

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

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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 falsely to 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. (1980 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.
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9-201. Permit required. It shall be unlawful for any peddler, canvasser, 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. (1980 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, nor to vendors who register with and pay a fee to the Antique Automobile Club of America to sell goods during the annual antique car show. The Palace Appreciation Day and RBS Parent Teacher Organization, the annual Healing Arts Festival. (1980 Code, § 5-202, as amended by Ord. #99-2, April 1999, and Ord. #99-9, Aug. 1999)

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

- (1) Name and physical description of applicant.

¹Municipal code reference
Privilege taxes: title 5.

(2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.

(3) A brief description of the nature of the business and the goods to be sold.

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

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

(6) 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 properly to evaluate 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, and, if so, 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 five dollars (\$5.00) shall be paid to the city to cover the cost of investigating the facts stated therein. (1980 Code, § 5-203)

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 clerk 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 clerk 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 clerk shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The city clerk shall keep a permanent record of all permits issued. (1980 Code, § 5-204)

9-205. Appeal. Any person aggrieved by the action of the chief of police and/or the city clerk in the denial of a permit shall have the right to appeal to the city council. 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. (1980 Code, § 5-205)

9-206. Bond. Every permittee shall file with the city clerk a surety bond running to the city 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 the City of Red Boiling Springs 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 city 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 city 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. (1980 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 city or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (1980 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. (1980 Code, § 5-208)

9-209. Exhibition of permit. Permittees are required to exhibit their permits at the request of any policeman or citizen. (1980 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. (1980 Code, § 5-210)

9-211. Revocation or suspension of permit. (1) Permits issued under the provisions of this chapter may be revoked by the city council, 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 clerk 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 it is reasonably necessary in the public interest, the mayor may suspend a permit pending the revocation hearing. (1980 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. (1980 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. (1980 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. (1) 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 clerk 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.

(2) Permits for charitable or religious solicitations within the city's corporate limits shall be issued on a first to apply basis, to be conducted on a particular day of the month by the requested charitable or religious organizations. All charitable or religious solicitation permits issued shall allow no more than eight (8) solicitors from the permittee to be within the streets at any one time. Road block participants must follow guidelines as set out by the Red Boiling Springs Police Department and signed by the organization. All solicitation shall take place at the intersection of Market Street and Hwy. 151 and only on Hwy. 56 at the intersection of Hwy. 52 and Hwy. 56, within the city's corporate limits. Only two (2) solicitations per month shall be allowed and only one (1) permit shall be issued per calendar year, per cause. However, that shall be no road blocks allowed on the Saturday following Labor Day. Any violation of this ordinance shall be subject to a fine not less than fifty dollars (\$50.00) per incident. (1980 Code, § 5-301, as amended by Ord. #06-7, Aug. 2006)

9-302. Prerequisites for a permit. The city clerk shall, upon application, 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. (1980 Code, § 5-302)

9-303. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the city council if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1980 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. (1980 Code, § 5-304)

CHAPTER 4

POOL ROOMS¹

SECTION

9-401. Prohibited in residential areas.

9-402. Hours of operation regulated.

9-403. Minors to be kept out; exception.

9-401. 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. (1980 Code, § 5-401)

9-402. 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 between the hours of 12:00 o'clock midnight on Saturday night and 1:00 P.M. on Sunday or between the hours of 6:00 P.M. on Sunday and 7:00 A.M. on Monday, or between the hours of 12:00 midnight on Monday, Tuesday, Wednesday, Thursday, and Friday nights and 7:00 A.M. the following morning. (1980 Code, § 5-402)

9-403. 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 written consent must be obtained from 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 must be obtained. This section shall not apply to the use of billiards, bagatelle, and pool tables in private residences. (1980 Code, § 5-403)

¹Municipal code reference
Privilege taxes: title 5.

CHAPTER 5

CABLE TELEVISION

SECTION

9-501. To be furnished under franchise.

9-501. To be furnished under franchise. Cable television service shall be furnished to the City of Red Boiling Springs and its inhabitants under franchise as the board of mayor and aldermen shall grant. The rights, powers, duties and obligations of the City of Red Boiling Springs 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. #102, 01-1, 04-7, and 05-06 in the office of the city clerk.

CHAPTER 6

CABLE TELEVISION FRANCHISE ORDINANCE

SECTION

- 9-601. Purpose.
- 9-602. Definitions.
- 9-603. Application fee.
- 9-604. Acceptance: effective date.
- 9-605. Terms of franchise.
- 9-606. Revocation of franchise and other penalties.
- 9-607. Transfer of cable television system.
- 9-608. Authority granted by the franchise.
- 9-609. Franchise fee.
- 9-610. Limitations of franchise.
- 9-611. Additional city rights in franchise.
- 9-612. Service area.
- 9-613. Time for providing service
- 9-614. Condition of use of streets.
- 9-615. System design and channel capacity.
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- 9-617. Service to government buildings.
- 9-618. Parental control devices.
- 9-619. Construction standards.
- 9-620. Operational standards and performance monitoring.
- 9-621. Rates and charges.
- 9-622. Rights of individuals.
- 9-623. Liability and indemnification.
- 9-624. Insurance.
- 9-625. Filing and communications with regulatory agencies.
- 9-626. Reports.
- 9-627. Franchise renewal.
- 9-628. Franchise required.
- 9-629. Unauthorized connections or modifications.
- 9-630. Notice.

9-601. Purpose. The City of Red Boiling Springs finds that the continued development of cable communication has the potential of having great benefit and impact upon the citizens of the city, because of the complex and rapidly changing technology associated with cable communications, the city further finds that the public convenience, safety and general welfare can best be served by establishing and maintaining regulatory powers which should be vested in the city or such city officials as the city shall designate. It is the intent of this ordinance and subsequent amendments to provide for and specify the means to

attain the best possible public interest and public purpose in these matters. Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the city's residents, but can provide additional services.

For these purposes, the following goals underlie the provisions contained herein:

(1) Where economically reasonable, cable television services should be made available to all city residents.

(2) The system should be capable of accommodating both the present and reasonably foreseeable future cable television needs of the citizens of the city. (as added by Ord. #05-5, Sept. 2005)

9-602. Definitions. Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the following meanings when used in this ordinance:

(1) "Cable television service." The provision of television reception, communications and/or entertainment services for direct or indirect compensation, or as otherwise provided by this ordinance, and distributing the same over a cable television system.

(2) "Cable television system." A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service to multiple subscribers within a community, not including a facility or combination of facilities that serves only to retransmit the television signals of one or more television broadcast stations; or a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such a facility or facilities use any public right-of-way public utility easement.

(3) "Channel." A portion of the electro-magnetic frequency spectrum (or any other means of transmission, including but not limited to optical fibers) which is capable of carrying the equivalent of one (1) six megahertz television broadcast signal and includes uses of all or any portion of such band of frequencies.

(4) "City." The City of Red Boiling Springs.

(5) "City council." The City Council of the City of Red Boiling Springs, State of Tennessee.

(6) "Commercial subscriber." All subscribers not defined as either residential or noncommercial.

(7) "FCC." The Federal Communications Commission.

(8) "Cable Act." The Cable Communications Policy Act 1984, as amended, 47 U.S.C. § 521 et seq.

(9) "Franchise." The nonexclusive rights granted pursuant to this ordinance to construct, operate, and maintain a cable television system along the public rights of way within the entire city. Any such authorization, in

whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the city as required by other ordinances and laws of the city.

(10) "Franchise agreement." A contract entered into between the city and the grantee pursuant to this ordinance, containing additional provisions of the franchise granted.

(11) "Grantee." The person, partnership, firm, or corporation to whom a franchise, as herein defined, is granted by the city council under this ordinance and the lawful successor, transferee or assignee of said person, firm, or corporation.

(12) "Gross annual receipts." The following types of revenue received by a grantee directly from the operations of a cable television system in the city: regular subscriber services fees, per channel pay services, leased channel revenues, converter and remote control rental revenues, late fees and advertising revenues.

(13) "Service area." The geographical areas within the incorporated limits of the city as now exist or hereafter are expanded.

(14) "Non-commercial." Any public, educational or governmental institution.

(15) "Person." Any individual, firm, partnership, association, corporation, or organization of any kind.

(16) "Residential subscriber." A subscriber who receives cable television service in a single family home or in an individual dwelling unit of a multiple dwelling, where the service is not to be utilized in connection with a business trade or a profession.

(17) "Street(s)." The surface of and the space above and below any publicly owned or maintained property or right-of-way, street, road, highway, freeway, land, path, alley, court, sidewalk, parkway, or drive, now or hereafter existing as such written the city.

(18) "Subscriber." Any person or entity lawfully receiving any portion of the cable television service of a grantee pursuant to this ordinance. (as added by Ord. #05-5, Sept. 2005)

9-603. Application fee. (1) Applicants for a new franchise hereunder shall pay an application fee to the City of Red Boiling Springs of two thousand five hundred dollars (\$2,500.00) which sum shall be due and payable to the city upon submission to the city of an application for a franchise or soon thereafter as demanded by the city clerk of the city. The application fee shall be nonrefundable and may be amended from time to time by the city council

(2) Applications for renewal of a franchise shall not be accompanied by a filing fee. The franchise fee collected by the city shall be used to cover the costs associated with a renewal application. (as added by Ord. #05-5, Sept. 2005)

9-604. Acceptance: effective date. (1) Within thirty (30) days after final action granting a franchise, which shall be done by ordinance of the city council, the grantee shall file with the city clerk a written acceptance acknowledged before a notary public of the conditions-required for the franchise. Such acceptance shall acknowledge that the grantee agrees to be bound by and to comply with the provisions of this ordinance, the franchise agreement (if any) and applicable law and shall be in such form and content as to be satisfactory to and approved by the city attorney. If such acceptance is not filed within said time, then the franchise so awarded may be deemed void and of no further force and effect and the offer of franchise so awarded to grantee may stand revoked, at the option of the city.

(2) Concurrently with the filing of the written acceptance, the grantee shall file with the city clerk the bond and insurance certificate required by this ordinance.

(3) The effective date of the franchise shall be the first day of the month next following the date on which the grantee files the acceptance, bond and insurance certificate as required herein; provided, however, if any of the material required to be filed with the acceptance or the acceptance itself is defective or fails to meet with approval, the franchise shall not be effective until such defect is cured, or such approval is obtained. (as added by Ord. #05-5, Sept. 2005)

9-605. Terms of franchise. The duration of a franchise granted pursuant to this ordinance shall not be more than fifteen (15) years from the effective date. (as added by Ord. #05-5, Sept. 2005)

9-606. Revocation of franchise and other penalties. (1) Subject to the provisions in this section, the city reserves the right to revoke, at any time, any franchise granted here under and rescind all rights and privileges associated therewith in the event that:

(a) Grantee has not substantially complied with a material provision of this ordinance, the franchise agreement, or any supplemental written agreement entered into by and between the city and the grantee; or

(b) Grantee has made a material false statement in the application for the franchise, knowing it to be false, or grantee commits a fraud in its conduct or relations under the franchise with the city; or

(c) Grantee becomes insolvent, or enters into receivership or liquidation, files for bankruptcy or assignment for benefit of creditors, or is unable to pay debts as they mature, unless grantee is in due process of contesting such debts; or

(d) Grantee fails to comply with any federal or state judgment arising directly from the exercise of grantee's rights under its franchise; or

(e) Grantee fails to comply or maintain in full force and effect the bond and insurance policies required by this ordinance; or

(f) Grantee assigns sells or transfers its title or interest in its franchise without the consent of the city council.

(2) In the event that the city shall make a preliminary decision to revoke a franchise granted hereunder, it shall give the grantee a minimum of sixty (60) days written notice of its intention to terminate and stipulate the cause. A public hearing shall be scheduled for the end of said sixty (60) day period. If during said period, the cause shall be cured to the satisfaction of the city, the city shall declare the notice to be null and void. If the cause is not cured to the satisfaction of the city, before the franchise may be terminated, the grantee must be provided with an opportunity to be heard before the city council in a public hearing in accordance with due process procedures. After the public hearing, if the city determines that the franchise should be terminated, it shall issue a written decision of its findings if fact and stating the specific grounds for termination. The decision to terminate a franchise shall be subject to judicial review as provided by law.

(3) Grantee shall not be declared in default or be subject to any sanction under provision of this ordinance in any case where the action justifying such sanction is without the grantee's knowledge or authorization or outside its control. (as added by Ord. #05-5, Sept. 2005)

9-607. Transfer of cable television system. (1) No transfer of control of the cable television system, other than a pro forma transfer to a parent or a wholly owned subsidiary corporation, or to a partnership with the same general partner as grantee, or hypothecation as the result of a commercial loan shall take place, whether by force or voluntary sale, lease, assignment, foreclosure, attachment, merger, or any other form of disposition, without prior notice to and approval by the City Council of the City of Red Boiling Springs, which approval shall not be unreasonably withheld. The notice shall include full identifying particulars of the proposed transaction. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into the qualifications of the prospective controlling party and the grantee shall assist the city in any such inquiry. The city shall have ninety (90) days from actual notice within which to approve or disapprove, by resolution, the proposed transfer of control. If the city fails to act within said (90) day period, the application for transfer control or assign the franchise shall be deemed to be granted.

(2) Approval of such transfer shall be expressly conditioned upon full compliance with the material terms of the franchise and this ordinance. The transferee shall agree in writing to comply with all provisions of this ordinance and the franchise agreement.

(3) For the purpose of this section, the term "control" is not limited to majority stock ownership, but includes actual working control in whatever

manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of affiliated persons of twenty five (25) percent of the voting shares of the grantee. (as added by Ord. #05-5, Sept. 2005)

9-608. Authority granted by the franchise. (1) The grantee of any franchise granted pursuant to the provisions of this ordinance shall, subject to the conditions and restrictions set out in this ordinance, be authorized to construct or have constructed, operate, and maintain a cable television system, and to engage in the business of providing cable television service in the city as defined herein and in the franchise and for that purpose to erect, install, construct, repair, replace, reconstruct and maintain such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the cable television system; provided, however, that before any pole, wire, or other thing mentioned above which is necessary and appurtenant to the cable television system is placed on or within any street, the required permits to do so must be obtained by the grantee from the city; and provided further, that before any such construction is commenced, the plans and specifications thereof must be approved in writing by the Mayor of the City of Red Boiling Springs. It shall be unlawful for any telephone, telegraph, or power company or any other public utility company or person to lease or otherwise make available to any person, any poles, lines, facilities, equipment or other property for use in connection with the operation of a cable television system or the provision of cable television service, unless such other person holds a valid franchise granted pursuant to the provisions of this ordinance.

(2) The authority granted to a grantee pursuant to the provisions of this ordinance is not and shall not be deemed to be an exclusive right or permission. The city expressly reserves the right to grant one or more nonexclusive franchises to operate a cable television system to other persons for the entire franchise area at any time under the same substantive terms and conditions as apply to the existing grantee. No such additional franchise granted by the city shall in any way affect the obligations of any other grantee.

(3) If the city grants an additional franchise under this ordinance which contains terms deemed more favorable by any existing grantee, said existing grantee may elect to incorporate said terms or provisions into its existing franchise upon notice to the city. (as added by Ord. #05-5, Sept. 2005)

9-609. Franchise fee. (1) Because the city finds that the administration of a franchise granted pursuant to this ordinance imposes upon the city additional regulatory responsibility and expense, a grantee of any franchise hereunder shall pay to the city, semiannually, a sum equal to three percent of its gross annual receipts. This payment shall be accompanied by detailed revenue by quarter report certified to be true and accurate by the

grantee's chief financial officer (CFO). This fee shall be in addition to any and all taxes which are now or may be required hereafter to be paid pursuant to any federal, state, or local law. This fee shall be deemed to reimburse the city for all costs of regulating the cable television system of the grantee and shall cover the expense of all regulatory requirements including, but not limited to, any performance testing required by the city under the terms of this ordinance and any renewal or transfer procedures arising hereunder.

(2) Acceptance of payments hereunder shall not be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable under this ordinance or for the performance of any other obligations hereunder.

(3) At its own discretion and expense, the city may audit records of gross annual receipts as they pertain to the payment of franchise fees to the city. (as added by Ord. #05-5, Sept. 2005)

9-610. Limitations of franchise. (1) In addition to the limitations otherwise herein appearing, the franchise is subject to the limitation that the grantee shall at all times during the life of any franchise hereunder be subject to the lawful exercise of its police power by the authorized regulatory state and federal bodies and shall comply with any and all ordinances which the city has adopted or shall adopt applying to the public generally and shall be subject to all laws of the State of Tennessee and the United States.

(2) Time shall be of the essence in any franchise granted hereunder. The grantee shall not be relieved of its obligations to comply promptly with a provision of this ordinance by the failure of the city to enforce compliance. Failure of the city to enforce any breach by the grantee shall not constitute a waiver by the city.

(3) Any poles, cable, electronic equipment or other appurtenances of the grantee to be installed in, under, over, along, across or upon a street shall be so located so as to cause no interference with the public use of the streets and to cause no interference with the rights of other users of the streets or of property owners who adjoin any of the streets.

(4) In the event of disturbance of any street, other public property, or private property by grantee, grantee shall, at its own expense and using reasonable efforts, replace and restore property to the condition existing before the work was done.

(5) Grantee shall contract, maintain and operate the cable television system so as to cause minimum inconvenience to the general public. All excavations shall be properly guarded and protected. All excavations shall be filled and the surface restored promptly after completion of the work at the grantee's sole cost and expense. The grantee shall at all times comply with all excavation ordinances of the city.

(6) The grantee shall, upon reasonable notice from any person holding a building moving permit issued by the city, temporarily alter its facilities to

permit the moving of such building. The actual cost of such altering shall be borne by the person requesting the altering and the grantee shall have the right to request payment in advance. For the provisions of this ordinance, reasonable notice shall be construed to mean at least seventy-two (72) hours prior to the move.

(7) If, at any time, in case of fire or disaster in the city it shall become necessary in the judgment of the mayor or the director of public safety or their designee to cut or move any of the wires, cable amplifiers, appliances, or appurtenances thereto of the grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the grantee at no expense to the city. (as added by ord. #05-5, sept. 2005)

9-611. Additional city rights in franchise. (1) The city reserves the right upon reasonable notice to require the grantee at its expense to protect, support, temporarily disconnect, relocate or remove from the streets any property of the grantee by reason of traffic conditions, public safety, street construction or excavation, change or establishment of street grade, installation of sewers, drains, water pipes, power or communication lines, tracts, or other types of structure or improvements by governmental agencies. Reasonable notice for this provision of the ordinance shall be construed to mean at least thirty (30) days except in the case of emergencies where no specific notice period shall be required.

(2) In the event of the failure by the grantee to complete any work required by subsection (1) above or any work required by city law or ordinance within the time established, the city may cause such work to be done and the grantee shall reimburse the city the reasonable costs thereof within thirty (30) days after receipt of an itemized list of such cost.

(3) The city reserves the right at all times the use of the community channel and in the event of an emergency or disaster, to require the grantee to make available to the city, upon request, grantee's audio override on all channels, at no cost, for emergency use during such emergency or disaster period.

(4) The city reserves the right during the life of any franchise hereunder to inspect, upon reasonable notice, at all reasonable hours, the grantee's contracts and engineering records dealing with gross revenue and technical service provided by grantee, provided that information pertaining to service to individual subscribers will be available pursuant to § 631 of the Cable Act.

(5) The city reserves the right during the life of any franchise granted hereunder, to install and maintain free of charge upon the poles or in the conduits of a grantee any wire and pole fixtures necessary for municipal networks such as police and fire, on the condition that such installations and maintenance thereof do not interfere with operations of the grantee.

(6) The city reserves the right during the life of any franchise granted hereunder, to reasonably inspect all construction or installation work performed subject to the provisions of the ordinance to ensure compliance with the terms of the ordinance. At its own expense, the city may also perform measurements upon and randomly inspect any portion of a grantee's system to ensure compliance with the technical standards under which grantee is authorized to operate provided that such measurement or inspection does not unreasonably interfere with the operation of the cable television system.

(7) At any time during the term of the franchise, and upon thirty (30) days notice, the city reserves the right to hold a public hearing for the expressed purpose of reviewing the general and specific performance of the grantee with regard to all franchise provisions contained herein or in any franchise agreement issued hereunder.

(8) Any right or power in or duty impressed upon any officer, employee, department, or board of the city shall be subject to transfer by the city council by law to any officer, employee, department or board of the city. The city reserves all rights not specifically granted herein and the enumerations of the rights herein shall not be construed to be a limitation of any right or power the city may otherwise have. (as added by Ord. #05-5, Sept. 2005)

9-612. Service area. (1) Subject to the provisions of paragraph (2) of this section, the grantee of any franchise hereunder shall offer cable television service to all potential residential subscribers who are located within the city limits as of the effective date of the franchise. Subject to the provisions of paragraph (2) of this section, the grantee shall offer cable television service to all potential residential subscribers within any area described in any annexation ordinance passed after the passage of this ordinance, within one (1) year of the effective date of the said annexation ordinance.

(2) The grantee of any franchise hereunder shall offer cable television service to all potential residential subscribers located within one hundred fifty (150) feet of grantee's feeder cable where there exists a minimum density of thirty (30) dwelling units per mile. The grantee may elect, but has no obligation, to offer cable television service to areas not meeting the above standard.

(3) In the event the continued use of a street is denied for any reasonable reason related to public health, safety or welfare, the grantee will make every reasonable effort to provide residential service over alternate routes. (as added by Ord. #05-5, Sept. 2005)

9-613. Time for providing service. Unless otherwise authorized by the city, all areas meeting the requirements of §9-612(2) subsequent to the effective date of a franchise granted pursuant to this ordinance shall be offered cable television service within twelve (12) months of the effective date of the annexation. (as added by Ord. #05-5, Sept. 2005)

9-614. Condition of use of streets. (1) The poles used for a distribution system shall be, to the extent possible, those erected and maintained by either a power company or a telephone company, or both. Notwithstanding any other provisions of this ordinance, no poles except replacements for existing poles shall be erected by for the grantee, in any street, except when necessary to serve a subscriber. Any poles, wires, cable or other facilities to be constructed or installed by grantee on or within the streets shall be constructed or installed only at such locations and depths and in such a manner as to comply with all state statues and rules and regulations of the State of Tennessee, the city, and any other agency of competent jurisdiction.

(2) The installation of trunk and distribution lines, including service drops to subscribers, shall be made underground in areas where both telephone and power lines are underground or are placed underground and the service poles are removed. (as added by Ord. #05-5, Sept. 2005)

9-615. System design and channel capacity. The cable television system shall be constructed and operated in a manner as set forth in this ordinance. The cable television system shall have a capacity of at least 300 MHz bandwidth and shall be constructed and operated in a manner set forth in this ordinance. (as added by Ord. #05-5, Sept. 2005)

9-616. Interconnection. Where economically reasonable and technically possible, grantee may connect its system with other cable systems adjoining it so as to provide the widest possible combination of programming in the most efficient manner. (as added by Ord. #05-5, Sept. 2005)

9-617. Service to government building. The grantee shall, upon request therefore, provide and furnish without charge to all public educational institutions and governmental buildings within the service area and within one hundred fifty (150) feet of grantee's existing distribution cable, one (1) service outlet. The institutions shall be entitled to receive, free of charge, the grantee's basic television service. (as added by Ord. #05-5, Sept. 2005)

9-618. Parental control devices. The grantee shall at all times have available parental control devices for the purpose of controlling premium television programming on individual subscriber television sets. The grantee shall have the right to charge reasonable fees for the use of such devices. (as added by Ord. #05-5, Sept. 2005)

9-619. Construction standards. (1) Grantee shall construct, install, operate and maintain the cable television system in a manner consistent with all laws, ordinances, construction standards, governmental requirements and the construction and operational standards contained in this ordinance and any franchise agreement.

(2) All installation and maintenance of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable sections of the National Electric Safety Code, the National Electrical Code of the National Bureau Fire Underwriters and all the state and local codes where applicable.

(3) Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable local or state codes and regulations.

(4) All construction methods and standards shall conform to standard industry practices at the time of construction, and as specified herein and in any franchise agreement.

(5) Any contractor used by a grantee for construction, installation, operation, maintenance, or repair of system equipment must be properly licensed under the laws of the State of Tennessee, and all local ordinances.

(6) The city does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the locations shall be verified by excavation. (as added by Ord. #05-5, Sept. 2005)

9-620. Operational standards and performance monitoring. (1) The cable television system shall be operated in compliance with the service standards established by the National Cable Television Association.

(2) The grantee shall put, keep and maintain all parts of the system in good condition throughout the entire franchise term.

(3) The grantee 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 be preceded by notice and shall occur during periods of minimum system use.

(a) Service repair response time to a subscriber outage call shall not exceed twenty-four (24) hours except on weekends and holidays or in circumstances beyond the reasonable control of the grantee; and

(b) Trained technicians shall respond on a twenty-four (24) hour day seven (7) days a week basis whenever ten (10) or more verifiable subscriber complaints of outage are received within a twenty four (24)hour period.

(c) The grantee shall have a local telephone number or a publicly listed toll-free 1-800 telephone number. The grantee shall provide the means to accept complaint calls twenty-four (24) hours a day, seven (7) days a week. (as added by Ord. #05-5, Sept. 2005)

9-621. Rate and charges. Grantee shall file with the city schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto. Grantee shall have the right to pass

through to its subscribers all taxes and fees related to the provision of cable television service and grantee shall have the right to itemize all such taxes and fees on the customer bills.. The City of Red Boiling Springs reserves the right and authority to comment, whether publicly or in private, regarding grantee's schedule of rates and charges. (as added by Ord. #05-5, Sept. 2005)

9-622. Rights of individuals. (1) The grantee shall not deny service, deny access, or otherwise discriminate against subscribers or other users, or any citizen on the basis of race, color, religion, national origin, sex or sexual orientation. The grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination.

(2) Grantee shall comply with the individual privacy provisions contained in the Cable Act. (as added by Ord. #05-5, Sept. 2005)

9-623. Liability and indemnification. (1) The grantee shall, at its sole cost and expense, fully indemnify, defend and save harmless the city, its officers, councils, commissions, and employees against any and all actions, liability, judgments, executions, claims or demands whatsoever by others, including but not limited to, copyright infringement and all other damages arising out of the installation or operation or maintenance of the cable television system authorized herein, whether or not any act of omission complained or is authorized, allowed or prohibited by this ordinance and any franchise granted hereunder. Grantee shall further indemnify and save the city harmless against all liabilities to others arising out of such construction, operation and maintenance, including but not limited to, any liability for damages by reason of, or arising out of, any failure by grantee to secure licenses from the owners, authorized distributors or licensees of programs to be transmitted or distributed by the grantee, and against any loss, cost, expense, and damages resulting therefrom, including reasonable attorney's fees, arising out of the grantee's exercise or enjoyment of this franchise, irrespective of the amount of any comprehensive liability policy required hereunder.

(2) The foregoing liability and indemnity obligations of the grantee pursuant to this section shall not apply to damages occasioned by acts of the city, its agents or employees, nor shall it be deemed a waiver of any defense of contributory negligence which the grantee may assert against the city, its agents or employees. (as added by Ord. #05-5, Sept. 2005)

9-624. Insurance. (1) At the time of filing written acceptance of the franchise, the grantee shall file with the city clerk, certificates for the following:

(a) A general comprehensive public liability insurance policy, indemnifying, defending and saving harmless the City, its officers, councils, commissioners, agents or employees from any and all claims by any person whatsoever on account of injury to or death of a person or

persons occasioned by the operations of the grantee under the franchise granted hereunder with a minimum of liability of three hundred thousand dollars (\$300,000.00) for personal injury or death of any two or more persons in any one (1) occurrence. Renewal certificates of such insurance shall be promptly forwarded to the city clerk as such renewals are made, and such insurance shall be constantly kept in force and effect during the term of this franchise.

(b) Property damage insurance indemnifying, defending and saving harmless the city, its officers, councils, commissions, agents, and employees from and against all claims by any person whatsoever for property damage occasioned by the operation of a grantee under the franchise granted hereunder with a minimum liability of three hundred thousand dollars (\$300,000.00) for property damage to any one person and five hundred thousand dollars (\$500,000.00) for property damage to two or more persons in any one (1) occurrence.

(2) Such insurance as provided for in this section shall be provided at the grantee's sole cost and expense and be kept in full force and effect by the grantee during the existence of the franchise and until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures incident to the maintenance and operation of the cable television system as defined in the franchise,

(3) All of the foregoing insurance contracts shall be issued and maintained by companies authorized to do business in the State of Tennessee and shall be required to give thirty (30) days written notice of any cancellation or reduction in coverage to both the city and the grantee herein. (as added by Ord. #05-5, Sept. 2005)

9-625. Filing and communications with regulatory agencies. The grantee shall maintain copies of all petitions, applications and communications, relative to any franchise granted pursuant to this ordinance transmitted by the grantee to, or received by the grantee from all federal and state regulatory commissions or agencies having competent jurisdiction to regulate the operations of any cable television system authorized hereunder. Said copies shall be available for inspection by the city during regular business hours of the grantee. (as added by Ord. #05-5, Sept. 2005)

9-626. Reports. The grantee shall file annually with the mayor not later than four (4) months after the end of its fiscal year during which it accepted a franchise hereunder and within four (4) months after the end of each subsequent fiscal year, a letter containing the amount of the gross revenues for the previous fiscal year certified by grantee's controller or chief financial officer. (as added by Ord. #05-5, Sept. 2005)

9-627. Franchise renewal. Upon completion of the term of any franchise granted pursuant to this ordinance, the procedures for the franchise renewals as established by the Cable Act (47 U.S.C. § 546) will apply. (as added by Ord. #05-5, Sept. 2005)

9-628. Franchise required. It shall be unlawful for any person to construct, operate or maintain a cable television system in the city unless such person or person for whom such action is being taken shall have first obtained and shall currently hold a valid franchise granted pursuant to this ordinance. It shall also be unlawful for any person to provide cable television service in the city unless such person shall have first obtained and shall currently hold a valid franchise granted pursuant to the provisions of this ordinance. All franchises granted by the city pursuant to this ordinance shall contain the same substantive terms and conditions. (as added by Ord. #05-5, Sept. 2005)

9-629. Unauthorized connections or modifications. (1) It shall be unlawful for any person without the expressed consent of the grantee, to make any connection, extension, or division whether physically, acoustically, inductively, electronically, or otherwise with or to any segment of the cable television system for any purpose whatsoever.

(2) It shall be unlawful for any person to willfully interfere, tamper, remove, obstruct or damage any part, segment, or content of a franchised cable television system for any purpose whatsoever.

(3) Any person found guilty of violating this section may be assessed a fine not to exceed five hundred dollars (\$500.00) or sentenced to thirty (30) days in jail, or both. (as added by Ord. #05-5, Sept. 2005)

9-630. Notice. Whenever under the terms of the franchise either party shall be required or permitted to give notice to the other, such notice shall be in writing and if to be served on the city, it shall be delivered either by first class U.S. mail or by handling such notice to the mayor at the city municipal offices, and if to grantee, then by delivering by first class U.S. mail or by handling such notice to such officer at such address as grantee shall from time to time direct. The original name and address of the officer on behalf of grantee shall be included in grantee's acceptance of the franchise. (as added by Ord. #05-5, Sept. 2005)