



CITY OF MOUNTAIN HOUSE

ORDINANCE NO. 2024-25

AN ORDINANCE AMENDING TITLE 7 OF THE MOUNTAIN HOUSE MUNICIPAL CODE RELATED TO BUSINESS REGULATIONS

WHEREAS, the City of Mountain House (“City”) came into existence on July 1, 2024, pursuant to the San Joaquin Local Agency Formation Commission’s Resolution 23-1526 Making Determinations, Approving and Ordering a Reorganization to Include Incorporation of the City of Mountain House, etc. (the “LAFCO Resolution”), which resolution the voters confirmed in an election held on March 5, 2024 within the territory of the City.

WHEREAS, pursuant to Section 10 of the LAFCO Resolution, and Government Code section 57376, the City Council’s first official act on July 1, 2024 was to adopt an ordinance (the “City ordinance continuing County ordinances”) providing that all San Joaquin County (“County”) ordinances previously applicable shall remain in full force and effect as city ordinances for a period of 120 days after incorporation, or until the city council has enacted ordinances superseding the county ordinances.

WHEREAS, on July 1, the City Council adopted a Municipal Code consisting of ten titles, including Title 7, Business Regulations, for the purpose of allowing for the future supersession of the ordinances continued by the City Ordinance continuing County ordinances by way of adding divisions, chapters, and sections to the Municipal Code by City Council ordinance.

WHEREAS, the City Council now desires to amend Title 7, Business Regulations, to add various divisions and chapters adapted without substantive change from the continued County and Mountain House Community Services District ordinances, with the exception of Division 1, Chapter 1, Business Licenses which was substantially revised. The additions supersede the provisions of Title 7 in the District and County Codes that were continued by the City Council on July 1.

NOW THEREFORE, the City Council of the City of Mountain House does ordain as follows:

SECTION 1. Amendment of Title 7. Title 7 of the Mountain House Municipal Code is amended in its entirety to read as set forth in the attached Exhibit A.

SECTION 2. Effective Date. This Ordinance shall take effect thirty days after passage.

SECTION 3. Publication and Posting. The City Clerk shall comply with Government Code section 36933's publication and posting requirements.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

PASSED AND ADOPTED by the City Council of the City of Mountain House, California at a meeting thereof held this 25th day of September 2024 by the following Vote, to wit:

AYES: DISKO, GREEN, HARRISON, TINGLE, MAYOR SU

NOES: NONE

ABSENT: NONE



ANDY SU, MAYOR
City of Mountain House,
County of San Joaquin, State of
California

ATTEST:
City Clerk of the City of Mountain
House, County of San Joaquin, State of
California

By: 



TITLE 7. BUSINESS REGULATIONS

SECTION 5. DIVISION 1. BUSINESS LICENSES

SECTION 6. CHAPTER 1 BUSINESS LICENSES

7-1-100. Statement of Purpose and Intent.

The purpose of the provisions of this Chapter is to provide for necessary regulation of lawful businesses being conducted within the City to protect the public health, safety, and welfare of the people of the City. Business license (“license”) registration fees shall be revenue-neutral in that they may not exceed the reasonable costs of providing the regulatory services included in the business registration and licensing program. No license fee shall be construed as a business license tax.

7-1-101. Definitions.

Certain words and phrases are defined as follows:

(a) Business. Professions, trades, vocations, enterprises, establishments, occupations, including home occupations as defined herein, and all and every kind of calling, any of which are conducted, transacted or carried on for the purpose of earning in whole or in part a profit or livelihood, whether a profit or livelihood is earned thereby, whether paid in money, goods, labor, or otherwise. This definition shall apply to business establishments located within the City that are operated at a fixed place of business and those that are operated on a mobile basis by a mobile operator.

(b) City. City of Mountain House.

(c) Code. City of Mountain House municipal code.

(d) Fixed Place of Business. A business house or premises separate and distinct from any other business or residence, regularly kept open with an agent acting exclusively for such business in attendance, or an outdoors location where a business is regularly carried on.

(e) License. Business License issued under this Chapter.

(f) License Inspector. Any employee, agent, representative, or contractor designated by the City to carry out license inspections.

(g) Mobile Operator. Businesses that are operated on a mobile basis utilizing a motor vehicle to visit customer locations to carry out business-related services; including, but not limited to those mobile-operated business involving: mobile automobile or other motor vehicle washing; pest control services; food and ice cream vendors; pet grooming; mobile carpet, drape or furniture cleaning; house cleaning; concrete mixing or cutting; masonry; painting and coating; landscaping; pool and fountain cleaning; and Port-a-Potty or other portable toilet servicing

(h) Person. Any natural person or persons, or any partner or partnership, trust, corporation, or other entity.

(i) Reviewing Authority. The Administrative Services Department of the City of Mountain House.

7-1-102. Business License Required.

Every person conducting or carrying on a business anywhere in the City shall obtain a license. A separate license shall be obtained for each physical location (including branch establishments) or for each business operated, including mobile operator businesses. No person shall establish a new or additional business use of any building or participate in a change of business ownership without first obtaining a new license to operate.

7-1-703. Exemptions.

(a) Federal, State, and Local Law. No license to operate is required of any person who is specifically exempted from local licensing requirements by Section 16001.8 of the Business and Professions Code, by Section 7284.1 of the Revenue and Taxation Code, or by any other provision of law. The provisions of this Chapter shall not be deemed or construed to apply to any person transacting or carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or of the State.

(b) Agriculture. No license to operate is required of any farmer selling his or her own agricultural produce in the City at a fixed place of business.

(c) Manufacturer. No license to operate is required of any manufacturer whose gross sales are less than one thousand dollars (\$1,000) annually and who sells his or her own products on his or her own property at retail or wholesale, provided such products are manufactured or produced exclusively within the City.

(d) Non-Profit Organizations. Any non-profit organization that is legally recognized as tax-exempt pursuant to the provisions of 26 U.S.C. § 501(c)(3).

(e) Mobile Operator within a Temporary Event. Any mobile operator that operates within the City solely as part of a legally permitted temporary event.

7-1-704. Application.

(a) Application Form. An application for any license required by this title must be filed on the form provided by the Reviewing Authority.

(b) Application Content. Applications for a license shall contain the following:

(1) The type of ownership of the business, i.e., whether individual, partnership, or a closely held corporation or otherwise. If the applicant is a closely held corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors and of each stockholder, and the name and address of the agent for service of process.

(2) The name under which the business is to be conducted.

(3) The complete address and all telephone numbers of the business.

(4) The name and address of the manager of the business.

(5) The following personal information concerning the applicant, if an individual; and concerning each stockholder, each officer and each director, if the applicant is a closely held corporation; and concerning each partner, including limited partners, having an ownership interest in the business of more than ten (10) percent, if the applicant is a partnership; and concerning the manager or other person in charge of the operation of the business:

(i) Name, complete current residence address, and residence telephone numbers.

(ii) If the person has resided at the current residence address for less than three (3) years, the previous addresses immediately prior to the present address of the applicant for the last three (3) years.

(iii) The business history experience, including but not limited to, whether the person in previously operating in this or another city, City, or state under a permit or license has had a permit or license denied, revoked, or suspended and the reasons therefor, and the business activities or occupations after such action of denial, suspension, or revocation.

(iv) All criminal convictions, other than misdemeanor traffic violations and infractions, for any offense, the jurisdiction in which the conviction occurred, and the circumstances thereof.

(6) Any additional information required by the City to issue the license.

(7) Authorization for the Reviewing Authority to seek additional information deemed necessary for a thorough investigation, including verifying the application statements and conducting a criminal history check with the California Department of Justice and other law enforcement agencies.

(8) Verification. A dated and signed statement where the applicant certifies under penalty of perjury that the information provided is true and correct.

7-1-705. Issuance.

(a) Investigation. Upon receiving the completed application, the Reviewing Authority shall investigate the information required in Section 7-1-703 (application requirements).

(b) Determination. The Reviewing Authority shall decide to approve or deny the license within a reasonable time after the completed application is submitted.

(c) Deficiency. Applicant shall make reasonable and diligent efforts to comply in a timely manner with the requirements imposed by the Reviewing Authority if a deficiency in the application is found. Such efforts shall include, but are not limited to, applying for required permits and completing any necessary repairs or corrections prior to commencing business operations.

If the deficiency is not an imminent hazard, then the applicant shall have thirty (30) days from receipt of written notice of the deficiency to apply for the appropriate permit and to complete any necessary repairs or corrections. Failure to complete such compliance within one hundred eighty (180) days from the date the application was filed shall result in the expiration of the application and the forfeiture of the license fee.

If the deficiency is an imminent hazard, then the applicant shall immediately remove the imminent hazard.

The Reviewing Authority shall give the applicant two (2) weeks written notice that the application is incomplete and due to expire. Failure to receive said notice shall not relieve the applicant from the duty to complete the requirements imposed by this Section.

(d) The application shall also be sent to County Public Health Services.

7-1-706. Fees.

(a) All applications for licenses shall be accompanied by the applicable fee as set forth in the schedule of fees established by City Council resolution.

(b) Application Fee. The initial license fee for each license is set forth in subdivision (d) and they may be adjusted from time to time by resolution of the City Council. The full amount of the license fee shall be paid in advance upon the submission of the license application

to the Reviewing Authority. License fees will not be prorated, nor will refunds be granted upon the termination of any business. An application filed because of an enforcement proceeding, shall be subject to an application fee two (2) times the normal application fee.

(c) **Renewal Fee.** The fee for each license to be renewed is set forth in subdivision (d), along with the additional fee for late renewals and requests for duplicate licenses, and they may be adjusted from time to time by resolution of the City Council.

(d) **License Fee Schedule.**

No.	Fee Description	Fee
1	License	\$100
2	License renewal	\$100
3	Late license renewal	\$10
4	Duplicate license	\$5

7-1-707. Timeframe.

Licenses shall remain in effect for a period not to exceed either one (1) year or three (3) years from date of filing the application. Issued licenses shall be retroactive to the date the application was filed. During this period no additional business locations may be established, no change or expansion in the business use of any new or existing building may be made, and no change in the business ownership may occur, until the Reviewing Authority has been notified thereof and the appropriate fee has been paid. The fee schedule for notification of such changes shall be established by resolution of the City Council. Failure to notify the Reviewing Authority within thirty (30) days of any such change may result in the termination of the existing license and a direction to cease all business operations until a new license is procured.

7-1-708. Renewals.

(a) **Renewal.** Upon the expiration of the license, a renewal application shall be submitted no later than the next business day to the Reviewing Authority on forms provided by the City. Any person who has obtained a license shall apply for renewal on or before expiration of the then current license term.

(b) **Renewal Fee.** Renewal of a license requires a renewal fee. Failure to timely pay the renewal fee shall result in the termination of the right to conduct business operations until a new license is procured. A new license shall issue upon payment of the renewal fee and/or a late fee.

(c) **Late Renewal Fee.** A late renewal fee applies if the license is renewed one (1) to eight-nine (89) days after its expiration.

(d) **Reapply.** Any person renewing greater than ninety (90) days after the expiration date, must reapply for a license as if none were ever issued.

7-1-709. Postings.

(a) Every person who has submitted a satisfactory application and who has paid the required fee(s) shall be issued a license with following information:

- (1) Name of the person to whom the license is issued;
- (2) Name of the business licensed;
- (3) Physical location of the business;
- (4) License expiration date; and
- (5) Other information necessary for the enforcement of this Chapter.

(b) Any person conducting a business licensed under this Chapter shall post his or her license in a conspicuous place at his or her place of business, shall keep it posted until its date of expiration, and shall then remove it upon expiration. No business shall be conducted without the license being posted. License holders must produce and exhibit their license upon request by any code enforcement officer, peace officer, or officer authorized to issue, inspect, or collect licenses.

(c) Any person conducting, transacting, or carrying on a business but not operating at a fixed place of business in the City shall always keep the license on his or her person while conducting business. Such person shall display the license to any code enforcement officer, peace officer, or officer authorized to issue, inspect, or collect licenses upon request.

7-1-710. Inspectors.

License inspectors may enter any licensed business at any time and demand to see the license.

7-1-711. Evidence of Doing Business.

The following circumstances shall be considered prima facie evidence that a person is conducting business in the City: where any person, by use of any sign, circular, card, brochure, telephone book, magazine, newspaper, website, electronic media or other publication, shall advertise, hold out or by any other means represent that the person is in business in the City, or when any person holds an active license issued by a governmental agency indicating that the person is in business in the City, and such person fails upon request of the City to sign and provide to the City a sworn statement attesting that such person is not conducting or carrying on a business from the City. The City shall provide a form for the purposes of the sworn statement required by this Section.

7-1-712. Enforcement.

(a) It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Chapter.

(b) The enforcement provisions of Division 2 of Title 1 of this Code shall be applicable in any of the following cases:

- (1) Operating a business without first securing a license;
- (2) Operating a business where a license has not been renewed; or
- (3) Operating a business that is not in compliance with the requirements of this Code.

(c) Each person shall be deemed guilty of a separate offense for every day, or any portion thereof, during which any violation of or failure to comply with any of the provisions of this Chapter is committed, continued, or permitted by such person, and each instance shall be deemed punishable as provided in this Section.

(d) Each infraction is punishable by:

- (1) A fine not exceeding \$100.00 for the first violation;
- (2) A fine not exceeding \$200.00 for the second violation within one (1) year;
- (3) A fine not exceeding \$500.00 for each additional violation within one (1) year.

7-1-713. Revocation and Suspension.

A license issued may be revoked or suspended after hearing by the City Manager upon proof that the applicant has been convicted during the term of the license of a crime prosecuted

in the name of the people of the State of California, provided such conviction is related to the applicant's conduct of his or her business.

7-1-714. Nontransferable Change of Location or Ownership, Name of Business.

No license issued shall be automatically transferable; except where a license is issued indicating a person is conducting, transacting, or carrying on a business at a particular place under a particular name, such license holder, upon application therefore, and payment of a change fee may obtain a new license showing some other location and/or name of the business and/or business ownership change. A new license shall be required as provided in Section 7-1-704 if there are any other changes that take place regarding a business.

7-1-715. Duplicate.

A duplicate license may be issued to replace any which has been lost or destroyed where such license holder submits a statement of such fact and provides payment of a duplicate license fee.

7-1-716. Criminal Background Investigation.

The police may conduct a criminal background investigation on any person applying for a license.

7-1-717. False Statements.

Every person who makes any false statement or representation in any application for a license is in violation of this Chapter and may have his or her license revoked.

7-1-718. Unlawful Business.

No license shall be construed as authorizing the conduct of or continuance of any occupation, use or activity of any kind which is prohibited by this Code, state, or federal law.

7-1-719. Water Quality Inspections and Enforcement; Additional License Fees.

A license shall not operate to exempt or excuse any person from complying with water quality requirements and inspection fees, Water Code § 13000 et seq. (Porter-Cologne Water Quality Control Act), Title 33 U.S.C. § 1251 et seq. (Clean Water Act), applicable state or federal regulations promulgated, and related administrative orders or permits issued. Failure to maintain the business premises, grounds, facilities, and structures in compliance with water quality requirements is a violation of this Chapter.

SECTION 7. CHAPTER 2 SOLICITOR LICENSES

7-1-200 License Required.

No person shall without first obtaining a license to operate, act or attempt to act within the City as a solicitor or itinerant solicitor.

7-1-201 Definitions.

(a) “Solicitor” is defined for the purpose of this Chapter as any person who goes from house to house, place to place, in or along the street, whether by appointment or otherwise, whose primary or secondary purpose is buying, selling or taking orders for or offering to buy, sell or take orders for goods, wares, or merchandise or other things of value for future delivery, or for services to be performed in the future, or who makes telephone calls for such purposes to persons within the City.

(b) “Itinerant solicitor” is defined for the purpose of this Chapter as any person who, in addition to the matters described in part (a) of this section, has no permanent residence in the City or who does not maintain a principal place of business in the City.

(c) “Principal place of business” is defined for the purpose of this Chapter as a business house separate and distinct from any other business or residence, regularly kept open with an agent acting exclusively for such business in attendance therein between the hours of eight (8) a.m. and five (5) p.m. for at least six (6) hours per day, for at least five (5) days per week.

(d) “Permanent residence” is defined for the purpose of this Chapter as a dwelling within the State of California where an applicant for a license has resided continuously for at least one year immediately preceding the filing of his application, and within the City continuously for at least one hundred twenty (120) days immediately preceding the filing of his application.

(e) “Chief of Police” means the City Manager or the City Manager’s designee.

7-1-202 Application for License.

To procure a license to operate as a solicitor or itinerant solicitor, a written application must be filed with the City Administrative Services Director’s Office on forms provided therefor.

7-1-203 Verification,

The truth of the matter contained in each application must be verified by the oath of the applicant in the same manner as pleadings in civil actions in this State are required to be verified.

7-1-204 Bond.

Before a license may be issued under this Chapter, the applicant must deposit with the Administrative Services Director a bond in an amount to be determined on the basis of the anticipated gross revenues from solicitation, and without regard to whether the applicant has a principal place of business or a permanent residence in the City. The amount of said bond shall be not less than One Thousand Dollars (\$1,000.00) or more than Ten Thousand Dollars (\$10,000.00), with surety or sureties to be approved, conditioned that upon failure to comply with any of the conditions or provisions of this Chapter the applicant or his sureties will pay any fine of not more than the amount of bond which may be imposed upon the applicant for such failure, and further conditioned that any person aggrieved by any solicitor or itinerant solicitor shall have a right of action on the bond for the recovery of money or damages or both. Said bond shall remain in effect for thirty (30) days after the expiration of a license or any renewal thereof issued pursuant to this Chapter.

7-1-205 Issuance of License.

Upon the filing of an application for license, the posting of the required bond, the investigation of the information contained in the application by the Chief of Police, including the applicant's business background and moral character, and the Chief of Police's favorable report thereon to the Administrative Services Director, the Administrative Services Director shall issue a license to the applicant. Should the Chief of Police report that any of the information in such application is untrue, or that the applicant's character or business responsibility is unsatisfactory, the Administrative Services Director shall notify the applicant that his application is disapproved and that no license will issue.

7-1-206 Identification Card and Fee.

Any duly licensed solicitor or itinerant solicitor shall, while operating in the City, carry on his or her person at all times an identification card to be furnished by the Administrative Services Director's Office at the time the license required by this Chapter is issued. Said card will state and serve as notice to the public that said solicitor or itinerant solicitor is duly licensed by the City, and said card must be shown to anyone contacted in person by the solicitor or itinerant solicitor for business purposes before any sale or offer to sell is made or any order taken. The fee for said card shall be set by resolution of the City Council.

7-1-207 License Fees.

The fee for each license shall be set by resolution of the City Council. The full amount of the fee shall be paid upon the submission of the license application. License fees will not be prorated nor will refunds be granted upon the termination of a business.

7-1-208 Exemption from Fees and Bond,

Solicitors and itinerant solicitors employed by a nonprofit charitable or fraternal organization and not themselves profiting from their solicitation are exempt from the fees provided for in Section 7-1-207 of this Chapter and from the bond required by Section 7-1-205. To establish a claim of exemption, such solicitor must file with the Administrative Services Director, in addition to the application provided for in Section 7-1-202 of this Chapter, a written, notarized affidavit disclosing the following information: a list of all principals or, if such organization is a corporation, a list of all corporate officers; a financial statement for the business for the most recent fiscal year; the name of the applicant's immediate supervisor; and any other information the Chief of Police or Administrative Services Director may require. No such solicitor is entitled to operate within the City unless and until said organization has obtained the license and said solicitor has obtained the identification card required by this Chapter.

7-1-209 Hours.

No person may operate within the City as a solicitor or itinerant solicitor before nine (9) a.m. or after seven (7) p.m.

7-1-210 Penalties.

(a) Any failure to comply with the provisions of this Chapter, including failure to obtain a solicitor's license, is a misdemeanor punishable by revocation of the misdemeanor's

solicitor's license, by a fine of three hundred dollars (\$300.00), by imprisonment in the County jail for a term of not more than three (3) months, or by such revocation and/or fine and/or imprisonment.

(b) Any person who intentionally or negligently violates this Chapter shall be liable for a civil penalty not to exceed twenty dollars (\$20.00) for each day in which such violation occurs.

7-1-211 Revocation of License.

A license issued pursuant to this Chapter may be revoked after hearing by the City Council upon proof that the applicant has been convicted during the term of such license of a crime or civil violation prosecuted in the name of the People of the State of California, provided such conviction is related to the applicant's conduct of his business.

SECTION 8. CHAPTER 3 PEDDLER LICENSES

7-1-300 License Required.

No person shall, without first obtaining a license to operate, act or attempt to act within the City as a peddler or itinerant peddler.

7-1-301 Definitions.

(a) "Peddler" is defined for the purpose of this Chapter as any person who, at any place in the City other than a principal place of business for which the peddler holds a business license, sells and makes immediate delivery or offers for sale and immediate delivery any goods, wares, merchandise or thing in the possession of the seller. "Peddler" does not include salesmen or agents for wholesale houses or firms that sell only to retail dealers for resale, to manufacturers for manufacturing purposes, or to bidders for public works or supplies.

(b) "Itinerant peddler" is defined for the purpose of this Chapter as any person who, in addition to the matters described in Subsection (a) of this section, has no permanent residence in the City or who does not maintain a principal place of business in the City.

(c) "Principal place of business" is defined for the purpose of this Chapter as a business house separate and distinct from any other business or residence, regularly kept open with an agent acting exclusively for such business in attendance therein between the hours of 8 a.m. and 5 p.m. for at least six (6) hours per day, for at least five (5) days per week.

(d) "Permanent residence" is defined for the purpose of this Chapter as a dwelling within the State of California where an applicant for a license has resided continuously for at least one (1) year immediately preceding the filing of his application, and within the City continuously for at least one hundred twenty (120) days immediately preceding the filing of his application.

(e) "Ice cream vehicle" shall mean a vehicle or portable stand or cart engaged in the curbside vending or sale of frozen refrigerated desserts, confections or novelties commonly known as ice cream, prepackaged candies, prepackaged snack foods, or soft drinks, primarily intended for sale to children under fourteen (14) years of age.

(f) "Dispense or dispensing" shall mean peddling, hawking, displaying for sale, soliciting the sale of, offering or exposing for sale, selling or giving away.

(g) "Chief of Police" means the City Manager or the City Manager's designee.

7-1-302 Application for License

To procure a license to operate as a peddler or itinerant peddler, a written application must be filed with the Administrative Services Director on forms provided therefor.

7-1-303 Verification.

The truth of the matter contained in each application must be verified by the oath of the applicant in the same manner as pleadings in civil actions in this State are required to be verified.

7-1-304 Issuance of License.

Upon the filing of an application for license, the investigation of the information contained in the application by the Chief of Police, including the applicant's business background and moral character, and the Chief of Police's favorable report thereon to the Administrative Services Director, the Administrative Services Director shall issue a license to the applicant. Should the Chief of Police report that any of the information in such application is untrue, or that the applicant's character or business responsibility is unsatisfactory, the Administrative Services Director shall notify the applicant that his or her application is disapproved and that no license will be issued.

7-1-305 Fee, Identification Card and License.

(a) Any duly licensed peddler or itinerant peddler shall, while operating in City, carry on his or her person at all times an identification card to be furnished by the Administrative Services Director's office at the time the license required by this Chapter is issued. Said card will state and serve as notice to the public that said peddler or itinerant peddler is duly licensed by the City, and said card must be shown to anyone contacted by the peddler or itinerant peddler for business purposes before any sale or offer to sell is made. The fee for said card shall be set by resolution of the City Council.

(b) Upon approval, the Administrative Services Director shall furnish the peddler with a license bearing name of peddler, a license number, the expiration date and a list of the items of merchandise permitted for dispensing, which shall be displayed at all times in a conspicuous place at the dispensing location.

(c) No peddler shall dispense any merchandise not listed on peddler's display plate.

7-1-306 License Fees.

The fee for each license shall be set by resolution of the City Council. The full amount of the fee shall be paid upon the submission of the license application. License fees will not be prorated nor will refunds be granted upon the termination of a business.

7-1-307 Exemption from Fees.

A soldier, sailor or marine who has received from the United States an honorable discharge or release from active duty under honorable conditions, and who wishes to become a peddler or itinerant peddler, is exempt from any and all fees required by this Chapter. However, he or she is subject to all other provisions of this Chapter, must file with the Administrative Services Director the statement required of other applicants, and must obtain the license and identification card provided for herein.

7-1-308 Sales from Vehicles or Portable Stands.

(a) No peddler of any goods, wares or merchandise, including food, candy, soft drinks or other edibles, shall sell, vend or peddle merchandise or edibles from any vehicle or any portable stand in the City unless, except for times necessary to complete a sale or sales, the vehicle is continually in motion and does not remain within three hundred (300) feet of any previous stopping point for more than twenty (20) minutes in any one (1) day.

(b) A peddler of prepared foods who utilizes one (1) or more vehicles or portable stands in the manner set forth in the preceding subsection, and who employs one (1) or more persons to operate such vehicles or stands on his behalf, may satisfy the licensing requirements of this Chapter by obtaining a peddler's license for each vehicle or stand used by him in lieu of obtaining a license for each employee operating such vehicle or stand, provided that all other requirements of this Chapter are met, and provided further, that all of the following conditions are met:

(1) The peddler applying for a vehicle license has a permanent residence in, or maintains a principal place of business in the City.

(2) The drivers or operators of said vehicles or stands do not peddle their wares door-to-door or in any manner other than by remaining in or immediately about said vehicle or stand in compliance with Subsection (a) of this section.

(3) The applicant provides the Administrative Services Director with a certificate of insurance evidencing coverage of such vehicles or stands for general liability purposes. No vehicle license shall issue under this Chapter until evidence of adequate insurance coverage has been required by the Administrative Services Director.

(c) No peddler shall dispense any merchandise, other than food, from an ice cream vehicle.

(d) No peddler shall dispense any merchandise, at any time, including food, from an ice cream vehicle parked or stopped within five hundred (500) feet of the property line of a school between 7:00 a.m. and 4:00 p.m. on regular school days.

(e) No peddler shall permit a person under sixteen (16) years of age to ride in or on an ice cream vehicle.

7-1-309 Hours.

Except for persons furnishing edible goods to workers on or about a job site, no person may operate within the City of as a peddler or itinerant peddler before 9:00 a.m. or after 7:00 p.m. A person furnishing edible goods to workers on or about a job site may so operate between the hours of 6:00 a.m. and 7:00 p.m. This section does not authorize any licensed peddler or itinerant peddler to enter upon a place of employment or business premises without the consent of the owner or the person having lawful possession or control hereof.

7-1-310 Penalties.

(a) Any failure to comply with the provisions of this Chapter, including failure to obtain a peddler's license, is a misdemeanor punishable by revocation of misdemeanor's peddler's license, by a fine of three hundred dollars (\$300.00), by imprisonment in the County jail for a term of not more than three (3) months or by such revocation and/or fine and/or imprisonment.

(b) Any person who intentionally or negligently violates this Chapter shall be liable for a civil penalty not to exceed twenty dollars (\$20.00) for each day in which such violation occurs. The civil penalty for “itinerant peddlers” may be increased to five hundred dollars (\$500.00) per day.

7-1-311 Revocation of License.

A license issued pursuant to this Chapter may be revoked after hearing by the City Council upon proof that the applicant has been convicted during the term of such license of a crime or civil violation prosecuted in the name of the People of the State of California, provided such conviction is related to the applicant’s conduct of his business.

SECTION 9. CHAPTER 4 SERVICE LICENSES

7-1-400 License Required.

No person who does not have or is not employed by a fixed place of business which holds a current, valid license to operate issued pursuant to Chapter 1 of Division 1 of Title 7, or who does not hold a current, valid business license issued by any city within the County of San Joaquin, shall, without first obtaining a service license issued pursuant to this Chapter, provide or attempt to provide services within the City.

7-1-401 Definitions.

(a) “Services” is defined for the purpose of this Chapter as any act of assistance or benefit, any work or labor or any installation, maintenance or repair of real or personal property, whether or not performed in conjunction with the sale of goods, materials or property, which services are performed or offered on a regular, rather than occasional, basis and constitute or are intended to constitute a principal source of income for the service provider or itinerant service provider.

(b) “Person” is defined for the purpose of this Chapter as any person or persons age sixteen (16) or over, or any partnership, trust, corporation, or other entity, who renders services for a specified recompense for a specified result, under the control of the person contracting for such services as to the result of the work only, and not as to the means by which such result is accomplished.

(c) “Service provider” is defined for the purposes of this Chapter as any person who has a permanent residence in the City.

(d) “Itinerant service provider” is defined for the purposes of this Chapter as any person who does not have a permanent residence in the City.

(e) “Permanent residence” is defined for the purposes of this Chapter as a dwelling within the State of California where an applicant for a license has resided continuously for at least one year immediately preceding the filing of his application, and within the City continuously for at least one hundred twenty (120) days immediately preceding the filing of his application.

(f) “Fixed place of business” is defined for the purposes of this Chapter as a business house or premises separate and distinct from any other business or residence, regularly kept open with an agent acting exclusively for such business in attendance, or an outdoors location where a business is regularly carried on.

(g) “Chief of Police” means the City Manager or their designee.

7-1-402 Exemptions from Licensing.

No license to provide services is required of any person who is specifically exempted from local licensing requirements by Section 7032 of the Business and Professions Code or by any other provision of law; or who holds a current, valid license to operate issued pursuant to Chapter 1 of Division 1 of Title 7 of this Code, or who holds a current, valid business license issued by any city within this City.

7-1-403 Identification Card and Fee.

Any duly licensed service provider or itinerant service provider shall, while operating in the City, carry on his or her person at all times an identification card to be furnished by the Administrative Services Director’s office at the time the license required by this Chapter is issued. Said card will state and serve as notice to the public that said person is duly licensed by the City, and said card must be shown to anyone to whom services are provided prior to providing such services. The fee for said card shall be set by resolution of the City Council.

7-1-404 Verification.

The truth of the matter contained in each application must be verified by the oath of the applicant in the same manner as pleadings in civil actions in this State are required to be verified.

7-1-405 Bond.

Before the Administrative Services Director may issue a license under this Chapter, the applicant must file with the Administrative Services Director a bond in the sum of One Thousand Dollars (\$1,000.00) executed by an established surety company or by two responsible freeholders residing in the City, or in lieu thereof shall make a cash deposit with the Administrative Services Director in the sum of One Thousand Dollars (\$1,000.00), conditioned that upon the failure to comply with any of the conditions or provisions of this Chapter, the applicant or his sureties will pay any fine of not more than the amount of bond that may be imposed upon the applicant for such failure, and conditioned further, that anyone aggrieved by the action of any person providing or agreeing to provide services under this Chapter shall have a right of action on the bond for the recovery of money or damages or both. Said bond shall remain in effect for thirty (30) days after the expiration of a license or any renewal thereof issued pursuant to this Chapter.

7-1-406 Issuance of License

Upon the filing of and application for license, the posting of the required bond, the investigation of the information contained in the application, including the applicant’s business background and moral character, and the Chief of Police’s favorable report thereon to the Administrative Services Director, the Administrative Services Director shall issue a license to the applicant. Should the Chief of Police report that any of the information in such application is untrue, or that the applicant’s character or business responsibility is unsatisfactory, the Administrative Services Director shall notify the applicant that his application is disapproved and that no license will issue.

7-1-407 Identification Card and Fee.

Any duly licensed service provider or itinerant service provider shall, while operating in the City, carry on his person at all times an identification card to be furnished by the Administrative Services Director's Office at the time the license required by this Chapter is issued. Said card will state and serve as notice to the public that said person is duly licensed by the City, and said card must be shown to anyone to whom services are provided prior to providing such services. The fee for said card is \$5.00, to be paid at the time of issuance.

7-1-408 License Fees.

The fee for each license shall be set by resolution of the City Council. The full amount of the fee shall be paid upon the submission of the license application. License fees will not be prorated nor will refunds be granted upon the termination of a business.

7-1-409 Exemption from Fees and Bond.

Persons providing services who are employed by a nonprofit charitable or fraternal organization and who do not themselves profit from the provision of such services are exempt from the fees provided for in Section 7-1-408 of this Chapter and from the bond required by Section 7-1-405. To establish a claim of exemption, such person must file with the Administrative Services Director, in addition to the application provided for in Section 7-1-407 of this Chapter, a written, notarized affidavit disclosing the following information: a list of all corporate officers of said organization; a financial statement for the business for the most recent fiscal year; the name of the applicant's immediate supervisor; and any other information the Chief of Police or Administrative Services Director may require. No such person is entitled to operate within the City unless and until said organization has obtained the license required by this Chapter.

7-1-410 Penalties.

(a) Any failure to comply with the provisions of this Chapter, including failure to obtain a service provider's license, is a misdemeanor punishable by revocation of the misdemeanant's service license, by a fine of three hundred dollars (\$300.00), by imprisonment in the County jail for a term not to exceed three (3) months, or by such revocation and/or fine and/or imprisonment.

(b) Any person who intentionally or negligently violates this Chapter shall be liable for a civil penalty not to exceed twenty dollars (\$20.00) for each day in which such violation occurs.

7-7-411 Revocation of License.

A license issued pursuant to this Chapter may be revoked after hearing by the City Council upon proof that the applicant has been convicted during the term of such license of a crime or civil violation prosecuted in the name of the People of the State of California, provided such conviction is related to the applicant's conduct of his business.

- (2) Pawnbrokers;
- (3) Secondhand car dealers or merchants in connection with automobile and motor vehicle sales agencies but not carried on and conducted in conjunction with a junk yard;
- (4) Persons engaged in the business of selling new automobile tires or batteries or other equipment taking in part payment used articles of the same kind and thereafter selling or disposing of the same;
- (5) Secondhand oil well supply and equipment dealers not conducting or carrying on their business in connection with a junk yard; or
- (6) Secondhand clothing merchants and ragpickers.

7-1-602 Junk Dealer Business/Peddler License Required.

It shall be unlawful for any person to engage in, conduct, or operate the business of junk dealer, junk peddler, or itinerate junk peddler in the City without first securing the appropriate license issued under the provisions of Chapter 1 or Chapter 3 of this Division and as modified by this Chapter.

7-1-603 Additional Application Requirements.

In addition to the license application provisions of Chapters 1 and 3 of this Division, the applicant shall accompany the application with names, photographs, addresses, copy of driver's licenses or government identification cards, and fingerprints of all the individuals who are to be actually engaged in the management of the business or in selling, buying or otherwise acquiring junk for the business for which the license is requested. In the event any other person, after the license has been granted, is engaged in the management of the business or in selling, buying or otherwise acquiring such junk, the licensee shall furnish to the Chief of Police the names, photographs, addresses, copies of driver's licenses or government identification cards, and fingerprints of such person. No license shall be issued until any such demand has been complied with, and any license that has been issued shall be suspended or revoked if the licensee does not, within a reasonable time, comply with the provisions of this section.

7-1-604 Referral of Application to Chief of Police

(a) The City department responsible for processing the license application shall refer the application and information required in Section 7-1-606 to the Chief of Police for investigation concerning the applicant's business and character of the applicant. At a minimum the Chief of Police's findings shall include the following:

- (1) That the applicant has not been convicted of a crime involving the possession or theft of property, fraud, hazardous materials or the environment, or crimes related to the operation of a junk dealer; provided, however, the Chief of Police shall not take into account a conviction that occurred at least five (5) years prior to the date of the application and, as of the date of the application, at least five (5) years have elapsed since the applicant was released from any disability resulting from the conviction and the applicant has no subsequent convictions for a felony or misdemeanor offense involving the possession or theft of property, fraud, hazardous materials or the environment, or crimes related to the operation of a junk dealer;
- (2) That the applicant has not had any license or permit to engage in a business or profession within the State of California revoked because of a violation of law or because of violation of regulations promulgated by the regulating agency having control or jurisdiction over

the license or permit. However, the Chief of Police shall not consider any such revocation if it occurred at least five (5) years prior to the date of the application;

(3) That the applicant has not had civil penalties imposed by a court or other government agency related to the operation of a junk dealer business or relating to hazardous materials or the environment within the past five (5) years prior to the date of application; and

(4) It appears that the applicant's conduct or the proposed conduct of the business does and will comply with all applicable laws and ordinances.

(b) The Chief of Police shall make written recommendations to the City department responsible for processing the license application no later than thirty (30) calendar days after receiving the referral. Should the Chief of Police report that the applicant's character or business responsibility is unsatisfactory, the City department responsible for processing the license application shall notify the applicant that his or her application is disapproved and that no license will be issued.

7-1-605 Period of License.

Licenses issued pursuant to this Chapter shall remain in effect for a period of one (1) year from the date of filing the application therefor.

7-1-606 Additional License Renewal Requirements.

(a) In addition to the license renewal provisions required in Chapters 1 or 2 of this Division, the licensee shall include the following with the license renewal application:

(1) Documentation of all notices of violation related to the operation of the business during the past year issued by any governmental entity, including the City, to the business, property owner, license holder, or employees;

(2) Documentation specifying corrective actions taken to address previous notices of violation or other conditions placed on the business;

(3) Documentation of criminal citations related to the operation of the business issued to the business, property owner, license holder or employees, including citations for failing to comply with state or local law applicable to junk dealers, or for receiving stolen property;

(4) Updated information, if any, regarding the license holder or owner of the business, including change of address, change of partnership, or change of corporate status; and

(5) If applicable, documentation proving that the license holder has valid permits for the use of welding equipment, propane tanks, or cutting torches operated by compressed gasses on the premises or as part of its business.

(b) If based on the information specified in Subsection (a) of this section, the licensee is in compliance with the requirements of this subdivision, and if there have been no material changes in the operation of the junk dealer business that have not been previously approved by the City, the license shall be deemed renewed for another one (1) year period and the Administrative Services Director shall issue such renewal.

7-1-607 Reporting.

(a) Junk dealers or recyclers shall report to the City every Monday before 12:00 noon on a form approved by the Chief of Police, a record of all junk sales and purchases of the previous seven (7) days. If Monday is a holiday, then the report shall be submitted by 12:00 noon

on the next regular business day. The report shall contain the information required by this Chapter and any additional information required by the Chief of Police as shown on the forms.

(b) The report shall at a minimum contain the following information:

(1) The name, business name, business address, telephone number, facsimile number, and electronic mail address of the junk dealer or recycler;

(2) The place and date of each sale or purchase of junk made in the conduct of his or her business as a junk dealer or recycler;

(3) The seller's name, valid driver's license number and state of issue or California-issued identification card number, and vehicle license number including the state of issue of any motor vehicle used in transporting the junk to the junk dealers or recycler's place of business;

(4) The name and address of each person to whom the junk dealer sold or disposed of, the junk and the license number of any motor vehicle used in transporting the junk from the junk dealer's or recycler's place of business;

(5) A full and complete description of the item or items of junk purchased or sold, including the item type, quantity, length, diameter, size, brand, model, manufacturer, and identification number;

(6) A signed statement declaring under penalty of perjury indicating either that the seller of the junk is the owner of it, or the name of the person he or she obtained it from, as shown on a signed transfer document; and

(7) The fingerprint of the right hand index finger of the seller of the junk, unless such finger is missing, in which event the print of the next finger in existence on the right hand shall be obtained with a notation as to the exact finger printed of the person from whom junk is received.

7-1-608 Holding Period Before Sale.

All junk purchased by owners or keepers of junk shops or junk yards shall be held for a period of at least fourteen (14) days before the same shall be sold.

7-1-609 Payment.

A junk dealer or recycler in this State shall not provide payment for junk unless, in addition to meeting the written record requirements of Section 7-1-607 and the Business and Professions Code Sections 21605 and 21606, all of the following requirements are met:

(a) The payment for the material is made by check or paper draft.

(b) The junk dealer or recycler provides the check or paper draft no earlier than ten (10) business days after the date of sale. The check or paper draft may be mailed to the seller or may be collected by the seller from the junk dealer or recycler.

(c) The junk dealer or recycler obtains a photograph and an address of the seller, or a copy of the valid driver's license of the seller containing a photograph and an address of the seller, or a copy of a state or federal government-issued identification card containing a photograph and an address of the seller. The junk dealer or recycler shall preserve the photograph and the address or the copies obtained pursuant to this paragraph for a period of two (2) years after the date of sale.

7-1-610 Immediate Notice of Certain Transactions.

Every junk dealer or recycler shall immediately notify the Chief of Police's Department by telephone, or other means likely to reach the Chief of Police's Department without delay, of the sale or purchase, or attempted sale or purchase, of any junk which reasonably appears to be stolen or used only by governments, utilities, railroads, agriculture, or for specific purposes, such as radiators, aluminum irrigation pipes, irrigation devices, catalytic converters, guardrails, manhole covers, high voltage transmission lines, historical markers, cemetery plaques, light poles, and bleachers.

7-1-611. Pawnbroking Prohibited

No owner or keeper of a junk shop or junk yard shall receive any personal property by way of pledge or pawn, nor shall any owner or keeper of a junk shop or junk yard engage in the business of pawnbroking on the same premises wherein a junk shop or junk yard is located.

7-1-612 Hours of Operation.

No junk peddler shall purchase or collect any junk in the City between the hours of 6:00 p.m. and 6:00 a.m.

7-1-613 Seller's Age Limit.

It is unlawful for any junk dealer or recycler to purchase or otherwise acquire, any junk from any person known to be under the age of eighteen (18) years.

7-1-614 Licenses and Badges.

Business licenses and badges will be issued in the manner established under the provisions of Chapter 1 or Chapter 3 of this Division and as modified by this Chapter, in Chapters 1 and 3.

7-1-615 Penalty.

Any person violating any of the terms of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment in the County Jail not to exceed six (6) months, or by both.

SECTION 12. CHAPTER 7 RETAIL SALES OF CONCEALABLE FIREARMS

7-1-700 License Required.

Before any person shall engage in the City in the business of retail selling of pistols, revolvers, and other firearms capable of being concealed upon the person, they shall have an approved license issued under the provisions of Chapter 1 of this Division and as modified by this Chapter.

(c) “Massage/bodywork” means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical electrical apparatus or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations.

(d) “Massage/bodywork establishment” means any premises, place of business, or membership club where there is conducted the business or activity of furnishing, providing or giving for a fee or other form of consideration, massage/bodywork, fomentation, bath, manipulation of the body, electric or magnetic treatment, alcohol rub or other similar massage/bodywork service or procedure.

(e) “Massage/bodywork technician” means any person, including the holder of a massage/bodywork establishment permit, who in connection with the activities of a massage/bodywork establishment administers to another person massage/bodywork, alcohol rub, fomentation, bath, electric or magnetic massage procedure, manipulation of the body, or any other similar procedure.

(f) “On-site therapy” means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the human body with the hands without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations, when the client remains fully clothed and at a location other than a massage/bodywork establishment, and is limited to business offices, sports complexes, convention centers, and public events.

(g) “Out call massage” means the engaging in or carrying on of massage/bodywork for a fee or any consideration at the location other than a duly licensed massage/bodywork establishment.

(h) “Person” shall mean any natural person, firm, partnership, corporation, association, or limited liability company.

(i) “Recognized school of massage” means any school or institution of learning which:

(1) Teaches the theory, ethics, practice, profession and work of massage/bodywork; and

(2) Requires a residence course of study to be given before the student shall be furnished with a diploma or certificate of leaning; and

(3) Has been approved pursuant to Section 94311 of the Education Code or, if said school is not located in California, has complied with the standards commensurate with those required in said Section 94311.

Any school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class, or courses of a massage/bodywork technician not approved by the California State Department of Education shall not be deemed a “recognized school of massage.”

(j) “Chief of Police” means the City Manager or the City Manager’s designee.

7-1-802 Permit Required.

No person shall operate a massage/bodywork establishment without first having obtained a massage/bodywork establishment permit from the Community Development Department. Only the massage/bodywork establishment permit holder, if licensed as a massage/bodywork technician, and the massage/bodywork establishment permit holder’s employees who possess a

valid massage/bodywork technician permit may offer massage/bodywork at the premises, place of business, or membership club cited in the massage/bodywork establishment permit. When necessary to accommodate the physical condition of a client, a massage/bodywork technician may perform massage/bodywork services in a suite, room or office other than that listed in the massage/bodywork establishment permit but located in the same building as that shown on the massage/bodywork establishment permit. Violation of any part of this section is a misdemeanor.

7-1-803 Application.

An application for a massage/bodywork establishment permit shall be filed with the Community Development Department and shall be in writing on forms provided by the City, and shall be accompanied by payment of a fee. Any such application shall be under oath and shall contain such information pertinent to the applicant and the business as the City may require. The applicant shall provide, with the application, two passport-size color photographs to be retained by the City and one passport-size photograph for each permit for which the applicant is applying. If an applicant applies for a massage/bodywork establishment permit and a massage/bodywork technician permit at the same time, on the same form, the applicant shall be required to pay one fee of one hundred fifty dollars (\$150.00) only, along with a one-time fee for fingerprinting, if applicable.

7-1-804 Fee.

The fee for a massage/bodywork establishment permit shall be one hundred fifty dollars (\$150.00) or as hereinafter established from time to time, after public notice, by resolution of the City Council. For new applicants, there shall be a one-time fee of twelve dollars (\$12.00) for fingerprinting the applicant.

7-1-805 Proof of Age

The permit applicant shall accompany the application with written evidence that the applicant is eighteen (18) years of age or older.

7-1-806 Age Requirement.

A massage/bodywork establishment permit shall not be issued to any person under eighteen (18) years of age or to a partnership, corporation, limited liability company, or association, any officer or manager of which is under eighteen (18) years of age.

7-1-807 Investigation.

- (a) The Director of Community Development shall refer all applications for a permit to the Chief of Police for investigation and recommendations.
- (b) The Chief of Police:
 - (1) May fingerprint the applicant; and
 - (2) Shall investigate and ascertain the following:
 - (i) Whether the applicant has, within three (3) years immediately preceding the date of filing of the application, been convicted in a court of competent jurisdiction of any offense which relates directly to the operation of a massage/bodywork establishment, whether as a massage/bodywork establishment owner or operator or as a massage/bodywork technician, or of

any felony the commission of which occurred on the premises of a massage/bodywork establishment; or

(ii) Whether the applicant has, within three (3) years immediately preceding the date of filing of the application, had any massage/bodywork establishment permit or massage/bodywork technician permit, which has been issued within the State of California, suspended or revoked; or

(iii) Whether the applicant has, within the ten (10) years immediately preceding the date of filing the application, completed a probationary period or has been released from prison (whichever period of time is longer), after having been convicted in a court of competent jurisdiction of any offense involving conduct which requires registration under Section 290 of the Penal Code, or of any violation of Sections 261.5, 266h, 266i, 314, 315, 316, 318 or 647(a), (b) or (d) of the Penal Code, or conspiracy or attempt to commit any such offense, or any offense which is the equivalent of any of the aforesaid offenses; or

(iv) Whether the applicant has, within ten (10) years immediately preceding the date of filing the application, completed a probationary period or has been released from prison (whichever period of time is longer) after having been convicted in a court of competent jurisdiction of any felony offense specified in Division 10 of the Health and Safety Code; or

(v) Whether the applicant has knowingly made a material misrepresentation in the application or the permit; or

(vi) Whether the applicant has, within three (3) years immediately preceding the date of filing the application, been convicted in a court of competent jurisdiction of an offense involving moral turpitude.

(c) The Chief of Police shall make a report of his findings to the Director of Community Development with his recommendations, if any.

(d) The Director of Community Development shall ascertain whether or not the premises to be used are suitable, proper, and adequate, and comply with all applicable laws, ordinances and regulations. The Director of Community Development shall make a report of the findings, together with his recommendations, if any. If the application is approved, the applicant will be issued a massage/bodywork establishment permit by the Community Development Department.

7-1-808 Business License.

Nothing herein shall constitute a waiver of the requirements of Chapter 1 of Division 1 of Title 7 of this code requiring issuance and possession of a valid business license.

7-1-809 Renewal of Permit.

A massage/bodywork establishment permit shall be valid for a period of three (3) years commencing with the date of issuance, unless such permit is revoked or suspended. Any person who holds a valid massage/bodywork establishment permit may apply for a new permit by applying for said new permit during the sixty (60) days preceding the expiration date of the current permit. The applicant shall apply pursuant to the procedures established in Sections 7-1-803 and 7-1-807.

7-1-810 Time Within Which to Grant or Deny Permit.

Within forty-five (45) days after the filing of an application for a permit, the Director of Community Development shall review the application, together with the report and recommendations of the reviewing agencies. The Director of Community Development shall grant said permit or notify the applicant that he proposes to deny the permit, together with the grounds for denial as set forth in Section 7-1-811 of this Chapter. Said notice shall be in writing and sent by mail to the applicant's mailing address set forth in the application. In the event of denial, the applicant may appeal such denial to the City Council by filing notice thereof with the City Clerk within thirty (30) days of the date the notice was mailed, and upon payment of fees as determined by the City Council for said appeal.

7-1-811 Grounds for Denial of a Permit.

The following grounds shall constitute grounds for denial of a massage/bodywork establishment permit:

- (a) The establishment as proposed by the applicant does not comply with all applicable laws including but not limited to the City's building, zoning and health regulations; or
- (b) The applicant has, within three (3) years immediately preceding the date of filing of the application, been convicted in a court of competent jurisdiction of any offense which related directly to the operation of a massage/bodywork establishment, whether as a massage/bodywork establishment operator or owner or as a massage/bodywork technician, or of any felony the commission of which has occurred on the premises of a massage/bodywork establishment; or
- (c) The applicant has, within three (3) years immediately preceding the date of filing the application, had a massage/bodywork establishment permit or massage/bodywork technician permit, or training license or permit, which was issued within the State of California, revoked; or
- (d) The applicant has, within three (3) years immediately preceding the date of filing the application, been convicted in a court of competent jurisdiction of an offense involving moral turpitude; or
- (e) The applicant has, within ten (10) years immediately preceding the date of filing the application, completed a probationary period or has been released from prison (whichever period of time is longer) after being convicted in a court of competent jurisdiction of any offense which required registration pursuant to Section 290 of the Penal Code, or convicted of a violation of Sections 261.5, 266h, 266i, 314, 315, 316, 318 or 647(a), (b) or (d) of the Penal Code, conspiracy or attempt to commit any such offense; or any offense which is equivalent to any of the aforesaid offenses;
- (f) The applicant has, within ten (10) years immediately preceding the date of filing the application, completed a probationary period or has been released from prison (whichever period of time is longer) after being convicted in a court of competent jurisdiction of any felony offense specified in Division 10 of Health and Safety Code; or
- (g) The applicant has knowingly made a material misrepresentation in the application for a permit.

7-1-812 Summary Suspension of a Permit.

Any permit issued hereunder may be summarily and temporarily suspended by the Chief of Police or the Director of Community Development in event that there is probable cause to

believe that the holder of such permit has committed any offense which would constitute grounds for denial of a permit pursuant to Section 7-1-811 of this Chapter, or has been arrested for any crime involving moral turpitude and such charges are currently pending in a court of competent jurisdiction. Any such suspension shall be accomplished by written notification of the suspension and the reasons therefor, sent by certified mail, return receipt requested, to the permittee's business address as approved in the permit or by personal service on the permittee or the permittee's agent.

Within two (2) working days thereafter, a copy of such notice, together with the reasons for the suspension, shall be transmitted to the City Clerk. If the permittee files an appeal as set forth in Section 7-1-814, the City Clerk shall place the matter on the agenda of the City Council according to the procedure set forth in Section 7-1-814.

7-1-813 Revocation by Director of Community Development.

The Director of Community Development may initiate revocation procedures by sending written notice setting forth grounds for such revocation. Said notice shall be sent by certified mail, return receipt requested, to the permittee's business address as approved in the permit or by personal service on the permittee or the permittee's agent.

Within two (2) working days hereafter, a copy of such notice, together with the reasons for the revocation, shall be transmitted to the City Clerk. The City Clerk shall place the matter on the agenda of the City Council according to the procedure set forth in Section 7-1-814.

7-1-814 Hearing by City Council Required- Time Limitations.

The City Council shall cause a hearing to be held:

- (a) Upon the appeal of an applicant from the decision of the Director of Community Development to deny the granting of a permit;
- (b) Upon the summary suspension of a permit pursuant to Section 7-1-811 of this Chapter if the permittee files an appeal as set forth in Section 7-1-815; or
- (c) Upon the Director of Community Development's determination to initiate revocation proceedings pursuant to Section 7-1-813 of this Chapter.

7-1-815 Hearing Procedure.

An to the City Council shall be made by filing a petition, within ten (10) working days of notification of suspension, with the Clerk of the City Council. The petition shall set forth the grounds of appeal and the reasons why such appeal should be granted. Upon receipt of a petition of appeal, or upon receipt of a notice of revocation, the City Clerk shall within ten (10) days following the filing of an appeal or notice, place the matter on the agenda of the City Council. If there is no meeting of the City Council within ten (10) days of the filing of the appeal or notice, the matter shall be placed on the agenda of the next meeting following the ten-day period.

The City Council shall set the matter for hearing within thirty (30) days and give the appellant, or, in the case of a notice of suspension or revocation, the permittee, notice of the time and place for said hearing. Said notice shall be given in person or by mail not later than fifteen (15) days prior to the hearing.

7-1-816- Grounds for Revocation and/or Suspension of a Massage/Bodywork Establishment Permit.

Any permit issued for a massage/bodywork establishment may be suspended and/or revoked after a hearing pursuant to Section 7-1-814, where it is found that:

- (a) Permittee has violated any provisions of this Chapter;
- (b) The permittee has been convicted in a court of competent jurisdiction of any offense constituting grounds for denial of the permit pursuant to Section 7-1-811 of this Chapter;
- (c) The permittee has engaged in fraud;
- (d) The permittee has continue to operate the massage/bodywork establishment after the permit has been suspended; or
- (e) The permittee has allowed a person to work as a massage/bodywork technician who:
 - (1) Does not have a valid massage/bodywork technician permit in their possession, or
 - (2) Has been convicted of any offense described in Section 7-1-815 of this Chapter, where the permittee has actual or constructive knowledge of such conviction.

7-1-817 Action by the City Council.

In considering and ruling upon the appeal of the petitioner, or in ruling upon a suspension or revocation, the City Council shall judge the merits of the matter based upon the grounds set forth in Section 7-1-816 of this Chapter. The City Council may reverse or affirm, wholly or in part, a decision, determination, or requirement of the Chief of Police or the Director of Community Development and may make such decisions or determinations or impose such conditions as the facts warrant. The decisions of the City Council shall be final. Any hearing may be continued from time to time.

7-1-818 Return of Permit-Closure of Premises.

Upon revocation or suspension, the permit shall be returned to the Director of Community Development for cancellation or holding pending the period of suspension. The Director of Community Development may direct or cause the premises to be closed and locked against use by the public when deemed reasonably necessary by the Director of Community Development in order to insure compliance with an order of suspension or revocation. Failure to return the permit when so ordered or failure to close the premises when so ordered shall constitute a misdemeanor.

7-1-819 Inspection.

Any person operating a massage/bodywork establishment shall be responsible for and provide that any premises used for the purposes of a massage/bodywork establishment shall, during business hours, be readily accessible and open for inspection, with just cause, by law enforcement officers for the purpose of locating evidence that would substantiate a violation of the provisions of this Chapter.

7-1-820 Hours.

No person shall conduct or operate a massage/bodywork establishment between the hours of ten-thirty p.m. and seven a.m., unless the massage/bodywork establishment is physically

located within another licensed business that is not a massage/bodywork establishment and that other business is regularly open for business between the hours of ten-thirty p.m. and seven a.m.

7-1-821 Alcoholic Beverages Prohibited.

No alcoholic beverages shall be sold, served or furnished on the premises of any massage/bodywork establishment. Violation of any part of this section shall constitute a misdemeanor.

7-1-822 Out-Call Massage Prohibited

No out-call massage/bodywork shall be performed unless authorized in writing by a physician, surgeon, chiropractor or osteopath duly licensed to practice in the State of California. Violation of this section shall constitute a misdemeanor. On-site therapy, as defined in Section 7-1-801, is not prohibited.

7-1-823 Business Name.

No person licensed to operate a massage/bodywork establishment shall operate under any name or conduct business under any designation not specified in the massage/bodywork establishment permit.

7-1-824 Change of Business Location.

Upon a request to change the location of a massage/bodywork establishment, an application to the Director of Community Development shall be made and such application shall be granted, provided all applicable provisions of this code have been complied with and the change of location fee, in the amount of fifty dollars (\$50.00) or as hereinafter established by resolution of the City Council, has been paid to the City.

7-1-825 Sale or Transfer of Interest in a Massage/Bodywork Establishment.

The sale or transfer of any interest in a massage/bodywork establishment shall be reported to the Director of Community Development at least ten (10) days prior to such sale or transfer. A new application, pursuant to Section 7-1-803 shall be filed and an investigation conducted pursuant to Section 7-1-807 as to the applicant obtaining such interest. If such applicant satisfies the requirements related to massage/bodywork establishment permit applicants, the existing permit shall be endorsed to include such applicant. A fee in the amount established by resolution of the City Council shall be paid to the City for the investigation necessitated by such sale or transfer.

7-1-826 Display of Permits.

The permittee shall display the massage/bodywork establishment permit, together with the permit of each massage/bodywork technician employed in the establishment, in an open and conspicuous place on the premises. Passport size photographs of the establishment and technician permittees shall be affixed to the respective permits on display pursuant to this section. Residence addresses of permittees need not be displayed. Violation of any part of this section shall constitute a misdemeanor.

7-1-827 Records.

The owner and/or operator of a massage/bodywork establishment shall maintain a current file of all persons employed therein. Said file shall contain true names and aliases used by such employees, the age, birthdate, height, weight, color of hair and eyes, home address, telephone number, social security number, date of employment and termination, name and address of the recognized school of massage attended, the date attended, and the written proof that the massage/bodywork technician has completed a residence course of study in massage/bodywork. The owner or operator shall make all records immediately available upon demand of any law enforcement officer.

7-1-828 List of Services.

A list of services available and the cost of such services shall be posted, in readily understandable language, in an open and conspicuous place on the premises. No massage/bodywork establishment nor any massage/bodywork technician may render, provide or offer to render or provide any service not listed in accordance with this section. Violation of any part of this section shall constitute a misdemeanor.

7-1-829 Requirements for Massage/Bodywork Establishments.

(a) Massage/bodywork schools operating as a massage/bodywork establishment shall possess a massage/bodywork establishment permit, massage/bodywork technician permit, and business license. Massage/bodywork schools that sublet individual space for the operation of a massage/bodywork establishment shall require a massage/bodywork establishment permit, massage/bodywork technician permit and a business license for each such massage/bodywork establishment. No person shall perform massage/bodywork on a member of the general public while students are on the premise during massage/bodywork classroom hours.

(b) Massage/bodywork establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Towels, coverings and linens shall not be used on more than one patron unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one patron. Soiled linens and paper towels shall be deposited in appropriate receptacles.

(c) Wet and dry heat rooms, steam or vapor rooms or cabinets, shower rooms and compartments, toilet rooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open. Bathtubs shall be thoroughly cleaned after each use with a disinfectant. All walls, ceilings, floors, and other physical facilities must be in good repair and maintained in a clean and sanitary condition.

(d) Instruments for massage/bodywork shall not be used on more than one patron unless the instrument is sterilized before each use by commonly accepted sterilization methods.

(e) All massage/bodywork technicians shall wear garments which cover the entire body, exclusive of the head, neck, arms, hands, and feet, while giving massage/bodywork. Such garments shall not be transparent.

(f) Condoms, spermicides and other items intended for birth control or to prevent the spread of sexually transmitted diseases, are permitted on the premises only if such items are the personal property of the owner, operator or an employee and such items are kept with the other personal items of the owner. In no case are said items of birth control or disease prevention permitted in areas accessible to the public.

(g) Violation of any part of this section shall constitute a misdemeanor.

7-1-830 Employment of Massage/Bodywork Technicians.

No permittee or operator of a massage/bodywork establishment shall allow or permit a person to administer massage/bodywork for such establishment unless said person possesses a valid massage/bodywork technician's permit under the provisions of this Chapter. It shall be the responsibility of the massage/bodywork establishment permittee to insure that each such person employed as a massage/bodywork technician shall first have obtained a valid permit under this Chapter. Violation of any part of this section shall constitute a misdemeanor.

7-1-831 Pre-existing Operators and Technicians.

All operators of existing massage/bodywork establishments, and all persons engaged in giving massage/bodywork in the City, upon the effective date of the ordinance codified in this Chapter, shall file an application and comply with all requirements of this Chapter within ninety (90) days.

7-1-832 Massage/Bodywork Technician's Permit Required.

It shall be unlawful for any person to act as a massage/bodywork technician as defined herein without first having acquired a valid massage/bodywork technician permit from the Director of Community Development and complying with all of the regulations contained in this Chapter. Violation of this section shall constitute a misdemeanor.

7-1-833 Eligibility.

Any person eligible for a massage/bodywork technician permit must have completed, prior to applying for the permit, a residence course of study in massage/bodywork of not less than three hundred (300) hours, at a recognized school of massage. Technicians operating a pre-existing massage/bodywork establishment, with a valid City business license for massage/bodywork, are required to provide proof that, prior to applying for the permit, the applicant has completed a residence course of study in massage/bodywork of not less than one hundred (100) hours of study at a recognized school of massage, and must show proof of having completed three hundred (300) hours of study prior to applying for renewal of the permit.

7-1-834 Application for a Massage/Bodywork Technician Permit.

An application for a massage/bodywork technician permit shall be filed with the Director of Community Development and shall be in writing on forms provided by the City and shall be accompanied by payment of a fee. Any such application shall be under oath and shall contain such information pertinent to the application as the City may require. If the applicant applies for a massage/bodywork establishment permit and a massage/bodywork technician permit at the same time, on the same form, the applicant shall be required to pay one fee of one hundred fifty dollars (\$150.00) only, along with a one-time fingerprinting fee if applicable.

7-1-835 Fee.

The fee for a massage/bodywork technician permit shall be one hundred fifty dollars (\$150.00) or as hereinafter established, after public notice, by resolution of the City Council. New applicants shall pay a one-time fee of twelve dollars (\$12.00) for fingerprinting.

7-1-836 Items to Accompany Application for Massage/Bodywork Technician Permit.

The following items shall accompany the application for a massage/bodywork technician permit:

- (a) Written evidence that the applicant is at least eighteen (18) years of age; and
- (b) The name and address of the recognized school of massage attended and written proof that the applicant has completed the residence course of study in massage/bodywork as required by Section 7-1-833 of this Chapter; and
- (c) Two passport-size color photographs to be retained by the City and one passport-size color photograph for each permit for which the applicant is applying.

7-1-837 Investigation by Director of Community Development.

- (a) The Director of Community Development shall refer all applications for massage/bodywork technician permits to the Chief of Police for investigation and recommendation.
- (b) The Chief of Police:
 - (1) May fingerprint the applicant; and
 - (2) Shall investigate and ascertain:
 - (i) Whether the applicant has, within three (3) years immediately preceding the date of filing the application, had any massage/bodywork establishment permit or massage/bodywork technician permit suspended or revoked;
 - (ii) Whether the applicant has, within ten (10) years immediately preceding the date of filing the application, completed a probationary period or has been released from prison (whichever period of time is longer) after being convicted in a court of competent jurisdiction of any offense that requires registration under Section 290 of the Penal Code or any violation of Sections 261.5, 266h, 266i, 314, 315, 316, 318 or 647(a), (b) or (d) of the Penal Code, or conspiracy or attempt to commit any such offense, or any offense which is equivalent to any of the aforesaid offenses;
 - (iii) Whether the applicant has knowingly made a material misstatement in the application;
 - (iv) Whether the applicant has, within three (3) years immediately preceding the date of filing the application, been convicted in a court of competent jurisdiction of a crime of moral turpitude;
 - (v) Whether the applicant has, within ten (10) years immediately preceding the date of filing the application, completed a probationary period or has been released from prison (whichever period of time is longer) after being convicted in a court of competent jurisdiction of any felony offense specified in Division 10 of the Health and Safety Code.
- (c) The Chief of Police shall make a report of the findings to the Director of Community Development together with his recommendations, if any. If the application or the investigation reveals that the applicant currently has charges of a crime involving moral turpitude

pending in a court of competent jurisdiction, the permit shall not be issued unless and until said charges are dismissed or the applicant is found not guilty.

7-1-838 Time Within Which to Grant or Deby a Massage/Bodywork Technician Permit

Within forty-five (45) days after the filing of an application for a massage/bodywork technician permit, the Director of Community Development shall review the application, together with the report and recommendation of the Chief of Police, and shall grant said permit or shall notify the applicant of the denial of the permit and the grounds for such denial. If the permit is granted, the applicant shall be issued a massage/bodywork technician permit issued by the Community Development Department. If a notice of denial is issued, said notice shall be in writing and sent by certified mail to the applicant's mailing address as set forth in the application. In the event of denial of the permit, the applicant may appeal said denial to the City Council by filing notice thereof with the City Clerk within thirty (30) days of the date the notice was mailed. The City Clerk shall set the matter on the agenda of the City Council as set forth in Section 7-1-844.

7-1-839 Grounds for Denial.

The following shall constitute grounds for denial of a massage/bodywork technician's permit:

- (1) The applicant has, within three (3) years immediately preceding the date of the filing of the application, been convicted in a court of competent jurisdiction of any offense which relates directly to the operation of a massage/bodywork establishment or of any felony, the commission of which occurred on the premises of a massage/bodywork establishment; or
- (2) The applicant has, within three (3) years immediately preceding the date of filing the application, had any massage/bodywork establishment permit or massage/bodywork technician permit which was issued within the State of California suspended or revoked; or
- (3) The applicant has, within ten (10) years immediately preceding the date of filing the application, completed a probationary period or was released from prison (whichever period of time is longer) after being convicted in a court of competent jurisdiction of any offense that required registration under Section 290 of the Penal Code or was convicted of any violation of Sections 261.5, 266h, 266i, 314, 315, 316, 318 or 647(a), (b) or (d) of the Penal Code, or conspiracy or attempt to commit any such offense, or any offense which is equivalent to any of the aforesaid offenses; or
- (4) The applicant has, within ten (10) years immediately preceding the date of filing the application, completed a probationary period or has been released from prison (whichever period of time is longer) after being convicted in a court of competent jurisdiction of any felony offense specified in Division 10 of the Health and Safety Code; or
- (5) The applicant has knowingly made a material misstatement in the application; or
- (6) The applicant has, within three (3) years immediately preceding the date of filing the application, been convicted in a court of competent jurisdiction of an offense of theft or a series of petty thefts.

7-1-840 Age Requirement for Massage/Bodywork Technician.

A massage/bodywork technician permit may not be issued to any person under the age of eighteen (18) years.

7-1-841 Summary Suspension of Technician's Permit.

Any massage/bodywork technician permit issued hereunder may be summarily and temporarily suspended by the Chief of Police or the Director of Community Development in the event that it is determined that the holder of said permit has been arrested and charged in any court of competent jurisdiction with any offense which would constitute grounds for denial of a permit pursuant to Section 7-1-845 of this Chapter, or has been arrested for any crime involving moral turpitude and such charges are currently pending in a court of competent jurisdiction.

7-1-842 Notice of Summary Suspension.

Summary suspensions shall be accomplished by written notice of the suspension and the reasons therefor sent by certified mail, return receipt requested, to the permittee's residence address as set forth in the application or by personal service upon the permittee. A copy of the notice, together with the reasons for suspension, shall be transmitted to the City Clerk within two working days of sending the notice to the permittee. If the permittee files an appeal pursuant to the provisions of Section 7-1-845 the City Clerk shall set the matter on the agenda of the City Council as set forth in Section 7-1-845.

7-1-843 Revocation by Director of Community Development.

The Director of Community Development may initiate revocation procedures by sending written notice setting forth the grounds for such revocation. Said notice shall be sent by certified mail, return receipt requested, to the permittee's residence address as set forth in the application for a massage/bodywork technician permit or by personal service upon the permittee. A copy of the notice, together with the reasons for revocation, shall be transmitted to the City Clerk within two (2) working days of sending the notice to the permittee. The City Clerk shall set the matter on the agenda of the City Council as set forth in Section 7-1-844.

7-1-844 Hearing by City Council- Time Limitations

The City Council shall cause a hearing to be held:

- (a) Upon appeal of an applicant from a decision of the Director of Community Development to deny granting a permit;
- (b) Upon the summary suspension of a permit pursuant to Section 7-1-841 of this Chapter if the permittee files an appeal pursuant to Section 7-1-845;
- (c) Upon the determination by the Director of Community Development to initiate revocation proceedings pursuant to Section 7--1-843 of this Chapter.

7-1-845 Hearing Procedure.

An appeal to the City Council shall be made by filing a petition, within ten (10) working days of notification, with the Clerk of the City Council. The petition shall set forth the grounds of appeal and the reasons why such appeal should be granted. Upon receipt of a petition of appeal, or upon receipt of a notice of revocation, the City Clerk shall within ten (10) days following the filing of an appeal or notice, place the matter on the agenda of the City Council. If there is no meeting of the City Council within ten (10) days of the filing of the appeal or notice, the matter shall be placed on the agenda of the next meeting following the ten-day period.

The City Council shall set the matter for hearing within thirty (30) days and give the applicant, or, in the case of a notice of suspension or revocation, the permittee, notice of the time and place for said hearing. Said notice shall be given in person or by mail not later than fifteen (15) days prior to the hearing.

7-1-846 Grounds for Revocation or Suspension of Massage/Bodywork Technician Permit.

A massage/bodywork technician permit may be suspended or revoked by the City Council after hearing pursuant to Section 7-1-845 where it is found that:

- (a) The permittee has violated any provision of this Chapter; or
- (b) The permittee has been convicted in a court of competent jurisdiction of an offense constituting grounds for denial of the permit pursuant to Section 7-1-811; or
- (c) The permittee has continued to function as a massage/bodywork technician after the permit has been suspended.

7-1-847 Return of Permit.

Upon revocation or suspension, the massage/bodywork technician permit shall be returned to the Director of Community Development for cancellation or holding during the period of suspension. Violation of this section shall constitute a misdemeanor.

7-1-848 Action by City Council is Final.

Action taken by the City Council with respect to the granting, denial, suspension or revocation of massage/bodywork technician permits shall be final and conclusive.

7-1-849 Renewal of Permit.

A massage/bodywork technician permit shall be valid for a three-year period commencing with the date of issuance, unless such permit is revoked or suspended. Any person who holds a valid massage/bodywork technician permit may request a new permit by applying for said new permit during the sixty (60) days preceding the expiration date of the current permit. The applicant shall apply pursuant to the provisions of Sections 7-1-834 and 7-1-836.

7-1-850 Replacement of Permit.

A lost, stolen or damaged massage/bodywork establishment permit or massage/bodywork technician permit may be replaced by providing proof of identity to the Community Development Department, applying for a replacement permit, and paying a replacement permit fee. The application for a replacement permit must be accompanied by one passport-size color photograph for each permit for which the applicant is applying.

7-1-851 Fee.

The fee for a replacement massage/bodywork establishment permit or a massage/bodywork technician permit shall be fifty dollars (\$50.00), or as hereinafter set by resolution of the City Council.

7-1-852 Exemptions.

The provisions of this Chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

- (a) Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists (state licensed professions or vocations) who are duly state licensed to practice their respective professions in the State of California;
- (b) Barbers, beauticians and cosmetologists who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses; except that this exemption shall apply only to the massaging of the neck, face and/or scalp of the customers;
- (c) Hospitals, nursing homes, sanatoriums or any other health facility duly licensed by the State of California;
- (d) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment;
- (e) Trainers of amateur, semi-professional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event such as road races, track meets, triathlons, biathlons or similar single-occurrence athletic or recreational events.

7-1-853 Nuisance to Maintain Massage/Bodywork Establishment in Violation of this Chapter.

Any massage/bodywork establishment maintained in violation of the provisions of this Chapter is a public nuisance. Pursuant to Section 1-2-414, the City shall be reimbursed for all times, services and materials needed to abate the nuisance.

7-1-854 Infraction or Misdemeanor to Violate the Provisions of this Chapter.

Unless otherwise noted, any person who violates the provisions of this Chapter may be prosecuted for an infraction.

7-1-855 Penalty for Violation of this Chapter.

Each violation shall be a new and separate offense.

- (a) Infractions. A permittee who is guilty of an infraction for violating the provisions of this Chapter shall be punished as follows:
 - (1) For the first violation, a fine of one hundred dollars (\$100.00), plus any additional penalties assessed by the court;
 - (2) For the second violation, a fine of two hundred dollars (\$200.00), plus any additional penalties assessed by the court;
 - (3) For the third violation, a fine of two hundred fifty dollars (\$250.00), plus any additional penalties assessed by the court.
 - (4) Each violation in excess of three is a misdemeanor.
- (b) Misdemeanors. The punishment for a permittee guilty of a misdemeanor for violating the provisions of this Chapter shall be:
 - (1) A fine of not more than one thousand dollars (\$1,000.00); or
 - (2) Imprisonment in the County jail or not a term of not more than six (6) months; or
 - (3) Both a fine and imprisonment.

(c) Other Remedies. This Chapter does not preclude the enforcement agency, the City Attorney, the Attorney General, law enforcement agencies, or other Federal, State or local officers and employees from pursuing other remedies provided by law.

SECTION 14. DIVISION 2. FRANCHISES

SECTION 15. CHAPTER 1 CABLE TELEVISION FRANCHISE

7-2-100 Intent.

(a) The City is authorized to grant one or more non-exclusive franchises to construct, operate, maintain, and reconstruct cable television systems within the City limits.

(b) The City Council finds that the development of cable television and cable systems has the potential of having great benefit and impact upon the residents of the City of Mountain House. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers which should be vested in the City and such persons as the City shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any franchises issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

7-2-101 Definitions.

For the purpose of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

(a) “Affiliated person” means each person who falls into one or more of the following categories: (i) each person having, directly or indirectly, a controlling interest in the company; (ii) each person in which the company has, directly or indirectly, a controlling interest; (iii) each officer, director, general partner, limited partner holding an interest of twenty-five percent (25%) or more, joint venturer or joint venture partner, of the company; and (iv) each person, directly or indirectly, controlling, controlled by, or under common control with, the company; provided that “affiliated person” shall in no event mean the franchising authority, any limited partner holding an interest of less than twenty-five percent (25%) of the company, or any creditor of the company solely by virtue of its status as a creditor and which is not otherwise an affiliated person by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, the company.

(b) “Basic cable service” means any service tier which includes the retransmission of local television broadcast signals.

(c) “Cable Act” means Title VI of the Communications Act of 1934, as amended, 47 U.S.C. Sections 521 et seq.

(d) “Cable television system,” “system,” “CATV system,” or “cable system,” means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service, which includes video

programming and which is provided to multiple subscribers within a community, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
 - (2) A facility that serves subscribers without using any public right-of way;
 - (3) A facility of a common carrier which is subject, in whole or in part, to Title II of the 1934 Communications Act, as amended, except that such facility shall be considered a cable system (other than for purposes of Section 621 (c) of the Cable Act (47 U.S.C. 541 (c)) to the extent such a facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services.
 - (4) An open video system that complies with Section 653 of the Cable Act, 47 U.S.C. Section 573; or
 - (5) Any facilities of any electric utility used solely for operating its electric utility system.
- (e) “Cable service” or “service” means the one-way transmission to subscribers of video programming or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, and shall include Internet service provided over a cable system.
- (f) “Channel” or “cable channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the Federal Communications Commission.
- (g) “City Council” means the City Council of the City of Mountain House.
- (h) “FCC” means the Federal Communications Commission, its designee, or any successor thereto.
- (i) “Franchise” means an initial authorization, or renewal thereof, issued by the City Council, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system within the City.
- (j) “Franchise agreement” means a franchise grant or a contractual agreement, containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.
- (k) “Franchise fee” means any tax, fee or assessment of any kind imposed by the City or other governmental entity on a grantee or cable subscriber, or both, solely because of their status as such. The term “franchise fee” does not include:
- (1) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);
 - (2) Capital costs which are required by the franchise to be incurred by grantee for public, educational, or governmental access facilities;
 - (3) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
 - (4) Any fee imposed under Title 17, United States Code.
- (l) “Franchise documents” means this chapter and any franchise agreement.

(m) “Grantee” means any person receiving a franchise pursuant to this chapter and under the granting franchise ordinance or agreement, and its lawful successor, transferee or assignee.

(n) “Grantor” or “City” means the City of Mountain House as represented by the City Council or any delegate acting within the scope of its jurisdiction.

(o) “Gross receipts” means, unless otherwise specified in the franchise documents, all revenue generated, directly or indirectly, by the grantee, its affiliates, subsidiaries, parent, and any other person or entity, from or in connection with the distribution of any cable service on the system or the provision of any activity related to cable service in connection with the system, including, without limitation, all amounts billed in a month, and including also, among other things, late fees and other revenues that may be posted in the general ledger as an offset to an expense account and all earned and accrued revenues. “Gross receipts” shall also include the value of any free services provided by the grantee (other than those authorized or required by this agreement or provided at the discretion of the company as a contribution to a charitable or other organization exempt from taxation as an entity described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended) which value of free services shall include, in the case of free cable services, the retail value of all tiers of cable service actually provided. “Gross receipts” shall also include all revenue of any other person, including, without limitation, leased or access channel programmers, which is generated, directly or indirectly, from or in connection with the distribution of any cable service over the system or the provision of any activity related to cable service in connection with the system. “Gross receipts” shall also specifically include: (i) the fair market value of any nonmonetary (i.e., barter) transactions between the grantee and any person, other than an affiliated person, but not less than the customary prices paid in connection with equivalent transactions; (ii) the fair market value of any nonmonetary (i.e., barter) transactions between the company and any affiliated persons but not less than the customary prices paid in connection with equivalent transactions conducted with persons who are not affiliated persons; (iii) revenue which represents or can be attributed to a subscriber fee or a payment for use of the system for the sale of merchandise through any cable service distributed over the system; (iv) franchise fees generated from subscribers; (v) revenue generated from the provision of Internet Access, Internet services, or online services by means of the system and revenue generated from the provision of bandwidth and other facilities or equipment of the system used to provide such access or services; and (vi) any revenue generated by the grantee or by any affiliated person, as reasonably determined from time to time by the City, through any means which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the City for the franchise granted pursuant to this chapter. “Gross receipts” shall also include all advertising revenue which is generated directly or indirectly by the company, any affiliated person, or any other person from or in connection with the distribution of any cable service over the system or the provision of any activity related to cable service in connection with the system. Advertising revenues from an affiliated person shall be grossed up as if the grantee had received the advertising revenue directly, if the advertising revenue received from the affiliated person is only net advertising revenue. “Gross receipts” shall not include: (i) the revenue of any person, including, without limitation, a supplier of programming to the grantee, to the extent that said revenue is also included in gross receipts of the grantee; (ii) the revenue of the grantee or any other person which is generated directly from the sale of any merchandise through any cable service distributed over the system (other than that portion of such revenue which represents or can be attributed to a subscriber fee or a payment for the use of the cable system for the sale of

such merchandise (such as, for example, the portion of such payment attributable to a commission for the grantee or an affiliated person), which portion shall be included in gross receipts); (iii) taxes imposed by law on subscribers which the grantee is obligated to collect (it being the intent of this chapter that franchise fees under this chapter are not considered taxes); (iv) amounts collected by the grantee from subscribers on behalf of leased or access channel programmers, other than affiliated persons, to the extent that all of the amounts collected (in excess of the amounts deducted pursuant to Section MH-7-2021 of this chapter and paid to the City) are passed on by the grantee to said programmers; (v) any investment income earned by the grantee; (vi) the revenue of any affiliated person which represents standard and reasonable amounts paid by the grantee to said affiliated person for ordinary and necessary business expenses of the grantee, including, without limitation, professional service fees and insurance or bond premiums; (vii) advertising commissions deducted by advertising agencies before advertising revenues are paid over to the grantee; and (viii) bad debt write-offs, provided, however, that bad debt recoveries shall be included to the extent such recoveries are related to sources of revenue included as gross receipts.

(p) “Initial service area” means the area of the City which will receive service initially, as set forth in the franchise agreement.

(q) “Installation” means the connection of the system to subscribers’ terminals.

(r) “Institutional network” means the cable or cables, electronics and ancillary equipment for governmental use, educational use, or both, provided pursuant to a franchise agreement.

(s) “Person” means an individual, partnership, association, joint stock company, joint venture, trust, corporation or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the City.

(t) “Public, educational or government access facilities” or “PEG access facilities” means the total of the following:

(1) Channel capacity designated for public, educational, or governmental use; and

(2) Facilities and equipment or the use of such channel capacity;

(u) “Sections” means any section, subsection, or provision of this chapter.

(v) “Service area” or “franchise area” means the geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in the agreement.

(w) “Service tier” means a category of cable service or other services provided by a grantee and for which a separate rate is charged by the grantee.

(x) “State” means the State of California.

(y) “Street” means the surface of and the space above and below each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the grantor shall permit to be included within the definition of street from time to time.

(z) “Subscriber” means any person who or which elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connections with cable system.

(aa) “Telecommunications service” means “telecommunications service” as that term is defined under Section 3 of the Federal Communications Act of 1934, 47 U.S.C. 153(46),

except that the term shall not include any institutional network for governmental or educational use as required by a franchise agreement.

7-2-102 Franchise to Install and Operate.

(a) A franchise granted by the City under the provisions of this chapter shall encompass the following purposes:

(1) To provide that grantee may engage in the business of providing cable service to subscribers within the designated service area.

(2) To provide that grantee may erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain cable, lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of a cable system in, on, over, under, upon, along, and across streets or other public places within the designated, service area as long as such equipment is maintained in accordance with FCC, PUC, Federal, State, County, and City standards for such equipment.

(3) To provide that grantee may maintain and operate a cable television system for the origination, reception, transmission, amplification, distribution and delivery of cable services.

(4) If required by the franchise, to provide that the grantee provide an institutional network.

(5) To set forth the obligations of a grantee under the franchise.

(b) A franchise granted pursuant to this chapter only authorizes a grantee to provide cable services and, if required by a franchise agreement, an institutional network for use by the City, and does not authorize any other services, including, but not limited to, telecommunications services.

7-2-103 Franchise Required.

It is unlawful for any person to construct, install, maintain, or operate a cable television system in the City without a properly granted franchise awarded pursuant to the provisions of this chapter.

7-2-104 Term of the Franchise.

(a) A franchise granted hereunder shall be for a term established in the franchise agreement, but in no case longer than fifteen (15) years, commencing on the grantor's adoption of an ordinance or resolution authorizing the franchise. The first day of the term shall from time to time be referred to as the "effective date" of the franchise.

(b) A franchise granted hereunder may be renewed upon application by the grantee pursuant to the provisions of applicable State and Federal law and of this chapter. Nothing in this chapter shall be interpreted to require the renewal of a franchise.

7-2-105 Franchise Area.

Any franchise shall be valid within the territorial limits of the City, and within any area added to the City during the term of the franchise, unless otherwise specified in the franchise agreement.

7-2-106 Federal or State Jurisdiction.

(a) This chapter shall not be construed in a manner prohibited by applicable Federal and State laws. Federal and State law, and any modification of such Federal or State law, shall to the extent applicable be considered part of this chapter as of the effective date of this chapter or the effective date of any modification of such Federal or State law.

(b) In the event that the State or Federal government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit the City's authority, grantor may, if it so elects, adopt rules and regulations in these areas.

(c) This chapter shall apply to all franchises granted or renewed after the effective date of this chapter. It shall further apply to the extent permitted by applicable Federal or State law to all existing franchises granted prior to the effective date of this chapter.

7-2-107 Restrictions Against Assignments and Transfers.

(A) Grantee, or any person holding control of or any interest in the grantee, a, system or a franchise, shall not sell, transfer, lease, assign, sublet, pledge, or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, the system, any guaranty of the performance of the grantee's obligations pursuant to the franchise, any part of the capacity of the system, or any title, either legal or equitable, in the franchise or system without the prior consent of the City and then only upon such terms and conditions as may be prescribed by the City, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise or the system without the consent of the City shall be null and void. The granting of a security interest in any grantee assets, or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this section.

(b) The requirements of Subsection (a) of this section shall apply to any change in the control of grantee, a franchise or a system. The word "control" as used herein is not limited to major stockholders or partnership interests, but includes actual working control in whatever manner exercised. A rebuttable presumption of the existence of a change in control of the system, the grantee or the franchise shall arise from the beneficial ownership, directly or indirectly, by any person or group of persons acting in concert (other than underwriters during the period in which they are offering securities to the public) of five percent (5%) or more of the grantee or the system or the franchise. "Control" as used herein may be held simultaneously by more than one person or group of persons.

(c) Grantee shall notify grantor in writing of any pending foreclosure or any other pending judicial sale of all or a substantial part of the franchise property of the grantee or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notifications shall be considered by grantor as notice of a pending change in control of ownership of the franchise and the provisions under this section governing the consent of grantor to such change in control ownership shall apply.

(d) For the purpose of determining whether it shall consent to any assignment, transfer, change in control, or other transaction subject to Subsections (a) and (b) of this section, grantor may inquire into the qualifications of the prospective transferee or controlling party, and grantee shall assist grantor in any such inquiry. In seeking grantor's consent to any change of ownership or control, grantee shall have the responsibility of insuring that the transferee

completes an application in the form and substance reasonably satisfactory to grantor, which application shall include information required for a franchise application pursuant to this chapter. An application shall be submitted to grantor not less than one hundred twenty (120) days prior to the date of transfer. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If, after considering the legal, financial, character, technical and other public interest qualities of the applicant and determining that they are satisfactory, the grantor finds that such transfer or change of control is acceptable, the grantor shall transfer and assign the rights and obligations of such franchise as may be in the public interest. The consent of the grantor to such assignment, transfer or change in control shall not be unreasonably withheld.

(e) The time period under Section 617 of the Cable Act, 47 U.S.C. Section 537, for the City to review a request for a transfer or assignment subject to this section shall not commence until the grantee has submitted the FCC Form 394 and such information it is required to submit pursuant to this section and the franchise agreement.

(f) To the extent not prohibited by law, a reasonable non-refundable transfer fee established by the City shall accompany the application for an assignment or transfer to cover all costs associated with processing and reviewing the application, including without limitation, costs of administrative review, financial, legal and technical evaluation of the application, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the fee, the applicant shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs.

(g) Subject to the City's rights under this chapter and the franchise documents, any financial institution having a pledge of the grantee or its assets for the advancement of money for the construction and/or operation of the cable system shall have the right to notify the grantor that it or its designee satisfactory to the grantor shall take control of and operate the cable television system in accordance with the terms of this chapter and the franchise documents, in the event of a grantee defaulting in its financial obligations. Further, said financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will insure continued service and compliance with this chapter and all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one (1) year unless extended by the grantor in its discretion and during said period of time it shall have the right to petition the grantor, in accordance with the requirements of this section, to transfer the franchise to a person acceptable to the grantor.

7-2-108 Geographical Coverage.

(a) Grantee shall design, construct and maintain the cable television system to have the capability to pass every parcel in the City, subject to any service area line extension requirements of the franchise documents.

(b) After service has been established by activating trunk and/or distribution cables for any service area, grantee shall provide service to any requesting subscriber within that service area within seven (7) days from the request, provided that the grantee is able to secure all rights-of-way and encroachment permits necessary to extend service to such subscriber within such

seven (7) day period on reasonable terms and conditions mutually acceptable to grantee and such subscriber.

(c) No person or entity in the existing service area of the grantee shall be arbitrarily refused service; provided, however, that grantee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or monthly service charge or any other charges as provided in this chapter or any resolution granting the franchise. Grantee shall assure that access to cable services is not denied to any group of potential residential cable subscribers because of the income of the residents in the area where the group resides.

7-2-109 Non-Exclusive Franchise.

Any franchise granted shall be non-exclusive. The grantor specifically reserves the right to itself provide cable service or to operate a cable television system or any component thereof, or grant, at any time, such additional franchises for a cable television system or any component thereof, as it deems appropriate, subject to applicable State and Federal law.

7-2-110 Multiple Franchises.

(a) Grantor may grant any number of franchises in the service area. Grantor may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:

(1) The capacity of the public rights-of-way to accommodate multiple coaxial cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewerage; and

(2) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.

(b) Each grantee awarded a franchise to serve the entire City shall offer service to all parcels in the City, in accordance with construction and service schedules mutually agreed upon between grantor and grantee, and consistent with applicable law. Grantor shall give grantee a reasonable period of time for grantee's cable system to become capable of providing cable service to all households in the service area.

(c) Grantor may require that any new grantee be responsible for its own underground trenching and the costs associated therewith, if, in grantor's opinion, the rights-of-way in any particular area cannot feasibly accommodate additional cables.

7-2-111 Franchise Applications.

Any person desiring a franchise for a cable television system shall file an application with the City. A reasonable non-refundable application fee established by the City shall accompany the application to cover all costs associated with processing, reviewing and acting on the application, including without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, an applicant shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs. It shall be the responsibility of each applicant for a franchise to comply with all applicable laws, ordinances, resolutions, rules,

regulations and other directives of the City and any Federal, State or local governmental authority having jurisdiction.

7-2-112 Applications—Contents.

- (a) An application for a franchise for a cable television system shall contain, where applicable:
- (1) A statement as to the proposed franchise and service area;
 - (2) Statement or schedule of cable services and the proposed rates and charges to subscribers for installation and services, and a copy of the proposed service agreement between the grantee and its subscribers;
 - (3) Resume of prior history of applicant, including the expertise (including, but not limited to, the technical expertise) of the applicant in the cable television field;
 - (4) The names, residence, and business addresses of partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each shareholder holding five (5) percent or more of the voting rights, if a corporation;
 - (5) The name, residence, and business addresses of officers, directors and managing employees of applicant, together with a description of the background of each such person;
 - (6) The name and address of the applicant and any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant;
 - (7) A statement setting forth all agreements and understandings, whether written, oral or implied, existing between the applicant and any person who is a party in interest with respect to the proposed franchise or the proposed cable television system (if a franchise is granted to a person posing as a front or as the representative of another person, and that information is not disclosed in the original application, the franchise shall be deemed void and of no force and effect);
 - (8) A detailed and complete financial statement of the applicant, certified by an independent certified public accountant, for the fiscal year immediately preceding the date of the application, and (i) a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the City, 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 cable system in the City, or (ii) a statement from an independent certified public accountant certifying that the applicant has available sufficient free, net, and uncommitted cash resources to construct and operate the proposed cable system in the City;
 - (9) A detailed financial plan (pro forma) describing for each year of the franchise, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and a sources and uses of funds statement;
 - (10) 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 franchised cable system(s); and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof;
 - (11) Proposed construction and service schedule;

(12) A description of the manner in which the applicant proposes to construct, install, maintain and operate the cable television system and the extent and manner in which existing and/or future facilities and/or public utilities will be used for the system;

(13) A description of the equipment and facilities proposed to be constructed, installed or maintained therein and the proposed location thereof, which description shall include, among other things, (i) 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 serviced; and (ii) a detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant;

(14) 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 the applicant and any person, firm, or corporation which materially relate or pertain to or depend upon the application and the granting of the franchise;

(15) A copy of any agreement covering the franchise area, if existing between the applicant and any utility providing for the use of any facilities of the utility, including but not limited to, poles, lines, or conduits; and

(16) Any reasonable additional information that the City deems applicable. The City Council may, at any time, demand, and the applicant shall then provide, such supplementary, additional or other information as the City Council deemed reasonably necessary to determine whether the requested franchise should be granted. The application may be amended with the consent of the City Council at any time prior to granting the franchise.

(b) In the event that the applicant fails to submit an application which contains the items specified in this section, at the time of submission to the City of Mountain House, the applicant shall be so notified in writing by the City of Mountain House within forty-five (45) days of receipt of the application by the City. The applicant has the option, upon such notification by the City of Mountain House, to either request that the application be set for public hearing before the City Council in its incomplete form or shall have one (1) year to correct any incompleteness. If the applicant neither requests a public hearing nor supplies an application containing the requirements specified in this section, within one (1) year of the notification of incompleteness, the application will be considered lapsed and closed. The applicant is not precluded from submitting a new application at any time, upon payment of a new application fee. Any new application shall be complete of itself without reference to any other prior application which has lapsed.

7-2-113 Consideration, Approval and Acceptance of Applications.

(a) The City may make such investigations and take or authorize the taking of such other steps as the City Council deems necessary or appropriate to consider and act on applications for franchises and determine whether a franchise should be granted to an applicant, and may require the applicant to furnish additional information and data for this purpose. In considering applications, the City Council may seek advice from other city officials or bodies, from such other advisory bodies as it may establish or determine appropriate, or from the public, and may request the preparation of one or more reports to be submitted to the City Council, which may include recommendations with respect to such applications.

(b) The City Council may authorize negotiations between City officials and applicants to determine whether the City and such applicants are able to reach agreement on the

terms of the proposed franchise. The authorization of such negotiations shall not in any manner obligate the City Council to grant a franchise.

(c) Upon receipt and review of any application for a franchise and after any negotiations authorized by the City Council, the City Manager shall prepare a report and make recommendations respecting such application to the City Council.

(d) A public hearing shall be set prior to any franchise grant, at a time and date approved by the City Council. Within thirty (30) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and if granted, subject to what conditions.

(e) Upon consideration of any application, the City Council may refuse to grant the requested franchise, except that the City Council may not unreasonably refuse to award an additional competitive franchise, or the City Council may by resolution grant a franchise for a CATV system to any applicant as may appear from its application to be in the opinion of the City Council qualified to render good and efficient CATV service to subscribers in the proposed franchise area. The application submitted, together with any amendments, and this chapter shall constitute and form part of the franchise if granted.

(f) A franchise for a CATV system shall only be awarded to an applicant following full consideration by the City Council of the applicant's legal, character, financial, technical and other qualifications, applicant's experience, the adequacy and feasibility of construction arrangements, and any other consideration that will safeguard the public interest, such as, but not limited to: (i) the adequacy of proposed compensation to be paid to the City, including the value of any facilities and services offered by the applicant to the City; (ii) the ability of the applicant to maintain the property of the City in good condition throughout the term of the franchise; (iii) the value and efficiency to the City and its residents of cable services to be provided, including the type and diversity of cable services to be provided, as well as alternatives to those services and services that may be precluded by the grant of this franchise; and (iv) the willingness and ability of the applicant to meet construction and physical requirements and to abide by all purpose and policy conditions, limitations and requirements with respect to the franchise. The City reserves the right to waive any or all requirements under this section when it determines that the best interests of the City may be served thereby and such is not prohibited by applicable law and may, if it so desires, request new or additional proposals.

(g) Within thirty (30) days after the date of a City Council resolution awarding a franchise, or within such extended period of time as the City Council may authorize, which authorization shall not be unreasonably withheld, the grantee shall file with the City of Mountain House Administrator its written acceptance in forms satisfactory to the City Attorney, of the franchise, together with the required bond and insurance policies, and its agreement to be bound by and to comply with and to do all things required of it by the provisions of this chapter and the franchise. The acceptance and agreement shall be acknowledged by the grantee before a notary public and shall be in form and content satisfactory to, and approved by, the City of Mountain House Counsel. In the event the grantee does not meet the deadlines provided in this section the grantee's application and award of a franchise will be considered automatically expired.

7-2-114 Franchise Condition.

(a) Any franchise granted pursuant to this chapter shall include, among other things, the following condition:

The CATV system herein franchised shall be used and operated solely and exclusively for the purpose expressly authorized by Ordinance of the City of Mountain House and no other purpose whatsoever, including, but not limited to, the provision of telecommunications services, as that term is defined by the City of Mountain House Cable Television franchise Ordinance.

(b) Inclusion of the foregoing statement in any franchise shall not be deemed to limit the authority of the City of Mountain House to include any other reasonable term, condition, limitation or restriction which it may impose in connection with a franchise granted pursuant to the authority conferred by this chapter. Such terms, conditions, limitations or restrictions may address, without limitation, the following subjects:

- (1) The term of the franchise;
- (2) The franchise area and the cable services which are the subject of the franchise;
- (3) The compensation to be paid to the City, which may include the payment of fees or the provision of facilities or services, or both;
- (4) The circumstances upon which the franchise may be terminated or cancelled;
- (5) The mechanisms, such as performance bonds, security funds or letters of credit, to be put in place to ensure the performance of the grantee's obligations under the franchise;
- (6) The City's right to inspect the facilities and records of the grantee;
- (7) Insurance and indemnification requirements applicable to the grantee;
- (8) The obligation of the grantee to maintain complete and accurate books of account and records, and the City's inspection rights with respect thereto;
- (9) Provisions to ensure quality workmanship and construction methods;
- (10) Provisions to ensure that the grantee will comply with all applicable City, State and Federal laws, regulations, rules and policies, including, without limitation, those related to employment, purchasing and investigations;
- (11) Provisions to ensure adequate oversight and regulation of the grantee by the City;
- (12) Provisions to restrict the assignment or other transfer of the franchise without the prior written consent of the City;
- (13) Remedies available to the City to protect the City's interest in the event of the grantee's failure to comply with terms and conditions of the franchise;
- (14) Provisions to ensure that the grantee will obtain all necessary licenses and permits from, and comply with, all laws, regulations, rules and policies of any governmental body having jurisdiction over the grantee, including, but not limited to, the Federal Communications Commission;
- (15) Provisions to ensure that the grantee will protect the property of the City and the delivery of public services from damage or interruption of operations resulting from the construction, operation, maintenance, repair or removal of improvements related to the franchise;
- (16) Provisions designed to minimize the extent to which the public use of the streets of the City are disrupted in connection with the construction of improvements relating to the franchise; and
- (17) Such other provisions as the City determines are necessary or appropriate in furtherance of the public interest.

7-2-115 Franchise Renewal.

Franchise renewals shall be in accordance with applicable law, including, but not necessarily limited to, Section 626 of the Cable Communications Policy Act of 1984, (47 U.S.C.

546) as amended. Grantor and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. Nothing in this section shall be interpreted to create a presumption of renewal. To the extent not prohibited by law, a reasonable non-refundable renewal fee established by the City shall accompany the request for renewal to cover all costs associated with processing and reviewing the request, including without limitation, costs of administrative review, financial, legal and technical evaluation of the request, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the request and document preparation expenses. In the event such costs exceed the renewal fee, the applicant shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs.

7-2-116 Minimum Consumer Protection and Service Standards.

(a) Except as otherwise provided in the franchise agreement, grantee shall maintain an office within, or within three (3) miles to, the City of Mountain House to provide the necessary facilities, equipment and personnel to comply with the following consumer protection and standards under normal conditions of operation:

(1) Sufficient telephone line capacity during normal business hours to assure that a minimum of ninety-five percent (95%) of all calls will be answered before the fourth ring.

(2) Emergency toll-free telephone capacity on a twenty-four (24) hour basis, including weekends and holidays;

(3) An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunction on a twenty-four (24) hour per day basis;

(4) An installation staff, capable of installing service to any subscriber within seven (7) days after receipt of request, in all areas where trunk and feeder cable have been activated; and

(5) Grantee shall schedule, within a specified four (4) hour time period, all appointments with subscribers for installation or service.

(b) Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system, preferably between midnight and 6:00 a.m.

(c) Grantee shall maintain a written log, or an equivalent stored in computer memory and capable of access and reproduction in printed form, for all service interruptions and requests for cable service that result in a service call.

(d) The grantee shall maintain a repair force of technicians generally capable of responding to subscriber requests for service within the following time frames:

(1) For a System Outage. Within two (2) hours, including weekends, of receiving subscriber calls or request for service which by number identify a system outage of sound or picture of one (1) or more channels, affecting at least ten percent (10%) of the subscribers of the system.

(2) For an isolated outage. Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture of one or more channels.

(3) For Inferior Signal Quality. Within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, the technician shall leave written notification of arrival. Three (3) successive subscriber failures to be present at an appointed time shall excuse grantee of duty to respond.

No charge shall be made to the subscriber for any service call unless the service request can be demonstrated to be unrelated to the portions of the cable system owned by grantee or to involve subscriber negligence or damage to grantee's property by the subscriber.

(e) Unless excused, grantee shall determine the nature of the problem within forty-eight (48) hours of beginning work and resolve all cable system related problems within five (5) business days unless technically unfeasible.

(f) Upon five (5) days' notice, grantee shall establish its compliance with any or all of the standards required above. Grantee shall provide sufficient documentation to permit grantor to verify the compliance.

(g) A repeated and verifiable pattern of material non-compliance with the consumer protection standards of Subsections (a) through (e) of this section, after grantee's receipt of due notice and an opportunity to cure, may be deemed a material breach of the franchise agreement.

(h) Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without the intervention by the grantor. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction. Grantee shall file a copy of these procedures with grantor.

(i) Grantor may determine, upon review of a subscriber complaint and the grantee's decision, if any, whether further action is warranted.

(j) The grantor may establish an escrow account wherein a subscriber may deposit a disputed portion of the subscriber's monthly service charge. If a subscriber either continues to make full and timely payment of all monthly service charges grantee or deposit any disputed portion of such monthly service charges into said escrow account, grantee shall not discontinue service during the pendency of complaint submitted under the provisions of this chapter. Any amount deposited in the escrow account shall be paid to the grantee or subscriber in accordance with a final determination of a complaint.

(k) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to rebuild, modify, or sell the system, or the grantor gives notice of intent to terminate or not to renew the franchise, the grantee shall act so as to ensure that all subscribers receive service so long as the franchise remains in force.

(l) In the event of a change of grantee, or in the event a new operator acquires the system, the original grantee shall cooperate with the grantor, new grantee or operator in maintaining continuity of service to all subscribers. During such period, grantee shall be entitled to the revenues for any period during which it operates the system.

(m) In the event grantee fails to operate the system for seven (7) consecutive days without prior approval or subsequent excusal of the grantor, the grantor may, at its option, operate the system or designate an operator until such time as grantee restores service under conditions acceptable to the grantor or a permanent operator is selected. If the grantor should fulfill this obligation for the Grantee, then during such period as the grantor fulfills such obligation, the grantor shall be entitled to collect all revenues from the system, and the grantee

shall reimburse the grantor for all reasonable costs or damages in excess of the revenues collected by the grantor that are the result of the grantee's failure to perform.

(n) All officers, agents, or employees of the grantee or its contractors or subcontractors who in the normal course of work require entry onto subscribers' premises shall carry a photo-identification card in a form approved by grantor. Grantor shall account for all identification cards at all times. Every vehicle of the grantee utilized for field maintenance shall be clearly identified as working for grantee. All such identification shall be returned on termination of service or permanently defaced on sale of vehicle.

(o) The grantee shall comply with the customer service standards enacted by the state that may be more stringent than, or address matters not addressed by, the standards set forth in this chapter and a franchise agreement, which such standards include, but are not limited to, those set forth in Sections 53066 et seq., 53054 et seq., and 53088 et seq. of the California Government Code, and Section 1722 of the California Civil Code.

(p) The grantee shall comply with the customer service standards adopted by the Federal Communications Commission, 47 C.F.R. Section 76.309, as may be amended from time to time. In the event of a conflict between the standards in this chapter or the franchise agreement and the FCC customer service standards, the more stringent standard shall apply.

(q) The grantor may establish in the franchise agreement provisions requiring the grantee to provide public, educational, and governmental access channels, facilities, equipment and support, and institutional network facilities, equipment and support.

7-2-117 Subscriber Contract.

(a) Before the grantee provides service to any subscriber, the grantee shall obtain a signed contract from the subscriber containing a provision substantially as follows:

Subscriber understands that in providing cable service (Grantee) is making use of public rights-of-way within the City of Mountain House and that the continued use of these public rights-of-way is in no way guaranteed. In the event 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. Subscriber agrees that Subscriber will make no claim nor undertake any action against the City of Mountain House, its officers, its employees, or (Grantee) if the service to be provided by (Grantee) hereunder is interrupted or discontinued or the continued use of such rights-of-way is denied to (Grantee) for any reason.

(b) The form of the grantee's contract with its subscribers is subject to approval of the City Council with respect to the inclusion of this provision.

7-2-118 Subscriber Antennas.

No grantee shall remove or offer to remove any potential or existing subscriber's antenna, or provide any inducement for removal as a condition respecting the provision of service.

7-2-119 Additional Service Standards.

Additional service standards and standards governing consumer protection and response by grantee to subscriber complaints not otherwise provided for in this chapter or that exceed the standards set forth in this chapter may be established in the franchise agreement, and the grantee

shall comply with such standards in the operation of the cable system. A material noncompliance of such standards may be deemed a material breach of the franchise.

7-2-120 Regulation of Cable Television—System Not Subject to Effective Competition.

A grantee's cable television system which is not subject to effective competition, as defined by Federal regulations regarding cable television system rate regulation, may seek to establish or increase its rates for the provision of basic cable service and related equipment and installations by the following procedure, except as otherwise expressly permitted by applicable Federal law or regulation:

- (a) The grantee must give notice to the City of Mountain House of the desire to establish or increase rates by filing the applicable FCC rate form;
- (b) The City will give notice of the proposal to the public pursuant to notice provisions in this chapter;
- (c) The City shall provide a reasonable opportunity for consideration of the views of interested parties and the public, which views shall be considered by the City Council; and
- (d) The City Council shall make a written order containing a statement and summary explanation of its decision on the rate matter, and shall act and adopt such order in a manner consistent with the rate regulations prescribed by the FCC for the regulation of the basic service tier and related equipment and installations.

7-2-121 Franchise Fee.

(a) Following the issuance and acceptance of the franchise, grantee shall pay to the grantor a franchise fee in the amount of five percent (5%) of gross receipts derived during each year of the franchise, or such other amount as may be set forth in the franchise agreement.

(b) The grantor, on an annual basis, shall be furnished a statement within sixty (60) days of the close of the calendar year, either audited or certified by an independent certified public accountant or such other person as permitted by the franchise agreement, reflecting the total amounts of gross receipts and all payments, deductions and computations for the period covered by the payment. Upon ten (10) days prior written notice, grantor shall have the right to conduct an independent audit of grantee's records for the three (3) year period immediately preceding said notice, and if such audit indicates a franchise fee underpayment of two percent (2%) or more, the grantee shall assume all reasonable costs of such an audit.

(c) No acceptance of any payment by the grantor shall be construed as a release or as an accord and satisfaction of any claim the grantor may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee.

(d) The franchise fee payments shall be in addition to and shall not constitute an offset or credit against any and all taxes or other fees or charges which the grantee or any affiliated person shall be required to pay to the City, or to any State or Federal agency or authority, as required herein or by law. The payment of said taxes, fees or charges shall not constitute a credit or offset against the franchise fee payments, all of which shall be separate and distinct obligations of the grantee and each affiliated person.

(e) Consistent with Section 622 of the Cable Act, 47 U.S.C. Section 542, the City intends to impose a fee equal to five percent (5%) of the gross receipts, or such other percentage of gross receipts as may be established by the City, of any person, such as, but not limited to, a leased access user, that distributes any service over the system. If the grantee collects revenues

for said person, then the grantee shall collect said five percent (5%) fee or such other amount as established by the City on the gross receipts of said person and shall pay said amounts to the distinct along with the City's franchise fee payments. If the grantee does not collect the revenues for a person that distributes any service over the system, then the company shall notify said person of this fee requirement and shall notify the City of such use of the system by such person.

(f) In the event that any franchise payment or recomputed amount is not made on or before the dates specified in the franchise agreement, grantee shall pay as additional compensation:

(1) An interest charge, computed from such due date, at an annual rate equal to the average rate of return on invested funds of the grantor during the period for which payment was due, or such other interest rate that may be set forth in the franchise agreement; and

(2) If the payment is late for forty-five (45) days or more, a sum of money equal to five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the grantor by reason of delinquent payment.

(3) Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

7-2-122 Private Property and Utility Pole Uses.

No franchise issued pursuant to the provisions of this chapter shall be deemed to expressly or implicitly authorize the grantee to:

(a) Enter on, occupy or otherwise utilize private property without the express consent of the owner or agent in possession thereof;

(b) Utilize poles owned by any private or public utility which are located within the streets or easements, without the express consent of the City and the utility.

7-2-123 Design and Construction Requirements.

(a) Grantee shall not construct any cable system facilities until grantee has secured necessary permits from grantor, and other applicable public agencies.

(b) Unless otherwise allowed by the City, grantee shall construct, operate and maintain its transmission and distribution facilities underground. Amplifiers and power supplies in grantee's transmission and distribution lines may be placed in appropriate housings upon the surface of the ground, if existing technology requires, but shall be of such size, location and design as approved by the City, and shall be so located as not to be unsightly or unsafe. The City shall not in any manner be responsible for any costs or liabilities incurred by grantee in placing grantee's facilities underground or obtaining any easements therefor.

(c) The following procedure shall apply with respect to access to and utilization of underground easements:

(1) The developer shall be responsible for contacting and surveying all franchised cable operators to ascertain which operators desire to provide cable service to that development. The developer may establish a reasonable deadline to receive cable operator responses. The final map shall indicate the cable operators that have agreed to serve the development.

(2) If one (1) or two (2) cable operators wish to provide service, they shall be accommodated in the joint utilities trench and/or conduit on a nondiscriminatory basis.

(3) Cost of trenching, installing conduit and aerial lines and obtaining easements shall be the responsibility of the property owner.

(4) The developer shall provide at least ten (10) working days' notice of the date that utility trenches and/or conduit will be open to the cable operators that have agreed to serve the development. When the trenches and/or conduits are open, cable operators shall have two (2) working days to begin the installation of their cables and five (5) working days after beginning installation to complete installation.

(i) The final development map shall not be approved until the developer submits evidence that:

(ii) It has notified each grantee that underground utility trenches and/or conduits are to open as of an estimated date, and that each grantee will be allowed access to such trenches and/or conduits, including trenches and/or conduits from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and

(5) It has received a written notification from each grantee that the grantee intends to install its facilities during the open trench and/or conduit period on the specified terms and conditions, or such other terms and conditions as are mutually acceptable to the developer and grantee, or has received no reply from a grantee within ten (10) days after its notification to such grantee, in which case the grantee will be deemed to have waived its opportunity to install its facilities during the open trench and/or conduit period.

(6) Sharing the joint utilities trench and/or conduit shall be subject to compliance with Public Utilities Commission and utility standards. If such compliance is not possible, the developer shall provide a separate trench and/or conduit for the cable television cables. With the concurrence of the developer, the affected utilities and the cable operators, alternative installation procedures, such as use of deeper trenches and/or conduits, may be utilized, subject to applicable law.

(7) If a developer has complied with the terms of this chapter, then any cable operator wishing to serve an area where the trenches and/or conduits have been closed shall be responsible for its own trenching and/or laying of conduit and associated costs.

(8) In the event that more than one franchise is awarded, the City reserves the right to limit the number of drop cables and/or pedestals per residence.

(9) The City reserves the right to grant an encroachment permit to a cable franchise applicant to install conduit and/or cable in anticipation of the granting of a franchise. Such installations shall be at the applicant's risk with no recourse against the City in the event the pending franchise application is not granted. The City may require an applicant to provide a separate trench for its conduit and/or cable, at the applicant's cost. The construction of such a separate trench, if provided, shall be coordinated with, and subject to, the developer's overall construction schedule.

7-2-124 Ordinances—Police Powers.

All zoning and other land use ordinances, building, electrical, plumbing and mechanical codes, business license ordinances and all other ordinances of general application now in existence or hereafter enacted by the County or the City shall be fully applicable to the exercise of the franchise issued pursuant to this chapter, and the grantee shall comply therewith.

7-2-125 Changes Required by Public Improvements.

The grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the grantee when required by the City by reason of traffic conditions, public safety, street

vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by public agencies; provided, however, that the grantee shall in all such cases have the privileges and be subject to the obligations to abandon any property of the grantee in place, as provided in this chapter.

7-2-126 Service Connections.

(a) The grantee shall provide cable service to any person located in the service area requesting service, and grantee shall construct its distribution cable throughout the franchise area in accordance with the terms of the franchise agreement.

(b) The grantee shall provide connection to its service at no charge for the initial one hundred fifty (150) feet of line, other than the grantee's standard installation fee. The grantee may charge any new subscriber for the grantee's actual cost for the entire length of any new service connection to remote or relatively inaccessible subscribers. Prior to installing any service connection for which the grantee will charge a potential subscriber on a costs basis, the grantee must present the prospective subscriber with a written statement of its estimated costs for the service connection.

(c) Nothing in this section shall be interpreted to waive a grantee's obligation to provide service to any person requesting cable service in the franchise area.

(d) Nothing in this section shall be interpreted to permit the grantee to charge for installations at a rate that is higher than permitted by applicable law or regulation, or to permit the City to establish rates for such installations in a manner prohibited by federal rate regulation.

7-2-127 Line Extensions.

The grantee shall be required to extend energized trunk cable from any existing terminus of the cable system to any area within the franchise area, except as may otherwise be permitted by the franchise agreement. Grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required for the extension of such trunk cable, including any utility joint use agreements and any permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the cable system. Within thirty (30) days following completion of such line extension construction, the grantee shall proceed to render service provided, however, that any such subscriber requesting service from the extension of the energized trunk cable shall be subject to the provisions of Section MH-7-2017 of this chapter.

7-2-128 Technical Standards.

(a) The grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, any detailed standards set forth in its franchise agreement, and any other applicable standards, including but not limited to the National Electrical Safety Code (National Bureau of Standards), National Electrical Code (National Bureau of Fire Underwriters), California Public Utilities Commission General Orders 95, 112-d and 128 or any subsequent revisions thereof.

(b) In addition, the grantee shall provide to the grantor, upon request, a written report of the results of the grantee's periodic proof of performance test conducted pursuant to FCC and

franchise standards and guidelines. Failure to maintain specified technical standards shall constitute a material breach of the franchise.

(c) In any event the cable television system shall not endanger or interfere with the safety of persons or property within the City.

(d) All working facilities, conditions and procedures, used or occurring during construction shall comply with the standards of the Occupational Safety and Health Administration.

(e) Construction, installation and maintenance of the cable television system shall be performed in an orderly and professional manner, and in close coordination with public and private utilities serving the City following accepted construction procedures and practices and working through existing committees and organizations.

(f) All cable and wires shall be installed, where possible, parallel with electrical and telephone lines, and multiple cable configurations of a grantee shall be arranged in parallel and bundled with due respect for engineering considerations.

(g) Any antenna structure used in the cable television system shall comply with placement, construction, marking and lighting of antennae structures, required by the U.S. Department of Transportation and any other applicable federal, state, or local regulations. A zoning permit for free standing antennas shall be obtained in advance from the proper authority, in accordance with applicable laws, regulations, and ordinances.

(h) RF leakage shall be in compliance with FCC regulations.

7-2-129 Service to Public Facilities.

With the City's reasonable cooperation, grantee shall, without charge to grantor, within six (6) months of the effective date of any franchise hereunder, fully wire and install to one (1) outlet, and provide all legally and contractually allowable cable services of its system and equipment used to receive such cable services, to all public and nonprofit private schools, City police and fire stations, City recreation centers, library, town hall, and such other buildings owned or controlled by the City, all without charge to such users, provided that such buildings shall be located within the franchise area. Grantee shall have no obligation to provide such service to buildings owned or controlled by the City if the primary purpose for such buildings is to house equipment, store records or provide residential housing.

7-2-130 Indemnity and Hold Harmless.

(a) Grantee shall indemnify, defend and hold grantor, its elected officials, officers, agents, independent contractors, consultants and employees harmless from any liability, claims, damages, costs or expenses, including reasonable attorney's fees, arising from injury to persons or damages to property to the extent caused by any conduct undertaken by the grantee, its officers, agents or employees, by reason of the franchise, including but not limited to those:

(1) Arising out of or alleged to arise out of any claim for damages by the grantee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation; and

(2) Arising out of or alleged to arise out of grantee's failure to comply with the provisions of any statute, regulation, or ordinance of the United States, the State of California, or any local agency applicable to the grantee in its business.

(b) Grantee shall at its sole cost and expense, upon demand of grantor, 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 grantor, its elected officials, officers, agents, independent contractors, consultants or employees, and arising out of or pertaining to the granting of the franchise to the grantee and/or any conduct of the grantee, its agents or employees which is within the scope of this indemnity.

(c) Nothing in this section shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their counsel without cost to grantee. Such participation shall not under any circumstances relieve grantee from its duty of paying any judgment entered against such party.

7-2-131 Insurance.

(a) On or before commencement of franchise operations, the grantee shall obtain policies of liability, including comprehensive general liability insurance, products/completed operations liability, personal injury liability, automobile liability (owned, non-owned, and hired automobiles), workers' compensation and employer's liability insurance and property insurance from companies authorized to transact business in California by the Insurance Commissioner of California.

(b) The policy of liability insurance shall:

(1) Be issued to grantee and name grantor, its elected officials, officers, agents and employees as additional insureds;

(2) Insure against the types of liabilities covered in the indemnification and hold harmless provisions of this chapter including against all liability for personal and bodily injury, death and damage to property arising from activities conducted and premises used pursuant to this chapter, negligent acts or omissions of grantee and its agents, servant and employees, committed in the conduct of franchise operations.

(3) Provide a combined single limit for comprehensive general liability and comprehensive automobile liability insurance in the amount provided for in the franchise agreement. Such insurance policy shall be subject to the review and approval of grantor's legal counsel; and

(4) Be noncancellable without thirty (30) days prior written notice thereof directed to grantor.

(c) The policy of workers' compensation insurance shall:

(1) Have been previously approved as to substance and form by the California Insurance Commissioner;

(2) Cover all employees of grantee who in the course and scope of their employment are to conduct the franchise operations;

(3) Provide for every benefit and payment presently or hereinafter conferred by Division 4 of the Labor Code of the State upon an injured employee, including vocational rehabilitation and death benefits; and

(4) Waive all rights of subrogation against the grantor, its officers, officials, employees, and volunteers for losses paid under the terms of the policy which arises from work performed by the named insured for the grantor.

(d) The policy of property insurance shall provide fire insurance with extended coverage on the franchise property used by grantee in the conduct of franchise operations in an

amount adequate to enable grantee to resume franchise operations following the occurrence of any risk covered by this insurance.

(e) Grantee shall file with grantor prior to commencement of franchise operations the required endorsements and either certified copies of these insurance policies or a certificate of insurance for each of the required policies executed by the company issuing the policy or by a broker authorized to issue such a certificate, certifying that the policy is in force and providing the following information with respect to said policy;

- (1) The policy number;
 - (2) The date upon which the policy will become effective and the date upon which it will expire;
 - (3) The names of the named insureds and any additional insured required by this chapter or the franchise agreement;
 - (4) The subject of the insurance;
 - (5) The type of coverage provided by the insurance; and
 - (6) Amount or limit of coverage provided by the insurance.
- (f) Conduct of franchise operations shall not commence until grantee has complied with aforementioned provisions of this section.

(g) The policies of insurance shall be maintained in full force and effect during the entire term of the franchise. In the event grantee fails to maintain any of the above-described policies in full force and effect, grantor shall, upon forty-eight (48) hours notice to grantee, have the right to procure the required insurance and recover the cost thereof from grantee. Grantor shall also have the right, upon forty-eight (48) hours notice to grantee, to suspend the franchise during any period that grantee fails to maintain said policies in full force and effect.

(h) No more than once during any three (3) year period, grantor shall have the right to order grantee to increase the amounts of the insurance coverage provided herein. Such order may be made by grantor after complying with the hearing procedure provided for in Section MH-7-2040 of this chapter. Increases in insurance coverage shall be based upon current prudent business practices of like enterprises involving the same or similar risks.

7-2-132 Faithful Performance Bond.

If required by the resolution granting the franchise, the grantee shall, concurrently with the filing of an acceptance of award under any franchise granted under this chapter, file with the City of Mountain House and shall at all times thereafter maintain in full force and effect for the term of a franchise or any renewal thereof, at the grantee's sole expense, a corporate surety bond by a company, and in a form, approved by the City Attorney, in the amount established by the City Council prior to or concurrently with the granting of the franchise, renewable annually, and conditioned upon the faithful performance of the grantee, and upon the further condition that in the event the grantee fails to comply with any one or more of the provisions of this chapter, or of any franchise issued to the grantee under this chapter, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City of Mountain House as a result thereof, including, but not limited to, the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee as prescribed by this chapter which may be in default, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond; the condition shall be a continuing obligation for the duration of the franchise and any renewal thereof and thereafter until the grantee has liquidated all of its obligations with the City of Mountain House that may have arisen

from the acceptance of the franchise or renewal by the grantee or from its exercise of any privilege therein granted. The bond shall provide that thirty (30) days' prior written notice of intention not to renew, cancellation, or material change be given to the City of Mountain House. Neither the provisions of this section, nor any bond accepted by the City of Mountain House pursuant hereto, nor any damages recovered by the City of Mountain House thereunder, shall be construed to excuse faithful performance by the grantee or limit the liability of the grantee under any franchise issued hereunder or for damages, either to the full amount of the bond or otherwise. The City Council may at any time waive or reduce the amount of the bond provided for by this section.

7-2-133 Records Required and Grantor's Right to Inspect.

(a) Grantee shall at all times maintain:

(1) A record of all complaints received and interruptions or degradation of service experienced for the preceding two (2) years, provided that such complaints result in or require a service call.

(2) A full and complete set of plans, records and "as built" maps showing the location of the cable television system installed or in use in the City, exclusive of subscriber service drops and equipment provided in subscribers' homes. Said plans, records and maps are trade secrets of grantee and, as such, are exempt from disclosure to members of the public under the Public Records Act (Government Code Section 6250 et seq.), including Section 6254(n). Grantor will not disclose any such records in response to a public records request without first allowing the grantee the opportunity to demonstrate that the plans, records and maps are exempt under express provisions of the Public Records Act or that on the facts of the particular case, the public interest served by not making the plans, records or maps public clearly outweighs the public interest served by disclosure of the plans, maps or records. Grantor shall provide grantee with prompt notice of any request grantor receives for public records that would include said plans, records or maps.

(3) If requested by grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the grantor within thirty (30) days following the end of each month in a form reasonably acceptable to the grantor.

(b) The grantor may impose reasonable requests for additional information, records and documents from time to time, provided they reasonably relate to the scope of the City's rights under this chapter or the grantee's franchise agreement. Grantee shall have no obligation to provide information, records or documents which contain trade secrets of grantee or which are otherwise of a confidential or proprietary nature to grantee unless it receives satisfactory assurances from grantor that such information can and will be held in strictest confidence by the grantor.

(c) Upon reasonable notice, and during normal business hours, grantee shall permit examination by any duly authorized representative of the grantor, of all franchise property and facilities, together with any appurtenance property and facilities of grantee situated within or without the City, and all records relating to the franchise, provided they reasonably relate to the scope of the grantor's rights under this chapter or the franchise agreement.

(d) If any records to be examined are not kept within the City or upon reasonable request made available within the City, and if the City Council determines that examination of

the records is necessary and appropriate, then all travel and other expenses incurred in making the examination of the records shall be paid by grantee.

7-2-134 Annual Reports.

Within ninety (90) days after the end of the calendar year, at the request of grantor in writing by December 31st of said calendar year, grantee shall submit a written annual report to grantor with respect to the preceding calendar year in a form approved by grantor, including, but not limited to, the following information:

- (a) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including but not limited to, services begun or discontinued during the reporting year;
- (b) A list of grantee's officers, members of its board of directors, and other principals of grantee;
- (c) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in grantee;
- (d) A list or description of any residences in grantee's service area where service is not available, and subject to applicable line extension policies, a schedule for providing service;
- (e) Information as to the number of homes passed, subscribers, additional television outlets, and penetration of basic and pay service in the service area;
- (f) Any other information which the grantor shall reasonably request; and
- (g) Notwithstanding any of the foregoing, grantee shall have no obligation to include information in its annual report to grantor which is a trade secret of grantee or is otherwise of a confidential or proprietary nature to grantee unless it receives satisfactory assurances from grantor that such information can and will be held in strictest confidence by the grantor.

7-2-135 Copies of Federal and State Communications.

(a) Grantee shall submit to grantor copies of all pleadings, applications and reports submitted by grantee to any Federal, State or local court, agency or governmental body, as well as copies of all decisions, correspondence and actions by any such Federal, State or local court, regulatory agency, or other governmental body which are non-routine in nature and which will materially affect its cable television operations within the franchise area. Grantee shall submit such documents to grantor simultaneously with its submission to such court, agency and/or body; or within five (5) days after its receipt from such court, agency and/or body. Information otherwise confidential by law and so designated by grantee, which is submitted to grantor, shall be retained in confidence by grantor and its authorized agents and shall not be made available for public inspection.

(b) Notwithstanding the foregoing, grantee shall have no obligation to provide copies of documents to grantor which contain trade secrets of grantee or which are otherwise of a confidential or proprietary nature to grantee unless it receives satisfactory assurances from grantor that such information can and will be held in strictest confidence by the grantor. To the extent possible, grantee will provide grantor with summaries of any required documents or copies thereof with trade secrets and confidential and proprietary matters deleted therefrom.

7-2-136 Public Reports.

If grantee is publicly held, a copy of each of grantee's annual and other periodic reports and those of its parent, shall be submitted to grantor within forty-five (45) days of its issuance.

7-2-137 Complaint Report and Opinion Survey.

(a) The grantee shall furnish to the grantor the results of any opinion survey conducted by the grantee which identifies satisfaction or dissatisfaction among subscribers within the City with the grantee's cable service. The results of such survey shall be furnished to the grantor within thirty (30) days following completion of the survey.

(b) Upon request of the grantor, but not more than once every three (3) years, the grantee shall conduct a subscriber satisfaction survey pertaining to quality of service, which may be transmitted to subscribers in subscriber statements for cable service. The form and content of such survey shall be reasonably acceptable to the grantor. The cost of such survey shall be borne by the grantee.

7-2-138 Privacy Report.

Upon grantor's request, but no more often than annually, grantee shall submit to grantor a report indicating the degree of compliance with the privacy provisions contained in this chapter and all steps taken to assure that the privacy rights of individuals have been protected.

7-2-139 Reports—General.

(a) All reports required under this chapter, except those which the grantee has agreed to keep confidential, shall be available for public inspection in the grantor's offices during normal business hours.

(b) All reports and records required under this chapter shall be furnished at the sole expense of grantee, except as otherwise provided in this chapter or the franchise agreement.

(c) The willful refusal, failure, or neglect of grantee to file any of the reports required as and when due under this chapter, may be deemed a material breach of the franchise agreement if such reports are not provided to grantor within thirty (30) days after written request thereof, and may subject the grantee to all remedies, legal or equitable, which are available to grantor under the franchise or otherwise.

(d) Any materially false or misleading statement or representation made knowingly and willfully by the grantee in any report required under this chapter or under the franchise agreement may be deemed a material breach of the franchise and may subject grantee to all remedies, legal or equitable, which are available to grantor under the franchise or otherwise.

7-2-140 Review of System Performance.

Every third year throughout the term of the franchise, if requested by the grantor, grantor and grantee shall meet publicly to review system performance and quality of service.

The various reports required pursuant to this chapter, results of technical performance tests, the record of subscriber complaints and grantee's response to complaints, and the information acquired in any subscriber surveys, shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. Within thirty (30) days after conclusion of a

system performance review meeting, grantor may issue findings with respect to the cable system's franchise compliance and quality of service.

If grantor determines that grantee is not in compliance with the requirements of this chapter or the grantee's franchise, grantor may direct grantee to correct the areas of noncompliance within a reasonable period of time. Failure of grantee, after due notice, to correct the areas of noncompliance within the period specified therefor or to commence compliance within such period and diligently achieve compliance thereafter, shall be considered a material breach of the franchise, and grantor may exercise any remedy within the scope of this chapter and the franchise agreement considered appropriate.

7-2-141 Special Review of System Performance.

When there have been complaints made or where there exists other evidence which, in the judgment of the grantor, casts reasonable doubt on the reliability or quality of cable service to the effect that the grantee is not in compliance with the requirements of this chapter or its franchise, the grantor shall have the right to compel the grantee to test, analyze and report on the performance of the system in order to assure compliance with this chapter and the franchise agreement. Grantor may not compel grantee to provide such tests or reports unless and until grantor has provided grantee with at least thirty (30) days' notice of its intention to exercise its rights under this section and has provided grantee with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report thereof shall be delivered to the grantor no later than thirty (30) days after the grantor notifies the grantee that it is exercising such right, and shall be made at grantee's sole cost. Such report shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used and procedures employed in said testing; the results of such tests; and the method by which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

7-2-142 Remedies for Franchise Violations.

If a grantee fails to perform in a timely manner any obligation required by this chapter or a franchise granted hereunder, following notice from the grantor and opportunity to be heard by the City Council, and an opportunity to cure such nonperformance in accordance with the provisions of this chapter, grantor may at its option and in its sole discretion seek any or all of the following remedies:

(a) Cure the violation and recover the actual costs thereof from the surety bond established herein if such violation is not cured within thirty (30) days after the City Council directs the grantee, pursuant to this chapter, of the need to cure and of grantor's intention to cure and assess the surety bond if the violation is not cured within such thirty (30) day period; and

(b) Revoke the franchise in accordance with MH-7-2043 and MH-7-2044 of this chapter; and

(c) For violations of consumer service standards of this chapter or the franchise agreement which have materially degraded the quality of service, grantor may (i) order and direct grantee to issue credits to subscribers, in an amount to be determined by grantor to be reasonably related to the nature of the degradation in service and measured by the period of the degradation, to provide monetary relief substantially equal to the reduced quality of service resulting from grantee's failure to perform; or (ii) seek liquidated damages or other monetary damages as permitted by state law; and

- (d) Seek appropriate judicial relief, including, but not limited to, injunctive or equitable; and
- (e) Seek monetary damages.

7-2-143 Grantor's Power to Revoke.

Grantor reserves the right to revoke any franchise granted pursuant to this chapter and rescind all rights and privileges associated with it in the event of a default or material breach by grantee of this chapter or the franchise agreement. An event of default or material breach by grantee includes, but is not limited to, the following circumstances:

- (a) If grantee shall default in the performance of any material obligation under this chapter or the franchise agreement and shall continue such default after receipt of due notice, an opportunity to be heard and a reasonable opportunity to cure the default;
- (b) If grantee shall fail to provide or maintain in full force and effect the insurance coverage or surety bond as required herein;
- (c) If grantee shall violate any order or ruling of any regulatory body having jurisdiction over the grantee relative to the grantee's franchise, unless such order or ruling is being contested by grantee by appropriate proceedings conducted in good faith;
- (d) If there shall occur any denial, forfeiture or revocation by any Federal, State or local governmental authority of any authorization required by law or the expiration without renewal of any such authorization, and such events either individually or in the aggregate, materially jeopardize or could reasonably be expected to materially jeopardize the system or its operation;
- (e) If grantee attempts to unlawfully evade any provision of this chapter or practices any fraud or deceit upon grantor;
- (f) If grantee persistently fails to remedy defaults for which lesser penalties have previously been imposed;
- (g) The condemnation by a public authority other than the grantor, or sale or dedication under threat or in lieu of condemnation, of all or any part of the system, the effect of which would materially frustrate or impede the ability of the grantee to carry out its obligations, and the purposes of the franchise agreement;
- (h) In the event that the grantee shall suspend or discontinue its business;
- (i) The occurrence of any event which may reasonably lead to the foreclosure or other similar judicial or nonjudicial sale of all or any material part of the system; or
- (j) If grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt.

The termination and forfeiture of the grantee's franchise shall in no way affect any right of grantor to pursue any remedy under the franchise or any provision of law.

7-2-144 Procedure for Remedying Franchise Violations.

Prior to imposing any remedy or other sanction against grantee specified in this chapter, grantor shall give grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:

- (a) Grantor shall first notify grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than five (5) days in the case of failure of the grantee to pay any sum or other amount due the grantor under this chapter or the grantee's franchise and thirty (30) days in all other cases. If

grantee fails to correct the violation within the time prescribed or if grantee fails to commence correction of the violation within the time prescribed, diligently remedy such violation thereafter, and provide a time schedule for completing its cure of the default or material breach that is acceptable to the grantor, the grantor shall then give written notice of not less than twenty (20) days of a public hearing to be held before the council. Said notice shall specify the violations alleged to have occurred.

(b) At the public hearing, the City Council shall hear and consider all relevant evidence, and thereafter render findings and its decision.

(c) In the event the City Council finds that grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from grantor and is diligently proceeding to fully remedy such violation and has provided a reasonable schedule for completing the cure of the default or material breach, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

(d) In the event the City Council finds that the alleged violations exist and that grantee has not corrected the same in a satisfactory manner or has not diligently commenced corrections of such violation after notice thereof from grantor and is not diligently proceeding to fully remedy such violation in a reasonable period of time, the City Council may impose one (1) or more of the remedies specified herein as it, in its discretion, deems appropriate under the circumstance.

7-2-145 Force Majeure—Grantee’s Inability to Perform.

In the event grantee’s performance of any of the terms, conditions or obligations required by this chapter or a franchise granted hereunder is prevented by a cause or event not within grantee’s control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed. Causes or events not within the control of grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires but shall not include (i) financial inability of the grantee to perform, or (ii) failure of the grantee to obtain or maintain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts of omissions of grantee, or (iii) the failure of the grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable system where the grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

7-2-146 Abandonment or Removal of Franchise Property.

(a) In the event that use of any franchise property or a portion thereof is discontinued for a continuous period of twelve (12) months, grantee shall be deemed to have abandoned that franchise property. Any part of the cable system that is intended for use only when needed because it is parallel or redundant to other parts of the system, shall not be deemed to have been abandoned because of its lack of use.

(b) Grantor, upon such terms as grantor may impose, may give grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this chapter, the grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from grantor and shall restore any affected street to its

former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. Grantor shall have the right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after such removal. The liability, indemnity and insurance provisions of this chapter and the surety bond provided herein shall continue in full force and effect during the period of removal and until full compliance by grantee with the terms and conditions of this section.

(c) Upon abandonment of any franchise property in place, the grantee, if required by the grantor, shall submit to the grantor any instrument, satisfactory in form to the grantor, transferring to the grantor ownership of the franchise property abandoned.

(d) At the expiration of the term for which the franchise is granted, or upon its revocation or earlier expiration, as provided for herein, in any such case without renewal, extension or transfer, the grantor shall have the right to require grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

(e) Notwithstanding anything to the contrary set forth in this chapter, the grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable grantee.

7-2-147 Restoration by Grantor—Reimbursement of Costs.

In the event of a failure by grantee to complete any work required herein or by any other law or ordinance, and if such work is not completed within thirty (30) days after receipt of written notice thereof from grantor or, if more than thirty (30) days are reasonably required therefor, if grantee does not commence such work within such thirty (30) day period and diligently complete the work thereafter (except in cases of emergency constituting a threat to public health, safety or welfare), grantor may cause such work to be done and grantee shall reimburse grantor for the costs thereof within thirty (30) days after receipt of an itemized list of such costs, or grantor may recover such costs through the surety bond provided by grantee.

7-2-148 Extended Operation and Continuation of Services.

Upon either expiration or revocation of the franchise, the grantor shall have discretion to permit grantee to continue to operate the cable television system for an extended period of time not to exceed twelve (12) months from the date of such expiration or revocation, unless extended by resolution of grantor. Grantee shall, as trustee for its successor-in-interest, continue to operate the system under the terms and conditions of this chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. The grantee shall use reasonable efforts to provide continuous, uninterrupted service to its subscribers, including operation of the system during transitional periods following franchise expiration or termination.

7-2-149 Receivership and Foreclosure.

(a) A franchise granted hereunder shall, at the option of grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of grantee, whether in receivership or 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 (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivership or trustees within said one hundred twenty (120) days shall have remedied all the faults under the franchise or provided a plan for the remedy of such faults which is satisfactory to the grantor; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise granted.

(b) In the case of a foreclosure or other judicial sale of the franchise property, or any material part thereof, grantor may serve notice of termination upon grantee and the successful bidder at such sale, in which event the franchise granted and all rights and privileges of the grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless: (1) grantor shall have approved the transfer of the franchise, as and in the manner that this chapter provides; and (2) such successful bidder shall have covenanted and agreed with grantor to assume and be bound by all terms and conditions of the franchise.

7-2-150 Rights Reserved to Grantor.

(a) Nothing in this chapter shall in any way or to any extent impair or affect the right of the City of Mountain House to acquire the grantee's property either by purchase or through exercise of the right of eminent domain, in respect to any grantee.

(b) No franchise granted under this chapter shall be given any value before any court or other public authority in any action or proceeding brought by the City of Mountain House in excess of the amount of the required filing fee and any other sum paid by the grantee to the City of Mountain House for a franchise at the time of granting.

(c) There is reserved to the City of Mountain House every right and power which is required to be reserved in this chapter or provided by any ordinance or resolution of the City of Mountain House, and the grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of, the City of Mountain House in its exercise of such rights or power, enacted or established before or after the effective date of the ordinance codified in this chapter.

(d) The City Council may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter.

(e) Neither the granting of any franchise under this chapter nor any of the provisions contained in this chapter shall be construed to prevent the City of Mountain House from granting any identical or similar franchise to any other person within all or any portion of the City of Mountain House.

(f) Neither the granting of any franchise nor any provision herein shall constitute a bar to the exercise of any governmental right or power of the City of Mountain House.

(g) The grantor shall have the right to waive any provision of the franchise or this chapter, except those required by Federal or State law, if the grantor determines (1) that it is in

the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the grantee or the subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the grantor. Waiver of any provision in one (1) instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the franchise or chapter unless the statement so relies.

7-2-151 Rights of Individuals.

(a) Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable Federal, State and local laws and regulations, and all executive and administrative orders, relating to nondiscrimination, including without limitation, Section 51 of the California Civil Code which is incorporated in this section by reference.

(b) Grantee shall adhere to the applicable equal employment opportunity requirements of the FCC, State and local regulations, as now written or as amended from time to time.

(c) Neither grantee, nor any person, agency, or entity shall, without the subscriber's consent, tap, or arrange for the tapping, of any cable, line or signal input device, or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participating, audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified, or as otherwise expressly permitted by the privacy provisions under the Federal Cable Act, 47 U.S.C. Section 551.

(d) In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. Grantee shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

(e) No cable line, wire, amplifier, converter, or other piece of equipment owned by grantee shall be installed by grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed.

(f) The grantee, or any of its agents or employees, shall not sell, or otherwise make available to any party for any purpose other than the operation or transfer of the cable system without consent of the subscriber pursuant to State and Federal privacy laws:

(1) Any list of the names and addresses of subscribers containing the names and addresses of subscribers who request to be removed from such list; and

(2) Any list which identifies the viewing habits of individual subscribers, without the prior written or electronic consent of such subscribers. This does not prohibit the grantee from providing composite ratings of subscriber viewing to any party.

7-2-152 Nonenforcement.

A grantee shall not be relieved of any obligation to comply with any of the provisions of the franchise documents or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the City, City Council, or their officers, agents or employees to enforce prompt compliance.

7-2-153 Alternative Remedies.

No provision of this chapter shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the franchise documents or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in said chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by the grantee, or judicial enforcement of the grantee's obligations by means of specific performance, injunction relief or mandate, or any other judicial remedy at law or in equity.

7-2-154 Possessory Interest Taxation.

The City declares that as a result of this chapter and any franchise issued pursuant hereto, a possessory interest subject to property taxation may be created and any such property interest may be subject to property taxation if it is created. The grantee, as the party in whom the possessory interest will be vested, may be subject to the payment of property taxes levied upon such an interest.

7-2-155 Unauthorized Connection and Tampering Penalty.

(a) No person shall make any unauthorized connection, whether physically, acoustically, inductively, electronically, or otherwise with any part of a franchised CATV system within the City of Mountain House for the purpose of taking or receiving television signals, radio signals, pictures, programs, sound, or electronic impulses of any kind for the purpose of enabling that person or others to receive any television signal, radio signal, picture, program, sound or electronic impulses.

(b) No person, without the consent of the grantee, shall willfully tamper with, obstruct, or injure any cables, wires, devices, or equipment used for the distribution of television signals, radio signals, pictures, programs, sound or electronic impulses of any kind.

SECTION 16. CHAPTER 2 STATE FRANCHISES TO PROVIDE VIDEO SERVICES

7-2-200 Intent.

(a) The City of Mountain House, pursuant to The Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") is entitled to receive a state franchise fee from and authorized to exercise certain powers pertaining to a video service provider which is granted a state franchise by the California Public Utilities Commission to provide video service in the City's limits.

(b) The City Council finds it is in the interest of the public convenience, safety, and general welfare to implement the rights and powers granted to the City under the DIVCA, and by this chapter, the City takes such action.

7-2-201 Definitions.

For the purpose of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The definitions in the DIVCA are incorporated herein. Words not defined shall be given their common and ordinary meaning.

(a) “Affiliated Person” means each Person who falls into one (1) or more of the following categories: (i) each Person having, directly or indirectly, a controlling interest in the Company; (ii) each Person in which the Company has, directly or indirectly, a controlling interest; (iii) each officer, director, general partner, limited partner holding an interest of twenty-five percent (25%) or more, joint venturer or joint venture partner, of the Company; and (iv) each Person, directly or indirectly, controlling, controlled by, or under common control with, the Company; provided that “Affiliated Person” shall in no event mean the City, any limited partner holding an interest of less than twenty-five percent (25%) of the Company, or any creditor of the Company solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management, or common control with, the Company.

(b) “Basic Cable Service” means any service tier which includes the retransmission of local television broadcast signals.

(c) “Cable Act” means Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 521 et seq.

(d) “Cable Television System,” “System,” “CATV System,” or “Cable System,” means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service, which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

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

(2) A facility that serves Subscribers without using any public right-of-way;

(3) A facility of a common carrier which is subject, in whole or in part, to Title II of the 1934 Communications Act, as amended, except that such facility shall be considered a cable system (other than for purposes of Section 621 (c) of the Cable Act [47 U.S.C. 541 (c)]) to the extent such a facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) An open video system that complies with Section 653 of the Cable Act, 47 U.S.C. § 573; or

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

(e) “City Council” means the City Council of the City of Mountain House.

(f) “City” means the City of Mountain House as represented by the City Council or any delegate acting within the scope of its jurisdiction.

(g) “DIVCA” means the Digital Infrastructure and Video Competition Act of 2006.

- (h) “FCC” means the Federal Communications Commission, its designee, or any successor thereto.
- (i) “Franchise” means a certificate to provide video services or a renewal of such certificate issued by the California Public Utilities Commission pursuant to DIVCA.
- (j) “Franchise Fee” means the fee set forth in Section 5860 of the Public Utilities Code.
- (k) “Franchise Documents” means this chapter and any documents filed with and the certificate issued by the California Public Utilities Commission.
- (l) “Grantee” means any Person receiving a state franchise certificate issued by the California Public Utilities Commission, and such person’s lawful successor, transferee or assignee.
- (m) “Installation” means the connection of the system to Subscribers’ terminals.
- (n) “Institutional Network” means the cable or cables, electronics and ancillary equipment for governmental use, educational use, or both, provided by the Grantee.
- (o) “Person” means an individual, partnership, association, joint stock company, joint venture, trust, corporation or other legally recognized entity, whether for-profit or not for-profit, but shall not mean the City.
- (p) “Public Educational or Government Access Facilities” or “PEG Access Facilities” means the total of the following:
 - (1) Channel capacity designated for public, educational, or governmental use; and
 - (2) Facilities and equipment or the use of such channel capacity.
- (q) “Sections” means any section, subsection, or provision of this chapter.
- (r) “Service Area” or “Franchise Area” means the geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in the Agreement.
- (s) “Service Tier” means a category of video or cable service or other services provided by a Grantee and for which a separate rate is charged by the Grantee.
- (t) “State” means the State of California.
- (u) “Street” means the surface of and the space above and below each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the Grantor shall permit to be included within the definition of street from time to time.
- (v) “Subscriber” means any person who or which elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connections with video or cable system.
- (w) “Telecommunications Service” means “telecommunications service” as that term is defined under Section 3 of the Federal Communications Act of 1934, 47 U.S.C. 153(46), except that the term shall not include any Institutional Network for governmental or educational.

7-2-202 Franchise Required.

It shall be unlawful for any person to construct, install, maintain, or operate a system to provide video service in the City without a properly granted Franchise.

7-2-203 Federal or State Jurisdiction.

(a) This chapter shall not be construed in a manner prohibited by applicable Federal and State laws. Federal and State law, and any modification of such Federal or State law, shall to the extent applicable be considered part of this chapter as of the effective date of this chapter or the effective date of any modification of such Federal or State law.

(b) In the event that the State or Federal government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit the City's authority, the City may, if it so elects, adopt rules and regulations in such areas.

(c) This chapter shall apply to all Grantees.

7-2-204 Customer Service Standards and Penalties.

(a) Prior to providing video services in the City's territory, the Grantee shall provide the City a description of the Grantee's customer service standards which comply with Government Code Section 53055.

(b) Grantee shall comply with Government Code Sections 53055, 53055.1, 53055.2, and 53088.2 and any other customer service standards pertaining to the provision of video services established by federal law or regulation or adopted by subsequent enactment of the California State Legislature.

(c) For purposes of this chapter, "material breach" means any substantial and repeated failure of a Grantee to comply with any of the requirements set forth in either Government Code Sections 53055, 53055.1, 53055.2, or 53088.2 or any other customer service standards pertaining to the provision of video services established by federal law or regulation or adopted by subsequent enactment of the California State Legislature.

(d) Any person within the City who subscribes to the services of any Grantee may file a complaint with the City asserting that the Grantee has committed a material breach of Grantee's consumer service obligations.

(e) The City Council delegates to its City Manager the authority to administer enforcement of the provisions of this section of this chapter. Upon receipt of any complaint, or upon his own motion, City Manager shall give the Grantee written notice of any material breach(s) and allow the Grantee at least thirty (30) days from receipt of the notice to remedy the specified material breach. A material breach for purposes of assessing any penalties under this section of this chapter shall be deemed to have occurred for each day within the territory of the City, following expiration of the notice provided for herein, that any such material breach has not been remedied by Grantee, irrespective of the number of customers affected. No monetary penalties shall be assessed for a material breach which is out of the reasonable control of Grantee.

(f) If the material breach has not been cured as set forth above, the City Manager may assess penalties upon the Grantee in accordance with the following schedule:

(1) Five hundred dollars (\$500.00) for each day of each material breach, not to exceed one thousand five hundred dollars (\$1,500.00) for each occurrence of a material breach.

(2) For each subsequent material breach of the same nature occurring within any twelve (12) month period for which notice to Grantee was provided and an initial penalty assessed as set forth above, a penalty of one thousand dollars (\$1,000.00) for each day of each material breach, not to exceed three thousand dollars (\$3,000.00) for each occurrence of such material breach.

(3) For any third and further material breach of the same nature within any twelve (12) month period for which notice to Grantee was provided and a second penalty assessed as set forth above, a penalty of two thousand five hundred dollars (\$2,500.00) for each day of each material breach, not to exceed seven thousand five hundred dollars (\$7,500.00) for each occurrence of such material breach.

(4) One-half of all penalties received by the City shall be submitted to the Digital Divide Account established in Section 280.5 of the Public Utilities Code.

(g) City Manager shall provide written notice of the assessment of the penalty to Grantee within five (5) business days of its assessment. Grantee may appeal the assessment to the City Council within ten (10) business days of receipt of notice from the City Manager. Grantee's appeal shall be in writing and state why the assessment is in error. The City Council shall review Grantee's submittal and either affirm, revise, or repeal the assessment. The City Council shall provide written notice of its determination to Grantee and the City Manager within thirty (30) business days of its determination.

(h) A Grantee shall not be relieved of any obligation to comply with any of the provisions of this chapter or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the City Council, or their officers, agents or employees to enforce prompt compliance.

(i) All officers, agents, or employees of the Grantee or its contractors or subcontractors who in the normal course of work require entry onto Subscribers' premises shall carry a photo-identification card. Every vehicle of the Grantee utilized for field maintenance shall be clearly identified as working for the Grantee.

(j) In addition, the Grantee shall provide to the City, upon request, a written report of the results of the Grantee's periodic performance tests conducted pursuant to any governmental requirements in order to permit the City to fulfill its duties regarding customer service standards.

7-2-205 Records Required and City's Right to Inspect.

(a) Grantee shall at all times maintain:

(1) A record of all complaints received and interruptions or degradation of video service experienced for the preceding two (2) years, provided that such complaints result in or require a service call.

(2) A full and complete set of plans, records and "as built" maps showing the location of the video service facilities installed or in use in the City, exclusive of Subscriber service drops and equipment provided in Subscriber's homes. Said plans, records and maps are trade secrets of Grantee and, as such, are exempt from disclosure to members of the public under the Public Records Act (Government Code Section 6250 et seq.), including Section 6254(n). City will not disclose any such records in response to a Public Records Request without first allowing the Grantee the opportunity to demonstrate that the plans, records and maps are exempt under express provisions of the Public Records Act or that on the facts of the particular case, the public interest served by not making the plans, records or maps public clearly outweighs the public interest served by disclosure of the plans, maps or records. The City shall provide Grantee with prompt notice of any request the City receives for public records that would include said plans, records or maps.

(b) The City may impose reasonable requests for additional information, records and documents from time to time, provided they reasonably relate to the scope of the City's rights under this chapter or the Grantee's Franchise. Grantee shall have no obligation to provide

information, records or documents which contain trade secrets of Grantee or which are otherwise of a confidential or proprietary nature to Grantee unless it receives satisfactory assurances from City that such information can and will be held in strictest confidence by the City.

(c) Upon reasonable notice, and during normal business hours, Grantee shall permit examination by any duly authorized representative of the City, of all property and facilities used by Grantee in the provision of video services within the City's territory, together with any appurtenance property and facilities of Grantee situated within or without the City, and all records relating to the Franchise, provided they reasonably relate to the scope of the City's rights under this chapter or the DIVCA.

(d) If any records to be examined are not kept within the City or upon reasonable request made available within the City, and if the City Council determines that examination of the records is necessary and appropriate, then all travel and other expenses incurred in making the examination of the records shall be paid by Grantee.

7-2-206 Copies of Federal and State Decisions Concerning Fines, Forfeitures, and Adverse Rulings.

Grantee shall provide City with copies of any decision of any Federal, State or local court, agency or governmental body, which imposes any fine or forfeiture on Grantee or renders any adverse decision regarding Grantee's operations in the City's territory. Grantee shall provide such documents to the City within five (5) days after its receipt from such court, agency and/or body.

7-2-207 Public Reports.

If Grantee is publicly held, a copy of each of Grantee's annual 10K and proxy statements filed with the Securities and Exchange Commission, and other periodic reports and those of its parent, shall be submitted to the City within forty-five (45) days of their issuance.

7-2-208 Complaint Report and Opinion Survey.

The Grantee shall furnish to the City the results of any opinion survey conducted by the Grantee which identifies satisfaction or dissatisfaction among Subscribers within the City with the Grantee's video service. The results of such survey shall be furnished to the City within thirty (30) days following completion of the survey.

7-2-209 Review of System Performance.

(a) Annually following commencement of video services in the City's territory, if requested by the City, the City and Grantee shall meet publicly to review system performance and quality of Service.

(b) The various reports required pursuant to this chapter, results of technical performance tests, the record of Subscriber complaints and Grantee's response to complaints, and the information acquired in any Subscriber surveys, shall be utilized as the basis for review. In addition, any Subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. Within thirty (30) days after conclusion of a system performance review meeting, the City may issue findings with respect to the Grantee's compliance with customer service and protection standards and quality of service.

7-2-210 Reports—General.

(a) All reports required under this chapter, except those which the Grantee has agreed to keep confidential, shall be available for public inspection in the City's offices during normal business hours.

(b) All reports and records required under this chapter shall be furnished at the sole expense of Grantee, except as otherwise provided in this chapter.

7-2-211 Franchise Fee.

(a) Grantee shall pay to City a Franchise Fee in the amount of five percent (5%) of Grantee's gross receipts in accordance with Section 5860 of the California Public Utilities Code. The obligation to remit the franchise fee to the City begins immediately upon the provision of video service within the City's territory by Grantee and shall be paid in accordance with Section 5860.

(b) The City will provide Grantee with documentation supporting the franchise percentage fee paid by any incumbent video provider upon receipt of the notice required to be provided to the City by Grantee pursuant to Section 5840(n) of the California Public Utilities Code.

(c) The franchise fee shall be remitted as directed by the City Manager to the City quarterly within forty-five (45) days after the end of each quarter. Each payment shall be accompanied by a summary explaining the basis for its calculation. The summary shall identify all gross revenues (as defined in Section 5860 of the Public Utilities Code) received by Grantee during the applicable quarter and shall itemize the gross revenues in accordance with the subparagraphs of subsection (d) of Section 5860 of the Public Utilities Code. In the event Grantee has bundled video services with any other services, capabilities, or applications, Grantee shall provide support for its allocation to video services of a portion of the revenues for the bundled package of services.

(d) Not more than once annually the City may examine the business records of Grantee to ensure compensation in accordance with Section 5860 of the Public Utilities Code. In connection with the review, Grantee will furnish records pertaining to its exclusion of any revenues in accordance with subsection (e) of Section 5860 of the Public Utilities Code.

(e) No acceptance of any payment by the City 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 as a Franchise Fee under this chapter or for the performance of any other obligation of the Grantee.

(f) The Franchise Fee payments shall be in addition to and shall not constitute an offset or credit against any and all taxes or other fees or charges which the Grantee or any Affiliated Person shall be required to pay to the City, or to any State or federal agency or authority, as required herein or by law. The payment of said taxes, fees or charges shall not constitute a credit or offset against the Franchise Fee payments, all of which shall be separate and distinct obligations of the Grantee and each Affiliated Person.

(g) If the Grantee does not pay the Franchise Fee when due, the Grantee shall pay a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus one (1) percent.

7-2-212 Alternative Remedies.

No provision of this chapter shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of this chapter, or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in said chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by the Grantee, or judicial enforcement of the Grantee's obligations by means of specific performance, injunction relief or mandate, or any other judicial remedy at law or in equity.

SECTION 17. DIVISION 3. BRINE DISCHARGING WATER SOFTENING APPLIANCE USE REGULATIONS

SECTION 18. CHAPTER 1 GENERAL PROVISIONS.

7-3-100 Purpose and Findings.

The purpose of this Chapter is to protect the health, safety and welfare for the City through the regulation of the discharge of salt products into the City; to impose regulations regarding to compliance with requirements of the California Water Code and the California Health and Safety Code § 116775 et seq. and to regulate the use of self-generating water softeners and salt based products. In accordance with Health and Safety Code § 116786, the City made, and the City Council makes to the extent necessary in continuing this Chapter, the following findings:

- (a) Limiting the availability, or prohibiting the installation, of the water softeners as set forth in this Chapter is a necessary means of achieving and maintaining compliance with the water discharge requirements and discharge permit issued by a California regional water quality control board.
- (b) There currently are no technologically and economically feasible alternatives to the Chapter.
- (c) Use of the alternative technology will result in a reduction in the potential saline discharge.
- (d) The City has adopted, and is enforcing, regulatory requirements that limit the volumes and concentrations of saline discharges from nonresidential sources to the community waste disposal system to the extent technologically and economically feasible.
- (e) The City need for this Chapter is substantiated by an independent study of discharges entitled "Mountain House Wastewater Treatment Plant Salinity Reduction Plan Update" dated May 2014 that identifies the restriction of water softeners consistent with this Chapter.

7-3-101 Definitions and Abbreviations.

The following words when used in any provision of this chapter shall be construed to have the following meaning:

"Authorized office" means the City Manager and Engineer or any person designated by the City Council.

“Brine” means a heavily concentrated salt solution.

“City” means the City of Mountain House

“District” means Mountain House Community Services District.

“Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or its legal representatives, agents or assigns.

“Residence” means a structure which is or is intended to be, in whole or in part, a place of dwelling, whether occupied or not, whether fully constructed or not, and includes, without limitation, homes, whether attached to another structure or not, apartments, condominiums and mobile homes.

“Residential self-regenerating water softening appliance” means a water softening device located within or adjacent to a residence located within the City or which discharges into a community sewer system that is tributary to the sewer system owned and operated by the City, or which discharges anywhere within the boundaries of the City, including, but not limited to, on the ground within the City, whereby the capability of the appliance to remove hardness from the water is renewed by the on-site application of a Brine solution followed by a subsequent rinsing of the active softening material.

“Salt” means any compound or mineral combination, including but not limited to sodium chloride (NaCl) or potassium chloride (KCl), that is used in Mountain House for regeneration of ion exchange water softeners or any other system, thereby resulting in water sent from any home or business to the City Wastewater Treatment Plant being elevated in salinity or resulting in said water discharged onto any land connected to the City Storm Drain system.

7-3-102 Regulations.

(a) No person shall install or in any manner assist in the installation of a residential or non-residential self-regenerating water softening appliance that discharges into the City sewer system owned and operated by the City or that discharges into the City sewer system that is tributary to the sewer system owned and operated by the City or a self-regenerating water softening appliance that discharges onto any land connected to the City Storm Drain system.

(b) New water softening devices installed for all users or structures shall be of a type and style as selected by the user at their expense, provided however that any such appliances or devices must comply with the terms and conditions of this Chapter. Use of salt discharging water softening devices is not prohibited by the City.

7-3-103 Permits.

Any person installing a water softening device shall obtain a permit from the City prior to the installation of the device. The prospective permittee shall pay for any and all fees prior to obtaining a permit to install the water softening device.

7-3-104 Enforcement.

The General Manager and the Community Development Director shall administer, implement and enforce the provisions of this Chapter. Any powers granted to or duties imposed upon the General Manager and Community Development Director may be delegated to persons acting in the beneficial interest of or in the employ of the City.

7-3-105 Violation.

(a) The City Manager may issue a Notice of Violation to any person who fails to comply with any conditions of this Chapter. A Notice of Violation shall allow a period of thirty (30) days to correct the violation and/or to remove and dispose of the non-compliant self-regenerating water softener. Any person violating this Chapter after issuance of a Notice of Violation and the subsequent thirty-day period shall pay an administrative fine to the City in an amount of one hundred dollars (\$100.00).

(b) Any use or activity in violation of the terms of this Chapter is declared to be a nuisance per se, and may be abated by order of any court of competent jurisdiction. The City Council, in addition to other remedies, may institute any appropriate action or proceedings to prevent, abate, or restrain the violation. All costs, fees and expenses in connection with such action shall be assessed as damages against the violation.