

## TITLE 9

### BUSINESS, PEDDLERS, SOLICITORS, ETC.<sup>1</sup>

#### CHAPTER

1. PEDDLERS, CANVASSERS, ETC.
2. TAXICABS.
3. CITY OF NORRIS CABLE TELEVISION SYSTEM ACT OF 1983.

#### CHAPTER 1

### PEDDLERS, CANVASSERS, ETC.<sup>2</sup>

#### SECTION

- 9-101. Permit required.
- 9-102. Exemptions.
- 9-103. Application for permit.
- 9-104. Issuance or refusal of permit.
- 9-105. Appeal.
- 9-106. Loud noises and speaking devices.
- 9-107. Use of streets.
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- 9-109. Exhibition of permit.
- 9-110. Public safety to enforce.
- 9-111. Revocation or suspension of permit.
- 9-112. Reapplication.
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**9-101. Permit required.** It shall be unlawful to peddle, canvass, or solicit for goods, services, or funds within the corporate limits in person or by telephone without first obtaining a permit in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (1972 Code, § 5-101)

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<sup>1</sup>Municipal code references

Building, plumbing, wiring and housing regulations: title 12.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

<sup>2</sup>Municipal code reference

Privilege taxes: title 5.

**9-102. Exemptions.** The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newspaper delivery persons, nor to bona fide merchants who merely deliver goods in the regular course of business. (1972 Code, § 5-102)

**9-103. Application for permit.** At the time of filing the application, a fee of fifty dollars (\$50.00) shall be paid to the City of Norris to cover the cost of investigating the facts stated therein. The license will expire fourteen (14) days from the date of issue.

- (1) Name and physical description of applicant.
- (2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.
- (3) A brief description of the nature of the business and the goods to be sold.
- (4) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship.
- (5) The length of time for which the right to do business is desired.
- (6) The names of at least two (2) references, or in lieu of the names of references, or other evidence that will enable evaluation of the reputation or business responsibility of applicant unless applicant is known to the public safety department.
- (7) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor or for violating any municipal ordinance, and, if so, the nature of the offense and the punishment or penalty assessed therefor.
- (8) The last three (3) cities or towns, if that many, where applicant carried on business immediately preceding the date of application and, in the case of transient merchants, the addresses from which such business was conducted in those municipalities.
- (9) At the time of filing the application, a fee of twenty dollars (\$20.00) shall be paid to the City of Norris to cover the cost of investigating the facts stated therein. However, no fee shall be assessed charitable, religious, patriotic, educational or philanthropic organizations nor to farmers, gardeners, or horticulturist selling products from their own farms, orchards, or gardens of their own raising or productions, or individuals engaged in incidental services to homeowners such as raking leaves, mowing yards, or shoveling snow. (1972 Code, § 5-103, as amended by Ord. #557, Aug. 2012)

**9-104. Issuance or refusal of permit.** (1) Each application shall be referred to the public safety director for investigation. The director shall report his findings to the city manager within seven (7) days.

(2) If as a result of such investigations the director reports the applicant's moral reputation and/or business responsibility to be unsatisfactory

the city manager shall notify the applicant that his application is disapproved and that no permit will be issued.

(3) If, on the other hand, the director's report indicates that the moral reputation and business responsibility of the applicant are satisfactory, the city manager shall issue a permit upon the payment of all applicable privilege taxes. (1972 Code, § 5-104)

**9-105. Appeal.** Any person aggrieved by the action of the public safety director and/or the city manager in the denial or revocation of a permit shall have the right to appeal to the city council. Such appeal shall be taken by filing with the city manager within ten (10) days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The city manager shall set a time and place for a hearing on such appeal and notice of the time and place of such hearing shall be given to the appellant. The notice shall be in writing and shall be mailed, postage prepaid, to the applicant at his last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a public safety officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1972 Code, § 5-105)

**9-106. Loud noises and speaking devices.** No permittee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks or other public places of the city or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (1972 Code, § 5-106)

**9-107. Use of streets.** Except as provided for in § 9-108, no permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets nor shall any be allowed to accept orders for goods or sell directly from a vehicle of any kind while standing in a public street. For the purposes of this chapter, the judgement of a public safety officer exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1972 Code, § 5-107)

**9-108. Solicitation at intersections.** Permittee may solicit for funds within an intersection provided that all other provisions of this chapter are complied with in full. If in the judgement of a public safety officer such solicitation causes public inconvenience as impediment, the permittee shall desist from solicitation immediately. In addition, the solicitation of funds within intersections shall be subject to the following restrictions:

(1) All participants shall be over 18 years of age and shall wear a safety vest or other approved safety device to increase visibility.

(2) The organization soliciting funds shall be identified in a manner readily apparent to motorists.

(3) Solicitation shall not begin before 9:00 A.M. nor continue beyond 5:00 P.M.

(4) No organization shall solicit funds in such a manner more than once each calendar year. (1972 Code, § 5-108)

**9-109. Exhibition of permit.** Permittees are required to exhibit their permits at the request of all public safety officers to see that the provisions of this chapter are enforced. (1972 Code, § 5-109)

**9-110. Public safety to enforce.** It shall be the duty of all public safety officers to see that the provisions of this chapter are enforced. (1972 Code, § 5-110)

**9-111. Revocation or suspension of permit.** (1) Permits issued under the provisions of this chapter may be revoked by the city manager or his appointee, for any of the following causes:

(a) Fraud, misrepresentation, or incorrect statement contained in the application for permit or made in the course of carrying on the business of solicitor, canvasser, peddler, transient merchant, itinerant merchant, or itinerant vendor.

(b) Any violation of this chapter.

(c) Conviction of any crime or misdemeanor.

(d) Conducting the business of peddler, canvasser, solicitor, transient merchant, itinerant merchant, or itinerant vendor, as the case may be, in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public.

(2) Notice of the revocation of a permit shall be given by the city manager in writing, setting forth specifically the grounds of the complaint. Such notice shall be mailed to the permittee at his last known address or it shall be delivered by a public safety officer in the same manner as a summons.

(3) A permittee whose permit is revoked may request a review before council. Such review shall be requested in writing within ten (10) days of the revocation of the permit. (1972 Code, § 5-111)

**9-112. Reapplication.** No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (1972 Code, § 5-112)

**9-113. Expiration and renewal of permit.** Permits issued under the provisions of this chapter shall expire on the same date that the permittee's

privilege license expires and shall be renewed for a fee of five dollars (\$5.00) if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (1972 Code, § 5-113)

## CHAPTER 2

### TAXICABS<sup>1</sup>

#### SECTION

- 9-201. Taxicab franchise and business tax license required.
- 9-202. Requirements as to application and hearing.
- 9-203. Liability insurance required.
- 9-204. Revocation or suspension of franchise.
- 9-205. Mechanical condition of vehicles.
- 9-206. Cleanliness of vehicles.
- 9-207. Inspection of vehicles.
- 9-208. License and permit required for drivers.
- 9-209. Qualifications for driver's permit.
- 9-210. Revocation or suspension of driver's permit.
- 9-211. Drivers not to solicit business.
- 9-212. Parking restricted.
- 9-213. Drivers to use direct routes.
- 9-214. Taxicabs not to be used for illegal purposes.
- 9-215. Miscellaneous prohibited conduct by drivers.
- 9-216. Transportation of more than one passenger at the same time.
- 9-217. Fares.

**9-201. Taxicab franchise and business tax license required.** It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a taxicab franchise from the city and has a currently effective business tax license. (1972 Code, § 5-201)

**9-202. Requirements as to application and hearing.** Applications for taxicab franchises shall be made under oath and in writing to the city manager. The application shall state the name and address of the applicant, the name and address of the proposed place of business, the number of cabs the applicant desires to operate, the makes and models of said cabs, and such other pertinent information as the city manager may require. The application shall be accompanied by at least two (2) affidavits of reputable local citizens attesting to the good character and reputation of the applicant. At the time of filing the application, a fee of five dollars (\$5.00) shall be paid to the City of Norris to cover the cost of investigating the facts stated therein. Within ten (10) days after receipt of an application the city manager shall make a thorough investigation of the applicant; determine if there is a public need for additional

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<sup>1</sup>Municipal code reference  
Privilege taxes: title 5.

taxicab service; present the application to the city council; and make a recommendation to either grant or refuse a franchise to the applicant. The city council shall thereupon hold a public hearing at which time witnesses for and against the granting of the franchise shall be heard. In deciding whether or not to grant the franchise the city council shall consider the public need for additional service, the increased traffic congestion, parking space requirements, and whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such an additional taxicab franchise. Those persons already operating taxicabs when this code is adopted shall not be required to make applications under this section but shall be required to comply with all of the other provisions hereof. (1972 Code, § 5-202)

**9-203. Liability insurance required.** No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy for each vehicle authorized in the amount of ten thousand dollars (\$10,000.00) for bodily injury or death to any one person, twenty thousand dollars (\$20,000.00) for bodily injuries or death to more than one person which are sustained in the same accident, and five thousand dollars (\$5,000.00) for property damage resulting from any one accident. The insurance policy required by this section shall contain a provision that it shall not be cancelled except after at least twenty (20) days' written notice is given by the insurer to both the insured and the city manager of the City of Norris. (1972 Code, § 5-203)

**9-204. Revocation or suspension of franchise.** The city council, after a public hearing, may revoke or suspend any taxicab franchise for misrepresentations or false statements made in the application therefor or for traffic violations or violations of this chapter by the taxicab owner or any driver. (1972 Code, § 5-204)

**9-205. Mechanical condition of vehicles.** It shall be unlawful for any person to operate any taxicab in the city unless such taxicab is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and rear vision mirror, all of which shall conform to the requirements of state motor vehicle law. Each taxicab shall be equipped with a handle or latch or other opening device attached to each door of the passenger compartment so that such doors may be operated by the passenger from the inside of the taxicab without the intervention or assistance of the driver. The motor and all mechanical parts shall be kept in such condition or repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (1972 Code, § 5-205)

**9-206. Cleanliness of vehicles.** All taxicabs operated in the city shall, at all times, be kept in a reasonably clean and sanitary condition. They shall

be thoroughly swept and dusted at least once each day. At least once every week they shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (1972 Code, § 5-206)

**9-207. Inspection of vehicles.** All taxicabs shall be inspected at least semiannually by the chief of police to insure that they comply with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. (1972 Code, § 5-207)

**9-208. License and permit required for drivers.** No person shall drive a taxicab unless he is in possession of a state special chauffeur's license and a taxicab driver's permit issued by the city manager of the City of Norris. (1972 Code, § 5-208)

**9-209. Qualifications for driver's permit.** No person shall be issued a taxicab driver's permit unless he complies with the following to the satisfaction of the city manager:

- (1) Makes written application to the city manager.
- (2) Is at least eighteen (18) years of age and holds a state special chauffeur's license.
- (3) Undergoes an examination by a physician and is found to be of sound physique, with good eyesight and hearing and not subject to epilepsy, vertigo, heart trouble or any other infirmity of body or mind which might render him unfit for the safe operation of a public vehicle.
- (4) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.
- (5) Produces affidavits of good character from two (2) reputable citizens of the city who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.
- (6) Has not been convicted of a felony, drunk driving, driving under the influence of an intoxicant or drug, or of frequent minor traffic offenses.
- (7) Is familiar with the state and local traffic laws. (1972 Code, § 5-209)

**9-210. Revocation or suspension of driver's permit.** The city council, after a public hearing, may revoke or suspend any taxicab driver's permit for traffic violation of traffic regulations, for violation of this chapter, or when the driver ceases to possess the qualifications as prescribed in § 9-209. (1972 Code, § 5-210)

**9-211. Drivers not to solicit business.** All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising upon the streets of the city for the purpose of obtaining patronage for their cabs. (1972 Code, § 5-211)

**9-212. Parking restricted.** It shall be unlawful to park any taxicab on any street except in such places as have been specifically designated and marked by the city for the use of taxicabs. It is provided, however, that taxicabs may stop upon any street for the purpose of picking up or discharging passengers if such stops are made in such manner as not to unreasonably interfere with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (1972 Code, § 5-212)

**9-213. Drivers to use direct routes.** Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (1972 Code, § 5-213)

**9-214. Taxicabs not to be used for illegal purposes.** No taxicab shall be used for or in the commission of any illegal act, business, or purpose. (1972 Code, § 5-214)

**9-215. Miscellaneous prohibited conduct by drivers.** It shall be unlawful for any taxicab driver, while on duty, to be under the influence of, or to drink any intoxicating beverage or beer; to use profane or obscene language; to shout or call to prospective passengers; to unnecessarily blow the automobile horn; or to otherwise unreasonably disturb the peace, quiet and tranquility of the city in any way. (1972 Code, § 5-215)

**9-216. Transportation of more than one passenger at the same time.** No person shall be admitted to a taxicab already occupied by a passenger without the consent of such other passenger. (1972 Code, § 5-216)

**9-217. Fares.** All fares charged for transportation of passengers by taxicabs shall be in accordance with a rate schedule approved by the city council and conspicuously displayed in each taxicab. It shall be unlawful to charge any fare in excess of that authorized by such schedule. (1972 Code, § 5-217)

### CHAPTER 3

#### CITY OF NORRIS CABLE TELEVISION SYSTEM ACT OF 1983<sup>1</sup>

##### SECTION

- 9-301. Short title.
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<sup>1</sup>See Ord. #408; Ord. #426; Ord. #431 (April 1996); Ord. #434 (July 1996); Ord. #442 (Feb. 1998); Ord. #468 (April 2002), and subsequent resolutions of record in the clerk's office which reflect various transfers of the cable television franchise.

**9-301. Short title.** The short title for this chapter shall be known and may be cited as the "City of Norris Cable Television System Act of 1983" (hereinafter referred to as CTSA). (1972 Code, § 5-301)

**9-302. Definitions.** For the purpose of this code, the following terms, phrases, words and their derivations shall have the meaning given herein. 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 plural number. The word "shall" is always mandatory and not merely directory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(1) "City" is the City of Norris, Tennessee.

(2) "Company" is the grantee of any rights under this code by way of franchise.

(3) "Franchise" is the rights granted to any person by the council of the City of Norris under the terms of this code and any agreement entered into by and between the City of Norris, Tennessee, and such person according to the terms of this code.

(4) "Council" is the governing legislative body of the City of Norris, Tennessee.

(5) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

(6) "Cable system" or "Cable television system" means a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive or transmit television or radio signals originated directly or indirectly or taken off the air and to transmit them to the subscribers for a fee.

(7) "SRTV system" shall mean cable system.

(8) "Corporate limits" shall include all areas lying within the limits of the City of Norris, Tennessee, as from time to time changed by annexation or other legal methods.

(9) "Federal Communications Commission" or "FCC" is the federal commission or agency created pursuant to the Acts of Congress.

(10) "Channels" shall mean a group of frequencies in the electro magnetic spectrum capable of carrying an audio-data or an audio-video television signal. Each channel is a block of frequencies containing six MHz band width.

(11) "Distant signals channel" means the channel or channels on the cable system designated to carry signals from stations located outside the mandatory carriage area as defined by the FCC.

(12) "Basic subscriber service" means all subscriber services provided by the grantee, including the delivery of broadcast signals, access channels and origination channels, covered by the regular monthly charge paid by all subscribers.

(13) "City council" or "council" means the present Norris city council or any successor to the legislative powers of the present city, also referred to as "grantor".

(14) "Grantee" means the person, company or corporation so designated by the council to receive an exclusive franchise as provided hereunder, and the lawful successors, transferees, or assignees of said person or business entity. Also may be referred to as "franchise" or "company".

(15) "Grantor" means the city government of Norris, as represented by the council acting within the scope of its jurisdiction. Also may be referred to as "franchisor" or "city".

(16) "Gross annual receipts" shall mean all revenue derived directly or indirectly by the grantee, its affiliates, subsidiaries, parents, and any company in which the grantee has a financial interest, from or in connection with the operation of the cable TV system pursuant to this chapter; including gross annual basic subscriber receipts, converter rentals and all other receipts related to the operation of this franchise except: Pay TV or premium channels, gross annual advertising receipts, gross annual lease receipts, installation and reconnection fees, converter sales, studio rental, and production equipment and personnel fees; provided, however, that "Gross Annual Receipts", shall not include any taxes on services furnished by the grantee herein, imposed directly upon any subscriber or user by the state, city or other governmental entity and collected by the grantee on behalf of said governmental unit.

(17) "Norris" means the present municipal corporation of Norris, together with any future annexation made pursuant to law. Also referred to as "city".

(18) "Norris cable television franchise ordinance" or "franchise ordinance" means an ordinance approving a contract between the City of Norris and a specific franchise which grants a franchise and defines the specific rights and obligations of each party pursuant to the general authority, powers, and restrictions of this chapter.

(19) "Streets" shall mean the surface of and all rights-of-way and the space above and below any public street, road, highway, bridge, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive, waterway, dock, wharf, pier, or easement now or hereafter held by the city for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the city which shall, within their property use and meaning entitle the franchisee to the use thereof for the purposes of installing or transmitting cable television system transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.

(20) "Year" means a full calendar year. (1972 Code, § 5-302)

**9-303. Authority to grant franchises.** (1) The city warrants it has a right to issue a franchise and the grantee, by acceptance, acknowledges and accepts the right of the city to issue the same.

(2) The city shall have the power to grant to a company, subject to the right of amendment as hereinafter provided, the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the city, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the city of a cable system for the interception, sale, and distribution of television signals, upon the limitations, terms, and conditions in this code contained, as the same may be from time to time amended.

(3) The franchise award shall not be sublet, assigned or leased, nor shall any of the rights or privileges therein granted or authorized be transferred or assigned, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, title, interest or property therein pass to or vest in any person except the grantee, either by act of the grantee or by operation of law, without the prior consent of the city expressed by ordinance, which consent will not be unreasonably withheld.

(4) The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall be exclusive when granted by the city. (1972 Code, § 5-303)

**9-304. Compliance with applicable laws and ordinances.** A company, at all times during the life of its franchise, shall be subject to all lawfully exercise of the police power by the city and to such reasonable regulations as the city shall hereafter by resolution or ordinance provide. Unless otherwise prohibited by state or federal law, or, where jurisdiction has been or shall be conferred upon a state or federal commission, board or body, the city reserves a right by ordinance or resolution to regulate such cable system as to attachment fees, if any; rates and charges to be paid by the subscribers for the service; the quality of service to be provided subscribers; the rate of construction of facilities so as to serve the territorial area referred to hereinafter; to promulgate rules and regulations and necessary other supervisory procedures to assure prompt completion of the system; to provide service for all citizens of the city and its police jurisdiction wherever located; to set a schedule of construction that will attain the said completion of such system as hereinabove last stated; and to adopt such other rules and regulations it may now or hereafter lawfully impose in keeping with and not in conflict with applicable state law, or the lawful rules and regulations heretofore or hereafter adopted by any federal commission, board or body and/or any lawful state rules and/or regulations lawfully adopted by any state commission, board or body. (1972 Code, § 5-304)

**9-305. Franchise area.** Any franchise granted hereunder relates to the present city limits of the city and to any area hereafter added thereto during the term of any franchise granted hereunder. (1972 Code, § 5-305)

**9-306. Regulation by other agency.** Any company, its successors and assigns "granted a franchise hereunder" shall be subject to lawful regulations heretofore or hereafter adopted by the Federal Communications Commission and should it now be or hereafter become subject to the jurisdiction of any other commission then also to the lawful rules and regulations adopted by such commission and also to the lawful rules and regulations adopted by any similar federal commission or state regulatory body, having jurisdiction. If any company, its successors or assigns, shall fail to comply with any federal and/or state statute, rules, regulations, orders or conditions lawfully vested under federal law and any federal regulatory body and/or rules, regulations, orders and conditions lawfully vested in and state regulatory body and/or rules, regulations, orders and conditions lawfully vested in the city shall have the right to terminate or cancel any franchise granted hereunder after written notice to the company to correct such failure or default and such failure or default shall continue for a period of time specified in such notice, not less than ninety (90) days. (1972 Code, § 5-306)

**9-307. Liability and indemnification.** (1) Any company shall pay and by its acceptance of any franchise granted by the city it shall specifically agree that it will pay all damages and penalties that the city may legally be required to pay as a result of granting any franchise or any operation thereunder. Such damages or penalty shall include damages arising out of the installation, operation or maintenance of the SRTV system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by such franchise granted.

(2) Any company shall pay and by its acceptance of any franchise granted hereunder shall specifically agree that it will pay all expenses incurred by the city in defending itself with regard to all damages and penalties mentioned in subsection (1) above. Such expenses shall include all out of pocket expenses, such as attorney's fees, and shall also include the reasonable value of any services rendered by the city attorney or his assistance or any employees of the city.

(3) Notwithstanding the above requirement, any company granted or subsequently acquiring the franchise award shall stand in the status of an independent contractor, and shall indemnify and hold harmless the city from demand for payment or satisfaction of money damages awarded against it or arising through its actions or those of its employees.

(4) During the term of award and acceptance of franchise, beginning within 90 days after award, the company shall post with the city a bond to be approved as to form by the city attorney in the sum of \$10,000.00, conditioned

upon the faithful performance of the conditions and terms of the franchise and providing a recovery on the bond in case of failure to perform the terms and conditions thereof. Bond shall mean an irrevocable bank letter of credit. The bond shall cease after 24 months or upon completion of construction.

(5) The company shall comply with all applicable state, federal and local statutes requiring types and amounts of insurance coverage.

(6) Said insurance policy of policies and said performance bond obtained by any company in compliance with this section must at all times be kept in full force and effect and such insurance policy or policies and performance bond, along with written evidence of payment of the required premiums shall be filed and maintained with the city manager at all times during the term of any franchise granted to the company. No policy or bond shall in any manner be altered, changed or substituted until at least thirty (30) days prior notice in writing shall have been given to the city by the company and/or its insurance and/or bonding company. (1972 Code, § 5-307)

**9-308. Color TV signals.** The facilities used by any company shall be capable of distributing color TV signals, and when the signals the company distributes are received in color they shall be distributed to subscribers in color. (1972 Code, § 5-308)

**9-309. Signal quality requirements.** The company shall comply with the standards required by the Federal Communications Commission as time to time amended and further the company shall:

(1) Deliver a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production TV sets in good repair, and deliver a picture as good as the state of the art shall from time to time allow.

(2) Transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing cross modulation in the cable or interfering with other electrical or electronic systems.

(3) Limit failures to a minimum by locating and correcting malfunctions properly and promptly, but in no event longer than twenty-four (24) hours after notice unless prevented by an act of God.

(4) Demonstrate by instruments otherwise to subscribers that a signal of adequate strength and quality is being delivered. (1972 Code, § 5-309)

**9-310. Construction of system.** The grantee shall adhere to the following schedule:

(1) Within 100 days after award of franchise the company shall proceed with due diligence to obtain all necessary permits for construction, operation, transmission or licenses of the CTS.

(2) Within 90 days after the publication of the FCC registration statement the company shall begin construction of the CTS.

(3) Within 18 months of the award of franchise, the company shall complete installation of the cable system to all areas of the city limits where there presently exist an average of twenty-five residences per mile of cable trunk system.

(4) The grantor may at its sole option apply any of the following in connection with delays in system construction:

(a) Reduction in the duration of the franchise on a month-for-month basis for each month of delay exceeding three months;

(b) Forfeiture of performance bonds for delays exceeding nine months;

(c) Termination of the franchise for delays exceeding one year.

(5) The grantee is not required under this chapter or any contract granted hereunder to extend its facilities to any area unless there presently exist an average of twenty-five (25) residents per mile of trunk cable system. In areas where there is not an average of twenty-five residents per mile of the system, the grantee may negotiate the cost of supplying service and pro-rate such expense among the subscribers for such area. (1972 Code, § 5-310)

**9-311. Operation and maintenance of system.** (1) The company shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

(2) The grantee shall maintain a toll-free telephone number whereby subscriber complaints and requests for repairs or maintenance may be received during normal business hours. The grantee shall further maintain sufficient staff, facilities and personnel to handle all normal system maintenance and minor repair functions within 24 hours from receiving such complaint or request, but in all events within 72 hours after notice is given. The company shall keep a record of all complaints from subscribers identifying the subscriber, his address, location, date of complaint, and disposition of complaint.

(3) Should it become necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the company shall do so at such time as will cause the least amount of inconvenience to its customers and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.

(4) The city reserves the right by ordinance or resolution to set up a system and provide personnel to regulate the actions of the company in the performance of its duty and responsibilities provided in this code and otherwise under any franchise granted hereunder. (1972 Code, § 5-311)

**9-312. Program alteration.** All programs of broadcasting stations carried by the company shall be carried in their entirety as received, with announcements and advertisements and without additions or deletions except

as may be allowed by the FCC or other regulatory agency, or as otherwise lawfully directed by the city. (1972 Code, § 5-312)

**9-313. Performance bond.** (1) The grantee shall, within thirty (30) days after the award of a franchise, file with the city council, a performance bond in the amount of \$10,000.00 payable to grantor, conditioned on the grantee's starting construction and providing the required services within the time schedule set forth in § 9-310 herein, except for delays of installation of cable or equipment caused by acts beyond the control of the grantee, such as acts of God, floods, fires, earthquakes, strikes, determinations of boards, commissions or governmental agencies and other acts or failure to act of someone other than the city, and of events over which the grantee has no control, the surety on the aforesaid bond shall be only as satisfactory to the city.

(2) Funds represented by such bond shall be recoverable by the city in case of the non-compliance of grantee, its assignees, vendees, lessees, or successors in interest. (1972 Code, § 5-313)

**9-314. Services required.** (1) The company may provide, but without charge and subject to the rules and regulations of the Federal Communications Commission, public emergency broadcast capabilities whereby the city can interrupt service on a designated channel in order to make such public emergency broadcasts as it deems necessary.

(2) The system shall be installed with all available channels and two-way capability; however, the company shall expand the systems channel capacity as required in the manner prescribed by the FCC. (1972 Code, § 5-314)

**9-315. Other business activities prohibited.** (1) The company shall not engage in the business of selling television receivers, radio receivers or accessories within the city during the term of any franchise granted hereunder.

(2) Any franchise granted hereunder authorizes only the operation of a cable system as provided for herein, and does not take the place of any other franchise, license or permits which might be required by law of the company. (1972 Code, § 5-315)

**9-316. Safety requirements.** (1) The company shall at all times employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries and nuisances to the public.

(2) The company shall install and maintain its wires, cables, fixtures and other equipment in accordance with the current requirements of any codes that may be from time to time adopted by the city.

(3) All structures and all lines, equipment and connections of the company in, over, under and upon the streets, sidewalks, alleys and public ways or places of the city, wherever situated or located, shall at all times be kept and

maintained in a safe, suitable and substantial condition, and in good order and repair by the company.

(4) The company shall have sufficient employees to provide safe, adequate and prompt service for its facilities.

(5) The company is authorized to bargain and conclude all necessary agreements with utility companies pertaining to pole usage, rental or sharing arrangements. (1972 Code, § 5-316)

**9-317. Amendments and supplemental agreements.** It shall be the policy of the city to amend this code, upon application of the company, when necessary, to enable the company to take advantage of any development or developments in the field of transmission of television and radio signals which will afford it an opportunity more efficiently, effectively or economically to serve its customers. Provided, however, that this section shall not be construed to require the city to make any amendment. (1972 Code, § 5-317)

**9-318. Conditions on street occupancy.** (1) All transmission and distribution structures, lines and equipment erected or installed by the company within the city shall be so located or installed as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

(2) In case of disturbance by the company of any street, sidewalk, alley, public way or paved area, the company shall, at its own cost and expense and in a manner approved by the city, replace and restore such street, sidewalk, alley, public way and paved area in as good a condition as before the work involving such disturbance was done. The company shall comply with all applicable provisions of the code and ordinances of the city, as may hereafter be amended.

(3) If at any time during the period of any franchise granted hereunder the city shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, the company, upon reasonable notice by the city, shall remove, at grantees' expense, relay and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures under the same conditions and terms as specified for any telephone or electrical utility.

(4) Any pole or other fixture placed in any public way by the company shall be placed in such a manner as not to interfere with the usual travel on such public way.

(5) The company shall, on request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid in advance by the person requesting the same and the company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes. (1972 Code, § 5-318)

**9-319. Termination by grantee.** (1) The grantee, at any time during the effective period of the franchise ordinance, may terminate its agreement by giving the grantor one hundred eighty (180) days' written notice of such termination with registered letter by registry receipt, addressed to the city council.

(2) The grantee shall pay the city, within thirty (30) days of the effective date of such termination, all sums then due to the city under the provisions of this chapter up to the date of termination. Grantee is responsible for any legal fees accrued in collecting sums due the city.

(3) The city may require the grantees to remove the abandoned property or may dispose of the property at the expense of the grantee or may appropriate the property to the use of the city or any other grantee. The portion of the system remaining on public property easements shall become the property of the city ninety (90) days after the mailing of notice. (1972 Code, § 5-319)

**9-320. Removal of facilities upon request.** Upon termination of service to any subscriber, the company shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request. (1972 Code, § 5-320)

**9-321. Transfer of franchise.** The company shall not transfer any franchises granted hereunder to any other person without prior approval of the city. Such approval shall not be unreasonably withheld by the city. (1972 Code, § 5-321)

**9-322. Change of control of company.** Prior approval of the council shall be required where the ownership or control of more than 51% of the right of control of the company is acquired by a person or group of persons acting in concert; none of whom already own or control 51% or more of such right of control, singularly or collectively. By its acceptance of any franchise granted hereunder the company specifically shall covenant and agree that any such acquisition occurring without prior approval of the council shall constitute a violation of any franchise granted to the company and a violation of this code; provided, however, that the company shall at all times be permitted to assign or transfer any interest in its profits or losses to any third party so long as the control of the company is not so transferred. Such approval shall not be unreasonably withheld by the city. (1972 Code, § 5-322)

**9-323. Filings and communications with regulatory agency.** Copies of all petitions, applications and communications submitted by the company to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency, having jurisdiction in respect to any matters effecting cable television

transmission capabilities, shall also be submitted simultaneously to the city. (1972 Code, § 5-323)

**9-324. City rights and franchise.** (1) The right is hereby reserved to the city to adopt, in addition to the provisions contained in this code, and in any other existing applicable ordinances, or sections of the code of the City of Norris such additional regulations as it shall find necessary in the exercise of the police powers; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

(2) The city shall have the right to inspect the books, records, maps, plans and income tax returns and other like materials of the company at any time during normal business hours.

(3) The city shall have the right, during the life of any franchise granted hereunder, to install and maintain free of charge upon the poles or in the conduits of the company, any wire and pole fixtures necessary for a police alarm system or like public purpose on the condition that such wire and pole fixtures do not interfere with the CATV operations of the company.

(4) The city shall have the right to inspect all construction or installation work performed subject to the provisions of any franchise granted hereunder and of this code and make such other inspections as it shall find necessary to insure compliance with the terms of or use of the system installed or constructed pursuant to any franchise granted hereunder or pursuant to this chapter, and the company shall comply with all applicable provisions of the Norris Municipal Code, 1949, as heretofore or hereafter amended, and all other codes including, but not limited to building, electrical and others, as may be amended.

(5) At the expiration of the term for which any franchise shall be granted hereunder, or of the term of any extension or renewal thereof, or upon the termination or cancellation of any franchise as provided for herein, the city, for good cause shown, shall have the right to require the company to remove at its own expense all portions of the CATV system from all public ways within the city limits.

(6) After the expiration of the term for which any franchise may be granted hereunder, or after its termination and cancellation, as provided for herein, the city shall have the right to determine whether the company shall continue to operate and maintain the cable television system pending the decision of the city as to the future maintenance and operation of such system. (1972 Code, § 5-324)

**9-325. Maps, plats and reports.** (1) The company shall file with the city manager a true and accurate map or plat of all existing and proposed installation.

(2) The company shall file annually with the board, or its designee, not later than ninety (90) days after the end of the company's fiscal year, a copy of

its financial report, income statement applicable to the operations within the city during the preceding twelve month period, a balance sheet, and a statement of its properties devoted to CATV operations, by categories, giving its investment to such properties on the basis of original costs, less accrued depreciation. These reports shall be prepared or approved by a certified public accountant and there shall be submitted along with them such other reasonable information as the board shall request with respect to the company's properties and expenses related to its CATV operations within the city.

(3) The company shall at all times keep on file with the city manager a current list of its partners, stockholders, officers and directors and bond holders. (1972 Code, § 5-325)

**9-326. Franchise fee and frequency of payment.** (1) At the end of two (2) years from the granting of a franchise, and annually thereafter, grantee shall pay the grantor three (3) percent of the gross annual receipts of grantee for cable television service provided to subscribers within the franchised area as now or hereafter constituted. Said payments shall be made annually by February 1st following the end of each calendar year. The city council shall have the right to inspect the records of the grantee at any reasonable time for the purpose of ascertaining accurately what the gross annual receipts of grantee may have been for the present year.

(2) This payment shall be in addition to any other tax or payment owed to the city by grantee, including ad valorem or business taxes.

(3) In the event that any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the maximum legal rate.

(4) The franchise fee as herein established shall not be increased during the term of any franchise granted pursuant hereto, except as noted in § 9-333(5). (1972 Code, § 5-326)

**9-327. Forfeiture of franchise.** (1) In addition to all other rights and powers pertaining to the city by virtue of this code or otherwise, the city reserves the right to terminate and cancel any franchise granted hereunder and all rights and privileges of the company as a result thereof in the event that the company:

(a) Violates or is in default of any covenant or agreement between the company and the city by virtue of this code or is in violation of any provision of this code or any rule, order or determination of the city or the council made pursuant to this code, except where such violation is without fault or through excusable neglect; unless such latter violation or default remains unremedied or uncorrected after reasonable notice in writing and opportunity offered to remedy such violation or default, in which latter event the same shall be a ground for termination or

cancellation of any franchise granted hereunder by action of the board without further notice.

(b) Becomes insolvent or unable to pay its debts or is adjudged a bankrupt.

(c) Attempts to evade any of the provisions of this code or practices any fraud or deceit upon the city.

(d) Fails to begin construction under any franchise granted hereunder within the time provided in such franchise agreement or by the terms hereof or complete construction so as to provide service throughout the city within the time specified.

(2) Any such termination and cancellation shall be by resolution duly adopted by the council after ninety 90 days notice to the company and failure of the company to correct the violation, insolvency, or bankruptcy, or failure to pay its debts or to secure reversal of a cease and desist order, or to complete construction under any franchise granted hereunder or any provision of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact as made by the board shall be conclusive. Provided, however, that before any franchise granted hereunder may be terminated and cancelled as provided herein, the company must be provided with an opportunity to be heard before the council; and further, that such finding of fact as made by the council shall be subject to review by a court or courts of appropriate jurisdiction and, on reasonable grounds, to appeal an adverse finding. (1972 Code, § 5-327)

**9-328. City's right of intervention.** The company agrees not to oppose intervention by the city in any suit or proceeding to which the company is a party. (1972 Code, § 5-328)

**9-329. Further agreement and waiver by company.** The company agrees to abide by all provisions of any franchise granted hereunder and further agrees that it will not at any future time set up as against the city or the council the claim that the provisions of this code or any franchise granted hereunder are unreasonable, arbitrary, or void. (1972 Code, § 5-329)

**9-330. Duration and acceptance of franchise.** Any franchise granted hereunder and the rights, privileges and authority thereby granted, shall take effect and be in force from and after the date of the grant of the franchise by the council, as provided herein, and shall continue to be in force and effect for a term as provided in such grant of franchise for a term as may be determined by the grant thereof not to exceed fifteen (15) years. (1972 Code, § 5-330)

**9-331. Erection, removal and common user of poles.** The company shall comply with all provisions of the zoning ordinance of the City of Norris as regards the location, height, type and any other pertinent aspect of poles or

other wire holding structures which should be erected by the company. (1972 Code, § 5-331)

**9-332. Radio and television capabilities.** The company's cable distribution system shall be capable of carrying radio and television signals on very high frequency channels with two-way capabilities. (1972 Code, § 5-332)

**9-333. Initial rates: rate change and request timing.** (1) The city shall have the right to regulate rates and charges which may be made by the grantee for installation of equipment and basic subscriber services. No rates for such purposes shall be established or charged by the grantee until the same shall have been filed with the city manager at least two regular monthly meeting dates prior to the requested effective date of change. The grantee shall collect no monies from any person within the franchised area until the grantee is ready to render service of the cable television system to said persons, or the area or district in which the person resides.

(2) The grantee shall furnish the following bid items when preparing its bid document as its' initial proposed charges:

(a) Connection charges.

- (i) Initial connection charge for first set.
- (ii) Additional installations at the same location.
- (iii) Relocation of service within a home.
- (iv) Specifying municipal agencies (should be free).
- (v) Reconnection service charge.

(b) Monthly rates.

- (i) Initial receiver.
- (ii) Each additional receiver.

(c) Special rates.

- (i) Cost of production support per hour for community groups and organizations.
- (ii) Other special provisions such as hotels, motels and apartments.
- (iii) Other services such as FM stereo, film library, pay cable television, etc.

(3) Initial basic subscriber rates shall be effective for a minimum of two (2) years from the date of award of franchise. Thereafter, the grantee may request a rate change at any time provided that not more than one (1) request may be made by the company in any twelve (12) month period.

(4) The rates and charges for television and radio signals distributed and other services provided by the company under any franchise granted hereunder shall be fair and reasonable and no higher than necessary to meet all costs of service (assuming efficient and economical management) and provide a fair rate of return on the company's capital investment.

(5) The council shall have the power, authority, and right to cause the company's rates and charges to conform to the provisions of the subsection above set forth, and for this purpose, it may deny rate increases or reductions in such rates and charges when it determines that in the absence of such action on its part, the company's rates and charges or proposed increased rates or charges will not conform to the above subsection, and provided that such determination by the council, upon notice, shall be, final and conclusive, subject to court review. (1972 Code, § 5-333)

**9-334. Billing subscribers: termination of service.** (1) The grantee may require subscribers to pay for each month of service in advance at the beginning of each month.

(2) If any subscriber fails to pay a properly due monthly subscriber's fee, or any other properly due fee or charge, the grantee may disconnect the subscriber's service outlet. Disconnection shall not be effected until thirty (30) days after the fee or charge is due, or until ten (10) days after adequate written notice of the intent to disconnect. Upon payment of the delinquent fee or charge, and the payment of a reconnection charge, the grantee shall promptly reinstate the subscriber's cable service.

(3) The grantee shall have the right to refuse services of connection or reconnection to the cable service operated by grantee if the proposed customer shall have been disconnected three (3) or more times for failure to pay in a timely manner the monthly subscriber fee.

(4) If the grantee fails to provide service requested by a subscriber or programmer, the grantee shall, after adequate notification and being afforded the opportunity to provide the service, promptly refund all deposit or advance charges paid for the service in question by said subscriber or programmer.

(5) After five (5) years from the date the franchise is signed all pay TV/premium channels will be subject to the three (3) percent franchise fee.

(6) If any subscriber terminates, for personal reasons, any monthly service prior to the end of the prepaid period, a pro-rata portion of any prepaid subscriber service fee, using the number of days as a basis, shall be refunded to the subscriber by the grantee within 30 days of the termination of service.

(7) If a proposed customer's residence is located at a distance greater than 300 feet from the public road right of way then grantee may negotiate privately with the proposed customer for reimbursement of the expense for erecting the residential service cable for that portion of the distance which exceeds 300 feet in length. (1972 Code, § 5-334)