# Title 5

# BUSINESS LICENSES AND REGULATIONS

**Chapters:**

## Chapter 5.04

## BUSINESS LICENSES GENERALLY*

Sections:



* For statutory provisions authorizing cities to license for revenue and regulation purposes, see Gov. Code § 37101; for provisions authorizing cities to license businesses on the exercise of the police power and for purposes of regulation, see Bus. and Prof. Code §§ 16000—16003.

**5.04.010 Definitions.**

For the purposes of this chapter, the following terms shall have the following meanings:

A. "City" means the city of Dos Palos, county of Merced, state of California.

B. "Collector" means the licensed collector of the city, the city clerk, the city administrator, or his duly authorized agents.

C. "Fixed place of business" means the premises in the city occupied for the particular purpose of conducting a business thereat and regularly kept open for that purpose with a competent person in attendance for the purpose of conducting such business.

D. "Garage sales and yard sales" means sales of goods, wares or merchandise in a garage or yard not to exceed two in any one year in a residential zone.

E. "Outdoor sales" means sales of goods, wares or merchandise upon any public street, alley or public place, unenclosed garage or driveway, vacant lot or parcel of land in a commercial zone.

E. "Person" means all domestic and foreign corporations, associations, syndicates, joint stock companies, partnerships of every kind, clubs, trusts, societies and individuals transacting and carrying on any business in the city. (Ord. 286 (part), 1988: Ord. 220 § 2 (part), 1978)

**5.04.020 License—Required.**

There is imposed upon the businesses specified in this chapter, license taxes in the amounts prescribed, and it is unlawful for any person to transact and carry on any such business in the city without first having procured a license from the city to do so or without complying with any and all applicable provisions of this chapter. Each day such business is carried on without a license shall constitute a separate violation of this chapter. (Ord. 220 § 2 (part), 1978)

**5.04.030 License—Liability.**

The amount of any license imposed by this chapter shall be deemed a debt to the city, and any person carrying on any business mentioned in this chapter without having a license from the city to do so shall be liable to an action in the name of the city in any court of competent jurisdiction, for the amount of license by this chapter imposed on such business, together with all penalties then due thereon in any such action. (Ord. 220 § 2 (part), 1978)

**5.04.040 License—Issuance.**

It shall be the collector's duty to prepare and issue a license under this chapter for every person liable to pay a license, and to state in each license the amount thereof, the period of time covered thereby, the name of the person to whom issued, the type of business licensed and the location or place where such business is to be carried on. It shall further be the duty and responsibility of the collector to see that all new businesses are licensed and that all changes in location and status are recorded. (Ord. 220 § 2 (part), 1978)

**5.04.050 License—Nontransferable.**

No license granted or issued under the provisions of this chapter shall be in any manner transferred or assigned, or shall authorize any person other than therein mentioned or named to do business under such license. (Ord. 220 § 2 (part), 1978)

**5.04.060 License tax—Payment in advance.**

All license taxes shall be paid in advance at the office of the collector. (Ord. 220 § 2 (part), 1978)

**5.04.070 License—Term.**

All licenses shall be paid in advance in lawful money of the United States. The annual license provided in this chapter to be paid shall be due and payable on January 1st of each year. When any business commences more than three months after the beginning of the license year, it shall pay three-quarters of the fee provided. When any business commences more than six months after the beginning of the license year, it shall pay one-half of the fee provided. When any business commences more than nine months after the beginning of the license year, it shall pay one-quarter of the fee provided. No tax shall be prorated for a portion of a quarter (Ord. 220 § 2 (part), 1978)

**5.04.080 License tax—Payment—Generally.**

Any person carrying on, either as principal or agent, any business in the city not specifically set forth shall pay the amount of the license tax prescribed in this chapter provided for the business nearest corresponding to the nature of the business sought to be licensed, as determined by the collector. (Ord. 220 § 2 (part), 1978)

**5.04.090 License tax—Delinquent—Penalty.**

Every license which is not paid within a period of thirty days from the time the same becomes due and payable is declared to be delinquent, and the collector shall thereupon add to such license and collect an additional sum of fifteen percent of said license daily for each day that said license is delinquent. (Ord. 286 (part), 1988: Ord. 220 § 2 (part), 1978)

**5.04.100 Application—Required.**

Every person required to have a license under the provisions of this chapter shall make application for the same to the collector of the city, and, upon payment of the prescribed tax, the collector shall issue to such person a license, unless the issuance of such license falls within a classification requiring approval of the council. (Ord. 220 § 2 (part), 1978)

**5.04.110 License—Types.**

Until modified by council action, there shall be four types of licenses issued, depending upon the kind of business engaged in: that issued to a fixed place of business; that issued to no fixed place of business; that issued to a business requiring special license and tax; that issued to a business requiring permits to be authorized by the council. (Ord. 220 § 2 (part), 1978)

**5.04.120 License—General provisions.**

Every person conducting, managing or carrying on any wholesale or retail or jobbing business, or otherwise engaged in the selling of goods, wares, merchandise or other things of value, or engaged in conducting, managing and operating any other type of business and not otherwise licensed by this chapter or any other ordinance of the city, shall pay an annual license fee based upon the average number of persons employed in such business, according to the following schedule:

For the first person employed ..... $ 40.00
For each additional employee ..... 16.00

Provided, that owners and operators of businesses who devote all or a major portion of their time to conducting or operating the business shall be classed as employees for the purpose of this section, regardless of the number of such owners, or whether or not they receive salaries; provided further, that no owner shall be required to pay more than the total sum of three hundred dollars per year as a business license fee or fees, regardless of the number of persons in his employ, or the multiple nature of the business owned by him, or the fact that the same business in whole or in part is subject to the payment of a license fee under more than one of the provisions of this chapter.

In addition, any business requiring an inspection, as deemed necessary by the fire department and/or building department, will pay an additional fee of thirty dollars per hour with an minimum of ten dollars per inspection. (Ord. 281, 1987: Ord. 270 § 1, 1985: Ord. 220 § 2 (part), 1978)

**5.04.130 Sworn statement required.**

Every person making application for a license or any renewal thereof, under the provisions of this chapter, shall, upon demand, furnish to the collector for his guidance in ascertaining the amount of the license to be paid by the applicant, a written statement, sworn to before a person authorized to administer oaths, setting forth such information as may be required and as may be necessary to properly determine the amount of the license to be paid by the applicant. (Ord. 220 § 2 (part), 1978)

**5.04.140 Statement—Failure to provide.**

In the event any person shall refuse to furnish the written statement provided for in Section 5.04.130, upon written demand therefor, it shall be conclusively presumed that the amount of the license fee for such business is the sum of three hundred dollars. (Ord. 220 § 2 (part), 1978)

**5.04.150 Rate—Professions, semiprofessions, connected businesses.**

Every person conducting, managing, or carrying on or who shall conduct, manage, or carry on, within the city, any business in this section enumerated, or any combination thereof, shall pay an annual license fee of forty dollars for the business and first person employed and sixteen dollars for each additional employee.

Attorney at law
Auctioneer
Accountant or income tax expert or adviser
Advertising counsel
Appraiser
Architect
Artist
Assayer
Bacteriologist
Broker, stock or bond
Chemist
Chiropodist
Chiropractor
Collection agency or mercantile agency
Dentist
Designer or decorator
Detective or investigation personnel
Draftsman
Drugless practitioner
Electrologist
Engineer, structural, consulting, mechanical, hydraulic
Engraver
Fee, grain, and fruit broker or buyer
Geologist
Illustrator or show car writer
Masseuse or masseur
Oculist, optician, or optometrist
Osteopath
Physician
Real estate broker, commission or otherwise
Surgeon
Surveyor
Taxidermist
Undertaker
Veterinarian
X-ray, dental, or medical laboratory technician. (Ord. 220 § 2 (part), 1978)

**5.04.160 Rate—Contractors.**

A. Every person who engages in the business of a general contractor or general engineering contractor shall pay a fee of forty dollars per year for the contractor and sixteen dollars for each additional employee.

B. Every person who engages in the business of a plumbing contractor, or plastering contractor, or painting contractor or electrical contractor or roofing contractor, or brick and cement work contractor, or termite control contractor or service contractor or installation contractor of any kind, or other specialty contractor, insulation contractor, or floor sanding and finishing contractor, carpet laying contractor, or tile contractor, or any person engaged in or employed in such work by the day or by the hour and who holds a valid state contractor's license, shall pay an annual license fee of forty dollars for the contractor and sixteen dollars for each additional employee, for each of the businesses or occupations engaged in or carried on by such person; provided, further, that the license issued to a person for one of such businesses or occupations shall not entitle the holder thereof to engage in or carry on any of the other businesses or occupations in this subsection mentioned without first paying the license fee of forty dollars per year in advance as provided for in this section for said business or occupation.

C. If any person transacting one or more of the businesses enumerated in subsection B of this

section also carries on a retail, wholesale or jobbing business, or any other business, he shall be required to obtain a license therefor and pay the sum of forty dollars per year in addition to the license fee specified in subsection B of this section.

D. Whenever a general contractor or general engineering contractor engages a subcontractor to perform work within the city, the general contractor or general engineering contractor shall immediately notify the collector of the name and address of the subcontractor. Such notice shall be given prior to the commencement of work by the subcontractor. Should the general engineering contractor or general contractor fail to notify the collector of the names and addresses of subcontractors as above, the general engineering contractor shall be liable for all license fees of the subcontractor as provided in this section (Ord. 220 § 2 (part), 1978)

**5.04.170 Rate—Wholesale and retail delivery.**

Every person not having a fixed place of business within the city, making wholesale and retail deliveries from house to house or business over regular routes to regular customers or otherwise shall pay a fee in accordance with Section 5.04.120. (Ord. 286 (part), 1989: Ord. 220 § 2 (part), 1978)

**5.04.180 Rate—Gasoline and petroleum products.**

Every person engaged in the business of distributing or delivering or soliciting or obtaining orders for the distributing or delivering of oil, kerosene, gasoline, grease, butane, propane, diesel fuel, or other petroleum products from any vehicle in bulk or in cans, drums, or tanks, within the city shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.190 Rate—Pool and billiard parlors.**

Every person engaged in the business of operating a pool and/or billiard parlor within the city shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part,) 1978)

**5.04.200 Rate—Bowling.**

Every person engaged in the business of keeping or maintaining a bowling alley shall pay a sum in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.210 Rate—Outdoor sales.**

Every person having a fixed place of business making outdoors sales shall pay a license fee in accordance with Section 5.04.120. (Ord. 286 (part), 1989)

**5.04.220 Rate—Vending machines and amusement devices.**

Every person engaged in the business of renting out, placing or servicing, within the city, any automatic vending machine, or coin-operated phonograph or other musical device, or any pinball machine or other mechanical game shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.230 Rate—Telephone companies.**

Every person engaged in the business of operating or conducting a telephone exchange or telephone company within the city shall pay a license fee computed in the manner set forth in Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.240 Rate—Hotels and motels.**

Every person engaged in the business of conducting or operating a hotel or motel within the city shall pay a license fee computed in the manner set forth in Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.250 Rate—Lodging and boardinghouse.**

Every person engaged in the business of conducting or operating a lodginghouse, boardinghouse, or lodging and boardinghouse, or apartment house within the city shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.260 Rate—Creameries.**

Every person who conducts a creamery, cream receiving station, skimming station, whole milk plant or dry milk factory, or cheese factory in the city, shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.270 Rate—Nurseries.**

Every person who engages in the business of selling or soliciting orders for nursery stock, trees, shrubs, vines, plants, etc., shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.280 Rate—Barber and beauty shops.**

Every person engaged in the business of conducting or operating a barbershop and/or beauty shop shall pay a fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.290 Rate—Laundries.**

Every person engaged in the business of conducting or operating a laundry or wash house, or who solicits within the city, laundry work or orders therefor, the work to be done out of the city, shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part,) 1978)

**5.04.310 Rate—Junk dealers and collectors.**

Every person who conducts or operates a business for the purchase or sale of junk, shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.320 Rate—Campgrounds or trailer courts.**

Every person who conducts the business of keeping or operating a campground or trailer court for the accommodation of motorists or others shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.330 Rate—Garages.**

Every person engaged in the business of conducting or operating a garage for the storage of or repair of automobiles, trucks, or other motor vehicles, in the city, shall pay a license fee in accordance with the provisions of Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.340 Rate—Automobile dealers.**

Every person engaged in the business of selling or dealing in new or secondhand automobiles in the city shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.350 Rate—Hauling.**

Every person engaged in the business of operating or running any truck, dray, job wagon or other vehicle, horse or motor-driven, used for commercial operation within the city, excepting common carriers, shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.360 Rate—Outdoor advertising.**

Every person lawfully engaged in the business of billposting or in maintaining boards or structures for the posting of bills, or other outdoor advertisements within the city shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.370 Rate—Warehouses.**

Every person engaged in the business of conducting or operating any warehouse in the city, used for the storage of grain, hay or other farm products, merchandise, or other goods belonging to other persons, for profit, shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.380 Rate—Job printing.**

Every person conducting a job printing business or establishment in the city shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.390 Rate—Theaters.**

Every person engaged in the business of conducting or operating a theater or moving picture show within the city, whether in or out of doors, shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.400 Rate—Dry cleaning.**

Every person engaged in the business of soliciting or taking orders for dry cleaning, pressing, or dyeing clothes within the city, with no fixed place of business therein, the work to be done outside the city, shall pay a license fee in accordance with Section 5.04.120. Additionally, if any person combines a laundry or laundry soliciting business with the businesses referred to in this section, a total fee in accordance with Section 5.04.120 shall be paid by such person in lieu of all other license fees provided for in this section. (Ord. 220 § 2 (part), 1978)

**5.04.410 Rate—Tailor shop.**

Every person engaged in the business of conducting a tailor shop shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.420 Rate—Miscellaneous services.**

Every person transacting and carrying on the functions or business in this section similar to the following: lawnmower and tool sharpeners; key makers; safe repairman; equipment service and installation; appliance maintenance, repair and installation; ambulance service; bail bond broker; dancing school in a public building; delivery service; distributing advertising; handcraft; house cleaning; house moving or wrecking; instructor (private); pest control; piano tuner; public bookkeeper; public stenographer; travel service; window cleaning; janitorial service, shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.430 Rate—Signs.**

Every person engaged in the business of soliciting orders for or selling or repairing or maintaining neon signs or any electrical or mechanical signs within the city shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.440 Rate—Transient photographers.**

Every person carrying on the business of photographer who has no fixed place of business within the city shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.450 Rate—Sound advertising.**

Every person carrying on the business of furnishing loudspeaker and/or sound advertising, whether traveling or stationary, shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.460 Rate—Fish dealer.**

Every person conducting a business of buying, selling or dealing in fish, game, shellfish, or seafood shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.470 Rate—Home occupations.**

Every person commencing, transacting, and carrying on in the city any business whatsoever in

a home shall be required to obtain and display a license, the fee which shall be in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.480 Rate—Cabarets.**

Every person owning or operating a business on premises to which has been issued a general on-sale liquor license by the State Alcoholic Beverage Control Board and who furnishes, makes available, or permits thereon music or entertainment either vocally, by orchestra, music box, radio or other musical entertainment devices, shall pay an annual license fee in accordance with Section 5.04.120. In addition to the aforesaid payment, any such person shall pay to the city an additional sum to be established by the chief of police for each occasion when live music is furnished for the entertainment of patrons, which sum, at the option of the city, shall be used for the purpose of policing such occasions, but in the event no officer is assigned to police the premises, the amount so paid for such occasion shall be refunded by the city; provided, however, that such license shall be issued subject to the further terms and conditions, the violation of any of which is declared to constitute a public nuisance:

A. That no loud, boisterous or disorderly conduct that disturbs the peace or quiet of the neighborhood shall be permitted therein;

B. That no loud music, noise or entertainment that disturbs the peace or quiet of the neighborhood shall be permitted therein;

C. That said business shall not be operated while music or entertainment as aforesaid is furnished, available or permitted between the hours of two a.m. and six a.m. (Ord. 220 § 2 (part), 1978)

**5.04.490 Rate—Card tables.**

Every person maintaining and operating card tables or who permits the playing of card games within or in connection with any pool or billiard parlor or lunch counter or restaurant or wherein wine, beer or liquor is sold shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.500 Rate—Pawn shops.**

Every person engaged in the business of operating a pawn shop shall pay a license fee in accordance with Section 5.04.120. (Ord. 220 § 2 (part), 1978)

**5.04.510 Rate—Businesses generally.**

Any business which is not specifically named in this chapter, and which is not required to be licensed by another section of this chapter, shall pay a license tax in accordance with the provisions of Section 5.04.120, expressly including, but not thereby limiting, the following: bakery, service station, cafe, restaurant, bar, grocery, furniture, dry goods, hardware, feeds, lumberyard, drug and sundries, food lockers, implement, auto and machine parts, welding shop, cabinet shop, shoe (sale or repair), women or men's clothing, refreshments, variety. (Ord. 220 § 2 (part), 1978)

**5.04.520 Permit—Required when.**

Certain business activities shall be carried on within the city only upon performance of reasonable conditions imposed by the council to safeguard the health and welfare of its citizens; and after receiving a permit issued upon authorization of the council to conduct the business in accordance with the provisions of this chapter. (Ord. 220 § 2 (part), 1978)

**5.04.530 Permit—Application.**

Written application must be filed with the collector by the prospective permittee on a form provided by the collector, and when filed, the applicant shall pay one dollar as a filing fee and as well, the license fee as determined by the schedule set forth in Section 5.04.550. No application shall be considered by the council unless said fees have been paid. The council, when authorizing the collector to issue the request permit, may

prescribe reasonable conditions and require reasonable acts to be performed by the applicant in the conduct of the activity proposed to be engaged in or, if the council deems it in the best interests of the city, the application may be denied, in which case, the license fee deposited, but not the application fee, shall be returned to the applicant. (Ord. 220 § 2 (part), 1978)

### 5.04.540 Permit—Failure to comply with conditions.

A permittee who fails to conduct his business in conformity with the conditions imposed by the council shall forfeit both his permit and the license fee, unless such permit runs by the year, in which case he shall have thirty days within which to comply, and, failing to do so, both his license fee and his permit shall be forfeited. (Ord. 220 § 2 (part), 1978)

### 5.04.550 Permit—Businesses and fees designated.

The following are the businesses requiring special permits from the council, who shall pay a license fee in accordance with Section 5.04.120 of this chapter:

A. Shows, and entertainment generally, offered in a regular building;

B. Medicine shows in tents;

C. Shooting gallery;

D. Palmistry, tea reading, fortunetelling, character reading, phrenology, card reading, and other similar activity;

E. Carnivals;

F. Wrestling or boxing; provided, however, that any charitable or fraternal organization or any organization of veterans of any branch of the United States Armed Forces operating on a national scale and having a local post or branch of such organization, and any active unit of the National Guard having local headquarters, shall not be required to pay the license tax set forth above, where the net income from such boxing or sparring match or wrestling match, does not inure in whole or in part to the benefit of private individuals or private members of such organizations, post or branch, and where such boxing or wrestling match is conducted directly by, in the name of and subject to the control of such organization, post or branch.

G. Peddlers and solicitors;

H. Outdoor sales. (Ord. 286 (part), 1989; Ord. 245 (part), 1981; Ord. 220 § 2 (part), 1978)

### 5.04.560 Gratuitous licenses.

Gratuitous licenses shall be issued by the collector when authorized by the council in the same manner as other licenses are issued by him subject to the conditions of this section, and as follows:

A. To persons living in or within a reasonable distance of the city to sell produce they actually raise;

B. To persons to sell goods at retail who, by infirmities of age, loss of limbs, or total disabling causes, are incapacitated from earning a living by physical labor;

C. To persons who, upon proper showing, are found by the council to merit exception for the provisions of any section thereof.

All applications for gratuitous licenses shall be in writing and must state the fact relied upon by the applicant, and be signed by him. The action of the council shall be endorsed upon the back of said license so issued, and signed by the clerk of the council. The collector shall enter such endorsement in the license books kept by him and no such license shall be in force until such entry is made. All licenses granted by the council, under this section, shall expire at the end of the term for which they were issued, provided that the council may at any time revoke the same, and such revocation must be entered on the license book or the record of the collector upon notice thereof. No gratuitous licenses are or shall be assignable, and the fact that a person may come within a class that may entitle him to have a gratuitous license issued to him shall not permit such person to do business without such license. (Ord. 220 § 2 (part), 1978)

### 5.04.561 Gratuitous licenses—Waivers.

The city manager shall have the authority to

permit and waive business license fees for concerns which are both local and nonprofit, conducting one-day-only, non-alcoholic, fundraising events including but not limited to: barbecues, food or beverage sales; car washes; and garage, rummage or yard sales.

The city manager acting in the best interests of the city, may impose more restrictive conditions including but not limited to: date, time, hours of operation, litter and nuisance control. (Ord. 343, 1997)

**5.04.570 Application of provisions.**

It is declared to be the intention of the council to make the provisions of this chapter apply to all businesses, trades, professions, and callings now actually in existence, or at present being operated, and to all businesses, trades, professions, and callings which may hereafter be commenced within the city or over which the city may exercise a proper jurisdiction for licensing purposes. A person shall be deemed to have commenced the operation of any such business and to be liable for the payment of the license fee by any one or more transactions within the city. (Ord. 220 § 2 (part), 1978)

**5.04.580 Interstate commerce.**

Every peddler, solicitor or other person claiming to be entitled to exemption from the payment of any license provided for in this chapter upon the grounds that such license casts a burden upon his right to engage in commerce with foreign nations or among the several states, or conflicts with the regulations of the United States Congress respecting interstate commerce, shall file a verified statement with the council, disclosing the interstate or other character of his business entitling such exemption. Such statement shall state the name and location of the company or firm for which the orders are to be solicited or secured, the name of the nearest local or state manager, if any, and his address, the kind of goods, wares or merchandise to be delivered, the place from which the same are to be shipped or forwarded, the method of solicitation or taking orders, the location of any warehouse, factory or plant within the state, the method of delivery, the name and location of the residence of the applicant and any other facts necessary to establish such claim of exemption. A copy of the order blank, contract form or other papers used by such person in taking orders shall be attached to the affidavit for the information of the council. If it appears that the applicant is entitled to such exemption, the council shall forthwith issue a gratuitous license. (Ord. 220 § 2 (part), 1978)

**5.04.590 Civil action.**

The license tax imposed by this chapter shall be deemed a debt due the city from and against any person who maintains, carries on, engages in, or conducts in the city, any business, occupation, trade, profession or employment upon which license tax is imposed, or for the commencing, engaging in, carrying on, or conducting of which a license is required to be procured without first having paid the license tax and procured the license according to the terms and provisions of this chapter, and such persons shall be liable in a civil action in the name of the city as plaintiff in any court of competent jurisdiction for the amount of the license tax imposed by this chapter and for the costs of suit and for any attorney's fee in the sum of one hundred dollars. The license tax imposed by this chapter shall become due and payable in lawful money of the United States of America to the collector. (Ord. 220 § 2 (part), 1978)

**5.04.600 Posting license.**

Every person having a license under the provisions of this chapter shall keep such license posted and exhibited while the same is in force, in some conspicuous place therein. (Ord. 220 § 2 (part), 1978)

**5.04.610 Amendment.**

The council may from time to time, in its discretion and by ordinance, fix, alter, change, amend or revise the schedule of fees for procuring a license from the city. (Ord. 208 § 1, 1978)

**5.04.620 Regulatory measure.**

The provisions of this chapter are enacted for municipal or regulatory purposes and are not intended to raise revenue. (Ord. 208 § 2, 1978)

# Chapter 5.06

# BINGO GAMES

Sections:



## 5.06.010 Permitted when.

Bingo games shall be permitted in the city, as authorized by Penal Code Section 326.5, only for the benefit of organizations exempted from the payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code and a contribution or gift to which would be a charitable contribution under Section 170(c)(2) of the Internal Revenue Code of 1954. (Ord. 191 § 1 (part), 1976)

## 5.06.020 Personal profit prohibited.

No person shall receive a profit, wage, or salary from any bingo game authorized by Section 19 of Article IV of the state constitution and this chapter. (Ord. 191 § 1 (part), 1976)

## 5.06.030 Participation by minor prohibited.

No minor shall be allowed to participate in any bingo game. (Ord. 191 § 1 (part), 1976)

## 5.06.040 Location restriction.

A nonprofit, charitable organization shall conduct a bingo game only on property owned or leased by it, and which property is used by such organization for an office for performance of the purposes for which the organization is organized. (Ord. 191 § 1 (part), 1976)

## 5.06.050 Open to public.

All bingo games shall be open to the public, not just to the members of nonprofit charitable organization. (Ord. 191 § 1 (part), 1976)

## 5.06.060 Operation and staff requirements.

A bingo game shall be operated and staffed only by members of the nonprofit charitable organization which organized it. Such members shall not receive a profit, wage, or salary from any bingo game. Only the organization authorized to conduct a bingo game shall operate such game, or participate in the promotion, supervision or any other phase of such game. (Ord. 191 § 1 (part), 1976)

## 5.06.070 Financial interest by other than licensed organization prohibited.

No individual, corporation, partnership, or other legal entity except the organization authorized by license to conduct a bingo game shall hold a financial interest in the conduct of such bingo game. (Ord. 191 § 1 (part), 1976)

## 5.06.080 Profits—Special account required.

All profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. (Ord. 191 § 1 (part), 1976)

**5.06.090 Participation—Physical presence requirement.**

No person shall be allowed to participate in a bingo game unless the person is physically present at the time and place in which the bingo game is being conducted. (Ord. 191 § 1 (part), 1976)

**5.06.100 Prize limitation.**

The total value of prizes awarded during the conduct of any bingo games shall not exceed two hundred fifty dollars in cash or kind, or both, for each separate game which is held. (Ord. 191 § 1 (part), 1976)

**5.06.110 Bingo defined.**

As used in this chapter, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random. (Ord. 191 § 1 (part), 1976)

**5.06.120 License required—Application—Issuance, denial when.**

No bingo game shall be conducted except pursuant to a license issued by the city council. Applications for such license shall be made upon forms supplied by the city clerk and shall be filed with the clerk accompanied by a license fee of one dollar. Such license, if issued, shall be for a period of twelve months. If the city council finds that the applicant does not qualify under the terms of this chapter, or that the conducting of bingo games at the particular location stated in the application will violate some other ordinance of the city, such application shall be denied. (Ord. 191 § 1 (part), 1976)

**5.06.130 Violation constitutes misdemeanor.**

It is a misdemeanor for any person to violate any provision of this chapter. (Ord. 191 § 1 (part), 1976)

**5.06.140 Operation contrary to provision—Unlawful—Abatement.**

Any bingo game conducted or operated contrary to the terms and provisions of this chapter and/or any participation therein contrary to the provisions of this chapter, shall be, and the same is declared to be unlawful and a public nuisance, and the city attorney upon order of the city council shall immediately commence an action or proceeding for the abatement and enjoinment thereof in the manner provided by law. (Ord. 191 § 1, 1976)

# Chapter 5.08

# PEDDLERS, SOLICITORS AND CANVASSERS

Sections:



## 5.08.010 Definitions.

For the purpose of this chapter, the following terms shall have the following meanings:

A. "Canvasser and solicitor" means any person whether as agent or principal, who solicits, canvasses or takes orders from house to house, from place to place in the city, for any goods, wares or merchandise or any article to be delivered some time in the future or for services to be performed in the future or the making, manufacturing or repairing of any article whatsoever for future delivery.

B. "Fixed place of business" means the premises in the city occupied for the particular purpose of conducting a business thereat and regularly kept open for that purpose with a competent person in attendance for the purpose of conducting such business.

C. "Peddler" is defined to include every person not having a fixed place of business in the city who travels from place to place or has a stand other than a stand licensed under this chapter, upon any public street, alley or other public place, unenclosed driveway, vacant lot or parcel of land who sells or offers for sale any goods, wares or merchandise in his possession.

D. "Person" means all domestic and foreign corporations, associations, syndicates, joint stock companies, partnerships of every kind, clubs, trusts, societies and individuals transacting and carrying on any business in the city. (Ord. 286 (part), 1989)

## 5.08.020 Rate—Peddlers, solicitors and canvassers.

Every person engaged in peddling, vending, canvassing or soliciting orders within the city shall pay a fee of fifty dollars per day regardless of the number of persons employed. (Ord. 286 (part), 1989)

## 5.08.030 Rate—Outdoor sales.

Every person having a fixed place of business engaged in the business of outdoor sales shall pay a fee in accordance with Section 5.04.120. (Ord. 286 (part), 1989)

## 5.08.040 Outdoor sales—General provisions.

Every person engaged in the business of outdoor sales shall have a license issued subject to further terms and conditions, the violation of any of which shall declare said license to be void:

A. Premises shall be kept neat, clean and free from litter or debris and clear of weeds.

B. No loud, boisterous or disorderly conduct that disturbs the peace and quiet of the neighborhood shall be permitted.

C. Off-street parking shall be provided so as not to disrupt normal traffic.

D. Access to the premises shall be provided so as not to disrupt normal traffic. (Ord. 286 (part), 1989)

## 5.08.050 Outdoor sales—Location restrictions.

It shall be prohibited for any person to conduct outdoor sales in any residential zone without first obtaining a home occupation permit. (Ord. 286 (part), 1989)

## 5.08.060 Application of provisions.

It is declared to be the intention of the council to make the provisions of this chapter apply to all

business, trades, professions and callings now actually in existence or at present being operated, and to all businesses, trades, professions and callings which may hereafter be commenced within the city or over which the city may exercise a proper jurisdiction for licensing purposes. A person shall be deemed to have commenced the operation of any such business and to be liable for the payment of license fee by any one or more transactions within the city. (Ord. 286 (part), 1989)

**5.08.070 Interstate commerce.**

Every peddler, solicitor or other person claiming to be entitled to exemption from the payment of any license provided for in this chapter upon the grounds that such license casts a burden upon his right to engage in commerce with foreign nations or among the several states or conflicts with the regulations of the United States Congress respecting interstate commerce shall file a verified statement with the council disclosing the interstate or other character of his business entitling such exemption. Such statement shall state the name and location of the company or firm for which the orders are to be solicited or secured, the name of the nearest local or state manager, if any, and his address, the kind of goods, wares or merchandise to be delivered, the place from which the same are to be shipped or forwarded,the method of solicitation or taking orders, the location of any warehouse, factory or plant within the state, the method of delivery, the name and location of the residence of the applicant and any other facts necessary to establish such claim of exemption. A copy of the order blank, contract form or other papers used by such person in taking orders shall be attached to the affidavit for the information of the council. If it appears that the applicant is entitled to such exemption, the council shall forthwith issue a gratuitous license. (Ord. 286 (part), 1989)

**ORDINANCE 353**

**AN ORDINANCE OF THE CITY OF DOS PALOS AMENDING THE DOS PALOS MUNICIPAL CODE TITLE 5, CHAPTER 08, SECTION 020, RATE--PEDDLERS, SOLICITORS, AND CANVASSERS.**

The City Council hereby amends the following:

**5.08.020** Rate--Peddlers, Solicitors, and Canvassers/, or other temporary business licensees.

Every person engaged in peddling, vending, canvassing or soliciting orders within the city shall pay a temporary business license fee of ~~fifty~~ two hundred ($200) dollars per day regardless of the number of persons employed.

This ordinance shall become effective on May 18, 2000, which is thirty days after its final passage and adoption. Ordinance 353 shall be published within fifteen days after its final passage, by one insertion in The Dos Palos Sun an adjudicated newspaper of general circulation available within the City of Dos Palos.

The above Ordinance was introduced after the first reading on a motion by Councilmember Montejano, and seconded by Mayor pro Tem Bonds, at a regular meeting of the Dos Palos City Council held on April 4, 2000 and passed on a 4-0 vote, (Maiorino absent).

Second reading of Ordinance 353 was held at a regular meeting of the City Council of the City of Dos Palos on April 18, 2000. The adoption of Ordinance 353 was moved by Councilmember Montejano, and seconded by Mayor pro Tem Bonds, and was adopted on a 5 - 0 vote of the members of the City Council as follows:

AYES: Westlake, Bonds, Maiorino, York and Montejano.

NOES: None.

ABSENT: None.

ATTEST:

Jerry Westlake
Jerry Westlake, Mayor

Alice Thompson
Alice Thompson, City Clerk

# Chapter 5.10

# TAXICABS

Sections:



## 5.10.010 Definitions.

As used in this chapter, the following terms shall have the following meanings:

A. "Automobile for hire" or "vehicle for hire" means every automobile or motor-propelled vehicle of private appearance not equipped with a taximeter used for the transportation of passengers over the public streets of the city and not over a defined route, and irrespective of whether such operation extends beyond the boundary limits of said city, at rates per mile, per trip, per hour, per day, per week, per month, and such vehicle is routed under the direction of such passenger, or passengers, or of such persons hiring the same.

B. "Council" means the city council.

C. "Driver" means and includes every person in charge of driving or operating any passenger-carrying or motor-propelled vehicle, as defined in this section, either as agent, employee or otherwise.

D. "Street" means any place commonly used for the purpose of public travel.

E. "Street stand" means a portion of a street designated by the traffic authority for the use, while awaiting employment, of any passenger-carrying or motor-propelled vehicle as defined in this section.

F. "Taxicab" means every automobile or motor-propelled vehicle of a distinctive color used for the transportation of passengers for hire over the public streets of the city, and not over a defined route, and irrespective of whether the operations extend beyond the boundary limits of the city, at rates for distance or for waiting time, or for both, and such vehicle is routed under the direction of such passenger or passengers, or of such persons hiring the same.

G. "Taximeter" means a mechanical instrument or device by which the charge for hire of a passenger-carrying vehicle is mechanically calculated either for distance traveled or for waiting time, or for both, and upon which such charges shall be indicated by means of figures.

H. "Traffic authority" means the chief of police. (Ord. 221 § 2 (part), 1979)

## 5.10.020 Owner's permit.

It is unlawful for any person to operate or cause to be operated at any point in the city any taxicab or limousine unless there has been issued by the city an owner's permit to the owner and a driver's permit to the driver thereof, and unless each such permit shall be in full force and effect, except:

A. When a vehicle which is lawfully transporting a passenger, or passengers, from a point outside to a destination within this city; provided, that no such vehicle shall, without such permit, solicit or accept a passenger or passengers from within this city for transportation to any destination whatsoever;

B. When a vehicle is being operated pursuant to a franchise issued by the city or pursuant to authority of the Railroad Commission of the state;

C. When a vehicle is being operated for the purpose of transporting bona fide pupils attending an institution of learning between their homes and such institutions. (Ord. 221 § 2 (part), 1979)

**5.10.030 Application for permit.**

The city council, in determining whether or not public convenience and necessity exist in the case of any application, may take into consideration any and all facts and conditions which such council may deem pertinent and proper, including (but not limited to) a consideration of:

A. The financial responsibility of the applicant;

B. The effect of the granting of the permit applied for on the businesses and operation of prior permittees hereunder then operating;

C. Whether or not prior permittees hereunder, then operating, are:

1. Under efficient management earning a fair and reasonable return of their capital devoted to such service, and

2. Under normal conditions adequately serving the public. (Ord. 221 § 2 (part), 1979)

**5.10.040 Driver's permit.**

A. Applicant for such permit shall furnish two 1-1/4 x 1-1/2 inch photographs of himself and shall be fingerprinted by the chief of police of the city. Applicant for such permit shall deposit an investigation fee of six dollars and twenty-five cents for such permit with the city license collector and secure a receipt therefor. The fees so deposited are to cover the expenses incurred and no refund shall be made for any reason.

B. No taxicab permit shall be issued to any person, firm or corporation until a standard, distinctive and uniform color scheme, name, monogram or insignia has been adopted by the applicant and approved by the chief of police which designates the owner of the vehicle.

C. No permit shall be issued to any person, firm, or corporation whose color scheme, name, monogram or insignia to be used on such cars shall be in conflict with, or imitate, any color scheme, monogram, name or insignia used by another concern operating within the city, in such a manner as to be misleading or tend to deceive or defraud the public. The permits mentioned in this chapter shall entitle the holder thereof to obtain a license to engage in the business described in the permit from the city clerk upon the payment of the license fee therefor, as provided by this chapter, and the city clerk shall issue to the holder of such permit a license setting forth the kind of transportation for which such license is issued and the year when issued. The permit shall be filed with the city clerk.

D. Each applicant for taxicab permit shall be subject to normal and usual investigation and screening by the chief of police prior to issuance of the taxicab permit. (Ord. 221 § 2 (part), 1979)

**5.10.050 Unlawful operation.**

It is unlawful for any person to drive, operate or be in charge of any passenger-carrying or motor-propelled vehicle as defined in this chapter without first having obtained a permit in writing to do so from the city council upon recommendation of the chief of police. Applicants for such permits to do so shall file with the city council an application in writing upon blanks to be furnished by the city containing such information as the city council or the chief of police may require. Every such permit so granted as provided in this chapter shall be filed with the city clerk, and upon payment to him of the sum of two dollars, he shall issue to the holder of such permit a badge of such design and bearing such words and numerals as may be prescribed by the chief of police. No permit shall be issued to any driver as defined in this chapter who is under the age of eighteen years, or who, in the exercise of

reasonable discretion, the chief of police shall deem not a fit or proper person to be in charge of or operate an automobile for hire, as determined by the rules and regulations of the city council pertaining to the operation of and the extent, character and quality of the service of taxicabs and autos for hire; nor shall any driver's permit be issued except to a citizen of the United States or to one who has regularly declared his intention to become a citizen. (Ord. 221 § 2 (part), 1979)

**5.10.060 Insurance.**

A. Before any license is issued for any vehicle or vehicles as defined in this chapter, the owner shall be required to file with the city council, and thereafter keep in full force and effect, a policy of insurance in such form as the city council may deem proper, and executed by an insurance company approved by said city council, insuring the public against any loss or damage that may result to any person or property from the operation of such vehicle or vehicles, provided the minimum amount of recovery in such policy of insurance specified shall not be less than the following sums:

1. For the injury to any one person or the death of any one person in any one accident ..... $ 50,000.00

2. For the injury to two or more persons, or the death of two or more persons in any one accident ..... $100,000.00

3. For the injury or destruction of property in any one accident ..... $ 10,000.00

B. All policies shall contain a provision for a continuing liability thereunder up to the full amount of the penalty thereof, notwithstanding any recovery thereon.

C. It is unlawful for any owner to operate or cause to be operated any vehicle without having a policy as described in this section in full force and effect at all times during the operation of such vehicles. (Ord. 221 § 2 (part), 1979)

**5.10.070 Owner operation.**

No vehicle as described in Section 5.10.010 for which a permit has been issued shall be operated by anyone but the owner thereof or any employee of the owner. It is unlawful for the owner or any driver of any such vehicles to enter into any contract agreement or understanding between themselves by the terms of which such driver pays to, or for the account of, such owner a fixed or determinable sum for the use of such vehicle. (Ord. 221 § 2 (part), 1979)

**5.10.080 Taxi stand.**

It is unlawful for any of the vehicles defined in Section 5.10.010 A and F to be operated from any place except a stand, granted by the city council in accordance with the provisions of this chapter, or from a private or public garage or parking space on private property; and it is unlawful for the owner, driver or operator of a vehicle operating under one classification as defined in this code to transfer the same to, or use the same in, another classification unless and until public convenience and necessity has been established to do so as set forth in this chapter. (Ord. 221 § 2 (part), 1979)

**5.10.090 Unattended taxi.**

A. Permits may be issued as provided in this chapter by the city council upon recommendation of the chief of police to the owners of the vehicles defined in this chapter allowing any such vehicles while awaiting employment to stand at certain designated places upon the streets of the city; provided, however, that no such permit shall be granted except upon written application of the person desiring such stand, filed with the city council, stating the number and kind of vehicle or vehicles for which the permit is sought, and the proposed location of such stand; provided also that such application must contain either the written or verbal approval of the occupant of the first floor of that portion of the building or property in front of which it is desired that said vehicle stand, or if there is a building and the first floor is

not occupied, then such permit may be granted upon the written consent of the owner, agent or lessee of such building or premises.

B. In addition to the number of taxicabs that may be permitted to stand upon the street within the limits of any block as provided in this section, the city council may grant permission to a taxicab owner or company who has a stand upon the public street at a station of any steam, interurban or bus transportation system, for additional taxicabs at any such stand located in front of or along the side of any such steam, interurban or bus transportation system as may be necessary to meet the needs of the traveling public; provided, however, that the consent of the owner or operator of said steam, interurban or bus transportation system is first obtained by said taxicab company for said additional taxicabs. Except as otherwise provided in this chapter, not more than three such vehicles shall be permitted to stand on any one side of a street within the limits of any one block having a frontage of five hundred feet or more, nor shall more than two such vehicles be permitted to stand upon any one side of such street within such block having a frontage of less than five hundred feet; provided, however, that no permit shall be issued for any stand to be located within fifty feet of another such stand on the same side of any street; and provided further, however, that the city council may, after exercising reasonable discretion, grant from time to time renewals or extensions of permits for stands existing upon the adoption of the ordinance codified in this chapter.

C. It is unlawful for the owner or driver of any of the vehicles defined in this chapter to stand or cause or permit such vehicle to stand while awaiting employment at any place other than a stand designated by the city council and assigned to the owner of said vehicle.

D. It is unlawful for the owner or driver of any of the vehicles defined in this chapter to leave such vehicle unattended in a stand for a period of time longer than three minutes.

E. All stands may be occupied for the full period of twenty-four hours; provided, however, that nothing contained in this chapter shall authorize the establishing of a stand at any place in the city where the standing of vehicles is prohibited by law. (Ord. 221 § 2 (part), 1979)

### 5.10.100 Signs.

A. Every vehicle used for carrying passengers for hire while standing upon a street in the city awaiting employment may display a sign with the words "For Hire"; such sign shall be of metal or other material approved by the chief of police of a uniform size of six inches by nine inches. The outer surface of all signs specified in this paragraph shall be painted, printed, or enameled a dark color and the letters and figures appearing thereon shall be white.

B. Every taxicab and vehicle for hire used for carrying passengers for hire shall display in the rear of the driver's seat and in the passengers' compartment and in full view of the passengers or passenger a card not less than two inches by four inches, nor more than two and one-half inches by five inches, which shall have printed thereon the owner's name, or the corporate or fictitious name under which the owner operates, and the business address and telephone number of such owner, together with the rates to be charged for such vehicle.

C. Every taxicab or vehicle for hire shall have conspicuously displayed thereon at one or more locations on the outside thereof the name of the owner or the corporate or fictitious name under which the owner operates, together with the company's telephone number and the cab or vehicle number.

D. Every taxicab or vehicle for hire may display an electrically lighted "vacant" sign attached to the top of such cab. Every such sign shall be not more than two and one-half inches high and nine inches in length.

E. It is unlawful to display any sign other than those provided in this section on any of the vehicles hereinbefore mentioned without first obtaining the written permission of the city council to do so. (Ord. 221 § 2 (part), 1979)

**5.10.110 Schedule of fares.**

A. Unless the owner or operator is permitted in writing by the city council to post a schedule of fares in lieu of a taximeter, it is unlawful for any owner operating any taxicab or vehicle for hire under the provisions of this chapter to operate any such vehicle unless it is equipped with a taximeter of such type and design as may be approved by the city council. It shall be the duty of every owner using taximeter to at all times keep such meter accurate, and such meter shall be subject to inspection from time to time, and any inspector of the city council or peace officer is authorized at his instance or upon the complaint of any person to investigate such taximeter and, upon the discovery of any inaccuracy of said taximeter, to remove or cause to be removed any such vehicle equipped with said taximeter from the streets of the city until the taximeter has been correctly adjusted. It is a violation to tamper with any taximeter.

B. The rate or fares to be charged to the public by taxicabs or limousines operating over the streets of the city shall be fixed by the city council at the time of the issuance of the owner's permit.

C. No rate shall be placed in effect, charged, demanded or collected for taxicab or limousine until the city council, after a hearing on its own motion or upon application, or upon complaint, has found and determined said rate to be just, reasonable, nondiscriminatory, nonpreferential nor in any way in violation of any provision of this chapter or any provision of law; nor until said rate to be placed in effect, charged, demanded or collected has been approved and established by the city council.

D. The city council shall have power, upon hearing its own motion or upon complaint, to investigate a single rate or fare, or the entire schedule of rates in effect, charged, or demanded, or collected for taxicab or limousine, and to establish a new rate or schedule of rates in lieu thereof.

E. All taxicabs and vehicles required to have taximeters under this chapter must base their charges on taximeters and all taximeters shall be placed so that the reading dial showing the amount to be charged shall be well lighted and readily discernible by the passenger riding in such taxicab.

F. It is unlawful for any driver of a taxicab or vehicle for hire while carrying passengers to display the flag attached to the taximeter in such a position as to denote that such taxicab or vehicle is not employed, or to throw the flag of the taximeter in a recording position when such cab or vehicle is not actually employed, or to fail to throw the flag of such taximeter in a nonrecording position at the termination of each and every service.

G. The driving privileges of any taxicab driver convicted of drunk driving or of reckless driving shall be ordinarily suspended and shall remain suspended until ordered reinstated by the city council.

H. Three moving violations of either the municipal code of the city or the California Vehicle Code shall be grounds for suspension or revocation of taxicab drivers' permits and privileges by the city council upon recommendation by the chief of police. (Ord. 221 § 2 (part), 1979)

**5.10.120 Passenger's rights.**

A. Any driver employed to carry passengers to a definite point shall take the most direct route possible that will carry the passengers safely, lawfully and expeditiously to their destination.

B. When a taxicab or vehicle for hire is engaged, the occupants shall have the exclusive right to the full and free use of the passengers' compartment, and it is unlawful for the owner,

or driver, of said taxicab to solicit or carry additional passengers therein without the consent of the first occupant or occupants. (Ord. 221 § 2 (part), 1979)

**5.10.130 Payment of fares.**

It is unlawful for any person to refuse to pay the legal fare of any of the vehicles mentioned in this chapter after having hired the same, and any person who hires any vehicle defined in this chapter with the intent to defraud the person from which it is hired is guilty of a misdemeanor. (Ord. 221 § 2 (part), 1979)

**5.10.140 Misrepresentation of identity.**

It is unlawful for any owner, driver or agent soliciting patronage for any of the vehicles mentioned in this chapter to misrepresent, by word, sign, hatband, insignia or badge, the true identity of the vehicle for which such patronage is sought. (Ord. 221 § 2 (part), 1979)

**5.10.150 Receipt for payment.**

It is unlawful for the operator of any taxicab or vehicle for hire upon receiving full payment for a fare as indicated by the taximeter or schedule of fares, when such schedule is permitted in lieu of taximeter, to refuse to give a receipt upon the request of any passenger making said payment. (Ord. 221 § 2 (part), 1979)

**5.10.160 Granting and revocation of permit.**

A. The city council upon recommendation of the chief of police shall have the power to grant or deny any or all permits herein, when, in the exercise of reasonable discretion, it has been determined that the applicant has or has not complied with all the provisions of this chapter relating to the granting of such permits. From the time of the revocation, or during the suspension of any such permits, it is unlawful for any such person whose permit is suspended or revoked to drive, operate or be in charge of any of the vehicles mentioned in this chapter, or to cause or permit the vehicles on which the permit has been suspended or revoked to engage in the several classes of business mentioned in this chapter or to allow any such vehicle to stand while awaiting employment at a location designated in such suspended or revoked permit or at any other location within the city until a new permit has been procured or until the period of suspension has expired; provided, however, that the chief of police may, and he is authorized to, suspend any of the permits mentioned in this chapter when the permittee has not complied with the provisions of this chapter, or has been arrested for, or convicted of, the commission of a felony, or has been arrested for, or convicted of, bookmaking, gambling, reckless driving, pandering, or use, sale, possession, furnishing information regarding or transportation of narcotics, or for assault, or battery, or has charged rates other than those which the permittee has on file with the city council or has violated any of the rules and regulations of the city council pertaining to the operation of, and the extent, character and quality of the services of taxicabs and vehicles for hire. Said action of the chief of police in suspending any of said permits is to be subject to the ratification and approval of the city council at any of its meetings held subsequent to the action of the chief of police, but not later than twenty-one days thereafter.

B. All permits issued under the provisions of this chapter shall be for a period not to exceed one year and all such permits shall expire upon the thirty-first day of December of each year at midnight; provided, however, that all permits issued for street stands, except those issued upon the written consent of a person operating a hotel which may be renewed yearly, shall remain in full force and effect until the same shall be cancelled either by the city council or the chief of police, or upon the request of the permittee, or the person who has given such written consent to use said stand has notified the city council that such permission has been withdrawn. (Ord. 221 § 2 (part), 1979)

**5.10.170 Service and safety.**

The city council and also the chief of police shall have authority to adopt and promulgate such rules and regulations as may be necessary for the service and safety or the operation of the vehicles mentioned in this chapter. (Ord. 221 § 2 (part), 1979)

**5.10.180 Business license.**

At the time of the issuance of any license under this chapter to operate within the city any of the vehicles defined in Section 5.10.010, the licensee shall pay to the city clerk for the city a business license fee and such annual fee shall continue to be paid to the city for the respective license period covered thereby as long as any such vehicle is so operated or offered for rental or hire within the city and as long as any license for such operation is in effect. In the event that any person holds a valid, current license under any other code of the city of the type of vehicle referred to in this chapter at the time this code becomes effective, then and in that event credit shall be given the holder of any such license for the unexpired portion thereof on the first fee payable hereunder in the event such licensee is granted a permit under this chapter, but in case such licensee is not granted a new permit hereunder, then and in the event any unearned portion of such existing license fee shall be refunded. (Ord. 221 § 2 (part), 1979)

## Chapter 5.12

## CABLE TELEVISION SYSTEMS

Sections:

**5.12.010 Definitions.**

For the purposes of this chapter, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

A. "Cable television system," "CATV," and "CTV," and "broadband two-way communications system," for the purpose of this chapter are terms describing a system employing antennae, microwave, wires, waveguides, coaxial cables, or other conductors, equipment, or facilities, designed, constructed or used for the purposes of:

1. Collecting and amplifying local and distant broadcast television or radio signals and distributing and transmitting them;

2. Transmitting original cablecast programming not received through television broadcast signals;

3. Transmitting television pictures, film and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers;

4. Transmitting or receiving two-way signals or transmissions;

5. Transmitting and receiving all other signals: digital, voice and audio-visual; provided, however, that any of the services permitted hereunder to be performed, as described above, shall be those performed by the grantee for subscribers, as defined in this section, in the operation of a cable television or CATV system franchised by the city and not otherwise.

B. "Chief administrative officer" means the city manager, city administrator, or other designation of the city's chief executive officer, or any designee thereof.

C. "City" means the city of Dos Palos, a municipal corporation of the state of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

D. "Council" means the governing body of the city of Dos Palos or any future board constituting the legislative body of the city.

E. "Franchise" means and includes any authorization granted under this chapter in terms of a franchise, privilege, permit, license or otherwise to construct, operate, and maintain a cable television system within all or a specified area in the city. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the city as required by other ordinances and laws of the city.

F. "Grantee" means the person, firm or corporation granted a franchise by the council under this chapter, and the lawful successor, transferee or assignee of said person, firm or corporation.

G. "Gross revenue" means any and all compensation and other consideration in any form whatever and any contributing grant or subsidy received directly or indirectly by a grantee from: (1) subscribers or users in payment for television or FM radio signals, reception or service received within the city, including installation and line extension charges, (2) advertising or commercial

messages over the CATV facilities, and (3) from any other person or utilization of or connection to the property of grantee to the extent city may from time to time legally impose a franchise payment on account thereof. Notwithstanding the above, gross annual receipts shall not include any taxes on services furnished by the grantee and imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the grantee for such governmental unit.

H. "Person" means any natural person and all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, business or common law trusts, and societies.

I. "Property of grantee" means all property owned, installed, or used within the city by a grantee in the conduct of a cable television system business under the authority of a franchise granted pursuant to this chapter.

J. "Special service area" means an area(s) of the city designated by the council, if it so elects, in the franchise agreement, where the franchisee may charge different rates, or provide different service(s), than in the remainder of the city.

K. "Street" means the surface, the air space above the surface and the area below the surface of any public street, other public right-of-way or public place, including public utility easements.

L. "Subscriber" or "user" means any person or entity receiving for any purpose any service of the grantee's cable television system including, but not limited to, the conventional cable television system service of retransmission of television broadcast, radio signals, grantee's original cablecasting, and the local government, education and public access channels; and other services, such as leasing of channels, data and facsimile transmission, pay television, and police, fire and similar public service communication. (Ord. 237 § 10, 1981)

**5.12.020 Franchise to install and operate.**

A. A nonexclusive franchise to install, construct, operate, and maintain a cable television system on streets within all or a specific portion of the city may be granted by the council to any person, whether operating under an existing franchise, who or which offers to furnish and provide such system under and pursuant to the terms and provisions of this chapter.

B. No provision of this chapter may be deemed or construed as to require the granting of a franchise when in the opinion of the council it is in the public interest to restrict the number of grantees to one or more.

C. When and in the event that the grantee of any franchise granted under this chapter uses in his cable television system distribution channels furnished to the grantee by a telephone company pursuant to tariff or contract on file with a regulatory body having jurisdiction and the grantee makes no use of the streets independent of such telephone company-furnished facilities, the grantee shall be required to comply with all of the provisions hereof as a "licensee" and in such event whenever the term "grantee" is used herein it shall be deemed to mean and include "licensee." (Ord. 237 § 20, 1981)

**5.12.030 Basic service.**

The cable television system permitted to be installed and operated under this chapter shall:

A. Be operationally capable of relaying to subscriber terminals those television and radio broadcast signals for the carriage of which the grantee is now or hereafter authorized by the Federal Communications Commission;

B. Be constructed two-way operational from the date of system initiation;

C. Distribute color television signals which are received in color;

D. Provide at least one channel, without charge, for exclusive use of the city. Additional channels may be required by the city as the need, in the determination of the city, arises;

E. Provide a community service channel program, as defined by Government Code Section 53066.1, as amended, plus any additional requirements which the council may, from time to time, impose;

F. Provide, at a minimum, a fully equipped permanent studio within the city limits, for public and municipal use, plus such other mobile and portable studios as are, from time to time, necessary;

G. Consist of state of the art technology and be at least equivalent in capacity and capability to those cable television systems constructed and operated in adjacent cities. (Ord. 237 § 30(a), 1981)

**5.12.040 Nonbasic services.**

The cable television system permitted to be installed and operated under this chapter may also engage in the business of:

A. Transmitting original cablecast programming not received through television broadcast signals;

B. Transmitting television pictures, film and videotape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers or subscribers;

C. Transmitting and receiving all other signals: digital, voice and audio-visual. (Ord. 237 § 30(b), 1981)

**5.12.050 Subscriber complaints.**

In addition to other service regulations adopted by the council, and excepting circumstances beyond grantee's control such as acts of God, riots and civil disturbances, and in providing the foregoing services, the grantee shall:

A. Limit system failures to minimum time duration by locating and correcting malfunctioning promptly, but in no event longer than twenty-four hours after occurrence, irrespective of holidays or other nonbusiness hours;

B. Upon complaint by a subscriber, make a demonstration satisfactory to the chief administrative officer that a signal is being delivered which is of sufficient strength and quality to meet the standards set forth in the regulations of the Federal Communications Commission;

C. Render efficient service, making repairs promptly and interrupting service only for good cause and for the shortest time possible. Planned interruptions, insofar as possible, shall be preceded by notice given to subscribers twenty-four hours in advance and shall occur during periods of minimum use of the system;

D. Maintain an office in the city, which office shall be open during all usual business hours, with its telephone number listed in directories of the telephone company serving the city, and be so operated that complaints and requests for repairs or adjustment may be received at any time, day or night, seven days a week, or provide a local telephone directory listing and "toll free" telephone service maintained on a seven-day, twenty-four-hour basis for the receipt of consumer complaints;

E. Maintain a written record, or "log," listing date of customer complaints, identifying the subscriber and describing the nature of the complaint, and when and what action was taken by grantee in response thereto; said record shall be kept at grantee's local office, for a period of five years from the date of complaint, and shall be available for inspection during regular business hours without further notice or demand, by the chief administrative officer. (Ord. 237 § 30(c), 1981)

**5.12.060 Municipal service.**

A. With respect to the local government channel, the grantee shall provide, at the request of the chief administrative officer, use of grantee's studio, equipment and technical services for production of live and video-tape municipal programs, subject to scheduling requirements of the grantee.

B. With respect to the basic television services, the grantee shall provide all subscriber services, and a tie-in connection, without cost, when the system possesses such facilities and as designated by the council, subject to the requirements of federal law to:

1. Public schools and community colleges within the city; and

2. Buildings owned and controlled by the city, used for public purposes and not for residential use (fire and police stations excepted.) (Ord. 237 § 30(d), 1981)

**5.12.070 Compatibility and connectibility.**

A. It is the desire of the city that all cable television systems franchised under this chapter shall, insofar as financially and technically possible, be compatible with another and with systems adjacent to the city.

B. Wherever it is financially and technically feasible, the grantee shall so construct, operate and modify the system so as to tie the same into all other systems within and adjacent to the city. (Ord. 237 § 30(e), 1981)

**5.12.080 Uses permitted.**

Any franchise granted pursuant to the provisions of this chapter shall authorize and permit the grantee to engage in the business of operating and providing a cable television system in the city, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, and appliances, attachments, and other property as may be necessary and appurtenant to the cable television system; and, in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other grantee franchised or permitted to do business in the city. (Ord. 237 § 30(f), 1981)

**5.12.090 Franchise payments.**

A. In consideration of the granting and exercise of a franchise to use the streets for the operation of a cable television system, any grantee shall pay to the city, during the life of the franchise, three percent of the franchisee's gross revenues per year from all cable services in the community except that, to the extent that the Federal Communications Commission, in its Rules and Regulations, at some time in the future allows a city to raise the franchise fee to five percent absent the showings currently required by Section 76.31 of the Rules and Regulations of the Federal Communications Commission, the city reserves the right to increase the franchise fee to a level of five percent.

B. The percentage payments shall be made in the manner, and at times directed in the franchise or in a council resolution fixing franchise fees and adopting rules for service and rate regulation.

C. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable under this chapter or for the performance of any other obligation hereunder.

D. In the event that the payment required by this section is not received by the city within the specified time, grantee shall pay to the city liquidated damages of two percent per month on the unpaid balance in addition thereto. (Ord. 237 § 40, 1981)

**5.12.100 Franchise term—Duration and termination.**

A. The franchise granted by the council under this chapter shall be for a maximum term of fifteen years from the date of its acceptance by the grantee. During the last year of the franchise, the grantee may apply to the council for a renewal of the franchise. Permission to renew for an additional equal term of fifteen years shall not

be unreasonably withheld if the grantee has substantially complied with the terms and conditions of the existing franchise.

B. The city may terminate any franchise granted pursuant to the provisions of this chapter in the event of the failure, refusal or neglect by grantee to do or comply with any material requirement or limitation contained in this chapter, or any material rule or regulation of the council or chief administrative officer validly adopted pursuant to this chapter.

C. The chief administrative officer may make written demand that the grantee do or comply with any such requirement, limitation, terms, condition, rule or regulation. If the failure, refusal or neglect of the grantee continues for a period of thirty days following such written demand, the chief administrative officer may place his request for the termination of the franchise upon the next regular council meeting agenda. The chief administrative officer shall cause to be served upon such grantee, at least ten days prior to to the date of such council meeting, a written notice of his intent to request such termination, and the time and place of the meeting, notice of which shall be published by the city clerk at least once ten days before such meeting in a newspaper of general circulation within the city.

D. The council shall consider the request of the chief administrative officer and shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by the grantee was with just cause.

E. If such failure, refusal or neglect by the grantee was with just cause, the council shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

F. If the council shall determine such failure, refusal or neglect by the grantee was without just cause, then the council may, by resolution, declare that the franchise of such grantee shall be terminated and forfeited unless there is compliance by the grantee within such period as the council may fix, or reduce the length of the franchise by a period of time up to the duration of the failure and/or violation.

G. The termination and forfeiture of any franchise shall in no way affect any of the rights of the city under the franchise or any provision of law.

H. In the event of any holding over after expiration of any franchise granted under this chapter, without the prior consent of the city, expressed by resolution, the grantee shall pay to the city reasonable compensation and damages of not less than one hundred percent of its gross revenue during said period. (Ord. 237 § 50, 1981)

### 5.12.110 Franchise application—Information required.

Each application for a franchise to construct, operate, or maintain any cable television systems in the city shall be filed with the city clerk and shall contain or be accompanied by the following:

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

B. A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following and to whatever extent required by the city:

1. The names, residence and business address of all officers, directors, and associates of the applicant,

2. The names, residence and business addresses of all officers, persons and entities having, controlling, or being entitled to have or control five percent or more of the ownership of the applicant and the respective ownership share of each such person or entity,

3. The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement

describing the nature of any such parent or subsidiary business entity, including but not limited to cable television systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby,

4. A detailed description of all previous experience of the applicant in providing cable television system service and in related or similar fields,

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

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

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

1. A detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served,

2. A statement of schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of said classifications, including installation charges and service charges,

3. A detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant and that such standards of operations are in compliance with those contained in Title 47, Subpart K (Section 76.601 et seq.), of the Rules and Regulations of the Federal Communications Commission,

4. A copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and any subscriber,

5. A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between any applicant and any person, firm, or corporation which materially relate or pertain to or depend upon the application and the granting of the franchise;

D. A copy of any agreement covering the franchise area, if existing between the applicant and any public utility subject to regulation by the California Public Utilities Commission providing for the use of any facilities of the public utility, including but not limited to poles, lines, or conduits;

E. Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the council, or by any provision of any other ordinance of the city (and of its Charter);

F. An application fee in the sum of one thousand five hundred dollars, which shall be in the form of cash, certified or cashier's check, or money order, to pay the costs of studying, investigating and otherwise processing such application, and which shall be in consideration thereof and not returnable or refundable in whole or in part, except to the extent that such fee exceeds the actual costs incurred by the city in studying,

investigating and otherwise processing the application; provided, that any applicant who shall deliver to the city clerk a written withdrawal of or cancellation of any application under this chapter not later than the seventh day next following the day such application is received by the city clerk, shall be entitled to have returned and refunded the sum of one thousand five hundred dollars, less any actual costs or expense incurred by the city by reason of such application. (Ord. 237 § 60(a), 1981)

**5.12.120 Franchise application—Solicitation.**

The council may, by advertisement or any other means, solicit and call for applications for cable television system franchises, and may determine and fix any date upon or after which the same shall be received by the city, or the date before which the same must be received, or the date after which the same shall be received, and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making and receiving of such applications. (Ord. 237 § 60(b), 1981)

**5.12.130 Franchise application—Referral to CATV committee.**

Upon receipt of any application for franchise, the council shall refer the same to a CATV committee, appointed by the council, who shall prepare a report and make their recommendations respecting such application, and cause the same to be completed and filed with the council. (Ord. 237 § 60(c), 1981)

**5.12.140 Franchise application—Hearing.**

If the council shall determine to further consider the applications, it shall pass a resolution setting a public hearing for the consideration of competing applications; fixing and setting forth a day, hour, and place certain when and where any persons having any interest therein or objections may file written protests and/or appear before the council and be heard, and directing the city clerk to publish said resolution at least once within ten days of the passage thereof in a newspaper of general circulation within the city. (Ord. 237 § 60(d), 1981)

**5.12.150 Franchise application—Considerations deemed pertinent by council.**

In making any determination under this chapter as to any application for a new franchise, or renewal thereof, the council may give due consideration to the quality of the service proposed, rates to subscriber, income to the city, experience, character, background, and financial responsibility of any applicant, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, and to abide by policy conditions, franchise limitation requirements, and any other considerations deemed pertinent by the council for safeguarding the interest of the city and the public. (Ord. 237 § 60(e), 1981)

**5.12.160 Franchise application—Granting or denial.**

At the time set for the hearing, or at any adjournment thereof, the council shall proceed to hear all written protests. Thereafter, the council shall make one of the following determinations:

A. That such application(s) be denied, which determination shall be final and conclusive; or

B. That such franchise be granted and the terms and conditions thereof. (Ord. 237 § 60(f), 1981)

**5.12.170 Franchise application—Rejection by council.**

The council may reject any and all applications and may, if it so desires, request new and/or additional proposals. (Ord. 237 § 60(g), 1981)

**5.12.180 Franchise application—Request for supplementary information.**

The council may at any time demand and applicant(s) shall provide such supplementary, additional or other information as the council may deem reasonably necessary to determine whether the requested franchise should be granted. (Ord. 237 § 60(h), 1981)

**5.12.190 Franchise application—Payment of processing costs.**

Any grantee, upon the effective date of its franchise, shall be required to reimburse city for its estimated engineering, administrative, publication and legal expenses incurred in connection with the processing, evaluation, and preparation of documents relating to such franchise, as such shall be established in the franchise agreement, in a total amount not to exceed fifteen thousand dollars. (Ord. 237 § 60(i), 1981)

**5.12.200 Performance deposit to city.**

The grantee shall, concurrently with the filing of an acceptance of award of the franchise granted under this chapter, deposit in a financial institution selected by the city the sum of twenty-five thousand dollars in a joint account with the grantees and the city as cosignators. This sum shall be maintained in an interest-bearing joint account during the period of construction of the cable television system within the city limits, but in no event in excess of three years. The return of the sum plus interest to the grantee shall be conditioned upon the faithful performance of the grantee, and upon the further condition that in the event grantee shall fail to comply with any one or more of the provisions of this chapter or of the franchise issued to the grantee hereunder, there shall be recoverable from this sum any damages or loss suffered by the city as a result thereof, including the full amount of any compensation indemnification, or cost of removal or abandonment of any property of the grantee as prescribed herein which may be in default, plus a reasonable allowance for the attorney's fees and costs, up to the full amount of the account. (Ord. 237 § 70(a), 1981)

**5.12.210 Performance bond for subscribers.**

Upon being granted a franchise, and upon filing of the acceptance required under Section 5.12.250, the grantee shall file, annually, with the city clerk, and shall thereafter during the entire term of such franchise maintain in full force and effect a corporate surety bond, or other adequate surety agreement, in the amount of ten thousand dollars. The bond or agreement shall be so conditioned that in the event such grantee shall fail to comply with any one or more of the provisions of any agreement or undertaking made between grantee and any subscriber, then there shall be recoverable jointly and severally from the principal and surety any damage or costs suffered or incurred by any subscriber as a result thereof, including reasonable attorney's fees and costs of any action of proceedings. Said condition shall be a continuing obligation during the entire term of such franchise and thereafter until grantee shall have satisfied in full any and all obligations to any subscriber which arise out of or pertain to any such agreement or undertaking. (Ord. 237 § 70(b), 1981)

**5.12.220 Hold harmless agreement.**

Grantee shall indemnify and hold harmless the city, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including but not limited to damages to city property and damages arising out of copyright infringements, and damages arising out of any failure by grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by grantee's cable television system), costs or liabilities (including costs or liabilities of the city with respect to its employees of every kind and nature whatsoever), including but not limited to damages for injury or death or damage to person

or property, and regardless of the merit of any of the same, and against all liability to others, and against any loss, cost, and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expenses arising out of or pertaining to the exercise or the enjoyment of any franchise under this chapter by grantee, or the granting thereof by the city. (Ord. 237 § 70(c), 1981)

**5.12.230 Defense of litigation.**

A. Grantee shall at the sole risk and expense of grantee, upon demand of the city, made by and through the city attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the city, its officers, boards, commissions, agents, or employees, and arising out of or pertaining to the exercise or the enjoyment of such franchise or the granting thereof by the city.

B. Grantee shall pay and satisfy or shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made or issued against grantee, the city, its officers, boards, commissions, agents, or employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required under this chapter, or otherwise; provided, that neither grantee nor city shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit, or other proceeding, without first obtaining the written consent of the other. (Ord. 237 § 70(d), 1981)

**5.12.240 Insurance required.**

Upon being granted a franchise, and upon the filing of the acceptance required under Section 5.12.250, the grantee shall file with the city clerk and shall thereafter during the entire term of such franchise maintain in full force and effect at its own cost and expense each of the following policies of insurance: General comprehensive liability insurance in the amount of one million dollars, together with bodily injury liability insurance in an amount not less than five hundred thousand dollars for injuries including accidental death, to any one person, and subject to the same limit for each person in an amount not less than one million dollars on account of any one occurrence, and property damage liability insurance in an amount not less than fifty thousand dollars resulting from any one occurrence; provided, however, as follows:

A. The city shall be named as an additional insured in any of said insurance policies; and

B. Where such insurance is provided by a policy which also covers grantee or any other entity or person, it shall contain the standard cross-liability endorsement. (Ord. 237 § 70(e), 1981)

**5.12.250 Acceptance of the franchise.**

A. No franchise granted under this chapter shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the city clerk. Written acceptance, which shall be in the form and substance approved by the city attorney, shall also be and operate as an acceptance of each and every term and condition and limitation contained in this chapter, or in such franchise, or otherwise specified as herein provided.

B. The written acceptance shall be filed by the grantee not later than 12:01 p.m. of the fortieth day next following the effective date of the ordinance granting such franchise.

C. In default of the filing of such written acceptance as required in this section, the grantee shall be deemed to have rejected and repudiated the franchise. Thereafter, the acceptance of the grantee shall not be received nor filed by the city clerk. The grantee shall have no rights, remedies, or redress in the franchise, unless and until the

council, by resolution, shall determine that such acceptance is received or filed, and then upon such terms and conditions as the council may impose.

D. In any case, and in any instance, all rights, remedies and redress which may or shall be available to the city shall at all times be available to the city, and shall be preserved and maintained and shall continuously exist in and to the city, and shall not be in any manner or means modified, abridged, altered, restricted, or impaired by agreement or otherwise.

E. Any franchise granted and accepted under this chapter shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by the grantee, of or pertaining to the construction, operation, or maintenance of any cable television systems in the city. (Ord. 237 § 80, 1981)

**5.12.260 Limitations of franchise.**

A. Every franchise granted under this chapter shall be nonexclusive.

B. No privilege or exemption shall be granted or conferred by any franchise granted under this chapter except those specifically prescribed herein.

C. Any privilege claimed under any such franchise by the grantee in any street or other public property shall be subordinate to any prior lawful occupancy to the streets or other public property.

D. Any such franchise shall be a privilege to be held in personal trust by the original grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, without prior consent of the council expressed by resolution, and then only under such conditions as may therein be prescribed. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale, or similar document, a duly executed copy of which shall be filed in the office of the city clerk within thirty days after any such transfer or assignment. The said consent of the council may not be unreasonably refused; provided, however, the proposed assignee must show responsibility as determined by the council utilizing the factors specified in Section 5.12.150 and must agree to comply with all provisions of this chapter; and provided further, that no such consent shall be required for a transfer in trust, mortgage, or other hypothecations, in whole or, in part, to secure an indebtedness, except that when such hypothecation shall exceed twenty-five percent of the market value of the property used by the franchisee in the conduct of the cable television system, prior consent of the council shall be required for such a transfer. Such consent shall not be withheld unreasonably.

In the event that grantee is a corporation, prior approval of the city council, expressed by resolution, shall be required where there is an actual change in control or where ownership of more than twenty-five percent of the voting stock of grantee is acquired by a person or group of persons acting in concert, none of whom already own fifty percent or more of the voting stock, singly or collectively. Any such acquisition occurring without prior approval of the city council shall constitute a failure to comply with a provision of this chapter within the meaning of Section 5.12.100.

E. Time shall be of the essence of any such franchise granted under this chapter. The grantee shall not be relieved of his obligation to comply promptly with any of the provisions of this chapter by any failure of the city to enforce prompt compliance.

F. Any right or power in, or duty impressed upon, any officer, employee, department, or board of the city shall be subject to transfer by the city to any other officer, employee, department, or board of the city.

G. The grantee shall have no recourse whatsoever against the city for any loss, cost, expense,

or damage arising out of any provision or requirement of this chapter or of any franchise issued hereunder or because of its enforcement.

H. The grantee shall be subject to all requirements of city laws, rules, regulations, and specifications heretofore or hereafter enacted or established.

I. Any such franchise granted shall not relieve the grantee of any obligations involved in obtaining pole or conduit space from any department of the city, utility company, or from others maintaining utilities in streets.

J. Any franchise granted under this chapter shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by grantee, or any successor to any interest of grantee, of or pertaining to the construction, operation, or maintenance of any cable television system in the city; and the acceptance of any franchise under this chapter shall operate, as between grantee and the city, as an abandonment of any and all of such rights, privileges, powers, immunities, and authorities within the city, to the effect that, as between grantee and the city, and all construction, operation and maintenance by any grantee of any cable television system in the city shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to said franchise, and not hereunder or pursuant to any other right, privilege, power, immunity, or authority whatsoever. (Ord. 237 § 90, 1981)

**5.12.270 Rights reserved to the city.**

A. The city reserves the power to adopt and enforce requirements and regulations on any or all of the following matters, if and when deemed necessary and proper in the public interest by the city council and if consistent with Rules and Regulations of the Federal Communications Commission:

1. Procedures for the periodic fixing of reasonable rates and service charges to be charged to subscribers by grantee, and provisions for the enforcement thereof;

2. Operational standards pertaining to the quality of audio-visual reception by subscribers;

3. Channel capacity requirements;

4. Requirements for carriage of specified television signals, radio signals, and supplementary signal carriage services;

5. Requirements for the provision of equipment and channels for local production and presentation of cablecast programs, and regulations pertaining thereto;

6. Requirement and regulations pertaining to minimum requirements and business practices by the grantee;

7. Public safety requirements pertaining to the installation and use of all CATV equipment;

8. Procedures for the investigation and resolution of all complaints by subscribers regarding grantee's CATV operations, including implementation thereof by designated city officers, employees, or agents;

9. Public access channels, equipment and facilities;

B. There is reserved to the city every right and power which is required to be herein reserved or provided by any law and the grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirements of the city in its exercise of such rights or powers, heretofore or hereafter enacted or established.

C. Nothing herein shall be deemed or construed to impair or affect, in any way, to any extent, the right of the city to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, and nothing herein contained shall be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the city's right of eminent domain.

D. Neither the granting of any franchise nor any provision hereon shall constitute a waiver or bar to the exercise of any governmental right or power of the city.

E. The council may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and may determine any question of fact which may arise during the existence of any franchise granted under this chapter. The chief administrative officer, with the approval of the city attorney, is authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations of any grantee under this chapter, either on behalf of the city, the grantee, or any subscriber, in the best interest of the public. Either the grantee or any member of the public who may be dissatisfied with the decision of the chief administrative officer may appeal the matter to the council for hearing and determination. The council may accept, reject or modify the decision of the chief administrative officer, and the council may adjust, settle or compromise any controversy or cancel any charge arising from the operations of the grantee or from any provision of this chapter.

F. In the event that the Federal Communications Commission elects to deregulate any area of cable communication over which it currently exercises jurisdiction, or grant authority to municipalities to regulate in these areas, any franchise issued pursuant to this chapter shall be automatically amended, without any additional act by any party to it, to reflect these new municipal regulatory powers, and the city may, if it so elects, adopt rules and regulations in these areas. (Ord. 237 § 100, 1981)

### 5.12.280 Adoption of rules and regulations for standards of operation.

A. Prior to receiving any applications for franchises, the council may adopt rules, regulations and standards governing the operation of cable television systems in the city. Such rules, regulations and standards shall apply to and shall govern the operations of the grantee of any franchise under this chapter, and are expressly declared a part of any franchise hereunder.

B. Rules, regulations and standards not adopted prior to receiving any application for a franchise shall be adopted by the council at the first regular meeting of the council next following the effective date of the ordinance codified in this chapter, by resolution which shall become effective upon adoption and shall be applicable to any application for a franchise previously received.

C. The standards adopted pursuant to these procedures shall be exclusively in those areas not either expressly or impliedly preempted by the Federal Communications Commission at the time of adoption.

D. The council may at any time adopt new rules or regulations or standards, or may amend, modify, delete, or otherwise change its respective rules or regulations or standards previously adopted, in the following manner: The council shall pass its resolution of intention stating or describing the rules or regulations, or standards to be adopted, amended, modified, deleted, or otherwise changed, and fixing and setting forth a day, hour, and place certain when and where any persons having any interest therein or objection thereto may appear before the council and be heard. Such resolution shall direct the city clerk to publish the same at least once within ten days of the passage thereof in a newspaper of general circulation within the city, and to mail a copy of the same to any grantee or applicant for a franchise, not more than thirty days nor less than fifteen days prior to the time fixed for hearing thereon.

At the time set for such hearing, or at any adjournment thereof, the council shall proceed to hear and pass upon such comments as may be presented. Thereafter the council, by its resolution, may adopt, amend, modify, delete, or otherwise change its respective rules, regulations and standards. Such determination by the council shall be final and conclusive. The rules and regulations, as amended, modified, deleted, or

otherwise changed by the council shall become effective upon the tenth day following the adoption of such resolution, unless a longer period shall be otherwise provided in such resolution. (Ord. 237 § 110(a), 1981)

**5.12.290 Rates.**

Unless and until the city council adopts an ordinance establishing procedures for the periodic fixing of reasonable rates pursuant to Section 5.12.270 for the entire city or parts thereof, the following limitations shall apply to the rates charged to subscribers by grantee:

A. No increase in rates beyond those represented to a subscriber at the time of initiation of service to such subscriber shall be applied to such subscriber for a period of not less than one year thereafter, except for such additional installations or services as may be requested by such subscriber during such period.

B. No increase in rates shall be imposed upon subscribers.

C. No charge shall be imposed upon any subscriber for termination of CATV service or removal of CATV apparatus upon termination of such service. No rate or charge of any type shall be imposed on a subscriber after receipt of notice of termination from such subscriber, unless such subscriber withdraws such notice prior to actual termination of service.

D. No charge shall be made to any subscriber by reason of the maintenance, repair, removal, or replacement of any CATV apparatus, or property of grantee, unless the same was caused by the deliberate or negligent act of said subscriber.

E. Except as otherwise provided by subsection A, grantee shall not charge different rates to subscribers within the same class of service, nor shall there be any difference in the services or facilities or in any other respect between subscribers within the same class except as authorized in Section 5.12.490 and, except that installation charges may vary according to the costs of installation. No grantee shall make or grant any preference to any corporation or person as to rates, charges, services, facilities, or rebates, or in any other respect nor subject any corporation or person to any prejudice or disadvantage.

F. The city reserves the power to lower the rates charged subscribers, whether or not they were initially approved by the city council. (Ord. 237 § 110(b), 1981)

**5.12.300 Grantee to obtain necessary permits and authorizations.**

Within thirty days after acceptance of any franchise, the grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business including, but not limited to, any utility joint use attachment agreements, microwave carrier licenses and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the cable television systems, or associated microwave transmission facilities.

In connection therewith, copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting grantee's cable television operations, shall also be submitted simultaneously to the chief administrative officer. (Ord. 237 § 120(a), 1981)

**5.12.310 Time limitation for commencement of construction.**

Within ninety days after obtaining all necessary permits, licenses and authorizations, including right of access to poles and conduits, grantee shall commence construction and installation of the cable television system. (Ord. 237 § 120(b), 1981)

### 5.12.320 Time limitation for beginning service to subscribers.

Within one hundred eighty days after the commencement of construction and installation of the system, grantee shall proceed to render service to subscribers, and the completion of the installation and construction shall be pursued with reasonable diligence thereafter, so that service to all of the areas designated and scheduled on the map and plan on construction made part of the franchise shall be provided as set forth therein. Grantee is required to complete construction of the entire city in a maximum of three years, although a shorter time may be specified in the franchise. (Ord. 237 § 120(c), 1981)

### 5.12.330 Use of existing poles, conduits and other facilities.

Grantee shall utilize existing poles, conduits, and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public property or on privately owned property unless and until first securing the written approval of the chief administrative officer.

Whenever grantee shall not utilize existing poles, conduits and other facilities, or whenever existing conduits and other facilities shall be located beneath the surface of the streets, or whenever the city shall undertake a program designed to cause all conduits and other facilities to be located beneath the surface of the streets in any area or throughout the city, in the exercise of its police power or pursuant to the terms hereof, upon reasonable notice to grantee, any such conduits or other facilities of grantee shall be constructed, installed, placed, or replaced beneath the surface of the streets. Any construction, installation, placement, replacement, or changes which may be so required shall be made at the expense of grantee, whose costs shall be determined as in the case of public utilities. (Ord. 237 § 120(d), 1981)

### 5.12.340 City use of grantee's poles or conduits.

The city shall have the right, free of charge, to make additional use, for any public or municipal purpose, whether governmental or proprietary, of any poles, conduits, or other similar facilities erected, controlled, or maintained exclusively by or for grantee in any street, provided such use by city does not interfere with the use by grantee. (Ord. 237 § 120(e), 1981)

### 5.12.350 Underground facilities.

In those areas of the city where the transmission or distribution facilities of the respective public utilities providing telephone, communication and electric services are underground or hereafter are placed underground, the grantee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground. The term "underground" includes a partial underground system; provided, that upon obtaining the written approval of the chief administrative officer, amplifiers in the grantee's transmission and distribution lines may be placed in appropriate housing upon the surface of the ground. (Ord. 237 § 120(f), 1981)

### 5.12.360 Disconnection, relocation or removal of facilities at city request.

The grantee at his expense shall protect, support, temporarily disconnect, relocate, or remove any property of grantee when, in the opinion of the chief administrative officer, the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other types of structure or improvements or governmental agencies whether acting in a governmental or a proprietary capacity, or any other structure or public improvement, including, but not limited to, movement of buildings, urban renewal and redevelopment, and any general program under

which the city shall undertake to cause all such properties to be located beneath the surface of the ground. The grantee shall in all cases have the privilege, subject to the corresponding obligations, to abandon any property of grantee in place, as herein provided. Nothing under this section shall be deemed a taking of the property of grantee, and grantee shall be entitled to no surcharge by reason of anything hereunder. (Ord. 237 § 120(g), 1981)

**5.12.370 Failure of grantee to perform required work.**

Upon the failure, refusal, or neglect of grantee to cause any work or other act required by law or hereunder to be done on any street within any time prescribed therefor, or upon notice given, where no time is prescribed, the chief administrative officer may cause such work or other act to be completed in whole or in part, and upon so doing shall submit to grantee an itemized statement of the costs thereof. The grantee shall, within thirty days after receipt of such statement, pay to the city the entire amount thereof. (Ord. 237 § 120(h), 1981)

**5.12.380 Removal or abandonment of grantee's property.**

A. In the event that:

1. The use of any part of the system of grantee is discontinued for any reason for a continuous period of thirty days without prior written notice to and approval by the city; or

2. Any part of such system has been installed in any street or other area without complying with the requirements hereof; or

3. Any franchise shall be terminated, cancelled, or shall expire;

then the grantee shall, at the option of the city, and at the expense of grantee and at no expense to the city, and upon demand of the city, promptly remove from any streets or other areas all property of grantee, and grantee shall promptly restore the street or other area from which such property has been removed to such condition as the chief administrative officer shall approve.

B. The council may, upon written application therefor by grantee, approve the abandonment of any of such property in place by grantee and under such terms and conditions as the council may prescribe. Upon abandonment of any of such property in place, grantee shall cause to be executed, acknowledged, and delivered to the city such instruments as the city attorney shall prescribe and approve, transferring and conveying the ownership of such property to the city. (Ord. 237 § 120(i), 1981)

**5.12.390 Technical standards.**

A. The performance of grantee's cable television system shall meet the technical standards as set forth in Section 76.605 or any successor section of the Federal Communication Commission's Rules and Regulations as those standards may exist from time to time.

B. Grantee shall conduct performance tests in accordance with the requirements of Section 76.601 or any successor section of the Federal Communication Commission's Rules and Regulations, as those requirements may apply or be extended from time to time. (Ord. 237 § 130, 1981)

**5.12.400 Inspection of property and records.**

A. At all reasonable times, the grantee shall permit any duly authorized representative of the city to examine all property of the grantee, together with any appurtenant property of the grantee situated within or without the city, and to examine and transcribe any and all maps and other records kept or maintained by the grantee or under its control which deal with the operations, affairs, transactions or property of the grantee with respect to its franchise. If any such maps or records are not kept in the city, or upon reasonable request made available in the city, and if the council shall determine that an examination thereof is necessary or appropriate, then

all travel and maintenance expense necessarily incurred in making such examination shall be paid by the grantee.

B. The grantee shall prepare and furnish to the city manager and city clerk, at the times and in the form prescribed by either of said officers, such reports with respect to its operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the city or any of its officers in connection with the franchise.

C. The grantee shall at all times make and keep in the city full and complete plans and records showing the exact location of all CATV system equipment installed or in use in streets and other public places in the city.

D. The grantee shall file with the city manager, on or before the last day of March of each year, a current map or set of maps drawn to scale, showing all CATV system equipment installed in place in streets and other places of the city. (Ord. 237 § 140, 1981)

**5.12.410 Right to purchase system.**

Upon the revocation of the franchise, or the expiration of the terms thereof, and upon payment by the grantor to the grantee of the fair market value of the grantee's CATV system, the grantor may purchase, acquire, take over, or hold said system. For purposes of this section, "fair market value" shall be determined by valuing the grantee's system as a going concern. No value shall be assigned to the franchise hereunder. Immediately upon a determination of revocation or expiration of the franchise, the grantor and grantee shall attempt to mutually agree upon the fair market value of the system. However, if within a reasonable period of time they cannot agree upon the fair market valuation, then said valuation shall be determined by a three-member board of appraisers, one selected by the grantor, one selected by the grantee, and one selected by the appraisers themselves. The cost of said appraisal shall be borne equally by the grantor and the grantee. (Ord. 237 § 150, 1981)

**5.12.420 Right of intervention.**

The grantor may intervene in any suit or proceeding in which the grantee is a party, provided that the grantor's interests are not adequately represented by the existing parties, and provided further, that the disposition of each suit or proceeding without the grantor's participation may, as a practical matter, impair or impede the grantor's ability to protect those interests. (Ord. 237 § 160, 1981)

**5.12.430 Effect of annexations.**

A. In the event any new territory shall be annexed to the city which is contiguous to only one franchise area in the city, such new territory shall become, by operation of law, a part of such franchise area immediately upon the effective date of such annexation.

B. In the event any new territory shall become annexed to the city which is contiguous to more than one franchise area in the city or is not contiguous to any franchise area, then the council shall determine at a public hearing which grantee or grantees, if any, shall serve such new territory.

C. In the event any portion of the unincorporated territory covered by any existing franchise or license granted by the county of Merced is annexed to the city prior to the time that the grantee of such county franchise or license has commenced installation of a CATV system within said territory, all rights acquired by said grantee under its county franchise or license shall terminate by operation of law as of the date on which the annexation to the city becomes effective.

D. In the event any portion of unincorporated territory covered by an existing franchise or license granted by the county of Merced is annexed to the city after the grantee thereof has commenced or completed construction and

installation of a CATV system within said territory, the rights reserved under such franchise or license to the county of Merced or to any officer thereof, shall inure to the benefit of the city. All regulatory provisions of this chapter within the city, whether then in effect or subsequently adopted, shall be applicable to and binding upon said grantee. In addition, the grantee shall be obligated to pay annually to the city the percentage of the gross receipts established by the county of Merced in said franchise or license which are derived from its operations within the annexed territory for five years or upon termination of the franchise, whichever is of the shorter time duration, at which time the council may establish the percentage of gross receipts to be paid to the city. (Ord. 237 § 170, 1981)

**5.12.440 Safety requirements.**

A. The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

B. The grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Code, as it now exists or hereafter may be amended, and in such manner that they will not interfere with any installations of the city or of a public utility serving the city.

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

D. The grantee shall strictly adhere to all building and zoning codes currently or hereafter in force. The grantee shall arrange its lines, cables, and other appurtenances on both public and private property in such a manner as to cause no unreasonable interference with the use of said public or private property by any person. (Ord. 237 § 180, 1981)

**5.12.450 Removal of facilities upon subscriber request.**

Upon termination of service to any subscriber, the grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request. (Ord. 237 § 190, 1981)

**5.12.460 Repair of streets and public ways.**

Any and all streets and public ways which are disturbed or damaged during the construction, operation, maintenance, or reconstruction of the cable television system shall be promptly repaired by the grantee, at its expense, to the satisfaction of the grantor. (Ord. 237 § 200, 1981)

**5.12.470 Erection of poles.**

The grantee is expected to make use of existing aerial poles. However, the grantee shall have the right to erect poles if written permission is obtained from the grantor. Except as may be permitted, the grantee shall lease pole space from existing owners for all construction. The grantor shall utilize its best efforts to assist in arriving at equitable rental agreement. (Ord. 237 § 210, 1981)

**5.12.480 Services to residents.**

Service shall be offered to all city residents in accordance with the provisions of the franchise agreement. The grantee shall not materially reduce the level of service without permission of the city, but may at its discretion substitute programming to offer subscribers an equal or better array of services. (Ord. 237 § 220, 1981)

**5.12.490 Special service areas.**

A. As defined in the franchise agreement, the grantee shall be permitted to charge higher installation fees for areas of low housing density,

commercial areas and/or underground utility areas that require exceptionally high construction costs.

B. Upon petition by the grantee, the council may defer or indefinitely suspend any expansion into such a special service area after a showing by grantee that such expansion would cause unreasonable financial hardship to grantee. The adequacy of such a showing shall be determined and weighed against the public interest in system expansion by the council after a public hearing. (Ord. 237 § 230, 1981)

**5.12.500 Receivership.**

A. Upon the foreclosure or other judicial sale of all or a substantial part of the CATV system, or upon the termination of any lease covering all or a substantial part of the CATV system, the grantee shall notify the city clerk of such fact, and such notification shall be treated as a notification that a change in control of the grantee has taken place and the provisions of this chapter governing the consent of the council to such change in control of the grantee shall apply.

B. The grantor shall have the right to revoke the franchise one hundred twenty days after the appointment of a receiver, or trustee, to take over and conduct the business of the grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty days, or unless:

1. Within one hundred twenty days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of the franchise and remedied all defaults thereunder; and

2. Such receiver or trustee, within said one hundred twenty days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the franchise. (Ord. 237 § 240, 1981)

**5.12.510 Authority of city to terminate in the event of condemnation.**

In order to preserve the right of the city under the franchise provided for, and its right to acquire the property of the grantee by purchase or by eminent domain proceedings at its then fair market value, at any time during the existence of the franchise, it is especially provided that if at any time the franchise or the property of the grantee under the franchise shall become the subject of eminent domain proceedings by the city, the city reserves and shall have the right at the time such proceedings are commenced, or at any time thereafter, to terminate said franchise by resolution. (Ord. 237 § 250, 1981)

**5.12.520 Continuity of service mandatory.**

It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to overbuilt, rebuild, modify, or sell the system, or the grantor revokes or fails to renew the franchise, the grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances during the lifetime of the franchise. In the event of purchase by the grantor, or a change of grantee, the current grantee shall cooperate with the grantor to operate the system for a temporary period, in maintaining continuity of service to all subscribers. (Ord. 237 § 260, 1981)

**5.12.530 Financial disclosures of independent consultant.**

A. Any individual, partnership or corporation employed by the city for the purposes of advising the city, its council, commissions, city manager, or staff, on matters relating to cable television, or reviewing and evaluating, or assisting the city in reviewing and evaluating, proposals for the construction and operation of a cable television system(s), or regulating, or assisting the city in regulating, a cable television system, shall, as a term condition of their

employment, file within ten days of the date of employment with the city clerk a statement containing:

1. A listing and description of any financial and/or ownership held by the consultant in any cable television company, and subsidiary or affiliate of any cable television company, any company which is a supplier or customer of any cable television company, or in other company which owns stock or has any interest in any of those types of companies which are described in this section. If the consultant is a partnership, the financial and/or ownership interest in cable television companies affiliates, subsidiaries, suppliers, and customers of any partner must be disclosed. If the consultant is a corporation, the financial and/or ownership interests in cable television companies, affiliates, subsidiaries, suppliers, and customers of any shareholder, officer, or directors must be disclosed;

2. A listing and description of any cable television company, affiliate, subsidiary, supplier, or customer which the consultant has represented, on a compensated or noncompensated basis, within the last fifteen years.

B. The statement filed pursuant to this section shall be a public document open to inspection by any person. Failure to file this statement, or the inclusion of a material misrepresentation or omission within the statement, shall constitute grounds for the city's termination of the employment contract. This provision shall not apply to individuals who are subject to the reporting requirements of the "Political Reform Act of 1974" (California Government Code Sections 81008 et seq.) under the local conflict of interest code if the disclosures required by the code are substantially similar to those of this section. (Ord. 237 § 270, 1981)

**5.12.540 Grantee's right to solicit.**

A franchise granted to provide service within the city may authorize and permit the grantee to solicit, sell, distribute, and make a charge to subscribers within the city for connection to the cable television system of grantee, and shall also authorize and permit the grantee to traverse any portion of the city in order to provide service outside the city. (Ord. 237 § 280(a), 1981)

**5.12.550 Permission to traverse portion of city to provide service outside city—Nongrantee's rights.**

A franchise, easement, license or other permit granted to anyone other than the grantee to traverse any portion of the city in order to provide service outside the city shall not authorize nor permit said person to solicit, sell, distribute or make any charge to subscribers within the city nor to render any service or connect any subscriber within the city to the cable television service system of grantee. (Ord. 237 § 280(b), 1981)

**5.12.560 Court proceedings.**

No franchise granted under this chapter shall ever be given any value by any court or other authority, public or private, in any proceeding of any nature or character, wherein or whereby the city shall be a party or affected therein or thereby. (Ord. 237 § 280 (c), 1981)

**5.12.570 Grantee subject to city and state regulations.**

A. Grantee shall be subject to all provisions of the other ordinances, rules, regulations, and specifications of the city heretofore or hereafter adopted, including, but not limited to, those pertaining to works and activities in, on, over, under, and about streets.

B. Any privilege claimed under any franchise granted pursuant to this chapter in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.

C. Grantee also shall be subject to the provisions of general laws of the state of California, or as hereafter amended, when applicable to the exercise of any privilege contained in any franchise granted under this chapter including, but

not limited to, those pertaining to works and activities in and about state highways. (Ord. 237 § 280(d), 1981)

**5.12.580 Prohibited acts.**

Grantee shall be prohibited from directly or indirectly doing any of the following:

A. Engaging in the business of selling at retail, leasing, renting, repairing or servicing of television sets or radios;

B. Imposing a fee or charge for any service or repair to subscriber-owned receiving devices except for the connection of its service or for the determination by grantee of the quality of its signal to the recipients thereof;

C. Soliciting, referring, or causing or permitting the solicitation or referral of any subscriber to persons engaged in any business herein prohibited to be engaged in by grantee;

D. Providing information concerning the viewing patterns of identifiable individual subscribers to any person, group or organization for any purpose. (Ord. 237 § 280(e), 1981)

**5.12.590 Federal or state jurisdiction.**

If the Federal Communications Commission or Public Utilities Commission of the state of California or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of any franchise granted under this chapter, then to the extent such jurisdiction shall preempt or preclude the exercise of like jurisdiction by the city, the jurisdiction of the city shall cease and no longer exist. (Ord. 237 § 280(f), 1981)

**5.12.600 Filing to be with city clerk.**

When not otherwise prescribed herein, all matters required by this chapter to be filed with the city shall be filed with the city clerk. (Ord. 237 § 280(g), 1981)

**5.12.610 Denial of service prohibited.**

No person, firm or corporation within the service area of the grantee, and where trunk lines are in place, shall be refused service; provided, however, that the grantee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or service charge. (Ord. 237 § 280(h), 1981)

**5.12.620 Notice to subscriber.**

Before providing cable television service to any subscriber, the grantee shall provide a written notice to the subscriber substantially as follows:

> Subscriber is hereby notified that in providing cable television service the Grantee is making use of public rights-of-way within the City of Dos Palos and that the continued use of such rights-of-way is in no way guaranteed. In the event the continued use of such rights-of-way is denied to Grantee for any reason, Grantee will make every reasonable effort to provide service over alternate routes. By accepting cable television service, subscriber agrees he will make no claim nor undertake any action against the City of Dos Palos, its officers, or its employees if the service to be provided hereunder is interrupted or discontinues.

(Ord. 237 § 280(i), 1981)

**5.12.630 Form of subscriber's contract.**

The form of the grantee's contract with the subscriber shall also be subject to approval of the city. (Ord. 237 § 280(j), 1981)

**5.12.640 Purchase of CATV system from city.**

Grantee may be required, at the option of the city, to purchase from the city any cable television system purchased through a negotiated sale or taken through eminent domain by the city at a price equal to the city's total cost, including attorneys' and appraisers' fees and other costs of negotiation and/or litigation. Grantee shall be required to operate said system as part of its

systems, without interruption of service, subject to the terms and conditions of grantee's franchise and this chapter. (Ord. 237 § 280(k), 1981)

**5.12.650 Equal opportunity employment and affirmative action plan.**

A. In the carrying out of the construction, maintenance and operation of the cable television system, the grantee shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin.

B. The grantee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship.

C. The grantee shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

D. The grantee shall, in all solicitations or advertisements for employees placed by or on behalf of the grantee, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, sex, or national origin.

E. The grantee shall incorporate the foregoing requirements in all of its contracts for work relative to construction, maintenance and operation of the cable television system, other than contracts for standard commercial supplies or law materials, and shall require all of its contractors for such work to incorporate such requirements in all subcontracts for such work. (Ord. 237 § 290, 1981)

**5.12.660 Violations.**

A. From and after the effective date of the ordinance codified in this chapter, it shall be unlawful for any person to construct, install or maintain within any public street in the city, or within any other public property of the city, or within any privately owned area within the city which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the city, any equipment or facilities for distributing any television signals or radio signals through a cable television system, unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

B. It shall be unlawful for any person, firm or corporation to make or use any authorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable television system within the city for the purpose of enabling himself or others to receive or use any television signal, radio signal, picture, program or sound, without payment to the owner of said system.

C. It shall be unlawful for any person, without the consent of the owner, to wilfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

D. If a subscriber files in writing with the franchisor a complaint for a service problem which is preventable and reasonably within the franchisee's or licensee's control, and if such franchisee or licensee fails within a reasonable period following receipt of written notice by the franchisor to remedy the problem, the franchisor may levy a penalty of up to five hundred dollars for any occurrence or series of related occurrences, unless the franchisee or licensee has fewer than five thousand subscribers, in which case the penalty shall not exceed two hundred dollars. If the franchisee or licensee objects to the penalty in writing to the franchisor, the franchisee, or licensee and franchisor shall conduct arbitration

in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be final.

E. The franchisee or licensee shall provide written notice to each subscriber at intervals of not more than one year, of the sanctions provided in this section and of the procedure for reporting and resolving subscriber complaints, including the subscriber's right to complain in writing to the franchisor of the franchisee's failure to resolve a service complaint which is preventable and reasonable within the franchisee's or licensee's control. The proper address of the franchisor or licensor to which complaints may be directed shall be included in such notice. (Ord. 237 § 300, 1981)

## Chapter 5.14

## HOME OCCUPATIONS

Sections:



### 5.14.010 Home occupation—Defined.

A "home occupation" is defined as use in a dwelling in a residential zone generally not as per Title 17 of this code (see Section 17.08.1140). (Ord. 289 (part), 1989)

### 5.14.020 Permit required.

There is required upon home occupations as defined in this chapter a permit. Such permit shall be approved, conditionally approved or denied by planning commission. The planning commission may require annual inspections by the fire department and/or building department as part of approval of said permit. (Ord. 289 (part), 1989)

### 5.14.030 Permit fee.

There is a one-time fee of seventy-five dollars for each permit approved by the plaining commission under this chapter. Said fee shall not be refundable in the event of disapproval of home occupation permit by the planning commission. Said fee shall be in addition to those imposed by Section 5.04.470, Chapter 17.76 Article 1, and Chapter 15.04. (Ord. 289 (part), 1989)

### 5.14.040 Revocation or modification procedures.

The planning commission may revoke or modify any home occupation permit on any one or more of the grounds set forth in this chpater after a hearing is held and conducted as set forth in this chapter. (Ord. 289 (part), 1989)

### 5.14.050 Grounds for revocation.

The grounds for the revocation of a home occupation permit shall be any of the following:

A. That approval was obtained by means of fraud or the misrepresentation of material fact;

B. That the use in question has ceased to exist;

C. That there is or has been a violation of or failure to observe the terms or conditions of the permit, or that the use has been conducted in violation of the provisions of this title or any other law code or regulation;

D. That the use to which the permit applies has been conducted in a manner detrimental to the public safety, health and welfare, or so as to be a nuisance. (Ord. 289 (part), 1989)

### 5.14.060 Grounds for modification.

The grounds for the modification of a permit shall be any of the following:

A. That the ground which would otherwise justify a revocation of the permit can be corrected or cured by a modification imposing new or additional conditions;

B. That improvements in methods or technological advances permit the conduct of the use with adequate safeguards under the proposed modification;

C. That one or more of the original conditions of the permit is unworkable, impractical, or otherwise fails to accomplish the original aims. (Ord. 289 (part), 1989)

### 5.14.070 Procedures to be followed.

Proceedings for the revocation or modification of a permit may be initiated and shall be set for hearing, noticed, heard and determined in substantially the same manner as provided for

amendments to the provisions of this title set forth in Sections 17.80.020, 17.80.030(C), 17.80.040 and 17.80.050, with the exception that the decision of the commission shall be final unless appealed to the council in accordance with the procedure set forth in Section 17.80.060. (All references in said sections to amendments shall be deemed to refer to the proposed revocation or modification.) (Ord. 289 (part), 1989)

**5.14.080 Appeals from commission decisions—City council authority.**

A. All decisions of the commission in proceedings for the revocation or modification of a home occupation permit may be appealed and reviewed in substantially the same manner as provided for appeals from decisions of the commission set forth in Sections 17.80.060 and 17.80.070. (All references in said sections to amendments shall be deemed to refer to the proposed revocation or modification.)

B. Upon the expiration of the time within which an appeal may be so filed, and there being no appeal filed within such time, the decision of the commission shall be deemed final; provided, however, if an appeal is filed within such time, the decision of the commission shall be stayed pending the determination of the appeal or its withdrawal by the appellant. The action of the council on such appeal shall be final. (Ord. 289 (part), 1989)