

TITLE XI: BUSINESS REGULATIONS

Chapter

- 110. SEXUALLY ORIENTED BUSINESSES**
- 111. PUBLIC AMUSEMENTS**
- 112. HAWKERS, VENDORS, SOLICITORS AND PEDDLERS**
- 113. CABLE TELEVISION**
- 114. SECOND HAND DEALERS, JUNK SHOPS AND JUNK DEALERS**

CHAPTER 110: SEXUALLY ORIENTED BUSINESSES

Section

General Provisions

- 110.01 Purpose and findings
- 110.02 Definitions
- 110.03 Classification of businesses

Licensing Provisions

- 110.15 License required
- 110.16 Issuance of license
- 110.17 Fees
- 110.18 Inspections
- 110.19 Expiration of license
- 110.20 Suspension of license
- 110.21 Revocation of license
- 110.22 Hearings regarding license denial, suspension, revocation, appeal or transfer of license

Business Operation Regulations

- 110.35 Location of sexually oriented businesses
- 110.36 Additional regulations for adult motels
- 110.37 Additional regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in viewing rooms
- 110.38 Additional regulations for escort agencies
- 110.39 Additional regulations for nude model studios
- 110.40 Prohibited conduct
- 110.41 Prohibition against children in a sexually oriented business
- 110.42 Advertising and lighting regulations

GENERAL PROVISIONS

§ 110.01 PURPOSE AND FINDINGS.

(A) *Purpose.* It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety and general welfare of the citizens of the village and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the village. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

(B) *Findings and rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the village, and on findings, interpretations and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41(1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and *Sensations, Inc., v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *Deja Vu of Nashville, Inc., v. Metropolitan Gov't of Nashville and Davidson County*, 466 F.3d 391 (6th Cir. 2006); *Deja Vu of Cincinnati, L.L.C. v. Union Township Bd. Of Trustees*, 411 F.3d 777 (6th Cir. 2005) (en banc); *Fantasy Ranch, Inc., v. City of Arlington*, 459 F.3d 546(5th Cir. 2006); *City of Chicago v. Pooh Bah Enterprises, Inc.*, 865 N.E.2d 133 (111. 2006); *Andy's Restaurant & Lounge, Inc., v. City of Gary*, 466 F.3d 550 (7th Cir. 2006); *181 South, Inc., v. Fischer*, 454 F.3d 228(3rd Cir. 2006); *Bronco's Entertainment, Ltd. v. Charter Twp. of Van Buren*, 421 F.3d 440 (6th Cir. 2005); *Charter Twp. of Van Buren v. Garter Belt, Inc.*, 258 Mich. App. 594 (2003); *Jott, Inc., v. Clinton Twp.*, 224 Mich. App. 513 (1997); *Michigan ex rel. Wayne County Prosecutor v. Dizzy Duck*, 449 Mich. 353(1995); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *ILQ Investments, Inc., v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Little Mack Entm't II, Inc., v. Twp. of Marengo*, 2008 WL 2783252 (W.D. Mich. July 17, 2008); *Kentucky Restaurant Concepts, Inc., v. City of Louisville*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *Restaurant Ventures V. Lexington-Fayette Urban County Gov't*, 60 S.W.3d 572 (Ky. Ct. App. 2001); *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377 (6th Cir. 2001); *Ctr. for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Bigg Wolf Discount Video Sales, Inc., v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *DLS, Inc., v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Brandywine, Inc., v. City of Richmond*, 359 F.3d 830 (6th Cir. 2004); *Currence v. City of Cincinnati*, 28 Fed. Appx. 438 (6th Cir. Jan. 24, 2002); *Broadway Books v. Roberts*, 642 F. Supp. 486 (E.D. Term. 1986); *Bright Lights, Inc., v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Triplett Grille, Inc., v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Threesome Entertainment v. Strittmather*, 4 F. Supp. 2d 710 (N.D. Ohio 1998); *Lady J. Lingerie, Inc., v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *In re Tennessee Public Indecency Statute*, 172 F.3d 873 (6th Cir. Jan. 13 1999)(table); *World Wide Video of Washington, Inc., v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc., v. Village of Somerset*, 316 F.3d 702(7th Cir. 2003); *Daytona Grand, Inc., v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Illinois One News, Inc., v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc., v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc., v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc., v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (III. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc., v. City of Kennedale*, No. 4:05-CV-1 66-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Ft. Worth, Texas - 2004; Kennedale, Texas -2005; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; McCleaiy Report - 2006; New York, New York Times Square - 1994; Jackson County,

Missouri - 2008; Warren, Michigan - 2005; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the village finds as follows:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter and sexual assault and exploitation;

(2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area; and

(3) Each of the foregoing negative secondary effects constitutes a harm which the village has a substantial governmental interest in preventing and/or abating. This substantial governmental interest in preventing secondary effects, which is the village's rationale for this chapter, exists independent of any comparative analysis between sexually oriented businesses and non-sexually oriented businesses. Additionally, the village's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the village. The village finds that the cases and documentation set forth above and relied on by the village are reasonably believed to be relevant to said secondary effects.

(C) The village hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

(Ord. 185, passed 11-11-2009)

§ 110.02 DEFINITIONS.

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

ADULT ARCADE. Any place to which the public is permitted or invited wherein coin-operated, slug-operated or for any form of consideration, or electronically, electrically or mechanically controlled still or motion picture machines, projectors, video or laser disc players or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE. A commercial establishment having 30% or more of all usable interior, retail, wholesale or warehouse space devoted to the distribution, display or storage of books, magazines and other periodicals and/or photographs, drawings, slides, films, videotapes, recording tapes and/or novelty items which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (as defined herein).

ADULT CABARET. An establishment which regularly features persons who appear semi-nude.

ADULT MOTEL. A hotel, motel or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

ADULT MOTION PICTURE THEATER or ADULT LIVE STAGE PERFORMING THEATER. An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (as defined herein) for observation by patrons therein. Such establishment is customarily not open to the public generally, but only to one or more classes of the public, excluding any minor by reason of age.

EMPLOYEE. A person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not

said person is paid a salary, wage or other compensation by the operator of said business. **EMPLOYEE** does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

ESCORT. A person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY. A person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

ESTABLISHMENT. Any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The additions of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

LICENSEE. A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

MASSAGE PARLOR. Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of or in connection with "specified sexual activities," or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "specified anatomical areas." The definition of sexually oriented businesses shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

NUDE MODEL STUDIO. Any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. **NUDE MODEL STUDIO** shall not include a proprietary school licensed by the state or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or in a structure:

- (1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;
- (2) Where in order to participate in a class a student must enroll at least three days in advance of the class; and
- (3) Where no more than one nude or semi-nude model is on the premises at any one time.

NUDITY or a **STATE OF NUDITY.** The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state. **NUDITY** or a **STATE OF NUDITY** does not include the following:

- (1) A woman's breast-feeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding;
- (2) Material as defined in Public Act 343 of 1984, § 2, being M.C.L.A. § 752.362; or
- (3) Sexually explicit visual material as defined in Public Act 33 of 1978, being M.C.L.A. § 722.673.

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

SEMI-NUDE or in a **SEMI-NUDE CONDITION.** The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a bikini, dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed in whole or in part. **SEMI-NUDITY** or a

STATE OF SEMI-NUDE CONDITION does not include the following:

- (1) A woman's breast-feeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding;
- (2) Material as defined in Public Act 343 of 1984, § 2, being M.C.L.A. § 752.362; and/or
- (3) Sexually explicit visual material as defined in Public Act 33 of 1978, § 3, being M.C.L.A. § 722.673.

SEXUAL ENCOUNTER CENTER. A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

SEXUALLY ORIENTED BUSINESS. An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater or adult live stage performing theater, escort agency, nude model studio or sexual encounter center.

SPECIFIED ANATOMICAL AREAS. Portions of the human body defined as follows:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks or female breast below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

SPECIFIED CRIMINAL ACTIVITY. Any of the following offenses:

- (1) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault, molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of this state, other states or countries;
- (2) Offenses for which:
 - (a) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
 - (b) Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
 - (c) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is the later date, if the convictions are of two or more misdemeanors or combination of misdemeanor offenses occurring within any 24-month period.
- (3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

SPECIFIED SEXUAL ACTIVITIES. The explicit display of one or more of the following:

- (1) Human genitals in a state of sexual stimulation or arousal; or
- (2) Acts of human masturbation, sexual intercourse, oral copulation or sodomy.

SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS. The increase in floor areas occupied by the business by more than 25%, as the floor areas exist on the date this chapter takes effect.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS. Any of the following:

- (1) The sale, lease or sublease of the business;
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- (3) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 185, passed 11-11-2009)

§ 110.03 CLASSIFICATION OF BUSINESSES.

Sexually oriented businesses are classified as follows:

- (A) Adult arcades;
- (B) Adult bookstores, adult novelty stores or adult video stores;
- (C) Adult cabarets;
- (D) Adult motels;
- (E) Adult motion picture theaters or adult live stage performing theaters;
- (F) Escort agencies;
- (G) Massage parlor;
- (H) Nude model studios; and
- (I) Sexual encounter centers.

(Ord. 185, passed 11-11-2009)

LICENSING PROVISIONS

§ 110.15 LICENSE REQUIRED.

(A) It is unlawful:

(1) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the village pursuant to this chapter;

(2) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the village pursuant to this chapter; and

(3) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.

(B) An application for a license must be made on a form provided by the village.

(C) All applicants must be qualified according to the provisions of this chapter. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in division (E) below, accompanied by the appropriate licensing fee.

(D) If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 30% or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.

(E) The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is:

(a) An individual, the individual shall state his or her legal name and any aliases and submit proof that he or she is 18 years of age;

(b) A partnership, the partnership shall state its complete name and the names of all general partners and whether the

partnership is general or limited; and

(c) A corporation, the corporation shall state its complete name, the date of its incorporation, the names and capacity of all officers, directors and stockholders with at least 30% ownership interest in the corporation, and the name of the registered corporate agent and the address of the registered office for service of process;

(2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state the sexually oriented business's fictitious name;

(3) Whether the applicant has been convicted of a specific criminal activity as defined in this chapter, and, if so, the specified criminal activity involved, the date, place and jurisdiction of each;

(4) Whether the applicant has had a previous license under this chapter or other similar sexually oriented business ordinances from another municipality or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation;

(5) Whether the applicant holds any other licenses under this chapter or other similar sexually oriented business ordinance from another municipality or county and, if so, the names and locations of such other licensed businesses;

(6) The category of sexually oriented business that the applicant intends to engage in at the licensed premises;

(7) The location of the proposed sexually oriented business, including a legal description of the property, street address and telephone number(s), if any;

(8) The applicant's business address or other mailing address;

(9) A recent photograph of the applicant(s);

(10) The applicant's driver's license number and/or his or her state or federally issued tax identification number;

(11) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches;

(12) A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines and the structures of any land use identified in § 110.35 of this chapter that is within 200 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is legally in existence at the time an application is submitted; and

(13) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than 150 square feet of floor space, films, videos cassettes, other video reproductions or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall also comply with the application requirements set forth in § 110.37.

(F) Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the village the following information:

(1) The applicant's name or any other name (including "stage" names) or aliases used by the individual;

(2) Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency;

(3) Height, weight, hair and eye color;

(4) Present business telephone number, if any;

(5) Present business address or other mailing address;

(6) Date, issuing state and number of driver's permit or other identification card information;

(7) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Police Department. The Police Department shall provide fingerprinting service upon request for a nominal fee during business

hours;

(8) A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other municipality, county or state has ever had a license, permit or authorization to do business denied, revoked or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the name, the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application; and

(9) A statement whether the applicant has been convicted of a specified criminal activity as defined in this chapter and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

(Ord. 185, passed 11-11-2009) Penalty, see § 110.99

§ 110.16 ISSUANCE OF LICENSE.

(A) Upon the filing of a completed application for a sexually oriented business employee license, the village shall immediately issue a temporary license to the applicant if the applicant seeks to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The application shall then be immediately referred to the appropriate village departments for an investigation to be made on such information as is contained in the application. The application process shall be completed within 30 days from the date the completed application is filed, and the village shall issue a license, unless:

(1) The applicant has failed to provide information required under the terms of this chapter for issuance of the license or has falsely answered a question or request for information on the application form;

(2) The applicant is under the age of 18 years;

(3) The applicant has been convicted of a "specified criminal activity" as defined in this chapter;

(4) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation or prohibited by a particular provision of this chapter; or

(5) The applicant has had a sexually oriented business employee license revoked by the village within two years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension or revocation of a license issued pursuant to this section shall be subject to appeal as set forth in § 110.22.

(B) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the village that the applicant has not been convicted of any specified criminal activity as defined in this chapter or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in § 110.17.

(C) Within 30 days after receipt of a completed sexually oriented business license application, the village shall approve or deny the issuance of a license to an applicant. The village shall approve the issuance of a license to an applicant unless:

(1) An applicant is under 18 years of age;

(2) An applicant is overdue in payment to the village of taxes, fees, fines or penalties assessed against or imposed upon him or her in relation to any sexually oriented business;

(3) An applicant has failed to provide information required under the terms of this chapter for issuance of the license or has falsely answered a question or request for information on the application form;

(4) An applicant has been denied a license by the village to operate a sexually oriented business within the preceding 12 months or whose license to operate a sexually oriented business has been revoked within the preceding 12 months;

(5) An applicant has been convicted of a specified criminal activity defined in this chapter;

(6) The premises to be used for the sexually oriented business have been disapproved by the Health Department, Fire Department or the Building Official as being out of compliance with applicable health, fire or building laws and ordinances;

(7) The license fee required by this chapter has not been paid; or

(8) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this chapter or is not in compliance with locational requirements of this chapter or the locational requirements of any other part of the village's ordinances.

(D) The license, if granted, shall state on its face the kind of license, the name of the person or persons to whom it is granted and the expiration date. Sexually oriented business licenses shall further state the address of the sexually oriented business and the classification for which the license is issued pursuant to § 110.03. Sexually oriented business licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. Sexually oriented business employee licenses shall be kept on the licensee's person or on the premises of the sexually oriented business where the licensee is working.

(E) The Health Department, Fire Department and the Building Official shall complete their certification that the premises is in compliance or not in compliance within 25 days of receipt of the application by the village.

(Ord. 185, passed 11-11-2009)

§ 110.17 FEES.

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: \$250 for the initial fee for a sexually oriented business license and fifty dollars (\$125) for annual renewal; \$150 for the initial sexually oriented business employee license and \$75 for annual renewal.

(Ord. 185, passed 11-11-2009)

§ 110.18 INSPECTIONS.

(A) An applicant or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Zoning Department or other village departments or agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the village to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

(B) A person who operates a sexually oriented business or his or her agent or employee commits a misdemeanor if he or she refuses to permit such lawful inspection of the premises at any time it is open for business.

(Ord. 185, passed 11-11-2009) Penalty, see § 110.99

§ 110.19 EXPIRATION OF LICENSE.

(A) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in § 110.15. Application for renewal shall be made at least 60 days before the expiration date, and when made less than 60 days before the expiration date, the expiration of the license will not be affected.

(B) When the village denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the village finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

(Ord. 185, passed 11-11-2009)

§ 110.20 SUSPENSION OF LICENSE.

The village shall suspend a license for a period not to exceed 30 days if it determines that the licensee has:

(A) Knowingly violated any section of this chapter; or

(B) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

(Ord. 185, passed 11-11-2009)

§ 110.21 REVOCATION OF LICENSE.

(A) The village shall revoke a license if a cause of suspension in § 110.20 occurs and the license has been previously suspended within the preceding 12 months.

(B) The village shall revoke a license if it determines that:

(1) A licensee gave false information in the material submitted during the application process;

(2) A licensee has knowingly allowed possession, use or sale of controlled substances on the premises;

(3) A licensee has knowingly allowed prostitution on the premises;

(4) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(5) Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the licensed premises; or

(6) A licensee is delinquent in payment to the village, township, county or state for any taxes or fees in relation to a sexually oriented business.

(C) When the village revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented business license for one year from the date the revocation became effective. If, subsequent to revocation, the village finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective.

(D) After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

(Ord. 185, passed 11-11-2009)

§ 110.22 HEARINGS REGARDING LICENSE DENIAL, SUSPENSION, REVOCATION, APPEAL OR TRANSFER OF LICENSE.

(A) When the village issues a written notice of intent to deny, suspend or revoke a license, the village shall immediately send such notice, which shall include the specific grounds under this chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the village for the respondent. The notice shall also set forth the following: The respondent shall have ten days after the delivery of the written notice to submit, at the office of the village, a written request for a hearing. If the respondent does not request a hearing within the ten days, the village's written notice shall become a final denial, suspension or revocation, as the case may be, on the thirtieth day after it is issued, and shall be subject to the provisions of division (B) below.

(1) If the respondent does make a written request for a hearing within said ten days, then the village shall, within ten days after the submission of the request, send a notice to the respondent indicating the date, time and place of the hearing. The hearing shall be conducted not less than ten days nor more than 20 days after the date that the hearing notice is issued. The village shall provide for the hearing to be transcribed.

(2) At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the village's witnesses. The village shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending or revoking the license. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a final written decision, including specific reasons for the decision

pursuant to this chapter, to the respondent within five days after the hearing.

(3) If the decision is to deny, suspend or revoke the license, the decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the thirtieth day after it is rendered. If the Hearing Officer's decision finds that no grounds exist for denial, suspension or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the village to immediately withdraw the intent to deny, suspend or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the village shall contemporaneously therewith issue the license to the applicant.

(B) If any court action challenging a licensing decision is initiated, the village shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the decision. The following shall apply to any sexually oriented business that is, in all respects, lawfully operating as a sexually oriented business, or any sexually oriented business employee that is, in all respects, lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the Village Clerk: Upon the filing of any court action to appeal, challenge, restrain or otherwise enjoin the village's enforcement of the denial, suspension or revocation, the village shall immediately issue the applicant or licensee (respondent) a provisional license. The provisional license shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the village's enforcement.

(C) A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

(Ord. 185, passed 11-11-2009)

BUSINESS OPERATION REGULATIONS

§ 110.35 LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(A) A sexually oriented business may only be located on a property located within the C-1 Commercial District pursuant to the village zoning ordinance, Ordinance Number 152, as amended, adopted March 12, 2003. It shall be unlawful for any person to operate or cause to be operated a sexually oriented business within 200 feet of:

- (1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
- (2) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities; *SCHOOL* includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
- (3) A public library or other public building;
- (4) A boundary of a residential district as defined in the village zoning ordinance and zoning map;
- (5) A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land within the village which is under the control, operation, or management of the village park and recreation authorities;
- (6) The property line of a lot devoted to a residential use as defined in the village zoning ordinance;
- (7) An entertainment business which is oriented primarily towards children or family entertainment;
- (8) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the state; or
- (9) A licensed premises, licensed pursuant to this chapter as a sexually oriented business.

(B) For the purpose of division (A) above, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used to conduct a sexually oriented business, to the nearest property line of the premises of a use listed in division (A) above. The presence of a use listed in division (A) above that is located outside the

geographic boundaries of the village shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

(Ord. 185, passed 11-11-2009)

§ 110.36 ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(A) Evidence that a sleeping room in a hotel, motel or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttal presumption that the establishment is an adult motel as that term is defined in this chapter.

(B) A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented license, he or she rents or sub-rents a sleeping room to a person and, within ten hours from the time the room is rented, he or she rents or sub-rents the same sleeping room again.

(C) For purposes of division (B) above, the terms **RENT** or **SUB-RENT** mean the act of permitting a room to be occupied for any form of consideration.

(Ord. 185, passed 11-11-2009) Penalty, see § 110.99

§ 110.37 ADDITIONAL REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS.

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The village may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared;

(2) The application shall be sworn to be true and correct by the applicant;

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the village;

(4) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises;

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this division (A)(5) must be by direct line of sight from the manager's station;

(6) It shall be the duty of the licensee to ensure that the view area specified in division (A)(5) above remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to division (A)(1) above;

(7) No viewing room of less than 150 square feet of floor space may be occupied by more than one person at any time;

(8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons

are permitted access at an illumination of not less than five foot-candles as measured at the floor level;

(9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises;

(10) No licensee shall allow openings of any kind to exist between viewing rooms or booths;

(11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms;

(12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist;

(13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting; and

(14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.

(B) A person having a duty under divisions (A)(1) through (A)(14) above commits a misdemeanor if he or she knowingly fails to fulfill that duty.

(Ord. 185, passed 11-11-2009) Penalty, see § 110.99

§ 110.38 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

(A) An escort agency shall not employ any person under the age of 18 years.

(B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(Ord. 185, passed 11-11-2009) Penalty, see § 110.99

§ 110.39 ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.

(A) A nude model studio shall not employ any person under the age of 18 years.

(B) It shall be unlawful for any person under the age of 18 years to appear semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this division (B) if the person under 18 years was in a restroom not open to public view or visible to any other person.

(C) It shall be unlawful for any person to appear in a state of nudity, or to knowingly allow another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

(D) A nude model studio shall not place or permit a bed, sofa or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(Ord. 185, passed 11-11-2009) Penalty, see § 110.99

§ 110.40 PROHIBITED CONDUCT.

(A) It shall be a misdemeanor for a person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or depict specified sexual activities.

(B) It shall be a misdemeanor for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least six feet from any patron or customer and on a stage at least two feet from the floor.

(C) It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in

a sexually oriented business.

(D) It shall be a misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer in a sexually oriented business.

(E) It shall be a misdemeanor for any person to sell, use or consume alcoholic beverages on the premises of a sexually oriented business.

(Ord. 185, passed 11-11-2009) Penalty, see § 110.99

§ 110.41 PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS.

It shall be unlawful for any person to knowingly or recklessly allow a person under the age of 18 years on the premises of a sexually oriented business.

(Ord. 185, passed 11-11-2009) Penalty, see § 110.99

§ 110.42 ADVERTISING AND LIGHTING REGULATIONS.

(A) A person shall not operate or cause to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, and advertise the presentation of any activity prohibited by an applicable state statute or local ordinance.

(B) A person shall not display or otherwise exhibit the materials and/or performances available at a sexually oriented business in any advertising which is affixed to or otherwise visible outside the premises. This prohibition shall not extend to advertising of the existence or location of such sexually oriented business.

(C) A person shall not allow any portion of the interior premises of a sexually oriented business to be visible from outside the premises.

(D) All off-street parking areas and premise entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premise.

(E) Nothing contained in this section shall relieve the operator(s) of a sexually oriented business from complying with the requirements of the village, commonly known as the sexually oriented business ordinance, as it may be amended from time to time, or any subsequently enacted village ordinances or regulations.

(Ord. 185, passed 11-11-2009) Penalty, see § 110.99

§ 110.43 HOURS OF OPERATION.

No sexually oriented business, except for an adult motel, may remain open at any time between 12:00 midnight and 6:00 a.m., on any day.

(Ord. 185, passed 11-11-2009) Penalty, see § 110.99

§ 110.99 PENALTY.

Any person, corporation, partnership or any other legal entity who violates the provisions of this chapter shall be guilty of a misdemeanor and may be fined not more than \$500 and/or imprisoned for not more than 90 days, or both. Each day that a violation is permitted to exist or occur, and each separate occurrence, shall constitute a separate offense.

(Ord. 185, passed 11-11-2009)

Section

- 111.01 License required
- 111.02 License prohibited for certain persons
- 111.03 Application for license; fee
- 111.04 Inspection of premises by Police Chief; approval or disapproval by Village Council
- 111.05 License to be displayed
- 111.06 Expiration and renewal of license; revocation
- 111.07 Transfer of license
- 111.08 Alcoholic beverages, controlled substances and gambling prohibited
- 111.09 Hours of operation; prohibited conduct
- 111.10 Exemptions

- 111.99 Penalty

§ 111.01 LICENSE REQUIRED.

No public billiard or pool room, dance hall, pinball arcade, video game arcade or bowling alley shall be established, maintained or conducted in any place within the village without first obtaining a permit from the Village Council.

(Ord. 126, passed 5-14-1997) Penalty, see § 111.99

§ 111.02 LICENSE PROHIBITED FOR CERTAIN PERSONS.

No person shall be granted a permit under the provisions of this chapter who is under the age of 18 years and who has not resided within the state for a period of at least one year prior to the application for such permit; nor shall any permit be granted to any person who has been convicted of any crime involving moral turpitude.

(Ord. 126, passed 5-14-1997) Penalty, see § 111.99

§ 111.03 APPLICATION FOR LICENSE; FEE.

Any person, firm or corporation desiring or intending to operate such an establishment for profit in the village shall file a written application for a license with the Village Clerk. The applicant shall state the location of the proposed establishment, the name of the owners of such establishment or any other persons having a proprietary interest therein, and name, age and place of residence of any and all persons who are or will be actively engaged in the management thereof. Such application shall be signed by the prospective licensee and there shall also be paid and remitted with such application the sum of \$50 which sum shall be the annual license fee for all licenses required hereunder.

(Ord. 126, passed 5-14-1997) Penalty, see § 111.99

§ 111.04 INSPECTION OF PREMISES BY POLICE CHIEF; APPROVAL OR DISAPPROVAL BY VILLAGE COUNCIL.

Upon receipt of such application and remittance, the Village Clerk shall forthwith refer the application to the Police Chief who shall

make a personal inspection of the premises and determine whether or not the facts alleged in the application are true and note his or her findings on said application. The Police Chief shall also investigate the general reputation and character of the applicant and note his or her findings on the application. Upon the return of the application by the Police Chief, the Village Clerk shall present the same to the Village Council at its next regular meeting, or at a special meeting held for that purpose, and the Village Council shall, by a majority vote of the members present and voting, either approve or disapprove the application for granting of the license.

(Ord. 126, passed 5-14-1997)

§ 111.05 LICENSE TO BE DISPLAYED.

Upon issuance of the license as hereinabove provided, the licensee shall then be permitted to operate the establishment licensed under said application and such license shall at all times be openly displayed in the licensed establishment.

(Ord. 126, passed 5-14-1997) Penalty, see § 111.99

§ 111.06 EXPIRATION AND RENEWAL OF LICENSE; REVOCATION.

(A) All licenses issued hereunder shall expire on January 1 of each year but shall be renewed automatically by the Village Clerk upon the payment to him or her of the annual license fee of \$50 by a licensee on or before the aforesaid expiration date. Upon receipt of payment, the Village Clerk shall issue a new license for the ensuing year; provided, however, not later than December 1 of the year preceding the expiration of any license, the Police Chief shall make an inspection of all establishments for which applications for renewal licenses are pending and make a written report to the Village Council as to the lawful operation of such establishments.

(B) The Village Council, by a majority vote of its members present and voting, may revoke any existing license or deny the granting of any application for a renewal of any license for good cause shown after notice to the licensee and a public hearing held pursuant to these statutes in such cases made and provided.

(C) In the event of revocation as herein provided, the Village Clerk shall forthwith revoke such license and advise the licensee in writing of such revocation and following which such licensee shall immediately cease and desist from operating and/or maintaining such establishment.

(Ord. 126, passed 5-14-1997) Penalty, see § 111.99

§ 111.07 TRANSFER OF LICENSE.

A licensee may transfer his or her license to a new owner or purchaser of the establishment upon the payment to the Village Clerk of a transfer fee of \$50 after the proposed transferee has filed an application and been approved by the Village Council in the same manner as hereinabove required for a new licensee. The Village Clerk shall then endorse the existing license as having been properly transferred to the transferee.

(Ord. 126, passed 5-14-1997)

§ 111.08 ALCOHOLIC BEVERAGES, CONTROLLED SUBSTANCES AND GAMBLING PROHIBITED.

No alcoholic beverages or controlled substances shall be used or sold in any such establishment or anywhere on the premises on which such establishment is situated at any time and no gambling or gambling devices shall be conducted or permitted in such establishment at any time. Provided, however, the sale of alcoholic beverages shall not be prohibited in those establishments licensed and controlled by the State Liquor Control Commission.

(Ord. 126, passed 5-14-1997) Penalty, see § 111.99

§ 111.09 HOURS OF OPERATION; PROHIBITED CONDUCT.

All establishments licensed hereunder shall be closed after 2:00 a.m., and shall not open until noon on Sundays. Such establishments

shall be open for inspection by any and all law enforcement officers at all reasonable times. Such establishments shall be kept clean, orderly, well-lighted and sanitary at all times and no filth or dirt shall be allowed to accumulate therein. The use of profanity shall be prohibited and any person who becomes disorderly or profane shall immediately be ejected from the establishment.

(Ord. 126, passed 5-14-1997) Penalty, see § 111.99

§ 111.10 EXEMPTIONS.

The provisions of this chapter shall not apply to any fraternal, religious or other organization which maintains billiard or pool tables, pinball games, video games, dance halls or bowling alleys for the use of their members and merely incidental to the principal activities of such an organization. Provided further, any business establishment that has not more than one pool table, pinball game or video game, the use of which is incidental to its principal business, shall be exempt from the provisions of this chapter.

(Ord. 126, passed 5-14-1997)

§ 111.99 PENALTY.

(A) Any person, firm or corporation who violates any of the provisions of this chapter, in addition to the other provisions of this chapter, is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$50 nor more than \$500, plus costs and other sanctions, for each infraction.

(B) Repeat offenses shall be subject to an increased civil fine as follows:

(1) The fine for any offense which is a first repeat offense shall be not less than \$250, plus costs and other sanctions; and

(2) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall not be less than \$500, plus costs and other sanctions.

(C) A **REPEAT OFFENSE** means a second (or any subsequent) violation of this chapter committed by a person within any six-month period and for which the person admits responsibility or is determined to be responsible.

(D) Each day on which any violation of this chapter continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

(Ord. 126, passed 5-14-1997)

CHAPTER 112: HAWKERS, VENDORS, SOLICITORS AND PEDDLERS

Section

- 112.01 Short title
- 112.02 Definition
- 112.03 License required
- 112.04 Application for license
- 112.05 Issuance of license; expiration; suspension or revocation
- 112.06 License to be carried and exhibited; nontransferability
- 112.07 Special provisions regarding food products
- 112.08 Cash bond required for taking of orders for future delivery
- 112.09 State license no exemption from this chapter
- 112.10 Invitation required to enter private home

112.11 License required for carnivals, fairs or tent shows

112.12 License required to take photographs or sell magazines

112.99 Penalty

§ 112.01 SHORT TITLE.

This chapter shall be known and may be cited as the Hawkers, Vendors, Solicitors and Peddlers Chapter.

(Ord. 110, passed 5-13-1992)

§ 112.02 DEFINITION.

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

PERSON. An individual, partnership, firm, corporation, company, association or organization.

(Ord. 110, passed 5-13-1992)

§ 112.03 LICENSE REQUIRED.

No person shall peddle or hawk any goods, wares, merchandise, service or other articles or things of value within the village, or sell or offer to sell the same, on any public street, sidewalk, alley or other public place, or from house to house, or place to place, without first obtaining a license from the village, nor shall any person go from house to house soliciting or taking orders for goods, wares, merchandise, services or other articles or things of value to be delivered at some subsequent date or dates, without first obtaining a license from the village.

(Ord. 110, passed 5-13-1992)

§ 112.04 APPLICATION FOR LICENSE.

(A) Each application for license shall be made to the Village Clerk at least 48 hours in advance of the time for which the applicant seeks its issuance. The application shall contain the following information:

- (1) The applicant's name;
- (2) The applicant's local address and telephone number and permanent address and telephone number (if different from the local address and number);
- (3) State sales tax license or permit number or exemption certificate;
- (4) Physical description;
- (5) Age;
- (6) The name of any person that the applicant is working for or on behalf of and that person's local address; and
- (7) A brief description of activity the applicant desires to conduct in the village.

(B) The application shall be signed and sworn to by the applicant.

(Ord. 110, passed 5-13-1992; Ord. 115, passed 4-14-1993)

§ 112.05 ISSUANCE OF LICENSE; EXPIRATION; SUSPENSION OR REVOCATION.

(A) Upon receipt of a properly completed application, the Village Clerk shall issue a license pursuant to this chapter which shall contain all the information required to be submitted on the application. No license shall be issued for more than one year or less than one day. All annual licenses shall expire on May 31 of each year. All licenses for a period of less than one year shall expire on the date mentioned thereon.

(B) The Village Clerk shall have authority to revoke or suspend any license issued as a result of any misrepresentation or false statement made by the applicant in order to obtain such license, or for the licensee's violation of or failure to comply with any village ordinance or state law. The Village Clerk shall report all suspensions to the Village Council which may for cause shown revoke or reinstate the license after giving the licensee a reasonable notice and an opportunity to be heard. No person whose license has been revoked shall receive another license for a period of one year thereafter.

(Ord. 110, passed 5-13-1992)

§ 112.06 LICENSE TO BE CARRIED AND EXHIBITED; NONTRANSFERABILITY.

The holder of any license issued hereunder shall carry the same with him or her at all times and shall exhibit it to any citizen upon demand. No licensee shall alter, remove or delete any entry made on such license. No license issued pursuant to this chapter shall be transferable.

(Ord. 110, passed 5-13-1992) Penalty, see § 112.99

§ 112.07 SPECIAL PROVISIONS REGARDING FOOD PRODUCTS.

No license shall be granted to any person for the peddling or hawking of food, food products or edibles of any character unless the applicant shall first secure a certificate from the County Health Department or a licensed medical doctor setting forth that the applicant is not suffering from any contagious or infectious disease. If the applicant is not an individual, a certificate must be provided for each employee of the applicant directly involved with the hawking or peddling of food, food products or edibles of any character, or involved with acquiring the product and/or preparing it for sale. A person selling his or her own home-grown agricultural products at his or her place of residence shall be exempt from the licensing provisions of this chapter, provided that no person shall sell his or her products from a motor vehicle parked on or along a public highway without first obtaining a license. This section shall not apply to any applicant who desires to sell pre-packaged food, food products or edibles of any character which are contained, in sealed packages or containers, and which the applicant is not involved in packaging for sale.

(Ord. 110, passed 5-13-1992) Penalty, see § 112.99

§ 112.08 CASH BOND REQUIRED FOR TAKING OF ORDERS FOR FUTURE DELIVERY.

(A) No person soliciting or taking orders for goods, wares, merchandise, services or other articles or things of value to be delivered at some future date or dates shall ask for or receive any deposit or any payment or part payment of money or other valuable thing in advance of such delivery unless such person shall have first deposited with the Village Clerk a cash bond in the amount of \$500, or a surety bond in like amount with good and sufficient sureties to be approved by the Village Clerk, conditioned to indemnify and save harmless any person dealing with any such solicitor against any damage or loss which he or she may suffer by reason of the failure of any such good, wares, merchandise or services to be delivered, or by reason of any false or fraudulent representation which such solicitor may have made with respect to the same. No license shall be issued to any solicitor until the bond required hereby shall have been deposited with and approved by the Village Clerk.

(B) Deposits of money or bonds made with the Village Clerk as required by the provisions of this section shall be subject to the claims of creditors in all cases where a judgment has been obtained against such licensee and the date for the appeal of such judgment has expired. In such cases, garnishment proceedings may be commenced against the Village Clerk. It shall be the duty of the Village Clerk to remit to any court any balance of such cash deposit remaining in his or her hands not exceeding the amount of the judgment for the purpose of satisfying the same. Any balance of such cash deposit remaining in the hands of the Village Clerk for a period of six months after the expiration of the license shall be remitted to the licensee. Any license issued under the provisions of this section shall expire and be void as soon as the amount of the bond filed with the Village Clerk shall have been diminished or used in whole or in part because of suits as provided for above.

(Ord. 110, passed 5-13-1992)

§ 112.09 STATE LICENSE NO EXEMPTION FROM THIS CHAPTER.

The fact that any person has been granted a license by the state or other public authority shall not exempt such person from securing a license from the village if such license is required by the terms of this chapter.

(Ord. 110, passed 5-13-1992)

§ 112.10 INVITATION REQUIRED TO ENTER PRIVATE HOME.

No peddler, hawker or solicitor shall enter any private home or other place unless invited to do so by the owner or occupant thereof, nor shall any peddler, hawker or solicitor remain upon any private premises after being ordered or requested to leave by the owner or occupant thereof.

(Ord. 110, passed 5-13-1992) Penalty, see § 112.99

§ 112.11 LICENSE REQUIRED FOR CARNIVALS, FAIRS OR TENT SHOWS.

No person shall promote, conduct, operate or maintain any carnival, circus, fair, freak show or tent show in any public street, alley or other public place, nor shall any person promote, conduct, operate or maintain the same in any private place without license from the Village Clerk.

(Ord. 110, passed 5-13-1992) Penalty, see § 112.99

§ 112.12 LICENSE REQUIRED TO TAKE PHOTOGRAPHS OR SELL MAGAZINES.

No person shall go from house to house or place to place within the village for the purpose of taking photographic portraits or soliciting orders therefor, or for the purpose of selling or taking orders for magazines, without a license.

(Ord. 110, passed 5-13-1992) Penalty, see § 112.99

§ 112.99 PENALTY.

(A) Any person or persons, partnership or corporation who shall violate any of the provisions of this chapter is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$50 nor more than \$500, plus costs and other sanctions, for each infraction.

(B) Repeat offenses shall be subject to an increased civil fine as follows:

(1) The fine for any offense which is a first repeat offense shall be not less than \$250, plus costs and other sanctions; and

(2) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be not less than \$500, plus costs and other sanctions.

(C) A **REPEAT OFFENSE** means a second (or any subsequent) violation of §§ 130.16 through 130.20 committed by a person within any six-month period and for which the person admits responsibility or is determined to be responsible.

(D) Each day on which any violation of those sections continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

(Ord. 110, passed 5-13-1992; Ord. 119, passed 4-12-1995)

Franchise Provisions

- 113.01 Title
- 113.02 Definitions
- 113.03 Nonexclusive franchise to install and operate cable television system
- 113.04 Authority granted by franchise
- 113.05 Application for franchise
- 113.06 Franchise procedure
- 113.07 Acceptance of franchise
- 113.08 Franchise requirements
- 113.09 Construction and use of facilities
- 113.10 Standards
- 113.11 Franchise limitation
- 113.12 Regulation of rates and service
- 113.13 Inspection of property and records
- 113.14 Default

Rate Regulation

- 113.25 Definitions
- 113.26 Purpose; interpretation
- 113.27 Rate regulation promulgated by FCC
- 113.28 Filing; additional information; burden of proof
- 113.29 Proprietary information
- 113.30 Public notice; initial review of rates
- 113.31 Tolling order
- 113.32 Public notice; hearing on basic cable service rates following 30-day deadline
- 113.33 Staff or consultant report; written response
- 113.34 Rate decisions and orders
- 113.35 Refunds; notice
- 113.36 Written decision; public notice
- 113.37 Additional rules adopted by Council
- 113.38 Failure to give notice
- 113.39 Additional hearings
- 113.40 Additional powers
- 113.41 Failure to comply; remedies

FRANCHISE PROVISIONS

§ 113.01 TITLE.

This shall be known as the Cable Television Subchapter.

(Ord. 77, passed 8-6-1981)

§ 113.02 DEFINITIONS.

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

BASIC SERVICE. The simultaneous delivery by the grantee to the television, radio or other appropriate communications receiver of a subscriber of all signals of over-the-air broadcasters required by the Federal Communications Commission or this subchapter to be carried by the cable television system of the grantee, together with such additional public, educational, governmental, leased or other access channels or signals as may be likewise required by law, but not including pay or subscription television as defined by the Federal Communications Commission.

COMMITTEE. A committee of the Village Council consisting of three Council members, appointed by the Village President, which shall be directly responsible for over-seeing and controlling the granting of a franchise pursuant to this subchapter and for over-seeing any franchise which may be granted.

COMMUNITY ANTENNA TELEVISION SYSTEM or CATV or CABLE TELEVISION SYSTEM. A system employing antenna, microwave, wires, wave guides, coaxial cables or other conductors, equipment or facilities designed, constructed or used for the purpose of:

- (1) Collecting and amplifying local or distant broadcast television or radio signals and distributing and transmitting same;
- (2) Transmitting original cablecast programming not received through television broadcast signals; or

(3) Transmitting television pictures, film and video tape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers; provided, however, that any of the services permitted hereunder to be performed, as described above, shall be those performed by the grantee for subscribers, as herein defined in the operation of a cable television or CATV system franchised by the village and not otherwise, and provided further that such term shall not include any such facility or system that serves only the residents of one or more apartment dwelling or commercial establishments under common ownership, control or management.

FRANCHISE. Any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a cable television system within the village.

FRANCHISE AREA. The territory within the village throughout which the grantee shall be authorized hereunder to construct, maintain and operate its system.

GRANTEE. Any person, firm or corporation receiving the grant of any franchise hereunder and shall include any lawful successor to the interest of such person, firm or corporation.

SUBSCRIBER or USER. Any person or entity receiving for any purpose any service of the grantee's cable television system including, but not limited to, the conventional cable television system service of re-transmission of television broadcast, radio signals, the grantee's original cablecasting and the local government, education and public access channels; and other services, such as leasing of channels, data and facsimile transmission, pay television and police, fire and similar public service communication.

VILLAGE. The Village of Three Oaks.

VILLAGE COUNCIL. The Council of the village.

(Ord. 77, passed 8-6-1981)

§ 113.03 NONEXCLUSIVE FRANCHISE TO INSTALL AND OPERATE CABLE TELEVISION SYSTEM.

A nonexclusive franchise to install, construct, operate and maintain a cable television system on streets within the village may be granted by the Village Council to any person whether operating under an existing franchise, or not, who offers to furnish and provide such system under and pursuant to the terms and provisions of this subchapter. No provision of this subchapter may be deemed or construed to require the granting of a franchise when, in the opinion of the Council, it is in the public interest to restrict the number of the grantees to one or more, and competitive franchises covering the same territory shall be restricted to those instances where the applicant for the second franchise can offer a unique or legally protected service which is not available and cannot be made available to the grantee of the existing franchise.

(Ord. 77, passed 8-6-1981)

§ 113.04 AUTHORITY GRANTED BY FRANCHISE.

(A) Any franchise granted pursuant to the provisions of this subchapter shall authorize and permit the grantee to do the following:

(1) Erect, install, construct, repair, replace, re-construct, maintain and retain, in, on, over, under, across and along any public street, alley, way or place now laid out and dedicated and all extensions thereof, such poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate and provide similar facilities or properties rented or leased from other persons, firms or corporations, including, but not limited to, any public utility or other grantee of any franchise of this village;

(2) Maintain and operate facilities and properties for the collection, transmission, conduction, amplification, conversion and distribution of programs and other services by use of electricity, radiation or other energy source; or

(3) Solicit, sell, distribute and make charge to subscribers within the village for connection to the CATV system of the grantee.

(B) A franchise granted solely to traverse any portion of the village in order to provide service outside the village, shall not authorize nor permit the grantee to solicit, sell, distribute or make any charge to subscribers within the village, nor to render any service or connect any subscribers within the village to the CATV system of the grantee.

(Ord. 77, passed 8-6-1981)

§ 113.05 APPLICATION FOR FRANCHISE.

All applications to construct, operate or maintain any CATV system in this village or to traverse any portion of the village for transmitting or conveying of such service elsewhere, shall be filed with the Village Clerk, and each application shall set forth, contain or be accompanied by the following:

(A) The name, address and telephone number of the applicant;

(B) A detailed statement of the corporate or other business entity organization of the applicant including, but not limited to, the following:

(1) The names, residence addresses and business addresses of all officers, directors and partners or business associates of the applicant;

(2) The names, residence addresses and business addresses of all persons and entities having an ownership interest in the applicant and the respective ownership share of each such person or entity;

(3) The names and addresses of any parent or subsidiary of the applicant and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including, but not limited to, all CATV or similar systems owned or controlled by the applicant, its parent or subsidiary and the areas served thereby;

(4) A detailed description of all previous experience of the applicant as to providing CATV service or related or similar services;

(5) A detailed and complete financial statement of the applicant, prepared by certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a responsible lending institution or funding source, addressed to both the applicant and the Council, setting forth the basis for a study performed by such lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the village, or a statement from a certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed system in this village; and

(6) A statement identifying, by place and date, any other cable television franchise(s) awarded to the applicant, its parent or subsidiaries; the status of said franchise(s) with respect to completion thereof; the total cost of completion of such system(s); and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof.

(C) A detailed description of the proposed plan of operation of the applicant, which shall include, but not be limited to, the following:

(1) A detailed map indicating all areas proposed to be served, routes to be taken, a diagram of the equipment which will be exposed and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served;

(2) A statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of any said classification, including installation charges, service charges and special, extraordinary or other charges. The purchase price, terms and nature of any optional or required equipment, device or other thing to be offered for sale to any subscriber shall be described and explained in detail; and

(3) A detailed statement describing the actual equipment and operational standards proposed by the applicant.

(D) A copy of the form of any agreement undertaking or other instrument proposed to be entered into between the applicant and any subscriber;

(E) Any other information pertinent to the subject matter of such application and requested by the Committee; and

(F) An application fee in the sum of \$250 which shall be in the form of cash, certified or cashier's check or money order to pay the costs of studying, investigating and otherwise processing such application and shall not be returnable or refundable in whole or in part except to the extent that such fee exceeds the actual cost incurred by the village in studying, investigating and otherwise processing the application.

(Ord. 77, passed 8-6-1981)

§ 113.06 FRANCHISE PROCEDURE.

(A) The Village Council may, by advertisement or any other means, solicit and call for application for CATV franchises, and may determine and fix the time for filing such applications.

(B) Upon receipt of any application for franchise, in manner, time and form as herein or otherwise provided, the Village Clerk shall forward and deliver same to the Committee.

(C) Upon receiving the same from the Village Clerk, as aforesaid, the Committee shall cause such application to be investigated, shall prepare a report of such investigation, shall make its recommendations respecting such application, and shall cause said report and recommendations to be placed upon the agenda of a regular or special session of the Village Council. A copy of such report and recommendations and notice of the date it will be presented to the Village Council shall be mailed or otherwise delivered to the applicant at the address listed in the application. The Village Clerk shall cause notice of such meeting to be published at least once in a newspaper of general circulation in the village, stating the hour, date and place of the meeting, stating that the proposed franchise will be considered, and stating that comments from the public will be heard.

(D) The Village Council shall receive the report and recommendations of the Committee, shall consider the same together with such application, and comments of the public and shall make its determination either that such application be accepted upon such terms and conditions as the Village Council shall determine, or that such application be rejected. The Village Council may make its determination at the regular or special session at which the Committee report is received or may defer the decision to a subsequent regular session of the Village Council. In making any determination as to any application, the Council shall consider the quality of the service proposed, the rates to subscribers, income to the village, experience, character and financial responsibility of the applicant and its management and owners, the technical and performance quality of the equipment to be used, the willingness and ability of the

applicant to meet construction and physical requirements, policy considerations, franchise limitations and requirements imposed by this subchapter and any other considerations deemed pertinent by the Village Council.

(E) If the Village Council shall determine that such application shall be rejected, such determination shall be final and conclusive. If the Village Council shall determine that such application shall be accepted, the Council shall:

(1) Decide and specify the terms and conditions of any franchise to be granted hereunder and as herein provided; and

(2) Pass an ordinance or resolution granting such franchise, stating the name of the grantee, the character of the franchise and the terms and conditions upon which such franchise is granted.

(Ord. 77, passed 8-6-1981)

§ 113.07 ACCEPTANCE OF FRANCHISE.

(A) No franchise hereunder shall become effective for any purpose unless and until a written acceptance thereof shall have been filed with the Village Clerk, and such written acceptance shall operate as an acceptance of each and every term and condition and limitation contained in this subchapter, and in such franchise.

(B) Such written acceptance shall be filed by the grantee not later than 30 days after grant of the franchise as provided above, and in default of such written acceptance as herein required, the grantee shall be deemed to have rejected the same.

(Ord. 77, passed 8-6-1981)

§ 113.08 FRANCHISE REQUIREMENTS.

In addition to any other franchise requirements hereunder, or made or adopted as herein provided, the following requirements shall apply to any franchise granted or renewed by the Village Council under this subchapter.

(A) *Franchise payments, operations within franchise area.* In consideration of the granting and exercise of a franchise to use the streets of the franchise area for the purpose of operating a cable television system for the use and benefit of subscribers therein, the grantee shall pay yearly to the village during the entire time of any franchise granted pursuant to this subchapter, an annual franchise fee equal to 3% of the grantee's yearly gross revenues derived from all cable services provided by the grantee within the village, or \$250, whichever is greater.

(B) *Franchise payments, operations outside franchise area.* In consideration of the granting and exercise of a franchise to use the streets of the franchise area solely for the purpose of providing cable television service to subscribers outside the franchise area, the grantee shall pay to the village during the entire life of the franchise, a franchise fee as specified by the Council when such franchise is granted, which fee shall be separate and distinct from that specified in division (A) above.

(C) *Franchise payments not in lieu of taxes.* Any franchise payments to the village by the grantee shall not be in lieu of any occupation, income, license or property tax or similar levy, assessment or charge which would otherwise apply to and be payable by the grantee.

(D) *Corporate surety bond re: village.* The franchise granted shall specify that upon acceptance of such franchise, the grantee shall file with the Village Clerk and shall thereafter during the entire term of such franchise maintain in full force and effect a corporate surety bond or other adequate surety agreement in the amount and kind specified in the franchise granted and conditioned that in the event the grantee shall fail to comply with any one or more of the provisions of such franchise, then there shall be recoverable jointly and severally from the principal and surety any damages or costs suffered or incurred by the village or by any subscriber as a result thereof, including attorneys' fees and costs of any action, or proceeding, and including the full amount of any compensation, indemnification, cost of removal of any property or other costs which may be incurred up to the full principal amount of such bond; and said condition shall be a continuing obligation during the entire term of such franchise and thereafter until the grantee shall have satisfied in full any and all obligations to the village and any subscriber which arise out of or pertain to said franchise. Neither the provisions of this section, nor any bond accepted by the village pursuant hereto nor any damages recovered by the village thereunder shall be construed to excuse faithful performance by the grantee, or limit the liability of the grantee under any franchise issued pursuant to this subchapter.

(E) *Comprehensive liability insurance.* Upon acceptance of such franchise, the grantee shall file with the Village Clerk and shall thereafter during the entire term of such franchise maintain in full force and effect a comprehensive liability policy of insurance with

limits of not less than \$500,000 for property damage to any one person, \$500,000 for property damage in any one accident, \$500,000 for personal injury to any one person and \$1,000,000 for personal injury in any one accident or such higher amounts as the Village Council may fix in the franchise, or any amendment thereto, and of such insuring institutions, form and substance as shall be approved by the Committee, and which shall assure the grantee, and shall provide primary coverage for the village, its officers, board, committees, agents and employees against liability for loss or damage for personal injury, death and property damage occasioned by any activity or operation of the grantee under such franchise.

(F) *Hold harmless agreement.* The grantee shall indemnify and hold harmless the village, its officers, board, committees, agents and employees against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages, (including, but not limited, to damages to village property and damages arising out of copyright infringements, and damages arising out of any failure by the grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the grantee's cable television system), costs or liabilities (including costs or liabilities of the village with respect to its employees), of every kind and nature whatsoever including, but not limited to, damages for injury or death or damage to person or property, and regardless of the merit of any of the same, against all liability to others, and against any loss, cost and expense resulting or arising out of any of the same including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, travelling and transportation expense or other costs or expense arising out of or pertaining to the exercise or the enjoyment of any franchise hereunder by the grantee or the granting thereof by the village.

(G) *Defense of litigation.* The grantee shall at the sole risk and expense of the grantee, upon demand of the village, made by and through the Village Attorney, appear in and defend any and all suits, actions or other legal proceedings whether judicial, quasi-judicial, administrative, legislative or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the village, its officers, board, committees, agents or employees and arising out of or pertaining to the exercise or the enjoyment of such franchise, or the granting thereof by the village.

(Ord. 77, passed 8-6-1981)

§ 113.09 CONSTRUCTION AND USE OF FACILITIES.

(A) Within 30 days after acceptance of any franchise, the grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited, to any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television systems, or associated microwave transmissions facilities. In connection therewith, copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission or any other federal or state regulatory commission or any agency having jurisdiction in respect to any matters affecting the grantee's cable television operations, shall also be submitted simultaneously to the Committee.

(B) Within 30 days after obtaining all necessary permits, licenses and authorizations, including right of access to poles and conduits, the grantee shall commence construction and installation of the CATV system.

(C) Within two years after the commencement of construction and installation of the system, the grantee shall complete construction of the facilities needed to permit the reception of broadcast signals, the origination of programming within the village, and the distribution of signals to the franchise area. Provided, however, the Village Council may approve exceptions to this requirement upon a showing by the grantee of undue hardship or expense.

(D) Failure on the part of the grantee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein shall be grounds for termination of such franchise.

(E) The grantee shall utilize existing poles, conduits and other facilities whenever possible and shall not construct or install any new, different or additional poles, conduits or other facilities without first securing the written approval of the Committee. Any poles, conduits or other facilities of the grantee to be installed in, under, over, along, across or upon a public street, alley, way or place shall be so located so as to cause minimum interference with the rights of other users of the streets, alleys, ways or places or of property owners who adjoin any of the streets, alleys, ways or places. In the event of disturbance of any public street, alley, place or way by the grantee, it shall, at its own expense, promptly replace and restore such street to as good a condition as before the work causing such disturbance was performed, and to the satisfaction of the Committee.

(F) In all sections of the village where all existing cables or other like facilities of utility companies are presently or subsequently placed underground, the grantee shall place its cables or like facilities underground, at the grantee's expense.

(G) The village shall have the right, free of charge, to make additional use, for any public or municipal purpose, whether

governmental or proprietary, of any poles, conduits or other facilities erected, controlled, or maintained exclusively by or for the grantee in any street or other public way or public place, provided such use by the village does not interfere with the use by the grantee.

(H) The grantee shall at the expense of the grantee, protect, support, temporarily disconnect or temporarily relocate any property of the grantee when, in the opinion of the Committee, the same is required by reason of street construction, change or establishment of street grade, installation of sewers, drains, waterpipes, power lines or signal lines.

(I) In the event the use of any part of the system of the grantee is discontinued for any reason for a continuous period of 30 days, without prior written notice to and approval by the Committee, or in the event any part of such system has been installed in any street or other area without complying with the requirements hereof, or in the event any franchise shall be terminated, cancelled or shall expire, the grantee shall, at the option of the village, and at the expense of the grantee and at no expense to the village, promptly remove from any street or other area all property of the grantee and the grantee shall promptly restore the street or other area from which such property has been removed to such condition as the Committee shall approve; provided the Village Council may, upon written application therefore by the grantee; approve the abandonment of any such property in place by the grantee and under such terms and conditions as the Village Council may prescribe; and upon abandonment of any such property in place, the grantee shall cause to be executed, acknowledged and delivered to the village such instruments as shall be approved by the Committee, conveying the ownership of such property to the village.

(J) Upon the failure, refusal or neglect of the grantee to cause any work or other act required by law or by this subchapter to be completed in, on, over or under any street within any time prescribed therefor, or upon notice given, where notice is prescribed, the Committee may cause such work or other act to be completed in whole or in part, and upon so doing shall submit to the grantee an itemized statement of the costs thereof, and the grantee shall, within 30 days after receipt of such statement, pay unto the village the entire amount thereof.

(Ord. 77, passed 8-6-1981)

§ 113.10 STANDARDS.

(A) *General rules.* The CATV system of a grantee receiving a franchise shall:

- (1) Be capable of relaying to subscriber terminals television and radio broadcast signals;
- (2) Be constructed with the capability of two-way digital signal transmission;
- (3) Distribute color television signals which it receives;
- (4) Be constructed and operated so as not to interfere with the television reception of persons not served by the grantee and so as not to interfere with, obstruct or hinder in any manner the operation of any utility serving the village;
- (5) Provide at least one channel, without charge, for exclusive use of the village and other governmental agencies;
- (6) Provide at least one channel, without charge, for use by the public school system; provided, however, the Village Council may waive this requirement at the time a franchise is granted if the franchise so granted provides for the addition of said channel by the grantee at the request of the Village Council, after the Village Council has determined there is a demand for said channel; and
- (7) Provide at least one channel as a public access channel for use by civic groups and interested citizens; provided, however, the Village Council may waive this requirement at the time a franchise is granted if the franchise so granted provides for the addition of said channel by the grantee at the request of the Village Council, after the Village Council has determined there is a demand for said channel.

(B) *Additional services.* The cable television system may also engage in the business of:

- (1) Transmitting original cablecast programming not received through television broadcast signals;
- (2) Transmitting television pictures, film and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers or subscribers; and/or
- (3) Transmitting and receiving all other signals: digital, voice and audio-visual.

(C) *Refusal of service.* No person, firm or corporation within the service area of the grantee, and where trunk lines are in place, shall be refused service; provided, however, that the grantee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or service charges.

(D) *Service standards.* The grantee shall:

(1) Correct malfunctions promptly but in no event later than 24 hours after occurrence; in the event it should be impossible or impractical to correct any malfunctions within 24 hours, then each subscriber whose reception is so disrupted shall receive a rebate from the grantee in the amount of one thirtieth of such subscriber's monthly charge for every additional 24-hour period that said subscriber's television reception is so disrupted, unless said disruption in service was entirely beyond the control of the grantee;

(2) Answer all complaints by subscribers;

(3) Planned interruptions of service, insofar as possible, shall be preceded by a notice given to subscribers 24 hours in advance and shall occur during periods of minimum use of the system;

(4) Maintain an office in the village, which office shall be open during the usual business hours, with a local telephone number listed in directories of the telephone company serving the village, which office shall be so operated that complaints and requests for repairs or adjustments may be received at any time, 24 hours a day, seven days a week, provided, however, that the Village Council may waive the requirement of maintaining an office in the village, if the grantee shall maintain an office in the area, subject to the same standards as if in the village, and provide an agent in the village to receive payments and accept complaints; and

(5) Provide notice of such office, or area office and local agent, and the grantee's complaint procedure to each subscriber at the time of initial subscription to the system.

(E) *Complaint procedures.* The Committee shall have primary responsibility for the administration of complaints regarding cable television franchises, and shall adopt procedures to be followed in resolving and processing such complaints.

(F) *Content.* The grantee shall not send, transmit, retransmit or otherwise pass through its system any material, audio or visual, which is obscene under state or local law or any motion picture which has been rated "X" by the Motion Picture Film Board.

(G) *Failure to provide service.* Any grantee of any franchise hereunder who shall, within one year after the payment of any installation charge by any subscriber, fail to operate its system or make its system available to such subscriber, on a regular and continuous basis, shall refund the installation charge to such subscriber, together with interest thereon at not less than 5% per year.

(Ord. 77, passed 8-6-1981)

§ 113.11 FRANCHISE LIMITATION.

In addition to any other franchise limitations hereunder or as herein provided, the following limitations shall apply to any franchise granted or renewed by the Village Council under this subchapter.

(A) *Nature of franchise.* Such franchise shall be nonexclusive, and neither the granting thereof nor any of the provisions contained herein or in such franchise shall limit, abridge, diminish, alter or affect the right, privilege, power or authority of the Village Council; and the Village Council hereby reserves and preserves the right to grant any identical or similar or different franchise to any person, firm or corporation other than the grantee, either within or without or partly within or partly without the franchise area of any grantee, subject only to the restrictions provided in § 113.04(A) of this subchapter. No privilege or exemption shall be granted or conferred by any franchise granted hereunder except those specifically prescribed in this subchapter.

(B) *Subordination of franchise privileges.* The grant of any privilege by any franchise hereunder shall be subordinate to any prior lawful occupancy of any street or public property or to the grant of any privilege under any other franchise of prior date, insofar as there shall be any conflict.

(C) *Transfer of franchise.* Any franchise granted hereunder shall be a privilege to be held in personal trust by the original grantee. It cannot, in any event, be sold, transferred, leased, assigned or disposed of in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise without prior written consent of the Village Council, and then only under such conditions as may therein be prescribed.

(1) Notice and request for approval of any proposed sale or transfer of this franchise must be given to the Village Council not later than 90 days before the proposed sale or transfer. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale, or similar document, a duly executed copy of which shall be filed in the office of the Village Clerk within 30 days after any such transfer or assignment. The said consent of the Village Council may not be unreasonably refused; provided, however, the proposed assignee must show financial responsibility as determined by the Village Council and must agree to comply with all the provisions of the franchise and of this subchapter; and provided, further, that no such consent shall be required for a transfer in trust, mortgage or otherwise, in whole or in part, to secure an indebtedness, except that when such transfer shall exceed 50% of the

market value of the property used by the franchisee in the conduct of the cable television system, prior consent of the Village Council shall be required for such a transfer. Such a consent shall not be withheld unreasonably.

(2) In the event that the grantee is a corporation, prior approval of the Village Council, expressed by resolution, shall be required where there is an actual change in control or where ownership of more than 30% of the voting stock of the grantee is acquired by a person or group of persons acting in concert, none of whom already own 30% or more of the voting stock, singly or collectively.

(D) *Term of franchise.* No franchise granted or renewed by the Village Council under this subchapter shall be for a term shorter than five years, unless terminated prior to its expiration as herein provided, nor shall any such franchise be granted or renewed for a term longer than 15 years. Any franchise renewal shall be subject to the prior approval of the Village Council utilizing the same procedures as prescribed herein for the granting of a new franchise.

(E) *Review of franchise.* Every five years after the effective date of the franchise the Council and the grantee shall jointly review the performance of the grantee's operation and specifically the Village Council will inquire whether the grantee is supplying a level and variety of services equivalent to those being generally offered at the time in the industry, in comparable market situations. In the event that the grantee desires to change or modify its obligations under its franchise, it may negotiate with the Village Council to do so at that time. Within 60 days of the conclusion of the review the Village Council and the grantee shall report in public proceeding the result of their review and their conclusions. The Village Council may then order unilateral changes in the franchise rights and obligations of the grantee where said changes cause no economic impact. Any changes that cause substantial adverse economic impact shall be the subject of negotiations with the grantee. Any disputes hereunder shall be resolved by arbitrators, one selected by each party and the third selected by the other two, whose decision shall be final. The arbitrators are to base their decision on what is fair and equitable to all concerned.

(F) *Recourse against village.* The grantee shall have no recourse or remedy whatsoever against the village for any loss, cost, expense or damage arising out of or with respect to any franchise hereunder, or this subchapter, or the enforcement thereof.

(G) *Village rules and regulations.* The grantee shall be subject to all ordinances, rules, regulations and specifications of the village heretofore or hereafter established including but not limited to, those pertaining to works and activities, in, on, over, under and about streets.

(H) *Prohibited activities of the grantee.* The grantee shall be prohibited from directly or indirectly doing any of the following:

- (1) Engaging in the business of selling at retail, leasing, renting, repairing or servicing of television sets or radios;
- (2) Soliciting, referring or causing or permitting the solicitation or referral of any subscriber to persons engaged in any business herein prohibited to be engaged in by the grantee;
- (3) Providing information concerning the viewing patterns of identifiable individual subscribers to any person, group or organization for any purpose, without the consent of the subscriber;
- (4) Entering or encroaching upon or interfering with or obstructing any private property without the express consent of the owner; and
- (5) Providing any repair service to its subscribers for a fee, which repair extends beyond the connection of its service or the determination by the grantee of the quality of its signals to the recipients thereof.

(Ord. 77, passed 8-6-1981)

§ 113.12 REGULATION OF RATES AND SERVICE.

At the time of the granting of any franchise hereunder, the Village Council shall approve and include therein all rates and charges allowable to the grantee, including, but not limited to, all such rates and charges for installation of equipment, service charges for all classifications of service including additional connections at one location and any other rates and charges of the grantee to subscribers. No such rates or charges shall be changed at any time after the granting of a franchise, except by authority of the Village Council, and upon written request by the grantee, provided, that prior to authorizing the change of any rates or charges of the grantee to subscribers, at any time after the granting of such franchise, the Village Council shall first pass its resolution of intention to do so, describing and stating any rates or charges to be changed, the reasons of the Village Council therefor, fixing a day, hour and place certain when and where any persons having an interest therein may appear before the Village Council and be heard and directing the Village Clerk to publish notice of such hearing at least once. The Village Clerk shall cause such notice to be published in a newspaper of general circulation within the village, and the same shall be published and a copy thereof shall be mailed to any grantee hereunder at least ten

days prior to the date specified for hearing thereon. At the time set for such hearing, or at any adjournment thereof, the Village Council shall proceed to hear and pass on all presentations made before it, and the decision of the Village Council thereon shall be final and conclusive. If the Village Council shall find that a change of rates or charges is justified by a change in cost of operation, the Village Council shall approve the change in rates.

(Ord. 77, passed 8-6-1981)

§ 113.13 INSPECTION OF PROPERTY AND RECORDS.

(A) The grantee shall at all reasonable times, and to the extent necessary to carry out the provisions of this subchapter, permit any duly authorized agent or representative of the village to examine all franchise property of the grantee, together with any appurtenant property of the grantee situated within or without the village, and to examine and transcribe any and all maps and other records kept or maintained by the grantee or under the control or direction or at the request of the grantee which appertain to the franchise operations, affairs, transactions or property of the grantee.

(B) The grantee shall prepare and furnish to the Committee, at such times and in such form as prescribed by the Committee, references and materials with respect to the operations, affairs, transactions or property of the grantee as may be reasonably necessary or appropriate to the performance of any of the duties of the Committee.

(Ord. 77, passed 8-6-1981)

§ 113.14 DEFAULT.

Failure, refusal, or neglect by the grantee to comply with any requirement herein, or any term or condition of a franchise issued hereunder shall be sufficient cause for termination of any franchise by the village as follows.

(A) Upon the continuing of any such failure, refusal or neglect for a period of ten days, next following written demand by the Committee that the grantee do or comply with any such requirement, limitation, term or condition, the Committee may cause to be placed on the agenda of a regular session of the Village Council its request for termination of such franchise, and in such case, the Committee shall cause to be served upon such grantee, at least 15 days prior to the date of such session of the Village Council, a written notice of its intent to request such termination at the time and place of such session.

(B) At such session of the Village Council, or any adjournment thereof, the Village Council shall consider the request of the Committee and shall hear any persons desiring to be heard, and shall determine whether or not such failure, refusal or neglect by the grantee was with just cause.

(C) If the Village Council shall determine such failure, refusal or neglect by the grantee was without just cause, then the Village Council may pass its resolution declaring that the franchise of such grantee shall be terminated and forfeited unless there is compliance by the grantee within 15 days, and such resolution shall operate to declare such franchise terminated and forfeited on the fifteenth day next following the passage thereof, and without further notice to the grantee, unless the grantee shall so comply within such 15-day period, such termination and forfeiture to become effective for all purposes 180 days thereafter.

(D) Within 180 days after such declaration of termination and forfeiture, the grantee may sell, remove, or transfer the entire system of the grantee, subject to the provisions of § 113.11(C) of this subchapter and upon any such sale or transfer in addition to any other rights hereunder or otherwise, the village shall have a lien (next in order of preference to any liens or encumbrances existing of record on the date of such termination and forfeiture) against any and all proceeds thereof in the full amount of any loss, cost, expense or other financial detriment incurred by the village in the exercise of any right hereunder, or by reason of such termination and forfeiture.

(E) If the grantee shall fail to or refuse to sell, remove or transfer the entire system of the grantee, as hereinabove provided, and regardless of the exercise of any other right of the village hereunder, then the village may institute appropriate court action to enforce requirements of this section.

(Ord. 77, passed 8-6-1981)

§ 113.25 DEFINITIONS.

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

ACT. The Cable Communications Act of 1934, being 47 U.S.C. §§ 521 et seq., as amended (and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385), and as may be amended from time to time.

ASSOCIATED EQUIPMENT. All equipment and services subject to regulation pursuant to 47 C.F.R. § 76.923.

BASIC CABLE SERVICE. "Basic service" as defined in the FCC Rules, and any other cable television service which is subject to rate regulation by the village pursuant to the Act and the FCC Rules.

FCC. The Federal Communications Commission.

FCC RULES. All rules of the FCC promulgated from time to time pursuant to the Act.

INCREASE IN RATES. An **INCREASE IN RATES** or a decrease in programming or customer services.

(B) All other words and phrases used in this subchapter shall have the same meaning as defined in the Act and FCC Rules.

(Ord. 117, passed 10-13-1993)

§ 113.26 PURPOSE; INTERPRETATION.

The purpose of this subchapter is to:

(A) Adopt regulations consistent with the Act and the FCC Rules with respect to basic cable service rate regulation; and

(B) Prescribe procedures to provide a reasonable opportunity for consideration of the views of interested parties in connection with basic cable service rate regulation by the village. This subchapter shall be implemented and interpreted consistent with the Act and FCC Rules.

(Ord. 117, passed 10-13-1993)

§ 113.27 RATE REGULATION PROMULGATED BY FCC.

In connection with the regulation of rates for basic cable service and associated equipment, the village shall follow all FCC Rules.

(Ord. 117, passed 10-13-1993)

§ 113.28 FILING; ADDITIONAL INFORMATION; BURDEN OF PROOF.

(A) A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the Act and the FCC Rules. The cable operator shall include as part of its submission such information as is necessary to show that its schedule of rates, or its proposed increase in rates, complies with the Act and the FCC Rules. The cable operator shall file ten copies of the schedule or proposed increase with the Village Clerk. For purposes of this subchapter, the filing of the cable operator shall be deemed to have been made when at least ten copies have been received by the Village Clerk. The Village Council may, by resolution or otherwise, adopt rules and regulations prescribing the information, data and calculations which must be included as part of the cable operator's filing of the schedule of rates or a proposed increase.

(B) In addition to information and data required by rules and regulations of the village pursuant to division (A) above, a cable operator shall provide all information requested by the Village President in connection with the village's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The Village President may establish deadlines for submission of the requested information and the cable operator shall comply with such deadlines.

(C) A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the Act and the FCC Rules including, without limitation, 47 U.S.C. § 543 and 47 C.F.R. §§ 76.922 and 76.923.

(Ord. 117, passed 10-13-1993)

§ 113.29 PROPRIETARY INFORMATION.

(A) If this subchapter, any rules or regulations adopted by the village pursuant to § 113.28(A) or any request for information pursuant to § 113.28(B) requires the production of proprietary information, the cable operator shall produce the information. However, at the time the allegedly proprietary information is submitted, a cable operator may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that support those reasons. The request for confidentiality will be granted if the village determines that the preponderance of the evidence shows that nondisclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. § 552. The village shall place in a public file for inspection any decision that results in information being withheld. If the cable operator requests confidentiality and the request is denied:

(1) Where the cable operator is proposing a rate increase, it may withdraw the proposal, in which case the allegedly proprietary information will be returned to it; or

(2) The cable operator may seek review within five working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

(B) Any interested party may file a request to inspect material withheld as proprietary with the village. The village shall weigh the policy considerations favoring nondisclosure against the reasons cited for permitting inspection in light of the facts of the particular case. It will then promptly notify the requesting entity and the cable operator that submitted the information as to the disposition of the request. It may grant, deny or condition a request. The requesting party or the cable operator may seek review of the decision by filing an appeal with any appropriate forum. Disclosure will be stayed pending resolution of any appeal.

(C) The procedures set forth in this section shall be construed as analogous to and consistent with the rules of the FCC regarding requests for confidentiality including, without limitation, 47 C.F.R. § 0.459.

(Ord. 117, passed 10-13-1993)

§ 113.30 PUBLIC NOTICE; INITIAL REVIEW OF RATES.

(A) Upon the filing of ten copies of the schedule of rates or the proposed increase in rates pursuant to § 113.28(A), the Village Clerk shall publish a public notice in a newspaper of general circulation in the village which shall state that:

(1) The filing has been received by the Village Clerk and (except those parts which may be withheld as proprietary) is available for public inspection and copying; and

(2) Interested parties are encouraged to submit written comments on the filing to the Village Clerk not later than seven days after the public notice is published.

(B) The Village Clerk shall give notice to the cable operator of the date, time and place of the meeting at which the Village Council shall first consider the schedule of rates or the proposed increase. This notice shall be mailed by first-class mail at least three days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the Village Council, then the Village Clerk shall mail a copy of the report by first class mail to the cable operator at least three days before the meeting at which the Village Council shall first consider the schedule of rates or the proposed increase.

(Ord. 117, passed 10-13-1993)

§ 113.31 TOLLING ORDER.

After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after 30 days from the date of filing under § 113.28(A) unless the Village Council (or other properly authorized body or official) tolls the 30 days' deadline pursuant to 47 C.F.R. § 76.933 by issuing a brief written order, by resolution or otherwise, within 30 days of the date of filing. The Village Council may toll the 30-day deadline for an additional 90 days in cases not involving cost-of-service showings and for an additional 150 days in cases involving cost-of-service showings.

(Ord. 117, passed 10-13-1993)

§ 113.32 PUBLIC NOTICE; HEARING ON BASIC CABLE SERVICE RATES FOLLOWING 30-DAY DEADLINE.

(A) If a written order has been issued pursuant to § 113.31 and 47 C.F.R. § 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit to the village any additional information required or requested pursuant to § 113.28. In addition, the Village Council shall hold a public hearing to consider the comments of interested parties within the additional 90-day or 150-day period, as the case may be.

(B) The Village Clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the village which shall state:

(1) The date, time and place at which the hearing shall be held;

(2) Interested parties may appear in person, by agent or by letter at such hearing to submit comments on or objections to the existing rates or the proposed increase in rates; and

(3) Copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the office of the Village Clerk.

(C) The public notice shall be published not less than 15 days before the hearing. In addition, the Village Clerk shall mail by first-class mail a copy of the public notice to the cable operator not less than 15 days before the hearing.

(Ord. 117, passed 10-13-1993)

§ 113.33 STAFF OR CONSULTANT REPORT; WRITTEN RESPONSE.

Following the public hearing, the Village President shall cause a report to be prepared for the Village Council which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or consultant's review and other appropriate information) include a recommendation for the decision of the Village Council pursuant to § 113.34. The Village Clerk shall mail a copy of the report to the cable operator by first-class mail not less than 20 days before the Village Council acts under § 113.34. The cable operator may file a written response to the report with the Village Clerk. If at least ten copies of the response are filed by the cable operator, the Village Clerk shall forward it to the Village Council.

(Ord. 117, passed 10-13-1993)

§ 113.34 RATE DECISIONS AND ORDERS.

The Village Council shall issue a written order, by resolution or otherwise, which in whole or in part approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund or orders other appropriate relief, in accordance with the FCC Rules. If the Village Council issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 C.F.R. § 76.933. The order specified in this section shall be issued within 90 days of the tolling order under § 113.31 in all cases not involving a cost-of-service showing. The order shall be issued within 150 days after the tolling order under § 113.31 in all cases involving a cost-of-service showing.

(Ord. 117, passed 10-13-1993)

§ 113.35 REFUNDS; NOTICE.

The Village Council may order a refund to subscribers as provided in 47 C.F.R. § 76.942. Before the Village Council orders any refund to subscribers, the Village Clerk shall give at least seven days' written notice to the cable operator by first-class mail of the date, time and place at which the Village Council shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent or by letter at such time for the purpose of submitting comments to the Village Council.

(Ord. 117, passed 10-13-1993)

§ 113.36 WRITTEN DECISION; PUBLIC NOTICE.

(A) Any order of the Village Council pursuant to § 113.34 or § 113.35 shall be in writing, shall be effective upon adoption by the Village Council and shall be deemed released to the public upon adoption.

(B) The Village Clerk shall publish a public notice of any such written order in a newspaper of general circulation within the village which shall:

(1) Summarize the written decision; and

(2) State that copies of the text of the written decision are available for inspection or copying from the office of the Village Clerk.

(C) In addition, the Village Clerk shall mail a copy of the text of the written decision to the cable operator by first-class mail.

(Ord. 117, passed 10-13-1993)

§ 113.37 ADDITIONAL RULES ADOPTED BY COUNCIL.

In addition to rules promulgated pursuant to § 113.28, the Village Council may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the Act and the FCC Rules.

(Ord. 117, passed 10-13-1993)

§ 113.38 FAILURE TO GIVE NOTICE.

The failure of the Village Clerk to give the notices or to mail copies of reports as required by this subchapter shall not invalidate the decisions or proceedings of the Village Council.

(Ord. 117, passed 10-13-1993)

§ 113.39 ADDITIONAL HEARINGS.

In addition to the requirements of this subchapter, the Village Council may hold additional public hearings upon such reasonable notice as the Village Council, in its sole discretion, shall prescribe.

(Ord. 117, passed 10-13-1993)

§ 113.40 ADDITIONAL POWERS.

The village shall possess all powers conferred by the Act, the FCC Rules, the cable operator's franchise and all other applicable law. The powers exercised pursuant to the Act, the FCC Rules and this subchapter shall be in addition to powers conferred by law or otherwise. The village may take any action not prohibited by the Act and the FCC Rules to protect the public interest in connection with basic cable service rate regulation.

(Ord. 117, passed 10-13-1993)

§ 113.41 FAILURE TO COMPLY; REMEDIES.

The village may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided under a cable operator's franchise with the village) for failure to comply with the Act, the FCC Rules, any orders or determinations of the village pursuant to this subchapter, any requirements of this subchapter 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 village pursuant to this subchapter, any requirements of this subchapter or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of renewal of a cable operator's franchise.

(Ord. 117, passed 10-13-1993)

§ 113.42 CONFLICTING PROVISIONS.

In the event of any conflict between this subchapter and the provisions of any prior ordinance or any franchise, permit, consent agreement or other agreement with a cable operator, then the provisions of this subchapter shall control.

(Ord. 117, passed 10-13-1993)

CHAPTER 114: SECOND HAND DEALERS, JUNK SHOPS AND JUNK DEALERS

Section

- 114.01 Definitions
- 114.02 License required; persons prohibited from receiving license
- 114.03 Fees; expiration of license
- 114.04 Metal tag to be kept by licensee
- 114.05 Business to be conducted inside building; fences or gates
- 114.06 Dealing in second hand articles
- 114.07 Sales of second hand bedding and clothing
- 114.08 Business hours
- 114.09 Sign; records
- 114.10 Articles to be held for certain time; description of articles to be provided to Village Clerk
- 114.11 Purchases from certain persons prohibited
- 114.12 Maintenance of premises

- 114.99 Penalty

§ 114.01 DEFINITIONS.

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

COLLECTOR. A person engaged in the business of collecting, receiving or purchasing second hand property or junk.

JUNK. Any personal property which is or may be salvaged for re-use, re-sale, reduction or similar disposition, or which is possessed, transported, owned, collected, accumulated, dismantled or assorted for any of the aforesaid purposes. Without limiting the aforesaid definition of **JUNK**, the term shall include used or salvaged iron, brass, lead, copper and other base metal or metals and their compounds or combinations; used or salvaged ropes, bags, paper, rags, glass, rubber and similar articles or property, and used motor vehicles which are used, owned or possessed for the purpose of wrecking or salvaging parts therefrom.

JUNK DEALER. Every person who engages in the business of buying, exchanging, collecting, receiving, storing or selling any

article or articles hereinabove defined as "junk."

JUNK YARD or JUNK SHOP. Any place at which a junk dealer buys, exchanges, collects, receives, stores, accumulates, sells or otherwise handles junk.

MOTOR VEHICLE DISMANTLING ESTABLISHMENT OR YARD. Any place at which motor vehicles are dismantled for purposes of taking the parts thereof for re-use or re-sale or destroying or salvaging same, and/or any place where motor vehicles are stored or accumulated for the purposes of dismantling same.

PERSON. Firm, corporation or individual **PERSON**.

SECOND HAND DEALER. Any person who engages in the business of buying, exchanging, collecting, receiving, storing or selling any property defined in this section as "second hand property."

SECOND HAND PROPERTY. Any used household furniture, used wearing apparel, used lumber, used brick, used tile, used plumbing fixtures, used electrical fixtures, used articles made of precious metal or metals, used jewelry, used tools, used motor vehicles or parts thereof and any other used articles or personal property bought and sold by and from other than the original purchaser and user.

SECOND HAND STORE. Any place at which a second hand dealer buys, exchanges, collects, receives, stores or sells second hand property.

(Ord. 24, passed 7-2-1953)

§ 114.02 LICENSE REQUIRED; PERSONS PROHIBITED FROM RECEIVING LICENSE.

(A) No person shall maintain or operate a second hand store or junk shop or junk yard or motor vehicle dismantling establishment, without first obtaining a license therefor. Application for such license shall be made to the Village Clerk upon blanks to be provided. The applicant shall state his or her name, whether a person, firm or corporation, the place or places at which such business is to be or is conducted or maintained and the applicant's residence for a period of three years preceding such application. The applications so received by the Village Clerk shall be referred to the Village President and by him or her to the Village Marshal, for purposes of investigation and recommendation by such.

(B) After receipt of such recommendations, the application shall be submitted to the Village Council. The sole power to grant licenses hereunder is vested in said Village Council. Licenses granted by said Village Council shall be issued by the Village Clerk.

(C) Any applicant seeking to establish a second hand store or junk shop or junk yard or motor vehicles dismantling establishment, in a location not previously used for that purpose, or any licensee seeking to move or establish same in a location not previously used for that purpose, must first obtain the consent in writing of 65% of the owners of residential property within 300 yards of any part of the area in which the proposed business is to be conducted. Said area shall include any portion to be used for the storage of any property in connection with such proposed business.

(D) No second hand store, junk shop, junk yard or motor vehicle dismantling yard or any part thereof, shall be hereafter established or located in any residential zone in the village nor shall same be hereafter established or located within 300 feet from any public street or highway in the village, nor shall same be hereafter established or located within 300 feet from any inhabited building or dwelling, nor shall same be hereafter established or located within 300 feet from any adjoining private property line.

(E) No person known to be a thief or an associate of thieves, an habitual drunkard, a receiver of stolen property or incapable of keeping the records and making the reports herein provided for shall be deemed to be a suitable person to receive a license as second hand dealer or junk dealer, and any person to whom a license as may have been granted, may have his or her license revoked by the Village Council on good cause shown and after reasonable notice and opportunity to be heard before such Village Council or committee thereof.

(Ord. 24, passed 7-2-1953)

§ 114.03 FEES; EXPIRATION OF LICENSE.

(A) The following fees shall be paid:

(1) For each person, corporation, co-partnership or firm engaged in or carrying on the business in the village of second hand dealer or junk dealer as defined in § 114.01, having a yard for the storage of second hand property and/or junk, the sum of \$25 per annum; provided, that a separate license must be taken out for each yard so used for the storage of second hand property and/or junk;

(2) For each person, corporation, co-partnership or firm engaged in or carrying on the business in the village of second hand dealer or junk dealer as hereinbefore defined, having a store room or building for the storage of second hand property and/or junk, the sum of \$25 per annum; provided, that a separate license must be taken out for each separate location so used for the storage of second hand property and/or junk; and

(3) For each collector in the village, as defined in § 114.01, the sum of \$5 per annum.

(B) All licenses issued hereunder shall expire on March 1 of each year.

(Ord. 24, passed 7-2-1953) Penalty, see § 114.99

§ 114.04 METAL TAG TO BE KEPT BY LICENSEE.

Each collector licensed hereunder shall receive from the Village Clerk a metal tag not exceeding six inches in diameter bearing the type of license and the license number. Said tag shall be kept by such collector on his or her person or vehicle when engaged in the business of collecting second hand property or junk as defined in § 114.01, and said tag must be produced at the request of any police officer or private person.

(Ord. 24, passed 7-2-1953)

§ 114.05 BUSINESS TO BE CONDUCTED INSIDE BUILDING; FENCES OR GATES.

(A) No person shall maintain a junk yard or junk shop within the village unless such business is carried on entirely inside a building or buildings, or unless the premises on which such business is conducted is entirely closed in, except for gates, by a solid or closed board fence not less than six feet in height. If painted, said fence shall be painted one solid color, and said fence shall be maintained in good solid and sightly condition at all times.

(B) Gates for access to said premises shall swing inward and such gate shall be closed when the premises are not open for business, and such gates shall be of solid board construction not less than six feet high and match the fence.

(C) Barbed wire may be installed on the tops of such fences on arms or supports projecting over the private property side of the fence at least eight feet above the adjacent grade.

(D) For a distance of at least 30 feet from the exterior of all buildings and/or fences enclosing or housing such junk yard or junk shop or motor vehicle dismantling yard, no grass, weeds, shrubbery or undergrowth shall be allowed to grow to a height exceeding one foot.

(Ord. 24, passed 7-2-1953) Penalty, see § 114.99

§ 114.06 DEALING IN SECOND HAND ARTICLES.

Any person, corporation, member or members of a co-partnership or firm whose business in whole or in part is that of purchasing, selling, exchanging or receiving second hand articles of any kind, is hereby declared to be a second hand dealer or junk dealer. This definition shall not apply to retail merchants who repossess their own merchandise sold on a title-retaining contract or chattle mortgage basis.

(Ord. 24, passed 7-2-1953)

§ 114.07 SALES OF SECOND HAND BEDDING AND CLOTHING.

(A) It shall be unlawful for any second hand dealer or junk dealer to sell or deliver or cause to be sold or delivered any bed mattress which is stained or discolored, or the contents of which are musty, or to sell or deliver any second hand clothing or bedding

until the same has been thoroughly cleaned and disinfected, or to sell or deliver any second hand linen until the same has been laundered.

(B) The foregoing provisions shall apply only when such articles are sold or delivered for consumption or use or re-sold at retail, and that such provisions are inapplicable when such articles are to be sold or delivered for re-processing.

(Ord. 24, passed 7-2-1953) Penalty, see § 114.99

§ 114.08 BUSINESS HOURS.

No person shall purchase any junk, as defined in § 114.01, between the hours of 6:00 p.m. and 7:00 a.m. nor on any Sunday.

(Ord. 24, passed 7-2-1953) Penalty, see § 114.99

§ 114.09 SIGN; RECORDS.

Such second hand dealer or junk dealer as defined in § 114.01, shall post in a conspicuous place in or upon his or her shop, store, wagon, vehicle, barn or other place of business, a sign having his or her name and occupation legibly inscribed thereon, and shall keep a separate book, open to inspection by members of the state police force, County Sheriff's office and other public officers, in which shall be written in the English language at the time of the purchase or exchange of such article a description thereof, the name, description and residence of the person from whom the same was purchased and received and the day and hour when such purchase or exchange was made. Each entry shall be numbered consecutively, commencing with number one.

(Ord. 24, passed 7-2-1953) Penalty, see § 114.99

§ 114.10 ARTICLES TO BE HELD FOR CERTAIN TIME; DESCRIPTION OF ARTICLES TO BE PROVIDED TO VILLAGE CLERK.

(A) Such articles purchased or exchanged, as provided herein, shall be retained by the purchaser thereof for not less than eight days before disposing of them, in an accessible place in the building where such articles are purchased and received. A tag shall be attached to such article in some visible and conspicuous place with a number written thereon to correspond with entry number in such book. Such purchaser shall prepare and deliver on Monday of each week to the Village Clerk, before 12:00 noon, a legible and correct copy, written in the English language, from such book, containing a description of each article purchased or received during the preceding week, the hour and day when the purchase was made and the description of the person from whom it was purchased. Such statement shall be verified by the affidavit of the person subscribing his or her name thereto.

(B) This section shall not apply to iron, steel, old rags or waste paper. Provided further, nothing herein contained shall make it necessary for the purchaser to retain articles purchased from individuals, firms or corporations having a fixed place of business in the village or elsewhere after such articles shall have been reported to the Village Clerk as herein provided.

(Ord. 24, passed 7-2-1953) Penalty, see § 114.99

§ 114.11 PURCHASES FROM CERTAIN PERSONS PROHIBITED.

No purchase or receipt of any articles shall be made from any person who is at the time intoxicated or from any habitual drunkard or from any person known by said junk dealer to be a thief or an associate of thieves or a receiver of stolen property, or from any person whom he or she has reason to suspect or from any minor under the age of 21 years without the consent of the parents of such minor.

(Ord. 24, passed 7-2-1953) Penalty, see § 114.99

§ 114.12 MAINTENANCE OF PREMISES.

All premises used as a junk yard or junk shop shall be kept and maintained in a clean, sanitary and neat condition. The person operating a junk yard or junk shop shall maintain the premises so used so that rats, vermin and fire hazard are as far as practicable

reduced to a minimum. No rubbish or portion or parts of wrecked machines and other accumulations which are to be discarded by such junk dealer shall be burned in such premises without the written consent of the Village Marshal.

(Ord. 24, passed 7-2-1953) Penalty, see § 114.99

§ 114.99 PENALTY.

Any person violating any of the provisions of this chapter shall be punished by a fine of not exceeding \$100, nor less than \$10, or by imprisonment in the county jail not exceeding 90 days, or by both such fine and imprisonment in the discretion of the court trying the offender.

(Ord. 24, passed 7-2-1953)