEMENT AND TERMINATION OF FRANCHISE

5.08.280 Notice of violation. In the event that the franchise authority believes the grantee has not complied with the terms of the franchise, it shall notify grantee in writing of the exact nature of the alleged noncompliance. (Ord. 242 §7.1, 1991)

5.08.290 Grantee's right to cure or respond. Grantee shall have sixty days from receipt of the notice described in Section 5.08.280 to:

- A. Respond to the franchise authority contesting the assertion of noncompliance; or
- B. To cure such default or, in the event that, by the nature of default, such default cannot be cured within the sixty-day period, initiate reasonable steps to remedy such default and notify the franchise authority of the steps being taken and the projected date that they will be completed. (Ord. 242 §7.2, 1991)

5.08.300 Public hearing. In the event that grantee fails to respond to the notice described in Section 5.08.280, pursuant to the procedures set forth in Section 5.08.290, the franchise authority shall schedule a public meeting to investigate the default. Such Public meeting shall be held at the next regularly scheduled meeting of the franchise authority which is scheduled at a time which is no less than five business days therefrom. The franchise authority shall notify the grantee of the time and place of such meeting and provide the grantee with an opportunity to be heard. (Ord. 242 §7.3, 1991)

5.08.310 Enforcement. Subject to applicable federal and state law, in the event the franchise authority, after such meeting, determines that grantee is in default of any provision of the franchise, the franchise authority may:

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

The grantee shall not be relieved of any of its obligations to comply promptly with any provision of the franchise by reason of any failure of the franchise authority to enforce prompt compliance. (Ord. 242 §7.4, 1991)

5.08.320 Acts of God. The grantee shall not be held in default or noncompliance with the provisions of the franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control. (Ord. 242 §7.5, 1991)

#### ARTICLE VIII. UNAUTHORIZED RECEPTION

5.08.330 Violation--Misdemeanor. In addition to those criminal and civil remedies provided, by state and federal law, it is a misdemeanor for any person, firm, or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the cable system without the express consent of the grantee. Further, without the express consent of grantee, it is a misdemeanor, for any person to tamper with, remove or injure any property, equipment or part of the cable system or any means of receiving cable service or other services provided thereto. (Ord. 242 §8.1, 1991)





