

TITLE VII - SOCIAL AND ECONOMIC WELL BEING
CHAPTER 1 - REGULATION OF BUSINESS AND VOCATION

ARTICLE I
PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

7-1.0101 PURPOSE.

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

(Easterly v. Incorporated Town of Irwin, 99 Iowa 694, 68 N.W. 919 [1896])

7-1.0102 DEFINITIONS.

For use in this chapter the following terms are defined:
(Town of Scranton v. Henson, 151 Iowa 221, 130 N.W. 1079 [1911]; Davenport v. Rice, 75 Iowa 74, 39 N.W. 191 [1888]; 68 Iowa 678 [1886])

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

2. "Solicitor" shall mean any person who solicits or attempts to solicit from house-to-house or upon the public street an order for goods, subscriptions or merchandise to be delivered at a future date.

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

7-1.0103 LICENSE REQUIRED.

Any person engaging in peddling, soliciting or in the business of a transient merchant in this city without first

obtaining a license as herein provided shall be in violation of this ordinance.

(Easterly v. Incorporated Town of Irwin, 99 Iowa 694, 68 N.W. 919 [1896])

7-1.0104 LICENSE EXEMPTIONS.

The following are excluded from the application of this chapter:

(State of Iowa v. Garbroski, 111 Iowa 496, 82 N.W. 959 [1900])

1. News boys.
2. Members of local Boy Scout, Girl Scout, Campfire Girls, 4-H Clubs, Future Farmers of America and similar organizations.
3. Farmers who offer for sale products of their own raising.
4. Students representing the Davenport Community School District conducting projects sponsored by organizations recognized by the school.
5. Milk delivery men who only incidentally solicit additional business or make special sales.
6. Persons customarily calling on businesses or institutions for the purposes of selling products for resale or institutional use.

7-1.0105 RELIGIOUS AND CHARITABLE ORGANIZATIONS.

Authorized representatives of religious and charitable organizations desiring to solicit money or to distribute literature shall be exempt from the operation of Section 6 through Section 14 of this chapter. All such organizations shall be required to submit in writing to the clerk the name and purpose of the cause for which such activities are sought, names and addresses of the officers and directors of the organization, the period during which such activities are to be carried on, and whether any commissions, fees or wages are to be charged by the solicitor for his efforts and the amount thereof. If the clerk shall find that the organization is a bona fide charity or religious organization he shall is-

sue, free of charge, a license containing the above information to the applicant.

7-1.0106 APPLICATION FOR LICENSE.

An application in writing shall be filed with the clerk for a license under this ordinance. Such application shall set forth the applicant's name, permanent and local address, business address if any, physical description, recent photograph, right thumb print and if a peddler a certificate signed by the health officer or other local physician that the applicant is in good health and free from any contagious diseases. The application shall also set forth the applicant's employer if any, and the employer's address, the nature of the applicant's business, the last three places of such business and the length of time sought to be covered by the license. An application fee of two dollars (\$2.00) shall be paid at the time of filing such application to cover the cost of investigating the facts stated therein.

7-1.0107 BOND REQUIRED.

Before a license under this chapter shall be issued, each principal shall post a bond, by a surety company authorized to engage in the business of insuring the fidelity of others in Iowa, in the amount of one thousand dollars (\$1,000.00) with the clerk to the effect that the registrant and the surety shall consent to the forfeiture of the principal sum of the bond or such part thereof as may be necessary: (1) to indemnify the town for any penalties or costs occasioned by the enforcement of this ordinance and (2) to make payment of any judgment rendered against the registrant as a result of a claim or litigation arising out of or in connection with such registrant's peddling or solicitation. Said bond shall not be retired until after a lapse of one (1) year from the expiration of the license which it covers.

7-1.0108 AGENT FOR SERVICE OF PROCESS.

Before the license is issued the applicant shall first sign an appointment naming the clerk as agent of the licensee for service of process in the event of claim or litigation against such registrant arising out of or in connection with any peddling or solicitation.

7-1.0109 LICENSE FEES.

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

(Memphis Steam Laundry Cleaner v. Stone, 342 U.S. 389 [1952])

1. "Solicitors." In addition to the application fee for each person actually soliciting, principal or agent, a fee of ten dollars (\$10.00) per day or fifty dollars (\$50.00) per week.

2. "Peddlers or transient merchants." The fee shall be ten dollars (\$10.00) per day or fifty dollars (\$50.00) per week.

(Ord. 387, 2004)

7-1.0110 LICENSED ISSUED.

If the clerk finds the application is completed in conformance with Section 6 of this chapter and the facts stated therein are found to be correct, the required bond is posted and the license fee paid, a license shall be issued immediately.

7-1.0111 DISPLAY OF LICENSE.

Each solicitor or peddler shall at all times while doing business in this city keep in his possession the license provided for in Section 10 of this chapter, and shall, upon the request of prospective customers, exhibit the license as evidence that he has complied with all requirements of this chapter. Each transient merchant shall display publicly his license in his place of business.

7-1.0112 LICENSE NOT TRANSFERABLE.

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

7-1.0113 TIME RESTRICTION.

All peddler's and solicitor's licenses shall provide that said licenses shall be in force and effect only between the hours of 8:00 o'clock A.M. and 6:00 o'clock P.M.

(City of Buffalo v. Tinsman, 98 N.Y. Supp. 737 [1906])

7-1.0114 REVOCATION OF LICENSE.

After notice and hearing, the clerk may revoke any license issued under this chapter for the following reasons:

1. Fraudulent Statements. The licensee has made fraudulent statements in his application for the license or in the conduct of his business.

2. Violation of Law. The licensee has violated this chapter or has otherwise conducted his business in an unlawful manner.

3. Endangered Public Welfare, Health or Safety. The licensee has conducted his business in such manner as to endanger the public welfare, safety, order or morals.

7-1.0115 NOTICE.

The license holder, and the surety on his bond shall be served with written notice containing particulars of the complaints against him, the ordinance provisions or state statutes allegedly violated, and the date, time and place for hearing on the matter.

7-1.0116 HEARING.

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

7-1.0117 RECORD AND DETERMINATION.

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

7-1.0118 APPEAL.

If the clerk revokes, or refuses to issue, a license he shall make a part of the record his reasons therefor. The licensee, or the applicant, shall have a right to a hearing before the council at its next regular meeting. The council may reverse, modify or affirm the decision of the clerk by a ma-

jority vote of the council members present and the clerk shall carry out the decision of the council.

(Constitution of Iowa, Article I, Sec. 9)

7-1.0119 EFFECT OF REVOCATION.

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

ARTICLE 2
POOL HALLS AND BILLIARD TABLES

7-1.0201 PURPOSE.

The purpose of this article is to provide for the licensing and regulation of pool halls and billiard parlors.

7-1.0202 LICENSE REQUIRED.

No person shall conduct or operate a billiard or pool table or other table kept for hire, without first procuring a license therefor, which license shall be fifteen dollars (\$15.00) per year for the first table and ten dollars (\$10.00) per year for each additional table under the control of the same person.

7-1.0203 HOURS OF OPERATION.

All billiard or pool rooms shall be closed at two o'clock A.M. and shall not open before six o'clock A.M. on any week day and between the hours of two A.M. and noon on Sunday and ten P.M. and six A.M. on the following Monday.

7-1.0204 OBSTRUCTION OF WINDOWS.

The windows of all billiard or pool rooms shall be free from curtains or other obstructions so as to give a free view of the same from the street at all times.

7-1.0205 MINORS.

No person who keeps a billiard or pool hall, nor the agent of any such person, shall permit any minor to participate in any game if such person become boisterous, rowdy, committed vandalism or the parents of such person has clearly stated that such person may not participate.

7-1.0206 APPLICATION.

This chapter shall to all places of business where the tables are kept for a major source of income.

7-1.0207 RESPONSIBILITIES.

The operator of any establishment, or his agent shall be held responsible for the conduct of patrons inside of and immediately adjacent to such establishment. Failure to maintain proper order shall result in revocation or suspension of said license at the discretion of the mayor or majority vote of the council.

ARTICLE 3
CARNIVALS AND CIRCUSES

7-1.0301 PURPOSE.

The purpose of this article is to provide for the licensing and regulation of carnivals and circuses.

7-1.0302 LICENSE REQUIRED.

It shall be unlawful for any person to operate a carnival or circus within the city unless a valid license therefore has been issued by the city. Only the owner, manager or agent need possess a license.

7-1.0303 APPLICATION FOR LICENSE.

Application shall be made to the administrator in writing and include:

1. Name and Location. The applicants' full name and address and the address of the location in which the carnival or circus will be operated.

2. Property Owner. If the applicant is not the owner of the property on which the carnival or circus will be operated, the name and address of the owner of such property together with the written authorization of the owner for the use of his property.

3. Sponsor. The name and written official statement of endowment of any sponsoring organization.

7-1.0304 BOND REQUIRED.

The applicant or sponsoring organization shall post a surety bond in the amount of one hundred dollars (\$100.00) conditioned upon compliance with all local laws and such bond may be forfeited at the sole discretion of the city for violation of any ordinances or failure to satisfactorily remove litter, debris or other waste materials from the area deposited or accumulating as a result of the operation of the carnival or circus.

7-1.0305 LICENSE FEE.

The fee for any such license shall be five dollars (\$5.00) per day or part thereof to include all days such carnival or circus shall occupy the premises for which the license is issued.

7-1.0306 LICENSE ISSUED.

The council, upon filing of the required bond and payment of all fees, may issue to the applicant the requested license.

ARTICLE 4
HOUSE MOVERS

7-1.0401 PURPOSE.

The purpose of this chapter is to protect and preserve the public safety and wellbeing by licensing and regulating house and building movers.

7-1.0402 HOUSE MOVER DEFINED.

A "house mover" shall mean any person who undertakes to move a building or similar structure upon, over or across the public streets, alleys, walks or property using skids, jacks, dollies or any method other than upon a properly licensed motor vehicle.

7-1.0403 LICENSE REQUIRED.

It shall be unlawful for any person to engage in the activity of house mover as herein defined without a valid license from the city for each house, building or similar structure to be moved.

7-1.0404 APPLICATION.

Application for a house mover's license shall be made in writing to the clerk on forms furnished by him. The application shall include:

1. Name and Address. The applicant's full name and address and if a corporation the names and addresses of its principal officers.

2. Building Location. An accurate description of the present location and future site of the building or similar structure to be moved.

3. Routing Plan. A routing plan approved by the chief of police, street superintendent, and public utility officials. The route approved shall be the shortest route compatible with the greatest public convenience and safety.

7-1.0405 BOND REQUIRED.

The applicant shall post with the clerk a penal bond in the sum of \$1,000.00 issued by a surety company authorized to issue such bonds in the state of Iowa. The bond shall guarantee the licensee's payment for any damage done to the city or to public property, and payment of all costs incurred by the city in the course of moving the building or structure.

7-1.0406 INSURANCE REQUIRED.

Each applicant shall also have filed a certificate of insurance indicating that he is carrying public liability insurance in effect for the duration of the license covering himself and his agents and employees for the following amounts.

	Per Person	Per Accident
Bodily Injury	\$50,000	\$100,000
Property Damage		\$50,000

7-1.0407 LICENSE FEE.

A license fee of ten dollars (\$10.00) shall be payable at the time of filing the application with the clerk. A separate license shall be required for each house, building or similar structure to be moved.

7-1.0408 LICENSE ISSUED.

Upon completion of the application, filing of bond and insurance certificate, and payment of the required fee the clerk shall issue a license.

7-1.0409 PUBLIC SAFETY.

At all times when a building or similar structure is in motion upon any street, alley, sidewalk or public property, the licensee shall maintain flagmen at the closest intersections or other possible channels of traffic to the sides, behind and ahead of the building or structure. At all times when the building or structure is at rest upon any street, alley, sidewalk or public property the licensee shall maintain adequate warning signs or flares at the intersections or channels of traffic to the sides, behind and ahead of the building or structure.

7-1.0410 TIME LIMIT.

No house mover shall permit or allow a building or similar structure to remain upon any street or other public way for a period of more than twelve (12) hours without having first secured the written approval of the city.

7-1.0411 REMOVAL BY CITY.

In the event any building or similar structure is found to be in violation of Section 10 of this chapter the city is authorized to remove such building or structure and assess the costs thereof against the license holder and the surety on his bond.

CHAPTER 2 - CIGARETTE PERMITS

7-2.01 DEFINITIONS.

For use in this chapter the following terms are defined.

1. "Cigarette" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of being flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. It also shall mean cigarette papers, wrappers and tubes. It shall further include cigarillos provided their weight does not exceed three (3)

pounds per thousand. However, this definition shall not be construed to include cigars.

(Code of Iowa, 1975, Sec. 98.1 [1])

2. "Retailer" shall mean every individual, firm, or corporation or other association that sells, distributes or offers items for sale for consumption, or for the purpose of sale for consumption, cigarettes, irrespective of the quantity or amounts or the number of sales.

(Code of Iowa, 1975, Sec. 98.1 [14]; O.A.G., 1944, P. 142)

3. "Place of Business" shall mean any building or structure in which cigarettes are sold, or are kept for the purpose of sale, by a retailer.

(O.A.G., 1932, P. 112; 1928, P. 162; and 1927, P. 142)

7-2.02 PERMIT REQUIRED.

No retailer shall distribute, sell or solicit the sale of any cigarettes within the city without a valid permit for each place of business. The permit shall be displayed publicly in the place of business so that it can be seen easily by the public. No permit shall be issued to a minor.

7-2.03 APPLICATION.

A completed application on forms provided by the State Department of Revenue and accompanied by the fee provided in Section 7-2.04 shall be filed with the clerk. Renewal applications shall be filed at least five (5) days prior to the last regular meeting of the council in June. If a renewal application is not timely filed, and a special council meeting is called to act on the application the costs of such special meeting shall be paid by the applicant.

(O.A.G., 1922, P. 460; Code of Iowa, 1975, Sec. 98.13 [5 and 9])

7-2.04 FEES.

The fee for issuing or renewing a cigarette permit shall be as follows:

(Code of Iowa, 1975, Sec. 98.13 [3])

FOR PERMITS ISSUED OR RENEWED DURING:	FEE:
July, August, or September	\$75.00
October, November, or December	\$56.25
January, February, or March	\$37.50

FOR PERMITS ISSUED OR RENEWED DURING:	FEE:
April, May, or June	\$18.75

7-2.05 ISSUANCE.

The council shall issue or renew a permit upon a determination that such issuance or renewal will not be detrimental to the public health, safety or morals, and shall certify its action in issuing a permit to the State Department of Revenue.

7-2.06 PERMITS NOT TRANSFERABLE.

A permit shall not be transferable to another place of business or retailer. However, if a retailer who holds a valid permit changes his place of business, the council, if it decides to issue a new permit to him, shall not charge any additional fee for the unexpired term of the original permit if the retailer has not received a refund for surrender of the original permit.

7-2.07 EXPIRATION.

Permits expire on June 30 of each year.

7-2.08 REFUNDS.

A retailer may surrender an unrevoked permit and receive a refund from the city, except during April, May, or June, as follows:

(Code of Iowa, 1975, Sec. 98.13 [4])

PERMITS SURRENDERED DURING:	AMOUNT OF REFUND:
July, August, or September	\$56.25
October, November, or December	\$37.50
January, February, or March	\$18.75

7-2.09 REVOCATION.

The council, after notice and hearing, shall revoke a permit if it finds the retailer has substantially violated the provisions of this chapter or Chapter 98, Code of Iowa, 1975, or if grounds exist that would be sufficient for refusal to issue such a permit. The clerk shall give five (5) days' written notice to the retailer by mailing a copy of the notice by certified mail to the place of business as it appears on his application for a permit. The notice shall state the reason for the contemplated revocation and the time and

place at which he may appear and be heard. The hearing shall be held at the regular meeting place of the council.

(Code of Iowa, 1975, Sec. 98.22; O.A.G., 1932, P. 164)

7-2.10 RENEWAL AFTER REVOCATION.

Upon revocation, no new permit shall be issued to the retailer or for the place of business for one year from the date of revocation unless good cause to the contrary is shown the council.

7-2.11 COMPLIANCE WITH STATE LAW.

All cigarette retailers shall abide by state law regarding the sale of cigarettes to no one under the legal age of eighteen (18).

(Ord. 339, 1996)

CHAPTER 3 - FRANCHISES

ARTICLE 1
GAS FRANCHISE

7-3.0101 FRANCHISE GRANTED.

There is hereby granted to Iowa-Illinois Gas and Electric Company, an Illinois corporation authorized to do business in the state of Iowa, hereinafter called the "Company," and to its successors and assigns for a period of twenty-five (25) years from and after the effective date of this franchise the right and franchise to acquire, erect, maintain and operate in the city of Buffalo, Iowa a gas plant or plants for the production, storage, transmission, distribution, sale, delivery or furnishing of gas, either natural or manufactured or mixed natural and manufactured, for public and private use in the city of Buffalo and elsewhere and to use the streets, avenues, alleys and public grounds and bridges in the city of Buffalo for the purpose of laying, constructing, maintaining, replacing and substituting mains, pipes, conduits and other facilities for the transmission, distribution, sale, delivery or furnishing of gas for public and private use in the city of Buffalo and elsewhere.

(Ord. 222 § 1, 1984)

7-3.0102 RIGHTS AND PRIVILEGES.

The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa, 1983, and this franchise shall not be exclusive.

(Ord. 222 § 2, 1984)

7-3.0103 RIGHT TO EXCAVATE.

The company shall have the right to excavate in any public street for the purpose of laying, relaying, repairing or extending gas pipes, mains, conduits and other facilities provided that the same shall be so located and maintained as to make no unnecessary obstruction of any drains or sewers or the flow of water therefrom, which have been or may hereafter be located by authority of said city. Said gas pipes, mains, conduits and other facilities shall be so located and maintained in the streets, avenues, alleys and public places of said city as to make no unnecessary obstruction therein to the use thereof by the public.

(Ord. 222 § 3, 1984)

7-3.0104 EXCAVATION REQUIREMENTS.

In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits, or apparatus, the company shall not unnecessarily obstruct the use of the streets, and shall replace the surface, restoring the original condition as nearly as practicable and in laying, repairing and replacing mains and pipes, the company shall conform to all reasonable regulations prescribed by the city to prevent injury to the pavement, streets, alleys, and public places, and the company shall not unnecessarily interfere with, injure or change any pavement, water pipes, drains or sewers of said city, either public or private.

(Ord. 222 § 4, 1984)

7-3.0105 CITY HELD HARMLESS.

The company, its successors and assigns, shall hold said city free and harmless from all damages arising on account of any negligence of the company, its successors and assigns, in the construction, operation and maintenance of said system.

(Ord. 222 § 5, 1984)

7-3.0106 EXTENSION OF SERVICE.

The company, its successors and assigns, shall extend its mains and pipes in accordance with rules and regulations approved by the Iowa State Commerce Commission.

(Ord. 222 § 6, 1984)

7-3.0107 REQUIREMENT TO FURNISH GAS SERVICE.

The company and its successors and assigns as long as they shall operate under the terms of this franchise shall furnish such quantities of gas of good quality as the city and the inhabitants thereof may reasonably demand; provided, however, that such undertaking and agreement shall be subject to such limitations on the use of gas for large-volume commercial or industrial applications, or for space heating as may be provided by reasonable rules and regulations placed into effect by the company during any temporary shortage in or permanent diminution of the supply of natural gas with which the company serves the city of Buffalo and the inhabitants thereof.

(Ord. 222 § 7, 1984)

7-3.0108 DEPOSITS.

The company is authorized to impose reasonable terms and conditions upon the furnishing of gas service and reasonable rules and regulations in the operation and conduct of its business, including, but not limited to, the requiring of a reasonable deposit of any consumer as a condition of furnishing gas to such consumer.

(Ord. 222 § 8, 1984)

7-3.0109 PROTECTION OF COMPANY PROPERTY.

All proper and necessary police regulations shall be adopted and enforced by the city of Buffalo, Iowa for the protection of the pipes, mains, conduits, meters and other apparatus of the company, its successors and assigns.

(Ord. 222 § 9, 1984)

7-3.0110 ELECTION REQUIREMENT.

This franchise and the rights and privileges herein granted shall not become effective or binding until this franchise shall have been submitted to and approved by a majority of the electors of said city of Buffalo, Iowa, voting at the next general or municipal election or at a special election called for that purpose. The cost and expense of the

election relating to the franchise provided for herein shall be paid by the company.

(Ord. 222 § 10, 1984)

7-3.0111 ACCEPTANCE BY COMPANY.

The company, its successors and assigns, within thirty (30) days after the approval of this franchise by a vote of the people at the next general or municipal election or at a special election called for that purpose, shall file in the office of the clerk of the city of Buffalo, Iowa its acceptance in writing of all the terms and provisions of this franchise.

(Ord. 222 § 11, 1984)

7-3.0112 REPEAL OF ORDINANCE 116.

Upon the effective date of this franchise, the gas franchise Ordinance No. 116, passed and approved by the city council of the city of Buffalo, Iowa, on April 6, 1959 granting a franchise to the company to furnish gas service to the city of Buffalo, Iowa, and its inhabitants, is hereby repealed and all other ordinances or parts of ordinances in conflict herewith are also hereby repealed.

(Ord. 222 § 12, 1984)

7-3.0113 EFFECTIVE DATE.

This franchise shall become effective upon passage by the city council, the approval of the voters as provided in Section 7-3.0110 hereof, and the acceptance by the company as provided in Section 7-3.0111 hereof.

(Ord. 222 § 13, 1984)

PASSED AND APPROVED this 6 day of February 1984.

ARTICLE 2
TELEPHONE FRANCHISE

7-3.0201 FRANCHISE GRANTED.

US West, a corporation, its successors and assigns, are hereby granted the right to use and occupy the streets, alleys, and other public places in the city for a term of twenty-five (25) years from the effective date hereof, for the purpose of constructing, maintaining, and operating a general telephone system within the city.

(Ord. 340 (part), 1996; Ord. 209, Sec. 1, 1982)

7-3.0202 EXERCISE OF POLICE POWER.

The rights herein granted are subject to the exercise of the police power as the same now is or may hereafter be conferred upon the city.

(Ord. 340 (part), 1996; Ord. 209, Sec. 2, 1982)

7-3.0203 PAYMENT OF COSTS.

US West shall, upon demand, pay the cost of publishing this ordinance and of holding the election hereinafter referred to.

(Ord. 340 (part), 1996; Ord. 209, Sec. 3, 1982)

7-3.0204 EFFECTIVE DATE.

This ordinance shall be in full force and effect and shall constitute a binding contract between the city of Buffalo, and US West when the same shall have been approved by a majority of the electors of said city voting thereon, and when the provisions hereof shall have been accepted in writing by US West and such acceptance filed with the city clerk.

(Ord. 340 (part), 1996; Ord. 209, Sec. 4, 1982)

Ordinance 40 granting franchise to the Northwestern Bell Telephone Company was passed and approved by the council on August 4, 1947.

Voters approved Ordinance 40 on _____. Northwestern Bell Telephone Company filed letter of acceptance on _____ 19_____.

ARTICLE 3

CABLE TELECOMMUNICATIONS FRANCHISE

7-3.0301 SHORT TITLE.

This chapter shall be known and may be cited as the "cable telecommunications franchise ordinance" granting a non-exclusive franchise to Eastern Iowa Cablevision and setting forth terms and conditions pertaining thereto.

(Ord. 206, Sec. 1, 1982)

7-3.0302 DEFINITIONS.

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

1. "Additional service" shall mean a subscriber service provided by the Grantee for which a special charge is made based on program or service content, time or spectrum usage and which provides services beyond "basic service" as set forth herein.

2. "Basic service" shall include but not be limited to WHBF, WOC, WQAD, KILN, WGN (Satellite), a local readable community events channel, plus at least three additional channels for future use either for local use or other TV channels for basic service, including Heritage Communications Channel if and when ordered.

3. "Cable Telecommunications Network" or "Network" shall mean any network of cables, optical, electrical, or electronic equipment, including cable television, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital for sale or use by the inhabitants of the city.

4. "City" shall mean the city of Buffalo, its council, officials, boards, commissions, agents and employees unless otherwise specifically designated, and the area within the present and future territorial city limits of the city of Buffalo.

5. "Commission" shall mean the Buffalo Cable Communications Advisory Commission.

6. "Council" shall mean the present governing body of the city of Buffalo or any legally appointed or elected successor or agency constituting the governing body of the city.

7. "FCC" shall mean the Federal Communications Commission and any legally appointed or elected successor.

8. "Grantee" shall mean the person, firm, corporation or other entity granted a franchise in accordance with the provision of this chapter.

9. "Shall" and "will" each is mandatory; "may" is permissive.

10. "Street" shall include all streets, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, boulevards, easements, rights-of-way, bridges or other public ways and all extensions and additions thereto established and maintained under public authority of the city which have been or may be hereafter dedicated to public use.

11. "Subscriber" shall mean any person, firm, corporation or entity receiving reception service from the Grantee.

12. "Channel" shall mean the segment of the electromagnetic spectrum to which a source of television transmission is assigned.

13. "Franchise" shall mean the rights, privileges, authority granted by the city to the Grantee hereunder and shall include all of the terms and conditions of this chapter.

14. "Person" shall mean any individual, or any corporation, business, firm, or other entity, and shall be construed as singular or plural, or masculine, feminine or neuter, as the context may require.

15. "Private property" shall mean all property, real, personal, or mixed, owned by a private person, including property owned by a public utility not owned or operated by the city.

16. "Property of the grantee" shall mean all property, real, personal or mixed, owned or used by the Grantee however arising from or related to or connected with the franchise.

17. "Public property" shall mean all property, real, personal or mixed, owned or used by the city, including property owned or used by a public utility owned or operated by the city, and any easements granted to the public or the city by private property owners.

(Ord. 206, Sec. 2, 1982)

7-3.0303 THE CABLE TELECOMMUNICATIONS NETWORK
FRANCHISE.

1. Authority Granted. This chapter shall give the Grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, above, over and under the streets, as defined in Section 7-3.0302, which are or may be dedicated to public use in the city, any towers, antennas, poles, cables, electronic equipment or other appurtenant equipment necessary for the operation of a Cable Telecommunications Network in the city. The grantee is hereby designated as public utility for purposes of the use of easements dedicated for use by the public utilities and by the city.

2. Duration of Franchise. Upon filing by the Grantee of the proper acceptance, security and insurance, the franchise shall take effect and continue in full force and effect for a period of fifteen (15) years.

3. Franchise Non-exclusive. This franchise shall not be exclusive.

4. Franchise Amendable. Any franchise granted pursuant to this chapter shall be deemed amendable to allow the Grantee to innovate and implement new services and developments; provided, however, that no such services or developments in conflict or inconsistent with the franchise be implemented without the expressed prior approval of the council.

5. Transfer of Franchise. The franchise shall be a privilege to be held for the benefit of the public by the Grantee. The franchise cannot, in any event, be sold, transferred, leased, assigned or disposed of in whole or part, either by forced or voluntary sale, merger, consolidation, mortgage, trust, receivership or any other means without the prior consent of the city and then only under such conditions as the city may establish. Such consent shall not be unreasonably withheld.

6. Contravention of Franchise. In the event a valid law, rule or regulation of any governing authority or agency having jurisdiction contravenes a provision of this chapter after its adoption, the applicable provision of this chapter

shall be superseded to the extent it is in conflict and contrary to such law, rule or regulation.

7. Pole Use Agreements Required. The franchise shall not relieve the Grantee of any obligation involved in obtaining pole or conduit use agreements from the power and telephone utilities or other agencies maintaining poles or conduits in the rights-of-ways of the city, whenever the Grantee finds it necessary to make use of said poles or conduits.

(Ord. 206, Sec. 3, 1982)

7-3.0304 OPERATION OF THE FRANCHISE.

1. Availability of Grantee. Grantee shall at all times maintain one (1) listed "toll free" telephone number on a twenty-four (24) hour availability schedule so that complaints and requests for repairs or adjustments may be made at any time.

2. Subscriber's Antennas. The Grantee shall not require the removal or offer to remove any potential or, existing subscriber's antenna as a condition or provision of service.

3. Antenna Switch. The Grantee, upon request from any subscriber, shall install an antenna switching device so as to permit continued use of the subscriber's television antenna, at a charge equal to the material cost of said switch to the Grantee.

4. Compliance with Regulations. Grantee agrees to comply with all applicable city ordinances, resolutions, standards and specifications in effect as of the passage of the ordinance codified in this chapter and any amendments or additions to ordinances, resolutions, standards and specifications which may be in force throughout the period of the franchise.

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

6. Assignment. Except for the purpose of obtaining financing, the Grantee shall not assign or transfer the franchise, nor any part of the rights, privileges and authority granted thereunder, without the written consent of the city.

7. Subscriber Privacy. In order to protect the privacy of subscribers, the franchisee shall:

A. Be constantly alert to possible abuses of the right of privacy or any other legal rights of any subscriber, programmer or other persons resulting from any device or signal associated with the system;

B. Discuss the possibility of such abuse at every scheduled review session;

C. Provide devices such as electronic locks, scramblers and warning lights as problems are identified, as the technology becomes available and as reasonable financial arrangements can be made;

D. Keep only such records of viewing and purchasing by subscribers as may be necessary for billing purposes;

E. Not monitor or tabulate any test results in any manner which would reveal the economic status, commercial product preferences or opinions of subscribers or their families;

F. Not maintain or tabulate any data on the political, religious, moral or social preferences or opinions of subscribers or their families;

G. Not market or otherwise distribute to advertising, marketing or bulk mailing organizations the names and addresses of subscribers or other related information;

H. Install any cable, line, wire, amplifier, converter or other piece of equipment owned by the franchisee without first securing the written permission of the owner, lessee, or tenant of the property involved.

(Ord. 206, Sec. 4, 1982)

7-3.0305 RIGHTS RESERVED TO THE CITY.

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

2. City's Right of Intervention. The city shall have the right to petition to intervene and the Grantee specifically agrees by its acceptance of the franchise not to oppose such intervention by the city in any suit or proceeding to which the Grantee is a party.

3. City's Right of Inspection. The city reserves the right, during the term of the franchise, to inspect all construction or installation work performed under provisions of franchise or this chapter and to perform measurements of system operation to insure compliance with franchise technical requirements and city specifications.

(Ord. 206, Sec. 5, 1982)

7-3.0306 VALIDATION AND ACCEPTANCE OF FRANCHISE.

1. Effective Date. The ordinance codified in this chapter shall be in full force and effect from and after its final passage by the city council of the city of Buffalo and after publication of said ordinance as required by Iowa law and after a special election confirms that a majority of voters voting desire that the city enter into a non-exclusive franchise, agreement, whichever is the last to occur, and Grantee shall within forty-five (45) days thereafter comply with the following:

A. Statement of Acceptance. A statement by the Grantee of unconditional acceptance of the franchise, its terms, provisions and requirements, shall be submitted in writing to the council.

B. Certificate of Insurance. A certificate of insurance with coverages and amounts as specified in this chapter shall be provided to the city by the Grantee.

C. Performance Bond. Grantee shall execute a performance bond or equivalent security as set forth in this chapter.

D. Reimbursement of Costs. Grantee shall reimburse to the city all franchise related costs including but not limited to costs of elections, including publication fees, and city legal services.

2. Failure to Comply. Should the Grantee fail to comply with the requirements of subsection A above, it shall have abandoned its application and shall acquire no rights or privileges under this chapter and the amount of the performance bond shall be forfeited in full to the city as liquidated damages.

(Ord. 206, Sec. 6, 1982).

7-3.0307 TERMINATION OF FRANCHISE.

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

A. If the Grantee should default in the performance of any of its obligations under the franchise and fails to rectify the default within thirty (30) days after receipt of written notice of the default from the city, except that the Grantee shall not be responsible for delay caused by strike, unavailability of materials, or other matters beyond the control of Grantee.

B. If the Grantee should fail to maintain the ability and indemnification coverages and the performance bond as required in this chapter.

C. If the Grantee should become insolvent, be declared a bankrupt, or the property of the Grantee shall come into the possession of any receiver, assignee, or other officer acting under an order of court, and any such receiver, assignee, or other such officer shall not be discharged within sixty (60) days after taking possession of such property.

D. If the Grantee should for a period of thirty (30) days violate any order or ruling of the city or any regulatory body having jurisdiction over the Grantee unless the

Grantee is lawfully contesting the legality of such order or ruling or is taking appropriate steps to bring itself within compliance.

E. If the Grantee arbitrarily ceases to provide service over the Network.

2. Procedure for Revocation. Following occurrence of any of the events listed above, the council shall provide written notice to the Grantee of said violations and shall advise the Grantee of the reasons alleged to constitute cause for revocation and shall establish a date of public hearing concerning said violations. Such hearing shall be set within sixty (60) days of notification of the parties. If, during this period the cause shall be cured to the satisfaction of the city, the city may declare any such notice to be null and void. The city may, at such hearing, establish a reasonable time for the Grantee to remedy such cause and may, if remedy has not occurred within such additional time, revoke the franchise without further hearing.

3. Filing Complaints. Nothing in this section shall prohibit the city from filing complaints with the Grantee for lesser violations of this franchise ordinance and requesting correction of the same.

(Ord. 206, Sec. 7, 1982)

7-3.0308 EXPIRATION OF FRANCHISE.

1. Review of Franchise Prior to Expiration. At least nine (9) months prior to the expiration of the franchise, the council shall schedule a public meeting or meetings with the Grantee to review the performance of the Grantee. The council may require the Grantee to provide specified records and information for this purpose and may inquire in particular whether the Grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations. The council shall provide its findings and recommendations to Grantee at least six (6) months prior to termination of said franchise.

2. Determination on Reissue of Franchise. The council shall, within ninety (90) days thereafter, determine whether

a franchise shall be reissued, and if so, shall establish the public proceedings leading to such issuance.

(Ord. 206, Sec. 8, 1982)

7-3.0309 PROCEDURE FOLLOWING EXPIRATION OR
TERMINATION OF FRANCHISE.

1. Disposition of Facilities. In the event this franchise expires and is not renewed or is revoked the Grantee may, at its option, sell its Network to the city of Buffalo or any duly constituted franchisee of the city of Buffalo at a price mutually agreeable between the parties, or may remove the same. In the event Grantee elects to remove its Network it shall do so immediately, but in any event within at least sixty (60) days from cessation of operation.

2. Restoration of Property. If Network removal is required, the Grantee shall return such public and private property to the owner thereof in the same condition as when the property of the Grantee was placed thereon, excepting conditions of ordinary and unrelated wear and tear.

3. Restoration by City, Reimbursement of Costs. In the event of a failure by the Grantee to complete any work required in subsection 2 above, or of any work required by law or ordinance not completed in a timely or satisfactory manner, the city may cause such work to be completed for which Grantee shall reimburse the city.

4. Expiration, Extended Operation. Upon the expiration of a franchise, the city may, on its own motion or by request of the Grantee, require the Grantee to operate the Network for an extended period not to exceed six (6) months from the date of any such expiration. All ordinance provisions shall continue in force during said extension.

(Ord. 206, Sec. 9, 1982)

7-3.0310 REPORTS AND RECORDS.

1. Annual Facilities Report. The Grantee shall file annually with the city clerk, within three (3) months of the close of each fiscal year, a total facilities report indicating the total number of subscribers and detailing the total physical miles of plant constructed, rebuilt or in operation during the fiscal year. Such report shall also describe any revisions to the Network "as built" maps which shall be filed

with the city. Also, if requested by the city, progress reports on Network construction or rebuild shall be supplied at such intervals as may be established by the city.

2. City's Access to Records. The city shall have the right to access during all normal business hours and upon the giving of reasonable notice, to the Grantee's contracts, engineering plans, accounting, financial data, and service records relating to the franchised property and operations of the Grantee.

(Ord. 206, Sec. 10, 1982)

7-3.0311 FRANCHISE PAYMENT.

1. Annual Franchise Payment. The Grantee shall pay to the city, during the term of the franchise, three (3%) percent of its annual gross subscriber revenues to be utilized by the city to offset its annual regulatory and administrative costs associated with the franchise. "Gross subscriber revenues" shall mean all revenues received by the Grantee from provision of basic service and all additional services, to all subscribers within the city and to those subscribers located outside the city but within two miles of the corporate limits thereof. "Gross subscriber revenues" shall not include revenues from sales and other taxes levied directly and collected by the Grantee.

2. Payment of Franchise Payment. Grantee shall make all payments due and owing as a franchise fee under subsection 1 of this section, on a semi-annual basis and such payments shall be paid within thirty (30) days after the end of each such period.

3. Rights of Recomputation. No acceptance of any payment by the city shall be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable as a franchise fee or for the performance of any other obligation of the Grantee.

(Ord. 206, Sec. 11, 1982)

7-3.0312 SUBSCRIBER RATES AND SERVICE AGREEMENTS.

1. Subscriber Rates and Charges. Except as otherwise provided in the franchise, the Grantee shall have the right, privilege, and authority to charge the rates and charges fixed in this section to its subscribers for its services.

At turn-on, single-user rates and charges may be as follows:

SERVICE	PER MONTH	INSTALLATION
Basic	\$4.00	\$15.00
Satellite	5.00	10.00 Service requires a converter \$25.00 deposit.
Premium	9.00	FREE when ordered with Satellite Service. If ordered separately, \$25.00 charge.
Cinemax	9.00	
Extra Outlet	2.00	FREE if ordered with any other service. Otherwise, an installation charge of \$25.00.
Stereo FM	2.00	FREE if ordered with any other service. Otherwise, an installation charge of \$25.00.

Multi-user rates and charges may be negotiated between the Grantee and subscriber, but in no event shall the multi-user rates and charges for any subscriber exceed the aggregate of rates and charges which would be charged to the multi-set if computed on the basis of single-user rates and charges.

Any commercial or industrial business which wishes to become a subscriber will be served subject to negotiation of installation fees and monthly service shall be agreeable to and negotiated by Grantee and commercial or industrial user.

Disconnection of any or all services shall be at no charge to the subscriber.

2. Basic Service to Public Buildings. Churches, public schools, public libraries, the fire station and municipal buildings, including municipal recreation buildings, shall receive free monthly service. The Grantee shall furnish said buildings with one hook-up without any installation charge, and public schools shall have the right at their own expense to create additional outlets within said public school buildings.

Change of Subscriber Rates and Charges.

A. Grantee's rates and charges presently in effect for installation, moving of equipment and for basic monthly cable television service are hereby approved by the city. A current schedule of rates will be kept on file with the city clerk.

B. For the purposes of this section, "basic monthly cable television service" is the provision of television broadcast signals and access and origination channel is, if any, and does not include advertising services, rental of studios or equipment, provision of program production services, per-channel or per-program charges to subscribers ("pay cable"), rental of channel, or any other services of the system, the rates and charges for which shall not require approval of the city.

C. Grantee shall have the right to change the rates for basic, monthly cable television service, in the following manner:

(1) For the purposes of this section, "CPI" shall mean the Consumer Price Index of the Department of Labor for the present year.

(2) For the purposes of this section, the words "year" and "years" shall mean the calendar year commencing January 1st of each year and ending on the 31st day of December of each year.

(3) For the purposes of this section; "the first yearly period for determining CPI" shall mean the year commencing January 1, 1982 and ending December 31, 1982.

(4) Grantee may increase the monthly rates in any one year charged for the basic monthly cable television service in an amount less than or equal to the percentage of increase of the CPI, or in an amount of eight (8%) percent, whichever amount is the smaller; without obtaining permission of the council.

(5) In the event that Grantee does not desire to raise its rates in any one calendar year it shall be allowed to accumulate the amount of CPI increase, or an amount of eight (8%) percent, whichever is the smaller, as a carry forward as

an allowable additional rate increase for any subsequent years, except that Grantee shall not increase the charge for the basic monthly cable television service in any one year by an amount in excess of sixteen (16%) percent, of the total monthly basic cable television rate.

(6) This rate section does not apply to rates to be charged any commercial or industrial business and does not apply to "pay" or "premium" cable, which rates are set at the sole discretion of the Grantee.

(7) Said rates may be increased in percentages larger than set forth in this section upon application by Grantee and acceptance of the proposed increased rates by the council.

D. Before instituting an increase equal to or less than said Consumer Price Index increase, Grantee will furnish to the council a copy of the new rates and charges, as well as information regarding Bureau of Labor Statistics figures on said Consumer Price Index. Such notification shall precede any increase by not less than thirty (30) days and not more than sixty (60) days.

4. Service Rules and Regulations. The Grantee shall have the right to prescribe reasonable service rules and regulations and operating rules for the conduct of its business. Such rules and regulations shall be consistent with the terms and conditions of the franchise. The Grantee shall file such rules and regulations, and all amendments thereto, with the city.

5. Service Agreements. The Grantee shall have the right to prescribe a reasonable form of service agreement for use between the Grantee and its subscribers. Such service agreement shall be consistent with the terms and conditions of this franchise.

(Ord. 206, Sec. 12, 1982)

7-3.0313 INSURANCE; INDEMNIFICATION; PERFORMANCE
BOND.

1. The Grantee shall at all times during the term of the franchise carry and require their contractors to carry:

A. Insurance in such forms and in such companies as shall be approved by the city to protect the city and Grantee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation and maintenance of any structure, equipment or appliance. The amount of such insurance shall not be less than five hundred thousand dollars (\$500,000) for damages to property. In addition thereto, Grantee shall carry an umbrella coverage in an amount not less than one million dollars (\$1,000,000). At each five year interval during the term of this franchise, the city shall have the right to review the minimum coverages as specified in this subsection, and may require the Grantee to secure and maintain such additional amounts of coverage as the city deems to be necessary for the protection of the public health and welfare;

B. Workmen's Compensation Insurance as provided by the laws of the State of Iowa as amended;

C. Automobile insurance with limits of not less than five hundred thousand dollars (\$500,000) in liability coverage. In addition thereto, Grantee shall carry an umbrella coverage in an amount not less than one million dollars (\$1,000,000). At each five year interval during the term of this franchise, the city shall have the right to review the minimum coverages as specified in this subsection, and may require the Grantee to secure and maintain such additional amounts of coverage as the city deems to be necessary for the protection of the public health and welfare.

2. All of said insurance coverage shall provide for a ten (10) day notice to the city in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective.

3. The Grantee shall at all times defend, indemnify, protect and hold harmless the city from and against any and all liability, losses and damage to property or bodily injury or death to any person, including payments made under workmen's compensation laws, which may arise out of or be caused by the erection, construction, replacement, removal, maintenance or operation of Grantee's network and caused by any act

or failure to act on the part of the Grantee, its agents, officers, servants or employees. Grantee shall hold the city harmless against any damages resulting from legal action which may be brought against it in connection with the establishment or operation of Grantee's network in the city and shall defend at its own expense any action brought against the city by reason of the erection, construction, replacement, removal, maintenance or operation of Grantee's network.

4. The Grantee shall secure and furnish to the city and maintain at all times throughout the term of the franchise a performance surety bond in favor of the city of Buffalo in the amount of twenty-five thousand dollars (\$25,000) conditioned upon the faithful performance of the Grantee of all the provisions contained in this franchise ordinance, and said bond shall be approved by the city of Buffalo's attorney. A certified copy thereof shall be filed and maintained with the city clerk.

(Ord. 206, Sec. 13, 1982)

7-3.0314 CABLE COMMUNICATIONS ADVISORY COMMISSION.

1. Upon the granting of a franchise, there shall be appointed the cable communications advisory commission.

2. The commission shall consist of five members appointed by the council. Each member shall serve a term of five years except that initial appointments shall be for one, two, three, four and five years respectively. Vacancies shall be filled by the council. The mayor shall serve as a non-voting member of the commission.

3. The commission shall perform the following functions:

A. Advise the council on all matters regarding this chapter;

B. Monitor Grantee operations - construction, operation and maintenance;

C. Attempt to resolve conflicts between the Grantee and public or private users;

D. Determine the general policy regarding access channels with the view toward maximizing usefulness to the community;

E. Conduct a public meeting at least annually for public input regarding the operation of the franchise;

F. Meet at least quarterly with the Grantee in an effort to maintain effective communications;

G. Report to the council the results of all commission meetings;

H. Make recommendations to the council for amendments to this chapter.

(Ord. 206, Sec. 14, 1982)

7-3.0315 NETWORK DESCRIPTION.

1. Network Bandwidth Capacity. The network required hereunder shall have a minimum initial forward bandwidth capability of 300 megahertz (Mhz).

Provision shall be made for increasing channel capacity when all available channels are in use and there exists an economically reasonable justification for meeting additional capacity demand. The network shall have at least thirty-five (35) channel capabilities and a converter will be used immediately upon completion of the system. Additional channels will be made available when said channels become available and are of interest to the Buffalo viewers.

2. Network Reverse Capacity. The network required hereunder shall have a minimum reverse bandwidth capability of thirty megahertz (30 Mhz), although activation of such reverse capability shall not be required unless and until there exists an economically reasonable justification for meeting the reverse capability demand.

(Ord. 206, Sec. 15, 1982)

7-3.0316 RESERVATION OF CHANNELS.

1. Education and Government Access Channels. The Grantee shall reserve for future dedication, a minimum of one channel of network bandwidth, for use by the city and by the school district. This channel shall be made available upon

demand, and at the then comparable and competitive lease rate, at such time as the city and/or the school district are prepared to utilize said channel.

2. All Channels Emergency Alert. The Grantee shall, in the event of any emergency or disaster, make its entire system available to the city or to a civil defense agency. The system shall be engineered to provide an audio alert system to allow authorized officials to override the audio signal on all channels and transmit emergency information.

3. Closed Caption Emergency Warnings. The Grantee shall as technology permits install its system so as to have the capability of providing "closed caption" emergency warnings.

(Ord. 206, Sec. 16, 1982)

7-3.0317 SERVICE AREA.

1. Initial Geographic Coverage. The Grantee shall design and construct its network so as to initially pass and provide tap off facilities to every single-family dwelling unit, multiple-family dwelling unit, agency and business establishment within the area of the city outlined in the attached zoning map which shall be incorporated as part of this chapter.

2. Conditions of Required Extension. The Grantee shall, at its expense, extend its network where there are sufficient potential subscriber dwelling units so as to yield an average of twenty (20) dwelling units per linear mile from the nearest cable terminal point to any newly annexed or developed areas of the city not then served by a Cable Telecommunications Network or to any resident dwelling within the city limits and within two hundred (200) feet of the existing network trunk line. The Grantee may negotiate an installation charge independent of that prescribed in subsection 1 of Section 7-3.0312 for any extension not required by this section.

3. Extension Policy. The Grantee shall file with the city clerk a copy of its extension policy for potential subscribers for whom the provision of service is not required pursuant to subsections 1 and 2 above. Such policy must be approved by the city and the Grantee shall not make, or re-

fuse to make, any extension except as permitted by the approved policy.

(Ord. 206, Sec. 17, 1982)

7-3.0318 TIME FOR PERFORMANCE.

1. Permit Application. Within thirty (30) days of the effective date of a franchise granted hereunder, the Grantee shall file all applications necessary to permit commencement of construction and operation of the Network and shall thereafter diligently pursue all such applications. The city may, at its discretion, provide assistance to insure the scheduled construction of the Network. If the city determines to acquire necessary rights and easements by condemnation, the Grantee shall bear all such related costs.

2. Commencement Timetable. Upon granting of the franchise for the Network the Grantee shall commence engineering and/or construction of the Network. Completion shall be pursued with reasonable diligence. The Grantee shall provide a copy of its construction plans to the city engineer prior to commencing construction.

3. Completion of Construction. Within twelve (12) months of the effective date of awarding the franchise, the Grantee shall have placed in use sufficient distribution facilities so as to permit the offering of basic subscriber services to one hundred percent (100%) of the area defined in subsection of Section 7-3.0317, except for those areas where right-of-way for service installation cannot be obtained.

4. Delays and Extension of Time. The city may, in its discretion, extend the time for the Grantee, if acting in good faith, to perform in such cases as the Grantee is being subjected to delay or interruption due to circumstances reasonably beyond its control.

5. Liquidated Damages. Subject to the provisions of subsection 1(A) of Section 7-3.0307 and subsection 4 of this section, Grantee shall pay to the city the sum of one hundred dollars (\$100) per day as liquidated damages until Grantee has completed performance as required hereunder.

(Ord. 206, Sec. 18, 1982)

7-3.0319 CONDITIONS OF STREET OCCUPANCY.

1. Installation of Cables And Equipment. All installations shall be underground in those areas of the city where both existing telephone and electric services are underground at the time of network construction. In areas where either telephone or electric utility facilities are installed aeri-ally at the time of construction, the Grantee may install its facilities aeri-ally with the understanding that at such time as both the telephone and electric facilities are required to be placed underground by the city, the Grantee shall likewise place its services underground without additional cost to the residents of the city.

2. Excavation Permits. The Grantee shall not disturb or open the surface of any street, sidewalk, driveway or public place for any purpose without having first obtained any necessary permit as may be required by the city.

3. Restoration of Ground Surface. In case of any disturbance of pavement, sidewalk, driveway or other ground surface, whether on public or private property, the Grantee shall, at its own expense, and in a manner approved by the city or the property owner, replace and restore said surface to the same conditions as before such work was commenced.

4. Changes Required by Public Improvements. The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate or remove from the street or other public place, any property of the Grantee when required by the city by reason of modifications or improvements undertaken by the city or its agents.

5. Temporary Removal of Cables. The Grantee shall, upon the request of any person holding a valid building or equipment moving permit issued by the city, temporarily raise or lower its cable to permit such movement. The expense of such temporary removal shall be borne by the person requesting same and the Grantee shall have the authority to request payment in advance. The Grantee shall be given not less than five (5) days advance notice of any such move to arrange for said temporary cable changes.

6. Authority to Trim Trees. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys,

sidewalks, and public places of the city so as to prevent the limbs of such trees from contacting the cables and equipment of the Grantee. All trimming shall be done at the expense of the Grantee. The city may, at its discretion, require such additional trimmings as it deems necessary to preserve the symmetrical appearance of the tree.

7. Office and Records in City. The Grantee shall make and keep at all times in the City Hall a full and complete set of plans showing the exact location of all network equipment installed on or in the streets and other public places of the city. The Grantee shall also provide to the city clerk a set of network "as built" maps drawn to scale showing all network facilities installed in the city. Subscriber drops need not be shown.

8. Grantee to Locate Buried Services. Grantee shall upon request of the city for the convenience of contractors or its residents designate the exact location of buried services by visible markings within twenty-four (24) hours of said request.

9. Depth of Buried Services. Grantee shall install all buried services at least twelve (12) inches below the ground surface.

(Ord. 206, Sec. 19, 1982)

7-3.0320 NETWORK TECHNICAL REQUIREMENTS.

1. General Requirements. Each broadband telecommunications network must be so designed, installed and operated as to meet the following general requirements:

A. Capable of continuous twenty-four (24) hours daily operation;

B. Capable of operating over an outdoor temperature range of -40 degrees F. to +140 degrees F. without catastrophic failure or irreversible performance changes over variations in supply voltages from 105 to 130 volts AC;

C. Capable of meeting all specifications set forth herein over an outdoor temperature range of -20 degrees F. to +100 degrees F. over variations in supply voltages from 105 to 130 volts AC;

D. Operated in such a manner as to avoid causing interference with reception of off-the-air signals by non-subscribers to the network;

E. Designed, installed and operated so as to comply with all applicable rules and regulations promulgated by the Federal Communications Commission;

F. Designed, installed and operated so as to assure the delivery of all subscribers of standard color and monochrome signals on the FCC-designated Class I television channels without noticeable picture degradation or visible evidence of color distortion or other forms of interference directly attributable to the performance of the Broadband, Telecommunications Network.

2. Class I Channel Performance Requirements. The following requirements apply to network performance on the FCC-designated Class I television channels as measured at any subscriber terminal with a matched termination:

A. The signal level as measured at the visual carrier frequency for each television channel shall average 2,000 UV (microvolts) and not be less than 1,000 UV (microvolts) across a 75 ohm terminating impedance. The aural carrier level shall be maintained between 13 and 17 decibels below its associated visual carrier level.

B. The video carrier signal level on each television channel shall not exceed:

+ A maximum level such that signal degradation due to overload in the subscriber receiver does not occur.

+ Two (2) decibels of the signal level of the video carrier of any adjacent channel.

+ Twelve (12) decibels of the video carrier signal level on any other television channel.

C. Broadband Telecommunications Network frequency response as measured at any subscriber terminal shall not vary more than \pm two decibels from one (1) Mhz below the video

carrier frequency to four (4) Mhz above the video carrier frequency of any television channel containing color programming.

D. The corrected ratio of visual signal level to network noise shall not be less than forty (40) decibels in accordance with NCTA standard 005-0069.

E. Cross-modulation as measured at any visual carrier frequency from the network input to any trunk amplifier station or to any subscriber terminal will be maintained at least fifty-seven (57) db below the desired signal carrier level at any point on the trunk and will be a minimum of fifty-two (52) db below the desired signal; carrier level at any subscriber terminal (NCTA standard 002.0267).

F. The ratio of visual carrier signal level to the RMS amplitude of any coherent disturbances such as intermodulation products, network generated or induced co-channel signals or discrete frequency interfering signals shall not be less than forty-six (46) decibels except for officially assigned offset carriers for which it shall not be less than thirty-six (36) decibels.

G. The terminal isolation between subscribers shall not be less than twenty-five (25) decibels except that the isolation between multi-terminals of one subscriber shall not be less than eighteen (18) decibels.

H. The hum and low-frequency disturbance level shall not exceed four percent (4%) peak-to-peak modulation at maximum, NCTA standard.

I. Radiation from the Broadband Telecommunications Network shall be in accordance with the limits set forth in Part 76, Section 76.605 (a) (12) of the FCC Rules and Regulations.

3. Standards Modified Where Necessary. Notwithstanding the fact that the network may be in compliance with all the standards set forth herein, the city may require a higher level of performance in any area to resolve signal quality or interference problems.

4. Specifications for Additional Channels to be Submitted. Proposed specifications for FCC designated Class II, III and IV channels shall be submitted by the Grantee to the city as the use of these channels is implemented.

(Ord. 206, Sec. 20, 1982)

7-3.0321 PERFORMANCE MEASUREMENTS.

1. General Requirements. Test procedures used in verification of the performance criteria set forth herein shall be in accordance with criteria set forth herein and shall be in accordance with good engineering practice. The test procedures specified in subsection 2 of this section are designed as a guide and should be made under conditions which reflect network performance during normal operation. As there is more than one technically acceptable method for performing many of the measurements, the technique and equipment utilized in each case, if different from those set forth below, shall be fully described in the annual certificate filed with the city.

2. Measurements Procedures. At such time as substantial completion of construction has been achieved and at regular intervals not to exceed one (1) year, Grantee shall conduct a "proof of performance" measurement of the Broadband Telecommunications Network to at least three (3) subscriber locations, at least two (2) of which shall be "worst case" locations at the network extremity. Measurements shall be made from the head end of the network in each community served. The measurements may be made as follows:

A. Network frequency response measurements may be made with a calibrated sweep frequency generator, variable attenuator and a quality grade of spectrum analyzer. All television signals except for ALC, AGC, or ASC pilot carriers may be disconnected during this test. With all automatic gain control amplifiers in the section under test set to their normal operating mode, the sweep generator shall be connected to the input of the Broadband Telecommunications Network and set for a full bank 300 Mhz sweep at a signal level equal to the approximate average video signal level of normal programming normally present at the input of the Network. With the spectrum analyzer set to 75 ohms termination and connected at the subscriber terminal under test, the full band spectral display of the analyzer shall be still photographed. The photo-

graph should contain sufficient resolution to permit easy interpretation by trained persons. Measurements shall then be made and recorded for all video carrier frequencies normally carried on the network.

B. Network signal-to-noise measurements may be made in accordance with NCTA Standard 005.0669.

C. The network cross-modulation measurement may be performed in accordance with NCTA Standard 002.0267.

D. The amplitude of the discrete frequency interferences within a television channel may be determined with a frequency selective voltmeter, calibrated for adequate accuracy.

E. The terminal isolation between any two subscriber terminals may be measured by applying a signal of predetermined amplitude from a signal generator to one terminal in the reverse direction and measuring the amplitude of that signal at the other terminal with a frequency selective voltmeter.

F. The network hum modulation may be measured at each visual carrier frequency on the network using a calibrated signal generator, a detector and an oscilloscope. The signal generator shall be connected, and the level and frequency set at a predetermined mode with all other channels set at their normal levels. With the detector and oscilloscope connected to the subscriber terminal, the average level of the detected signal and the peak-to-peak AC hum will be indicated on the oscilloscope.

G. Radiation measurements may be made in accordance with the procedures established in Part 76, Section 76.609(h) (1) - (h) (5) of the FCC Rules and Regulations.

3. Additional Tests and Inspection. The city reserves the right to:

A. Require additional tests at specific terminal locations in the event of particular problems in the network;

B. Conduct its own inspections of the Broadband Telecommunications Network on its own motion at any time during normal business hours upon the provision of reasonable notice. The Grantee shall have a representative available during such inspection.

4. Report of Measurements Combined. To the extent that the report of measurements as required above may be combined with any reports of measurements required by the FCC or other regulatory agencies, the city shall accept such combined reports, provided that all standards and measurements herein or hereafter established by the city are satisfied.

(Ord. 206, Sec. 21, 1982)

7-3.0322 SERVICE STANDARDS.

1. Grantee shall at all times provide and maintain within the city a service technician who shall be a resident of the city, so that subscriber complaints and requests for repairs or adjustments can be resolved within twenty-four (24) hours during normal business days and if at all possible within the same day reported. Individual home failures during the night shall be resolved during the following day.

2. In such cases where a network problem has caused loss of service to more than one subscriber, the response time for such problem shall be immediate, but in no event exceed two (2) hours.

(Ord. 206, Sec. 22, 1982)

7-3.0323 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS A CRIME.

1. Injury to Property of the Grantee. It shall be unlawful for any person to wrongfully or unlawfully injure the property of the Grantee or to deliberately interfere with the dissemination of cable television, and any person so doing shall be deemed to be guilty of a misdemeanor and punishable under subsection 3 of this chapter.

2. Intercepting Signals of the Grantee. It shall be unlawful for any person to intercept or receive the signals of the Grantee without having subscribed for said services and entered into an agreement to pay for said services, and any person so doing shall be deemed to be guilty of a misdemeanor and punishable under subsection 3 of this chapter.

3. Penalty. Any person violating any of the provisions of subsections 1 or 2 of this chapter shall, upon conviction, be subject to a fine of not to exceed one hundred dollars (\$100) and/or imprisonment not exceeding thirty (30) days.

(Ord. 206, Sec. 23, 1982)

7-3.0324 INTERCONNECTION.

1. No Prohibition of Interconnection. Nothing in this chapter shall be construed so as to prohibit the Grantee from interconnecting its network with other cable telecommunication networks in the city, other municipalities, counties or states.

(Ord. 206, Sec. 24, 1982)

7-3.0325 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

1. Services to be Equally Available. The Grantee shall not, in making available the services or facilities of its network, or in its rules or regulations, or in any other respect, make or grant preferences or advantages to any subscriber or potential subscriber to the network and shall not subject any person to any prejudice or disadvantage. This provision shall not prohibit promotional campaigns to stimulate subscriptions to the network or other legitimate uses thereof; nor shall it prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification shall be entitled.

2. Fairness of Accessibility. The entire network shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios, and other services to all citizens, businesses, public agencies, or others entitled having a legitimate use for the network, and no one shall be arbitrarily excluded from its use.

(Ord. 206, Sec. 25, 1982)

CHAPTER 4 - COMMUNICATION TOWERS AND ANTENNAS

7-4.0101 PURPOSE AND GENERAL POLICY.

The council finds that in order to ensure public safety and provide efficient delivery of services by the city and others wishing to utilize wireless communication technologies, in order to protect public and private investments, ensure the health, safety and welfare of the population, to provide for the regulation and administration of the orderly location of antenna arrays and towers and to secure the rights of the city to a return on its investment on public property, it is necessary for the city to establish uniform rules and policies. This amendment is to be interpreted in light of these findings for the benefit of the citizens of the city of Buffalo.

(Ord. 361, 1999)

7-4.0102 DEFINITIONS.

As used in this amendment:

1. "Communications tower" shall mean a tower, pole or similar structure which supports a telecommunications antenna operated for commercial purposes above ground in a fixed location, free standing, guyed or on a building.

2. "Telecommunications" shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

3. "Antenna" shall mean a device, dish or array used to transmit or receive telecommunications signals.

4. "Height" of a communication tower is the distance from the base of the tower to the top of the structure.

(Ord. 361, 1999)

7-4.0103 LOCAL REGULATION AND COMPLIANCE WITH THE TELECOMMUNICATIONS ACT OF 1996.

The Telecommunications Act of 1996 prohibits the city from establishing policies that discriminate against one or a group of providers in favor of another or another group of providers or potential providers. The following objectives shall be applied consistently to all telecommunications pro-

viders that request a location on city property for their communication towers and antennas.

1. To minimize the overall number of towers located in the city, providers may be required to participate in collocation agreements.

2. To ensure that new towers will be safe and blend into their environment, providers will propose designs consistent with site characteristics.

3. To minimize placement of wireless equipment in highly populated areas, residential locations will be considered as a last resort.

4. To assure revenues from site leases of city-owned and controlled land and structures reflects fair compensation for use of city property and administration of this amendment.

(Ord. 361, 1999)

7-4.0104 LEASE REQUIRED.

No person or other entity shall use any public property without first obtaining a lease from the city.

(Ord. 361, 1999)

7-4.0105 FEE REQUIRED.

No lease for the use of public property shall be granted without requiring the lessee thereof to pay a reasonable and competitively neutral fee for the use of that public property.

(Ord. 361, 1999)

7-4.0106 LIMIT ON TERM.

No lease for the use of public property shall be granted for a term of more than twenty-five (25) years. (Note: City may opt for a shorter term.)

(Ord. 361, 1999)

7-4.0107 PRIORITIES.

Priority of the use of city-owned land for communication antennas and towers will be given to the following entities in descending order of priority:

1. All functions of the city of Buffalo.
2. Public safety agencies that are not a part of the city, including law enforcement, fire and ambulance services, and private entities with a public safety agreement with the city.
3. Other governmental agencies for uses which are not related to public safety.
4. Entities providing licensed commercial communications services, including cellular, personal communications services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging and similar services that are marketed to the general public for business and/or personal use.

(Ord. 361, 1999)

7-4.0108 PLACEMENT REQUIREMENTS.

The placement of communications antennas or towers on city-owned property must comply with the following requirements:

1. The antenna or tower will not interfere with the purpose for which the city-owned property is intended.
2. The antenna or tower will have no adverse impact on surrounding private property.
3. The applicant will produce proof of adequate liability insurance for potential damage antennas or towers could reasonably cause to city property and facilities and commit to a lease agreement which includes equitable compensation for the use of public land and other necessary provisions and safeguards. The fees shall be established by the city council and shall reflect potential expense and risks to the city and other appropriate factors.
4. The applicant will submit a letter of credit, performance bond, or other security acceptable to the city to cover the cost of antenna or tower removal.

5. The antennas or towers will not interfere with other uses which have a higher priority as discussed in the paragraphs above.

6. Upon reasonable notice, the antennas or towers may be required to be removed at the user's expense.

7. The applicant must reimburse the city for any costs which it incurs because of the presence of the applicant's antenna or tower.

8. The user must obtain all necessary land use approval.

9. The applicant will cooperate with the city's objective to promote collocations and thus limit the number of separate antenna sites requested.

(Ord. 361, 1999)

7-4.0109 APPLICATION PROCESS.

All applicants who wish to locate a communications antenna or tower on city-owned or private property must submit to the city building commissioner a completed application accompanied by a fee of two hundred dollars (\$200.00) and the following documents, if applicable:

1. Documents:

A. One copy of typical specifications for proposed structures and antennas, including description of design characteristics and material.

B. A site plan drawn to scale showing property lines, tower location, tower height, guy wires and anchors, existing structures, photographs or elevation drawings depicting typical design of proposed structures, parking, fences, landscape plan, and existing land uses on adjacent property. A site plan is not required if the antenna is to be mounted on an approved existing structure.

C. A current map or update for an existing map on file showing locations of applicant's antennas, facilities, existing towers and proposed towers which are reflected in public records, serving any property within the city.

D. A report from a structural engineer showing the tower antenna capacity by type and number, and a certification that the tower is designed to withstand winds in accordance with ANS/EIA/TIA 222, latest revision standards.

E. Identification of the owners of all antennas and equipment to be located on the site.

F. Written authorization from the site owner for the application.

G. Evidence that a valid FCC license for the proposed activity has been issued.

H. A line of sight analysis showing the potential visual and aesthetic impacts on adjacent residential districts.

I. A written agreement to remove the tower and/or antenna within one hundred eighty (180) days after cessation of use.

J. Additional information, as required, to determine that all applicable zoning regulations are met.

K. Any communications facilities located on the roof of an antenna support structure must be set back at least one foot from the edge of the roof of the structure. This setback requirement shall not apply to (1) communications facilities located above the roof of the structure if the facilities are appropriately screened from view through the use of panels, walls, fences or other screening techniques approved by the city, or (2) camouflage antennas that are mounted to the exterior of the antenna support structures below the roof, but do not protrude more than twenty-four (24) inches from the side of such an antenna support structure.

2. Conditions. Applicant must also show evidence that all of the following conditions which are applicable are met:

A. Applicant must show that the proposed communications tower, antenna or accessory structure will be placed in a reasonably available location that will minimize the visual impact on the surrounding area and allow the facility to

function in accordance with minimum standards imposed by applicable communications regulations and applicant's technical design requirements.

B. Applicant must show that a proposed antenna and equipment cannot be accommodated and function as required by applicable regulations and applicant's technical design requirement without unreasonable modifications on any existing structure or tower under the control of the applicant.

C. Applicant for a permit in a residential district must show that the area cannot be adequately served by a facility placed in a nonresidential district for valid technical reasons.

D. Prior to consideration of a permit for location on private property which must be acquired, applicant must show that available publicly owned sites, and available privately owned sites occupied by a compatible use, are unsuitable for operation of the facility under applicable communications regulations and applicant's technical design requirements.

E. Applicant must provide the names, addresses and telephone numbers of all owners of other towers or useable antenna support structure within a one-half mile radius of the proposed new tower site, including city-owned property, and written documentation that the applicant (1) made diligent but unsuccessful efforts for a minimum of forty (40) days prior to the submission of the application to install or collocate the applicant's telecommunications facilities on towers or useable antenna support structures owned by the city and other persons located within a one-half mile radius of the proposed tower site, or (2) written technical evidence from an engineer that the proposed tower or facilities cannot be installed or collocated on another person's tower or support structure within a one-half mile radius of the proposed tower and must be located at the proposed site in order to meet the coverage requirements of the applicant's wireless communications system.

F. Applicants must show that a new tower is designed to accommodate additional antenna equal in number to applicant's present and future requirements.

G. Applicant must show that all applicable health, nuisance, noise, fire, building and safety code requirements are met.

H. All towers and communications facilities shall be of camouflage design standards. Examples of camouflage facilities include, but are not limited to, architecturally screened roof, roof-mounted antennas, antennas integrated into architectural elements, telecommunications towers designed to blend into the surrounding environment or to look other than a tower, such as light poles, power poles and trees. At a minimum, all towers not requiring FAA painting or markings shall have an exterior finish which is galvanized or painted dull blue, gray or black.

I. Applicant must show by certificate from a registered engineer that the proposed facility will contain only equipment meeting FCC rules, and must file with the city clerk-financial officer a written indemnification of the municipality and proof of liability insurance or financial ability to respond to claims up to one million dollars (\$1,000,000.00) in the aggregate which may arise from operation of the facility during its life, at no cost to the municipality, in form approved by the city attorney.

J. Land use regulations, visibility, fencing, screening, landscaping, parking, access, lot size, exterior illumination, sign, storage, and all other general zoning district regulations except setback and height, shall apply to the use. Setbacks on all sides shall be a distance equal to the height of the tower. The following height conditions apply:

i. Residential - R-1 Single-family Residence, R-2 Two-Family Residence and R-3 General Residence Districts. Freestanding tower with height not exceeding one hundred (100) feet is a permitted conditional use: height exceeding one hundred (100) feet requires special exception.

ii. Commercial - C-1 General Commercial and C-3 Highway-Oriented Commercial Districts. Freestanding or guyed tower with height not exceeding one hundred eighty (180) feet is a permitted conditional use: height exceeding one hundred eighty (180) feet requires special exception.

iii. Industrial - I-1 General Industrial District. Free-standing or guyed tower with height not exceeding three hundred sixty (360) feet is a permitted conditional use: height exceeding three hundred sixty (360) feet requires special exception.

iv. Other (List Districts) Freestanding or guyed tower with height not exceeding five hundred (500) feet is a permitted conditional use: Height exceeding five hundred (500) feet requires special exception.

K. A tower must be a minimum distance equal to one and one-half the height of the tower from property designated historic or architecturally significant, and must be set back from all lot lines distances equal to the district setback requirements or twenty-five (25) percent of the tower height, whichever is greater.

All responses to applications for siting of telecommunications towers and facilities shall be in writing and shall be made within thirty (30) days after all application materials are received.

(Ord. 361, 1999)

7-4.0110 NOISE AND EMISSION STANDARDS.

No equipment shall be operated at towers and telecommunications facilities so as to produce noise in excess of applicable noise standards under WAC 173-60, except during emergencies or periodic routine maintenance which requires the use of a backup generator, where the noise standards may be exceeded temporarily.

The Federal Telecommunications Act of 1996 gives the FCC sole jurisdiction to regulate radio frequency emissions. Facilities that meet the FCC standards shall not be conditioned or denied on the basis of emissions impacts. Applicants for tower sites shall be required to provide information on the projected power density of the facility and how this meets FCC standards.

(Ord. 361, 1999)

7-4.0111 PLACEMENT OF FACILITIES AND RELATED LEASE FEES.

The placement and maintenance of communications antennas or towers on city-owned sites, such as water towers and parks, will be allowed when the following additional requirements are met:

1. Water Tower or Reservoir Sites. The city's water tower and reservoir represent a large public investment in water pressure stabilization and peak capacity reserves. Therefore, its protection is of prime importance. As access to the city's water storage system increases, so does the potential for contamination of the public water supply. For these reasons, the placement of communications towers or antennas on water towers or reservoir sites will be allowed only when the following requirements are met.

A. The applicant must have written approval from the public works director each time access to the facility is desired. This will minimize the risk of contamination to the water supply.

B. There is sufficient room on the structure and/or the grounds to accommodate the applicant's facility.

C. The presence of the facility will not increase the water tower or reservoir maintenance cost to the city.

D. The presence of the facility will not be harmful to the health or safety of the workers maintaining the water tower or reservoir.

E. A fee will be assessed for placing facilities on a city water tower, such fee to be determined by the city council.

2. Parks. The presence of certain communications antennas or towers represents a potential conflict with the purpose of certain city-owned parks and recreational facilities. Towers shall be prohibited in designated conservation areas. Communications antennas or towers will be considered only in the following parks after the recommendation of the park board and approval of the city council:

A. Public parks of a sufficient scale and character that are adjacent to an existing commercial or industrial use.

B. Commercial recreational areas and major ball fields.

C. Park maintenance facilities.

D. Fee for placing facilities on park property, such fee to be determined by the city council.

(Ord. 361, 1999)

7-4.0112 ABANDONMENT.

In the event the use of any communications tower has been discontinued for a period of one hundred eighty (180) consecutive days, the tower shall be deemed to be abandoned. Determination of date of abandonment shall be made by the building commissioner, who shall have the right to request documentation and/or affidavits from the communication tower owner/operator regarding the issue of tower usage. Upon such abandonment, the owner/operator of the tower shall have an additional one hundred eighty (180) days within which to: (1) reactivate the use of the tower or transfer the tower to another owner/operator who makes actual use of the tower, or (2) dismantle and remove the tower. At the earliest, one hundred eighty-one (181) days from the date of abandonment, without reactivating or upon completion of dismantling and removal, any special exception and/or variance approval for the tower shall automatically expire.

(Ord. 361, 1999)

7-4.0113 TERMINATION.

The city council may terminate any lease if it is determined that any one of the following conditions exist:

1. A potential user with a higher priority cannot find another adequate location and the potential use would be incompatible with the existing use.

2. A user's frequency broadcast unreasonably interferes with other users of higher priority, regardless of whether or not this interference was adequately predicted in the technical analysis.

3. A user violates any of the standards in this ordinance or the conditions attached to the city's lease agreement.

Before taking action, the city will provide notice to the user of the intended termination and the reason for it, and provide an opportunity for a hearing before the city council regarding the proposed action. This procedure need not be followed in emergency situations.

(Ord. 361, 1999)

7-4.0114 HOME RULE.

This amendment is intended to be and shall be construed as consistent with the reservation of local authority contained in the Twenty-fifth Amendment to the Iowa Constitution granting cities Home Rule powers. To such end, any limitation on the power of the city contained herein is to be strictly construed and the city reserves to itself the right to exercise all power and authority to regulate and control its local affairs and all ordinances and regulations of the city shall be enforced against the holders of any lease.

(Ord. 361, 1999)

7-4.0115 NEW TECHNOLOGIES.

Should, within the term of any lease, developments within the field for which the grant was made to the holder of the lease present the opportunity to the holder of the lease to be more effective, efficient and economical though the use of a substance or material other than those for which the lease was originally made, the holder of the lease may petition the city council which, with such requirements or limitations as it deems necessary to protect public health, safety and welfare, may allow the use of such substances under the terms and conditions of the lease.

(Ord. 361, 1999)