TITLE XI: BUSINESS REGULATIONS

Chapter

110. BUSINESS LICENSING

111. TEMPORARY SALES

112. PROFESSIONAL LICENSING

113. OCCUPATION TAXES

114. ALCOHOLIC BEVERAGES

115. CABLE TELEVISION

116. ALARM SYSTEMS

117. ECONOMIC DEVELOPMENT PROGRAM

118. NATURAL GAS FRANCHISE

119. TOBACCO PRODUCT SALES REGULATIONS

Section

Self Service Stations

110.01 Definition
110.02 N.F.P.A. standards adopted

CHAPTER 110: BUSINESS LICENSING

SELF SERVICE STATIONS

§ 110.01 DEFINITION.

SELF-SERVICE MOTOR FUEL DISPENSING STATIONS, as used in this subchapter, are defined as that portion of property where flammable and combustible liquids used as motor fuels are stored and subsequently dispensed from fixed equipment into the fuel tanks of motor vehicles by persons other than the service station attendant and shall include any facility available for the sale of other retail products.
(‘79 Code, § 10-301) (Ord. 138, passed - -)

§ 110.02 N.F.P.A. STANDARDS ADOPTED.

Incorporated herein by reference into this code are the standards recommended by the National Fire Protection Association, known as the Automotive and Marine Service Station Codes, N.F.P.A. 1 and N.F.P.A. 30A, as may be amended from time to time. This code shall have the same force and effect as if set out verbatim herein. One copy of the Automotive and Marine Service Station Codes is on file with the City Clerk and shall be available for public inspection at any reasonable time. The operation of all self-service motor vehicle dispensing stations, including all use, sales, storage, transportation, and installation of flammable and combustible gases shall be in conformity with the aforementioned standards.
(‘79 Code, § 10-302) (Ord. 138, passed - -) Penalty, see § 10.99

Section

Peddlers and Hawkers

CHAPTER 111: TEMPORARY SALES

111.01 Regulation
111.02 Exceptions
111.03 Distribution of handbills

Fireworks

111.15 Definitions
111.16 Sale and discharge of nonpermissible fireworks prohibited
111.17 Sale of permissible fireworks; permit required; application; permit fee
111.18 Sale of permissible fireworks regulated
111.19 Discharge of permissible fireworks regulated

PEDDLERS AND HAWKERS

§ 111.01 REGULATION.

To prevent the sale of fraudulent, dangerous and unhealthful good and services and to protect the public by maintaining records of the products and services sold and the persons and companies responsible for such sales, all peddlers and hawkers shall, before doing business within the city, make application for and be issued a permit. Application for said permit shall be made to the City Clerk and shall contain all necessary information and documents required for the protection of the residents of the city. Peddlers with any fixed site location shall be limited to six sales days per calendar year unless otherwise provided. Any person or persons granted a peddler and hawker permit shall be subject to any fees, occupation taxes and other rules and regulations which the City Council deems appropriate for the purposes stated herein. Any permit so granted shall be subject to revocation by the City Clerk for good and sufficient cause upon a written complaint by the city police. For purposes of this § 111.01, ***PEDDLER*** or ***HAWKER*** shall mean an itinerant trader or traveling salesperson, or a person who goes

about seeking sales and deliveries of articles to possible customers or who sells or attempts to sell goods he or she carries with him or her in traveling about from place to place.
('79 Code, § 10-201) (Am. Ord. 745, passed 10-6-98) Penalty, see § 10.99
Statutory reference:
Municipal authority, see Neb. RS 16-205

§ 111.02 EXCEPTIONS.

Nothing herein shall be construed to apply to any person or persons selling farm produce exempted by the provisions of § 113.04 or to wholesale salesmen soliciting merchants directly or to a representative of a nonprofit or charity organization soliciting on behalf of that organization.
('79 Code, § 10-202) (Am. Ord. 745, passed 10-6-98)

§ 111.03 DISTRIBUTION OF HANDBILLS.

(A) For the purpose of this section, the following definitions shall apply unless the text clearly indicates or requires a different meaning.

HANDBILLS. Any pamphlet or printed advertising, circular, leaflet, magazine or other printed or written material or copy thereof.

PRIVATE PREMISES. Any dwelling, house, building or other structure designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.

(B) It shall be unlawful for any person to throw, deposit, place, leave or distribute any handbill, sample or other material in, upon or to private premises within the city within any plastic bag or other material that is capable of causing the suffocation of any minor person or otherwise throw, deposit, place, leave or distribute in, upon or to private premises within the city any such plastic bag or other material unless:

(1) The plastic bags or other materials are comprised of materials having holes no less than one-fourth inch in diameter and not more than two inches apart:

(2) The plastic bags or other material has no opening greater than six inches in diameter;

(3) Hand delivered in person to the owner or other adult person present in or upon such private premises; or

(4) A distribution of mail by United States Postal Service.

(C) No provisions hereof shall be construed to authorize the use of mailboxes for the depositing of handbills, samples or other materials prohibited by federal postal law or regulations.
(‘79 Code, § 10-203) (Ord. 466, passed 9-20-88) Penalty, see § 10.99
Cross-reference:
For related provisions, see § 130.02

FIREWORKS

§ 111.15 DEFINITIONS.

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

FIREWORKS. Any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation and which meets the definition of common or special fireworks set forth by the United States Department of Transportation in Title 49, Code of Federal Regulations.

PERMISSIBLE FIREWORKS. Sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, color wheels and lady fingers not exceeding seven-eighths inch in length or one-eighth inch in diameter and which do not contain more than 50 milligrams each in weight of explosive material. The provisions of this section shall not apply to any fireworks to be used for purpose of public exhibitions or display under authorization of the city or to fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal.
(Neb. RS 28-1241) (‘79 Code, § 10-312) (Ord. 75, passed - -; Am. Ord. 470, passed 10-18-88)

§ 111.16 SALE AND DISCHARGE OF NONPERMISSIBLE FIREWORKS PROHIBITED.

It shall be unlawful for any person to sell, hold for sale or offer for sale, ignite or cause to be exploded within the corporate limits of the city any fireworks or any other dangerous or combustible substance; provided, however, permissible fireworks may be sold and discharged in accordance with the following sections of this subchapter; and provided further that the City Council may authorize fireworks displays at special public gatherings under such circumstances that they will do no damage to person or property upon issuance of a display permit.
(‘79 Code, § 10-312) (Ord. 75, passed - -) Penalty, see § 10.99
Statutory reference:
Statutory provisions, see Neb. RS 28-1237, 28-1239.01, 28-1241, 28-1244, 28-1245, and 28-1249

§ 111.17 SALE OF PERMISSIBLE FIREWORKS; PERMIT REQUIRED; APPLICATION; PERMIT FEE.

(A) Each year the City Council shall determine whether or not to allow fireworks stands to operate in the city. If the City Council determines that fireworks stands will be permitted, the Council shall, by resolution, establish the maximum number of permits to be issued.

(B) It shall be unlawful for any person to sell, hold for sale or offer for sale any permissible fireworks within the corporate limits of the city unless such person has first obtained a permit from the City Council to do so.

(C) Application for said permit shall be made in the following manner:

(1) Application shall be made on such form as shall be prescribed by the City Council and shall be filed with the City Clerk by noon on January 15 of the year for which the permit is sought. If January 15 falls on a weekend or a holiday when city offices are closed, the deadline will move to noon on the next business day. The city shall, by publication, give notice each November of the procedure and deadline for submitting a permit application.

(2) Only nonprofit organizations and associations using volunteer sales persons and which will use the net proceeds from the sale of fireworks for community betterment purposes within the city shall be eligible for a permit.

(3) If the applicant organization has held a permit in any of the three preceding years, it must file with its application a written statement of the income and expenses from the sale of its fireworks within the city for each of such years, together with a statement of its community betterment type expenditures made from the net proceeds from the sale of fireworks in each said year.

(4) The applicant shall state the nature of the community betterment purpose for which the net proceeds from the current year's sale of fireworks will be utilized if the permit be granted.

(5) The application organization must identify the proposed location for the retail fireworks stand in the permit application. A signed statement from the property owner granting the application organization permission to utilize the property must accompany the application.

(6) All applications for permits must be approved by the City Council. The City Clerk shall be responsible for reviewing applications, tallying points and making recommendations to the Council for permits. Applications will be evaluated on the following criteria/point system:

(a) Each year all applications will start out with a total of 20 points.

(b) Applications shall be automatically disqualified if they are received after the application deadline of January 15; if they are incomplete based on the checklist that is included on the application form; or if the applicant organization is a prior-year permit holder that has displayed and/or sold or attempted to sell illegal fireworks or has otherwise violated the law regarding the operation of their fireworks stand.

(c) 1. Applications that are not disqualified will be reviewed by the City Clerk and will lose points according to the following schedule:

Point Deduction	***Infraction***
2	Information missing from the fireworks application permit
2	Information missing from the tent permit application
2	Information missing from the sign permit application
2	Information missing from the explosive materials storage permit application
2	Information missing from the site plan
5	Lack of sufficient detail regarding proposed community betterment expenditures
5	Lack of sufficient detail regarding previous years income and expenditures
5 - 20	Concerns with proposed location based on recommendation from public safety personnel

2. In the event of a tie(s) after ranking, first preference shall be given to those eligible organizations that identify community betterment acquisitions, services or programs which will benefit the city as a whole. Those that benefit only particular areas or neighborhoods of the city shall have second preference. If all other application requirements are met, special consideration will be given to organizations agreeing to co-locate and operate a fireworks stand.

(7) Permits will be valid only for the period specified on the face of the permit and will automatically terminate on the specified ending date. Permit holders shall not have any right to or expectation of receiving a permit or operating a fireworks stand in the city in any future year or period. Notwithstanding anything herein to the contrary, permits are revocable at the will of the city, at anytime, with or without cause.

(8) As used herein, the following terms have the following meaning:

(a) ***COMMUNITY BETTERMENT*** shall mean that which generally betters or enhances the community of the city, such as:

1. The acquisition, improvement and maintenance of parks and recreational facilities, public equipment and other items for community use and enjoyment or to be used by the city in service to the community;

2. The recruitment and attraction of new businesses and jobs to the city community;

3. Athletic programs for the community; and

4. Other acquisitions, services or programs of general benefit to the city community.

(b) ***NET PROCEEDS*** shall mean gross sales less the cost of fireworks, permit fee, rental or lease expense, advertising and similar costs of operation of the fireworks stand. Volunteer salespersons shall be used and any remuneration paid or given to persons performing services in connection with the sale of fireworks shall not be deemed a cost of operation.

(9) A permit fee to sell, hold for sale or offer for sale permissible fireworks in such amount as set from time to time by the Mayor and City Council and a current record of which shall be maintained by the City Clerk, shall be collected by the city. A permit application deposit of $500 must accompany the permit application; and, if a permit is issued, the remaining balance shall be due and payable no later than June 25 of the year for which the permit has been issued. If the permit is denied, $400 of the deposit will be refunded.

(10) Prior to issuance of the permit, applicant shall supply to the city a copy of a certificate of insurance issued by an insurance company in good standing, authorized to do business in Nebraska, providing combined liability coverage for bodily injury and property damage in a minimum amount of $300,000 per occurrence and $1,000,000 in aggregate coverage and naming the City of La Vista as an additional insured.
(‘79 Code, § 10-313) (Ord. 75, passed - -; Am. Ord. 721, passed 3-17-98; Am. Ord. 777, passed 5-18-99; Am. Ord. 792, passed 10-19-99; Am. Ord. 885, passed 11-19-02; Am. Ord. 1005, passed 9-5-06; Am. Ord. 1120, passed 4-6-10) Penalty, see § 10.99

§ 111.18 SALE OF PERMISSIBLE FIREWORKS REGULATED.

Persons holding a permit to sell permissible fireworks:

(A) May only sell the same beginning 12:01 a.m. June 25 and ending midnight on July 4 of the year for which the permit is issued. Within this period, permissible fireworks may be sold only between the hours of 8:00 a.m. and 11:00 p.m.

(B) Shall at no time sell within the city limits any fireworks or other pyrotechnics other than permissible fireworks.

(C) Shall during such times as fireworks are being sold have an adult in charge of his or her stand or retail outlet and shall display therein the required permit in a conspicuous manner and place.

(D) Shall at all times comply with all regulations passed by the City Council pertaining to the permissible size, location, equipping and operation of fireworks stands and retail outlets.

(E) Shall at no time sell any fireworks or other pyrotechnics to any person under 12 years of age. ('79 Code, § 10-314) (Am. Ord. 792, passed 10-19-99) Penalty, see § 10.99

§ 111.19 DISCHARGE OF PERMISSIBLE FIREWORKS REGULATED.

(A) *Prohibition as to time of discharge.* Except as may be otherwise provided herein or authorized by special permit approved by the City Council, no person shall ignite or discharge any permissible fireworks except between the hours of 7:00 a.m. to 10:00 p.m. from June 25 through July 2 inclusive and between the hours of 7:00 a.m. and 11:00 p.m. from July 3 through July 4 inclusive of each year.

(B) *Dangerous environmental conditions.* In the event that in the determination of the Fire Chief, general weather or ground cover conditions are such as create an unacceptable risk of fire should there be discharge of fireworks, including permissible fireworks, within the city limits, then in such event the Fire Chief shall advise the City Administrator and Mayor of such determination and shall communicate a recommendation to them for any preventative action or measures the Fire Chief deems necessary, including what limitations should be placed upon the time period for discharge of fireworks or the extent to which the discharge of fireworks should be prohibited. The Mayor, with the advice of the Council President, the City Administrator, the Fire Chief, and the Chief of Police, or such of them as may be readily available, shall order such action, if any, the Mayor shall deem necessary or appropriate in the situation, including partial or total bans on discharge of fireworks on such dates and during such times as the Mayor may determine necessary or appropriate. Should the Mayor determine that prohibitive or preventative action is required, the Mayor shall issue a proclamation to that effect and shall advise the City Administrator, who shall advise the members of the City Council, the Fire Chief, the Chief of Police, and the media of the Mayor's proclamation and shall cause same to be conspicuously posted throughout the city. Discharge of fireworks in violation of such proclamation shall constitute a violation of this section and shall be punishable as such. As used herein, references to the Mayor and other officials shall, in the case of their absence or inability to act, include persons empowered to act in their stead.

(C) *Prohibition as to manner and place of discharge.* In no event shall any person ignite or discharge any fireworks, even though same be permissible fireworks:

(1) In or from any motor vehicle;

(2) On any street, highway, or sidewalk;

(3) Near any person or group of persons;

(4) In any building;

(5) In any public park, except as may be authorized by special permit;

(6) In any public building;

(7) In any school or on any school grounds; and

(8) In any other manner or place that is likely to inflict or increase the risk of property damage or bodily harm to any person or persons or place any of them in danger of bodily harm.

(D) *Special permit for community fireworks show.*

(1) The City Clerk may authorize the issuance of special permits for fireworks displays to be conducted by or under the auspices of the city or by or under the auspices of a nonprofit organization, organized for purposes of service to or betterment of the city, its businesses, or residents, for the purpose of putting on an admission-free public fireworks display for the benefit of the residents of the city at such place, during such times and under such terms, conditions, and security measures as the City Clerk may prescribe for such display.

(2) The permit holder shall obtain the required approval of the State Fire Marshal. By way of specification and not of limitation, as a condition of any permit hereunder, the permit holder shall obtain and maintain in effect, for the maximum limitations and repose periods under any and all products liability or tort laws in the State of Nebraska, insurance for any and all liabilities arising out of or resulting from any permitted fireworks or fireworks display, written by an insurer authorized to do business in the state, in such amount and upon such other terms as satisfactory to the city in its sole discretion. The city shall be an additional named insured on each such policy provided.
(‘79 Code, § 10-315) (Ord. 75, passed - - ; Am. Ord. 340, passed 6-21-83; Am. Ord. 571, passed 8-17-93 Am. Ord. 792, passed 10-19-99; Am. Ord. 813, passed 7-18-00; Am. Ord. 1062, passed 6-17-08)
Penalty, see § 10.99

Section

General Provisions

CHAPTER 112: PROFESSIONAL LICENSING

112.01 Revocation of registration

Plumbers

112.10 Unregistered practice unlawful
112.11 Registration requirements
112.12 Term of registration
112.13 Registration fee
112.14 Compliance with law

Water Conditioning Installers

112.25 Definitions
112.26 Unregistered practice unlawful
112.27 Registration requirement
112.28 Term of registration
112.29 Registration fee
112.30 Compliance with law
112.31 Inspection

Mechanical Contractors

112.45 Unregistered practice unlawful
112.46 Registration requirements
112.47 Term of registration
112.48 Registration fee
112.49 Compliance with law

112.99 Penalty

GENERAL PROVISIONS

§ 112.01 REVOCATION OF REGISTRATION.

Any registration may be revoked for cause by the City Council at any time upon a hearing and sufficient written sworn charges filed with the Building Inspector showing the registered person, firm, or corporation had violated any provision of the city code or rule or regulation of the city relating to building standards and specifications for the second time within one years or of other causes sufficient for the revoking of a registration. The registered person, firm, or corporation shall have written notice of such charges and of the time of such hearing. Any person, firm, or corporation having its registration revoked for cause shall not be allowed to reregister with the city for a period of one year thereafter. Any person, firm, or corporation providing a bond to the city shall forfeit such bond upon revocation of such registration.
(‘79 Code, § 10-413) (Am. Ord. 520, passed 3-5-91)

PLUMBERS

§ 112.10 UNREGISTERED PRACTICE UNLAWFUL.

It shall be unlawful for any person, firm, corporation, agent, receiver or trustee to cause or permit any job of plumbing or drain laying or making any connection with or opening into any private or public sewer or water distribution system, or to do any plumbing in connection with any property located within this city or within its zoning jurisdiction outside the corporate limits of this city, unless the plumber doing said work has been registered as required by this subchapter and has received a permit from the Building Inspector for the particular plumbing or drain laying work. Any person, firm, or corporation doing work in violation of the provisions hereof shall be guilty of a violation of this subchapter and subject to the penalties hereinafter provided for such violation.
(‘79 Code, § 10-401) Penalty, see § 112.99

§ 112.11 REGISTRATION REQUIREMENTS.

The Building Inspector shall not allow any person, firm, or corporation to register with this city as a plumber unless such person, firm, or corporation shall first provide the following:

(A) The full name and business address of the person, firm, or corporation.

(B) Evidence that a proper license to engage in the business of plumbing has been issued to such person, firm, or corporation by a metropolitan class city in Nebraska or such other political subdivision in Nebraska or Iowa as the city shall deem to have adequate licensing examination requirements, and that the person, firm, or corporation is authorized to transact business in the state of Nebraska.

(C) No master plumber registration shall be allowed without the filing with the city of a certificate of insurance which provides combined coverage for bodily injury and property damage in a minimum amount of $300,000 per occurrence and $1,000,000 in aggregate coverage plus a bond in the sum of $5,000 with sufficient sureties, such bond and certificate of insurance to be for the protection of the city against loss or damage by reason of carelessness or negligence of the person holding such license to properly execute and protect any and all plumbing work performed by him or her or work under his or her supervision during the period of such registration. Master plumbers who work full time for an agency, company or corporation and who do not perform plumbing for anyone other than their employer shall be exempt from providing the $300,000 combined insurance coverage. This exemption will be granted provided the plumber files with the city a bond in the sum of $5,000 and proof of insurance from his or her employer in an amount equal to or greater than $300,000.
(‘79 Code, § 10-402) (Am. Ord. 520, passed 3-5-91; Am. Ord. 753, passed 11-17-98)

§ 112.12 TERM OF REGISTRATION.

All original and renewal registrations shall be nontransferable and shall expire on the thirty-first day of December following a registration or renewal thereof. Each person, firm, or corporation desiring to renew its registration shall again comply with the requirements applicable to the original registration.
(‘79 Code, § 10-403)

§ 112.13 REGISTRATION FEE.

A fee shall be paid upon each registration or renewal thereof pursuant to the terms of this subchapter. The applicable fee shall be in such amount as set from time to time by the Mayor and City Council, and a current record of such amount shall be maintained by the City Clerk.
(‘79 Code, § 10-404)

§ 112.14 COMPLIANCE WITH LAW.

All persons, firms or corporations registered as provided herein shall faithfully observe all ordinances of the city pertaining to plumbing, and all plumbing work executed by or under the supervision of such person, firm, or corporation shall be executed in a workmanlike manner and shall be of such character as to fully secure the results sought to be obtained by this subchapter or the City Plumbing Code.
(‘79 Code, § 10-405) Penalty, see § 112.99

WATER CONDITIONING INSTALLERS

§ 112.25 DEFINITIONS.

For the purpose of this subchapter the term "water conditioning appliance" shall mean any apparatus or equipment which is designed to soften, filter or change the mineral content of water where such apparatus and equipment is connected to a water supply system and is not connected to a drainage system. The phrase "connected to a water supply system" shall not be considered to include connection to existing faucets. The term "water conditioning installer" shall mean a person engaging in the business of installing, replacing or relocating water conditioning appliances.
(‘79 Code, § 10-411)

§ 112.26 UNREGISTERED PRACTICE UNLAWFUL.

It shall be unlawful for any person, firm, or corporation to engage in the occupation of a water conditioning installer in connection with any property located within this city or within its zoning jurisdiction outside the corporate limits of this city, unless the person doing the water conditioning work is registered as a plumber or as a water conditioning installer as required by this subchapter and has received a permit from the Building Inspector for the particular water conditioning work. Any person, firm, or corporation doing work in violation of the provisions hereof shall be guilty of a violation of this subchapter and subject to the penalties hereinafter provided for such violation.
(‘79 Code, § 10-406) Penalty, see § 112.99

§ 112.27 REGISTRATION REQUIREMENT.

The Building Inspector shall not allow any person, firm, or corporation to register with this city as a water conditioning installer unless each person, firm, or corporation shall first provide the following:

(A) The full name and business address of the person, firm, or corporation.

(B) Evidence that a proper license to engage in the business of water conditioning installation has been issued to such person, firm, or corporation by a municipal class city in Nebraska or such other city in Nebraska as the City Council shall deem to have adequate licensing examination requirements.

(C) The trade name used by the person, firm, or corporation if any.
(‘79 Code, § 10-407)

§ 112.28 TERM OF REGISTRATION.

All original and renewal registrations shall be nontransferable and shall expire on the thirty-first day of December following a registration or renewal thereof. Each person, firm, or corporation desiring to renew its registration shall again comply with requirements applicable to the original registration.
(‘79 Code, § 10-408)

§ 112.29 REGISTRATION FEE.

A fee shall be paid upon each registration or renewal thereof pursuant to the terms of this subchapter. The applicable fee shall be in such amount set from time to time by the Mayor and City Council, and a current record of such amount shall be maintained by the City Clerk
(‘79 Code, § 10-409)

§ 112.30 COMPLIANCE WITH LAW.

All persons, firms or corporations registered as required by this subchapter shall faithfully observe all ordinances of the city pertaining to the installation of water conditioning appliances, and all work executed by or under the supervision of such person, firm, or corporation shall be executed in a workmanlike manner and shall be of such character as to fully secure the results sought to be obtained by this subchapter or any other ordinance, rule or regulation of the city relating to water conditioning appliances.
(‘79 Code, § 10-410) Penalty, see § 112.99

§ 112.31 INSPECTION.

Any person, firm, or corporation installing, replacing or relocating a water conditioning appliance shall give notice of completion to the Building Inspector, and the Building Inspector shall, within ten days after the notice of completion, inspect or cause to be inspected such installation, replacement or relocation and shall indicate in writing that such work has been approved or disapproved.
(‘79 Code, § 10-412)

MECHANICAL CONTRACTORS

§ 112.45 UNREGISTERED PRACTICE UNLAWFUL.

It shall be unlawful for any person, firm, corporation, agent, receiver or trustee to cause or permit any installation, repair, modification or expansion of a furnace or air conditioning system on a property located within this city or within its zoning jurisdiction outside the corporate limits of this city, unless the mechanical contractor doing said work has been registered as required by this subchapter and has received a permit from the Building Inspector for the particular mechanical heating or air conditioning work. Any person, firm, or corporation doing work in violation of the provisions hereof shall be guilty of a violation of this subchapter and subject to the penalties hereinafter provided for such violation. (‘79 Code, § 10-415) (Ord. 520, passed 3-5-91) Penalty, see § 112.99

§ 112.46 REGISTRATION REQUIREMENTS.

The Building Inspector shall not allow any person, firm, or corporation to register with this city as a mechanical contractor unless such person, firm, or corporation shall first provide the following:

(A) The full name and business address of the person, firm, or corporation.

(B) Evidence that a proper license to engage in the business of mechanical contracting has been issued to such person, firm, or corporation by a metropolitan class city in Nebraska or such other political subdivision in Nebraska as the City Council shall deem to have adequate licensing examination requirements.

(C) (1) No mechanical contractor registration shall be allowed without the filing with the city of a certificate of insurance which provides combined coverage for bodily injury and property damage in a minimum amount of $300,000 dollars per occurrence and $1,000,000 in aggregate coverage plus a bond in the sum of $5,000 dollars with sufficient sureties, such bond and certificate of insurance to be for the protection of the city against loss or damage by reason of carelessness or negligence of the person holding such license to properly execute and protect any and all mechanical contracting work performed by him or her or work under his or her supervision during the period of such registration.

(2) Mechanical contractors who work full time for an agency, company or corporation and who do not perform mechanical contracting work for anyone other than their employer shall be exempt from providing the $300,000 dollars combined insurance coverage. This exemption will be granted provided the mechanical contractor files with the city a bond in the sum of $5,000 and proof of insurance from his or her employer in an amount equal to or greater than $300,000.
(‘79 Code, § 10-416) (Ord. 520, passed 3-5-91; Am. Ord. 754, passed 11-17-98)

§ 112.47 TERM OF REGISTRATION.

All original and renewal registrations shall be nontransferable and shall expire on the thirty-first day of December following a registration or renewal thereof. Each person, firm, or corporation desiring to renew its registration shall again comply with the requirements applicable to the original registration. (‘79 Code, § 10-417) (Ord. 520, passed 3-5-91)

§ 112.48 REGISTRATION FEE.

A fee shall be paid upon each registration or renewal thereof pursuant to the terms of this subchapter. The applicable fee shall be in such amount set from time to time by the Mayor and City Council, and a current record of such amount shall be maintained by the City Clerk
(‘79 Code, § 10-418) (Ord. 520, passed 3-5-91)

§ 112.49 COMPLIANCE WITH LAW.

All persons, firms or corporations registered as provided herein shall faithfully observe all ordinances of the city pertaining to heating and air conditioning, and all mechanical work executed by or under the supervision of such person, firm, or corporation shall be executed in a workmanlike manner and shall be of such character as to fully secure the results sought to be obtained by this subchapter and the City Mechanical Code.
(‘79 Code, § 10-419) (Ord. 520, passed 3-5-91) Penalty, see § 112.99

§ 112.99 PENALTY.

Unless a penalty is otherwise provided in applicable state statute or in another chapter or section of this code with respect to a particular violation, any person, firm, or entity that violates any of the provisions of this chapter, including but not limited to any neglect or refusal to comply therewith or opposition to the enforcement thereof, shall be guilty of a misdemeanor and shall upon conviction thereof be subject to a fine in any amount not in excess of $100 in the discretion of the court. Every day on which a violation continues shall be deemed a separate violation hereunder. If such person is registered to engage in the business of plumbing, water conditioning, or mechanical contracting installation, replacement, or relocation pursuant to this chapter, he or she shall forfeit his or her registration and shall not be entitled to another registration for one year after such forfeiture.
(‘79 Code, § 10-414) (Am. Ord. 520, passed 3-5-91)

Section

113.01 Purpose
113.02 Amounts
113.03 Government exemption
113.04 Locally grown products exempted
113.05 Collection date
113.06 Nonrefundable
113.07 Gas and telephone companies; procedure
113.08 Cable television system or cable service
113.09 Licensing; lotteries and games of chance
113.10 Failure to pay

CHAPTER 113: OCCUPATION TAXES

§ 113.01 PURPOSE.

For the purpose of raising revenue there is hereby levied an occupation tax upon each and every occupation, business and service carried on within the corporate limits of the City of La Vista, Nebraska as specified and enumerated in the city's master fee ordinance. An occupation tax levied and collected pursuant to Neb. RS 16-205 shall be imposed in the manner provided in Neb. RS 18-1208, to the extent applicable. Every person, firm, partnership, limited liability company, corporation or association carrying on the occupation, business or service hereinafter specified within the corporate limits of said city shall pay to the City Clerk annually on or before the first day of January the sum or sums hereinafter set forth in the city's master fee ordinance as a tax upon said occupation or business. All money so collected shall be paid over forthwith by the City Clerk to the City Treasurer who will credit the same to the General Fund of the city, and said money shall be and remain under the control of the Mayor and City Council of said city and used for such purposes as are permitted in case of other moneys belonging to the General Fund.
(‘79 Code, § 10-501) (Ord. 59, passed - - ; Am. Ord. 903, passed 3-18-03; Am. Ord. 927, passed 2-3-04; Am. Ord. 1187, passed 1-15-13)

§ 113.02 AMOUNTS.

For the purpose of raising revenue, an occupation tax is hereby levied on the types of businesses and in such amounts as set from time to time by the Mayor and City Council, and a current record of such

businesses and amounts shall be outlined in the city's master fee ordinance which shall be maintained by the City Clerk. An occupation tax levied and collected pursuant to Neb. R.S. 16-205 shall be imposed in the manner provided in Neb. R.S. 18-1208 to the extent applicable.
(‘79 Code, § 10-502) (Ord. 59, passed - -; Ord. 69, passed - -; Ord. 89, passed - -; Am. Ord. 551, passed 8-4-92; Am. Ord. 740, passed 9-15-98; Am. Ord. 903, passed 3-18-03; Am. Ord. 927, passed 2-3-04; Am. Ord. 1187, passed 1-15-13)

§ 113.03 GOVERNMENT EXEMPTION.

The occupation taxes levied by this chapter are not levied upon any business or occupation which does business of an interstate character only, which is done or conducted by any department of the government of the United States or the state of Nebraska or the officers and officials of either as such in the course of its or their official duties or by any county or political subdivision of the state of Nebraska or its officers as such.
(‘79 Code, § 10-503) (Ord. 59, passed - -)

§ 113.04 LOCALLY GROWN PRODUCTS EXEMPTED.

It is hereby declared that the provisions of this chapter shall not extend to or affect individuals selling only their own farm products, fruit, livestock, meat, poultry, butter, eggs, vegetables, hay or grain, if actually raised or produced by the said vendor. However, the sale or offering for sale of the products and commodities in this section excepted in the city shall be prima facie evidence that the same were not raised or produced by said vendors until such vendors shall reasonably satisfy the City Clerk or police that they are entitled to the scheduled exceptions; provided, the City Clerk or Police may, in any case of such vendor claiming exemption hereunder, accompany him or her to a notary public or any official authorized to take acknowledgments under oath, and then and there require him or her to make affidavit with respect to the matters concerning the raising or production of the specified products or commodities sold or offered for sale by such vendor.
(‘79 Code, § 10-504) (Ord. 59, passed - -)

§ 113.05 COLLECTION DATE.

All occupation taxes shall be due and payable on the first day of January of each year, except in the event that the said tax is stated on a daily or other basis (other than annually), or another date is specified below or otherwise by City Council by ordinance. Occupation taxes collected from Class C liquor licensees shall be due and payable on the first day of November, and occupation taxes collected from all liquor licenses with the exception of Class C shall be due and payable on the first day of May.

Occupation taxes levied on pawnbroker transactions shall be due and payable on a monthly basis no later than the last day of the calendar month immediately after the month in which the subject pawnbroker transactions occur. Every occupation tax levied by this chapter at a daily or yearly rate must be paid in one payment in advance before the business is commenced. Upon the payment of any occupation taxes by any person or persons to the City Clerk, the said Clerk shall give a receipt, properly dated, and specifying the person paying the said tax and the amount paid. The City Clerk shall have the option ot provide a single receipt for the aggregate amount of all occupation taxes paid

on pawnbroker transactions during a calendar year, so long as the city maintains a current record of occupation taxes paid during the year, and the receipt is provided no later than March 1 following the calendar year in which the taxes are paid. The revenue collected shall then be immediately deposited into the General Fund by the City Treasurer. The City Treasurer shall keep an accurate account of all revenue turned over to him or her. All forms and receipts herein mentioned shall be issued in duplicate. One copy shall then be kept by each party in the transaction.
(Neb. RS 17-525) ('79 Code, § 10-505) (Ord. 59, passed - -; Am. Ord. 552, passed 8-4-92; Am. Ord. 903, passed 3-18-04)

§ 113.06 NONREFUNDABLE.

No person paying an occupation tax under this chapter shall be entitled to a refund of any tax so paid.
('79 Code, § 10-506) (Am. Ord. 903, passed 3-18-03)

§ 113.07 GAS AND TELEPHONE COMPANIES; PROCEDURE.

(A) The payment of the occupation tax herein levied under § 113.02 of this chapter shall be in semi-annual payments using the calendar half year ending June thirtieth and December thirty-first each year as a basis for determining and computing the amount of tax payable. Each half year payment shall be due 45 days after the termination of each calendar half year. All payments of tax made after the due date shall draw interest at the rate of 3/4% per month and, after payment has been in default for six months, a penalty of 5% shall be added thereto in addition to the interest charges and shall be paid by the company or companies subject to the occupation tax. Each succeeding payment may make such adjustment to be shown on the report hereinafter provided for as may be necessary for uncollectibles or any other matters which may have resulted in either an excess or deficiency in the amount of tax paid in any previous period.

(B) All such companies at the same time as they make such half year payments of tax shall file with the City Clerk a full, complete and detailed statement of the gross receipts subject to the occupation tax

provided for in § 113.02, and said statement shall be duly verified and sworn to by the Manager in charge of the business of the particular company in the city or by a higher managerial employee of such company, and the city shall have the right at any time to inspect through its officers, agents or representatives the books and records of such company for the purpose of verifying such report or reports. However, in case any company shall refuse, fail or neglect to furnish or file such report or reports at the time required by this chapter or shall fail or refuse to permit the city to inspect the books and records of such company for the purpose of verifying such report or reports, then and in that event, the occupation tax for the preceding half year shall be estimated by the City Council and said amount so estimated shall be paid within 45 days following the end of the half year as required by § 113.02, and said amount shall draw interest and penalties as further provided in this section.
('79 Code, § 10-507) (Ord. 59, passed - -; Am. Ord. 552, passed 8-4-92)

§ 113.08 CABLE TELEVISION SYSTEM OR CABLE SERVICE.

Any person, firm, or corporation which is maintaining and operating any cable television system or

providing any cable service within the boundaries of the city, as constituted from time to time, shall pay to the city a franchise fee as provided in § 115.050 of this code. This payment shall be in addition to any other tax or payment owed to the city by such person, firm, or corporation.
('79 Code, § 10-507.01) (Ord. 242, passed 6-19-79; Am. Ord. 365, passed 12-4-84; Am. Ord. 806, passed 5-16-00)

Statutory reference:

City cable television ordinance, see Chapter 115

§ 113.09 LICENSING; LOTTERIES AND GAMES OF CHANCE.

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

DISTRIBUTOR. Any person who engages in the business of selling, leasing or delivering possession or custody of gambling devices for consideration to a person engaged in the occupation of conducting games of chance and/or lotteries.

GAMBLING DEVICE. Any and all machines or devices used by a person engaged in the occupation of conducting games of chance and/or lotteries.

GAMES OF CHANCE AND/OR LOTTERIES. Those forms of gambling authorized by the state of Nebraska pursuant to the Constitution of the state of Nebraska, article III, section 24.

PERSON ENGAGED IN THE OCCUPATION OF CONDUCTING GAMES OF CHANCE AND/OR LOTTERIES. Any person who operates, owns or is the lessee of a place of business where any game of chance and/or lottery activity is conducted, whether or not any other type of business is conducted on the premises; or, any person who either directly controls or manages the games of chance and/or lotteries or owns any machine or device used to engage in the occupation of games of chance and/or lotteries, but does not sell, lease or deliver possession or custody of such a device to other persons.

(B) *Occupation tax*. An occupation tax is hereby imposed on each person engaged in the occupation of conducting games of chance and lottery activities within the city on a contract basis for one or more licensed organizations. Every person conducting games of chance and lottery activities within the city shall pay the tax in the amount and manner specified in division (C) of this section.

(C) *Amount of occupation tax for persons engaged in the occupation of conducting games of chance and lotteries*. The occupation tax for each person engaging in the occupation of conducting games of chance and lottery activities within the city on a contract basis for one or more licensed organizations shall be such amount as set from time to time by the Mayor and City Council, and a current record of such amount shall be maintained by the City Clerk. The tax shall be paid on a calendar-quarter basis on or before the 15th day following the last day of each calendar quarter.

(D) *Amount of occupation tax for distributor*. The occupation tax for engaging in the occupation of distributing gambling devices within the city shall be such amount as set from time to time by the Mayor and City Council, and a current record of such amount shall be maintained by the City Clerk. The tax shall be paid on a calendar-quarter basis on or before the 15th day following the last day of each calendar quarter.

(E) *Prohibition*. It shall be unlawful for any person to engage in the occupation of conducting games of chance or lottery activities without first obtaining a license to do so.

(F) *License application*. Every person desiring a license required by the provisions of this chapter shall make application to the City Clerk. Accompanying each application shall be:

(1) A sworn statement by each designated supervising member that such member will be responsible for compliance with rules and regulations for each occasion of games of chance and/or lotteries which he or she supervises.

(2) A sworn statement by the member designated as responsible for the proper utilization of gross receipts that no commission, fee, rent, seller profits, compensation, reward or recompense will be paid to any person or organization not sanctioned by the laws of the state of Nebraska and the city and that all profits will be spent for a lawful purpose.

(G) *Display of license*. Every license issued under the provisions of this division shall be conspicuously displayed at the place where the game of chance and/or lottery activity is conducted at all times during the conduct thereof.

(H) *License fee*. The license fee for engaging in the occupation of conducting games of chance and lotteries within the city shall be such amount as set from time to time by the Mayor and City Council, and a current record of such amount shall be maintained by the City Clerk. The tax shall be paid on a calendar-quarter basis on or before the 15th day following the last day of each calendar quarter.

(I) *Exemption*. Notwithstanding anything in this § 113.09 above to the contrary, licensed organizations, as defined in applicable state statutes, that are operating games of chance or lotteries in compliance with such statutes, and all other applicable rules and regulations, and all operators of a Keno lottery pursuant to Neb. RS 9-601 et seq. and written agreement with the city, shall be exempt from the provisions of this chapter. Keno lottery shall not be operated in the city pursuant to Neb. RS 9-601, except upon approval of and a written agreement with the city.
(‘79 Code, § 10-507.02) (Ord. 512, passed 11-5-90) Penalty, see § 10.99

§ 113.10 FAILURE TO PAY.

If any person, company or corporation fails or neglects to pay the occupation taxes as provided herein on the day it becomes due and payable, a late fee in such amount as set from time to time by the Mayor and the City Council shall be added and the city shall then proceed by civil suit to collect the amount due.
(Neb. RS 17-525) (‘79 Code, § 10-508) (Am. Ord. 927, passed 2-3-04)

CHAPTER 114: ALCOHOLIC BEVERAGES

Section

General Provisions

114.01 Definitions
114.02 City powers and duties
114.03 Owner of premises
114.04 Employer
114.05 Nuisance defined; abatement, hearing
114.06 Emergencies, authority to prohibit sales

Licensing

114.20 License required
114.21 Application, transfer
114.22 Licenses limited
114.23 Liquor application; city examination
114.24 Licensing consideration criteria
114.25 License application; personal appearance
114.26 Liquor license renewal
114.27 Grounds for revocation or suspension of license
114.28 Transfers of location of licenses; transfer fee, application, withdrawal; fee retained; number of transfers allowable
114.29 Licenses for premises not yet constructed
114.30 Catering license

Regulations

114.40 Minors and incompetents
114.41 Credit sales
114.42 (Reserved)
114.43 Original package
114.44 Minors prohibited on licenses premises unless accompanied by parent or adult; exception
114.45 Minor attempting to purchase prohibited
114.46 Hours of sale

114.47 Sale of beer; unlawful for “on sale” licensed premises to have other alcoholic liquor on premises
114.48 No sale of alcohol, fit for beverage purposes, by nonbeverage users
114.49 Sanitary conditions
114.50 Hiring minors
114.51 Acquisition and possession
114.52 Removal of intoxicated persons from public property

114.99 Penalty

GENERAL PROVISIONS

§ 114.01 DEFINITIONS.

For purposes of this chapter, the definitions found in Neb. RS 53-103.01 through 53-103.42 shall be used.
(Neb. RS 53-103) (‘79 Code, § 10-101)

§ 114.02 CITY POWERS AND DUTIES.

(A) The City Council is authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail, craft brewery, microdistillery and licensees carried on within the corporate limits of the city.

(B) The City Council shall further have the following power and duties in respect to licensees within the corporate limits of the city:

(1) To cancel or revoke for cause retail, craft brewery or microdistillery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the Nebraska Liquor Control Commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule or regulation adopted by the City Council has been or is being violated, and at that time examine the premises of the licensee in connection with such determination;

(3) To receive a signed complaint from any resident within its jurisdiction that any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule or regulation relative to alcoholic liquor has been or is being violated, and to act upon such complaints in the manner provided in the Act; and

(4) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided for resident complaints, it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted relating to alcoholic liquor; and to collect for the benefit of the State of Nebraska and the city all license fees and occupation taxes as prescribed by law.
(Neb. RS 53-134) ('79 Code, § 10-112) (Am. Ord. 1163, passed 1-17-12)

§ 114.03 OWNER OF PREMISES.

If the owner of the licensed premises, any person from whom the licensee derives the right to possession of such premises or the agent of such owner or person knowingly permits the licensee to use such licensed premises in violation of the terms of the Nebraska Liquor Control Act or any city ordinance, such owner, agent or other person shall be deemed guilty of a violation of the Act or ordinance to the same extent as such licensee and be subject to the same punishment.
(Neb. RS 53-1,101) (‘79 Code, § 10-113)

§ 114.04 EMPLOYER.

Every act or omission of whatsoever nature constituting a violation of any of the provisions of the Nebraska Liquor Control Act or any city ordinance by any officer, director, manager or other agent or employee of any licensee, if such act is committed or omission is made with the authorization, knowledge or approval of the licensee, shall be deemed and held to be the act of such employer or licensee, and such employer or licensee shall be punishable in the same manner as if such act or omission had been done or omitted by the licensee personally.
(Neb. RS 53-1,102) (‘79 Code, § 10-114)

§ 114.05 NUISANCE DEFINED; ABATEMENT, HEARING.

Any place where alcoholic liquors are sold in violation of the provisions of said Nebraska Liquor Control Act or of this chapter is hereby defined to be a nuisance and may be abated and suppressed after charges are made by the City Council and a hearing had thereon, subject to reasonable notice being given the parties charged with maintaining such nuisance.
(Neb. RS 53-190) (‘79 Code, § 10-122) (Ord. 43, passed - -)

§ 114.06 EMERGENCIES, AUTHORITY TO PROHIBIT SALES.

(A) Without limiting in any respect any authority now delegated to or inherent in the office, the Mayor or the Acting Mayor is hereby authorized in times of emergency or great and unusual public excitement to prohibit, by proclamation, the possession in public places, the sale or transportation of all intoxicating liquor including beer as well as all other beverages of greater alcoholic content. The proclamation may also direct the closing of all bars and packaged liquor dispensaries and any other places where intoxicating liquor is stored or sold at either wholesale or retail prices. In the event of the violation of the terms of the proclamation in places where other business is carried on, the Mayor Acting Mayor, or any of the members of the City Council or city officers in charge of enforcing the terms of the proclamation may take such measures even though they may affect the other business as may be necessary to insure compliance with the terms of the proclamation.
(‘79 Code, § 10-124)

(B) The city police officers or other person in charge of enforcing any proclamation, issued pursuant to division (A) of this section, may use such force as may be necessary to close summarily the places designated in the proclamation and any police officer may place under arrest any person offering any resistance to or failing to cooperate in carrying out the proclamation. The proclamation may remain in effect as long as the emergency or state of public excitement shall continue.
(‘79 Code, § 10-125) (Ord. 43, passed - -)

LICENSING

§ 114.20 LICENSE REQUIRED.

It shall be unlawful for any person to manufacture for sale, sell, keep for sale or to barter any alcoholic liquors within the city unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act.
(‘79 Code, § 10-102) Penalty, see § 114.99

§ 114.21 APPLICATION, TRANSFER.

Each application submitted to the City Council for the granting or recommending of any license to sell alcoholic liquors and each request for a transfer to a different location from that for which any such license was originally granted shall be accompanied by a true copy of the deed, lease or other proper instrument showing that the applicant is either the owner of the premises for which the license is sought or to which a transfer is desired, or is the lessee thereof, to enable the Council to determine applicant's ability to secure such license under the requirements of Nebraska Liquor Control Act.
(‘79 Code, § 10-103) (Ord. 43, passed - -)

§ 114.22 LICENSES LIMITED.

Whenever in the judgment of the City Council the public interest, welfare and good government of the city demand a limitation of the number of licenses of any class to sell alcoholic liquors, including beer, which may be issued within the corporate limits of the city, the number of licenses permitted may be fixed and determined by the Council by motion or resolution.
(‘79 Code, § 10-104) (Ord. 43, passed - -)

§ 114.23 LIQUOR APPLICATION; CITY EXAMINATION.

Any person or persons desiring to obtain a license to sell alcoholic liquors at retail shall file with the Liquor Control Commission. The Commission shall then notify by registered or certified mail the City Clerk. The City Council shall then meet and determine the desirability of the application and report in writing or in person to the Commission within 45 days. The City Council may examine, or cause to be examined, under oath, any applicant; examine, or cause to be examined, the books and records of any such applicant; to hear testimony, and to take proof for its information in the performance of its duties. For the purpose of obtaining any of the information desired, the City Council may authorize its agent, or the City Attorney, to act on their behalf. The City Council may hold the said examination and hearing upon the receipt from the Commission of the notice and copy of the application. The City Council shall fix a time and place at which a hearing will be held, and at which time the City Council may receive competent evidence under oath, either orally or by affidavit, from the applicant or any other person concerning the propriety of the issuance of such license. Notice shall be published in a legal newspaper in or of general circulation in the city one time not less than seven, nor more than 14 days before the time of the hearing. Such notice shall include, but not be limited to a statement that all persons desiring to give evidence before the local City Council in support of or protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than 45 days after the receipt of the Commission's letter of notice, and after such hearing, the City Council shall cause to be read at large in the minute record of their proceedings a resolution recommending either issuance or refusal of said applicant. The City Clerk shall thereupon mail to the Commission a copy of the resolution which shall state the cost of the published notice except that failure to hold a hearing and to examine the said applicant shall not render void any license issued by the Commission. In the event the Commission refuses to issue a license, the cost of the publication of notice as herein required shall be paid by the Commission.
(‘79 Code, § 10-105) (Am. Ord. 471, passed 10-18-88; Am. Ord. 493, passed 2-6-90; Am. Ord. 546, passed 6-16-92)

Statutory reference:

Application; hearings, Neb. RS 53-131 through 53-134

§ 114.24 LICENSING CONSIDERATION CRITERIA.

(A) The City Council shall only consider the following licensing standards and criteria at the examination hearing held pursuant to § 114.23 and in evaluation of any applicant for a retail alcoholic liquor license, for the upgrading or a license to sell alcoholic liquor or for the expansion or change in the location of the premises, and for the purpose of formulating a recommendation from the city to the Nebraska Liquor Control Commission in accordance with the Nebraska Liquor Control Act:

(1) The adequacy of existing law enforcement resources and services in the area;

(2) The recommendation of the Police Department or any other law enforcement agency;

(3) Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises, potential traffic and parking problems and the proximity and availability of on-street and off-street parking;

(4) Zoning restrictions and the City Council’s zoning and land-use policies;

(5) Sanitation or sanitary conditions on or about the proposed licensed premises;

(6) The existence of a citizen's protest and similar evidence in support of or in opposition to the application;

(7) The existing population and projected growth within the jurisdiction of the local governing body and within the area to be served;

(8) The existing liquor licenses, the class of each such license and the distance and times of travel between establishments that issued such licenses;

(9) Whether the proposed license would be compatible with the neighborhood or community where the proposed premises are located;

(10) Whether the type of business or activity proposed to be operated or presently operated in conjunction with the proposed license is and will be consistent with the public interest as declared in Neb. RS 53-101.01;

(11) Whether the applicant can ensure that all alcoholic beverages, including beer and wine, will be handled by persons in accordance with Neb. RS 53-102;

(12) Whether the applicant has taken every precaution to protect against the possibility of shoplifting of alcoholic liquor, which alcoholic liquor shall be displayed and kept in and sold from an area which is reasonably secured;

(13) Whether the applicant is fit, willing and able to properly provide the service proposed in conformance with all provisions and requirements of and rules and regulations adopted and promulgated pursuant to the Nebraska Liquor Control Act;

(14) Whether the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to ensure that the licensee can conform to all the provisions and requirements of and rules and regulations adopted and promulgated pursuant to the Nebraska Liquor Control Act;

(15) The background information of the applicant established by information contained in the public records of the Commission and investigations conducted by law enforcement agencies;

(16) Past evidence of discrimination involving the applicant as evidenced by findings of fact before any administrative board or agency of the local governing body, any other governmental board or agency of the city, any other governmental unit or any court of law;

(17) Whether the applicant or the applicant's representatives suppressed any fact or provided any inaccurate information to the Nebraska Liquor Control Commission, the City Council or the employees of the Nebraska Liquor Control Commission in regard to the license application or liquor investigations. The applicant shall be required to cooperate in providing a full disclosure to the investigating agents of the City Council;

(18) Proximity of and impact on schools, hospitals, libraries, parks and public institutions;

(19) Whether activities proposed to be conducted on the licensed premises or in adjacent related outdoor areas will create unreasonable noise or disturbance; and

(20) Compliance with state laws, liquor rules and regulations and city ordinances and regulations and whether or not the applicant has ever forfeited bond to appear in court to answer charges of having committed a felony or charges of having violated any law or ordinance enacted in the interest of good morals and decency or has been convicted of violating or has forfeited bond to appear in court and answer charges for violating any law or ordinance relating to alcoholic liquor.

(B) It shall be the applicant's duty to produce evidence pertaining to the designated criteria prescribed in this subsection. The burden of proof and persuasion shall be on the party filing the application. When applicable for purposes of this section, “applicant” shall be synonymous with “licensee.”
(‘79 Code, § 10-106) (Ord. 43, passed - -; Am. Ord. 412, passed 5-20-86; Am. Ord. 494, passed 2-6-90)
Statutory reference:
Similar provisions, see Neb. RS 53-132

§ 114.25 LICENSE APPLICATION; PERSONAL APPEARANCE.

It shall be the duty of every applicant for an alcoholic liquor license whose application is pending before the City Council, as provided by this chapter, to appear before the City Council personally (if a partnership at least one of the partners and if a corporation at least one managing officer thereof) at the time of the hearing upon the propriety of granting or recommending such license to answer such questions as may be asked in determining the facts required by law and this chapter concerning the propriety of granting such license. Failure to appear without reasonable excuse shall be grounds for denying such application; provided, however, failure to so appear shall not render the applicant amenable to the penalty provision of this chapter. Such applicant may at said hearing present evidence, other than his or her own testimony, in his or her behalf which shall be considered by the City Council in determining the said facts.
(‘79 Code, § 10-107) (Ord. 43, passed - -; Am. Ord. 474, passed 11-1-88)

§ 114.26 LIQUOR LICENSE RENEWAL.

Retail or bottle club licenses issued by the Commission and outstanding may be automatically renewed in the absence of a request by the City Council to require the said licensee to issue an application for renewal. Any licensed retail or bottle club establishment located in an area which is annexed to the city shall file a formal application for a license, and while such application is pending, the licensee shall be authorized to continue all license privileges pursuant to this chapter until the original license expires, is canceled or revoked. If such license expires within 60 days following the annexation date of such area, the license may be renewed by order of the Commission for not more than one year. The City Clerk, upon notice from the Commission, between January tenth and January thirtieth of each year, shall cause to be published in a legal newspaper in or of general circulation in the city, one time, a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the city; provided, Class C license renewal notices shall be published between the dates of July tenth and July thirtieth of each year. The City Clerk shall then file with the Commission proof of publication of said notice on or before February tenth of each year or August tenth of each year for Class C licenses. Upon the conclusion of any hearing required by this section, the City Council may request a licensee to submit an application.
('79 Code, § 10-108) (Am. Ord. 264, passed 12-4-79)
Statutory reference:
State license renewal procedures, Neb. RS 53-135 and 53-135.01

§ 114.27 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE.

A retail license to sell alcoholic liquors, which the City Council is legally empowered to revoke, may be either revoked or suspended by the Council whenever it shall find, after notice and hearing as provided by law, that the holder of any such license has violated any of the provisions of the Nebraska Liquor Control Commission or any statutory provision or ordinance of the city now existing or hereafter adopted, enacted in the interest of good morals and decency or for any one or more of the following causes:

(A) The licensee, his or her manager or agent in charge of the premises licensed has been convicted of or has pleaded guilty to a felony under the laws of the state of Nebraska or any other state of the United States.

(B) The licensee, his or her manager or agent in charge of the premises licensed has been convicted of or pleaded guilty to being the proprietor, manager or agent in charge of a gambling house or of pandering or other crime or misdemeanor opposed to decency and morality.

(C) The licensee, his or her manager or agent in charge of the premises licensed has been convicted of or pleaded guilty to violation of any federal or state law concerning the manufacture, possession or sale of alcoholic liquors.

(D) That the licensee either swore falsely to any question in his or her application for said license, has failed to comply with the statements and representations made in answer to any question or questions in said application or has failed to keep any promise, oral or written, made to the licensee's request for said license.

(E) The licensee, his or her manager or agent in charge of the premises licensed shall have forfeited bond to appear in court to answer charges for any one of the violations of laws or ordinances referred to in this section.

(F) The licensee, manager or agent shall allow any live person to appear or have reasonable cause to believe that any live person shall appear in any licensed premises in a state of nudity to provide entertainment, to provide service, to act as hostess, manager or owner or to serve as an employee in any capacity. For the purposes of this subsection, the term nudity shall mean the showing of the human male or female genitals, pubic area or buttocks, or the human female breasts, including the nipple or any portion below the nipple with less than a full opaque covering.
(‘79 Code, § 10-109) (Ord. 43, passed - -; Am. Ord. 499, passed 3-20-90)

§ 114.28 TRANSFERS OF LOCATION OF LICENSES; TRANSFER FEE, APPLICATION, WITHDRAWAL; FEE RETAINED; NUMBER OF TRANSFERS ALLOWABLE.

There is hereby imposed a pecuniary charge for the exercise of the privilege of transferring, after a request in writing to and approval by the City Council pursuant to Neb. RS 53-129 and after presentation of proof of payment of the state registration fee prescribed in Neb. RS 53-131, any alcoholic liquor license, issued pursuant to the Liquor Control Act of the State of Nebraska, from one location within the city to another location therein which shall be the sum of $25 for each such transfer, which said sum shall be deposited with the City Clerk at the time the application for such transfer is made. In event such transfer is permitted by the City Council, the said sum shall be deposited with the City Treasurer and credited to the General Fund of the city. In event the requested change of location is not permitted by the City Council, the said sum shall be returned by the City Clerk to the person requesting such transfer. In event that any such applicant for a transfer shall withdraw his or her application at any time after the same is presented to the Council, the said sum of $25 shall be retained by the city in the same manner as if a transfer had been permitted. Only one transfer of any such alcoholic liquor license shall be allowed or permitted within the period of any one license year.
(‘79 Code, § 10-110) (Ord. 43, passed - -)

§ 114.29 LICENSES FOR PREMISES NOT YET CONSTRUCTED.

In the event that the premises to be licensed are not yet constructed and ready for occupancy, the applicant shall submit to the City Council a bona fide full and complete set of plans and specifications for the construction of the premises to be licensed, which must be approved by the Council prior to

granting or recommending a license for such premises. The applicant shall further submit such evidence as to applicant's financial ability to construct the licensed premises in accordance with said plans and specifications as the Council shall require. If applicant is a lessee of the premises to be constructed, such evidence of financial ability shall be required of and submitted by the owner of said premises. Failure to erect the premises according to the plans and specifications approved by the Council shall be cause for revocation of any license granted for same.
(‘79 Code, § 10-111) (Ord. 43, passed - -)

§ 114.30 CATERING LICENSE.

(A) The holder of a Class C, Class D or Class I license issued under Neb. RS 53-124 or a craft brewery license, may obtain an annual catering license as prescribed in this section. Any such licensee desiring to obtain a catering license shall file an application with the Nebraska Liquor Control Commission.
(Neb. RS 53-124.12(1))

(B) Upon receipt from the Commission of the notice and copy of the application as provided in Neb. RS 53-124.12, the City Council shall process the application in the same manner as provided in § 114.23.

(C) The City Council with respect to catering licensees within its corporate limits may cancel a catering license for cause for the remainder of the period for which that license is issued. Any person whose catering license is canceled may appeal to the District Court.
(Neb. RS 53-124.12(4)) (‘79 Code, § 10-134) (Am. Ord. 545, passed 6-16-92; Am. Ord. 638, passed 12-19-95; Am. Ord. 708, passed 11-18-97; Am. Ord. 1035, passed 5-1-07)

REGULATIONS

§ 114.40 MINORS AND INCOMPETENTS.

It shall be unlawful for any person or persons to sell, furnish, give away, exchange, or deliver, or permit the sale, gift, or procuring of any alcoholic liquors to or for any minor or to any person who is mentally incompetent.
(Neb. RS 53-180) (‘79 Code, § 10-115) (Am. Ord. 1164, passed 1-17-12) Penalty, see § 114.99

§ 114.41 CREDIT SALES.

No person shall sell or furnish alcoholic liquor at retail to any person on credit, on a passbook, on an order on a store, in exchange for any goods, wares, or merchandise or in payment for any services rendered. Nothing herein contained shall prevent the following:

(A) Any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members, or bona fide guests of members, and charged to the account of such members or guests in accordance with the bylaws of such club;

(B) Any hotel or restaurant holding a retail license from permitting checks or statements for liquor to be signed by regular guests residing at such hotel or eating at such restaurant and charged to the accounts of such guests; or

(C) Any licensed retailer engaged in the sale of wine from issuing wine-tasting cards to customers.
(Neb. RS 53-183) ('79 Code, § 10-116) (Am. Ord. 1165, passed 1-17-12) Penalty, see § 114.99

§ 114.42 (RESERVED).

§ 114.43 ORIGINAL PACKAGE.

No person, except a manufacturer or wholesaler, shall fill or refill, in whole or in part, any original package of alcoholic liquor with the same or any other kind or quality of alcoholic liquor. It shall be unlawful for any person to have in his or her possession for sale at retail any bottles, casks or other containers containing alcoholic liquor except in original packages. Nothing in this section shall prohibit the refilling of original packages of alcoholic liquor for strictly private use and not for resale.
(Neb. RS 53-184) ('79 Code, § 10-118) Penalty, see § 114.99

§ 114.44 MINORS PROHIBITED ON LICENSED PREMISES UNLESS ACCOMPANIED BY PARENT OR ADULT; EXCEPTION.

No person who holds a license to sell alcoholic liquors by the drink, including beer, shall allow any minors to be in, frequent or loiter about the licensed premises unless such minors are accompanied by their parents or legal guardian; provided however, that in the case where the licensed premises are in fact a combination cocktail lounge and restaurant and said cocktail lounge constitutes a separate room or rooms within the licensed premises then the prohibition provided in this section shall be applicable only to the area comprising said cocktail lounge.
('79 Code, § 10-119) (Ord. 115, passed - -) Penalty, see § 114.99

§ 114.45 MINOR ATTEMPTING TO PURCHASE PROHIBITED.

It shall be unlawful for any minor to purchase or attempt to purchase or to have any person purchase or procure for him or her any alcoholic liquors or alcoholic beverages, including beer, by the drink or in the original package.
('79 Code, § 10-120) (Ord. 43, passed - -) Penalty, see § 114.99
Statutory reference:
Similar provisions, see Neb. RS 53-180.01

§ 114.46 HOURS OF SALE.

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

OFF SALE. Alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

ON SALE. Alcoholic beverages sold at retail by the drink for consumption on the premises of the licensed establishment.

(B) It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the city except during the hours provided herein.

HOURS OF SALE

Alcoholic Liquors (except beer and wine)

Secular Days		
	Off Sale	6:00 a.m. to 1:00 a.m.
	On Sale	6:00 a.m. to 2:00 a.m.
Sundays		
	Off Sale	6:00 a.m. to 1:00 a.m.
	On Sale	6:00 a.m. to 2:00 a.m.

Beer and Wine

Secular Days

Off Sale	6:00 a.m. to 1:00 a.m.
On Sale	6:00 a.m. to 2:00 a.m.

Sundays

Off Sale	6:00 a.m. to 1:00 a.m.
On Sale	6:00 a.m. to 2:00 a.m.

(C) It shall be unlawful on premises licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in the possession or control of any person for purposes of consumption for a period of time longer than 15 minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises.

(D) Nothing in this section shall be construed to prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section.
(‘79 Code, § 10-123) (Ord. 212, passed - -; Am. Ord. 259, passed 12-4-79; Am. Ord. 306, passed 5-4-82; Am. Ord. 536, passed 9-3-91; Am. Ord. 1123, passed 6-1-10; Am. Ord. 1189, passed 2-5-13) Penalty, see § 114.99
Statutory reference:
Authority to alter statutory hours, see Neb. RS 53-179

§ 114.47 SALE OF BEER; UNLAWFUL FOR “ON SALE” LICENSED PREMISES TO HAVE OTHER ALCOHOLIC LIQUOR ON PREMISES.

In order to regulate the business of licensees of the sale of beer only for consumption upon the premises, it shall be unlawful for any person, firm, partnership or corporation, having a license to sell beer only for consumption on the premises, or any agent or servant of any such person, firm, partnership or corporation, to have, keep, store or possess in any manner whatsoever in any room or building, or in any place whatsoever upon the premises covered by such license in the city any alcoholic liquor except beer; provided, nothing herein shall apply where a license to sell alcoholic liquor other than beer has been obtained for such premises.
(‘79 Code, § 10-126) (Ord. 43, passed - -) Penalty, see § 114.99

§ 114.48 NO SALE OF ALCOHOL, FIT FOR BEVERAGE PURPOSES, BY NONBEVERAGE USERS.

No nonbeverage user shall, within the city, sell, give away or otherwise dispose of any alcohol, purchased under a license as such nonbeverage user, in any form fit for beverage purposes.
(Neb. RS 53-187) ('79 Code, § 10-127) (Ord. 43, passed - -) Penalty, see § 114.99

§ 114.49 SANITARY CONDITIONS.

It shall be unlawful to open for public use any retail liquor establishment that is not in a clean and sanitary condition. Toilet facilities shall be adequate and convenient for customers and patrons. The licensed premises shall be subject to any health inspections the Building Inspector or the city police may make or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions, and a report concerning the sanitary conditions shall be made at all hearings concerning the application for or renewal of a liquor license.
('79 Code, § 10-128) Penalty, see § 114.99
Statutory reference:
State sanitary rules and regulations authorized, see Neb. RS 53-118
Authority to regulate licensed premises, see Neb. RS 53-134.03

§ 114.50 HIRING MINORS.

It shall be unlawful for any person to hire a minor regardless of sex under the age of 19 years to serve or dispense alcoholic liquors, including beer, to said licensee's customer.
('79 Code, § 10-129) Penalty, see § 114.99

§ 114.51 ACQUISITION AND POSSESSION.

It shall be unlawful for any person to purchase, receive, acquire, accept or possess any alcoholic liquor acquired from any other person other than one duly licensed to handle alcoholic liquor under the Nebraska Liquor Control Act; provided, nothing in this section shall prevent:

(A) The possession of alcoholic liquor for the personal use of the possessor and his or her family and guests, as long as the quantity of alcoholic liquor transported, imported, brought or shipped into the state does not exceed nine liters in any one calendar month;

(B) The making of wine, cider or other alcoholic liquor by a person from fruits, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if made solely for the use of the maker and his or her family and guests;

(C) Any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, any hospital or other institution caring for the sick and diseased persons from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in compounding of prescriptions of licensed physicians;

(D) The possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church;

(E) Persons who are 16 years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor;

(F) Persons who are 16 years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment;

(G) Persons who are 16 years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment; or

(H) Persons who are 19 years old or older from serving or selling alcoholic liquor in the course of their employment.
(Neb. RS 53-168.06, 53-175, 53-194.03) ('79 Code, § 10-131) (Am. Ord. 405, passed 11-19-85; Am. Ord. passed 7-1-97) Penalty, see § 114.99

§ 114.52 REMOVAL OF INTOXICATED PERSONS FROM PUBLIC PROPERTY.

(A) Any law enforcement officer with the power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself or others, or who is otherwise incapacitated, from any public or quasi-public property. An officer removing an intoxicated person from public or quasi-public property shall make a reasonable effort to take such intoxicated person to his or her home or to place such person in any hospital, clinic, alcoholism center or with a medical doctor as may be necessary to preserve life or to prevent injury. Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctor which have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals. If such efforts are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil protective custody, except that civil protective custody shall be used only as long as is necessary to preserve life or to prevent injury, and under no circumstances longer than 24 hours. The placement of such person in civil protective custody shall be recorded at the facility or jail at which he or she is delivered and communicated to his or her family or next of kin, if they can be located, or to such person designated by the person taken into civil protective custody.

(B) The law enforcement officer who acts in compliance with this section shall be deemed to be acting in the course of his or her official duty and shall not be criminally or civilly liable for such actions. The taking of an individual into civil protective custody under this section shall not be considered an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(C) For purposes of this section, public property shall mean any public right-of-way, street, highway, alley, park or other state, county or city-owned property.

(D) For the purposes of this section, quasi-public property shall mean and include private or publicly-owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress.
(Neb. RS 53-1,121) (‘79 Code, § 10-133)

§ 114.99 PENALTY.

Unless a penalty is otherwise provided in applicable state statute or in another chapter or section of this code with respect to a particular violation, any person, firm, or entity that violates any of the provisions of this chapter, including but not limited to any neglect or refusal to comply therewith or opposition to the enforcement thereof, shall be guilty of a misdemeanor and shall upon conviction thereof be subject to: for a first offense violation, a fine in any amount not in excess of $500 in the discretion of the court,; and for a second offense violation, a fine in any amount not in excess of $1,000, or imprisonment for not more than six months, or both. Each day on which a violation continues shall be deemed a separate violation and offense hereunder.
(‘79 Code, § 10-132) (Ord. 43, passed - -)

Section

General Provisions

CHAPTER 115: CABLE TELEVISION

115.001 Definitions
115.002 Application for franchise
115.003 Granting conditions of a certificate of franchise
115.004 Duration, renewal, and acceptance of certificate of franchise
115.005 Cable system and operations
115.006 Work on the cable system
115.007 Licenses and permits
115.008 Relocation of lines
115.009 Protection of structures
115.010 Safety precautions; other property
115.011 Tree trimming
115.012 Maps and plats
115.013 Undergrounding of cable system
115.014 No liability to franchisee
115.015 Governmental programming, capacity, designations, and additional channels
115.016 Governmental programming; use of unused capacity
115.017 Rates, fees, and charges

Customer Service

115.030 Standard
115.031 Selection of service
115.032 Billings
115.033 Service calls
115.034 Disconnection
115.035 Information to subscribers
115.036 Customer contacts
115.037 Service interruptions
115.038 Cable information

Compensation to the Franchising Authority

115.050 Amounts required
115.051 Acceptance of payment not a release of claim; audits and recomputations
115.052 Franchise fees additional to taxes, permit fees, and other charges

Oversight and Regulation

115.060 Generally
115.061 Books. Records, and files
115.062 Inspection and audit

Transfer, Default, and Termination

115.070 Transfer of franchise or interest therein
115.071 Specific rights and remedies; remedies not exclusive
115.072 Performance bond
115.073 Franchising authority; occurrence of event of default; breach procedures
115.074 Termination

Insurance and Indemnity

115.090 Insurance specifications
115.091 Insurance maintenance
115.092 Liability not limited
115.093 Indemnification of the franchising authority

Miscellaneous Provisions

115.100 Controlling authorities
115.101 Maintenance of cable system in good working order
115.102 Binding effect
115.103 No waiver; cumulative remedies
115.104 No agency
115.105 Governing law
115.106 Claims under agreement
115.107 Reserved rights
115.108 City's right of intervention

GENERAL PROVISIONS

§ 115.001 DEFINITIONS.

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

BASIC SERVICES. The lowest priced tier of service which includes the retransmission of local broadcast television signals, including at a minimum but not limited to all must-carry signals and all PEG channels.

CABLE ACT. Collectively Title VI of the Communications Act of 1934, as amended, 47 USC 521 et seq., and the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.

CABLE SERVICE or ***SERVICE.*** The one-way transmission to subscribers of (i) video programming or (ii) other programming services, such as digital audio; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, including but not limited to interactive services, enhanced services, information services, high speed data services, cable modem services, and internet access and services, such as an internet service provider.

CABLE TELEVISION SYSTEM or ***CABLE SYSTEM.*** A facility of the franchisee, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which is provided to multiple subscribers within the franchise area, but the term does not include:

(1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) A facility that serves subscribers without using any public rights-of-way;

(3) A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system (other than for the purposes of Section 621(c) of the Cable Act) to the extent that the facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) An open video system that complies with Section 653 of the Cable Act; or

(5) Any facilities of any electric utility used solely for operating its electric utility system.

CERTIFICATE or ***CERTIFICATE OF FRANCHISE.*** A certificate of franchise issued by the city upon a majority vote of the City Council which authorizes the holder of the certificate to operate and maintain a cable television system within the franchise area pursuant to the rules and regulations of this chapter. The holder of the certificate may also be referred to as franchisee or grantee.

CITY. The City of La Vista. The words ***CITY*** and ***FRANCHISING AUTHORITY*** are synonymous when used in this chapter.

CONTROL or ***CONTROLLING INTEREST.*** Except to the extent otherwise defined elsewhere in this chapter, actual working control in whatever manner exercised.

COUNCIL. The City Council of La Vista.

EVENTS OF DEFAULT. Includes but shall not be limited to any of the following acts or failures to act by the franchisee:

(1) Franchisee's material breach or violation of any of the terms, covenants, representations, or warranties contained herein or franchisee's failure to perform any obligation hereunder;

(2) The foreclosure or other similar judicial or nonjudicial sale or transfer of all or any material part of the cable system, except as approved by the franchising authority;

(3) The condemnation by a public authority other than the franchising authority, or sale dedication under threat or in lieu of condemnation, of all or any material part of the cable system;

(4) The suspension or discontinuance of business by the franchisee;

(5) Any denial, forfeiture, or revocation by any federal, state, or local governmental authority of any authorization required by law or the expiration without renewal of any such authorization;

(6) Franchisee's failure to pay the franchise fee or any amount due under this chapter;

(7) Franchisee's failure to pay any taxes of any kind, including but not limited to property and income taxes, on or before the due date for the same, provided, however, that franchisee shall not be in default with respect to any taxes that have not been paid because they are being disputed in good faith;

(8) The entry of any judgment against franchisee that remains unpaid for longer than 45 days after entry (and is not stayed pending rehearing or appeal) which would materially impair franchisee's ability to provide cable services in the franchise area;

(9) Dissolution or termination of the franchisee for any reason; or

(10) Franchisee's voluntary or involuntary filing in bankruptcy, insolvency, transfer for the benefit of creditors, failure to pay debts as they come due, or any attempt to obtain protection from creditors.

FCC. The Federal Communications Commission, its designee, or any successor thereto.

FRANCHISE AREA. The incorporated limits of the city as constituted from time to time during a franchise.

FRANCHISEE. The operator of a cable television system or the provider of cable services within the city who has been granted a certificate by the city or anyone who succeeds the holder of a certificate in accordance with the provisions of this chapter. The words ***FRANCHISEE*** and ***GRANTEE*** are synonymous when used in this chapter.

FRANCHISING AUTHORITY. See ***CITY***.

GOVERNMENTAL PROGRAMMING CHANNELS. Those channels designated by the franchisee to provide governmental programming.

GOVERNMENTAL PROGRAMMING. Such information, data, messages, broadcasts, and public meetings of the franchising authority and such other political subdivisions of the state or other governmental unit, or any committee, body, or agency thereof, and any other civic, public, educational, or governmental programming, as authorized from time to time by the franchising authority or its designee.

GRANTEE. See ***FRANCHISEE***.

GROSS REVENUE.

(1) All revenues received by the franchisee or any affiliate, in whatever form and from any and all sources, from or in any way related to or connected with the operation of the cable system to provide cable service.

(2) The term ***GROSS REVENUE*** shall include compensation received from advertising to the extent such compensation is considered revenue under generally accepted accounting principles and shall include but not be limited to:

(a) Subscription and other revenues received on or on account of all cable services provided over the cable system in the franchise area; and

(b) Receipts from sale or leasing of cable service equipment at retail within the franchise area.

(3) The term ***GROSS REVENUE*** shall not include:

(a) Fees or taxes which are imposed directly or indirectly on any subscriber by any governmental unit or agency and which are collected by the franchisee on behalf of such governmental unit or agency (provided, however, that ***GROSS REVENUE*** shall include all amounts directly or indirectly collected by the franchisee to pay franchise fees under this agreement; and

(b) Subscriber bad debt.

NORMAL BUSINESS HOURS. For purposes of FCC rules referred to in this chapter, with respect to office hours and in-person and live telephone service at franchisee's local office, 8 a.m. to 5 p.m., Monday through Friday, and 9 a.m. to 1 p.m. on Saturday, unless otherwise agreed by franchisee and franchising authority. For hours other than specified in the foregoing sentence, franchisee shall make available a live operator or telephone answering service 24 hours each day, seven days a week, which shall be the normal business hours during these times with respect to the telephone service provided.

PERSON. Any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

PUBLIC RIGHT-OF-WAY. See ***STREET, PUBLIC RIGHT-OF-WAY,*** or ***RIGHT-OF-WAY***.

RIGHT-OF-WAY. See ***STREET, PUBLIC RIGHT-OF-WAY,*** or ***RIGHT-OF-WAY***.

STREET, PUBLIC RIGHT-OF-WAY, or ***RIGHT-OF-WAY.*** The surface of and the space above and below any dedicated public street, highway, freeway, bridge. alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other dedicated public right-of-way in the franchise area, including but not limited to easements within the franchise area which have been dedicated for compatible uses, but shall not include any property of the franchising authority which is not a dedicated public right-of-way, street, highway, or alley.

SUBSCRIBER. Any person lawfully receiving any cable service by means of or in connection with the cable system, whether or not a fee is paid for such cable service.
(Ord. 807 § 10-801, passed 5-16-00)

§ 115.002 APPLICATION FOR FRANCHISE.

(A) Application for a franchise hereunder shall be in writing, shall be filed with the City Clerk, and shall contain the following information:

(1) The name and address of the applicant and complete disclosure as to the ownership of all pecuniary interests in the applicant. If the applicant is a partnership or a joint venture, the name and

address of each partner or joint venturer shall be set forth. If the applicant is a corporation, the application shall also state the names and addresses of its directors, officers, and all stockholders. If the applicant is owned in whole or in part by another corporation, or by a partnership, joint venturer, or other entity, then a list of all stockholders, partners, or associates thereof shall also be given. Persons subscribing for stock or otherwise expressing an intention to purchase an interest, but who have not yet done so, shall be disclosed in the same manner.

(2) A general statement and description of the system proposed to be constructed, installed, maintained, or operated by the applicant; the manner in which applicant proposes to construct, install, maintain, and operate the same; a statement of the services and channels to be provided initially; a brief narration of the experience and qualifications of applicant in the installation and operation of a cable television system; an initial distribution plan of proposed immediate service within the city; and, particularly, the extent and manner in which existing or future poles or other facilities or other public utilities will be used for such system.

(3) A statement of proposed rates and charges to subscribers for installation and services, and a copy of proposed service agreement between the applicant and its subscribers shall accompany the application.

(4) A copy of any contract, if existing, between the applicant and any public utility providing for the use of facilities of the public utility, such as poles, lines, or conduits.

(5) A statement setting forth all agreements and understandings, whether written, oral, or implied, existing between the applicant and any person, firm, or corporation with respect to the proposed franchise or the proposed operation. If a franchise is granted to a person, firm, or corporation posing as a front or as the representative of another person, firm, or corporation, and such information is not disclosed in the original application, such franchise shall be void *ab initio* and of no force and effect whatsoever.

(6) A balance sheet of applicant prepared by a certified public accountant, or person otherwise satisfactory to the Council, showing applicant's financial status as of a date within six months prior to the date of the application. The applicant shall also furnish evidence satisfactory to the city of financial ability to complete the construction and installation of the proposed Cable System.

(7) The Council may at any time demand and applicant shall provide such supplementary, additional, or other information as the Council may deem reasonably necessary to determine whether the requested franchise should be granted.

(8) There shall be no requirement for local ownership or investment in franchise applicant, and no preference shall be given to any applicant by reason of local ownership or investment in the applicant.

(9) A copy of the contract form that applicant intends to have subscribers execute in connection with the extension of service to their residences.

(10) A statement in affidavit form that no Mayor, City Council member, or member of any committee created by the city to advise in respect to or monitor cable television franchises, or any City Administrator, or City Attorney, or any member of their immediate families, directly or indirectly owns any pecuniary interest in applicant or in any parent, affiliated, or subsidiary corporation of applicant or in any entity having a partnership, joint venture, or other proprietary relationship with applicant.

(B) Nothing herein is to be construed to limit the number of applications which can be filed or the number of franchises which can be granted by the City.
(Ord. 807 § 10-802, passed 5-16-00)

§ 115.003 GRANTING CONDITIONS OF A CERTIFICATE OF FRANCHISE.

(A) The franchising authority by issuance of a certificate grant to the franchisee a nonexclusive franchise which authorizes the franchisee to construct, install, operate, and maintain a cable system in, along, upon, across, above, over, or under the public rights-of-way within the franchise area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any public rights-of-way and all extensions thereof and additions thereto such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system, subject to the terms and conditions of this chapter.

(B) The franchisee shall not originate any programming to provide a news service on any cable television channel carried on the franchisee's facilities, unless the franchisee makes available within its channel capacities the equal opportunity to news service media to carry similar originated programming on a reasonable contract basis, which shall include consideration of availability of time and rates for such service in other similar communities. The offering of a time and/or weather service shall not be deemed or considered as program origination of news service for the purpose of this chapter.

(C) (1) Nothing in this chapter or in the granting of any certificate shall:

(a) Abrogate the right of the franchising authority, to perform any public works or public improvements of any description;

(b) Be construed as a waiver of any codes or ordinances of the franchising authority or of the franchising authority's right to require the franchisee or any person utilizing the cable system to secure the appropriate permits or authorizations for such use;

(c) Be construed as a waiver or release of the rights of the franchising authority in and to the streets; or

(d) Affect the right of the franchising authority to grant to any person a franchise, consent, or right to occupy and use the streets, or any part thereof, for the construction, operation, or maintenance of all or any part of a cable system within the franchising area or for any other purpose.

(2) No grant of a franchise shall establish any priority for the use of the rights-of-way by the franchisee or by any other current or future franchisee or permit holder. In the event of any dispute as to priority of use of the rights-of-way in the franchising area, the priority shall be determined by the franchising authority in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the state.

(D) A certificate granted under this chapter authorizes the franchisee to use the rights-of-way of the franchising area for the purpose of providing the cable services over the cable system. The issuance of a franchise hereunder is not an agreement, acquiescence, or a waiver of any right, remedy, or defense of the franchising authority with respect to the use of the rights-of-way for purposes other than the operation of the cable system to provide cable services.
(Ord. 807 § 10-803, passed 5-16-00)

§ 115.004 DURATION, RENEWAL, AND ACCEPTANCE OF CERTIFICATE OF FRANCHISE.

(A) A franchise granted pursuant to a certificate of franchise hereunder shall take effect and be in force after the certificate of franchise is issued by the city and shall continue in force and effect for a term determined by the City Council and Mayor, but in no event longer than 15 years. Subject to Section 626 of the Cable Act, the franchising authority reserves the right to grant or deny renewal of a franchise at the end of a term. In the event a franchisee continues (with permission of the city) to operate all or any part of the cable system after the term of its franchise, then the franchisee shall continue to comply with all applicable provisions of the franchise unless otherwise agreed, including without limitation all compensation and other payment provisions thereof throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the franchise.

(B) The acceptance of a certificate of franchise by a franchisee will constitute the unconditional acceptance and promise by the franchisee to comply with and abide by all of the provisions, terms, and conditions of this chapter and that the provisions, terms, and conditions of this chapter shall be by reference incorporated into the certificate of franchise as if fully set out therein. In addition the franchisee shall file with the City Clerk its acceptance of the certificate of franchise and its promise to abide by the provisions, terms, and conditions of this chapter in writing duly executed and sworn to by or on behalf of the franchisee before a notary public or other officer authorized by law to administer oaths. Should the franchisee fail to file the written acceptance and promise as above described it shall acquire no rights, privileges, or authority under the certificate of franchise.
(Ord. 807 § 10-804, passed 5-16-00)

§ 115.005 CABLE SYSTEM AND OPERATIONS.

(A) A franchisee shall construct, operate, maintain, and upgrade the cable system as provided in this chapter. The franchisee shall make cable service available to every person requesting the same at

any location within the franchise area, and no charge shall be imposed on any current or potential subscriber in the franchise area for extending cable service to the requestor's location so long as the requestor is within one mile of the franchisee's trunk or distribution cable and there are at least five residential units within a radius of 500 feet of the requestor's location. In the event a person requesting cable service is beyond the area set forth in the previous sentence, the franchisee shall pay the costs of extending the cable system the first 1,000 feet from the point of the franchisee's trunk or distribution cable nearest the requestor's location, and the requestor may obtain service by paying the construction costs to extend the cable system the remainder of the distance to the requestor's location. In any new subdivision or development in the franchise area, the franchisee shall extend or install the cable system no later than the date on which electric or telephone utilities are installed such that the franchisee need only install drops in a dwelling in order to provide cable service in the subdivision or development.

(B) Throughout the term of a franchise, the franchisee shall operate and maintain the cable system in accordance with the testing procedures and the technical performance standards of the FCC in effect from time to time and shall provide to the franchising authority upon request a written report of the results of any testing of the cable system or cable services. Franchisee shall at all times maintain a skilled workforce and inventory of parts that are necessary for the erection, construction, operation, maintenance, and repair of the cable system, and franchisee's performance of any other obligation from time to time under this chapter.

(C) Franchisee shall install and maintain an emergency alert system that meets all requirements of federal law. Upon the request of a subscriber, the franchisee shall make available a device by which the subscriber can block completely the video and audio signals of a particular cable service during periods selected by that subscriber.
(Ord. 807 § 10-805, passed 5-16-00)

§ 115.006 WORK ON THE CABLE SYSTEM.

(A) All work involved in the construction, operation, maintenance, repair, upgrade, or removal of the cable system shall be performed in a safe, thorough, reliable, good, and workmanlike manner, applying high standards of engineering and workmanship, and using materials of good and durable quality, and shall meet or exceed:

(1) All applicable federal, state, or local laws, rules, regulations, ordinances, orders, or codes;

(2) Safety or industry codes applicable to the work performance or governing those persons performing the work; and

(3) Requirements of any utility whose poles or conduits are used for the cable system or any part thereof.

(B) If, at any time, it is reasonably determined by the franchising authority or any other agency or authority of competent jurisdiction that any part of the cable system, including without limitation any means used to distribute signals over or within the cable system, is harmful to the health or safety of any person, then the franchisee shall, at its own cost and expense, promptly correct all such conditions.
(Ord. 807 § 10-806, passed 5-16-00)

§ 115.007 LICENSES AND PERMITS.

The franchisee shall obtain all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain, repair, or upgrade the cable system, or any part thereof, and shall comply with any other code or ordinance of the franchising authority, as amended from time to time, and obtain any other approval or permission, as required from time to time, for the franchisee to perform hereunder, including but not limited to obtaining any permit that is required prior to use of rights-of-way or commencement of construction. Franchisee shall be subject to all laws, rules, regulations, and orders regarding private property when performing under this chapter. Franchisee shall comply with all applicable zoning or land use ordinances, restrictions, or regulations as may exist from time to time.
(Ord. 807 § 10-807, passed 5-16-00)

§ 115.008 RELOCATION OF LINES.

(A) If the grades of lines of any street or public right-of-way within the franchise area are changed at any time during the term of a franchise, then the franchisee shall, at its sole cost and expense, upon the request of the franchising authority after reasonable prior notice to the franchisee, protect or promptly alter or relocate the cable system, or any part thereof, as directed by the franchising authority, so as to conform with such new grades or lines. In addition to but not in limitation of the foregoing, the franchisee shall protect, support, disconnect, or remove from the right-of-way any portion of the cable system when required to do so by the franchising authority due to any excavation, construction, repair, maintenance, grading, regrading, installation, vacation, or relocation of any streets, sewers, pipes, or other public facilities, structures, improvements, or work. Furthermore, if a street where the franchisee has lines or other facilities is vacated, eliminated, or closed, the franchisee's rights under this chapter with respect to the street shall terminate upon 30 days notice, and the franchisee shall remove the cable system from the former street unless it obtains easements from property owners permitting the cable system to remain, provided, however, that the franchising authority may reserve easements for the cable system to use the former street to the extent reserved for other utilities. The franchisee shall pay the entire cost and expense of any removal, movement, relocation, installation, or reinstallation of any lines or other facilities hereunder unless it is for the benefit of a private party, in which case the franchisee may charge the private party for actual costs and expenses.

(B) The franchisee shall, upon at least 30 days prior written notice (or such other notice period as agreed to by the parties) to franchisee by the franchising authority of any person holding a permit (including a permit to move a structure) temporarily to move its wires or other equipment. The franchisee may impose a reasonable charge on any person (other than the franchising authority) for any such movement of its wires or equipment and may require payment in advance, provided, however, that the amount charged by franchisee shall not be greater than the franchisee's actual direct costs to carry out the move.

(C) The franchising authority may, in case of fire, disaster, or other emergency situations, as reasonably determined by the franchising authority, cut or move any of the wires, cables, amplifiers, appliances, or other parts of the cable system, in which event the franchising authority shall not incur any liability to the franchisee. When possible, the franchisee shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself. All costs to repair or replace such wires, cables, amplifiers, appliances, or other parts of the cable system shall be borne by the franchisee.
(Ord. 807 § 10-808, passed 5-16-00)

§ 115.009 PROTECTION OF STRUCTURES.

In connection with the construction, operation, maintenance, repair, upgrade, or removal of a cable system, the franchisee shall, at its own cost and expense, protect any and all existing structures belonging to the franchising authority and all designated landmarks. The franchisee shall obtain the prior approval of the franchising authority before altering any water main, sewerage or drainage system, or any other municipal or public utility structure, improvement, or property. Any such alteration shall be made by the franchisee, at its sole cost and expense, and in a manner prescribed by the franchising authority. The franchisee agrees that it shall be liable, at its own cost and expense, to replace or repair and restore, in a manner as may be specified by the franchising authority, any street or other municipal or public utility structure, improvement, or property that may be disturbed, damaged, or destroyed as a result of any work hereunder or any act, omission, or negligence of franchisee or its designee to as good or better condition as existed immediately before the disturbance, damage, or destruction and to maintain said condition for one year thereafter. Failure of franchisee to effectuate such replacement, repair, or restoration within 48 hours shall authorize the city to cause the proper replacement, repair, or restoration to be made, with the cost thereof to be paid by franchisee upon demand by the city. Franchisee shall erect, install, construct, repair, replace, and maintain the cable system and otherwise carry out its duties under this chapter in a manner that minimizes interference with use of the rights-of-way and the property, inhabitants, and activities in the franchise area and does not unduly burden the present or future use of the rights-of-way. If the franchising authority determines that any portion of the cable system constitutes an undue influence or burden, the franchisee shall at its sole cost and expense modify the cable system or take such other action as the franchising authority determines to remove, eliminate, or alleviate the influence or burden within the period specified by the franchising authority.
(Ord. 807 § 10-809, passed 5-16-00)

§ 115.010 SAFETY PRECAUTIONS; OTHER PROPERTY.

The franchisee shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, watchmen, and suitable and sufficient lighting. Before entering or performing work on any municipal or private property in the franchising area, franchisee shall obtain the written permission of the property owner. In addition, franchisee shall at its sole cost and expense immediately restore and replace any real or personal property that is disturbed, damaged, or destroyed as a result of any work hereunder or act, omission, or negligence of franchisee or its designee to as good or better condition as such property was in immediately before the disturbance, damage, or destruction and shall maintain said condition for one year thereafter. Failure of franchisee to effectuate such replacement, repair, or restoration within 48 hours shall authorize the city to cause the proper replacement, repair, or restoration to be made, with the cost thereof to be paid by franchisee upon demand by the city.
(Ord. 807 § 10-810, passed 5-16-00)

§ 115.011 TREE TRIMMING.

Franchisee shall have the authority to trim trees to prevent damage to the cable system, provided, however, that any trimming shall be performed in accordance with governing ordinances and codes, as amended from time to time and, except in the event of an emergency, subject to the prior written approval of the owner of the property on which the trees are located.
(Ord. 807 § 10-811, passed 5-16-00)

§ 115.012 MAPS AND PLATS.

The franchisee shall make available for inspection by the franchising authority true and accurate maps or plats of all existing and proposed installations and update the same at reasonable intervals so that the franchising authority will at times have access to a current set of such maps and plats. The franchising authority shall provide upon request from the franchisee the boundaries from time to time of the franchise area.
(Ord. 807 § 10-812, passed 5-16-00)

§ 115.013 UNDERGROUNDING OF CABLE SYSTEM.

For any cable system expansion, the franchisee shall place the cable system lines and equipment underground in localities where both telephone and power lines are underground. For existing facilities (or any other aerial facilities under this chapter), the franchisee shall replace aerial facilities with underground facilities if and when other utilities are required by the franchising authority to place facilities underground. At no time shall the cable system be the only aerial facility. Where underground

is required, the franchising authority shall determine whether utility trenches shall be shared. Franchisee shall place active components, including pedestals and power supplies, underground in areas where similar components of telecommunications providers or other cable providers are required to be underground.
(Ord. 807 § 10-813, passed 5-16-00)

§ 115.014 NO LIABILITY TO FRANCHISEE.

Neither the franchising authority nor its officers, officials, employees, agents, attorneys, consultants, or independent contractors shall have any liability to the franchisee as a result of or in connection with the protection, movement, removal, alteration, or relocation of any part of the cable system by or on behalf of the franchisee or the franchising authority in connection with any emergency, public work, public improvement, alteration of any municipal structure, or any change in the grade or line of any street, as provided in this chapter.
(Ord. 807 § 10-814, passed 5-16-00)

§ 115.015 GOVERNMENTAL PROGRAMMING, CAPACITY, DESIGNATIONS, AND ADDITIONAL CHANNELS.

(A) The franchisee shall designate channel capacity on the basic service tier for governmental programming to be provided by the franchising authority or its designee (which programming may be provided pursuant to an interlocal cooperation agreement in conjunction with one or more of Ralston, Papillion, or Bellevue, or a board or committee of representatives authorized by said municipalities and the franchising authority). The franchisee shall initially designate two channels for governmental programming. Except as otherwise provided by law, the channels and any programming thereon shall be under the exclusive management and control of the franchising authority or its designee and shall be used solely for governmental programming.

(B) The franchisee shall have sole discretion to make channel number assignments for governmental programming channels. In the event the franchisee is required by federal law or regulations to change the channel number of a governmental programming channel, the franchisee shall provide 30 days advance notice to the franchising authority and its subscribers. Should franchisee decide to change the channel number for any other reason, the franchisee shall notify the franchising authority of such change and the reason for the change at least 30 days prior to the proposed change.

(C) The franchisee shall make available up to one additional governmental programming channel to the franchising authority under such circumstances and on such terms and conditions as specified by the franchising authority. The maximum number of governmental programming channels which may be required of a franchisee under this chapter shall be three.
(Ord. 807 § 10-815, passed 5-16-00)

§ 115.016 GOVERNMENTAL PROGRAMMING; USE OF UNUSED CAPACITY.

Whenever any governmental programming channel is programmed for less than eight hours per day, six days per week, for a continuous period of not less than 26 consecutive weeks, the franchising authority may permit the franchisee to utilize unused channel capacity on that channel, subject to such rules and procedures as specified by franchising authority from time to time. Any request from the franchisee to use any fallow capacity designated for a governmental programming channel must be submitted in writing to the franchising authority for approval. After approval, the franchisee may continue to utilize the unused capacity of the channel for any other purposes it so chooses, consistent with the franchise, until the franchising authority determines that all or a part of such channel capacity is needed for governmental programming. The franchisee shall relinquish use of the channel back to the franchising authority. This provision shall not be construed to require the franchising authority to rearrange or reschedule any programming upon said channel.
(Ord. 807 § 10-816, passed 5-16-00)

§ 115.017 RATES, FEES, AND CHARGES.

(A) The franchising authority reserves the right to regulate the franchisee, the cable system, and the rates, fees, charges, deposits, and associated terms and conditions for cable service (or for related equipment or services such as equipment rental, deposits, and downgrade fees) provided pursuant to this chapter to the fullest extent permitted by applicable law, as amended from time to time, and the franchising authority may, in connection with any such regulation, establish rules and regulations from time to time to the extent permitted by such applicable law. In connection with such regulation, the franchising authority shall comply with FCC rules as amended from time to time and provide the public with an opportunity to comment.

(B) (1) The franchisee shall not discriminate between or among any residential subscribers in the rates, terms, and conditions for any cable service, provided that the foregoing requirement shall not prevent (to the extent otherwise permitted by applicable law) the use of:

(a) Short-term sales promotions and other short-term discounts or reduced charges;

(b) Reasonable discounts or reduced charges to senior citizens or economically disadvantaged groups; or

(c) Bulk rate arrangements.

(2) Nothing in this section shall be construed to prevent the franchisee from individually negotiating the rates, terms, and conditions of cable service provided to nonresidential customers. Notwithstanding the foregoing, franchisee shall not deny service, deny access, or otherwise discriminate on rates or any other terms or conditions of cable services (or any related service provided by

franchisee) on the basis of race, color, creed, religion, ancestry, national origin, sex, disability, age, familial status, marital status, income level, demographics, status with regard to public assistance, or location within the franchise area.

(C) Before any new or modified rate, fee, charge, deposit, or associated term or condition for cable service may be imposed, the franchisee must provide notice to the franchising authority of the change and notify affected subscribers. Submission of a franchisee rate card which reflects all current rates, fees, charges, deposits, and associated terms and conditions will satisfy the requirements of this section.

(D) In the event that (i) the franchisee offers one or more cable, internet-related, telecommunications, or any other (cable or non-cable) service on a bundled basis (such that more than one service is provided at a single, combined, discounted or special fee), (ii) at least one of such bundled services is a cable service under this agreement, and (iii) revenues received by franchisee on at least one service provided in the bundled arrangement is not subject to any fee or tax to the franchising authority or is subject to a different rate of fee or tax to the franchising authority than is provided for under this chapter on cable services—then any discount of fees or charges of franchisee to subscribers or customers obtaining bundled services shall be applied proportionately to the fee of each service provided under the arrangement, such that it is not applied disproportionately to cable services provided under this chapter.
(Ord. 807 § 10-817, passed 5-16-00)

CUSTOMER SERVICE

§ 115.030 STANDARD.

Franchisee shall comply with the more stringent of the customer service and protection standards: set forth in this chapter, adopted from time to time by franchisee, from time to time adopted by the FCC, or from time to time adopted by the National Cable Television Association or such other association of cable service providers from time to time setting such standards. To the extent permitted under federal law, franchising authority reserves the right to amend or revise the standards referred to herein from time to time.
(Ord. 807 § 10-818.1, passed 5-16-00)

§ 115.031 SELECTION OF SERVICE.

Franchisee shall only charge subscribers for cable services that subscribers affirmatively request and shall not engage in “negative option” marketing or charge a subscriber for any service or equipment which the subscriber has not affirmatively requested.
(Ord. 807 § 10-818.2, passed 5-16-00)

§ 115.032 BILLINGS.

Billings for Cable Services shall state in a conspicuous and understandable manner the amount of the bill, the date that payment is due, the date after which charges for late payment will be assessed, and the amount of any charges for late payment. Franchisee shall not assess any charges for late payment earlier than 21 days after a bill is mailed to a subscriber. Charges for late payment shall be no greater than an amount needed to reimburse the franchisee for additional costs incurred because of the subscriber's delay in payment and, in any event, shall not exceed $1 unless otherwise authorized by the franchising authority.
(Ord. 807 § 10-818.3, passed 5-16-00)

§ 115.033 SERVICE CALLS.

Franchisee shall require any person providing services in the community for or on behalf of franchisee to wear a uniform with a clearly visible franchisee logo and identification badge bearing the name and picture of the person wearing the same. Franchisee shall account for all identification badges and uniforms at all times. Franchisee vehicles used for service calls shall be clearly marked with a visible franchisee logo. Franchisee shall not charge any subscriber for any service call unless it is established that the required service is a result of negligence of or malicious destruction of cable equipment by the subscriber or a problem that did not originate with the cable system.
(Ord. 807 § 10-818.4, passed 5-16-00)

§ 115.034 DISCONNECTION.

(A) Franchisee shall promptly disconnect cable service upon and, as of the effective date specified in, a request of any subscriber. If no effective date is specified in a request, service shall terminate effective the day following the day the request is received by the franchisee. Franchisee shall not charge for any cable services after the effective date of termination of service.

(B) Franchisee may disconnect cable services to a subscriber:

(1) Forty-five days after payment is due so long as franchisee provides at least ten days advance written notice to the subscriber specifying the date that service will terminate (except cable service shall not be disconnected in the event nonpayment is due to a bona fide dispute regarding the subscriber's bill); or

(2) At any time that the franchisee reasonably and in good faith determines that the subscriber tampered with or abused the franchisee's equipment or the cable system or is stealing cable services, or determines that wiring on the premises (not provided by franchisee) violates FCC standards.
(Ord. 807 § 10-818.5, passed 5-16-00)

§ 115.035 INFORMATION TO SUBSCRIBERS.

Franchisee shall provide to subscribers upon request or installation of cable services, and in any event at least annually, a written description in easily understandable language of cable services (and any related services) offered, all rates, prices, fees, and charges for or in any way related to cable services, installation and maintenance policies and procedures, instructions on the use of cable services, billing and complaint procedures, and the designation of programming to channels.
(Ord. 807 § 10-818.6, passed 5-16-00)

§ 115.036 CUSTOMER CONTACTS.

Franchisee shall maintain within a seven-mile radius of city hall of the franchising authority (or at such other location as agreed to by the franchising authority and franchisee) a local office serving the franchising area, for the purposes of receiving payment of bills, receiving and responding to service requests, receiving and resolving subscriber complaints and similar matters. Franchisee also shall maintain a local toll-free telephone service for responding to subscribers. The office shall be open to the public and the telephone service available during normal business hours. Franchisee shall maintain for a period of three years a record of each subscriber complaint, response thereto, and resolution thereof which shall be available for inspection by the franchising authority at the franchisee's local office during normal business hours. In addition, upon request by the franchising authority, franchisee shall provide reports of customer service performance, including the number of telephone calls received and franchisee's resolution of the same, to the extent permitted by applicable law.
(Ord. 807 § 10-818.7, passed 5-16-00)

§ 115.037 SERVICE INTERRUPTIONS.

Franchisee shall interrupt cable service only for good cause, unless otherwise permitted under applicable law. Franchisee shall minimize the scope, degree, and duration of any interruption. In the event of any foreseeable interruption of cable service, franchisee shall give the franchising authority advance written notice of the same, except in the event the interruption is pursuant to a test required by the FCC. Franchisee shall credit subscribers pro rata for any cable services not received during an interruption. To minimize any service interruptions due to loss of electric power, franchisee shall maintain a backup power source sufficient to operate the cable system for up to four hours if there is a loss of conventional electric power.
(Ord. 807 § 10-818.8, passed 5-16-00)

§ 115.038 CABLE INFORMATION.

Franchisee shall not create, record, or retain any information regarding the programming selected by any subscriber nor shall franchisee sell, distribute, provide, or make available to any person (other

than to franchising authority pursuant to applicable law or its role as franchiser) any information about or related to any subscriber without the subscriber's prior written authorization, except for such disclosure as necessary to carry out its franchise, to provide cable services, or detect unauthorized reception of any cable services.
(Ord. 807 § 10-818.9, passed 5-16-00)

COMPENSATION TO THE FRANCHISING AUTHORITY

§ 115.050 AMOUNTS REQUIRED.

As compensation for the use of the public rights-of-way, the franchisee shall pay to the franchising authority the amounts set forth herein. The franchisee shall pay to the franchising authority a franchise fee equal to 5% of Gross Revenue. The 5% franchise fee includes compensation for right-of-way use by the franchisee. All such payments of franchise fees shall be made on a quarterly basis, not later than 45 days after the last day of each calendar quarter and shall be remitted simultaneously with a report setting forth the gross revenue for the period ending on the last day. Any amount not paid when due hereunder shall accrue interest at the rate of 10% per annum, compounded monthly.
(Ord. 807 § 10-819, passed 5-16-00)

§ 115.051 ACCEPTANCE OF PAYMENT NOT A RELEASE OF CLAIM; AUDITS AND RECOMPUTATIONS.

No acceptance of any franchise fee payment by the franchising authority shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the franchising authority may have for further or additional sums payable or any other claim under this chapter, and all amounts paid shall be subject to audit and recomputation by the franchising authority. If an audit and recomputation reveals that franchise fees for any quarter were underpaid by greater than 10% , then franchisee shall pay the cost of such audit and recomputation.
(Ord. 807 § 10-819, passed 5-16-00)

§ 115.052 FRANCHISE FEES ADDITIONAL TO TAXES, PERMIT FEES, AND OTHER CHARGES.

The franchise fees provided for hereunder are in addition to any other amounts that may be due the franchising authority by franchisee from time to time, including but not limited to taxes and permit fees. Franchisee shall pay within 60 days of the effective date of a franchise all franchise fees remaining under any prior franchise between franchisee and franchising authority.
(Ord. 807 § 10-819, passed 5-16-00)

OVERSIGHT AND REGULATION

§ 115.060 GENERALLY.

The franchising authority shall have the right to oversee, regulate, and periodically inspect the construction, operation, maintenance, and upgrade of the cable system and all parts thereof as necessary to ensure compliance with the provisions of this chapter. Franchisee shall perform its obligations under this chapter and shall not directly or indirectly contract, assign, or subcontract any obligation or performance in whole or in part to any other Person. At the request of the franchising authority, the franchisee shall promptly submit to the franchising authority such reasonable information as the franchising authority may request regarding the Franchisee's compliance with any term or condition of this chapter.
(Ord. 807 § 10-820.1, passed 5-16-00)

§ 115.061 BOOKS. RECORDS, AND FILES.

Throughout the term of a franchise hereunder, the franchisee shall maintain in the franchise area or make available in the franchise area within 30 business days complete and accurate books of account and records regarding the Franchisee's ownership and operation of the cable system and the provision of cable service over the cable system, including without limitation books of account and records adequate to enable the franchising authority to determine whether the franchisee is and throughout the term of the franchise has been in compliance with this chapter. All such documents pertaining to the financial matters which may be the subject of an audit by the franchising authority shall be retained by the franchisee for a minimum of three years. In addition, the franchisee shall at all times during the franchise maintain in a file available for public inspection during normal business hours in the franchising area those documents required pursuant to the FCC's rules and regulations.
(Ord. 807 § 10-820.2, passed 5-16-00)

§ 115.062 INSPECTION AND AUDIT.

(A) Upon reasonable prior notice to the franchisee and during normal business hours, the franchising authority or its designated representatives shall have the right to examine, in the franchise area, all books and records pertaining to the franchisee's performance under the terms of the franchise and any other aspect of the cable system, including facilities and equipment thereof, as necessary or appropriate to ensure compliance with this chapter.

(B) To the extent permitted by law, the franchising authority also may conduct compliance audits and hold public hearings at any time during the term of a franchise, provided that it gives the franchisee written notice 30 business days in advance of the commencement of any such audit, and written notice of the time and place of such public hearing ten business days in advance of such hearing, and provided further that the franchisee shall be given an opportunity to be heard.
(Ord. 807 § 10-820.3, passed 5-16-00)

TRANSFER, DEFAULT, AND TERMINATION

§ 115.070 TRANSFER OF FRANCHISE OR INTEREST THEREIN.

(A) Franchisee shall not sell, transfer, lease, assign, sublet, encumber, pledge, deed, grant, mortgage, or dispose of, in whole or in part, either voluntarily or involuntarily, by forced or involuntary sale or transfer, or by ordinary or voluntary sale, transfer, consolidation, or otherwise, a franchise granted under this chapter and/or cable system or any right, title, or interest therein, or rights or privileges granted by the franchise ("Transfer"), without the prior consent of the City Council. Any attempt to transfer the franchise and/or cable system without the consent of the City Council shall be null and void. This provision shall not apply to sales of property or equipment in the normal course of business. No consent from the City shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness.

(B) (1) The following events shall be deemed to be a transfer of the franchise and/or cable system requiring compliance with this section:

(a) The sale, assignment or other transfer of all or a majority of franchisee's assets;

(b) The sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interest in franchisee or its parent by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in franchisee or its parent;

(c) The issuance of additional capital stock or partnership, membership, or other equity interest by franchisee or its parent so as to create a new controlling interest in franchisee or its parent; and

(d) The entry by franchisee into an agreement with respect to the management or operation of the franchisee and/or the system or service.

(2) The term ***CONTROLLING INTEREST*** as used herein means majority equity ownership.

(C) Franchisee shall notify franchising authority in writing upon learning of any pending or proposed foreclosure or other judicial, trustee, or other sale of all or a substantial part of the franchise property of the franchisee or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notification shall be considered by franchising authority as notice that a transfer of the franchise has taken place and the provisions under this section governing the consent of franchising authority to such change in control of ownership shall apply.

(D) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, franchising authority may inquire into the legal, technical, and financial qualifications of the prospective transferee or controlling party and obtain any other information or make any other inquiry as the franchising authority deems necessary or appropriate, and franchisee shall assist franchising authority in any such inquiry. In seeking franchising authority's consent to any transfer, franchisee shall have the responsibility of insuring that the transferee completes an application in form of FCC Form 394 (or its successor). The application shall be submitted to franchising authority not less than 90 days prior to the date of transfer. The transferee shall be required to establish that it possesses the legal, technical, and financial qualifications to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If, after considering the legal, financial, and technical qualities of the applicant and determining that they are satisfactory, the franchising authority finds that such transfer is acceptable, the franchising authority shall transfer and assign the rights and obligations of the franchise, subject to this chapter and such other terms or conditions specified by the franchising authority.

(E) Any financial institution having a pledge of the franchisee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the franchising authority that it or its designee satisfactory to the franchising authority shall take control of and operate the cable television system, in the event of a franchisee default in its financial obligations, subject to approval of franchising authority. Further, the financial institution shall also submit a plan for such operation within 30 days of assuming such control that will insure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year unless extended by the franchising authority in its discretion, and during that period of time it shall have the right to petition the franchising authority to transfer the franchise to another franchisee. Franchisee shall pay or reimburse costs of the franchising authority to analyze, consider, or make a decision regarding any proposed transfer.
(Ord. 807 § 10-821, passed 5-16-00)

§ 115.071 SPECIFIC RIGHTS AND REMEDIES; REMEDIES NOT EXCLUSIVE.

With respect to any franchisee or franchise, the franchising authority shall have the specific rights and remedies set forth herein. These rights and remedies are in addition to any and all other rights or remedies, now or hereafter available to the franchising authority to enforce the provisions of this chapter or any franchise and will not be deemed waived by the exercise of any other right or remedy. The exercise of any such right or remedy by the franchising authority shall not release the franchisee from its obligations or any liability under this chapter or a franchise, except as expressly provided for herein or as necessary to avoid duplicative recovery from or payments by the franchisee.
(Ord. 807 § 10-822, passed 5-16-00)

§ 115.072 PERFORMANCE BOND.

(A) Within 30 days after the effective date of a franchise, the franchisee shall deposit with the clerk of the franchising authority a performance bond from a surety authorized to do business in the state and acceptable to the franchising authority in the minimum amount of $100,000, and the performance bond shall be maintained at the minimum amount of $100,000 during the entire term of a franchise hereunder, even if amounts have to be withdrawn pursuant to this section. The form and content of such performance bond shall be subject to the approval of the franchising authority and shall contain a provision that the issuer of such performance bond can rely absolutely on the demand of the franchising authority upon said performance bond. The performance bond shall be used to ensure the faithful performance by franchisee of all provisions of this chapter and the franchise, including payment of franchise fees; compliance with all orders, permits, and directions of any agency, commission, board, department, division, or office of the franchising authority having jurisdiction over its acts or defaults; and the payment by franchisee of any claims, liens, and taxes due the franchising authority which arise by reason of the construction, operation, or maintenance of the cable system. In the alternative and under the same provisions as above, franchisee may furnish a letter of credit in the required amount, in form and content (and issued by a financial institution authorized to do business in the state) acceptable to the franchising authority.

(B) If franchisee fails to pay the franchising authority any amount within the time fixed herein, or fails to pay to the franchising authority any taxes due and unpaid, or fails to pay or repay the franchising authority within ten days any damages, costs, or expenses which the franchising authority is compelled to pay by reason of the acts or default of franchisee in connection with the franchise, or fails after receipt of 30 days' written notice of the failure by the franchising authority to comply with any provision of this franchise which the franchising authority reasonably determines can be remedied by an expenditure of money, the franchising authority may demand and receive payment of the amount thereof, with interest, under the performance bond. Upon such demand for payment, the franchising authority shall notify franchisee of the amount and date thereof.

(C) Any performance bond hereunder shall contain the following endorsement: "It is hereby understood and agreed that this performance bond may not be canceled by the issuer hereof nor the intention not to renew be stated by the issuer hereof until 30 days after receipt by the franchising authority, City of La Vista, Nebraska, by registered mail of a written notice of such intention to cancel or not to renew."
(Ord. 807 § 10-823, passed 5-16-00)

§ 115.073 FRANCHISING AUTHORITY; OCCURRENCE OF EVENT OF DEFAULT; BREACH PROCEDURES.

(A) *Default.* Upon the occurrence of an event of default, the franchising authority may take one or more of the following actions (in addition to and not in limitation of any other action, right, or remedy available at law or equity):

(1) Require the franchisee to take such actions as the franchising authority deems reasonably appropriate to cure such event of default;

(2) Seek money damages from the franchisee as compensation for such event of default;

(3) Seek to obtain the appointment of a court-appointed trustee or similar person to take any actions which the franchising authority deems appropriate in the circumstances;

(4) Terminate the franchise, in which case the franchise shall be forfeited; or

(5) Commencement of an action at law for monetary damages or in equity for injunctive relief or specific performance.
(Ord. 807 § 10-824, passed 5-16-00)

(B) *Breach procedures.* The franchising authority shall exercise the rights provided in division (A) of this section in accordance with the following procedures. The franchising authority shall notify the franchisee, in writing, of an event of default, which notice shall specify the alleged event of default with reasonable particularity. If the event of default is due to failure of the franchisee to pay money to franchising authority, franchisee shall cure the default by paying the full amount due with interest within 30 days after the date notice is given. For an event of default which cannot be cured by the payment of money to franchising authority, franchisee shall have 60 days after notice is given to cure the event of default.
(Ord. 807 § 10-825, passed 5-16-00)

§ 115.074 TERMINATION.

(A) In the event of a termination of a franchise, whether by expiration, revocation, or otherwise, the franchising authority may:

(1) Direct the franchisee to cooperate with the franchising authority or third party in maintaining continuity in the distribution of cable service to subscribers over the cable system for a period of up to three months; or

(2) Order the franchisee to cease all construction and operational activities in a prompt and workmanlike manner.

(B) In addition, the franchisee shall remove the cable system from the franchise area as and when specified by the franchising authority, and the franchising authority shall retain any franchise fees or other fees or payments already paid, and franchisee shall immediately pay all other amounts that are due and payable, upon the termination date.
(Ord. 807 § 10-826, passed 5-16-00)

INSURANCE AND INDEMNITY

§ 115.090 INSURANCE SPECIFICATIONS.

(A) Throughout the term of a franchise granted hereunder and during the removal of the cable system, the franchisee shall, at its own cost and expense, maintain a comprehensive liability insurance policy or policies that are in a form and content acceptable to the franchising authority, together with evidence acceptable to the franchising authority demonstrating that the premiums for the policy or policies have been paid. Such policy or policies shall be issued by companies duly licensed to do business in the state and acceptable to the franchising authority. Such policy or policies shall insure the franchisee and the franchising authority and its officers, boards, commissions, councils, elected officials, agents, and employees (through appropriate endorsements if necessary) against each and every form of liability of the franchisee or franchising authority referred to in, or arising out of, or resulting from the franchise in the minimum combined amount of $5,000,000 for all claims arising out of a single occurrence and $1,000,000 for any person for any number of claims arising out of a single occurrence.

(B) The Franchisee shall comply with the Nebraska Workers' Compensation Act and in that regard shall during the franchise and removal of the cable system secure insurance from an insurer licensed in the state and acceptable to the franchising authority to cover its obligations with respect to workers' compensation claims, or take other appropriate steps, which insurance and steps shall be in form and substance satisfactory to the franchising authority. The franchisee shall defend, indemnify, and hold harmless the franchising authority and its officers, boards, commissions, councils, officials, agents, and employees from any workers' compensation claims to which the franchisee may become subject during the term of the franchise or removal of the cable system.

(C) The franchisee shall at all times during the franchise and the removal of the cable system also maintain the following types of insurance, written by an insurer licensed in the state and acceptable to the franchising authority (and in form and content acceptable to the franchising authority) to indemnify, defend, and hold harmless franchising authority and its officers, boards, commissions, councils, officials, agents, and employees from and against the specified risks in the following amounts: $1,000,000 per person, $5,000,000 per occurrence property damage insurance; and $1,000,000 per person, $5,000,000 per occurrence comprehensive automobile liability insurance. Finally, franchisee's professional liability (broadcaster liability) policy shall include the city as an additional named insured.

(D) Any additional or increased coverage may be required by the franchising authority upon such terms as agreed to with the franchisee.
(Ord. 807 § 10-827.1, passed 5-16-00)

§ 115.091 INSURANCE MAINTENANCE.

The insurance policies required hereunder shall be maintained by the franchisee throughout the term of the franchise and such other period of time during which the franchisee operates or is engaged in the removal of the cable system. Each such policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled, the amount or extent of coverage decreased, nor the intention not to renew be stated until 30 days after receipt by the franchising authority, by registered mail, of a written notice of such intent to cancel, decrease coverage, or not to renew." Within 30 days after receipt by the franchising authority of such notice, the franchisee shall obtain and furnish to the franchising authority replacement insurance policies in a form reasonably acceptable to the franchising authority. The franchising authority and each of the parties for which insurance protection is to be provided by franchisee under this chapter shall be designated in the governing policies as additional named insureds. Within 30 days after the effective date of a franchise, and at such other times as requested by franchising authority, franchisee shall provide franchising authority with certificates of insurance evidencing the coverages in effect. Failure to maintain the insurance required by this chapter shall be a material breach of the franchise.
(Ord. 807 § 10-827.2, passed 5-16-00)

§ 115.092 LIABILITY NOT LIMITED.

The legal liability of the franchisee to the franchising authority and any person for any of the matters which are the subject of the liability insurance policies required by this chapter, including without limitation the franchisee's indemnification obligations set forth herein shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by the franchisee.
(Ord. 807 § 10-827.3, passed 5-16-00)

§ 115.093 INDEMNIFICATION OF THE FRANCHISING AUTHORITY.

Franchisee shall defend, indemnify, and hold harmless the franchising authority, its officers, officials, employees, agents, attorneys, consultants, boards, commissions, representatives, and independent contractors from and against any and all liabilities, costs, claims, damages, penalties, charges, losses, or expenses of any kind (including without limitation attorneys' fees and court costs) in any way arising out of or resulting from:

(A) The construction, installation, operation, maintenance, repair, upgrade, or removal of or any risk, event, or occurrence related to the cable system or any part thereof or activity or function related thereto, or to any cable service, or the production or distribution thereof;

(B) Any other franchisee property;

(C) The failure of franchisee or any of its officers, agents, employees, successors, or assigns to comply with any applicable federal, state, or local law, rule, regulation, or order; or

(D) Any act, omission, or negligence of franchisee, its officers, agents, employees, successors, or assigns.
(Ord. 807 § 10-827.4, passed 5-16-00)

MISCELLANEOUS PROVISIONS

§ 115.100 CONTROLLING AUTHORITIES.

Any franchise or certificate hereunder is controlled by and subject to the Cable Act, other federal laws, state laws, and all applicable local laws, ordinances, and regulations, as amended from time to time. Incorporated herein by reference and made a part of any franchise or related agreement or certificate are all La Vista city ordinances. In the event of a conflict between this chapter and any other city ordinance, this chapter will control.
(Ord. 807 § 10-828.1, passed 5-16-00)

§ 115.101 MAINTENANCE OF CABLE SYSTEM IN GOOD WORKING ORDER.

Until the termination of a certificate or franchise and the satisfaction in full by the franchisee of its obligations under this chapter, the franchisee shall maintain all of the material properties, assets, and equipment of the cable system and all such items added in connection with any upgrade in good repair and proper working order and condition.
(Ord. 807 § 10-828.2, passed 5-16-00)

§ 115.102 BINDING EFFECT.

This chapter shall be binding upon and inure to the benefit of the franchisee and its permitted transferees, successors, and assigns.
(Ord. 807 § 10-828.3, passed 5-16-00)

§ 115.103 NO WAIVER; CUMULATIVE REMEDIES.

The franchisee agues to abide by all the provisions of this chapter and further agrees it will not at any future time set up as against the City Council or the City the claim that the provisions of this chapter are unreasonable, arbitrary, or vague. No failure on the part of the franchising authority to exercise,

and no delay in exercising, any right or remedy, including without limitation the rights and remedies set forth in this chapter, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other right or remedy. Rights and remedies of franchising authority, including without limitation the rights and remedies set forth in this chapter, are cumulative and not exclusive of any remedies provided by law or in equity, and nothing contained in this chapter shall impair any of the rights or remedies of the franchising authority under applicable law or in equity.
(Ord. 807 § 10-828.4, passed 5-16-00)

§ 115.104 NO AGENCY.

The franchisee shall conduct the work to be performed pursuant to this chapter as an independent contractor and not as an agent of the franchising authority.
(Ord. 807 § 10-828.5, passed 5-16-00)

§ 115.105 GOVERNING LAW.

Any franchise or certificate hereunder shall be governed in all respects, including validity, interpretation, and effect, and construed in accordance with the laws of the state as applicable to contracts entered into and to be performed entirely within that state and such other laws of the state as are applicable thereto or the subject matter thereof.
(Ord. 807 § 10-828.6, passed 5-16-00)

§ 115.106 CLAIMS UNDER AGREEMENT.

Except to the extent otherwise required by the Cable Act, any and all claims asserted by or against the franchising authority arising under this chapter or related thereto shall be heard and determined either in a court of the United States (“Federal Court”) located in the state or in a court of the state of appropriate jurisdiction. If the franchising authority initiates any action against a franchisee in federal court or in a state court, service of process may be made on the franchisee either in person, wherever such franchisee may be found, or by registered mail addressed to the franchisee at its office in the franchise area as required by this chapter, or to such other address as the franchisee may previously provide to the franchising authority in writing.
(Ord. 807 § 10-828.7, passed 5-16-00)

§ 115.107 RESERVED RIGHTS.

(A) Notwithstanding anything in this chapter to the contrary, a franchise or certificate granted under this chapter shall be subject to the franchising authority's right to control, manage, and regulate rights-

of-way and other public property; ordinances related to the subject matter of this chapter, as amended from time to time, and not expressly revoked by the chapter; right to install or maintain without charge any equipment or lines of the franchising authority on the poles or in conduit of the franchisee, so long as such use does not interfere or compete with cable services provided by franchisee; right to require upon expiration or termination of a franchise that the franchisee remove at its own cost and expense any or all of the cable system; and option to reopen any franchise within 90 days of any applicable federal or state law, regulation, rule, or order that becomes effective after the effective date of the franchise and affects the right of the franchising authority to regulate rates or protect subscribers of cable services; and only those matters directly affected by the legislation shall be at issue in the event the franchise is reopened.

(B) In addition to but not in limitation of the foregoing, the franchising authority may subsequently impose on any franchisee a requirement to provide nondiscriminatory access to the franchisee's cable modem platform for providers if internet access service upon such terms as acceptable to the franchising authority.
(Ord. 807 § 10-828.8, passed 5-16-00)

§ 115.108 CITY'S RIGHT OF INTERVENTION.

The franchisee agrees not to oppose intervention by the city in any suit or proceeding to which the franchisee is a party.
(Ord. 807 § 10-828.9, passed 5-16-00)

Section

116.01 Applicability
116.02 Definitions
116.03 General alarm system requirements
116.04 Registration requirement
116.05 Application for registration; fee; fee reduction for residential fire alarm systems
116.06 Issuance of registration
116.07 Term of registration; transfer; termination; renewal
116.08 Verification of registration information
116.09 Changes to registration information
116.10 Required information when reporting an alarm
116.11 False alarm fees
116.12 Notices
116.13 Failure to pay fees

CHAPTER 116: ALARM SYSTEMS

§ 116.01 APPLICABILITY.

This chapter is intended to regulate the activities and responsibilities of persons who purchase, rent or use and persons who own or conduct the business of selling, leasing, renting, installing, maintaining or monitoring alarm systems, devices or services. It is further intended to encourage improvement in reliability of these systems, devices and services and to insure that Police and Fire Department personnel will not be unduly diverted from responding to actual criminal activity or emergencies as a result of responding to false and nuisance alarms. The chapter specifically applies to burglar alarms, robbery alarms, hold-up alarms, and panic alarms, and fire alarms, both audible and inaudible. The provisions of this chapter shall not apply to audible alarms affixed to motor vehicles, or alarm systems that are operated by the city, county, state or federal government and installed on premises, which such entity occupies or uses for governmental purposes.
(Ord. 864, passed 6-4-02)

§ 116.02 DEFINITIONS.

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

ACT OF GOD. An unusual, extraordinary, sudden and unexpected manifestation of the forces of nature, the adverse effects of which cannot be prevented by reasonable human care, skill or foresight. Such events include tornadoes, floods, earthquakes, and other similarly violent conditions.

ALARM ANSWERING SERVICE or ***REMOTE MONITORING POINT.*** A business providing among its services the service of receiving on a continuous basis, through trained employees, emergency signals from alarm systems, and thereafter immediately relaying the message by live voice to the public safety department communications center.

ALARM SYSTEMS. Any device used to detect or prevent intrusion, criminal activity or other such emergency situations which, when activated, causes notification to be made directly or indirectly to the Police Department, or any device or system designed primarily for the purpose of giving an audible or visual signal of an attempted intrusion, criminal activity or other such emergency. It shall also mean any device, audible or inaudible, which is used to detect smoke, heat or sprinkler activation, which when activated, causes notification to be made directly or indirectly to the Fire Department.

ALARM USER. The person, firm, partnership, association, corporation, company or organization of any kind in control of any building, structure or facility who purchases, leases, contracts for or otherwise obtains an alarm system and thereafter contracts with or hires an alarm business to monitor and/or service the alarm device.

ANNUNCIATOR. That part of an alarm system which communicates the fact that the system has been triggered.

AUDIBLE ANNUNCIATOR. An annunciator which gives an alarm by means of a bell, siren, buzzer, or similar sound-producing device mounted at some location which, when activated, is clearly audible at a distance of 50 feet or more outside of any building in which it is mounted.

COORDINATOR. The person designated by the City Administrator to issue registrations and enforce the provisions in this chapter.

FALSE ALARM. An alarm signal eliciting an urgent response by police or fire personnel when a situation requiring an urgent response does not, in fact, exist, but does not include an alarm signal caused by acts of God or other extraordinary circumstances not reasonably subject to control by the alarm user. The burden of proof that such an alarm was not a false alarm shall be on the alarm user.

FIRE WATCH. A condition beyond normal staffing, undertaken when any required fire alarm system is out of service for more than four hours in a 24-hour period, requiring the assigning of additional personnel to walk the affected areas. The assigned individuals should be trained in fire prevention and in occupant and Fire Department notification techniques, and they should understand the particular fire safety situation.

KNOX BOX. A high security key box system; designed to give Fire Department and emergency services personnel access to locked buildings, elevators and other secured areas.

LOCAL ALARM SYSTEM. An alarm system which when activated causes an audible and/or visual signalling device to be activated and which is intended to be seen and/or heard by others outside of the protected premises.

MAINTENANCE. Repair service, including periodic inspections and tests, required to keep the fire alarm system and its component parts in an operative condition at all times, and the replacement of the system or its components when they become undependable or inoperable for any reason.

NUISANCE ALARM. Any fire alarm caused by mechanical failure, malfunction, improper installation, or lack of proper maintenance, or any alarm activated by a cause that cannot be determined.

PRINCIPAL. The person, firm or corporation whose premises are protected by an alarm system. In the event that a building having more than one tenant, such as an apartment building, is protected by a single alarm system, ***PRINCIPAL*** means building owner; only one registration is required per building.

REGISTRATION. A 12-month period beginning on January 1 of each year and ending December 31of the same year.
(Ord. 864, passed 6-4-02)

§ 116.03 GENERAL ALARM SYSTEM REQUIREMENTS.

(A) No alarm system shall be installed, used or maintained in violation of any of the requirements of this chapter.

(B) All fire alarm systems required by law, shall be installed, used and maintained in accordance with all applicable state laws.

(C) The holder of an alarm system registration shall be responsible for training and retraining all employees, family members and other persons who make regular use of the protected premises and who may, in the normal course of their activities, be in a position to accidentally trigger an alarm. Such training shall include procedures and practices to avoid accidental alarms, and steps to take in the event the system is accidentally triggered.

(D) The holder of the alarm system registration shall, at all times, be responsible for the proper maintenance and repair of the system and for the repair and replacement of any component, method of installment, design feature or like condition which may give rise to a false alarm.

(E) Alarms, other than fire alarms, shall be programmed so that each audible annunciator will automatically silence within 15 minutes of being activated, and will not sound again unless a new act or circumstance triggers a sensor.

(F) No test of an alarm system incorporating an audible annunciator shall be conducted between the hours of 8:00 p.m. of any day and 7:00 a.m. the following day.

(G) The application of an alarm system registration shall list the name and phone number of three persons, or an alarm answering service, having access to the premises and who may be notified to assist the Police or Fire Department personnel in the event the alarm is activated. The Principal shall immediately notify the Coordinator of any changes in this information. This information must be updated annually.

(H) The application for a fire alarm system registration installed in a commercial, industrial or multi-family dwelling must be accompanied by an inspection report from an inspector licensed by the State of Nebraska certifying the alarm system has been installed and is working properly.

(I) In all buildings, other than single-family residences or duplexes, with an installed fire alarm system, a Knox Box System must be installed on the exterior of the building adjacent to the main door. This must contain all necessary keys for complete access to the building and fire alarm panel. The Knox Box can only be purchased with advanced authorization from the Fire Department.
(Ord. 864, passed 6-4-02)

§ 116.04 REGISTRATION REQUIRED.

(A) As of January 1, 2003, it shall be unlawful for any person within the jurisdiction of the city to use or operate any alarm system without current valid registration thereof, not to include single-family residences and duplexes.

(B) Any person within the jurisdiction of the city installing a new alarm system after the effective date of this chapter shall have 30 days from the date of installation to obtain a registration therefor as required in this chapter, not to include single-family residences and duplexes.
(Ord. 864, passed 6-4-02) Penalty, see § 10.99

§ 116.05 APPLICATION FOR REGISTRATION; FEE; FEE REDUCTION FOR RESIDENTIAL FIRE ALARM SYSTEMS.

Each application for an alarm system, registration or renewal shall be made on a form prescribed by the Coordinator and shall contain the following information:

(A) The name, address and telephone number of the Principal of the protected premises.

(B) The type of premises (apartment, office, variety store, etc.) and any business name by which the premises is known.

(C) The address of the protected premises, including if it is in an apartment complex, commercial or industrial complex and any name by which the complex is commonly known.

(D) The names, current addresses, and current telephone numbers, including home phone numbers, of three persons, or an alarm answering service.

(D) The application shall be accompanied by a fee payable to the city. The applicable fee shall be in such amount as set from time to time by the Mayor and City Council, and a current record of such amount shall be maintained by the City Clerk.

(E) Renewal applications shall be completed annually and will be accompanied by a fee payable to the city. The applicable fee shall be in such amount as set from time to time by the Mayor and City Council, and a current record of such amount shall be maintained by the City Clerk.

(F) Alarm system users in single-family residences and duplexes, while being excused from annual alarm registration, will not be excused from compliance with all provisions of the chapter, or from any fees incurred as a result of nuisance alarms.
(Ord. 864, passed 6-4-02)

§ 116.06 ISSUANCE OF REGISTRATION.

Upon receipt of the completed registration application and fee, the Coordinator shall, if it appears that the proposed system will comply with the provisions of this chapter, issue to the applicant a registration bearing an identifying number, and setting forth the expiration date. The city shall not, by the issuance of any alarm system registration, be obligated to respond or accord any priority to an alarm from such system.
(Ord. 864, passed 6-4-02)

§ 116.07 TERM OF REGISTRATION; TRANSFER; TERMINATION; RENEWAL.

(A) All alarm system registrations shall be valid for 12 months, and issued for the calendar year from January 1 to December 31 of the given year. No rebates, or reduction of registration fee will be granted for registrations issued that will expire in less than 12 months.

(B) All alarm system registrations shall automatically terminate upon any change of the Principal of protected premises. No registration may be transferred to another Principal or protected premises. No refunds will be given on termination of any registration for any reason.

(C) The renewal registration will not be issued until the applicable registration fee is paid, and a late charge, per month or any part thereof, will be assessed on all registration holders who do not pay the renewal fee prior to expiration of their existing registrations. The late charge shall be in such amount as set from time to time by the Mayor and City Council, and a current record of such amount shall be maintained by the City Clerk. The renewal application shall contain the Principal's signed statement that there have been no changes in the Principal or protected premises.
(Ord. 864, passed 6-4-02)

§ 116.08 VERIFICATION OF REGISTRATION INFORMATION.

Prior to issuing an alarm system registration, and at any time thereafter during the term thereof, the Coordinator, or his designee, may conduct, or direct an investigation to be conducted as is determined necessary to verify that the information furnished by the application or permittee is correct and that the system is in conformance with the provisions of this chapter. The Coordinator shall maintain all information obtained by such inspection confidentially, unless such inspection reveals non-compliance with existing fire code and/or state statute, the Coordinator or his designee, may contact appropriate authorities as deemed necessary.
(Ord. 864, passed 6-4-02)

§ 116.09 CHANGES TO REGISTRATION INFORMATION.

Within ten days following any change of circumstances, which renders obsolete any of the information, submitted pursuant to § 116.05, the registrant shall file an amendment to his application setting forth the currently accurate information. No additional fee shall be required unless the change has terminated the registration as provided in § 116.07.
(Ord. 864, passed 6-4-02)

§ 116.10 REQUIRED INFORMATION WHEN REPORTING AN ALARM.

Any alarm answering service reporting an alarm to the Sarpy County Communications Center (911 Center), shall give the following information:

(A) The Principal or business name, the address of the protected premises, the type of premises, and the name by which the premises are known, if any. This information shall be repeated a second time at the end of the message.

(B) The name and telephone number of the Principal or agent having ready access to the protected premises; and

(C) The type of criminal activity or emergency that is indicated.
(Ord. 864, passed 6-4-02)

§ 116.11 FALSE ALARM FEES.

(A) As a condition of any alarm system registration or usage, under the provisions of this chapter, the registrant or owner of a single-family residence or duplex shall pay to the city, within 30 days of invoice, for any false alarm generated by the registrant's alarm system (from January 1 through December 31 of each year), a fee which shall be in such amount as set from time to time by the Mayor and City Council, and a current record of such amount shall be maintained by the City Clerk.

(B) All fees will be doubled if a representative from the business or residence, generally those identified on the application for registration discussed in § 116.03, does not respond to the property at the request of the police or fire personnel.

(C) For false and nuisance alarms occurring at a commercial or residential location that does not have a current and valid registration if required:

(1) The first false or nuisance alarm will serve as warning and notice that alarm registration is required,

(2) All subsequent false and nuisance alarms will carry a penalty fee which shall be in such amount as set from time to time by the Mayor and City Council, and a current record of such amount shall be maintained by the City Clerk.

(D) The city may revoke the registration of any alarm system other than a fire alarm system, having more than ten false alarms annually, or when the assessed fees become delinquent. The system must be removed from the protected premises within 15 days unless a decision by the Coordinator allows for reinstatement of alarm system registration.
(Ord. 864, passed 6-4-02)

§ 116.12 NOTICES.

(A) Notice or billing from the city to any registration holder shall be deemed to have been given or rendered on the date such notice or billing is deposited in the US mail, first class postage, prepaid,

addressed to the registration holder at the address shown in the city's registration records. A certificate signed by the person who mailed the notice shall be prima facie evidence of the facts state therein with respect to such notice.

(B) Notice to the city or payment under this chapter shall be effective when received at the appropriate city office.
(Ord. 864, passed 6-4-02)

§ 116.13 FAILURE TO PAY FEES.

(A) For all non-fire alarm systems, if the alarm user fails to pay the registration fee or false alarm fees, written notice shall be sent to the user by certified mail. If payment is not made within ten days from the date of the mailing, then the user's permit to maintain an alarm shall be revoked by the Coordinator. The system must be removed from the protected premises within 15 days, unless a decision by the Coordinator allows for reinstatement of the alarm systems registration.

(B) In the case of a fire alarm system, for which the registration fees or nuisance alarm fees have not been paid, upon determination of the Coordinator, or his designee, registration may be revoked and the State Fire Marshall notified. If such action is taken in a location required by state law to have an operable fire alarm system, the premises may be closed until the alarm is brought into compliance, and/or fees have been paid, or an approved fire watch must be implemented. (See National Fire Protection Association 601, Standard for Security Services in Fire Loss Prevention, for further information.)
(Ord. 864, passed 6-4-02)

CHAPTER 117: ECONOMIC DEVELOPMENT PROGRAM

Section

117.01 Establishment
117.02 Strategy
117.03 Purpose
117.04 Duration
117.05 Definitions
117.06 Qualifying businesses
117.07 Funding of program
117.08 Establish separate development fund
117.09 Investment of funds
117.10 Disposition of funds on termination
117.11 Termination of program
117.12 Continuation of program
117.13 Audit of funds
117.14 Eligible activities
117.15 Citizen Advisory Review Committee
117.16 Application process and selection of participants
117.17 Disclosure of confidential information
117.18 Administration system
117.19 Legal assurances
117.20 Amendment

§ 117.01 ESTABLISHMENT.

An Economic Development Program is hereby established for the City of La Vista, Nebraska, as authorized by the Local Option Municipal Economic Development Act, Neb. RS 18-2701 et seq. ("Act").
(Ord. 921, passed 12-2-03)

§ 117.02 STRATEGY.

The Mayor and City Council find and determine as follows: Community and economic development is essential to the vitality, strength and economic well being of the city. There is a high degree of

competition among states and municipalities to provide incentives for businesses or services to locate or expand in or near their respective jurisdictions. The community and economic development strategy of the city is to be positioned to quickly and effectively compete for quality community or economic development opportunities. The strategy further includes lowering the property tax burden by the expansion of the property and sales tax bases through public investment in the local economy as a result of the Economic Development Program.
(Ord. 921, passed 12-2-03)

§ 117.03 PURPOSE.

The purpose of this Economic Development Program is to give the city the flexibility to quickly respond to desirable opportunities for community or economic development using funds raised from local sources of revenue to provide incentives or investment in the La Vista community or its infrastructure for the location or expansion of services or businesses or rehabilitation of residential neighborhoods in or near the city. The intent and goals of the city in establishing an economic development program are to ultimately increase the overall community tax valuation, create jobs and generate employment opportunities within the La Vista area, attract new investment capital to the community, develop tourism opportunities, broaden the tax base, support or capitalize on La Vista's existing or future commercial developments, rehabilitate residential neighborhoods, expand industrial development and/or increase economic diversification, stability and vitality for the City of La Vista and the surrounding area.
(Ord. 921, passed 12-2-03)

§ 117.04 DURATION.

The Economic Development Program established by this chapter shall be in existence for a period of 25 years beginning on October 1, 2004 and ending on September 30, 2029. Before October 1, 2004, the Mayor and City Council, Plan Administrator and/or committees created under this chapter shall be authorized to plan and prepare for economic development opportunities and activities, so long as any economic development incentive, assistance, appropriation or funds raised from local sources of revenue does not commence earlier than October 1, 2004. Revenue to fund this Economic Development Program shall be established annually during the Program by the Mayor and City Council as part of the city operating budget and the amount appropriated in any year will not exceed the applicable statutory limitations described elsewhere below. The Mayor and City Council may allocate such funds from the existing 1% local option sales tax or property taxes. The Mayor and City Council shall have authority to extend the program beyond September 30, 2029 for one or more years as they determine in their sole discretion advisable to appropriate any unexpended funds that were collected from local sources of revenue and deposited in the Economic Development Fund before October 1, 2029 or earnings thereon.
(Ord. 921, passed 12-2-03)

§ 117.05 DEFINITIONS.

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

CITY. The City of La Vista, Nebraska.

ECONOMIC DEVELOPMENT PROGRAM. Any project or program utilizing funds derived from local sources of revenue for the purpose of providing direct or indirect financial assistance to a qualifying business or the payment of related cost and expenses, or both, without regard to whether that business is identified at the time the project or program is initiated or is to be determined by specified means at some time in the future.

ELECTION. Any general election, primary election, or special election called by the city as provided by law.

FINANCIAL INSTITUTION. A state or federally chartered bank, a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, a federally insured capital stock industrial loan and investment company, and a capital stock state savings bank.

LOCAL SOURCES OF REVENUE. The city's local option sales tax, property taxes and any other sources of revenue as may be from time to time permitted by applicable law to be utilized for the Economic Development Program.

QUALIFYING BUSINESS. Defined in § 117.06.
(Ord. 921, passed 12-2-03)

§ 117.06 QUALIFYING BUSINESSES.

A qualifying business shall mean any corporation, partnership, limited liability company or sole proprietorship which derives its principal source of income from any of the following: the manufacture of articles of commerce; the conduct of research and development; the processing storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce; the sale of services in interstate commerce; headquarters facilities relating to activities as listed in this section; telecommunications activities, including services providing advanced telecommunications capability; tourism-related activities; or construction or rehabilitation of housing; and any other business deemed as a qualifying business through future action of the Nebraska Legislature. A qualifying business need not be located within the territorial boundaries of the city. If a business which would otherwise be a

qualifying business employs people and carries on activities in more than one city in Nebraska or will do so at any time during the first year following its application for participation in the city's Economic Development Program, it shall be a qualifying business only if, in each such city, it maintains employment for the first two years following the date on which the business begins operations in the city as a participant in its Economic Development Program at a level not less than its average employment in such city over the 12-month period before participation.
(Ord. 921, passed 12-2-03)

§ 117.07 FUNDING OF PROGRAM.

(A) The Economic Development Program will be funded annually from October 1, 2004 through September 30, 2029 by various local sources of revenue. Appropriations of funds directly from local sources of revenue for the program, in each year during which the program is in existence, shall not exceed four-tenths of one percent of the taxable valuation of the city in the year in which the funds are collected or $2,000,000, pursuant to Nebraska RS 18-2717 ("Limitations" herein).

(B) The Mayor and City Council may appropriate such funds from the existing 1% local option sales tax or property taxes. As part of the annual municipal budget process the Mayor and City Council shall establish the actual amount of funding, subject to the limitations provided herein.

(C) The total amount to be collected from the local sources of revenue for the full length of the program for the city shall not exceed the total amount of funds generated during the full length of the program from 100% of the total collections of the existing 1% local option sales tax and such property tax funds up to the limitations described above. The limitations only apply to appropriation of funds derived directly from local sources of revenue. The limitations shall not apply to reappropriation of funds which were appropriated but not expended during previous fiscal years.

(D) Following is a preliminary proposed budget for the program. The total amount proposed to be directly collected from local sources of revenue to finance the Program may be up to, but not exceed, the total "Maximum Possible Collections Under State Statute" specified in the preliminary budget.

Fiscal Year	***Maximum Possible Collections Under State Statute***	***Preliminary Projected Maximum Expenditures***
FY 2005	$2,000,000	$1,650,000
FY 2006	2,000,000	1,732,500
FY 2007	2,000,000	1,819,125
FY 2008	2,000,000	1,910,025
FY 2009	2,000,000	2,000,000
FY 2010	2,000,000	2,000,000
FY 2011	2,000,000	2,000,000

Fiscal Year	*Maximum Possible Collections Under State Statute*	*Preliminary Projected Maximum Expenditures*
FY 2012	$2,000,000	$2,000,000
FY 2013	2,000,000	2,000,000
FY 2014	2,000,000	2,000,000
FY 2015	2,000,000	2,000,000
FY 2016	2,000,000	2,000,000
FY 2017	2,000,000	2,000,000
FY 2018	2,000,000	2,000,000
FY 2019	2,000,000	2,000,000
FY 2020	2,000,000	2,000,000
FY 2021	2,000,000	2,000,000
FY 2022	2,000,000	2,000,000
FY 2023	2,000,000	2,000,000
FY 2024	2,000,000	2,000,000
FY 2025	2,000,000	2,000,000
FY 2026	2,000,000	2,000,000
FY 2027	2,000,000	2,000,000
FY 2028	2,000,000	2,000,000
FY 2029	2,000,000	2,000,000
Total	$50,000,000	$49,111,650

(E) The city shall have the authority to issue bonds pursuant to the Local Option Municipal Economic Development Act to provide funds to carry out the Economic Development Program. Also, additional funds from other non-city sources may be sought beyond those derived from local sources of revenue.

(F) It is expected that less than 5% of amounts allocated for the Economic Development Program will be used for administration (legal fees, audit fees, etc.) with at least 95% of amounts allocated for the program to be used for eligible activities under the Program. Any allocated funds not used for administration activities in a fiscal year shall be allocated to be available to be used for eligible activities under the program.
(Ord. 921, passed 12-2-03)

§ 117.08 ESTABLISH SEPARATE DEVELOPMENT FUND.

The city shall establish a separate Economic Development Fund pursuant to Neb. RS 18-2718. Any funds derived from local sources of revenue for the program, earnings from the investment of such

funds, any loan payment, any proceeds from the sale by the city of assets purchased by the city under the Economic Development Program, or any other money received by the city by reason of the Economic Development Program, shall be deposited into the Economic Development Fund. Any proceeds from the issuance and sale of bonds to provide funds to carry out the Economic Development Program, except for refunding bonds in Neb. RS 18-2732, shall also be deposited into the Economic Development Fund. Unless otherwise authorized, money in the Economic Development Fund shall not be deposited in the general fund of the city and the city shall not transfer or remove funds from the Economic Development Fund nor shall they be co-mingled with any other city funds.
(Ord. 921, passed 12-2-03)

§ 117.09 INVESTMENT OF FUNDS.

Any money in the Economic Development Fund, not currently required or committed for purposes of the Economic Development Program, shall be invested as provided in Neb. RS 77-2341.
(Ord. 921, passed 12-2-03)

§ 117.10 DISPOSITION OF FUNDS ON TERMINATION.

In the event the Economic Development Program is terminated, the balance of the money in the Economic Development Fund, not otherwise committed by contract under the Program, shall be deposited in the General Fund of the city. Any funds received by the city, by reason of the Economic Development Program, after the termination of such program, shall be transferred from the Economic Development Fund to the General Fund of the city as such funds are received. The Economic Development Fund shall not be terminated until such time as all projects and contracts related to the program have been finally completed and all funds related to them fully accounted for, with no further city action required, and after completion of the final audit.
(Ord. 921, passed 12-2-03)

§ 117.11 TERMINATION OF PROGRAM.

When the Economic Development Program is terminated, the governing body of the city, shall, by resolution, certify the amount of money to be transferred from the Economic Development Fund to the General Fund of the city and the amount that it is anticipated will be received by the city between such time and final audit of the Economic Development Fund pursuant to Neb. RS 18-2718.
(Ord. 921, passed 12-2-03)

§ 117.12 CONTINUATION OF PROGRAM.

If, after five full budget years, following initiation of the approved development program, less than 50% of money collected from local sources of revenue is spent or committed by contract for the Economic Development Program, the governing body of the city shall place the question of the continuation of the Economic Development Program on the ballot at the next regular election.
(Ord. 921, passed 12-2-03)

§ 117.13 AUDIT OF FUNDS.

The city shall provide for an annual, outside, independent audit of the Economic Development Program, by a qualified auditing business. The auditing business shall not, at the time of the audit or any period during the audit, have any contractual or business relationship with any qualifying business receiving funds or assistance under the Economic Development Program, or any financial institution directly involved with a qualifying business receiving funds or assistance under the Economic Development Program. The result of such audit shall be filed with the City Clerk and made available for public review during normal business hours. Every applicant or recipient under the Economic Development Program agrees by submitting an application under the program to provide at its cost such financial statements, audits and access to books, records and statements as the city from time to time requests or requires.
(Ord. 921, passed 12-2-03)

§ 117.14 ELIGIBLE ACTIVITIES.

(A) The eligible economic activities of the Program are those activities from time to time permitted by Nebraska statute or authorized by the Mayor and City Council, including, but not limited to, the following activities: direct loans or grants to qualifying businesses, including loans and grants for fixed assets or working capital or both; loan guarantees for qualifying businesses; expenditures or grants for public works improvements, site development, and infrastructure improvements which are essential to the location or expansion of, or the provision of new services by, qualifying businesses, the construction of buildings to be leased or sold to said businesses, or the development of public facilities; the purchase of, or obtaining, renewing or extending options to purchase, real estate, including commercial, industrial and public sites; grants or loans for job training; the issuance of bonds as provided for in the Act, payments for salaries and support of city staff to implement the Economic Development Program or for contracting the same to an outside entity; and grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income. Land to be purchased either directly or through options may be within or without the corporate limits of the city.

(1) *Purchase of land.* As a part of the program, the city may purchase real property or options on real property when such property is located within the corporate limits of the city or the city's extraterritorial zoning jurisdiction or future growth and development area. The Program Administrator shall be responsible for recommending real property purchases to the Mayor and City Council following review of available real property which meets the goals and strategies of this Economic Development Program and reporting the same to the Mayor and City Council. The city shall

comply will all statutory requirements when purchasing real property and the city may use the proceeds from any future sale of the property for additional real property purchases.

(2) *Housing rehabilitation.* As a part of the program, the city may make grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income. The income level standards which will qualify persons as low or moderate income for participation in the program shall be based upon U.S. Department of Housing and Urban Development guidelines or standards (or other federal government agency or department identified by the city in the event the U.S. Department of Housing and Urban Development ceases to exist, be known by that name, or provide relevant guidelines or standards) existing from time to time for qualifying for federal housing assistance, as may be modified by the city based on information from the Nebraska Department of Health and Human Services, Nebraska Department of Economic Development or other sources the city determines are relevant in consideration of local and regional economic conditions and income levels from time to time existing. The city shall consider the following criteria to determine whether any adjustments to income of persons would be appropriate when assessing their qualification for participation in the program:

(a) Amount of income of the person available for housing needs;

(b) Size of family to reside in each housing unit;

(c) Cost and condition of housing available in the city;

(d) Whether the person or any member of the person's family who will be residing in the housing unit is elderly, infirm or disabled;

(e) Ability of the person to compete successfully in the private housing market and pay the amounts the private enterprise market requires for safe, sanitary and uncrowded housing; and

(f) Such other factors as the city from time to time determines which are particularly relevant to the conditions facing persons seeking new or rehabilitated housing in the city.

(3) *Loan fund.* The city may establish a loan fund under the Economic Development Program. The loan fund shall be organized and operated as determined by the city based on loan or financing

programs from time to time offered business ventures by the Small Business Administration (or other federal government agency identified by the city in the event the Small Business Administration ceases to exist, be known by that name, or provide relevant loan or financing programs) ("SBA") or the State of Nebraska. The particular requirements, conditions, standards and criteria of any loan or financing provided by the city under the loan fund shall be consistent with the relevant SBA or State of Nebraska loan or financing program on which the particular loan or financing provided by the city is based. The SBA or State of Nebraska requirements, standards, conditions or criteria will be the minimum applicable to the city loan fund with respect to the matters listed in (a) through (d) below. The city can in any case impose additional or greater requirements, standards, criteria or conditions as determined under the circumstances appropriate.

(a) Types of financial assistance available, the maximum proportion of financial assistance that will be provided to any single qualifying business and the criteria used to determine the appropriate level of assistance;

(b) The criteria and procedures that will be used to determine the necessity and appropriateness of permitting a qualifying business to participate in the loan fund;

(c) The criteria for determining the time within which a qualifying business must meet the goals set for it under its participation agreement; and

(d) Standards for loan delinquency, declaration of default, and actions to be taken upon default (consistent with Neb. RS 18-2520).

(B) At the time a qualifying business applies to the city to participate in the loan fund, the business shall provide to the city appropriate documentation evidencing its negotiations with one or more primary lenders and the terms upon which it has received or will receive the portion of total financing which will not be provided by the city.

(C) The investment strategies that the city will pursue to promote the growth of the loan fund while assuring its security and liquidity will be in accordance with applicable law. The Finance Director of the city will have primary responsibility for administration of loan servicing, unless otherwise specified by the Mayor and City Council.

(D) The loan fund will be administered in accordance with applicable law, including Neb. RS 18-2720. The city does not at this time expect that any personnel or other assistance beyond regular city employees will be needed to assist in the administration of the loan fund. However, if the City Administrator at any time determines that additional personnel or assistance is needed, payment or reimbursement for the same shall be provided from the loan fund unless otherwise approved by the city.

(E) The loan fund will be audited annually in conjunction with the audit of the Economic Development Program pursuant to Neb. RS 18-2721. In addition, any applicant or recipient of lending

or other financing from the loan fund is required to provide at its cost such financial statements, audits and access to books, records and statements as the city from time to time requests or requires. All applicants and recipients are deemed to agree to this condition by the submittal of an application under this Economic Development Program.
(Ord. 921, passed 12-2-03)

§ 117.15 CITIZENS ADVISORY REVIEW COMMITTEE.

There is hereby created a Citizen Advisory Review Committee, which shall review the functioning and progress of the Economic Development Program and shall advise the Mayor and City Council with regard to the Program. The Committee shall consist of five registered voters of the city. Said members shall be appointed by the Mayor, subject to approval by the City Council. The members of the Committee shall serve for five-year terms. Any member of the Committee may be removed from office by the Mayor, with the approval of the City Council.

(A) At least one member of the Committee shall have expertise or experience in the field of business finance and accounting.

(B) The Program Administrator specified below shall have responsibility for the administration of the Economic Development Program and serve as an ex officio member of the Committee with responsibility for assisting the committee and providing it with necessary information and advice on the Economic Development Program.

(C) A representative from the Sarpy County Economic Development Corporation and any other person as from time to time designated by the Mayor with the approval of the City Council may also serve as an ex-officio member of the Citizen Advisory Review Committee and may also provide the committee with necessary information and advise the committee on the Economic Development Program.

(D) No member of the Citizen Advisory Review Committee shall be an elected or appointed city official, employee of the city, a member of the Application Review Committee or otherwise a participant in a decision-making position regarding expenditures of program funds, or an official or employee of any qualifying business receiving financial assistance under the Economic Development Program or of any financial institution participating directly in the Economic Development Program.

(E) The Citizen Advisory Review Committee shall elect a chairperson from its membership and shall create and fill such other offices as it may determine. The term of the chairperson shall be one year and such person shall be eligible for re-election.

(F) The Citizen Advisory Review Committee shall hold regular meetings once per quarter to review the functioning and progress of the Economic Development Program and shall advise the governing body

of the city with regard to the program. Special meetings of the Citizen Advisory Review Committee shall be held whenever called by the Mayor or the chairperson for the Committee.

(G) At least once in every six-month period after the effective date of this chapter, the Committee shall report to the governing body on its findings and suggestions at a public hearing called for that purpose.
(Ord. 921, passed 12-2-03)

§ 117.16 APPLICATION PROCESS AND SELECTION OF PARTICIPANTS.

(A) In order for a qualifying business to be considered for program benefits, the qualifying business shall first become an applicant by applying to the city for assistance. Applications shall be signed, dated and submitted in the manner, on such forms, in the number of originals and duplicates, and with such person(s) specified from time to time by the Program Administrator. The application shall contain information as required by this Program and any additional information, assurances, certifications, requirements or guarantees as may be specified by the Program Administrator and/or the Application Review Committee.

(1) Applications for assistance from a qualifying business shall include the following information:

(a) SBA Form 4 application, with such modifications as authorized by the city;

(b) Business plan which includes financial projections for the next three years where appropriate;

(c) Signed copies of the most recent two years' federal tax returns or all years where the applicant has been in existence for less than two years;

(d) Signed copies of financial statements of the applicant for the two most recent fiscal years or all fiscal years where the applicant has been in existence for less than two years;

(e) Where the applicant is a closely held entity, signed balance sheets from the holders or beneficial owners of more than 25% of the ownership interests in the entity; and

(f) Other information as requested by the Program Administrator or the Application Review Committee.

(2) The Program Administrator may waive the furnishing of all or any portion of the above items or any other requirement where the Program Administrator is able to obtain reasonable assurance

as to the stability of the qualifying business from other reliable sources or information, including audited financial statements and filings with regulatory agencies (i.e. SEC filings).

(3) The Program Administrator may also waive the furnishing of all or any portion of the above items where the qualifying business agrees that no funds shall be paid to or for the benefit of the qualifying business until the qualifying business has performed according to agreed upon criteria.

(4) The Program Administrator may use any method he or she determines appropriate to verify the information provided by the applicant, including, but not limited to, the following: credit checks, Dun & Bradstreet reports, examination of internal records and audit reports, and any other reasonable methods as determined by the Program Administrator.

(B) Upon receipt of an application, the Program Administrator shall make a preliminary determination as to whether the application appears to be viable, based on whether:

(1) The applicant is eligible;

(2) The proposed activities are eligible;

(3) The applicant has any actual or potential legal actions or other risks that may significantly impact its ability to perform; and

(4) The applicant has complied with application requirements.

(C) Once the Program Administrator makes a determination that the application appears to be viable, the application is referred to the Application Review Committee appointed by the Mayor with City Council approval. The Application Review Committee shall be separate and apart from the Citizen Advisory Review Committee and no member of the Application Review Committee shall at the same time be a member of the Citizen Advisory Review Committee. The Application Review Committee shall review the application and any supplemental financial or other information furnished and provide recommendations to the Program Administrator concerning negotiations with the applicant and whether any further information, assurances, certifications, requirements or guarantees from the applicant are desired.

(D) Once the Application Review Committee has completed its review, and following any additional negotiations conducted by the Program Administrator, the committee shall make a recommendation that:

(1) The application be approved,

(2) The application be denied, or

(3) The Committee is not able to make a recommendation due to lack of information or other factors that may be cited by the Committee.

(E) (1) The Committee will have authority to deny or recommend approval of any application, subject to any conditions the committee determines appropriate. Denial or recommendation of approval will be based on the Committee's review of the application and other information provided and a determination whether the applicant has demonstrated to the satisfaction of the Committee:

(a) The applicant's eligibility for funding,

(b) That the type and amount of assistance is appropriate and desirable for the city,

(c) A desirable level, type and quality of public benefit to the city or its residents from the applicant's proposed use of the funding, and

(d) That the timing, type, magnitude and probability of public benefit that the Committee determines is likely to be achieved from the funding is reasonable and efficient in relation to the cost of funding provided.

(2) If the application is denied or the Committee is unable to make a recommendation, the application shall be deemed denied and a summary of the reasons may be given. Any deemed denial of an application shall be final and binding on all parties.

(F) All recommendations of the Application Review Committee for approval of an application shall be submitted to the City Council for consideration of approval and funding. The City Council shall approve, reject, or refer back to the Committee for further consideration, the Application Review Committee's recommendation, subject to any conditions the City Council determines appropriate. In making its determination, the City Council shall generally not be presented with any information which has been determined by the Program Administrator or the Application Review Committee as confidential. An applicant which has been awarded funding under the program shall be referred to as a Funded Business.

(G) There shall be no limit on the number of times that a qualifying business may apply for assistance. Applications shall be received until all funds anticipated for the program have been committed. The decision as to whether or not program benefits shall be granted on applications that the Application Review Committee recommends for approval to the City Council is at the sole discretion of the City Council and is final and binding on all parties. The City Council may modify the application and selection process provided in this section from time to time as determined necessary or appropriate.
(Ord. 921, passed 12-2-03)

§ 117.17 DISCLOSURE OF CONFIDENTIAL INFORMATION.

(A) The Program Administrator, members of the Citizen Advisory Review Committee or members of the Application Review Committee may be permitted access to business information received by the city in the course of its administration of the Economic Development Program, which information would otherwise be private, proprietary or confidential:

(1) Under Neb. RS 84-712.05,

(2) By agreement with a qualifying business submitting an application under or participating in the Economic Development Program, or

(3) Under any ordinance of the city providing access to such information to the Program Administrator or members of either Committee and guaranteeing the confidentiality of such information received by reason of its administration of the Economic Development Program.

(B) Neither the Program Administrator nor any member of a Committee shall divulge any such information to any other person or entity, except as required by law.
(Ord. 921, passed 12-2-03)

§ 117.18 ADMINISTRATION SYSTEM.

(A) It is important to have a clearly defined administration system for the Program. It is the intent of the Program that the majority of the funds be used for eligible activities and a relatively smaller portion on administration of the Program. A description of the administration of the Program is below. The city is authorized to provide for any additional responsibilities or positions from time to time as may be needed to carry out the Program.

(B) *Program Administrator*. The City Administrator shall be the Program Administrator. The duties of the Program Administrator include:

(1) Administration of the Program.

(2) Serve as an ex-officio but non-voting member of the Citizen Advisory Review Committee.

(3) Assist the Citizen Advisory Review Committee and provide it with necessary information and advice on the Program.

(4) Track employment figures for participating businesses for two years if businesses employ persons in other Nebraska communities.

(5) On a regular basis review whether qualifying businesses are carrying out their responsibilities under the Program and following the applicable agreements, laws and regulations.

(C) The Program Administrator may from time to time designate such individuals or, with approval of the Mayor and City Council, contract with outside entities, and delegate such responsibilities, duties or tasks to said individuals or entities that she determines necessary or appropriate to administer the Economic Development Program.
(Ord. 921, passed 12-2-03)

§ 117.19 LEGAL ASSURANCES.

The city will endeavor to comply with applicable laws, regulations and requirements, which will be facilitated through the checks and balances built into the Program pursuant to Nebraska statute, including:

(A) The Citizens Advisory Review Committee is responsible for periodically meeting, reviewing the functioning of the Program and advising the governing body of the city with regard to the Program. At least one of the members of the Committee will have expertise or experience in business finance or accounting. It is anticipated that others on the Committee will have expertise or experience that will assist the city comply with applicable requirements. The makeup of the Committee pursuant to Neb. RS 18-2715 decreases the likelihood of conflicts of interest on the Committee with others related to the program and increases the opportunity for objectivity in carrying out Committee duties.

(B) The Program Administrator will provide ongoing oversight in the administration of the program.

(C) The city will have the Program annually audited by an outside, independent private auditing business, the results of which will be filed with the City Clerk and made available for public review during normal business hours. The city also will have access to applicant and recipient books and records.

(D) Funding awards and annual appropriations for the program require City Council approval.

(E) The City Attorney will provide desired consultation to the City upon request regarding significant changes to the Local Option Municipal Economic Development Act.
(Ord. 921, passed 12-2-03)

§ 117.20 AMENDMENT.

The Mayor and City Council may amend this chapter:

(A) From time to time to conform to the provisions of any existing or future state or federal law,

(B) After notice, at least one public hearing, and a 2/3 vote of the members of the city's governing body, when necessary to accomplish the purposes of the original enabling resolution, or

(C) As otherwise permitted from time to time by applicable law.
(Ord. 921, passed 12-2-03)

CHAPTER 118: NATURAL GAS FRANCHISE

Section

118.01 Franchise granted
118.02 Term
118.03 Governing rules and regulations
118.04 Location, construction and maintenance of company facilities
118.05 Standard equipment
118.06 Odorizing of gas
118.07 Extension of company facilities
118.08 Relocation of company facilities
118.09 Insurance
118.10 Acceptance of franchise
118.11 Franchise fee
118.12 Financial and operational record requirements
118.13 Transfer
118.14 Regulatory authority
118.15 Confidential information
118.16 Force majeure
118.17 Hold harmless
118.18 Severability
118.19 Non-waiver
118.20 Repeal conflicting ordinances
118.21 Effect and interpretation of chapter
118.22 Effective date and acceptance
118.23 Notices

§ 118.01 FRANCHISE GRANTED.

The City of La Vista, Nebraska, (hereinafter referred to as "city") hereby grants a non-exclusive franchise to Aquila, Inc, d/b/a Aquila Networks, a Delaware corporation, (hereinafter called "grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are now within the

present or future limits of said city, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas for all purposes to the inhabitants of said city and consumers in the vicinity thereof, and for the distribution of natural gas from or through said city to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of city and in carrying on such business. The laying or installation of additional pipe within the city and its extraterritorial zoning jurisdiction shall require a right-of-way permit for that purpose.
(Ord. 974, passed 12-6-05)

§ 118.02 TERM.

The franchise granted under this chapter shall remain in effect for a period of 25 years from the effective date of this chapter, as determined pursuant to state law; provided, however, that city or grantee may terminate this chapter on the tenth anniversary of the effective date of this chapter, and every five years thereafter until the franchise term expires. City or grantee shall notify the other party in writing, no later than 180 days before the end of the initial term or each five-year anniversary thereafter that city desires not to renew the franchise.
(Ord. 974, passed 12-6-05)

§ 118.03 GOVERNING RULES AND REGULATIONS.

(A) The franchise granted under this chapter is subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by state or federal law. The rates to be charged by grantee for service within the present or future corporate limits of city and the rules and regulations regarding the character, quality and standards of service to be furnished by grantee shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by grantee. Provided however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes grantee from recovering from its customers any cost associated with services provided hereunder, then grantee and city shall renegotiate the terms of this chapter in accordance with the action taken, so as to allow grantee to be made whole economically.

(B) In determining the rights and duties of the grantee, the terms of this chapter shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the city. The foregoing notwithstanding, grantee shall be and remain subject to all ordinances, rules, and regulations of the city now in effect, or which city might subsequently adopt, for the regulation of land

uses or the protection of the health, safety, and general welfare of the public; provided, however, that grantee hereby reserves the right to challenge the validity of any ordinance, rule or regulation city passes subsequent to the date of this chapter, and to terminate this chapter upon 90 days advance written notification, if such subsequent ordinance, rule or regulation imposes any material new costs and/or burdens upon the grantee, and provided that nothing herein shall be construed as a waiver by grantee of any of its existing or future rights under state or federal law or a limitation upon the existing or future powers of the city under state or federal law.

(C) If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the grantee, then the grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the grantee.
(Ord. 974, passed 12-6-05)

§ 118.04 LOCATION, CONSTRUCTION AND MAINTENANCE OF COMPANY FACILITIES.

(A) All mains, services and pipes which shall be hereafter laid or installed under this chapter shall be located in public right-of-way and shall be located and laid so as not to obstruct or interfere with any existing or planned water pipes, drains, sewers, paving or other structures, and all such mains, services and pipes shall be laid in place subject to the reasonable approval of the city or subject to the reasonable approval of such representative as city may from time to time provide. Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of city and to the general public as is reasonably necessary; and repairs and replacements shall be made promptly by grantee, leaving such properties in as good as condition as existed immediately prior to excavation. If grantee does not promptly perform and complete the necessary work to restore the public right-of-way of other public property, and fails to properly restore the public right-of-way within 30 days after receipt of written notice by the city to grantee of the condition, then the city may restore the public right-of-way or other public property. The city may seek reimbursement from grantee for the reasonable expense of restoration for the work performed by the city or its agents.

(B) Grantee agrees that for the term of this grant, it will maintain facilities and equipment sufficient to meet the current and future energy requirements of city, its inhabitants and industries. While constructing and maintaining its facilities and equipment, grantee shall obtain permits as required by ordinance, except that in emergency situations, grantee shall take immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, grantee shall notify city as soon as reasonably possible.

(C) City will give grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affect grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements and the time when the city will start the work, and, if more than one right-of-way is involved, the order in which this work is to proceed. The notice shall be given to the grantee a sufficient length of time, considering seasonable working conditions, in advance of the actual commencement of the work to permit the grantee to make any additions, alterations, or repairs to its facilities.
(Ord. 974, passed 12-6-05)

§ 118.05 STANDARD EQUIPMENT.

Grantee, in the construction, operation, and maintenance of the gas system in the city, shall use only pipes, material, and equipment that meet applicable federal, state, and local construction and safety codes. Grantee shall also use reasonably and legally required safety devices to protect the city and its residents from injury as required by federal, state, and local laws and regulations.
(Ord. 974, passed 12-6-05)

§ 118.06 ODORIZING OF GAS.

Grantee shall odorize, as necessary, the gas provided within the city in accordance with applicable law and regulation.
(Ord. 974, passed 12-6-05)

§ 118.07 EXTENSION OF COMPANY FACILITIES.

Upon receipt and acceptance of a valid application for service, grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current corporate limits of city; provided, that the grantee shall not be obligated to construct or extend its mains or furnish gas or gas service within the city if grantee, through no fault of its own, is unable to obtain delivery of an adequate supply of natural gas at or near the corporate limits of city to warrant the construction or extension of its mains; provided, further, that when the amount of natural gas supplied to grantee at or near the city limits is insufficient to meet the additional firm requirements of connected or new customers, grantee shall have the right to prescribe reasonable rules and regulations for allocating the available supply of natural gas for such additional firm requirements to domestic, commercial, and industrial consumers, in that order of priority.
(Ord. 974, passed 12-6-05)

§ 118.08 RELOCATION OF COMPANY FACILITIES.

(A) If city elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, grantee, upon reasonable notice from city, shall remove and relocate its facilities or equipment situated in the public rights-of-way, if such removal is necessary to prevent interference and not merely for the convenience of the city, at the cost and expense of grantee. If city orders or requests grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and not merely for the convenience of the city or other right-of-way user, grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause grantee unreasonable additional expense in exercising its authority under this section. City shall also provide a reasonable alternative location for grantee's facilities. City shall give grantee written notice of vacating of a public right-of-way. Vacating of a public right-of-way shall not deprive the grantee of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same are first paid to the grantee.

(B) Any person or corporation desiring to move a building or other structure along, or to make any unusual use of any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the facilities or equipment of the grantee, shall first give notice to the city and the grantee and a pay a sum sufficient to cover the expense and damage incident to the moving of grantee's facilities and equipment.
(Ord. 974, passed 12-6-05)

§ 118.09 INSURANCE.

(A) Grantee shall maintain insurance at all times during the term of this chapter in an amount not less than the city's maximum liability under the Nebraska Political Subdivisions Tort Claim Act, as amended from time to time, to cover and protect itself and the city as an additional insured from and against all claims, demands, losses, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly, from or by reason of loss, injury, or damage to the city, its property, employees or agents, or to other persons or their property on account of or arising from the grant or exercise of the franchise granted by this chapter.

(B) In addition to and not in limitation of the foregoing, grantee shall be insured to provide coverage for all foreseeable and unforeseeable risks, injuries and damages, on account of or arising from this chapter and such coverage shall include, but not be limited to the following types:

(1) Insurance which will protect the city from claims arising under workers' compensation law and any similar employee benefit law in such amounts as are required by state and federal statute, and with respect to an employer's liability for workers' compensation;

(2) Bodily injury and property insurance for comprehensive general liability (including explosion, collapse and underground), contractual liability (including that arising from this chapter), personal injury (with employment exclusion deleted), and comprehensive automobile liability (including hired and non-owned vehicles). It is a condition of this chapter that all policies waive governmental immunity as a defense in any action brought against the insured or any other party to this chapter. Upon request by city, grantee shall furnish proof of the insurance required under this section.
(Ord. 974, passed 12-6-05)

§ 118.10 ACCEPTANCE OF FRANCHISE.

Within 60 days after the passage of this chapter, grantee shall prepare and file a written acceptance of the franchise granted under this chapter with the City Clerk. Failure of grantee to so accept the franchise granted by this chapter within said period of time shall be deemed a rejection thereof by grantee and the rights and privileges herein granted shall after the expiration of said period of 60 days, if not so accepted, absolutely cease and terminate, unless said period of time shall be extended by further ordinance duly passed for that purpose.
(Ord. 974, passed 12-6-05)

§ 118.11 FRANCHISE FEE.

(A) Grantee shall pay to the City Treasurer a franchise fee based on a percentage of grantee's gross revenues derived from sales or transportation of natural gas delivered within the city excluding sales or transportation to governmental agencies, departments, or other governmental bodies whether they be federal, state or local. The franchise fee shall be 5% of gross revenues but may be amended by city from time to time to provide for such different rate as city's governing body may determine appropriate. Such franchise fee shall be in lieu of any and all fees and impositions of city based on gross revenues or license fees for the privilege of conducting a gas business within the city. Nothing herein shall be construed to exempt grantee from payment of ad valorem property taxes or taxes in lieu thereof.

(B) Grantee shall pay to the city on or before the 15th day of each month that portion of the fee applicable to gross receipts derived from sales or transportation of natural gas delivered within the city during the previous month. Any amount due which is not paid on or before the prescribed date shall draw interest at 1% per month, and after payment has been in default six months, a penalty of 5% of the amount due, including interest, shall be added thereto in addition to the monthly interest charge.

(C) For purposes hereof, ***GROSS REVENUES*** shall include all revenues derived from delivery of gas within the City of La Vista which utilize, in whole or in part, any pipes, containers or other equipment or form of delivery or storage over which grantee has any ownership or control. ***GROSS REVENUES*** shall include revenues derived in third party marketing arrangements, such as "Energy Option Programs" or other arrangements whereby the marketer or seller of the gas is a third party who utilizes grantee's lines, containers, or other method, in whole or in part, to deliver gas within the city. In respect to any such third party arrangements, grantee shall determine the sale price of the gas at the franchise rate and shall remit to city as part of its franchise fee an amount equal to the amount that would have been payable to city had the gas been sold to the consumer directly by grantee.
(Ord. 974, passed 12-6-05)

§ 118.12 FINANCIAL AND OPERATIONAL RECORD REQUIREMENTS.

Upon five days' notice, subject to confidential protection, and to the extent permitted by Nebraska law, the books, records, contracts, and other documents directly related to the grantee's franchise and its public right-of-way use shall be open to reasonable inspection by the city, or by any person designated by the city, and grantee shall provide within 30 days following request by the city, or any person designated by the city, all additional relevant information requested by the city or by any person designated by the city. To the extent permitted under Nebraska law, the city shall maintain the confidentiality of all information provided by the grantee that is not in the public domain.
(Ord. 974, passed 12-6-05)

§ 118.13 TRANSFER.

(A) The franchise granted under this chapter shall not be sold, leased, granted, conveyed, transferred, hypothecated or assigned to any person or exercised by any person other than grantee without consent from the city, which consent may not be unreasonably withheld, and which consent is subject to the requirements of Neb. RS 66-1820 and 66-1821.

(B) Notwithstanding the restrictions on transfers set forth above, no such consent shall be required whenever:

(1) Grantee has assigned the rights, and obligations under this chapter to an affiliate of grantee; provided that such affiliate has expressly assumed, in a writing delivered to city evidencing its ability to so assume, grantee's obligations and responsibilities under the franchise agreement; provided, further, that grantee shall remain fully liable for and shall not be relieved from the full performance of all obligations under the franchise agreement; or

(2) Grantee has assigned all of grantee's rights and obligations under the franchise agreement to any entity that has acquired, directly or indirectly:

(a) Control of grantee,

(b) An entity into which grantee has merged,

(c) An entity that has acquired all or substantially all of the assets of grantee's Nebraska properties; or

(d) An entity to which grantee has assigned, transferred, or pledged the rights and privileges under the franchise agreement, for mortgage or otherwise assigned its rights hereunder as security for indebtedness.

(C) The provisions of this section shall be equally applicable to any subsequent assignment or transfer by an assignee or transferee of grantee. No approval or deemed approval of a transfer or assignment of the franchise agreement granted under this chapter shall operate as a waiver or release of the city's right to condemn the system or any part thereof pursuant to Nebraska law.
(Ord. 974, passed 12-6-05)

§ 118.14 REGULATORY AUTHORITY.

The city expressly reserves, subject to grantee's express right to challenge the adoption or enforceability of such ordinances, rules, or regulations, the city's right and duty to adopt, in addition to the provisions in this chapter, ordinances, rules, and regulations as the city deems necessary to exercise its police power for the protection of the health, safety, and welfare of its citizens and their properties.
(Ord. 974, passed 12-6-05)

§ 118.15 CONFIDENTIAL INFORMATION.

City acknowledges that certain information it might request pursuant to this chapter may be of a proprietary and confidential nature. If grantee requests that any information provided by grantee to city be kept confidential due to such proprietary or commercial value, city and its employees, agents, and representatives shall maintain the confidentiality of that information, to the extent allowed by law. If city is requested or required by legal or administrative process to disclose any such confidential information, city shall promptly notify grantee of such request or requirement so that grantee may seek an appropriate protective order or othen relief. City shall use all reasonable efforts to ensure that the confidentiality of grantee's confidential information is maintained.
(Ord. 974, passed 12-6-05)

§ 118.16 FORCE MAJEURE.

(A) It shall not be a breach or default under this chapter if either party fails to perform its obligations hereunder due to *force majeure*. ***FORCE MAJEURE*** shall include, but not be limited to, the following:

(1) Physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines;

(2) Acts of others such as strikes, workforce stoppages, riots, sabotage, insurrections or wars;

(3) Governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome.

(B) Each party shall make reasonable efforts to avoid *force majeure* and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance; provided, however, that this provision shall not obligate a party to settle any labor strike.
(Ord. 974, passed 12-6-05)

§ 118.17 HOLD HARMLESS.

Grantee, during the term of the franchise granted under this chapter, agrees to save harmless city from and against all claims, demands, losses and expenses arising directly out of the negligence of grantee, its employees or agents, in the constructing, operating, and maintaining of distribution and transmission facilities or appliances of grantee; provided, however, that grantee need not save harmless city from claims, demands, losses and expenses arising solely out of the negligence of city, its employees or agents.
(Ord. 974, passed 12-6-05)

§ 118.18 SEVERABILITY.

If any clause, sentence or section of this chapter is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.
(Ord. 974, passed 12-6-05)

§ 118.19 NON-WAIVER.

Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.
(Ord. 974, passed 12-6-05)

§ 118.20 REPEAL CONFLICTING ORDINANCES.

This chapter, when accepted by grantee as provided below, shall constitute the entire agreement between the city and the grantee relating to the franchise and the same shall supersede all prior ordinances pertaining to the franchise agreement, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 651, passed June 4, 1996, is hereby repealed as of the effective date hereof.
(Ord. 974, passed 12-6-05)

§ 118.21 EFFECT AND INTERPRETATION OF CHAPTER.

The captions which precede each section of this chapter are for convenience in reference only and shall not be taken into consideration in the interpretation of any of the provisions of this chapter.
(Ord. 974, passed 12-6-05)

§ 118.22 EFFECTIVE DATE AND ACCEPTANCE.

This chapter shall become effective and be a binding contract between the city and grantee, upon its final passage and approval by city, in accordance with applicable laws and regulations, and upon acceptance by grantee by written instrument within 60 days of passage by the governing body, and filed with the City Clerk of the City of La Vista, Nebraska. The City Clerk shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to grantee.
(Ord. 974, passed 12-6-05)

§ 118.23 NOTICES.

Any notices required to be given hereunder shall be sent to the following:

(A) If to grantee:

Steve Pella, Vice President
Aquila, Inc., d/b/a Aquila Networks
1600 Windhoek
Lincoln, Nebraska 68512

(B) If to city:

City Clerk
8116 Park View Boulevard
La Vista, Nebraska 68128

(Ord. 974, passed 12-6-05)

Section

119.01 Findings and intent
119.02 Definitions
119.03 Certain forms of distribution prohibited

119.99 Penalty

CHAPTER 119: TOBACCO PRODUCT SALE REGULATIONS

§ 119.01 FINDINGS AND INTENT.

The City Council hereby declares that it is the policy of the city to affirm the scientific evidence that the use of tobacco products is casually connected to many diseases and is dangerous to human health. Placing tobacco products out of the reach of children will reduce the likelihood of children to use tobacco products.
(Ord. 999, passed 7-18-06)

§ 119.02 DEFINITIONS.

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

PLACE OF BUSINESS. A place where tobacco products are sold at retail, including vending machines.

RESPONSIBLE PERSON. Any person, firm, association, company, partnership, or corporation or agent or employee of same who operates a store, stand, booth, concession or other place at which tobacco sales are made to purchasers. ***RESPONSIBLE PERSON*** as defined and applied herein must be an individual 18 years or older.

TOBACCO PRODUCTS.

(1) Cigarettes,

(2) Cigars,

(3) Cheroots,

(4) Stogies,

(5) Periques,

(6) Granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco,

(7) Snuff, snuff flour, Cavendish, plus and twist tobacco, fine cut and other chewing tobacco,

(8) Shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco, and

(9) Anything containing tobacco or any other kinds and forms to tobacco prepared in such manner as to be suitable for either chewing, smoking in a pipe, chewing and smoking, or inhaling and snorting through the nose.

VENDOR-ASSISTED ACCESS. Access to tobacco or tobacco products only with the direct assistance of the vendor or a vendor employee or agent, so that customers do not have direct access to take possession of tobacco or tobacco products without direct assistance from the vendor or a vendor employee or agent.

VENDING MACHINE. Any device or machine requiring the deposit of money or other things of value, including any such device or machine activated or operated by the vendor or by an employee or agent of the vendor.
(Ord. 999, passed 7-18-06)

§ 119.03 CERTAIN FORMS OF DISTRIBUTION PROHIBITED.

(A) It shall be unlawful to sell cigarettes or other tobacco products in any form except original factory-wrapped packages. The sale of single cigarettes is specifically prohibited.

(B) It shall be unlawful for any person or organization to give away, hand out, or otherwise distribute free samples of cigarettes or other tobacco products, or coupons that can be redeemed for free samples of cigarettes or other tobacco products, on public property or property that is open to the general public within the city's jurisdiction.

(C) It shall be unlawful to commingle tobacco products with any other product for sale from a single vending machine.

(D) It shall be unlawful for any person to:

(1) Sell, permit to be sold, or offer for sale tobacco or tobacco products by means other than vendor-assisted access, or

(2) Display tobacco or tobacco products in a manner allowing customers access to tobacco or tobacco products without vendor assistance. The requirements of this division shall not apply to a separate humidor room in which no one under the age of 18 years is allowed to enter and which bears a sign to that effect.

(E) Cigarettes or other tobacco products may be dispensed from a vending machine or similar device when such machine or device is located in an area, office, business, plant, or factory which is not open to the general public or on the licensed premises of any establishment having a license issued under the Nebraska Liquor Control Act for the sale of alcoholic liquor for consumption on the premises when such machine or device is located in the same room in which the alcoholic liquor is dispensed.
(Ord. 999, passed 7-18-06) Penalty, see § 119.99

§ 119.99 PENALTY.

Unless a penalty is otherwise provided in applicable state statute or in another chapter or section of this code with respect to a particular violation, any person, firm or entity that violates any of the provisions of this chapter, including but not limited to any neglect or refusal to comply therewith or opposition to the enforcement thereof, shall be guilty of a misdemeanor and shall upon conviction thereof be subject to: for a first offense violation, a fine in any amount not in excess of $500 at the discretion of the court; and for a second offense violation, a fine in any amount not in excess of $1,000 or imprisonment for not more than six months, or both. Each day on which a violation continues shall be deemed a separate violation and offense hereunder.
(Ord. 999, passed 7-18-06)