

TITLE 9**BUSINESS, PEDDLERS, SOLICITORS, ETC.¹****CHAPTER**

1. MISCELLANEOUS.
2. PEDDLERS, ETC.
3. CHARITABLE SOLICITORS.
4. TAXICABS.
5. POOL ROOMS.
6. CABLE TELEVISION.
7. CITY OF MCEWEN CABLE TELEVISION CODE OF 1982.
8. TELECOMMUNICATIONS REGULATIONS.

CHAPTER 1**MISCELLANEOUS****SECTION**

9-101. "Going out of business" sales.

9-101. "Going out of business" sales. It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of business within ninety (90) days he shall prima facie be deemed to have violated this section. (1970 Code, § 5-101)

¹Municipal code references

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

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

CHAPTER 2**PEDDLERS, ETC.¹****SECTION**

- 9-201. Permit required.
- 9-202. Exemptions.
- 9-203. Application for permit.
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- 9-211. Revocation or suspension of permit.
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9-201. Permit required. It shall be unlawful for any peddler, canvasser, or solicitor, or transient merchant to ply his trade within the corporate limits without first obtaining a permit in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (1970 Code, § 5-201)

9-202. Exemptions. The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic or philanthropic organizations. (1970 Code, § 5-202)

9-203. Application for permit. Applicants for a permit under this chapter must file with the city recorder a sworn written application containing the following:

- (1) Name and physical description of applicant.
- (2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.
- (3) A brief description of the nature of the business and the goods to be sold.

¹Municipal code reference
Privilege taxes: title 5.

(4) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship.

(5) The length of time for which the right to do business is desired.

(6) A recent clear photograph approximately two (2) inches square showing the head and shoulders of the applicant.

(7) The names of at least two (2) reputable local property owners who will certify as to the applicant's good moral reputation and business responsibility, or in lieu of the names of references, such other available evidence as will enable an investigator to evaluate properly the applicant's moral reputation and business responsibility.

(8) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor or for violating any municipal ordinance; the nature of the offense; and, the punishment or penalty assessed therefor.

(9) The last three (3) cities or towns, if that many, where applicant carried on business immediately preceding the date of application and, in the case of transient merchants, the addresses from which such business was conducted in those municipalities.

(10) At the time of filing the application, a fee of fifty dollars (\$50.00) shall be paid to the municipality to cover the cost of investigating the facts stated therein. (1970 Code, § 5-203, as amended by Ord. #172, June 1995)

9-204. Issuance or refusal of permit. (1) Each application shall be referred to the chief of police for investigation. The chief shall report his findings to the city recorder within seventy-two (72) hours.

(2) If as a result of such investigation the chief reports the applicant's moral reputation and/or business responsibility to be unsatisfactory the city recorder shall notify the applicant that his application is disapproved and that no permit will be issued.

(3) If, on the other hand, the chief's report indicates that the moral reputation and business responsibility of the applicant are satisfactory the city recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The city recorder shall keep a permanent record of all permits issued. (1970 Code, § 5-204)

9-205. Appeal. Any person aggrieved by the action of the chief of police and/or the city recorder in the denial of a permit shall have the right to appeal to the board of mayor and aldermen. Such appeal shall be taken by filing with the mayor within fourteen (14) days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The mayor shall set a time and place for a hearing on such appeal and notice of the time and place of such hearing shall be given to the appellant. The notice shall be in writing and shall be mailed, postage prepaid, to the applicant at his last known address at least five (5) days prior to the date set for hearing, or shall be

delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1970 Code, § 5-205)

9-206. Bond. Every permittee shall file with the city recorder a surety bond running to the municipality in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of this municipality and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the municipality that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the municipality doing business with said permittee that the property purchased will be delivered according to the representations of the permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the clerk of the court in which the suit is commenced, be relieved without costs of all further liability. (1970 Code, § 5-206)

9-207. Loud noises and speaking devices. No permittee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks, or other public places of the municipality or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (1970 Code, § 5-207)

9-208. Use of streets. No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where the operation might impede or inconvenience the public use of the streets. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1970 Code, § 5-208)

9-209. Exhibition of permit. Permittees are required to exhibit their permits at the request of any policeman or citizen. (1970 Code, § 5-209)

9-210. Policemen to enforce. It shall be the duty of all policemen to see that the provisions of this chapter are enforced. (1970 Code, § 5-210)

9-211. Revocation or suspension of permit. (1) Permits issued under the provisions of this chapter may be revoked by the board of mayor and aldermen after notice and hearing, for any of the following causes:

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

(b) Any violation of this chapter.

(c) Conviction of any crime or misdemeanor.

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

(2) Notice of the hearing for revocation of a permit shall be given by the city recorder in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed to the permittee at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

(3) When reasonably necessary in the public interest the mayor may suspend a permit pending the revocation hearing. (1970 Code, § 5-211)

9-212. Reapplication. No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (1970 Code, § 5-212)

9-213. Expiration and renewal of permit. Permits issued under the provisions of this chapter shall expire on the same date that the permittee's privilege license expires and shall be renewed without cost if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (1970 Code, § 5-213)

CHAPTER 3

CHARITABLE SOLICITORS

SECTION

- 9-301. Permit required.
- 9-302. Prerequisites for a permit.
- 9-303. Denial of a permit.
- 9-304. Exhibition of permit.

9-301. Permit required. No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the city recorder authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (1970 Code, § 5-301)

9-302. Prerequisites for a permit. The recorder shall issue a permit authorizing charitable or religious solicitations when, after a reasonable investigation, he finds the following facts to exist:

- (1) The applicant has a good character and reputation for honesty and integrity, or if the applicant is not an individual person, that every member, managing officer or agent of the applicant has a good character or reputation for honesty and integrity.
- (2) The control and supervision of the solicitation will be under responsible and reliable persons.
- (3) The applicant has not engaged in any fraudulent transaction or enterprise.
- (4) The solicitation will not be a fraud on the public but will be for a bona fide charitable or religious purpose.
- (5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (1970 Code, § 5-302)

9-303. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the board of mayor and aldermen if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1970 Code, § 5-303)

9-304. Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any policeman or person solicited. (1970 Code, § 5-304)

CHAPTER 4

TAXICABS¹

SECTION

- 9-401. Taxicab permit and privilege license required.
- 9-402. Requirements as to application and hearing.
- 9-403. Liability insurance or bond required.
- 9-404. Revocation or suspension of permit.
- 9-405. Mechanical condition of vehicles.
- 9-406. Cleanliness of vehicles.
- 9-407. Inspection of vehicles.
- 9-408. License and permit required for drivers.
- 9-409. Qualifications for driver's permit.
- 9-410. Revocation or suspension of driver's permit.
- 9-411. Drivers not to solicit business.
- 9-412. Parking restricted.
- 9-413. Drivers to use direct routes.
- 9-414. Taxicabs not to be used for illegal purposes.
- 9-415. Miscellaneous prohibited conduct by drivers.
- 9-416. Transportation of more than one passenger at the same time.

9-401. Taxicab permit and privilege license required. It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a taxicab permit from the municipality and has a currently effective privilege license. (1970 Code, § 5-401)

9-402. Requirements as to application and hearing. No person shall be eligible to apply for a taxicab permit if he has a bad character or has been convicted of a felony within the last ten (10) years. Applications for taxicab permits shall be made under oath and in writing to the board of mayor and aldermen. The application shall state the name and address of the applicant, the name and address of the proposed place of business, the number of cabs the applicant desires to operate, the makes and models of said cabs, and such other pertinent information as the board of mayor and aldermen may require.² The application shall be accompanied by at least two (2) affidavits of reputable local citizens attesting to the good character and reputation of the applicant. Within ten (10) days after receipt of an application the board of mayor and aldermen shall make a thorough investigation of the applicant and determine if there is

¹Municipal code reference
Privilege taxes: title 5.

²Charter reference: § 17.

a public need for additional taxicab services. The board of mayor and aldermen shall thereupon hold a public hearing at which time witnesses for and against the granting of the permit shall be heard. In deciding whether or not to grant the permit the board of mayor and aldermen shall consider the public need for additional service, the increased traffic congestion, parking space requirements, and whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such an additional permit. Those persons already operating taxicabs when this code is adopted shall not be required to make applications under this section but shall be required to comply with all of the other provisions hereof. (1970 Code, § 5-402)

9-403. Liability insurance or bond required. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy for each vehicle authorized in the amount equal to that required by the state financial responsibility law as set out in Tennessee Code Annotated, title 55, chapter 12. The insurance policy required by this section shall contain a provision that it shall not be cancelled except after at least twenty (20) days' written notice is given by the insurer to both the insured and the recorder of the municipality. (1970 Code, § 5-403)

9-404. Revocation or suspension of permit. The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab permit for misrepresentations or false statements made in the application therefor or for traffic violations or violations of this chapter by the taxicab owner or any driver. (1970 Code, § 5-404)

9-405. Mechanical condition of vehicles. It shall be unlawful for any person to operate any taxicab in the municipality unless it is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and rear vision mirror, all of which shall conform to the requirements of state motor vehicle law. Each taxicab shall be equipped with a handle or latch or other opening device attached to each door of the passenger compartment so that such doors may be operated by the passenger from the inside of the taxicab without the intervention or assistance of the driver. The motor and all mechanical parts shall be kept in such condition or repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (1970 Code, § 5-405)

9-406. Cleanliness of vehicles. All taxicabs operated in the municipality shall, at all times, be kept in a reasonably clean and sanitary condition. They shall be thoroughly swept and dusted at least once each day. At least once every week they shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (1970 Code, § 5-406)

9-407. Inspection of vehicles. All taxicabs shall be inspected at least semiannually by the chief of police to insure that they comply with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. (1970 Code, § 5-407)

9-408. License and permit required for drivers. No person shall drive a taxicab unless he is in possession of a state special chauffeur's license and a taxicab driver's permit issued by the recorder. (1970 Code, § 5-408)

9-409. Qualifications for driver's permit. No person shall be issued a taxicab driver's permit unless he complies with the following to the satisfaction of the board of mayor and aldermen:

- (1) Makes written application to the board of mayor and aldermen.
- (2) Is at least eighteen (18) years of age and holds a state special chauffeur's license.
- (3) Undergoes an examination by a physician and is found to be of sound physique, with good eyesight and hearing and not subject to epilepsy, vertigo, heart trouble or any other infirmity of body or mind which might render him unfit for the safe operation of a public vehicle.
- (4) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.
- (5) Produces affidavits of good character from two (2) reputable citizens of the municipality who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.
- (6) Has not been convicted of a felony, drunk driving,¹ driving under the influence of an intoxicant or drug, or of frequent minor traffic offenses.
- (7) Is familiar with the state and local traffic laws. (1970 Code, § 5-409)

9-410. Revocation or suspension of driver's permit. The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab driver's permit for violation of traffic regulations, for violation of this chapter, or when the driver ceases to possess the qualifications as prescribed in § 9-409. (1970 Code, § 5-410)

9-411. Drivers not to solicit business. All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising upon the streets of the municipality for the purpose of obtaining patronage for their cabs. (1970 Code, § 5-411)

¹Charter reference: § 17.

9-412. Parking restricted. It shall be unlawful to park any taxicab on any street except in such places as have been specifically designated and marked by the municipality for the use of taxicabs. It is provided, however, that taxicabs may stop upon any street for the purpose of picking up or discharging passengers if such stops are made in such manner as not to unreasonably interfere with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (1970 Code, § 5-412)

9-413. Drivers to use direct routes. Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (1970 Code, § 5-413)

9-414. Taxicabs not to be used for illegal purposes. No taxicab shall be used for or in the commission of any illegal act, business, or purpose. (1970 Code, § 5-414)

9-415. Miscellaneous prohibited conduct by drivers. It shall be unlawful for any taxicab driver, while on duty, to be under the influence of, or to drink any intoxicating beverage or beer; to use profane or obscene language; to shout or call to prospective passengers; to unnecessarily blow the automobile horn; or to otherwise disturb the peace, quiet and tranquility of the municipality in any way. (1970 Code, § 5-415)

9-416. Transportation of more than one passenger at the same time. No person shall be admitted to a taxicab already occupied by a passenger without the consent of such other passenger. (1970 Code, § 5-416)

CHAPTER 5

POOL ROOMS¹

SECTION

9-501. Prohibited in residential areas.

9-502. Hours of operation regulated.

9-503. Minors to be kept out; exception.

9-501. Prohibited in residential areas. It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire on any premises located in any block where fifty percent (50%) or more of the land is used or zoned for residential purposes. (1970 Code, § 5-501)

9-502. Hours of operation regulated. It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire except on the days and during the hours as follows:

<u>DAYS OF WEEK</u>	<u>PERMITTED HOURS OF OPERATION</u>
Mondays	6:00 A.M. - 11:00 P.M.
Tuesdays	6:00 A.M. - 11:00 P.M.
Wednesdays	6:00 A.M. - 11:00 P.M.
Thursdays	6:00 A.M. - 11:00 P.M.
Fridays	6:00 A.M. - 12:00 midnight
Saturdays	6:00 A.M. - 12:00 midnight
Sundays	1:00 P.M. - 11:00 P.M.

It shall be conclusively presumed that a person is conducting and operating pool tables or billiard tables if persons other than the owner, operator or their employees are in the building or place during hours not herein permitted. Any person who conducts or operates a place where pool tables or billiard tables are kept for public use or hire shall shut and lock the doors to the premises and have all patrons expelled therefrom by the daily closing hour as herein established. (1970 Code, § 5-502)

¹Charter reference: § 16.
Municipal code reference
Privilege taxes: title 5.

9-503. Minors to be kept out; exception. It shall be unlawful for any person engaged regularly, or otherwise, in keeping billiard, bagatelle, or pool rooms or tables, their employees, agents, servants, or other persons for them, knowingly to permit any person under the age of eighteen (18) years to play on said tables at any game of billiards, bagatelle, pool, or other games requiring the use of cue and balls, without first having obtained the written consent of the father and mother of such minor, if living; if the father is dead, then the mother, guardian, or other person having legal control of such minor; or if the minor be in attendance as a student at some literary institution, then the written consent of the principal or person in charge of such school; provided that this section shall not apply to the use of billiards, bagatelle, and pool tables in private residences. (1970 Code, § 5-503)

CHAPTER 6

CABLE TELEVISION

SECTION

9-601. To be furnished under franchise.

9-601. To be furnished under franchise. Cable television service shall be furnished to the City of McEwen and its inhabitants under franchise as the board of mayor and aldermen shall grant. The rights, powers, duties and obligations of the City of McEwen and its inhabitants and the grantee of the franchise shall be clearly stated in the franchise agreement which shall be binding upon the parties concerned.¹

¹For complete details relating to the cable television franchise agreement see Ords. #124, 185, 193, and 194 in the office of the city recorder.

CHAPTER 7**CITY OF McEWEN CABLE TELEVISION CODE OF 1982****SECTION**

- 9-701. Short title.
- 9-702. Definitions.
- 9-703. Grant of exclusive authority.
- 9-704. Compliance with applicable laws and ordinances.
- 9-705. Area of franchise coverage.
- 9-706. Regulation by other agency.
- 9-707. Liability and indemnification.
- 9-708. Color TV.
- 9-709. Signal quality requirements.
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- 9-715. Other services required.
- 9-716. Other business activities.
- 9-717. Safety requirements.
- 9-718. Amendments and supplemental agreements.
- 9-719. Conditions of street occupancy.
- 9-720. Preferential or discriminatory practices prohibited.
- 9-721. Removal of facilities upon request.
- 9-722. Transfer of franchise.
- 9-723. Change of control of company.
- 9-724. Filings and communications with regulatory agency.
- 9-725. City rights and the franchise.
- 9-726. Maps, plats and reports.
- 9-727. Payment to the city.
- 9-728. Forfeiture of franchise.
- 9-729. City's right of intervention.
- 9-730. Further agreement and waiver by company.
- 9-731. Duration and acceptance of franchise.
- 9-732. Rates and charges.
- 9-733. Procedure for granting of a franchise.

9-701. Short title. This chapter shall be known and may be cited as the "City of McEwen Cable Television Code of 1982" (hereinafter called the "code"). (1970 Code, § 5-601)

9-702. Definitions. For the purpose of this code the following terms, phrases and words shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include plural number. The word "shall" is always mandatory and not merely directory.

(1) "City" is the City of McEwen, Tennessee, a municipal corporation incorporated under the name and style of the Board of Mayor and Aldermen of McEwen.

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

(3) "Franchise" is the rights granted to the company by the board of mayor and aldermen of the city under the terms of this code and the agreement thereby entered into by and between the city and the company according to the terms of this code.

(4) "Board" is the board of mayor and aldermen of the city.

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

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

(7) "Corporate limits" shall include all areas lying within the corporation boundaries or limits of the city as now exist or as from time-to-time increased by annexation or other legal methods.

(8) "Federal Communications Commission" or "FCC" is the federal commission or agency created pursuant to the acts of congress.

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

(10) "Subscriber" or "customer" shall mean any person who has paid to the company the prescribed charges for the services provided by the company pursuant to the franchise.

(11) "Distant signals channel" means the channel or channels on the cable system designated to carry signals from stations located outside any mandatory carriage area as defined by the FCC. (1970 Code, § 5-602)

9-703. Grant of exclusive authority. (1) The city shall have the power by ordinance of the board to grant to the company, subject to the right of amendment as hereinafter provided, the right and privilege under this code to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof and additions thereto, in the corporate

limits, such poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the city of a cable system for the interception, sale, and distribution of television and radio signals and to operate in the city a cable system for the inception, sale and distribution of television and radio signals, television energy and other incidental services, including background music and closed circuit television and programs recorded on film, television tape or otherwise, original productions, or signals from the subscriber back to any other central source, all upon the limitations, terms, and conditions contained in this code, as the same may be from time-to-time amended by the board.

(2) The right to use and occupy said streets, alleys, public ways and places for the purposes above set forth in § 9-703(1) shall be exclusive to the company when granted by the city. (1970 Code, § 5-603)

9-704. Compliance with applicable laws and ordinances. The company, at all times during the life of the franchise, shall be subject to all lawful exercise of the police power by the city and to such reasonable regulations under this code as the city shall hereafter by resolution or ordinance provide. Unless otherwise prohibited by state or federal law, or, where jurisdiction has been or shall be conferred upon a state or federal commission, board or body, the city reserves the right by ordinance or resolution to regulate such cable system as to pole attachment fees, if any; rates and charges to be paid by the subscribers for the service; the quality of service to be provided subscribers; the rate of construction of facilities so as to serve the territorial area of the franchise; to promulgate rules and regulations and necessary other supervisory procedures to assure prompt completion of the cable system and to provide service for all citizens of the city wherever located; to set a schedule of construction that will attain the said completion of such cable system; and to adopt such other rules and regulations it may now or hereafter lawfully impose in keeping with and not in conflict with applicable state law, or the lawful rules and/or regulations heretofore or hereafter adopted by any federal commission, board or body and/or any lawful state rules and/or regulations lawfully adopted by any state commission, board or body. (1970 Code, § 5-604)

9-705. Area of franchise coverage. The franchise relates to the corporate limits of the city. (1970 Code, § 5-605)

9-706. Regulation by other agency. The company, its successors and assigns, and the cable system which it or its successors or assigns operate, shall be subject to lawful regulations heretofore or hereafter adopted by the Federal Communications Commission and made applicable to the company and should the company now be or hereafter become subject to the jurisdiction of any other commission then also to the lawful rules and regulations adopted by such commission and also to the lawful rules and regulations adopted by any similar

federal commission or state regulatory body, having jurisdiction. If the company, its successors or assigns, shall fail to comply with any federal and/or state statute, rule, regulation, order or condition lawfully required or imposed under federal law by any federal regulatory body and/or any rule, regulation, order or condition lawfully required or imposed by any state regulatory body and/or any rule, regulation, order or condition lawfully required or imposed by the city and/or any valid applicable ordinance of the city, then the city shall have the right to terminate or cancel the franchise after written notice to the company to correct such failure or default and such failure or default shall have continued for a period of time specified in such notice, but not less than thirty (30) days. (1970 Code, § 5-606)

9-707. Liability and indemnification. (1) The company shall pay all damages and penalties that the city may legally be required to pay as a result of the city granting the franchise or any operation hereunder. Such damages or penalty shall include damages arising out of the installation, operation or maintenance of the cable system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by the franchise.

(2) The company shall pay all expenses incurred by the city in defending itself with regard to all damages and penalties mentioned in § 9-707(1) above. Such expenses shall include all expenses, including attorney's fees of city, and shall also include the reasonable value of any services rendered by the city attorney or any employees of the city.

(3) The company shall maintain throughout the term of the franchise, comprehensive all-risks general liability insurance insuring the city and the company with regard to all damages mentioned § 9-707(1) and § 9-707(2) above in the minimum amount of \$300,000 for all risks.

(4) The company shall maintain at its own cost until the construction of the cable system has been completed pursuant to the franchise a performance bond in favor of the city, written by a surety company to be approved by the board or its designee, in a form which shall be approved by the city attorney, in a company qualified to do business in the State of Tennessee in a penal sum of \$50,000.00 conditioned that the company shall well and truly observe, fulfill and perform each term and condition of any franchise granted to it. Said bond shall be kept in effect during such required time and on file with the city recorder of city.

(5) Said insurance policy or policies obtained by the company in compliance with this section must at all times be kept in full force and effect and such insurance policy or policies along with written evidence of payment of the required premiums, shall be filed and maintained with the city recorder of city at all times during the term of the franchise.

(6) No policy or bond shall be in any manner altered, changed or substituted until at least thirty (30) days prior notice in writing shall have been

given to the city by the company and/or its insurance and/or bonding company. (1970 Code, § 5-607)

9-708. Color TV. The facilities used by the company shall be capable of distributing color television signals, and when the signals the company distributes are received in color they shall be distributed to subscribers in color. (1970 Code, § 5-608)

9-709. Signal quality requirements. The company shall comply with the standard required by the Federal Communications Commission as time-to-time amended and further the company shall:

(1) Deliver a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production television sets in good repair, and deliver a picture as good as the state of the art are from time-to-time allows; provided, however, that nothing herein shall prohibit the use of tape for cable casting on public access and educational channels.

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

(3) Limit failures to a minimum by locating and correcting malfunctions properly and promptly, but in no event longer than seventy-two (72) hours after notice unless prevented by an act of God.

(4) Demonstrate by instruments to city, or its designee, that a signal of adequate strength and quality is being delivered. (1970 Code, § 5-609)

9-710. Operation and maintenance of system. (1) The company shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall occur during period of minimum use of cable system.

(2) The company shall maintain an office in Humphreys County, Tennessee which shall be open during all usual business hours, have a listed telephone and be so operated that complaints and requests for repairs or adjustments may be received at any time when any television signals are being broadcast. The company shall respond to all service calls within twenty-four (24) hours and correct malfunctions as promptly as possible, but in all events within seventy-two (72) hours after notice thereof unless prevented by an act of God. For that purpose, the company shall maintain a competent staff of employees sufficient to provide adequate and prompt service to its subscribers. The company shall keep a record of all complaints from subscribers identifying the subscriber, his address, location, date of complaint, and disposition of complaint.

(3) The company shall extend its cable television system throughout the city as rapidly as practicable. Within one (1) year from the latest date of

either the issuance or any certificate of compliance by the Federal Communications Commission or the necessary agreements with utility companies pertaining to pole usage and the preparation by the utility companies of their pole plans for the use by the company, the cable television system of company shall be capable of providing basic service to every dwelling unit within the corporate limits within sixty (60) days of a person making an application for service.

(4) The city reserves the right by ordinance or resolution to set up a system and provide personnel to regulate the actions of the company in the performance of its duty and responsibilities provided in this code and the franchise. (1970 Code, § 5-610)

9-711. Carriage of signals. The company shall receive and distribute television signals which are disseminated to the general public by broadcasting stations licensed by the Federal Communications Commission, and shall distribute such other signals authorized under this code or permitted under FCC regulations. All FCC regulations shall be observed regarding the carriage of the programming of any existing or future television broadcasting station which covers the city including federal rules and regulations regarding the picking up of distant or other signals. The company shall carry all television stations reasonably broadcasting in the city and also such distant signal channel stations which the company elects to carry under FCC regulations now or hereafter in effect. (1970 Code, § 5-611)

9-712. Program alternation. All programs of broadcasting stations carried by the company shall be carried in their entirety as received with announcements and advertisements and without additions or deletions except as may be allowed by the FCC or other regulatory agency, or as otherwise lawfully directed by the city. (1970 Code, § 5-612)

9-713. Commencement of construction. Within sixty (60) days from the effective date of the franchise the company will apply for all necessary utility permits, private easements, and FCC authorization and shall begin engineering and construction of the cable system. (1970 Code, § 5-613)

9-714. Conformity with superior authority. Nothing herein shall be enforced where it is in conflict with any lawful rule, regulation or order of any federal commission, board or body or any state commission, board or body, or in conflict with any federal or state statute. In the event of such conflict, the provisions hereof shall be considered as amended by such lawful rule, regulation or order of said federal commission, board or body or state commission, board or body or federal or state statutes and the same shall be enforced as so amended. (1970 Code, § 5-614)

9-715. Other services required. (1) In the event the company shall at any time institute and originate any local programming then the company shall provide, without charge and subject to the rules and regulations of the Federal Communications Commission, public emergency broadcast capabilities whereby the city can interrupt service on a designated channel in order to make such public emergency broadcasts as it deems necessary.

(2) The cable system shall be designed for two-way capability; provided however, the company shall expand the channel capacity of the cable system to fulfill the needs of its subscribers in the manner prescribed by the FCC. (1970 Code, § 5-615)

9-716. Other business activities. (1) The company shall not engage in the business of selling television receivers, radio receivers or accessories within the city during the term of the franchise.

(2) The franchise shall authorize only the operation of a cable system as provided for herein, and does not take the place of any other franchise, license or permit which might be required by law of the company. (1970 Code, § 5-616)

9-717. Safety requirements. (1) The company shall at all times employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries and nuisances to the public.

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

(3) All structures and all lines, equipment and connections of the company in, over, under and upon the streets, sidewalks, alleys and public ways or places of the city, wherever situated or located, shall at all times be kept and maintained in a safe, suitable and substantial condition, and in good order and repair by the company.

(4) The company shall maintain a force of one or more resident agents or employees within Humphreys County, Tennessee at all times and shall have sufficient employees to provide safe, adequate and prompt service for its facilities. (1970 Code, § 5-617)

9-718. Amendments and supplemental agreements. It shall be the policy of the city to amend this code, upon application of the company, when necessary, to enable the company to take advantage of any development or developments in the field of transmission of television and radio signals which will afford it an opportunity to more efficiently, effectively or economically serve its subscribers. Provided, however, that this section shall not be construed to require the city to make any amendment or to prohibit it from unilaterally changing its policy stated herein. (1970 Code, § 5-618)

9-719. Conditions of street occupancy. (1) All transmissions and distribution structures, lines and equipment erected or installed by the company within the city shall be so located or installed as to cause a minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

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

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

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

(5) The company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public ways and places in the city so as to prevent the branches of such trees from coming in contact with the wires and cables of the company, except that at the option of the city said trimming may be done by it or under its supervision and direction at the expense of the company. (1970 Code, § 5-619)

9-720. Preferential or discriminatory practices prohibited. The company shall not, as to rate, charges, service, service facilities, rules or regulations or in any other respect, make or grant any undue preference or advantage to any person in the same class, nor subject any person in the same class to any prejudice or disadvantage. The company shall not discriminate in its employment policies and practices with respect to race, age, creed, or sex, and shall permit minority citizens an opportunity to apply for employment and that training and opportunities for advancement and promotion without such discrimination. (1970 Code, § 5-620)

9-721. Removal of facilities upon request. Upon termination of service to any subscriber, the company shall promptly remove all of its facilities and equipment from the premises of such subscriber upon his request. (1970 Code, § 5-621)

9-722. Transfer of franchise. The company shall not transfer the franchise to any other person without prior approval of the city. (1970 Code, § 5-622)

9-723. Change of control of company. Prior approval of the board shall be required where the ownership or control of more than 51% of the right of control of the company is acquired by a person or group of persons acting in concert, none of whom already own or control 51% or more of such right of control, singularly or collectively. Any such acquisition occurring without prior approval of the board shall constitute a violation of the franchise and a violation of this code; provided, however, that the company shall at all times be permitted to assign or transfer any interest in its profits or losses to any third party so long as the control of the company is not so transferred. (1970 Code, § 5-623)

9-724. Filings and communications with regulatory agency. Copies of all petitions, applications and communications submitted by the company to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency, having jurisdiction in respect to any matters affecting the cable system, shall also be submitted simultaneously to the city. (1970 Code, § 5-624)

9-725. City rights and the franchise. (1) The right is hereby reserved to the city to adopt, in addition to the provisions contained in this code, and in any other existing applicable ordinances, or sections of the McEwen Municipal Code, such additional regulations as it shall find necessary in the exercise of the police powers; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

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

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

(4) The city shall have the right to inspect all construction or installation work performed subject to the provisions of the franchise and of this code and make such other inspections as it shall find necessary to insure compliance with the terms of or use of the cable system installed or constructed

pursuant to this code and the company shall comply with all applicable provisions of the McEwen Municipal Code as heretofore adopted or hereafter amended, and all other codes including, but not limited to building, electrical and others, as may be amended.

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

(6) After the expiration of the term for which the franchise may be granted, or after its termination and cancellation, as provided for herein, the city shall have the right to determine whether the company shall continue to operate and maintain the cable system pending the decision of the city as to the future maintenance and operation of such system. (1970 Code, § 5-625)

9-726. Maps, plats and reports. (1) The company shall file with the city recorder a true and accurate map or plat of all existing and proposed installation of cable, wires and facilities of the cable system.

(2) The company shall file annually with the board, or its designee, not later than ninety (90) days after the end of its fiscal year, a copy of its financial report, income statement applicable to the operations within the city during the preceding twelve (12) months period, a balance sheet, and a statement of its properties devoted to its operations within the city by categories, giving its investment in such properties on the basis of original costs less accrued depreciation. These reports shall be prepared or approved by a certified public accountant and there shall be submitted along with them such other reasonable information as the board shall request with respect to the properties and expenses of the company related to its cable system operations within the city.

(3) The company shall at all times keep on file with the city recorder a current list of its partners, stockholders, officers, directors and bondholders. (1970 Code, § 5-626)

9-727. Payment to the city. The company shall pay to the city an amount equal to 1% of its gross subscriber revenues received by it during its preceding fiscal year; said payment shall be made within ninety (90) days after the end of its fiscal year. The said franchise payment shall be in addition to and not in lieu of any ad valorem taxes or business taxes or business taxes assessed with respect to the real or personal property of the company. (1970 Code, § 5-627)

9-728. Forfeiture of franchise. (1) In addition to all other rights and powers appurtenant to the city by virtue of this code or otherwise, the city

reserves the right to terminate and cancel the franchise and all rights and privileges of the company as a result thereof in the event that the company:

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

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

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

(d) Fails to begin construction under the franchise within the time provided herein or by the terms hereof and fails to complete construction so as to provide service throughout the city within the time specified.

(2) Any such termination and cancellation shall be by ordinance duly adopted by the board after thirty (30) days notice to the company and the failure of the company to correct the violation, insolvency, or bankruptcy, or its failure to pay its debts or to secure reversal of a cease and desist order, or its failure to complete construction under the franchise. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact shall be made by the board. Provided, however, that before the franchise may be terminated and cancelled as provided herein, the company must be provided with an opportunity to be heard before the board; and further, that such finding of fact as made by the board shall be subject to review by a court or courts of appropriate jurisdiction. (1970 Code, § 5-628)

9-729. City's right of intervention. The company shall not oppose intervention by the city in any suit or proceeding to which the company is a party. (1970 Code, § 5-629)

9-730. Further agreement and waiver by company. The company shall abide by all provisions of the franchise and shall not at any future time set up as against the city or the board the claim that the provisions of this code or the franchise are unreasonable, arbitrary, or void. (1970 Code, § 5-630)

9-731. Duration and acceptance of franchise. The franchise and the rights, privileges and authority thereby granted, shall take effect and be in force from and after the date of the grant of the franchise by the board, as provided

herein, and shall continue to be in force and effect for a term of fifteen (15) years. (1970 Code, § 5-631)

9-732. Rates and charges. (1) The rates and charges for television and radio signals distributed and other services provided by the company under the franchise shall be fair and reasonable and no higher than necessary to meet all costs of services (assuming efficient and economical management) and to provide a fair rate of return on the capital investment of the company.

(2) The board shall have the power, authority, and right to cause the rates and charges of the company to conform to the provisions of the § 9-732(1) above set forth, and for this purpose, it may approve or deny rate increases or cause reductions in such rates and charges when it determines that in the absence of such actions on its part, the rates and charges or proposed increased rates or charges of the company will not conform to the above section, and provided that such determination by the board shall be final and conclusive. However, no action shall be taken by the board with respect to the rates and charges under this section until the company shall have been given notice thereof and an opportunity to be heard by the board with regard thereto.

(3) As a condition for the granting of the franchise and the continuance thereof the company shall file with the city on or before December 1 of each year a statement or schedule of its proposed rates and charges to its subscribers during the succeeding calendar year and which shall be a continuing part of and condition of the franchise and which schedule of rates and charges shall not be changed within one (1) year from the effective date thereof without prior approval by the board. (1970 Code, § 5-632)

9-733. Procedure for granting of a franchise. The granting by the board on behalf of the city of the franchise under this code shall be in accordance with the following procedures:

(1) At such time as the board shall direct by resolution the mayor of the city shall cause to be given by public advertisement in a newspaper published in Humphreys County, Tennessee, notice that the board is soliciting from interested persons bids or proposals for the acquisition of the franchise under this code. Such notice shall require that such bids be submitted in writing within a time as therein stated and which bids shall set forth the following:

(a) The name, address, ownership, background, experience in the business and other pertinent information of the bidder; and

(b) The agreement by the bidder that it accepts and agrees to be bound by the provisions of this code and that its bid constitutes an offer of contract that when accepted by award of the franchise shall be a lawfully binding contractual arrangement between the bidder and the city; and

(c) The proposal of the bidder of the minimum time it reasonably expects and the maximum time by which it shall have constructed a cable system in the city; and

(d) The type or kind of cable system it proposes (but of not less a quality than as required by this code); and

(e) The rates and charges that the bidder proposes to charge during the first calendar year of its operations; and

(f) Exhibit a copy of the insurance policies and bonds as required under this code; and

(g) Be executed by an authorized officer of the bidder and state the time during which such bid shall be irrevocable.

(2) The board shall have the right to waive any irregularity of any bid and shall have the right to reject any and all bids or cause a rebidding.

(3) If deemed necessary by the board it shall have the right to conduct public hearings upon the bid or bids received.

(4) At such time as the board shall determine, but not longer than sixty (60) days from the date that the bidding shall cease, the board shall award the franchise to the best bidder as determined solely by the board by the adoption of a specific grant of franchise ordinance that accepts the bid and which by such acceptance shall create a binding contract between the city and the company. (1970 Code, § 5-633)

CHAPTER 8

TELECOMMUNICATIONS REGULATIONS

SECTION

- 9-801. Purpose.
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- 9-821. Privacy of customer information.
- 9-822. Annexation or deannexation.
- 9-823. Unauthorized use of public rights-of-way.

9-801. Purpose. The purpose of this regulation is to establish a competitively neutral policy in permitting use of public rights-of-way by providers of telecommunications services by:

- (1) Permitting non-discriminatory access thereto by such providers;
- (2) By managing such public rights-of-way in ways to minimize the impact and cost to citizens resulting from the placement of telecommunications facilities within those rights-of-way;
- (3) By obtaining fair and reasonable compensation for the commercial use of the public rights-of-way through collection of rents;
- (4) By promoting competition among providers to encourage universal availability of advanced telecommunications services to all residents and businesses; and

(5) By minimizing congestion, inconvenience, visual impact and other adverse effects that such use may have on the public rights-of-way. (as added by Ord. #188, Aug. 1997)

9-802. Applicable scope. This regulation applies to all providers of telecommunications services under Titles II ("Title II") and VI ("Title VI") of the Federal Communications Act of 1934 as amended (47 U.S.C. 201 *et seq.*), excluding services provided solely by means of wireless transmission. This regulation does not exempt providers of cable services nor open video systems services from the requirements of Title VI and applicable Federal Communications Commission ("FCC") rules and regulations. Any requirements and obligations imposed by this regulation are in addition to any requirements imposed by Title VI or by state law. (as added by Ord. #188, Aug. 1997)

9-803. Definitions. (1) "Applicant." A person filing an application seeking permission to use the public rights-of-way to provide telecommunications services within the city, whether by means of owned facilities or by means of capacity obtained from another provider.

(2) "City." The City of McEwen and its incorporated territory.

(3) "Chief administrative officer." The mayor of the city.

(4) "City requirements." All laws, rules, regulations, policies and directives of general application of the city in effect at any time.

(5) "Gross revenue." All revenues received by a provider for telecommunications services furnished within the city; provided, however, revenues received for use of network capacity, switched or unswitched access, and sale of unbundled elements under the Federal Communication Act of 1934 and from re-sellers of telecommunications services in compliance with this regulation are not included. It also does not include revenue which is uncollectible from customers ("bad debts") and end-user taxes collected from customers.

(6) "Municipal permit." The right granted by the city to use the public rights-of-way to provide telecommunications services to the public or to other providers.

(7) "Person." A natural person or a firm, proprietorship, partnership, association, trust, estate, corporation, company or any business or commercial organization or enterprise of any kind.

(8) "Provider." A person operating or using a telecommunications network providing telecommunications services in the city.

(9) "Public rights-of-way." The surface, air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge or similar property in which the city holds any property interest or exercises any rights of management or control and which may be used for the installation and maintenance of a telecommunications network.

(10) "Telecommunications network" All facilities placed in the public rights-of-way used to provide telecommunications services.

(11) "Telecommunications services." All transmissions of information between or among points specified by the user (whether by voice, video or other data transmission), without change in content of the information sent and received, where such transmissions are accomplished through a telecommunications network. Telecommunications services includes all ancillary or adjunct switching services and signal conversions rendered as a function of underlying transmission services, but excludes long distance transmissions (inter-LATA and intra-LATA toll transmissions). Telecommunications services also includes all content or value-added services rendered in conjunction with transmission services. (as added by Ord. #188, Aug. 1997)

9-804. Municipal permit required. No person shall deliver telecommunications services using any portion of the public rights of way of the city by means of a telecommunications network unless the person obtains and holds a valid municipal permit. (as added by Ord. #188, Aug. 1997)

9-805. Application to provide telecommunications services using the public rights-of-way. (1) Application for a municipal permit shall be submitted to the chief administrative officer in a form prescribed by him and shall describe all services the applicant proposes to provide. It shall outline the proposed telecommunication network and identify the uses of and potential impact on the public rights-of-way.

(2) The chief administrative officer shall review applications and grant or deny municipal permits. He shall submit a report annually to the board of mayor and aldermen analyzing whether requirements imposed by this regulation result in

(a) Anti-competitive effects in the market for telecommunications services in the city as defined by federal law or

(b) Discrimination in favor of or against a provider. (as added by Ord. #188, Aug. 1997)

9-806. Municipal permit issuance. (1) If the chief administrative officer finds that an application meets the requirements of this regulation he shall issue a municipal permit to the applicant.

(2) The chief administrative officer shall complete all deliberations towards issuing a municipal permit and issue or a deny the same in writing within sixty (60) days of receipt of an application. The applicant shall respond to all reasonable information requests of the chief administrative officer during the consideration period. Any delays in providing information shall be documented in writing and any delays or refusals to furnish information by an

applicant shall be grounds for denial of a municipal permit. (as added by Ord. #188, Aug. 1997)

9-807. Petition for reconsideration. Granting, denying or terminating a municipal permit is an exercise of the municipal police power. A person whose application for a municipal permit is denied must petition the board of mayor and aldermen for reconsideration before seeking judicial remedy. The petition must be filed within forty-five (45) days of written denial of the application by the chief administrative officer. A petition for reconsideration is deemed denied if the board of mayor and aldermen do not act within forty-five (45) days after it is filed with the city recorder. (as added by Ord. #188, Aug. 1997)

9-808. Administration and enforcement. (1) The chief administrative officer shall administer this regulation and enforce compliance with municipal permits.

(2) Providers shall report all information required by the chief administrative officer, in the form and manner prescribed, which relates to the use of the public rights-of-way under a municipal permit.

(3) The chief administrative officer shall report to the board of mayor and aldermen any determination that a provider has failed to comply with this regulation. (as added by Ord. #188, Aug. 1997)

9-809. Compensation to city. (1) To compensate the city for the use and occupancy of the public rights-of-way, providers shall pay fees calculated as follows:

(a) Rights-of-way rental fees. Providers shall pay a 5% annual fee based on their gross revenues obtained from providing telecommunications services within the city.

(b) Non-monetary consideration. To the extent allowed by state and federal law, the city may include non-monetary compensation to be furnished by each provider. To the extent not expressly prohibited by applicable law, a provider may agree to furnish non-monetary consideration in the form of telecommunications services, telecommunications network capacity, conduit or other infrastructure, all valued at direct cost. A credit or offset for any non-monetary consideration received shall be applied to the annual rights-of-way rental fees of such provider. Form of non-monetary consideration and the credit amount shall be public information.

(c) Credit for cable television franchise fees and other contributions. Providers currently franchised by the city under the state and federal law and regulations to provide cable television service shall receive a credit against the annual rights-of-way rental fees for any cable television franchise fees paid by them to the city and for any other

monetary or non-monetary contributions to the city under an existing granted cable franchise.

(2) Providers may pass through to customers the municipal rights-of-way rental fees on a pro-rata basis at their discretion as permitted by state and federal law. The city does not require nor recommend a pass-through charge of the fee on a per line or customer basis. (as added by Ord. #188, Aug. 1997)

9-810. Remitting rental fees to the city. Providers shall remit the municipal rights-of-way rental fees on a quarterly basis. Payment shall be made on or before the 45th day following the close of each calendar quarter for which the payment is calculated. (as added by Ord. #188, Aug. 1997)

9-811. Audits. (1) On thirty (30) days notice, the chief administrative officer, or his designee, may audit a provider. Providers shall furnish information to demonstrate compliance with their municipal permits.

(2) Providers shall keep complete and accurate books of accounts and records of business and operations in accordance with generally accepted accounting principles for a period of five (5) years. If the FCC requires, providers shall use the system of accounts and the forms of books, accounts, records and memoranda prescribed in 47 CFR Part 32 or successor regulations. The city may examine providers books and records.

(3) Providers shall make available for examination, audit, review and copying, at city hall, upon reasonable written request, books and records, including papers, accounts, documents, maps and plans pertaining to their municipal permits granted under this regulation. Providers shall fully cooperate in making records available and otherwise assist examiners. Examiners shall not make copies of customer specific information. (as added by Ord. #188, Aug. 1997)

9-812. Transfers. (1) Municipal permits may not be transferred or assigned unless the chief administrative officer approves such transfers in writing.

(2) Change in control of a provider is a transfer requiring approval. A change of 25 percent or greater in the ownership of a provider establishes a rebuttable presumption of change in control.

(3) The transfer or attempt to transfer a municipal permit without approval of the chief administrative officer is grounds for revocation. If revoked all rights of the provider thereunder immediately cease.

(4) Providers may transfer their facilities to an affiliate or to another provider which holds a municipal permit. Providers transferring their facilities remain subject to all applicable obligations and provisions of the municipal permit unless the facilities are transferred to a provider holding a municipal permit.

(5) The chief administrative officer must act on requests for transfer of municipal permits within ninety (90) days of receipt of requests from providers. Requests for transfer of municipal permits not acted upon within ninety (90) days shall be deemed approved. (as added by Ord. #188, Aug. 1997)

9-813. Notices to the city. (1) Providers shall promptly notify the chief administrative officer of the details of all petitions, applications, written communications and reports submitted by provider to the FCC and the Tennessee Regulatory Authority relating to or affecting the use of the public rights-of-way and the telecommunications services authorized in a municipal permit. Providers shall furnish the chief administrative officer with copies of all documents upon request.

(2) If a provider asserts the confidential nature of any information, the chief administrative officer shall maintain the confidentiality of such information to the extent permitted by law. The chief administrative officer shall promptly notify a provider of requests for access to confidential information concerning that provider. (as added by Ord. #188, Aug. 1997)

9-814. Construction obligations. (1) Providers are subject to the municipal police power and other governmental powers and the rights of the city as a property owner under state and federal laws including the requirements for construction, expansion, reconstruction, maintenance or repair of facilities in the public rights-of-way.

(2) Providers shall place or locate facilities underground in accordance with any applicable requirements.

(3) Whenever requested, providers shall furnish the chief administrative officer with accurate and complete information relating to the construction, reconstruction, removal, maintenance, operation and repair of facilities performed by a provider in the public rights-of-way. If any information furnished is erroneous as to the location of facilities and reliance on this information results in construction delays or additional expenses, providers furnishing the erroneous information shall be liable for the cost of any delays and all additional expenses incurred by reason thereof. (as added by Ord. #188, Aug. 1997)

9-815. Joint facilities use. Providers may be required to allow attachment of another provider's facilities to its poles and conduits. (as added by Ord. #188, Aug. 1997)

9-816. Emergency orders or operations. (1) The chief administrative officer may declare an emergency and order removal or abatement of a provider's facilities. Upon written notice thereof, a provider shall remove facilities by the deadline established in the order. Providers and city officials shall cooperate to the maximum extent possible to assure continuity of service.

If a provider, after notice, fails or refuses to act, the city may remove or abate the facilities at the sole cost and expense of the provider.

(2) Except in an emergency, a provider may not excavate the pavement of a street or public right-of-way without first complying with all municipal requirements. (as added by Ord. #188, Aug. 1997)

9-817. As built plans and modifications. Within one hundred twenty (120) days of completion of each new facility segment, providers shall supply the city with a complete set of "as built" drawings for the segment in a format prescribed by the chief administrative officer. Providers must obtain approval before relocating facilities in the public rights-of-way. The city shall not unreasonably withhold its approval. Providers shall furnish revised maps, including additional facilities, on June 30 of each year to the chief administrative officer showing how new facilities connect to existing facilities. (as added by Ord. #188, Aug. 1997)

9-818. Conditions of rights-of-way occupancy. (1) In the exercise of its governmental functions, the city has first priority over all uses of public rights-of-way. The city reserves the right to lay sewer, water and other pipe lines, cables and conduits, to do underground and overhead work and attachment, to restructure or change facilities in, across, along, over or under a public street, alley or rights-of-way occupied by providers and to change any curb, sidewalk or the grade of any street.

(2) In case of conflict or interference between facilities of different providers, the provider whose facilities were first permitted shall have priority over a competing provider's use of the public rights-of-way.

(3) During the term of a municipal permit, if the city authorizes abutting landowners to occupy space under the surface of any public street, alley or right-of-way, that permission given to an abutting landowner shall be subject to the rights of providers. If the city closes or abandons a public right-of-way that contains a provider's facilities, the city shall convey the land or abandon the public rights-of-way subject to the rights granted in municipal permits.

(4) Upon written notice, at their expense, providers shall, temporarily or permanently, remove, relocate, change or alter the position of facilities that are in the public rights-of-way within one hundred twenty (120) days. The city shall give notice whenever it determines that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a city or other governmental entity public improvement in the public right-of-way. Provider are not prohibited from pursuing recovery of the cost of relocation or removal from private parties who initiate a request for relocation or removal.

(5) Providers holding municipal permits may trim trees in or over the rights-of-way for the safe and reliable operation, use and maintenance of its networks. All tree trimming shall be performed in accordance with standards

promulgated by the city. Tree trimming shall be done under the supervision of the city.

(6) Providers shall temporarily remove, raise or lower aerial facilities to permit the moving of houses or other bulky structure, upon written notice of no less than forty-eight (48) hours. The expense of such temporary rearrangement shall be paid by the party requesting and benefitting from the temporary rearrangement. Providers may require prepayment or prior posting of a bond from a party requesting a temporary move. (as added by Ord. #188, Aug. 1997)

9-819. Insurance requirements. Providers shall obtain and maintain insurance in amounts prescribed by the chief administrative officer. The insurance shall be issued by an insurance company licensed to do business in the State of Tennessee and which is acceptable to the chief administrative officer. Such insurance shall be maintained throughout the term a municipal permit is granted. Providers shall furnish proof of insurance at the time of issuance of a municipal permit. The city reserves the right to review the insurance requirements while a municipal permit is in effect and to reasonably adjust requirements for insurance coverage and limits when the chief administrative officer determines that changes in statutory law, court decisions or the claims history of the industry or with the provider require adjustment of the coverage. The city will accept some certificates of self-insurance in appropriate cases. (as added by Ord. #188, Aug. 1997)

9-820. Indemnity. (1) During the term of a municipal permit, providers are liable for the acts or omissions of persons acting for them, including affiliates, when such persons are involved, directly or indirectly, in the construction and installation of the providers' facilities. The acts or omissions of such persons shall be considered the acts or omissions of the providers for whom they are acting.

(2) Providers granted municipal permits shall provide to the chief administrative officer, in writing, a statement agreeing to defend, indemnify and hold the city harmless against all damages, costs, losses or expenses arising out of, incident to, concerning or resulting from the negligence or willful misconduct of the provider, the provider's agents, employees or subcontractors, in the performance of activities under a municipal permit. (as added by Ord. #188, Aug. 1997)

9-821. Privacy of customer information. Providers shall comply with state and federal laws regarding privacy of customer information. (as added by Ord. #188, Aug. 1997)

9-822. Annexation or deannexation. Within thirty (30) days following passage of action affecting the corporate boundaries of the city, the chief

administrative officer shall notify providers of such action and shall furnish maps of the affected area showing the new boundaries of the city. (as added by Ord. #188, Aug. 1997)

9-823. Unauthorized use of public rights-of-way. (1) No person shall use the public rights-of-way to provide telecommunications services without first securing a municipal permit from the city.

(2) Each unauthorized use of the public rights-of-way and each unauthorized placement of facilities constitutes a separate offense. Each day that a violation occurs constitutes a distinct and separate offense. (as added by Ord. #188, Aug. 1997)