

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: LICENSING AND MISCELLANEOUS

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HAWKERS, PEDDLERS AND SOLICITORS

' 110.01 DEFINITIONS.

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

PEDDLER. Any individual, whether a resident of the village or not, traveling either by foot or vehicle from place to place, carrying goods, wares or merchandise, offering and exposing the same for sale, or making sales and delivering articles to purchasers. The word **PEDDLER** shall include the words **HAWKER** and **HUCKSTER**.

SOLICITOR. Any individual, whether a resident of the village or not, traveling either by foot or vehicle from place to place, taking or attempting to take orders for the sale of goods, wares or merchandise for future delivery, or for services to be furnished or performed in the future. This definition shall include any person who uses or occupies any building, structure or other place in the village for the sole purpose of taking orders for future delivery.
(1957 Code, ' 20-501)

' 110.02 LICENSE.

It shall be unlawful for any peddler or solicitor to engage in such business within the village without first obtaining a license as provided in this subchapter; provided, however, that any individual selling or offering for sale only goods, wares or merchandise which he has grown, raised or manufactured shall, after meeting all other requirements, be granted a license without payment of the fee required by this subchapter; and further provided, that any individual selling or offering for sale merchandise for the benefit of any charitable organization, or public institution located in the village and without personal pecuniary gain to the individual, shall, after meeting all other requirements, be granted a license without payment of the fee required by this subchapter. The amount of the fee shall be set by the Council.
(1957 Code, ' 20-502) Penalty, see ' 10.99

' 110.03 EXHIBITION OF LICENSE.

Peddlers and solicitors are required to exhibit their licenses at the request of any citizen.
(1957 Code, ' 20-503) Penalty, see ' 10.99

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' 110.04 INVITATION TO PREMISES.

It shall be unlawful for any peddler or solicitor to enter a private residence or any premises upon which a private residence is located for the purpose of engaging in his or her business without first having been requested or invited to do so by the owner or occupant thereof.

(1957 Code, ' 20-505) Penalty, see ' 10.99

TRANSIENT MERCHANTS

' 110.20 DEFINITIONS.

The word *TRANSIENT MERCHANT* as used in this subchapter shall mean any person, whether a resident of the village or not, who engages in the temporary business of retail sale and delivery of goods, wares or merchandise within said village, and who, for the purpose of conducting such business, uses or occupies any village lot, premises, building, room or structure including railroad cars; provided, however, that such definition shall not be construed to include merchants having regularly established places of business within the village who make incidental sales or deliveries direct from railroad cars, or to persons making sales at any annual fair, and provided further that every person engaged in carrying on a temporary business until his or her inventory has been assessed for taxation in the village.

(1957 Code, ' 20-551)

' 110.21 LICENSE.

(A) It shall be unlawful for any transient merchant to engage in such business without first obtaining a license as provided in this subchapter; provided however, that any person selling or offering for sale any goods, wares or merchandise on behalf of and solely for the benefit of any recognized charitable or religious or public institution in the village shall, after meeting all other requirements, be granted a license without payment of the fee required by this subchapter.

(B) The license fee shall be refunded to any licensee who continued in the same business as soon as his or her inventory has been assessed for taxes in the village; provided, however, that such fee shall not be so refunded until an amount at least equal to said fee has been paid to the village by the licensee in taxes on the licensee's business property or in water charges for water furnished the licensee's place of business. The amount of the fee shall be set by the Council.

(1957 Code, ' 20-552) Penalty, see ' 10.99

Shepherd - Business Regulations***PUBLIC SHOW, CIRCUS OR EXHIBITION*****' 110.35 LICENSE.**

(A) No person shall conduct, maintain or operate any carnival, public show, circus or exhibition to which admission is obtained upon payment of money and which has no permanent location in the village without first obtaining a license as provided in this subchapter.

(B) The provisions of this subchapter shall not extend to any exhibitions by the pupils of any school or to any entertainment for the benefit of any school, church or for any benevolent or charitable object, and nothing contained herein shall be construed to require any school, church or those giving or responsible for any entertainment for any benevolent or charitable object to obtain a license hereunder.

(1957 Code, ' 20-601) Penalty, see ' 10.99

' 110.36 APPLICATION FOR LICENSE.

The Clerk shall require that any person desiring a license under this subchapter shall state in his or her application the proposed location of the business, the written consent of the owner of the property, the number of employees, a description of the sanitary facilities on the property and a sufficient description of the type of show or exhibit to apprise the Clerk of its nature.

(1957 Code, ' 20-602)

' 110.37 GRANTING OF LICENSE.

(A) The Clerk shall not grant such license except on certification of the Police and Fire Departments that all requirements prescribed by this code have been complied with and that the public peace, health and safety are adequately safeguarded.

(B) The Clerk shall not grant such license if it shall appear that such show or exhibition is of an indecent or immoral nature.

(1957 Code, ' 20-603)

FOOD TRUCKS**' 110.50 REQUIREMENTS.**

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(A) Provide appropriate waste receptacles at the site of the unit and remove all litter, debris and other waste attributable to the vendor on a daily basis.

(B) Not operated on public property within one block of a village-authorized street fair, public festival, farmers market or event being conducted without authorization from the event sponsor.

(C) Not use any flashing or blinking lights or strobe lights; all exterior lights over 60 watts shall contain opaque, hood shields to direct the illumination downward.

(D) Not use loud music, amplification devices or Acrying out@ or any other audible methods to gain attention which causes a disruption or safety hazard as determined by the village.

(E) The operation of all mobile food truck units, including generators, shall meet the village=s noise ordinance, sign ordinance and all other village ordinances.

(F) Comply with all applicable federal, state and county regulations.

(G) May have one portable sign that is six square feet, with no dimension greater than three square feet and no height (with legs) greater than four feet, located within five feet of the unit; and under no circumstances shall such sign be placed that impedes pedestrian and/or vehicle safety.

(H) Within commercial areas, a mobile food vendor may only operate between the hours of 6:00 a.m. and 12:00 a.m. on residential and private property within commercial areas. Other restrictions regarding hours of operation may be established by resolution of the Village Trustees.

(I) No mobile food vending unit may be left unattended for more than two hours; and any mobile food vending unit not in operation shall be removed at closing vendors units operating on village-controlled property only.

(J) Shall not utilize any electricity or power without the prior written authorization of the power customer; no power cable or similar device shall be extended at or across any village street, alley or sidewalk except in a safe manner.

(K) Village food vendors license must be displayed at all times.

(L) All grey water/untreated waste shall be disposed of in accordance with federal, state, county and local regulations, and under no circumstances shall untreated waste be disposed of into the public sewer.

(M) No vehicle shall be located so as to block a public sidewalk or pathway, designated fire lane or otherwise impede pedestrian or vehicular movement.

(N) Anyone operating on private property must submit a letter from the property owner granting

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them permission to use the property at time of application.

(O) Mobile food units are limited to an overall length of 36 feet and an overall width of nine feet.

(P) Mobile food units shall not be located directly in front or within a 75-foot radius of the business property line of permanent business with a food license during the business hours of operation.

(Q) If operating on sidewalks or while parked on village streets, mobile food service units shall not supply or provide tables and chairs, booths, stools, benches, tents or other similar dining for customers.

(R) A license is valid only for each individual vehicle or trailer operated by a mobile food service provider and shall not be transferred among vehicles or trailers.

(Ord. passed 10-15-2018) Penalty, see ' 10.99

' 110.51 IMPOUNDMENT.

Any equipment associated with food vending that is not in compliance with this subchapter and left on public property may be impounded at the owner=s expense.

(Ord. passed 10-15-2018)

' 110.52 OTHER PERMITS.

A permit obtained under this subchapter shall not relieve any vendor of responsibility for obtaining any other permit or authorization required by any other ordinance, statute or administrative rule. It is the vendor=s responsibility to obtain a permit from the Health Department.

(Ord. passed 10-15-2018)

' 110.53 APPROVED LOCATIONS.

(A) Vending on village property: First, Second and Third Streets north and south to alleys off from Wright Avenue (maximum of two units at one time, the first two that arrive during the designated hours may operate). Based on permit issued as in a first-come first-served basis.

(B) No mobile food units may operate on any other publicly owned property within the village.

(C) All units must operate to curb side only.

(Ord. passed 10-15-2018) Penalty, see ' 10.99

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' 110.54 HOURS OF PRESENCE AND/OR OPERATION.

This includes setup and tear down:

(A) For residential areas: 9:00 a.m. to 10:00 p.m.;

(B) For public property commercial areas: 6:00 a.m. to 12:00 a.m.;

(C) For private property in commercial areas: 6:00 a.m. to 12:00 a.m.;

(D) May 1 through November 1; and

(E) Each permit is good for 48 hours consecutively.

(Ord. passed 10-15-2018)

' 110.55 FEE SCHEDULE.

\$300	If vending on village property (if also vending on private property, this fee applies)
\$200	If vending on private property only
All village based food service establishments are exempt. Fees can be set by the Village Council at any time.	

(Ord. passed 10-15-2018)

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APPENDIX A: SALES PERMIT

VILLAGE OF SHEPHERD
SHEPHERD, MICHIGAN

SALES PERMIT

Permit No. _____

Permit Fee _____

\$200 Private Property/Food Trucks

\$300 Village Property/Food Trucks

\$100 Door to Door Sales/Ice Cream Trucks

\$10.00 Background Check Required

NON-PROFIT EXCLUDED

_____ HAS REGISTERED WITH THE VILLAGE OF SHEPHERD TO
(NAME)

BE ABLE TO PROMOTE SALES WITHIN THE VILLAGE FROM (date) _____

TO _____. HE/SHE REPRESENTS _____
(COMPANY)

STREET

CITY _____ STATE _____ ZIP _____

PHONE _____ (_____)

G VALID HEALTH DEPT APPROVAL

SIGNED: _____
(VILLAGE OFFICIAL)

G Photo of Food Truck/Set Up Display

' 110.02 It shall be unlawful for any peddler or solicitor to engage in such business within the village without first obtaining a permit as provided in this subchapter; provided, however, that any individual selling or offering for sale only goods, wares or merchandise which he has grown, raised or manufactured shall, after meeting all other requirements, be granted a permit without payment of the fee required by this subchapter; and further provided, that any individual selling or offering for sale merchandise for the benefit of any charitable organization, or public institution located in the

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village and without personal pecuniary gain to the individual, shall, after meeting all other requirements, be granted a permit without payment of the fee required by this subchapter. The amount of the fee shall be set by the Council.

' 110.21 (A) It shall be unlawful for any transient merchant to engage in such business without first obtaining a permit as provided in this subchapter; provided however, that any person selling or offering for sale any goods, wares or merchandise on behalf of and solely for the benefit of any recognized charitable or religious or public institution in the village shall, after meeting all other requirements, be granted a permit without payment of the fee required by this subchapter.

(B) The permit fee shall be refunded to any permittee who continued in the same business as soon as his inventory has been assessed for taxes in the village, provided, however, that such fee shall not be so refunded until an amount at least equal to said fee has been paid to the village by the permittee in taxes on the permittee=s business property or in water charges for water furnished to the permittee=s place of business. The amount of the fee shall be set by the Council.

(Ord. passed 10-15-2018)

CHAPTER 111: RESERVED

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CHAPTER 112: YARD SALES

Section

- 112.01 Definitions
- 112.02 Duration and frequency
- 112.03 Signs
- 112.04 Exceptions to chapter

- 112.99 Penalty

' 112.01 DEFINITIONS.

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

GOODS. Any goods, warehouse merchandise or other property capable of being the object of a sale regulated under this chapter.

YARD SALE. All sales entitled Ayard sale,@ Alawn sale,@ Agarage sale,@ Aattic sale,@ rummage sale@ or Aflea market sale@ or any similar casual sale of tangible personal property which is advertised by any means whereby the public at large is or can be made aware of such sale.
(Ord. passed - -)

' 112.02 DURATION AND FREQUENCY.

(A) No person shall conduct a yard sale in the village more than four times within a 12-month period, and no such sale shall be conducted for a period exceeding three consecutive calendar days. (Exception: period of three consecutive days shall be waived during Spring Festival Week.)

(B) If a motor vehicle is being sold, not more than one motor vehicle shall be advertised at a time as being for sale, or be parked and be advertised as being for sale, on a residential lot.

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(C) In addition, not more than two motor vehicles shall be advertised as being for sale and be parked on a residentially used or zoned lot during a calendar year, and no vehicle shall be parked on a residential lot with a for sale sign on it for more than 30 days in a calendar year.

(Ord. passed - -) Penalty, see ' 112.99

' 112.03 SIGNS.

The following rules will apply to the display of any sign displayed for the purpose of advertising a yard sale:

(A) Yard sale signs are permitted in all zoning districts;

(B) Yard sale signs may not exceed six square feet per sign face or have more than two faces;

(C) Yard sale signs may not exceed eight feet in height;

(D) Yard sale signs may be displayed free-standing, on a wall or in a window; and

(E) Yard sale signs may be displayed during the sale period only and the signs shall be removed from all locations immediately following the sale.

(Ord. passed - -) Penalty, see ' 112.99

' 112.04 EXCEPTIONS TO CHAPTER.

This chapter shall not apply to or affect:

(A) Persons selling goods pursuant to an order or process of a court of competent jurisdiction;

(B) Persons acting in accordance with their powers and duties as public officials; or

(C) Persons selling or advertising for sale items of personal property which are specifically named or described in the advertisement and which separate items do not exceed five in number.

(Ord. passed - -)

' 112.99 PENALTY.

Fines for violations of this chapter shall be as set forth by the county.

(Ord. passed - -)

CHAPTER 113: CABLE COMMUNICATIONS SYSTEMS

Section

- 113.01 Title
- 113.02 Definitions
- 113.03 Purpose
- 113.04 Franchise required
- 113.05 Application process
- 113.06 Franchise requirements
- 113.07 Programming
- 113.08 Minimum design requirements
- 113.09 Guidelines for providing cable service
- 113.10 Franchise renewal
- 113.11 Transfer of ownership
- 113.12 Purchase of cable system by grantor
- 113.13 Removal of cable system
- 113.14 Delegation of authority of grantor
- 113.15 Regional interconnect
- 113.16 Conflicts

' 113.01 TITLE.

This chapter shall be known as the ACable Communications Systems Ordinance.@
(Ord. passed 11-20-1995)

' 113.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words Ashall@ and Awill@ are always mandatory and not merely directory. The word Amay@ is permissive. Words appearing in this chapter which are not defined in this section shall have their common and ordinary meanings.

ACCESS CHANNEL. Any program or signal channel available for nonprofit use by government

agencies, educational institutions, community groups and individual members of the public under terms established by the franchise agreement.

ADMINISTRATOR. The chief administrative officer of the grantor or that person designated or provided with the authority to execute this chapter.

APPLICATION. Any proposal seeking authority from the grantor to construct, develop, reconstruct or redevelop and operate a cable system within the jurisdiction of the grantor pursuant to this chapter. It shall include any initial proposal as well as all amendments and informal correspondence related thereto, all subsequent renewal proposals and in each and every instance it shall mean the inclusion of all information requested in this chapter.

BASIC SERVICE. At least all of the following:

(1) The retransmission to all subscribers of all broadcast television channel signals authorized by the Federal Communications Commission and provided for in the franchise agreement; and

(2) The cablecasting to all subscribers of programming on the local origination channel and all public, educational, government and community access channels.

BROADCAST SIGNAL. A television or radio signal that is transmitted over the air and is received by a cable communications system off the air through a microwave or satellite link, and retransmitted to cable system subscribers.

CABLE COMMUNICATIONS SYSTEM or SYSTEM. A system of antennas, cables, amplifiers, towers, microwave links, cablecasting studios, and any other conductors, converters, equipment or facilities designed and constructed for the purpose of distributing video programming to home subscribers and for producing, receiving, amplifying, storing, processing or distributing audio, video, digital or other forms of electronic or electric signals.

CABLE FACILITY. A nonbroadcast signal that originates within the facilities of the cable communications system.

CABLECAST. To distribute programs originating locally to subscribers to the cable system.

COMMUNITY ACCESS GROUP. Any nonprofit group or organization designated as eligible to utilize access channels and facilities.

CONVERTER. An electronic device which converts signals transmitted as cable service to a frequency which permits their reception on subscriber=s television receivers.

DROP. The cable and related hardware including grounding materials which connect a subscriber=s premises to the cable system.

EASEMENT. The right to occupy and use public rights-of-way, including public utility

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easements for the operation of a cable system.

EDUCATION ACCESS CHANNEL. Any channel where local educational institutions are the primary designated programmers.

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

FRANCHISE. The rights granted pursuant to this chapter to construct, own, operate and maintain a system as defined by this chapter, within the jurisdiction of the grantor. Any such authorization, in whatsoever form granted, shall not mean nor include any license or permit required for the privilege of transacting and carrying on a business within the jurisdiction of the grantor as required by other ordinances and laws of the grantor.

FRANCHISE AGREEMENT. A written agreement between the grantor and the grantee, including the specifications, franchise applications and other related material establishing the grantee's rights and responsibilities relating to construction, operation and maintenance of a cable communications system.

GOVERNMENT ACCESS CHANNEL. Any channel where local governmental agencies are the designated programmer.

GRANTEE. The franchisee, its successors or its delegates acting within the scope of its franchise.

GRANTOR. The community or its designee.

GROSS RECEIPTS. All the revenues derived directly or indirectly by a grantee, its affiliates, subsidiaries, parents and any person in which a grantee owns any interest from or in connection with the operation of the cable system for the delivery of cable service including, but not limited to, all monthly and subscriber fees for basic service and any premium services, installation and reconnection charges, equipment rental charges for converters, video cassette recorders, video production equipment and video tape programming, advertising revenue and leased channel revenue; provided, however, that this term does not include revenues generated from the sale or lease of capital assets unrelated to the operation of the cable service outside of the community.

HEADEND. Any location which houses the electronic equipment that transmits the necessary signal and services for the cable system, and includes sub-headends and similar facilities.

INSTALLATION. Refers to the complete process of constructing a subscriber drop which connects a television receiver to the cable system.

LEASED ACCESS or LEASED ACCESS CHANNEL. Any channel or portion of a channel available for lease and programming by persons or entities other than the grantee.

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LOCAL ORIGINATION CHANNEL. Any channel where the grantee is the primary designated programmer and provides local programs to subscribers.

PARENTAL CONTROL LOCK-OUT DEVICE. A special electronic circuit or other appropriate device designed to permit a subscriber to scramble, block or trap temporarily any signal that cannot be viewed without the use of a code or physical Akey@ apparatus.

PAY CABLE or PAY TELEVISION. The delivery of television signals over the cable communications system for a fee or charge to subscribers, over and above the charge for basic service on a per-program, per-channel or other subscription basis.

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

PUBLIC ACCESS CHANNELS COMMUNITY ACCESS CHANNEL OR COMMUNITY CHANNEL. Any channel where any member of the general public or any noncommercial organization may be a programmer, without charge, on a nondiscriminatory basis.

STREET. The surface of as well as the space above and below any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or any easement or extension, now or later held by the grantor for any public purpose and shall include any other easements or rights-of-way or extensions as may be later held by the grantor which shall within their proper use and meaning entitle the grantor and its grantee to their use.

THEFT OF SERVICE. The unauthorized reception of cable service, and shall include the action of any person who shall intercept or receive or assist in intercepting or receiving any cable service offered over a cable system, unless such actions are specifically or otherwise authorized by a grantee or authorized by the village.

(Ord. passed 11-20-1995)

' 113.03 PURPOSE.

(A) The grantor finds that the development of the cable communications system has the potential of having great benefit and impact upon its citizens. Because of the complex and rapidly changing technology associated with cable television, the grantor further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the grantor or such persons as the grantor shall designate. It is the purpose of this chapter and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an internal part. Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the community

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residents, but can provide a variety of interactive communication services to institutions and individuals. Many of these services involve municipal agencies and other public institutions, by providing governmental, educational or health care communications.

(B) For these purposes to the extent practicable, the following goals underlie these regulations contained herein.

(1) The cable communications system should be capable of accommodating both the present and reasonably foreseeable future communications needs of the community.

(2) The cable communications system should be improved and upgraded if necessary during the franchise term so that the new facilities necessary for the operation of this system shall be integrated to the maximum extent possible with existing facilities.

(3) The cable communications system authorized by this chapter shall be responsive to the needs and interests of the community, and shall provide a wide diversity of information sources and services to the public.

(4) The public, educational and governmental needs for access to the cable communications system are met.

(Ord. passed 11-20-1995)

' 113.04 FRANCHISE REQUIRED.

No person shall own or operate a cable communications system in the jurisdiction without first making application and receiving approval for a franchise in the form of a franchise agreement between the grantor and the grantee which shall comply with all of the terms and specifications contained in this chapter. Franchise agreements shall authorize the use of public easements for the construction and operation of cable communication systems but they shall not convey any property rights to grantee. No franchise agreement shall either expressly or impliedly be deemed to restrict the granting of subsequent agreements nor shall any franchise agreement create any right to renewal. The failure to obtain a franchise agreement as required by this chapter shall constitute a misdemeanor.

(Ord. passed 11-20-1995) Penalty, see ' 10.99

' 113.05 APPLICATION PROCESS.

(A) Applications shall be reviewed in accordance with the procedures of this section.

(B) Persons seeking to obtain a franchise may at any time file a written application with the grantor=s administrator or designee in conformity with the minimum requirements of this section.

(C) The grantor reserves the right to issue more specific requests for proposals (RFP) from time

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to time as circumstances may require, in which case, all information specified must be supplied.

(1) *Basic information.* In order to be reviewed in accordance with this section, all applications must include an application fee as set by the grantor or the grantor's designee and present the following detailed information:

- (a) The applicant's legal name and principal business address;
- (b) A listing of the applicant's officers, directors and/or other principals with sufficient biographical information to permit the grantor to evaluate the expertise of the applicant;
- (c) A listing of stockholders or other equity investors or owners having a minimum of 2% interest at the time of the application and an indication of the person having control of the application together with conformed copies of any articles of incorporation and bylaws;
- (d) A complete set of financial statements prepared by an independent firm of certified public accountants with certification by a financial officer of the applicant which include a profit and loss statement and balance sheet covering the operation of the current system for the past two years in the case of a renewal application or covering any other cable communication system(s) which the applicant has owned for the past two fiscal years of operation in the case of an initial application;
- (e) A consolidated statement of net worth containing sufficient detailed information such that, when reviewed together with the required financial statements, the grantor would be able to readily determine the financial responsibility of the applicant;
- (f) A general description of the status of the current system or proposed design for any planned new system with detailed maps for construction or reconstruction showing where the applicant has used or will use public right-of-way, antenna/tower locations, trunk and feeder design, channel capacity, extent of two-way capability, addressability and microwave facilities;
- (g) A detailed description of currently existing or proposed video production capability together with the proposed plans for developing the usage of such capability;
- (h) A description of the cable services to be provided over the system and where service is to be offered in packages or tiers, some designation of the services available on each tier as well as any technical devices required to receive such services;
- (i) A detailed discussion of the specific plans which the applicant intends to pursue in order to meet the future cable-related needs and interests of the community;
- (j) In the case of renewal applications, a detailed statement of the activities of the grantee which meet or exceed the requirements of any current franchise; and

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(k) A sworn statement by the chief executive officer of the applicant, certifying the truth of all information contained in the application.

(2) *Review procedure.*

(a) *Generally.*

1. Upon receipt, the applicant shall be reviewed. If the application does not appear to be complete, it shall be returned to the applicant with an indication of what additional information is required.

2. The review shall consider the relevant strengths and weaknesses of every applicant on its own merits. The service record of the applicant in other communities, as well as the past service record within the jurisdiction, in the case of a renewal application, shall be relevant criteria among others. In particular, the review may focus upon the demonstrated ability of an applicant to develop new and advanced uses of its technology, its plans to develop community interest and usage of the technology, the price/value relationship between current or proposed services and the satisfaction of the subscribers or probable subscribers, the strength of on-site management as well as any other criteria which the grantor deems relevant.

(b) *Public hearings.* The grantor shall not execute a franchise agreement for a term of years in compliance with this chapter unless legal, financial, technical and operational qualifications of the grantee are established as well as the adequacy and feasibility of the proposed contractual arrangements. Where an applicant demonstrates that it can provide cable services deemed to be in the best interest of the community, the application may be approved. Following a preliminary determination that an application appears to be in the best interest of the community, the grantor shall notify the applicant of the date and time set for a public hearing on the proposed contractual arrangements and the findings of the grantor to date. This hearing shall be preceded by public notice published at least ten days prior to the hearing in a newspaper of general circulation within the community. If the grantor approves the findings made at this public hearing, it may grant a franchise to the applicant in the form of a franchise agreement which shall constitute a contract between the grantor and the grantee.

(3) *Negotiated provisions of the franchise agreement.* The franchise agreement shall contain such further conditions or provisions as may be negotiated between the grantor and the grantee.

(4) *Grantee acknowledgment.* A grantee shall acknowledge its acceptance of a franchise agreement by written affidavit in a form approved by the grantor wherein it shall be recited that the grantee has reviewed in detail the terms and conditions contained therein with legal counsel of its choice and that it is satisfied and accepts such terms as its negotiated agreement to provide cable service and that it knowingly accepts all business risks.

(Ord. passed 11-20-1995)

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' 113.06 FRANCHISE REQUIREMENTS.

A franchise agreement executed pursuant to this chapter shall incorporate the terms and conditions set forth in this chapter whether or not such terms and conditions are fully reproduced therein, which incorporation shall commit a grantee to be bound by the rules and regulations established in accordance with the provisions of this section and all other sections of this chapter.

(A) *Franchise term.* The maximum term for any franchise agreement between the grantor and a grantee shall be 15 years and the minimum term shall be one year. The grantor shall approve the term which it deems to be in the best interest of the community and in furtherance of the public health, safety and convenience according to all of the facts and circumstances of each application.

(B) *Applicants.*

(1) Each applicant for a franchise to provide cable service shall, in its application, define the initial service area and provide a line extension and drop policy for extending areas outside of the initial service area.

(2) Upon execution of a franchise agreement, the grantee shall proceed as soon as may be practical to construct or reconstruct the cable system so as to be in compliance with this chapter and any franchise agreement. The failure or neglect to complete construction, reconstruction or maintenance within the allotted time or any extension, shall render any franchise agreement voidable upon written notice from the grantor of its intention to cancel the contract.

(C) *Franchise fee.* As compensation for the use of the streets, public ways and places, and other facilities, for the construction, operation, maintenance, modification or reconstruction of a cable system, and for the grantor's costs of maintenance, improvement and supervision thereof, and for the grantor's costs of establishing and conducting the regulatory activities required by virtue of the granting of a franchise pursuant to this chapter, the grantee shall pay to the grantor 5% of its annual gross receipts for the term of its franchise agreement or any portion thereof while it is operating a cable system in accordance with this chapter.

(1) The grantor expressly reserves the right to negotiate a lower percentage fee in any franchise agreement in the event that it determines that such a lower percentage is in the best interest of the community.

(2) The franchise fee set forth in any franchise agreement shall be due and payable on a monthly basis. The grantee shall prepare a monthly report stating its gross receipts by revenue category for the immediately preceding month. This gross receipts report shall be submitted to the administrator or the grantor designee with the franchise fee percentage payment no later than the close of business on the thirtieth day of the month following the reporting period.

(3) At the end of any calendar year the franchise fees paid by a grantee shall be adjusted to

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account for any under or over payments. In no event shall the franchise fees paid to the grantor exceed 5% of the gross receipts derived from any 12-month period of operation of the cable system, including the time value of money, which would have lawfully been collected if such fees had been paid per annum in arrears. The grantee shall be solely responsible for determining the amount of its monthly payments in this regard. To the extent that overpayments occur, any amounts paid in excess of that which was due, shall be deemed to be credited to the following month's payment. The failure to remit the full balance due in any month shall be cured at year end by a complete audit. The grantee shall submit complete financial statements to the grantor no later than April 15 of each year of operation, prepared by an independent certified public accountant, detailing its operation by month for the preceding calendar year. Interest on any under paid amounts shall accrue from the date such payments were due until they are paid at the maximum allowable rate under state law.

(4) Nothing in this section shall in any way restrict or nullify any liquidated damage provisions relating to nonpayment of franchise fees on a timely basis contained elsewhere in this chapter or in a franchise agreement and nothing in this section shall restrict the authority of the grantor to tax the grantee in the ordinary course of its operations solely because of its status as a franchisee.

(D) *Indemnification.* Each applicant for a franchise to own and operate a cable system in the community shall agree in its application to indemnify the grantor against liability for any and all claims arising out of the application process, renewal process, installation, operation, maintenance, construction or reconstruction, extension or removal of the cable system. The agreement to indemnify the grantor shall be stated in every franchise agreement executed and shall expressly include a reference to the reimbursement of all expenses incurred by the grantor in defending itself in the event that any claims are made against it by way of lawsuit or otherwise. The grantor shall notify the grantee or applicant within 30 days following the receipt of any claim of demand for which the grantee or applicant would be liable according to its indemnification responsibilities. Any such notice will be given in writing to the person, and at the place, named in the franchise agreement or application for a franchise.

(E) *Insurance.*

(1) In order to provide for the general welfare and convenience of the public and to protect the interests of the grantor, every applicant for a franchise shall indicate its ability to obtain insurance in a form and amount which satisfies this section.

(2) The grantor shall not execute a franchise agreement in accordance with this chapter unless and until an approved grantee provides adequate proof of insurance, together with written proof of payment of all such premiums as may be required to put the coverage described in full force and effect, it shall be the duty of every grantee to file annually with the grantor proof of insurance coverage including copies of policies.

(a) Each grantee shall obtain and shall keep in full force and effect at all times during the term of any franchise agreement or extension thereof, a policy of broad form comprehensive general liability insurance which includes personal injury liability, and blanket contractual liability.

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1. Said policy shall provide the following minimum coverages for the benefit of the grantor:

a. Subcontractor agrees to defend, indemnify, and hold harmless the village from and against all liabilities, claims, damages, losses, and expenses arising out of or resulting from performance, or alleged to result from the performance, of the subcontractor=s work. This includes but is not limited to injury or death to any person or persons, including the contractor=s employees, and damage to property. The contractor agrees that the indemnification extends to the officers, employees, and representatives of the contractor, and shall not be applicable only to liability caused by the sole negligence of contractor.

b. Contractor agrees at its own expense to maintain at least the following insurance coverage:

(i) Worker=s compensation statutory coverage for the state in which the work is performed and employer=s liability with limit of \$500,000;

(ii) Automobile liability including coverage for non-owned and hired vehicles with limit of \$1,000,000;

(iii) Commercial general liability insurance without exclusion for products/completed operations, explosion/collapse/underground damage, or contractual liability with limit of \$2,000,000 per occurrence \$3,000,000 aggregate. This policy shall name the village as additional insured. Such additional insured coverage shall be primary coverage for the additional insured. The addition of an umbrella over the liability lines is acceptable to meet required occurrence and aggregate limits;

(iv) Contractor will provide certificate of insurance to the village as evidence of required coverage prior to commencing the work; and

(e) Acceptable insurance companies, all insurance coverage required by this section shall be with insurance companies licensed and admitted to do business in the state who are acceptable to the owner and to have a minimum A.M. best company=s insurance report rating of a or A- (excellent). The contractor shall submit evidence of insurance company=s A.M. best company insurance reports rating and status with the state.

c. To furnish the grantor a bond for the faithful performance of its obligations under the contract if awarded under this chapter, in an amount not less than \$10,000.

2. These coverage limits may be achieved in the primary policy, or in combination with an umbrella/excess liability policy. If umbrella or excess policies are used, the policy shall include a Broad as primary@ endorsement.

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a. Each grantee shall obtain and shall keep in full force and effect at all times during the term of any franchise agreement or extensions thereof, all risk liability damage insurance (excluding only flood and earthquake coverage) covering losses arising with respect to the following real and personal property incidental to the operation of its cable system: all buildings, offices, studios and other realty or personality ordinarily contained therein; all headend electronics or any subheadends; all earth stations, antenna towers, microwave transmission towers and all vehicles. No physical damage insurance shall be required for.

b. Each grantee shall obtain and shall keep in full force and effect at all times during the term of any franchise agreement or extensions thereof, all risk liability damage insurance (excluding only flood and earthquake coverage) covering losses arising with respect to the following real and personal property incidental to the operation of its cable system: All buildings, offices, studios and other realty or personality ordinarily contained therein; all headend electronics or any subheadends; all earth stations, antenna towers, microwave transmission towers and all vehicles. No physical damage insurance shall be required for the distribution system (neither trunk, feeder or drop lines), amplifiers or passive hardware or converters. It shall be the sole responsibility of any grantee to pay for all premiums due from the coverage outlined in this section.

(b) Each policy of insurance required by this section shall contain a 90-day cancellation or nonrenewal provision which shall expressly require the carrier to give written notice to the grantor administrator 90 days prior to cancellation, nonrenewal or material alteration of coverage.

(c) Any policy of insurance issued pursuant to the requirements of this section, shall only satisfy this chapter if it shall be issued by a responsible and nonassessable insurance carrier duly authorized to do business in the state, which company must have been rated at least B+ by Best=s during each of the preceding five years.

(d) Nothing in this section shall be construed to excuse a grantee from the faithful performance of its obligations under any franchise agreement or to limit its liability under any provision of this chapter.

(F) *Security fund.*

(1) Prior to the execution of a franchise agreement, the grantee shall provide and maintain a security fund for the period and in the sum specified in the franchise agreement, as security for the faithful performance by it of all the provisions of this franchise, and compliance with all orders, permits and directions of any agency of the grantor having jurisdiction over its acts or defaults under the franchise, and the payment by the grantor of any claims, liens and taxes due the grantor which arise by reason of the construction, operation or maintenance of the system.

(2) The security fund may be assessed by the grantor for purposes including, but not limited to, the following:

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- (a) Failure of the grantee to pay the grantor sums due under the terms of the franchise;
- (b) Reimbursement of costs borne by the grantor to correct franchise violations not corrected by the grantee, after due notice;
- (c) Liquidated damages assessed against the grantee due to default or violation of franchise requirements, which result in financial damages to the grantor;
- (d) Liquidated damages assessed against the grantee due to revocation pursuant to franchise requirement Atermination@ in division (J) below.

1. *Unrestricted endorsement.* The letter of credit shall both contain the following unrestricted endorsement:

AThe drawee acknowledges that this letter of credit may not be cancelled by the surety under any circumstances without written authorization from the Shepherd Village Council President

2. *Statement of Clerk.* The statement of the clerk of the grantor in the following form shall be sufficient to draw against the said letter of credit upon presentment:

AI (We) certify that ____ now holds Franchise to operate a cable television system within the _____, and _____ is now in mater al breach of its agreements with the grantor.@

3. *Use of the performance bond and letter of credit.* Prior to drawing upon the letter of credit or performance bond for the purpose described in this section, the grantor shall notify the grantee in writing that payment is due and the grantee shall have ten days from the receipt of the written notice to make a full and complete payment. If the grantee does not make the payment within ten days, the grantor may withdraw the amount thereof, with interest and penalties, from the letter of credit or the performance bond.

4. *Notification.* Within three days of a withdrawal from the letter of credit or performance bond, the grantor shall send to the grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.

5. *Replenishment of letter of credit and performance bond.* No later than 30 days after mailing to the grantee by certified mail notification of a withdrawal pursuant to division (F)(2)(d)3. above, the grantee shall replenish the letter of credit or performance bond in an amount equal to the amount so withdrawn unless grantee has challenged such withdrawal and/or the basis thereafter. Failure to make timely replenishment of such amount to the letter of credit and/or performance bond shall constitute a violation of this chapter.

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(G) *Liquidated damages.*

(1) In order to facilitate an orderly regulatory framework and to provide for the common interests of the grantor and the grantee, any franchise agreement executed pursuant to this chapter shall contain negotiated dollar amounts to serve as fixed and liquidated damages for the violation of this chapter or of the franchise agreement.

(2) The ordinance violations which are to be specified in detail in the franchise agreement shall be those for which ongoing monitoring and enforcement are unduly burdensome for the grantor and which are such that it would be impossible to determine the actual dollar value of damage to the grantor or the public.

(3) Similarly the franchise agreement violations which are to, be specified for purposes of liquidated damages shall be those which are not ordinarily capable of being cured by compensatory or punitive damages at law.

(4) It being the express purpose of this section to identify the common interests of the grantor and the grantee in such a way as to forestall resort to termination of the contract as a remedy for material breaches of same or mis ordinance and to thereby protect the investment of the grantee and to insure continuity of service for the community.

(5) The liquidated damages specified in a franchise agreement shall serve as the primary pecuniary remedy for the specified violations. However, nothing in this section shall prevent or bar the grantor from pursuing any remedies at law or in equity where a material breach of a franchise agreement persists notwithstanding the payment of liquidated damages.

(H) *Regulatory authority.*

(1) *Governing requirements.* At all times during the term of the franchise, grantee shall comply with all laws, rules or regulations of the grantor, state or federal government, their regulatory agencies or commissions which are now applicable or may be applicable hereafter to the construction and operation of the cable communications system, including without limitations, all laws, ordinances or hereafter enacted; provided that any law, regulation or ordinance hereafter enacted shall not materially affect the rights under the franchise. Nothing herein shall be deemed a waiver of grantee's right to challenge the validity of any such law, rule or regulation. The grantee shall comply with new laws and regulations, such as the American with Disabilities Act, being 42 U.S.C. " 12101 et seq.

(2) *Change in law or regulation.* Notwithstanding any other provisions of this chapter to the contrary, the grantee shall at all times comply with all laws and regulations of the local, state and federal government. In the event that any actions of the state or federal government or any agency thereof, of any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the grantor under this chapter or franchise, or if in compliance with any local, state or federal law or regulation, the grantee finds conflict with the terms of this chapter, the

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franchise, or any law or regulation of the grantor, then as soon as possible following thereof, the grantee shall notify the grantor of the point of conflict believed to exist between such law or regulation and the law or regulations of the grantor, this chapter and the franchise. The grantor, at its option, may notify the grantee that it wishes to negotiate those provisions which are affected in any way by such modification in regulations or statutory authority. Thereafter, the grantee shall negotiate in good faith with the community in the development of alternative provisions which shall, to the extent permitted by law, materially maintain the rights of the community as established under the terms of this chapter and the franchise. The community shall have the duty, based upon the results of such negotiations, to modify any of the provisions to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter and the franchise and the agreement reached in negotiations.

(3) *Reservation of rights for regulation.* The grantor reserves the right to exercise the maximum plenary authority, as may be lawfully permissible, to regulate the cable communications system, the franchisee and the grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the grantor, the grantor may, without approval of the grantee, engage in any such regulation as may then be permissible, whether or not contemplated by this chapter or the franchise including without limitations, regulations regarding franchise fees, taxes, programming, rates charged to subscribers and users, consumer protection or any other similar or dissimilar matter.

(4) *Right of inspection of records.* The grantor shall have the right to inspect all books, records, reports, maps, plans, financial statements of the grantee and any parent company to the extent such materials are relevant to the grantee's performance of its obligations under this chapter and the franchise, and other like materials of the grantee, at any time during normal business hours upon 24 hours= prior notice to the grantee.

(5) *Right of inspection of cable facilities.* The grantor shall have the right to inspect all cable facilities or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this chapter and other pertinent provisions of the law.

(6) *Franchise nonexclusive.* Any franchise granted pursuant to this chapter shall be nonexclusive. The grantor specifically reserves the right to:

(a) Grant at any time such additional franchises for a cable communications system as it deems appropriate; and/or

(b) Build, operate and own such cable communications system or systems as it deems appropriate.

(7) *Expense reimbursement to grantor.* The grantee shall pay the grantor a sum of money which will, when added to any application fees received, reimburse all reasonable costs and expenses

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incurred by it in connection with the granting of an initial franchise, including, but not limited to, consultant fees, attorney=s fees, publication fees, travel expenses and all other direct costs. To the extent allowed by law, the grantee shall pay the grantor a sum of money which will reimburse all reasonable costs and expenses incurred by it in connection with the direct costs. To the extent allowed by law, the grantee shall pay the grantor a sum of money which will, reimburse all reasonable costs and expenses incurred by it in connection with the extending or renewing a franchise, including, but not limited to, consultant fees, attorney=s fees, publication fees, travel expenses and all other direct costs. The grantor shall submit a detailed schedule of all such costs. Such payment shall be made within 30 days after the grantor furnished the grantee with a written statement of such expenses.

(I) *Reports required.*

(1) *Annual reports required.* The grantee shall file the following reports, which shall be submitted 90 days after the end of the grantee=s fiscal year with the grantor administrator:

(a) *Facilities report.* An annual report setting forth the physical miles of cable plant construction, reconstruction and cable plant in operation. The report shall also indicate modifications to the headend and other areas of system operations (billing, converters, equipment for new services);

(b) *Financial reports.* The following financial report for the franchise area shall be submitted annually to the grantor 90 days after the end of the grantee=s fiscal year.

1. An ownership report, indicating all persons, who are any time during the preceding year did control or benefit from an interest in the franchise of 1% or more.

2. An annual, fully audited and certified financial statement from the previous calendar year, including subscriber revenue from each category of service and every source of non- subscriber revenue.

3. An annual list of officer and members of the Board of grantee and of any parent corporation.

(c) *Operational report.* The following system and operational report shall be submitted annually to the grantor 90 days after the end of the grantee=s fiscal year:

1. A report on the system=s technical tests and measurements as set forth herein and in the franchise;

2. A report of new services added and a projection for services planned for the future;

3. A report on support provided by the grantee for public, educational, governmental channels and other public benefit projects; and

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4. A compilation of the monthly reports to provide year end analysis.

(2) *Monthly reports required.* The grantee shall provide a monthly operational report which will provide a concise overview of the following system activity:

(a) A subscriber report indicating end of month subscriber numbers for all levels of service, an analysis of disconnects and a review of revenues from all other services;

(b) A gross receipt report, which shall state the gross receipts by revenue category for the immediately preceding month;

(c) A technical summary of cable system service log indicating the types of service problems, the length of time between detection and resolution and the action taken to correct the problems; and

(d) A statement of current status of video production equipment provided by the grantee. Report shall also indicate maintenance issues and any equipment in need of replacement.

(3) *Additional reports.* The grantee shall prepare and furnish to the grantor at the times and in the form prescribed, such additional reports with respect to the operation, affairs, transactions or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the grantor in connection with this chapter or the franchise.

(J) *Termination.*

(1) In the event that a grantee causes or creates a material breach of a franchise agreement executed pursuant to the ordinance, or violates the provisions of this chapter in a significant and material manner, the grantor may elect to terminate any franchise granted hereunder.

(2) Any termination for cause shall be made by resolution of the grantor stating that such cancellation is for cause, and the specific reasons alleged to constitute such cause, and the grantee shall have the right to appear before the grantor at a duly noticed and scheduled public meeting to present its position with regard to the finding made under this section.

(3) A material breach shall include, but shall not be limited to the following:

(a) Any uncured violation of a material provision of a franchise agreement or this chapter which is not cured within a period of 30 days following receipt of written notice of same by the grantee;

(b) Any attempts to sell, transfer or dispose of the capital assets related to the cable system without giving written notice of such attempts 90 days prior to same to the grantor administrator; and

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(c) Any attempt to evade the provisions of this chapter by deceit, fraud or misrepresentation.

(4) The foregoing action shall only be mitigated by circumstances beyond the control of the grantee. Simple negligence, mistake or neglect shall not excuse such actions. A grantee shall at all times be solely responsible for proving the existence of circumstances beyond its control.

(K) *Rate regulation.*

(1) The community shall comply with rules of the Federal Communications Commission set forth in 47 C.F.R. part 76, subpart N regarding the regulation of cable television rates for basic service and associated equipment, as amended.

(2) After a cable operator has submitted for review its existing rate for the basic service tier and associated equipment costs of a proposed increase in these rates, the clerk or the grantor designee shall post a public notice of the rates and costs giving interested parties, including the cable operator, a reasonable opportunity to file written comments which shall be available in the office of the community clerk for public inspection and copying during normal business hours.

(3) The community shall comply with procedures set forth in 47 C.F.R. ' 76.938 regarding confidential business information submitted by the cable operator in a rate regulation proceeding.

(4) A cable operator which willfully or repeatedly fails to comply with a rate decision or refund order directed specifically at the cable operator shall be subject to a monetary forfeiture as determined by the community following the procedures set forth in 47 U.S.C. ' 503.
(Ord. passed 11-20-1995)

' 113.07 PROGRAMMING.

Concurrently with the activation of the cable communications system in the community, the grantee shall provide all services to subscribers as described herein.

(A) *The system shall carry programming as specified in the franchise.* Any such change in program or services offered shall comply with the conditions and procedures contained in the franchise, and shall be reported to the clerk of the grantor or other designee of grantor at least 30 days prior to the proposed implementation. The grantee shall use its best effort to ensure diversity of programming.

(B) *Basic service tier.* A basic service tier shall be offered to subscribers throughout the term of the ordinance and the franchise to the extent required by law.

(C) *Access.*

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(1) The grantee shall provide the number of access and community channels specified in the franchise agreement executed pursuant to this chapter.

(2) All residential subscribers who receive all or any part of the total services offered on the system shall also receive all access channels at no additional charge.

(3) These channels shall be activated upon system activation and thereafter maintained as needed.

(4) The grantee shall establish rules and regulations for the use of community access channels which shall be approved by the grantor before implementation and thereafter shall not be altered or amended without the approval of the grantor.

(5) In preparing these rules, the grantee shall:

(a) Provide an equal opportunity for community use of access service;

(b) Present a needs assessment of the community to be served and provide a plan to meet those needs;

(c) Develop a plan to allocate to the grantor a reasonable use and fair schedule of channel time and use of equipment and facilities so that the grantor can send and receive programming fitted to its needs. Such plan shall be approved by the grantor before implementation and thereafter shall not be altered or amended without approval of the grantor;

(d) Describe all equipment and facilities and any charges for their use; and

(e) Comply, at minimum, with the requirements of the grantor now or hereafter adopted or determined regarding access channels

(D) *Program guide.* The grantee shall provide a program guide which shall be delivered in electronic form

(E) *Institutional network.* The grantee shall provide an institutional network as specified in the franchise.

(F) *Emergency override.* The grantee shall, without charge provide, service and maintain public emergency transmission facilities in the community, as described in the franchise.

(Ord. passed 11-20-1995)

' 113.08 MINIMUM DESIGN REQUIREMENTS.

(A) In order to provide for a technologically advanced cable system which will satisfy the

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communication needs of the community, all applicants for a franchise shall agree to provide certain minimum design features in their applications. Nothing in this section shall be construed to limit or in any way discourage the development of more extensive systems or better facilities and equipment.

(B) The grantor is expressly authorized to negotiate any state of the art improvements with applicants which will serve to ensure that the grantor maintains a modern cable system.

(1) *Channel capacity*. All applicants for a franchise shall agree to construct and maintain the following minimum channel capacities:

(a) A cable system constructed to provide sufficient bandwidth capacity such that, when used with an appropriate converter device at a subscriber's receiver, it shall enable the reception of a minimum of 54 downstream video channels and 400 megahertz on a single cable; and

(b) A cable system having at least 36 activated video channels at all times.

(2) *Allocation of public benefit channel capacity*. All applicants for a franchise shall provide a percentage of system channel capacity to support the cablecasting of public, educational and governmental access programming.

(C) *Community installations*. Cable service shall be provided to every school building, fire station, village hall, community center, library, police station and other public buildings with not less than one outlet on each floor at no cost to the user.

(D) *Parental control devices*. All applicants shall make available upon request by any subscriber, a converter or other device capable of removing from a subscriber's service both the video and audio of any channel which the subscriber considers offensive. The grantee shall inform subscribers of this capability in writing and the appropriate device shall be installed and maintained at no additional cost to the subscriber. The grantee may charge a deposit.

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(E) *Video production capability.* All applicants shall purchase and maintain video production capability within the cable system for the production of local programming, ownership of such equipment shall remain with the grantee, and the maintenance of such facilities and equipment shall be the responsibility of the grantee. Whenever it is necessary to replace equipment, the grantee shall replace such equipment with new equipment reflecting advances in the state of the art, provided that such equipment is compatible with the balance of the system. The franchise agreement shall specify the type, quality and quantity of equipment with a cash value of the proposed equipment package. This package shall provide character generated services. The grantor reserves the right to specify equipment which best suits the needs of the communities. All grantees shall purchase and maintain such video production capability as to be able to produce both live and video-taped programming from remote points in the cable system including all necessary equipment to transmit upstream signals to the headend for immediate processing and retransmission downstream to subscribers. The grantor shall designate remote points for live cablecasting in the franchise agreement, which points may be changed by the grantor from time to time upon 30 days= prior written notice to the grantee.

(F) *Leased access channels.* Every grantee shall at all times comply with the provisions of the Cable Act of 1984, being 47 U.S.C. " 521 et seq. pertaining to the availability and use of leased channel space.

(Ord. passed 11-20-1995)

' 113.09 GUIDELINES FOR PROVIDING CABLE SERVICE.

(A) *Minimum procedures.* In addition to the minimum design requirements established by this chapter, it is the intention of the grantor to provide for minimum procedures for the delivery of cable service to subscribers as a matter of the general welfare and convenience.

(B) To this end, absent some circumstances beyond the control of the grantee.

(C) In case of a disconnect for nonpayment of service charges, a grantee shall not disconnect cable service for delinquent payment without first sending written notice of such pending disconnection to the delinquent subscriber at least ten days prior to the physical disconnection of service.

(D) *Protection of subscriber privacy mandatory.* The grantee shall at all times protect the privacy of subscribers, as provided in this chapter and other applicable federal, state and local laws.

(E) *Theft of service.* Nothing in this section shall prohibit a grantee from immediately disconnecting any person who shall illegally attempt to receive cable service; however, in the event of a theft of service problem, a grantee shall make all reasonable efforts to ascertain that the occurrence is not the result of a prior billing problem prior to disconnection.

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(F) *Prohibition against providing television services.* A grantee shall not sell television or radio receiving sets or parts to its CATV subscribers except that it may repair and service to the extent necessary to establish the validity of its CATV signal. As converters or other parts become necessary for the reception of any and all channels, or for additional outlets of FM service, the grantee shall provide converters to all subscribers on a deposit basis, sale or rental.

(G) *Customer service standards.*

(1) *Definitions.* For the purpose of this division (G), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

NORMAL BUSINESS HOURS. Those hours during which similar businesses in the community are open to serve customers. In all cases, Anormal business hours@ must include some evening hours at least one night per week and/or some weekend hours.

NORMAL OPERATING CONDITIONS. Those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods ad maintenance or upgrade of the cable system. Each applicant for a franchise shall maintain certain records, and administer certain procedures in compliance with this section.

1. *Business office.* A grantee shall maintain a reasonably convenient business office with established office hours for responding to billing or service related problems. The grantor maintains the right to vary this requirement if it is deemed advisable.

2. *Policy statement.* A grantee shall adopt and maintain a written set of rules and regulations for the conduct of its business such that, upon request, any member of the general public may receive such rules prior to subscribing for cable service. At a minimum, a grantee shall address each of the items set forth in this section in a way which satisfies all requirements stated herein. A written notice of the availability of these polices shall be given to each subscriber at the time of initial installation.

a. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, grantee shall, at its own expense and in a manner approved by the grantor engineer, replace and restore all paving, sidewalk, driveway or surfacing of any street or alley disturbed, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of five years.

b. In the event that at any time during the existence of a franchise, the grantor shall lawfully widen, realign or otherwise alter pavement, change the grade of any water main, fire

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hydrant, sewer or appurtenances, the grantee and anyone acting for it in connection with the use of the streets, upon reasonable notice by the grantor, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

c. In conduit districts now or later established by ordinances of the grantor, and as amended or altered, and in such other areas of the grantor in which telephone lines and electric utility lines are underground, all of grantee=s lines, cable and wires shall be underground.

3. *Service disconnection procedure.* Upon receipt of notice of a request to disconnect service, written or oral, a grantee shall proceed to close the subscriber=s account and remove all equipment from the subscriber=s premises. Subscribers shall have the right to have cable service disconnected without charge unless otherwise specified in the FCC rules. A refund of unused service charges shall be paid to the customer within 60 days from the date of termination of service. In any event all such requests shall be completed within ten days of the receipt of same.

SERVICE INTERRUPTIONS. The loss of picture or sound on one or more cable channels.

(2) *Exceptions.* Nothing in this section is intended to prevent or prohibit:

(a) The grantor and a cable operator from agreeing to customer service requirements that exceed the standards set forth in this section;

(b) The grantor from enforcing throughout the franchise term pre-existing customer service requirements that exceed the standards set forth in this section and are contained in current franchise agreements;

(c) The grantor from enacting or enforcing any consumer protection law; and

(d) The establishment or enforcement of any section or regulation concerning customer service that imposes customer service requirements that exceed or address matters not addressed by the standards set forth in this section.

(3) *Customer service standards.* A cable operator is subject to the following customer service standards certified quarterly by the cable operator:

(a) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to subscribers 24 hours a day, seven days a week. Trained company representatives shall be available to respond to customer telephone inquiries during normal business hours.

(b) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquires received after normal business

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hours must be responded to by a trained company representative on the next business day.

(c) Under normal operating conditions, telephone answer time by a company representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90% of the time under normal operating conditions measured on a quarterly basis.

(d) Under normal operating conditions, the customers may receive a busy signal less than 3% of the time measured on a quarterly basis.

(e) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(f) Under normal operating conditions, each of the following five standards will be set no less than 95% of the time measured on a quarterly basis.

1. Standard installations will be performed seven business days after an order has been placed. Standard installations are those that are located not more than 125 feet from the existing distribution system.

2. Excluding conditions beyond the control of the operator, a cable operator shall begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

3. The appointment window for installations, service calls and other installation activities will be either a specific time or, at maximum, a four-hour block during normal business hours. The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

4. A cable operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

5. If a cable operator representative is running late for an appointment and will not be able to keep the appointment as scheduled, the customer will be contacted, the appointment rescheduled, as necessary, at a time which is convenient for the customer.

(g) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

1. Products and services offered;

2. Prices and options for programming services and conditions of subscription to programming and other services;

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3. Installation and service maintenance policies;
4. Instructions on how to use the cable service;
5. Channel positions of programming carried on the system; and
6. Billing and complaint procedures, including the address and telephone number of the cable operator and of the municipal building.

(h) All subscribers shall receive a monthly bill. Bills shall be clear, concise and understandable. Bills must be fully itemized with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall clearly delineate all activity during the billing period, including operational charges, rebates and credits. In case of a billing dispute, a cable operator must respond to a written complaint from a subscriber within 30 days.

(i) Refund checks shall be issued promptly, but not later than:

1. The customer=s next billing cycle following resolution of the request or 30 days, whichever is earlier; or
2. The return of the equipment supplied by the cable operator if service is terminated.

(j) Credits will be issued no later than the customer=s next billing cycle following the determination that a credit is warranted.

(4) *Enforcement.* The grantor may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided under a cable operator=s consent agreement with the community) for failure to comply with the Act, the FCC rules, any orders or determinations of the community pursuant to this section, any requirements of this section, or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC rules, any orders or determinations of the community pursuant to this section, any requirements of the section, or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of renewal of a cable operator=s consent agreement.

(Ord. passed 11-20-1995)

' 113.10 FRANCHISE RENEWAL.

Under completion of the term of any franchise granted under this chapter, the grantor may in its discretion grant or deny renewal of the franchise of the grantee in accordance with the provisions of the Cable Act.

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(Ord. passed 11-20-1995)

' 113.11 TRANSFER OF OWNERSHIP.

In no event shall a grantee of a franchise executed pursuant to this chapter transfers any rights granted therein or engage in a transfer of 50% or more of ownership or control without first receiving the prior written approval of the grantor. Any transfer, encumbrance or other disposition of any controlling interest in the grantee shall constitute an immediate material breach and violation of this chapter subjecting the franchise to termination unless written notice of any such attempt is given to the grantor at least 120 days prior to any such attempted action.

(Ord. passed 11-20-1995)

' 113.12 PURCHASE OF CABLE SYSTEM BY GRANTOR.

In the event that a franchise is not renewed or is terminated for cause, the grantor shall have the absolute right, which right shall be made a part of every franchise agreement by reference to this section, to buy the cable system if it chooses to do so. If the grantor elects to buy the system, the price shall be determined at fair market value with no value attributed to the franchise per se but with the system valued as a going concern not at depreciated book value. The grantor and the grantee shall each appoint an appraiser, the two of which shall appoint a third appraiser or if they cannot agree, a Circuit Judge from the appropriate jurisdiction shall, acting in an administrative capacity, appoint a third appraiser. The three appraisers shall independently evaluate the value of the system. The average of the three appraisals shall be deemed the purchase price. Each party shall pay the costs of its appraiser and one-half of the cost of the third appraiser.

(Ord. passed 11-20-1995)

' 113.13 REMOVAL OF CABLE SYSTEM.

In the event that a franchise terminates for any reason and the grantee has not sold or otherwise transferred ownership of the cable system to the grantor or a third party, the grantee shall forthwith remove its facilities from all public easements. If the grantee fails to take prompt action in this regard, the grantor may proceed to remove the system and charge the security fund or the grantee directly.

(Ord. passed 11-20-1995)

' 113.14 DELEGATION OF AUTHORITY OF GRANTOR.

The grantor reserves the right to delegate from time to time any of its rights or obligations under the franchise to any body or organization. Any such delegation shall be effective upon written notice thereof to the grantee. Upon receipt of such notice, the grantee shall be bound by all terms and

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conditions of the delegation not in conflict with the franchise. Any such delegation or revocation thereof, no matter how often made, shall not be deemed to be an amendment to the franchise or require the grantee=s consent.

(Ord. passed 11-20-1995)

' 113.15 REGIONAL INTERCONNECT.

The grantor shall retain the right to require a grantee to interconnect its cable system with any other communications facilities in the service area.

(Ord. passed 11-20-1995)

' 113.16 CONFLICTS.

(A) Any other provisions of this chapter to the contrary notwithstanding, a grantee shall at all times comply with all laws and regulations of the federal, state, county and grantor governments and all administrative agencies thereof; provided, however, that if any law or regulation shall prohibit a grantee expressly from performing a service required hereunder, such that it would be in conflict with the terms of this chapter or the provisions of the grantor=s code of ordinances, then as soon as such a conflict becomes known to the grantee, the grantee shall notify the grantor in writing of what it believes the conflict to consist of and in particular what law or regulation it believes to be in conflict with this chapter or the grantor=s code of ordinances, and the grantee shall be thereby excused from performance hereunder, provided that it acts in good faith reliance thereon, pending an authoritative resolution of such conflict.

(B) If any provision of this chapter or any related ordinances is held by any court or by any federal, state or county agency of competent jurisdiction to be invalid as conflicting with any federal, state or county law, rule or regulation, said provision shall be considered a separate, distinct and independent part of this chapter such other ordinance, and such holding shall not affect the validity and enforceability of any other of these. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changes, so that the provisions which had been held invalid or modified is no longer in conflict with the laws, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall be binding on the parties, provided that the grantor shall give the grantee 30 days= written notice of such change before requiring compliance with said provision.

(C) If the grantor determines that a material provision of this chapter or any related ordinances is affected by such action of a court or of the federal, state or county government, the grantor shall have the right to modify any of the provisions herein or in such related ordinances to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter.

(Ord. passed 11-20-1995)

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CHAPTER 114: USE OF RIGHTS-OF-WAY BY TELECOMMUNICATIONS PROVIDERS

Section

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' 114.01 PURPOSE.

The purpose of this chapter is to regulate the access to and ongoing use of public rights-of-way by telecommunications providers to ensure and protect the public health, safety and welfare and to exercise reasonable control of the public rights-of-way pursuant to the Village Charter, the state=s Telecommunications Act (Public Act 216 of 1995, as amended, being M.C.L.A. " 484.2101 et seq.), other state statues (including, without limitation, M.C.L.A. ' 247.183), and Article VII, ' 29 of the 1963 Michigan Constitution by:

(A) Minimizing disruption of the public rights-of-way by regulating the access to and ongoing use of public rights-of-way by telecommunications providers and the construction, and installation, of facilities in the public rights-of-way to provide telecommunications services;

(B) Ensuring that the village and the public are protected from liability for use of the public rights-of-way by telecommunications providers;

(C) Providing for the payment of nondiscriminatory permit fees which do not exceed the fixed and variable costs of granting permits and maintaining the rights-of-way used by telecommunications providers; and

(D) Assisting telecommunications providers in understanding the village's requirements for use of the public rights-of-way and providing a fair and non-discriminatory policy for permitting the use of the public rights-of-way by such providers.

(Ord. passed 5-17-1999)

' 114.02 RESERVATION OF RIGHTS.

The issuance of a permit or permits under this chapter and the access to and use of the public rights-of-way by a telecommunications provider shall not constitute a waiver of or otherwise adversely affect the following reserved rights:

(A) *Right to require franchise.* Article VII, ' 29 of the 1963 Michigan Constitution and the Village Charter require that all public utilities obtain a franchise to conduct a local business within the village. The applicability of this requirement to telecommunications providers may be challenged under ' 102(dd) of the State Telecommunications Act which purports to define telecommunications services as not constituting public utility services. Due to this and other legal and regulatory issues, and to avoid the expense and delay of litigation that may be unnecessary, the village hereby determines that telecommunications providers shall not be required at this time to obtain franchises for the transaction of local business within the village. Telecommunications providers shall be required to obtain and maintain a permit for access to and ongoing use of the public rights-of-way and to otherwise comply with the terms of this chapter. Such a permit shall not constitute a franchise. The village reserves the right to require telecommunications providers to obtain a franchise in the future to transact local business within the village.

(B) *Rights regarding takings claim.* Certain cable or telecommunications providers have initiated or supported legal proceedings in which they contend that federal law grants them the right to physically occupy the rights-of-way and other property of a municipality for the purpose of providing telecommunications service without compensating the municipality for the use or value of the property so occupied or the cost of acquiring and maintaining such property. Municipalities dispute that claim. The village believes that if such a claim were sustained it would, among other things, constitute an unlawful taking by the United States in violation of the Fifth Amendment to the United States Constitution. The legal issues involved in such disputes have not been finally decided. The village desires to act on applications for permits granting access to its public rights-of-way at this time rather than wait for determination of these issues, provided this can be done without waiver or loss of any rights of the village or a permittee. Therefore, notwithstanding any other provision hereof, a permittee

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is not precluded by this chapter from seeking relief from the fee provisions of ' 114.06 from any court or agency of competent jurisdiction. If a permittee seeks such relief, the village reserves the right to assert a takings claim and to take all action it deems necessary in support thereof. Neither this chapter nor the issuance or acceptance of a permit hereunder constitutes or will be claimed to constitute a waiver or relinquishment of any rights or defenses of either the village or the permittee in connection with these disputed issues, and the acceptance of a permit constitutes an acknowledgment and agreement thereto by the permittee.

(C) *Option to obtain consent agreement.* The village finds that legislative, legal and regulatory issues in connection with use of the public rights-of-way by telecommunications providers and the resulting potential for litigation and delay are likely to have an adverse affect on the development of a healthy, competitive telecommunications infrastructure in the community. This would be detrimental to the village and its residents as well as to telecommunications providers. The issue effect, among other things, both the cost to telecommunications providers and the compensation to the village for the maintenance and use of its public rights-of-way. In order to promote certainty, encourage competition and avoid litigation, the village will, at the request and sole option of an applicant or permittee, consider entering into a consent agreement for use of the public rights-of-way for the provision of telecommunications services on terms and conditions mutually acceptable to the village and the telecommunications provider. It is the village=s intent that such an agreement would satisfy the requirement for a permit under this chapter, and would include, among other things, the permit fee; an extended term of up to 15 years; authorization to conduct a local business in the village pursuant to Article VII, ' 29 of the 1963 Michigan Constitution; and a covenant to abide by the terms of the agreement as a compromise of disputed issues and uncertain outcomes, notwithstanding the resolution of these legislative, regulatory and legal requirements in the future. A permittee may request a consent agreement at any time.

(Ord. passed 5-17-1999)

' 114.03 DEFINITIONS.

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

AFFILIATE and ***AFFILIATED.*** Any entity controlling, controlled by or under common control with a permittee.

CONTROL, CONTROLLING and ***CONTROLLED.*** Effective control, by whatever means exercised, such as those described in Report and Order and Further Notice of Proposed Rule Making in MM Docket 92-264, 8 FCC Red 6828 (1993) at paragraphs 22-28 (adopting broadcast transfer of control standards as then in effect).

LOCAL EXCHANGE SERVICE. The provision of an access line and usage within a local calling area for the transmission of high quality two-way interactive switched voice of data communication.

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PERMIT. Non-exclusive permit issued pursuant to this chapter for access to and ongoing use of public rights-of-way by telecommunications providers for wires, poles, pipes, conduits or other facilities designed or used to provide telecommunications services. The term **PERMIT** does not include any other permits, licenses or approvals required by the village or other governmental entities.

PERMITTEE. A telecommunications provider which has been issued a permit pursuant to this chapter.

PERSON. An individual, corporation, partnership, association, governmental entity or any other legal entity.

PUBLIC RIGHTS-OF-WAY. The public rights-of-way, easements, highways, streets and alleys within the village.

TELECOMMUNICATIONS ACT. Public Act 216 of 1995, being M.C.L.A. " 484.2101 et seq., as amended from time to time.

TELECOMMUNICATIONS PROVIDER. A person who provides one or more telecommunications services for compensation.

TELECOMMUNICATIONS SERVICES. Regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated usage. **TELECOMMUNICATIONS SERVICES** does not include one-way transmission to subscribers of video programming or other programming services and subscriber interaction for the selection of video programming or other programming services.

TELECOMMUNICATIONS SYSTEM. Facilities designed or used to provide telecommunications services.

VIDEO PROGRAMMING. Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

VILLAGE. The Village of Shepherd.

VILLAGE COUNCIL.

- (1) The Village Council of the Village of Shepherd or its designee.
- (2) This definition does not authorize delegation of any decision or function that is required by law to be made by the Village Council.
- (3) In any case in which a hearing is held pursuant to this chapter, the Village Council may

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conduct the hearing or, in its sole discretion, may by resolution appoint a committee or subcommittee of the commission or a hearing officer to conduct the hearing officer to conduct the hearing and submit a proposal for decision to it, pursuant to procedures established by resolution.

VILLAGE PRESIDENT. The Village President or his or her designee.
(Ord. passed 5-17-1999)

' 114.04 PERMITS.

(A) *Permit required.* No person shall use the public rights-of-way to provide telecommunications services without a permit issued pursuant to this chapter. For purposes of this chapter, use of public rights-of-way includes the installation, construction, maintenance or repair, of a telecommunications system within the public rights-of-way. Failure to comply with the permit requirement of this section shall constitute a violation of this chapter. A person who violates this requirement shall comply with all requirements of this chapter applicable to a permittee and shall pay the annual fee plus late payment charges as provided by ' 114.06 for the time period in which the violator did not have a permit plus the actual costs incurred by the village in enforcing this chapter against the person. Receipt of a permit under this chapter does not supersede a permittee's obligation to obtain any and all other necessary permits or authorizations, under any applicable village ordinance, resolution, regulation or policy.

(B) *Consent agreement.* If a telecommunications provider negotiates a consent agreement with the village under the provisions of ' 114.02(C), and the village determines that the consent agreement substantially satisfies the obligations of a telecommunications provider under this chapter, giving due regard to any special circumstances involving the telecommunications provider, the consent agreement will be deemed to satisfy the requirement of a permit under this chapter and under the telecommunications provider, the consent agreement will be deemed to satisfy the requirement of a permit under this chapter and under the Telecommunications Acts. When a consent agreement is no longer in effect, the telecommunications provider shall be required to comply with all terms and conditions of this chapter as it may be amended from time to time.

(Ord. passed 5-17-1999)

' 114.05 PERMIT APPLICATION PROCEDURES.

(A) *Application.* A telecommunications provider shall apply for a permit pursuant to this chapter. The application shall be made on an application form provided by the village. Three copies of the application shall be filed with the Village Clerk, and two additional copies each shall simultaneously be filed with the Department of Public Works Superintendent and Village Attorney.

(B) *Required information.* In addition to other information required by the village or this chapter, the application shall include, without limitation, the following information:

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(1) The name and address of the applicant or any person exercising control over the applicant, and if the applicant or any person or persons exercising control is not a natural person, each of its officers, directors, stockholders beneficially holding more than 15% of the outstanding voting shares, or its managers, general partners, limited partners and/or members holding an equity interest of more than 15%. If no person controls fifteen percent or more of the outstanding shares, the name and address of ten largest shareholders, partners, limited partners and/or members as the case may be shall be provided;

(2) Copies of the most recent financial statements of the applicant;

(3) A general description of the applicant=s existing and proposed telecommunications system, telecommunications services in the village and the type of existing and proposed wires and other facilities proposed to be placed in the public rights-of-way; and a statement whether such systems and or facilities are owned by the applicant and that such use complies with the terms of any agreement existing between the owner thereof and the applicant. Alternatively, with respect to any facilities not owned by the applicant, the applicant may furnish a copy of any written agreement between the owners of such facilities and the applicant setting forth the nature of the applicant=s interest therein and the right of the applicant to use the facilities;

(4) A map setting forth the location of the facilities in the public rights-of-way. The map shall completely and accurately identify the location and dimensions of above ground and underground facilities in sufficient detail to the satisfaction of the Village President or his or her designee. Prior to the issuance of a right-of-way construction permit, specific location of the facilities in the public rights-of way must be identified; and

(5) Proof of applicable federal and state authority, if any be needed, to operate a telecommunications system in the village.

(C) *Application fee.* The application will be accompanied by a non-refundable application fee in an amount established by ordinance or resolution of the Village Council. The nonrefundable application fee shall be designed to reimburse the village for the costs of reviewing an application for a permit and issuance of a permit in accordance with the procedures of this chapter.

(D) *Administrative completeness.* An application shall not be deemed to be filed for purposes of the 90-day permit application review period in ' 251(3) of the Telecommunications Act unless and until the application is determined by the department of Public Works Superintendent or Village Clerk to be administratively complete. A determination whether the application is administratively complete shall be made by the Village Clerk within 15 business days after the application is received by the village. If the Village Clerk determines that the application is not administratively complete, the Village Clerk shall so advise the applicant in writing and shall identify the items which must be furnished by the applicant for an administratively complete application.

(E) *Additional information.* The Village President may request an applicant to submit such

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additional information which the Village President deems reasonably necessary or relevant to review the application. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the Village President. If the applicant fails to provide the requested additional information by the deadline established by the Village President, the 90-day period for acting on the application under division (G) below shall be extended by the number of days after the deadline that the information was provided to the Village President.

(F) *Misleading statements.* A person who makes a statement which was untrue when made or omits a material fact for the purpose of inducing the village to issue a permit hereunder, which permit would not have been issued but for the misstatement of fact or omission of fact, shall be in violation of this chapter and shall be subject to all remedies for violation of this chapter including, without limitation, denial of the requested action, permit revocation, civil fines and costs.

(G) *Permit approval or denial.* Within 75 days after the Village President determines that the application is administratively complete (subject to any adjustments for delays in providing additional information as provided in division (E) above), the Village Council shall hold a public hearing on application. Notice of the public hearing shall be published in a newspaper in general circulation not less than ten days before the public hearing. Notice of the public hearing shall also be mailed to the applicant not less than ten days before the public hearing. Any report or recommendation on the on the application obtained or prepared by the Village President shall be mailed to the applicant not less than ten days before the public hearing. The applicant and any other interested parties may appear in person, by agent, or by letter at such hearing to submit comments on the application. Following the public hearing, the Village Council shall approve, approve with conditions or deny the application within 90 days after the Village President determines that the application is administratively complete pursuant to division (D) above, subject to any adjustments for delays in providing additional information as provided in division (E) above. The Village Council shall not unreasonably deny an application for a permit. The failure of the village to substantially comply in good faith with the procedural requirements of this division (G) above for the review of permit applications shall not invalidate the decision or proceedings of the village.

(H) *Conditions.* The Village Council may impose conditions on a permit to protect the public health, safety and welfare. Without limitation, these conditions may include the posting of a bond by the telecommunications provider in an amount which shall not exceed the reasonable cost to ensure that the public rights-of-way are returned to their original condition during and after the telecommunications provider=s access and use. The Village Council may require a telecommunications provider to maintain a letter of credit, cash bond or other financial guarantee with a local financial guarantee with a local financial institution, in an amount proportionate to the size of such telecommunications provider=s system (including approved expansions, if any), but not in excess of the reasonable cost to ensure that the public rights-of-way are returned to their original condition, which can be drawn upon by the village due to the telecommunication=s provider=s failure to cure to the reasonable satisfaction of the Village President or his or her designee, any violation of this chapter, or breach or default under a permit, after 30 days= notice.

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(I) *Modification.* The Village Council may, in its discretion, grant a modification of a specific requirement of " 114.07, 114.08, 114.09 or 114.11 if the applicant requests such modification in its application for a permit and if the applicant demonstrates that:

- (1) There are exceptional or extraordinary circumstances which warrant a modification;
- (2) The modification will not be detrimental to the public health, safety, and welfare; and

(3) The modification will not impair the intent and purposes of this chapter and its several sections. The application shall describe the applicant=s request for a modification and the reasons for the request with specificity. A modification granted by the Village Council pursuant to this section shall expire upon the expiration of the permit or earlier if so determined by the Village Council. A modification shall modify only those requirements determined by the Village Council. A modification shall modify only those requirements expressly set forth in approval of the Village Council and shall not modify any other provisions of this chapter. If a request for a modification is denied by the Village Council, the telecommunications provider shall comply with all requirements of this chapter without exception.

(J) *Waiver.* The Village Council shall grant a waiver of any requirement of this chapter, except ' 114.08(A), (C), (F), (G) and (H), if an applicant or permittee requests a waiver and the Village Council finds that: unless waived the requirement will prohibit or have the effect of prohibiting the ability of the applicant or permittee to provide any telecommunications service within the meaning of ' 253(a) of the Federal Telecommunications Act, 47 U.S.C. ' 253(a); the requirement is not within the cope of any state or local authority referenced in ' 253(c); and the requirement is not necessary to protect the public safety and welfare or safeguard the rights of consumers. Any request for a waiver must be included in an application for a permit. A request for a waiver shall include a detailed statement of the facts and circumstances forming the basis for the request. If the request is made in connection with an application for a permit, the provisions of ' 114.05(D) and (G) shall apply to the request. Section 114.05(A), (C) and (F) shall apply to a waiver request that is not made in connection with a permit application, and the request may be denied for violation of or failure to comply with any of those provisions. Section 114.05(G) shall also apply to such a request, with the exception of the 75 and 90 day time periods set forth in that section, but the Village Council may by resolution establish different or additional procedures for conducting the public hearing and acting on the request. (Ord. passed 5-17-1999)

' 114.06 ANNUAL PERMIT FEES.

(A) *Establishment of annual fees; payment.*

(1) In addition to the non-refundable application fee set forth in ' 114.05(C) and any other fees for other permits or authorizations required by the village, a permittee shall pay an annual fee in an amount established by an ordinance or resolution of the Village Council.

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(2) The annual fee may be modified from time to time by ordinance or resolution of the Village Council.

(3) The amount of the annual fee shall not exceed the fixed and variable costs to the village in maintaining the public rights-of-way used by a telecommunications provider unless otherwise permitted by law.

(4) The annual fee shall be payable quarterly as follows:

(a) First quarter (January 1 - March 31): April 30;

(b) Second quarter (April 1 - June 30): July 31;

(c) Third quarter (July 1 - September 30): October 31; and

(d) Fourth quarter (October 1 - December 31): January 31

(5) When a permit is issued during a calendar year, the annual fee shall be prorated for the balance of the calendar year. In the event that a quarterly payment is not paid when due, the permittee shall pay a late payment charge of the greater of \$100 or interest at the rate of 1% over the prime rate then charged by Mercantile Bank of Michigan and computed monthly. A person who violates this chapter by failing to obtain a permit shall pay the annual fee plus late payment charges, as required by this section, for the time period in which the violator did not have a permit plus the actual costs of the village in enforcing this chapter against the person.

(B) *Records.* All records (including those of affiliates) reasonably necessary to verify the accuracy of annual fees paid by the permittee under division (A) above shall be made available by a permittee at a location within the village or within 20 miles of the village's boundaries. The village, by itself or in combination with other municipalities, reserves the right to audit any permittee (or any affiliate of a permittee) to verify the accuracy of annual fees paid or to be paid to the village. Any additional amount due the village shall be paid within 30 days of submission of an invoice. If the additional amount due exceeds 2% of the total annual fee which the audit determines should have been paid for a calendar year, the permittee shall pay the village's costs in connection with the audit within 30 days of submission of an invoice.

(C) *Other payments.* The non-refundable application fees and the annual fees established pursuant to this chapter shall be in addition to any tax, charge, fee or payment due, or to become due, to the village by a permittee under any village ordinance or the laws of the state.

(D) *Misleading statements.* A person who makes a statement which was untrue when made or omits a material fact for the purpose of inducing the village to issue a permit hereunder, which permit would not have been issued but for the misstatement of fact or omission of fact, shall be in violation

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of this chapter and shall be subject to all remedies for violation of this chapter including, without limitation, denial of the requested action, permit revocation, civil fines and costs.

(Ord. passed 5-17-1999)

' 114.07 DURATION OF PERMIT; RENEWAL.

A permit shall remain in effect until June 30 following the tenth year anniversary from the date of the issuance of the permit (unless the permit expires pursuant to ' 114.08(J) or the permit is earlier revoked pursuant to ' 114.13). Applications for renewal of permits shall be filed in the same manner as original applications in ' 114.06 and shall be filed with the village not less than 120 days before the expiration of the permit. The village expressly reserves all rights to approve, approve with conditions or deny applications for permit renewals pursuant to this chapter and to impose additional conditions on renewed permits.

(Ord. passed 5-17-1999)

' 114.08 PERMIT TERMS AND REQUIREMENTS.

(A) *Non-exclusive, additional permits.* A permit shall be non-exclusive. The village expressly reserves the right to approve, at any time, additional permits for access to and ongoing use of the public rights-of-way by telecommunications providers and to enter into agreements and grant franchises for such access and use. The issuance of additional permits, entry into agreements or grant of franchises shall not be deemed to amend, modify, revoke or terminate the terms and conditions of any permits previously issued to telecommunication providers.

(B) *Expansion requests.* A permit approved by the Village Council shall authorize access to and ongoing use of the public rights-of-way described in the permit, subject to compliance with the conditions of the permit, the requirements of this chapter, and any other applicable requirements of a village ordinance or applicable state and federal law. The permittee shall not use any public rights-of-way not expressly authorized by the permit. Any use of the public rights-of-way (including any installation, construction, maintenance or repair of a telecommunication system within the public rights-of-way) to provide telecommunications services shall be performed only as authorized by the permit. A permittee may, however, expand or modify its telecommunications system to public rights-of-way not described in its permit by obtaining approval of an amended permit from the village. Such approval may be granted in writing by the Village President in response to a written request from the permittee for expansion or modification to specific portions of named public rights-of-way. The Village Council may establish by resolution a nonrefundable application fee for such a request. The Village President may grant, grant with conditions or deny such request. The Village President shall not unreasonably deny any request. A denial of any request may be appealed to the Village Council which shall make the final decision. Any expansion or modification into additional public rights-of-way shall be subject to all terms and conditions of the original permit and this chapter including, without limitation, the application of the annual fee to the expanded or modified public rights-of-way used by

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the permittee.

(C) *Construction permit.* A permittee shall not commence construction, excavation, street opening, tree trimming or maintenance of, upon, over, across or under the public rights-of-way in the village without first obtaining all necessary construction, excavation, street opening, tree trimming or maintenance within the public rights-of-way.

(D) *Lease or use of facilities; overtasking.* A permittee shall not lease, sublease, license or otherwise allow the use of wires, conduit, poles or facilities in the public rights-of-way by a person without securing from the person has secured all necessary governmental approvals required to occupy space in public rights-of-way. A permittee shall not allow the property of a third party or non-telecommunications system wires or any other facilities to be overlashed, affixed or attached to any portion of a permittee=s telecommunications system located in the public right-of-way; or allow other actions with a similar result without securing from the person a representation that all governmental approvals have been secured in order to occupy space in the public right-of-way.

(E) *AAs built@ maps.* Without expense to the village, a permittee shall provide the village with Aas built@ maps, records and plans showing its telecommunications system or portions thereof within the village including those of affiliates used by the permittee, and maps and descriptive information of facilities of other persons used by the permittee. The Village President may waive part or all of this requirement if satisfactory records of the location of the telecommunications system were previously provided to the village. The Aas built@ maps, records and plans shall be provided within 30 days of the completion of the telecommunications system and any extensions, additions or modifications to the telecommunications system and any extensions, additions, or modifications to the telecommunications system. In addition to the foregoing, a permittee, without expense to the village, shall, upon 48 hours= notice, give the village access to all Aas-built@ maps, records, plans and specifications showing its telecommunications system or portions thereof within the village. Upon request be the village, a permittee shall inform the village as soon as possible (but no more than one business day after the request) of any changes from previously supplied maps, records or plans and shall mark up maps provided by the village so as to show the location of its telecommunications system.

(F) *No inducement.* By acceptance of a permit, a permittee acknowledges that it has not been induced to obtain the permit by any understanding or promise or other statement, whether verbal or written, by or on behalf of the village or by any third person concerning any term or condition of a permit not expressed in this chapter.

(G) *Acceptance of terms and conditions.* The permittee acknowledges by the acceptance of a permit that it has carefully read its terms and conditions and does not accept all such terms and conditions.

(H) *No priority.* A permit does not establish any priority of use of the public rights-of-way by a permittee over any present or future permittees or parties having agreements with the village or franchises for such use. In the event of any dispute as to the priority of use of the public rights-of-way by a permittee over any present or future permittees or parties having agreements with the village or

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franchises for such use. In the event of any dispute as to the priority of use of the public rights-of-way, the first priority shall be to the public generally, the second priority to the village, the third priority to the state and its political subdivisions in the performance of their various functions, and thereafter as between permittees, other permit holders, parties having agreements with the village, and franchisees, as determined by the village in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the state.

(I) *Future use by the village.* A permittee acknowledges, by accepting a permit, that it obtains no rights to or further use of the public rights-of-way other than those expressly granted herein. Each permittee acknowledges and accepts as its own risk that the village may make use in the future of the public rights-of-way which a permittee is using or in which a permittee=s telecommunications system is located in a manner inconsistent with the permittee=s use of such public rights-of-way and that in such event the permittee will not be entitled to compensation from the village.

(J) *Expiration of permit.* Unless the village grants an extension, a permit shall expire one year from the date of issuance unless prior thereto the permittee either:

(1) Commences construction, installation, or operation of its telecommunications system within the public rights-of-way authorized by the permit and diligently pursues completion of construction or installation; or

(2) Commences use of the public rights-of-way to provide telecommunications services as authorized by the permit.

(Ord. passed 5-17-1999)

' 114.09 USE OF PUBLIC RIGHTS-OF-WAY BY PERMITTEE.

(A) *No burden on public rights-of-way.* A permittee and its contractors and subcontractors and a permittee=s telecommunications system shall not unduly burden or interfere with the present or future use of any of the public rights-of-way within the village. A permittee shall erect and maintain its telecommunications system so as to cause minimum interference with the use of public rights-of-way and with the rights and reasonable convenience of property owners. Permittee=s cables and wires shall be suspended or buried so as to not endanger or injure persons or property in the public rights-of-way. If the village in its reasonable judgements determines that any portion of the telecommunications system located in the public right-of-way constitutes an undue burden or interference, the permittee at its sole cost and expense shall modify that portion of the telecommunications systems or take such other actions as the village may determine are in the public interest to remove or alleviate the burden, and the permittee shall do so within the time period established by the village.

(B) *Restoration of property.* A permittee and its contractors and subcontractors shall immediately restore, at the permittee=s sole cost and expense and in a manner approved by the village, any portion of the public rights-of-way that is in any way disturbed, damaged or injured by the construction,

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operation, maintenance or removal of the telecommunications system to as good or better condition than that which existed prior to the disturbance. In the event that the permittee, its contractors or subcontractors fail to do so within the time specified by the village, the village shall be entitled to complete the work and the permittee shall reimburse the village for the costs of doing so or village may draw upon the letter of credit or bond posted by the permittee, at village=s sole option.

(C) *Easements*. Upon village=s request, a telecommunications provider shall submit evidence of any easement or authorization to use private property for construction or operation of its telecommunications system. Any easements over or under private property necessary for the construction or operation of a telecommunications system shall be arranged for and obtained by the permittee. Any use or intrusion on private property without an easement or other instrument evidencing permission of the property owner shall constitute a trespass by the permittee and a violation of this chapter. Any easement over or under property owned by the village other than the public rights-of-way shall be separately negotiated with the village.

(D) *Tree trimming*. Subject to all applicable village ordinances, if any, permittee may trim trees upon and overhanging the public rights-of-way so as to prevent the branches of such trees coming into contact with its telecommunications system. The permittee shall minimize the trimming of trees to trimming only those trees that are essential to maintain the integrity of its telecommunications system. No trimming shall be done in the public rights-of-way without previously informing the village permittee will use reasonable efforts to notify all affected property owners in advance of trimming trees on or adjacent to their properties.

(E) *Pavement cut coordination/additional fees*. A permittee shall coordinate all construction work in the public rights-of-way with village=s program for street construction, rebuilding, resurfacing and repair (collectively, Astreet resurfacing@). A permittee shall meet with the official of the village primarily responsible for the public rights-of-way at least twice per year to this end.

(1) The goals of such coordination shall be to require a permittee to conduct all work in the public rights-of-way in conjunction with or immediately prior to any street resurfacing planned by the village, and to prevent the public rights-of-way from being disturbed by a permittee for a period of years after such street resurfacing.

(2) In addition to any other fees or payments required by this chapter, a permittee shall pay to the village the sum set from time to time by Village Council resolution or ordinance for each foot cut into or excavation of any public rights-of-way, or portion thereof, which was subject to street resurfacing within 18 months prior to such cut or excavation. This fee is in addition to all other fees required by this chapter.

(F) *Marking*. A permittee shall mark any installations of its telecommunications system which occur after the effective date of this chapter as follows.

(1) Aerial portions of its telecommunications system shall be marked with a marker on its

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lines on alternate poles which shall state the permittee=s name and provide a toll-free number to call for assistance.

(2) Direct buried underground portions of its telecommunications system shall have:

(a) A conducting wire placed in the ground at least several inches above the permittee=s cable (if such cable is non-conductive);

(b) At least several inches above that a continuous colored tape with the permittee=s name and a toll-free phone number and a statement to the effect that there is buried cable beneath; and

(c) Stakes or other appropriate above-ground markers with the permittee=s name and a toll-free number indicating that there is buried telephone cable below.

(3) Portions of its telecommunications system located in conduit, including facilities of others used by a permittee, shall be marked at each manhole with permittee=s name and toll-free telephone number to call for assistance.

(G) *Compliance with laws.* A permittee shall comply with all laws, statues, ordinances, rules, regulations regarding the installation, construction, ownership and use of its telecommunications system, whether federal, state or local, now in force or which hereafter may be promulgated (including, without limitation, any ordinance, requiring the installation of a reasonable amount of additional conduit when a permittee installs underground conduit for its telecommunications system). Before any installation is commenced, the permittee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commission of the village or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. A permittee shall comply in all respects with applicable codes and industry standards, including, but not limited to, the National Electrical Safety Code (latest edition) and the National Electric Code (latest edition). A permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

(H) *Street vacation.* If the village vacates or consents to the vacation of public rights-of-way within its jurisdiction, and such vacation necessitates the removal and relocation of a permittee=s facilities in the vacated right-of-way, the permittee shall, as a condition of the permit, consent to the vacation and move its facilities at its sole cost and expense when ordered to do so by the village or a court of competent jurisdiction. The permittee shall relocate its facilities to such alternate route as the village, acting reasonably and in good faith, shall designate.

(I) *Relocation.* A permittee may request to relocate its facilities above, below or within a public way. The Village President may grant, grant with conditions, or deny such request. If the village requests a permittee to relocate, protect, support, disconnect, place underground or remove its facilities because of street or utility work, or other public projects, the permittee shall relocate, protect, support, disconnect, place underground or remove its facilities, at its sole cost and expense, to such alternate

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route as the village, acting reasonably and in good faith, shall designate. The work shall be completed within the time period designated by the village.

(J) *Public emergency.* The village shall have the right to sever, disrupt, dig-up or otherwise destroy facilities of a permittee, without any prior notice, if such action is deemed necessary by the Village President, Police Chief or Fire Chief or their designees because of a public emergency. Public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to life, health, or property caused by any natural or human-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, major water breaks, hazardous material spills and the like. The permittee shall be responsible for repair at its sole cost and expense of any of its facilities damaged pursuant to any such action taken by the village.

(K) *Miss dig.* If eligible to join, a permittee shall subscribe to and be a member of AMISS DIG, @ the association of utilities formed pursuant to Public Act 174 of 2013, as amended, being M.C.L.A. " 460.721 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

(L) *Use of existing facilities, under grounding.* A permittee shall utilize existing poles, conduits and other facilities wherever practicable, and shall not construct or install any new, different or additional poles or other facilities unless expressly authorized by the permit. Where utility wiring is located underground, either at the time of initial construction or subsequent thereto, a permittee=s telecommunications system shall also be located underground unless otherwise expressly authorized by the permit. All under grounding shall be at the sole cost and expense of the permittee.

(M) *Underground relocation.* If a permittee has its facilities on poles of a municipal electric utility, or any other public utility company and such utility relocates its facilities underground, the permittee shall relocate its facilities underground in the same location at the permittee=s sole cost and expense.

(N) *Pole/conduit/trench license agreement; notification.* If a permittee forfeits or otherwise loses its rights under a pole/conduit/trench license agreement with any entity, then permittee shall notify the Village Clerk in writing within 30 days.

(O) *Identification.* All personnel of a permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. A permittee shall account for all identification cards at all times. Every service vehicle of a permittee and its contractors or subcontractors shall be clearly identified as such to the public with the permittee=s name.

(P) *9-1-1 emergency service.* As a condition of a permit, a permittee providing local exchange service shall arrange to have 9-1-1 services provided within the village in accordance with the provisions of the applicable 9-1-1 service plan and the rules and orders of the State Public Service Commission.

(Ord. passed 5-17-1999)

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' 114.10 NO VILLAGE LIABILITY; INDEMNIFICATION.

(A) The village, and its officers, agents, elected or appointed officials, employees, departments, boards and councils, shall not be liable to a permittee=s telecommunications system or the provision of telecommunications services, or for any damages arising out of a permittee=s use of the public rights-of-way.

(B) *Indemnification.* As a condition of a permit, a permittee shall defend, indemnify, protect and hold harmless the village, its officers, agents, employees, elected and appointed officials, departments, boards and councils from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings and expenses of any nature (including, without limitation, attorneys= fees) arising out of or resulting form the acts or omissions of the permittee, its officers, agents, employees, contractors, successors or assigns, but only to the extent of the fault of the permittee, its officers, agents, employees, contractors, successors or assigns.

(Ord. passed 5-17-1999)

' 114.11 INSURANCE.

(A) A permittee shall obtain and maintain in full force and effect for the duration of a permit the following insurance covering all insurable risks associated with its ownership or use of its telecommunications system:

(1) A comprehensive general liability insurance policy, including completed operations liability, independent contractors liability, contractual liability coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than \$5,000,000;

(2) An automobile liability insurance policy covering any vehicles used in connection with its activities under its permit in an amount not less than \$1,000,000; and

(3) Workers= compensation and employer=s liability insurance with statutory limits.

(B) The village shall be named as an additional insured in all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless 30 days prior written notice is given to the village. A permittee shall provide the village with a certificate of insurance evidencing such coverage as a condition of issuance of the permit and shall maintain on file with the village a current certificate. All insurance shall be issued by insurance carriers licensed to do business by the state or by surplus line carriers shall be rated A+ or better by A.M. Best Company or another rating agency approved by the village.

(C) If the insurance policies required by this section are written with deductibles in excess of

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\$50,000, the deductibles shall be approved in advance by the village. A permittee agrees to indemnify and save harmless the village from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this chapter.

(D) The permittee shall require that its contractors and subcontractors working in public rights-of-way carry in full force and effect workers= compensation and employer liability, comprehensive general liability and automobile liability insurance coverages of the types which permittee is required to obtain under division (A) above with appropriate limits of coverage.

(E) The permittee=s insurance coverage shall be primary insurance with respect to the village, its officers, agents, employees, elected and appointed officials, departments, boards and councils. Any insurance or self-insurance maintained by any of them shall be in excess of the permittee=s insurance and shall not contribute to it.

(Ord. passed 5-17-1999)

' 114.12 NO ASSIGNMENT OR TRANSFER OF CONTROL WITHOUT VILLAGE CONSENT.

A permittee shall not assign or transfer a permit or any of its rights under a permit, in whole or in part, voluntarily, involuntarily or by operation of law, including by merger or consolidation or by other means, without the prior written consent of the village, which shall not be unreasonably withheld. The permittee shall reimburse the village for reasonable, actual costs, including attorney fees, incurred in the review of a request by the permittee for consent to an assignment or transfer of the permit. Notwithstanding anything in this section to the contrary, the permittee may grant a security interest in its rights under a permit in favor of a third party without first obtaining the consent of the village. If a permit or any rights thereunder is assigned or transferred in whole or in part with the approval of the village, the terms and conditions of the permit and of this chapter shall be binding upon the successors and assigns of the permittee. Notwithstanding the provisions of this section, if the transfer of a permit is to an affiliate owned or controlled by the permittee, then no such approval shall be required, but the permittee shall provide written notice prior to any of such transfer to the village; provided however, no such transfer will relieve the permittee of its obligation of compliance with this chapter and permit.

(Ord. passed 5-17-1999)

' 114.13 REVOCATION.

(A) In addition to all other rights and powers reserved or pertaining to the village, the village reserves an additional separate and distinct remedy the right to revoke a permit and all rights and privileges of a permittee in any of the following events or for any of the following reasons:

(1) A permittee fails after 30 days= prior written notice to comply with any of the provisions of the permit or this chapter (except ' 114.05(F);

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- (2) A permittee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;
- (3) All or part of a permittee's facilities are sold under an instrument to secure a debt and are not redeemed by the permittee within 90 days from such sale;
- (4) A permittee violates ' 114.05(F) of this chapter or otherwise attempts to or does practice any fraud or deceit in its conduct or relations with the village;
- (5) The village condemns all of the property of a permittee within the village by the lawful exercise of eminent domain;
- (6) A permittee abandons its telecommunications system or fails to seek renewal of its permit;
- (7) A permittee fails to pay any fines due for violations of this chapter; or
- (8) A permittee fails to pay any civil fines imposed by a court of competent jurisdiction, such as pursuant to an ordinance providing for civil infractions.

(B) No revocation, except for reason of condemnation, shall be effective unless the Village Council shall have adopted a resolution setting forth the reason for the revocation and the effective date, which resolution shall not be adopted without 30 days= prior notice to the permittee and a hearing at which the permittee receives rudimentary due process.

(Ord. passed 5-17-1999)

' 114.14 REMOVAL.

(A) *Removal; underground.* Upon revocation of a permit, or upon expiration of a permit if the permit is not renewed, the permittee may remove any underground cable from the public rights-of-way which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. Except as otherwise provided, the permittee shall not remove any underground cable or conduit which requires trenching or other opening of the public rights-of-way along the extension of cable to be removed. The permittee shall remove, at its sole cost and expense, any underground cable or conduit which is ordered to be removed by the village based upon a determination, in the sole discretion of the village, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the village to remove cable or conduit shall be mailed to the permittee not later than 30 calendar days following the date of revocation or expiration of the permit. A permittee shall file written notice with the Village Clerk not later than 30 calendar days following the date of expiration or termination of the permit of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the village. Removal

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shall be completed not later than 12 months following the date of revocation or expiration of the permit. Underground cable and conduit in the public rights-of-way which is not removed within such time period shall be deemed abandoned and, at the option of the village, title shall be vested in the village. For purposes of this division (A), **CABLE** means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

(B) *Removal; above ground.* Upon revocation of a permit, or upon expiration of a permit if the permit is not renewed, a permittee, at its sole cost and expense, shall, unless relieved of the obligation by the village, remove from the public rights-of-way all above ground elements of its telecommunications system, including, but not limited to, poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

(C) *Permits; restoration; completion.* A permittee shall apply for and obtain such encroachment permits, licenses, authorization or other approvals and pay such fees and deposit such security as required by applicable law or ordinances of the village, shall conduct and complete the work of removal in compliance with all such applicable law or ordinances, and shall restore the public rights-of-way to the same condition they were in before the work of removal commenced.

(Ord. passed 5-17-1999)

' 114.15 OTHER PROVISIONS NOT WAIVED.

(A) Nothing in this chapter shall be construed as a waiver of any ordinances, Charter provisions, codes or regulations of the village or village=s right to require permittee or persons utilizing the telecommunications system or telecommunications services to secure appropriate permits or authorization for such use.

(B) The village fully reserves its police powers to ensure and protect the public health, safety and welfare and fully reserves its authority and power to amend this chapter at any time. The terms and conditions of any permit shall be subject to compliance with any future amendments of this chapter. The village fully reserves its right to exercise the reasonable control of the public rights-of-way pursuant to Article VII, ' 29 of the 1963 Michigan Constitution.

(C) Nothing in this chapter or any permit shall limit any right the village may have to acquire by eminent domain any property of a telecommunications provider.

(D) Nothing in this chapter or any permit shall limit the authority of the village to impose a tax, fee or other assessment of any kind on any person. A telecommunications provider shall pay all fees necessary to obtain all federal, state and local licenses, permits and authorizations required for the construction, installation, maintenance or operation of its telecommunications system within the public rights-of-way.

(Ord. passed 5-17-1999)

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' 114.16 AUTHORIZED VILLAGE OFFICIALS.

The Village President or his or her designee is hereby designated as the authorized village official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the Municipal Ordinance Violations Bureau) for violations under this chapter as provided by this chapter.
(Ord. passed 5-17-1999)

' 114.17 SEVERABILITY.

(A) If any provision of this chapter or any related ordinances is held by any court of any federal, state or county agency of competent jurisdiction to be invalid as conflicting with any federal, state or county law, rule or regulation, said provision shall be considered a separate, distinct and independent part of this chapter, and such holding shall not affect the validity and enforceability of any other of these. In the event that such law, rule or regulations subsequently repealed, rescinded, amended or otherwise changes, so that the provisions which had been held invalid or modified is no longer in conflict with the laws, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall binding on the parties, provided that the village shall give the permittee 30 days= written notice of such change before requiring compliance with said provision.

(B) Any other provisions of this chapter to the contrary notwithstanding, a permittee shall at all times comply with all laws and regulations of the federal, state, county and village governments and all administrative agencies thereof, provided, however, that if any law or regulation shall prohibit a permittee expressly from performing a service required thereunder, such that it would be in conflict with the terms of this chapter or the provisions of the village=s code of ordinances, then as soon as such a conflict becomes known to the permittee, the permittee shall notify the village in writing of what it believes the conflict to consist of and in particular what law or regulation it believes to be in conflict with this chapter or the village=s code of ordinances and the permittee shall be thereby excused from performance thereunder, provided that it acts in good faith reliance thereon, pending an authorization resolution of such conflict.

(C) If the village determines that a material provision of this chapter or any related ordinances is affected by such action of a court or of the federal, state or county government, the village shall have the right to modify any of the provisions herein or in such related ordinances to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter.
(Ord. passed 5-17-1999)

' 114.99 PENALTY.

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(A) A person who violates any provision of this chapter is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$500 and not more than \$5,000, plus costs and other sanctions, for each infraction. Each day that a violation continues shall be a separate infraction. Repeat offenses under this chapter shall be subject to increased fines as follows:

(B) First repeat offense shall be fined at not less than \$1,000.
(Ord. passed 5-17-1999)