

TITLE 3

BUSINESS REGULATIONS AND LICENSING

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Chapter 3.20

CABLE TELEVISION SYSTEM FRANCHISE AGREEMENT

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3.20.010 Definitions. For the purpose of this Chapter, the following terms, phrases, words and abbreviations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number:

- (1) "Broadcast Signal" means a television or radio signal that is transmitted over the air to a wide geographic audience and is carried by a Cable Television System off-the-air by microwave or satellite link, or other means.
- (2) "Cable Subscriber" (Including "Subscriber") shall mean any person, whether individual, business entity or institution, who pays either monthly, yearly or special event service charges and, who lawfully receives any type of cable service, including, but not limited to, basic cable, cable programming service, pay cable, pay-per-view or other cable services lawfully provided by the Cable Television System, regardless of whether such person occupies single-family or multiple-unit dwellings, hotels, or

motels, or carries on business or other affairs in business establishments or institutional premises.

- (3) "Cable Television System" (Including "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 terms do not include
 - (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
 - (b) a facility that serves Subscribers without using any public right-of-way;
 - (c) a facility of a common carrier, which is subject in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system to the extent such 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;
 - (d) an open video system that complies with Section 653 of the Cable Act; or
 - (e) any facilities of any electric utility used solely for operating its electric utility systems.
- (4) "Chief Administrative Officer" shall mean the City Manager, City Administrator, or other designation by the Council or the City's chief executive officer.
- (5) "City" shall mean the City of Jasper, Indiana, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.
- (6) "Converter" shall mean an electronic device used in the operation of the System, either sold to Subscribers or placed for rental by the Grantee in dwellings, hotels, motels, business establishments or institutional premises, which converts electronic signals from one radio frequency to another.
- (7) "Council" shall mean the present governing body of the City or any future board constituting the legislative body of the City.

- (8) "Franchise" shall mean and include the authorization granted hereunder in terms of a franchise, right, privilege, permit, license or otherwise, which evidences the City's assent to the Grantee constructing, operating and maintaining a cable television system within all of the City. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying a business within a City as required by other ordinances and laws of this City.
- (9) "Franchise Area" shall mean the entire geographic area within the present boundaries of the area under the jurisdiction of the Council, and shall include any additional areas which are later added by annexation or other legal means for enlarging such boundaries.
- (10) "Grantee" shall mean the person, firm or corporation granted a Franchise by the Council under this Ordinance, or the lawful successor, transferee or assignee of said person, firm or corporation.
- (11) "Gross Receipts" shall mean all monthly service fees actually collected from Cable Subscribers within a fiscal year by the Cable Television System for providing any type of cable service, including, but not limited to, basic cable, cable programming service, pay cable and pay-per-view cable to Cable Subscribers in the Franchise Area.
- (12) "Property of Grantee" shall mean all real, personal, tangible or intangible property owned, installed or used within the City by the Grantee in the conduct of a Cable Television System business under the authority of the Franchise granted pursuant to this ordinance.
- (13) "Public Interest" shall mean that standard which shall be applied by the City and Council in considering renewal applications, and termination or extension issues; namely whether the Grantee: (a) is and has been in substantial compliance with the material terms of the Franchise and when applicable, valid laws and regulation; and (b) remains legally, technically and financially qualified to operate the Cable Television System; and (c) is providing reasonable service to the Franchise Area in light of the economic and technical constraints bearing on the Grantee and the reasonable needs of the residents of the Franchise Area.
- (14) "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including public utility easements, dedicated utility strips or rights-of-way, any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Franchise Area which shall entitle the City and the Grantee to the use

thereof for the purpose of installing, operating, repairing and maintaining the Cable Television System. Said word shall also mean any easement now or hereinafter held by the City within the Franchise Area for the purpose of public travel, or for utility or public service use, and shall include other easements or rights-of-way as shall be now held or hereafter held by the City within the Franchise Area, which shall within their proper use thereof for the purpose of installing or transmitting Grantee's Cable Services over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the Cable Television System.

- (15) "Residents" means any person residing in the Franchise Area as defined herein.
- (16) "State" means the State of Indiana. (Ord. 2003-25, S1, June 5, 2003) (Ord. 1124 S1, 1983)

3.20.020 Franchise to install and operate.

- (1) There is hereby granted by the City to the Grantee the non-exclusive Franchise to engage in the business of operating and providing a Cable Television System in the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, across and along any Public Way and all extensions thereof and additions thereto in the Franchise Area such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the Cable Television System; and in addition, so to use, operate and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or similar entity permitted to do business in the Franchise Area. Grantee shall be required to pay no fees or charges, other than the franchise payment, stated in Section 3.20.080 hereof, to any person or entity for the use of Public Ways within the Franchise Area. No Cable Television System shall be allowed to occupy or use the Public Ways or the Franchise Area or be allowed to operate without a cable television franchise. The Grantee shall at all times during the term of this Franchise to subject to all lawful exercise of the general police power by the City.
- (2) In the event the City enters into a franchise, permit, license, or other agreement of any kind with any other person or entity other than the Grantee for the purpose of providing cable television service to any part of Franchise Area which contains terms more favorable or less burdensome to such person or entity in regard than similar provisions of this Ordinance, then this Ordinance shall be deemed amended as of the Effective Date of the other franchise, permit, license or other agreement,

so as to give the Grantee the benefit of any such more favorable or less burdensome terms. (Ord. 2003-25, S2, June 5, 2003) (Ord. 1124 S2, 1983)

3.20.030 Franchise Term. The franchise granted by the Council under this Ordinance shall be for a term of ten (10) years from the date set forth in 3.20.180 hereof; provided that this term may be extended at the option of Grantee, upon application by the Grantee and approval by Council, as outlined in Section 3.20.120 hereof. (Ord. 2003-25, S3, June 5, 2003) (Ord. 1124 S3, 1983)

3.20.040 Cable television service obligations.

- (1) Obligations of Grantee:
 - (a) The grantee shall render service as required hereunder and shall respond to complaints and make repairs as necessary. Grantee shall assure the continuity of Cable Service to all Cable Subscribers who are current in their payments for service, and in no event shall Grantee turn-off the System except as permitted by the terms of Section 3.20.120 hereof. Grantee may interrupt Cable Service only for good cause; planned interruptions, insofar as possible, shall be preceded by notice given to Subscribers.
 - (b) The Cable Television System shall be operated and maintained by Grantee at all times in substantial compliance with all applicable filing, reporting or technical requirements of the Federal Communications Commission or other government agencies regulating cable television generally.
 - (c) The Grantee shall not be liable for any delay in or its inability to perform any of its obligations hereunder, including, without limitation, to provide, repair, replace, construct, maintain or operate Cable Television Service if such delay or inability to perform is due to any cause beyond Grantee's control, including, without limitation, act of God, fire, flood, earthquake, hurricane, unavoidable casualty, extraordinary delays in transportation, strike, lockouts, picketing, boycotts, embargoes, government orders or other requirements, acts of civil or military authorities, governmental restrictions, energy shortages, equipment and material delays by vendors, regulations or controls, war-related shortages, alien invasions acts or omissions of carriers, or activities or other emergency conditions including weather conditions incompatible with good quality workmanship or operations.
 - (d) Subject to applicable FCC guidelines governing "parental control" devices, the Grantee shall make available to any Cable Subscriber

so requesting a parental guidance or lock-out device which shall permit the Subscriber to eliminate Cable Service reception of any cable network services. The Grantee shall advise all Cable Subscribers regarding the availability of this device, and a charge for any such device and associated service installation may be imposed.

- (2) Obligations of City.
 - (a) It being in the public interest for the Grantee to maintain a good relationship with the residents of the City, the City shall assist and cooperate with the Grantee in maintaining such a relationship.
 - (b) If it becomes legally or practically infeasible for Grantee to use certain Public Ways, particularly public utility easements, easements across private property, or dedicated utility strips, then the City shall cooperate with Grantee in obtaining the necessary authority to cross, use or otherwise employ rights of way in installing and maintaining its System.
- (3) Channel Carriage. Grantee shall provide Subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall at a minimum, consist of the following: (a) All signals carried in fulfillment of applicable FCC requirements, and (b) Any signal of any television broadcast station that is provided by Grantee to any Subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. (Ord. 2003-25, S4, June 5, 2003) (Ord. 1124 S4, 1983)

3.20.050 Conditions of street occupancy.

- (1) All transmission and distribution structures, poles, lines, and equipment installed or erected by the Grantee within the City shall be so located as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.
- (2) In case of disturbance of any Public Way, the Grantee shall, at its expense, restore, reconstruct and repair such Public Way to substantially as good a condition as reasonable, considering the condition of the Public Way existing immediately prior to Grantee's work. In the event that the City determines that Grantee has not made such restoration, reconstruction or repair in a reasonable satisfactory manner, the City, after giving Grantee notice and opportunity to correct such failure, shall have the right to carry out such restoration, reconstruction or repair, and Grantee shall reimburse

in City in full for all reasonable expenses incurred by the City in carrying out all or part of such restoration, reconstruction or repair.

- (3) Upon its receipt of reasonable advance notice, the Grantee shall, at its own 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 lawfully required by City by reason of traffic conditions, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City; but, the Grantee shall in all cases have the right of abandonment of its property, subject to City ordinances, and if public funds are available to any company using such street, easement or right of way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.
- (4) The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.
- (5) The Grantee shall have the authority to trim trees or other natural growth overhanging any of its cable plant in the Franchise Area so as to prevent branches from coming in contact with the Grantee's wires and cables or other equipment. After completion of construction of the System, Grantee may trim trees or natural growth overhanging the cable plant, and shall be permitted to charge persons who own or are responsible for such trees or natural growth for the cost of such trimming, provided that similar charges are assessed by and paid to the utilities or the City for tree trimming. The Grantee shall compensate the City or property owner, or shall replace at its own cost and expense, for all trees or shrubs damaged as a result of any construction of the System undertaken by Grantee.
- (6) Subject to any applicable state or federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street; provided that (a) such use by the City does not interfere with a current or future use by the Grantee; and (b) the City holds the Grantee harmless against and from all claims, demands, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits; and (c) the City either pays a rental fee consistent with then current market rates or as agreed to by Grantee, otherwise compensates Grantee for the use of such poles or conduits.

- (7) The City shall have the right to inspect all construction or installation work performed in, over, under and upon the Public Ways, subject to the provisions of this Franchise and made such inspections as it shall find necessary to insure compliance with the terms of this Franchise and other pertinent provisions of law. Any such inspection shall be during normal business hours and shall further be conducted in such a manner so as to minimize any interference with the on-going construction or installation work being performed as well as with Grantee's normal operation of the Cable Television System. (Ord. 2003-25, S5, June 5, 2003) (Ord. 1124 S5, 1983)

3.20.060 Safety requirements.

- (1) Construction, installation and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. All such work shall be performed in accordance with applicable safety code or technical requirements, including but not limited to National Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); Bell System Code of Pole Line Construction; and applicable FCC or other federal, state and local regulations.
- (2) In any event, the system shall not endanger or interfere with the safety of persons or property in the Franchise Area. In particular, Grantee shall substantially comply with all local, state or federal law or regulations which govern cable plant signal leakage or interference with communications media. Any antenna structure used in the Cable Television System shall comply with all construction, marking and lighting of antenna structure requirements of Federal Aviation Administration. All working facilities, conditions and procedures used during construction, installation and maintenance of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration. (Ord. 2003-25, S6, June 5, 2003) (Ord. 1124 S6, 1983)

3.20.070 Aerial and Underground Construction and Extension of Service.

- (1) In those areas of the City where all of the transmission or distribution facilities of the respective public utilities are underground, or hereafter are placed underground, the Grantee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the System's signal quality. In those areas where the transmission or distribution facilities of the respective public utilities providing telephone

communications and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Section 3.20.070 (1) shall require Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters directional couplers), amplifiers, power supplies, pedestals, or other related equipment.

- (2) The Grantee is hereby authorized to extend the system within the Franchise Area when, where and to the extent that such extension is technically and economically feasible.
- (3) Whenever the Grantee shall have received written requests, with any requested monetary deposits for Cable Service for at least fifteen (15) subscribers within 396.24 cable meters (1300 cable feet) of the same aerial trunk cable, or from at least twenty-five (25) subscribers within 396.24 cable meters (1300 cable feet) of the same underground trunk cable, it shall extend its System to such Subscribers solely for the usual connection and service fees for all Subscribers, provided that such extension is technically and economically feasible. The 1300 cable feet shall be measured in extension length of Grantee's cable required for service located within the Public Way or easement and shall not include the length of the necessary drop to the Subscriber's home or premises. Notwithstanding the above, the Grantee shall not be required to install a drop line from the feeder cable to the Subscriber's house or premises if it exceeds 45.73 cable meters (150 feet), unless the Subscriber is willing to pay the cost of the drop over 150 feet.
- (4) No person in the Grantee's service area shall be arbitrarily refused service; but in recognition of the capital costs involved in unusual circumstances, including, without limitation, instances when subscriber density is less than provided or in sub-paragraph (3) above, Cable Service may be made available in such lower density areas on the basis of the payment in advance of costs of materials, labor and obtaining easements by the parties requesting Cable Service in more densely populated areas from subsidizing service to low density area Subscribers.
- (5) Grantee shall maintain maps and plats of the Cable Television System plant and shall update these maps and plats to reflect changes in the system plant, copies of which shall be made available to the City upon request.
- (6) (a) For all residential structures hereinafter erected which are to be served by underground utilities, the developer of the subdivision or development may acquire Cable Service for such development under the following conditions; (1) The entire cost of such

undergrounding, from the boundary of the new subdivision or, in the case of an individual structure which is not part of an existing subdivision, from the lot line, to each building, shall be borne by the developer, subdivider or owner of the property, including the reimbursement to the Grantee of its share of all trenching costs, materials and labor; and (2) Developer, at its expense, shall perform any trenching or backfilling necessary in preparation for the provision of Cable Service, including furnishing of any imported backfill material required, and will furnish and install for the Grantee any necessary distribution conduit and substructures, including pedestals, required in preparation for the provision of Cable Service and in accordance with the Grantee's plans and specifications.

- (b) Grantee shall not be obligated to provide Cable Service to such new development unless such developer or owner agree to bear the costs. However, Grantee shall have the right to provide Cable Service to all newly developed areas of the City at its own expense, regardless of whether a developer or owner cooperates with Grantee or pays Grantee for the expenses of installing cable on their property.
- (c) Grantee shall provide plans and specifications to a developer, and shall inspect the facilities installed hereunder, and certify to the City prior to final approval of the subdivision or development that the facilities installed in a development were properly installed. Facilities installed hereunder shall be owned, operated and maintained by Grantee. (Ord. 2003-25, S7, June 5, 2003) (Ord. 1124 S7, 1983)

3.20.080 Franchise Payments.

- (1) In consideration of the granting and exercise of this Franchise to use the Public Ways and Streets, as herein defined, for the operation of a Cable Television System and to help defray some of the costs of regulating the System, Grantee shall pay to the City a percentage equal to five (5%) percent of its Gross Receipts during each year of operation under this Franchise.
- (2) The franchise payments shall be made to the City annually within sixty (60) days after the expiration of any calendar year or portion thereof during which the Franchise is in force. After notice to Grantee delivered pursuant to Section 3.20.170 hereof that a payment is late, and upon allowing Grantee a thirty (30) day period within which to pay any outstanding fees, the City shall be entitled to impose on Grantee a penalty in the amount of \$100.00 per day for each day in excess of such thirty (30) day notice

period in which Grantee willfully fails, refuses or neglects to pay any undisputed portion of the percentage payment due and owing.

- (3) At the time of payment, Grantee shall provide the City an annual summary of Gross Receipts received during the applicable year. The City shall have the right to request copies of or inspect Grantee's books and records directly related to Grantee's Franchise Fee and Grantee's Proof of Performance tests. The City shall further have the right, upon request, to copies of all petitions, applications and communications submitted by Grantee and directly related to Grantee's Franchise to the Federal Communications Commission, Securities and Exchange Commission or other Federal or State regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to this Franchise. Any request for copies made pursuant to this section shall be preceded by reasonable prior written notice to Grantee to allow sufficient time for compliance with the foregoing. (Ord. 2003-25, S8, June 5, 2003) (Ord. 1124 S9, 1983)

3.20.090 Indemnifications, Insurance.

- (1) Hold harmless.
 - (a) By its acceptance of this Franchise, Grantee specifically agrees that it will pay all damages and penalties which the City may legally be required to pay which result from any negligent operation of the Cable Television System on the part of Grantee. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements, and all other damages arising out of the installation, operation, or maintenance of the Cable Television System authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, except for any claim asserted or liability imposed that arises or is related to wanton or willful negligence by the City. In the event any action or proceeding shall be brought against the City by reason of any matter for which the City is indemnified hereunder, Grantee shall, upon notice from the City, at the Grantee's sole cost and expense, resist and defend the same. The City shall, at its sole cost, have the option to participate in its defense in coordination with the defense provided by Grantee.
 - (b) The Grantee shall hold the City, its officers, boards and employees, harmless from liability for damages or claims for damages and for any liability or claims resulting from property, damage or bodily injury (including accidental death) which arise out of the Grantee's

negligent operations in conducting a cable television business in the City.

- (c) The City shall hold Grantee, its officers, directors, employees, subscribers, assigns and successors, harmless from liability for damages, claims for damages or liability or claims resulting from bodily injury (including accidental death) which arise out of the City's, its employees' or agents' negligence in dealing with or in any way handling or affecting Grantee's real or personal property used or usable in the Cable Television System in the Franchise Area, to the extent provided by the statutory and common law of the State of Indiana and by the Constitution of the State of Indiana. This provision does not and shall not be construed as a waiver, relinquishment or abrogation of the statutory limitation of liability available to the City. This paragraph in no way waives the City's limited right of sovereign immunity or protection under the applicable statutory limitation of liability available to cities generally in this State.

- (2) Insurance Required. Upon being granted a franchise, and upon the acceptance required under this Ordinance, the Grantee shall file with the City Clerk-Treasurer, and shall thereafter maintain in full force and effect at its own cost and expense, during the term hereof, General Comprehensive Liability Insurance, with the City named as an additional insured, protecting the Grantee and the City against liability for loss, personal injury and property damage occasioned by the operation of the Cable Television System by Grantee, in the amount of not less than \$1,000,000.00 for each person, not less than \$2,000,000.00 for any one occurrence, and Property Damage Liability Insurance in an amount not less than \$1,000,000.00 resulting from any one occurrence. Evidence in the form of a Certificate of Insurance naming the City as an additional insured and certificate holder on such policy shall be provided to the City. For these purposes, the City's name and address should appear as follows: City of Jasper, c/o Department of Personnel/Safety, P.O. Box 29, Jasper, 47547-0029. (Ord. 2003-25, S9, June 5, 2003) (Ord. 1124 S10, 1983)

3.20.100 Restrictions of Transfer of Franchise Rights. The Franchise granted herein shall not be sold, assigned or transferred, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, other than to a person or entity controlling, controlled by or under common control with the Grantee, without prior written consent of the Common Council expressed by resolution. The consent of the Common Council shall not be unreasonably withheld; provided, however, that the prospective assignee or transferee must agree in writing to comply with all the provisions of this Ordinance; and provided, further, that no such consent shall be required for a transfer in trust, by mortgage, or by other hypothecation, in whole or in part, or to

assign rights in the Cable Television System to secure indebtedness. (Ord. 2003-25, S10, June 5, 2003) (Ord. 1124 S11, 1983)

3.20.110 Rates and charges.

- (1) **Rate Regulation:** Grantee shall recognize the right of the City to exercise its authority to regulate rates for the Basic Service Tier of Cable Service and the equipment and services necessary to deliver the Basic Service Tier of Cable Service to Subscribers as provided for by the FCC. Grantee and the City shall abide by all applicable laws, rules, regulations, and orders with regard to rates and regulations thereof, as promulgated by the FCC.
- (2) **Filing of Rate Schedule:** The Grantee shall file annually with the City, a Full, written schedule of all Subscriber and User rates and all other rates, fees, or charges. Said schedule shall be filed no less than thirty (30) days prior to the time such changes are announced by Grantee in the levels of regulated rates, fees, or other charges.
- (3) Consistent with FCC Basic Service Tier rate regulation procedures, Grantee may charge a reasonable fee, related to time, labor, material or other costs, for connection, rental, repairs, replacements, or testing of electronic devices, including but not limited to converters, decoders, traps or connectors, which are installed by Grantee at Subscriber residences or locations, whether or not such items are owned by the Subscriber, or are used at Subscribers' request in testing the signal quality of the Cable Service received on Subscriber's television receivers.
- (4) Grantee reserves the right to pass through to the Subscribers any excessive copyright charges to the Grantee for the receiving and distribution of any distant signals. (Ord. 2003-25, S11, June 5, 2003) (Ord. 1124 S12, 1983)

3.20.120 Extension; Renewal; Termination.

- (1) **Extension:** The City may extend the Franchise for an additional five (5) years beyond the current 10 year term if Grantee so requests. Within 180 days of the expiration date of the term then in effect, Grantee shall, at its option, notify the City Clerk-Treasurer in writing that Grantee wishes to petition for a five year extension. The City shall then set a date for a public hearing in front of the Council with the City Clerk-Treasurer. Said public hearing shall be advertised in a newspaper of general circulation in the Franchise Area as required by Indiana Law. At said hearing, the Council shall hear the petition of Grantee, and any comments from residents of the City on whether the issues raised by the Public Interest Standards will be met by a five year extension of the current term. If they will the Council shall grant Grantee's petition. If the Council denies the petition, it shall give its reasons in writing within 30 days after the hearing,

and shall provide Grantee with a copy of the decision within 2 business days of its publication.

- (2) **Renewal of Franchise.** Prior to the expiration of the initial term of the Franchise granted hereunder or any extension thereof, the City Council may consider any application by Grantee for renewal of the Franchise for an additional term, if, in the opinion of the Council, such renewal would serve the Public interest. The procedure to consider such a renewal shall be as follows:
 - (a) Prior to the expiration of the initial term of the Franchise or any extension thereof, Grantee shall petition the Council in writing for renewal of the Franchise.
 - (b) Within 30 days after receipt by the Council of Grantee's petition for renewal, the Council shall hold a public hearing to consider the renewal petition, and the City Clerk-Treasurer shall publish notice of said public hearing, its time, place, subject matter and parties entitled to be heard at the hearing, in a newspaper of general circulation in the Franchise Area as required by Indiana Law.
 - (c) At the public hearing, the Council shall hear representatives of the Cable Television System and interested Residents of the Franchise Area on any issues raised pursuant to the Public Interest Standard set forth in Section 3.20.010 (13) hereof.
 - (d) The Council shall make its decision on the Grantee's petition for renewal, and shall publish a written determination within 2 business days after it is published.
- (3) **Termination.** The City may terminate this Franchise in the event of the willful failure, refusal or neglect by Grantee to substantially comply with any material requirement of limitation contained in this Ordinance. The City shall comply with the following procedures:
 - (a) The City Council shall, with advice of legal counsel, make a written determination that after reasonable investigation it appears that Grantee has willfully failed, refused or neglected to substantially comply with the material provisions of this Ordinance. However, the Council shall not be justified in determining that an apparent violation by Grantee of this Ordinance exists, unless it also appears that there is no reasonable explanation, excuse or justification for such apparent violation. Further, a dispute between the City and Grantee over policies, practices or procedures which are clearly stated in or based on the

language of the Ordinance shall not be deemed a sufficient basis for a determination of apparent violation.

- (b) If the Council finds good cause to make its determination on the standards set forth above, then it shall give written notice to Grantee stating clearly its factual and legal basis for such determination. Grantee shall then have a period of thirty (30) days after its receipt of such notice in which to comply with the provision. If the apparent violation is not remedied within the thirty day period, the City Council may order the matter of apparent violation to be brought up for discussion at a regularly scheduled meeting. Grantee shall be served with notice at least thirty (30) days prior to the meeting as to the topic, time, place and procedure for the meeting, and the same shall be publicized by the City Clerk-Treasurer in a newspaper of general circulation in the Franchise Area.
 - (c) At the meeting, the Council shall permit representatives of Grantee to be heard, together with any Residents of the Franchise Area who have requested to be heard on the topic of the apparent violation. Based on the facts and arguments of Grantee, any relevant factual presentations of residents, and the Council's own investigation, the Council shall make a decision whether the apparent violation was in fact a willful failure, refusal or neglect to substantially comply with a material provision of the Ordinance. Such decision shall be in writing stating clearly the factual and legal basis for the decision, shall be rendered and made public within 30 days of the meeting, and Grantee shall be provided a copy thereof within two (2) business days after the decision is published.
 - (d) If the Council shall determine that such willful failure, refusal or neglect by the Grantee was not in the public interest and was without just cause, then the Council may, by resolution, declare that the Franchise of such Grantee shall be terminated unless the Grantee shall comply with the Ordinance provision within such period as the Council may fix.
- (4) Procedure in event of Termination, Non-Renewal or Denial of Extension:
- (a) If Grantee disagrees with a Council determination as to termination, renewal or extension, and chooses not to comply with the material provision at issue, or does comply with protest, then Grantee may pursue any and all equitable or legal means of judicial review. If Grantee seeks judicial relief in the form of judicial stay, injunction or other temporary restraint of the effectiveness of the

Council's decisions, both the City and the Council agree not to oppose unnecessarily Grantee's pursuit of such relief.

- (b) Pending a final disposition of Grantee's judicial review, Grantee shall have the right to continue the business of providing Cable Service to its Subscribers, may receive revenue and profits from such business, and shall in all ways be considered by the City as having a claim of right to continue as the Grantee, provided that Grantee shall continue to comply with the material provisions of the Ordinance which are not in dispute. (Compliance by Grantee with material provision in dispute shall not be construed as an admission of liability).

- (c) In the event, Grantee is ultimately unsuccessful in pursuit of its judicial remedies, or if Grantee is permitted to and does not comply with any final determination, then Grantee shall commence, immediately after a judicial mandate shall be issued and entered on the records of a Court, to solicit buyers for the Cable Television System, and shall use commercially reasonable efforts to sell the System. In the event Grantee is unable to find, after its efforts, a bona fide buyer who will pay a fair market price for the System, then Grantee shall have the right to shut down and remove any and all of the Cable Television System in the Franchise Area, all to be accomplished within one (1) year after a final order is issued by a court, or by the Council in the event Grantee chooses not to seek judicial review of the Council's final determination. Grantee may continue to operate the System within such one (1) year period, and until it is shut down and removed. However, at Grantee's sole option, it may abandon some or all of the equipment, property or facilities of the Cable Television System; but in so doing Grantee relinquishes all right to compensation by the City of any third party using or taking over such System after Grantee has abandoned it. (Ord. 2003-25, S12, June 5, 2003) (Ord. 1124 S13, 1983)

3.20.130 Miscellaneous provisions.

- (1) When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the City Clerk-Treasurer.

- (2) (a) The Grantee shall provide without charge one (1) outlet of Basic Cable Service to each governmental office building, fire station, police station, and public school building that is passed by its Cable Television System. The outlets of Basic Cable Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public, users of such outlets shall hold

Grantee harmless from any and all liability or claims arising out of their use of such outlets.

- (b) Notwithstanding the above, the Grantee shall not be required to provide an outlet to such buildings where the line from the feeder cable to said buildings or premises exceeds 45.73 cable meters (150 cable feet), unless the building owner is willing to pay the cost of the drop over 150 feet. In the event that additional outlets of Basic Cable Television Service are provided to such buildings, the buildings owner shall pay the usual installation and service fees associated therewith.
- (3) In the case of any emergency or disaster, the Grantee shall, upon request of the City, subject to and consistent with the FCC's Emergency Alert System requirements, make available its facilities for the City to provide emergency information and instructions by means of an alphanumeric crawl for emergency use during the emergency or disaster period. The City shall hold the Grantee, its agents, employees, officers and assigns hereunder harmless from any claims arising out of the emergency use of its facilities by the City.
- (4) Grantee shall be prohibited from directly or indirectly initiating or using any form, procedure or device for procuring information or data from Subscribers' premises from each Subscriber so affected. Authorization shall mean written approval from the Subscriber of the specific use or purpose for which the information is sought. Said authorization shall not have been obtained from the Subscriber as a condition of service. Further, it shall be unlawful for the Grantee, without such authorization, to activate or utilize any transmission path from the Subscriber's premises, in a manner which invades Subscriber's right of privacy, or for which Grantee has no authorization. However, Grantee shall have the right to utilize any transmission path to verify the technical integrity and quality of performance of the Cable Television System. The provisions of this Section 3.20.130 (4) shall not apply to the collection of information solely for billing purposes or to monitor whether there is unauthorized reception of Cable Services.
- (5) If the Federal Communications Commission, or any other federal or State body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of this Ordinance, then to the extent such justification shall pre-empt or preclude the exercise of like jurisdiction by the City, the jurisdiction of the City shall cease and no longer exist.
- (6) No person, firm or corporation within the Franchise Area of the Grantee, and where trunk lines are in place, pursuant to Section 3.20.070 hereof, shall be refused Cable Service; provided, however, that the Grantee shall

not be required to provide service to any subscriber who does not pay the applicable connection fee or service charge.

- (7) If at any time the Grantee's Cable Television System or other equipment is disturbed, damaged, or severed by a third party, the cost of repair shall be paid by the party responsible for said damage. The Grantee may charge the responsible party for the cost of labor and materials expended by Grantee to repair said damage or replace damaged cable plant. The City will cooperate with the Grantee in enforcing any charge or penalty arising from such damage to Grantee's property. (Ord. 2003-25, S13, June 5, 2003) (Ord. 1124 S14, 1983)

3.20.140 Equal Opportunity Employment. The Grantee shall substantially comply with all valid and applicable requirements of federal or state government regarding equal employment policy and practice. (Ord. 2003-25, S14, June 5, 2003) (Ord. 1124 S15, 1983)

3.20.150 Violations.

- (1) From and after the effective date of this Ordinance, it shall be unlawful for any person to construct, install or maintain on public property of the City, or within any other public property of the City, or within any privately-owned area within the City which has not yet become a Public Way but is designated or delineated as a proposed Public Way on any tentative subdivision approved by the City, any equipment or facilities for distributing any television signals or radio signals through a cable television system, unless a franchise authorizing such use of such Public Way or property or area has first been obtained pursuant to the provisions of this Ordinance, and unless such franchise is in full force and effect.
- (2) It shall be unlawful for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the franchised Cable Television System within this City for the purpose of enabling such person, firm or corporation or third parties to receive or use any Cable Services without payment to the Grantee.
- (3) It shall be unlawful for any person, without the consent of the Grantee, to willfully tamper with, remove or injure any property, equipment or part of the Cable Television System or any means for receiving Cable Services.
- (4) It is agreed that any person in violation of this section shall be subject to the maximum penalty allowed by Federal, State and local law. The City agrees to cooperate with Grantee in the prosecution of any such violations and reserves the right, but is not required, to prosecute an Ordinance

violation action in the name of the City. (Ord. 2003-25, S15, June 5, 2003) (Ord. 1124 S16, 1983)

3.20.160 Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is held illegal, invalid or unconstitutional by the decision of any court or regulatory tribunal of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Council hereby declared that it would have passed this Ordinance and each section, sub-section, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee of the Franchise granted hereunder. (Ord. 2003-25, S16, June 5, 2003) (Ord. 1124 S17, 1983)

3.20.170 Notices. All notices required herein shall be in writing, and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed enveloped by certified or registered mail, postage prepaid, at a post office or branch thereof regularly maintained by the U.S. Postal Service. The Notices shall be addressed as follows:

If to City:

Clerk-Treasurer
City of Jasper
P.O. Box 29
Jasper, IN 47546

With a copy to:

City Attorney
City of Jasper
P.O. Box 29
Jasper, IN 47546

If to Grantee:

Insight Communications Midwest, LLC
P.O. Box 649, 2856 Cathy Lane
Jasper, IN 47546
Attn: District Vice President

With a copy to:

Insight Communications Midwest, LLC.
810 Seventh Avenue, 41st Floor
New York, NY 10019
Attn: V.P., Administration

Parties may designate other addresses from time to time by giving due notice to each other. (Ord. 2003-25, S17, June 5, 2003) (Ord. 1124 S18, 1983)

3.20.180 Acceptance of the Franchise; Effective Date.

- (1) Grantee shall indicate acceptance of this Franchise with the City Clerk-Treasurer within ten (10) days after the passage and adoption of this Ordinance, by signing below.
- (2) The effective date of this Ordinance shall be June 7, 2003. (Ord. 2003-25, S18, June 5, 2003) (Ord. 1124 S19, 1983)

3.20.190 Prior Ordinances. All ordinances and/or parts of ordinances in conflict herewith are repealed. (Ord. 2003-25, S19, June 5, 2003)

Chapter 3.24

CABLE TELEVISION SYSTEM RATE REGULATIONS

Sections:

- 3.24.010 Adoption of Rules and Regulations.**
- 3.24.020 Notice to Public and Cable Operator.**
- 3.24.030 Review of the Rates.**
- 3.24.040 Time period for reviewing the cable television services and equipment.**
- 3.24.050 Review Decision adopted by Formal Resolution.**
- 3.24.060 Information provided by grantee shall not be disclosed to the public.**
- 3.24.070 Refund to Subscribers.**
- 3.24.080 Violation and Penalties.**
- 3.24.200 Execution of the intentions of the Cable Television Consumer Protection and Competition Act.**

3.24.010 Adoption of Rules and Regulations.

- (1) That the Common Council of the City of Jasper, Indiana, hereby adopts the rules and regulations set forth by the Federal Communications Commission pursuant to Section 623(b) of the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. 543(b)) for the review of the basic service tier of cable television services and equipment necessary for the provision of such service tier. Such rules and regulations promulgated by the Federal Communications Commission are found in Exhibit A attached hereto.
- (2) For the purposes of this Ordinance, the basic service tier of cable television services shall mean a separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all signals of domestic television broadcast stations provided to any subscriber, (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system) any public, educational, and governmental programming required by the franchise to be carried on the basic tier, and any additional video programming signals or service added to the basic tier by the cable operator. Equipment necessary to provide said basic tier of service shall be defined as those items of associated equipment necessary for the reception of basic cable service by a subscriber, including, but not limited to converter boxes, remote control units, additional outlets, and installations. (Ord. 1993-34, S1, 1993)

3.24.020 Notice to Public and Cable Operator.

- (a) The Common Council of the City of Jasper, Dubois County, Indiana, shall provide the grantee of the cable television franchise, the public, and interested parties with an opportunity to be heard at a public hearing before the Common Council of the City of Jasper, upon ten (10) days written notice to the grantee of the cable television franchise of the time and place of the public hearing, provided further that said notice shall indicate that the purpose of the public hearing is to receive the views of the grantee and interested parties on issues pertaining to regulation of the basic service tier of cable television services and equipment necessary to provide said basic tier of service; and provided further that notice of said public hearing shall be published in a local newspaper of general circulation at least ten (10) days before the date of this hearing, and provided further, that an agenda for said public hearing shall be posted in a public place at the Jasper City Hall at least ten (10) days prior to said public hearing and that any other notice required by I.C. 5-14-1.5 shall be given.
- (2) Upon the adoption of this ordinance and the certification of the City of Jasper, Indiana, by the Federal Communications Commission, the City shall immediately notify the cable operator by certified mail, return receipt requested, that the City intends to regulate subscriber rates charged for the basic service tier and associated equipment as authorized by the Cable Television Consumer Protection and Competition Act of 1992. Upon receipt of said notice by the City, the Cable Operator shall, within thirty (30) days, file with the City its current rates for the basic service tier and associated equipment along with any additional documentation justifying the reasonableness of its rates. (Ord. 1993-34, S2, 1993)

3.24.030 Review of the rates.

- (1) That the City of Jasper, Dubois County, Indiana, shall establish that the period for review of rates of the basic service tier of cable television services and the equipment necessary to provide said basic tier of service shall be thirty (30) days from the submission by the grantee of the cable television franchise of Federal Communications Commission Form 393. If the Common Council takes no action within thirty (30) days from the date the cable operator files its basic cable rates with the City, the proposed rates will continue in effect.
- (2) In the event that additional time for review of the Federal Communications Commission Form 393 submitted by grantee is necessary, the Common Council or its designee shall issue a brief written order prior to the end of the thirty (30) day review period, with a copy of said order to be sent by Certified United States Mail to the grantee, providing for an additional

ninety (90) day period for review of rates of the basic service tier and the equipment necessary to provide said basic tier of service. During the extended review period and before taking action on the proposed rate, the Common Council shall hold at least one public hearing in which interested citizens may express their views and record objections. (Ord. 1993-34, S3, 1993)

3.24.040 Time period for reviewing the cable television services and equipment.

- (1) That the City of Jasper, Dubois County, Indiana, shall establish that the period for review of the basic service tier of cable television services and the equipment necessary to provide said basic tier of service shall be ninety (90) days from the submission by the grantee of information and forms prescribed by the Federal Communications Commission for a showing of cost-of-service, as defined by the Federal Communications Commission.
- (2) In the event that additional time for review of the cost-of-service showing submitted by the grantee is necessary, the Common Council, or its designee shall issue a brief written order prior to the end of the ninety (90) day review period with a copy of said order to be sent by Certified United States Mail to the grantee, providing for an additional one hundred fifty (150) day period for review of rates of the basic service tier and the equipment necessary to provide said basic tier of service. During the extended review period and before taking action on the proposed rate, the Common Council shall hold at least one public hearing in which interested citizens may express their views and record objections. (Ord. 1993-34, S4, 1993)

3.24.050 Review Decision adopted by Formal Resolution.

- (1) Upon completion of its review of the proposed rates for the basic service tier of cable television services and the equipment necessary to provide said basic tier of service, the Common Council shall adopt its decision by formal resolution. Said resolution shall indicate the reasons for the decision. Upon passage of the resolution, the Common Council shall publish the resolution in pamphlet form.
- (2) In the event that the cable operator's proposed rates exceed the reasonable rate standard as established by the Federal Communications Commission in its rules and regulations attached hereto, the Common Council may order the rates reduced by rollbacks or refunds to subscribers, in the manner so prescribed by the Federal Communications Commission. (Ord. 1993-34, S5, 1993)

3.24.060 Information provided by grantee shall not be disclosed to the public. In considering information provided by the grantee as a part of review of his rates for the basic service tier of cable television services and the equipment necessary to provide said basic tier of service, the City shall not disclose to the public the content of any records, forms, reports, calculations or other documents as provided which the grantee has indicated as being of a proprietary interest or constituting a trade secret in nature. The municipal officer responsible for administration of the Indiana Freedom of Information Act shall retain the right to determine the validity of the grantee's claim of proprietary interest or trade secrecy in accordance with the provisions (sic) of the Indiana Freedom of Information Act. (Ord. 1993-34, S6, 1993)

3.24.070 Refund to Subscribers. The City may order the cable operator to refund to subscribers a portion of previously paid rates under the following circumstances:

- (1) A portion of the previously paid rates have been determined to be in excess of the permitted basic cable service tier charge or above the actual cost of equipment; or
- (2) The cable operator has failed to comply with a valid rate order issued by the City. (Ord. 1993-34, S7, 1993)

3.24.080 Violation and Penalties. Failure by the cable operator to comply with the terms and conditions established by this Ordinance shall constitute a violation of the Jasper Municipal Utilities Facility License dated January 11, 1965, and any and all extensions or renewals thereof; and, shall be subject to the penalties provided therein. (Ord. 1993-34, S8, 1993)

3.24.200 Execution of the intentions of the Cable Television Consumer Protection and Competition Act:

- (1) That the Common Council of the City of Jasper, Indiana, ratifies the filing of FCC Form 328 by the Mayor on October 6, 1993.
- (2) That the Common Council herewith designates the Mayor of the City of Jasper, Indiana, as the designee of the City to execute all documents and/or correspondence required as necessary to carry out the intentions of the Cable Television Consumer Protection and Competition Act of 1992, and the regulations promulgated by the FCC and the City of Jasper, Indiana, thereunder.
- (3) That the Mayor shall appoint and designate a City employee to receive consumer complaints which may be filed with the City pursuant to the Cable Television Consumer Protection and Competition Act of 1992.

Chapter 3.25

TRANSIENT MERCHANTS/DOOR-TO-DOOR SOLICITORS

Sections:

3.25.010	Purpose of Chapter.
3.25.020	Definitions.
3.25.030	License Required.
3.25.040	Application.
3.25.050	Investigation of Applicant.
3.25.060	Suspension, Revocation, Penalties.
3.25.070	Fees.
3.25.080	Exhibition of License.
3.25.090	Transferability; Expiration.
3.25.100	Exemptions.
3.25.110	Right to Appeal.
3.25.120	Effective Date.

3.25.010 Purpose of Chapter. The purpose of this Chapter is to regulate the activities of individuals who engage in door to door solicitation and/or the activities or persons referred to in this act as transient merchants to protect against criminal activity, including fraud, to minimize the unwelcome disturbance of citizens and the disruption of privacy as necessary in the interest and promotion of the public health, safety, convenience, peace, comfort, order and public welfare of the City of Jasper, Indiana and the citizens and inhabitants thereof. (Ord. 1997-13, S3.25.010, 1997)

3.25.020 Definitions. For the purpose of this Chapter, the following terms, phrases, words and abbreviations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number:

- (1) "Peddler" means any person traveling by foot, wagon, automotive vehicle, or any other type of conveyance from place to place, from house to house, or from street to street carrying, conveying, or transporting goods, wares, merchandise, food products, offering and exposing them for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad car, or other vehicle or conveyance. However, one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this Chapter shall be deemed a peddler subject to the provisions of this Chapter. The word "Peddler" shall include the words hawker and huckster.

- (2) "Solicitor" means any person traveling from place to place, from house to house, or from street to street within the City of Jasper, for the purpose of taking orders for the sale of goods, wares, merchandise, magazines, books, or personal property of any nature whatsoever for a future delivery, or for services to be furnished or performed in the future, regardless of whether the person has, carries, or exposes for sale a sample of the subject of the sale or whether he is collecting advance payments on the sales or who solicits monies door-to-door for non-profit or not-for-profit organizations.
- (3) "Transient Merchant" means any person, whether as owner, agent, consignee, or employee, who engages in a temporary business of selling and delivering goods, wares, and merchandise within the City of Jasper, and who, in furtherance of this purpose, hires, leases, uses, or occupies any building, structure, motor vehicle, tent, railroad boxcar, boat, public room in hotels, motels, lodging houses, apartments, shops, or any street, alley, or other place within the City of Jasper, for the exhibition and sale of the goods, wares, and merchandise, either privately or at public auction. However, this definition shall not be construed to include any person who, while occupying temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only, and this definition shall not be construed to include any person who is a commercial traveler or salesman calling exclusively upon businesses, professional persons, schools, or public institutions for the purposes of taking orders or selling books, equipment, supplies, or services used professionally thereby. A person shall be a transient merchant even though he temporarily associates with a local dealer, trader, merchant, or auctioneer, or conducts the transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant, or auctioneer. The term "Transient Merchant" shall include the terms itinerant merchant and itinerant vendor.
- (4) "Food" means any raw, cooked, or processed edible substance, ice, beverage, drink or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (5) "License" shall mean a license which has been issued pursuant to the requirement of this ordinance. (Ord. 1997-13, S3.25.020, 1997)

3.25.030 License Required.

- (1) It shall be unlawful for a Transient Merchant, Peddler, or Solicitor to engage in their respective businesses within the corporate limits of the City of Jasper without obtaining a license in compliance with the provisions of this Chapter. The obtaining of a license by an employer or principal shall in no way relieve any employee or agent of that employer or principal of

his legal obligation to obtain a license, if his activity falls within the definition set out in Section 3.25.020.

- (2) Licenses issued under the provisions of this Chapter shall contain the information and be in the form prescribed by the Jasper Police Department.
- (3) It shall be unlawful for a transient merchant, peddler or solicitor to engage in door-to-door solicitations before 9:00 a.m. and after 8:00 p.m., and the license to be issued shall show on its face that restriction. Statutory reference: Authority to license transient merchants, see I.C. 25-37-1-11 (Ord. 1997-13, S3.25.030, 1997)

3.25.040 Application. Applicants for any license under this Chapter, whether a natural person, firm, corporation or other entity, shall file a written sworn application signed by the applicant, if an individual, by a partner if a partnership, and by an officer or duly authorized agent if a corporation, with the Jasper Police Department showing the following information.

- (1) The names and description of the applicant and, if other than a natural person, the names of the persons having the management or supervision or the applicant's business during the time that it is proposed that it will be carried on in the City of Jasper.
- (2) The full permanent address and full local address of the applicant.
- (3) A brief description of the nature of the business and the goods to be sold, whether the goods are proposed to be sold from stock in possession, or from stock in possession and by sample; to be sold at auction, direct sale, or by direct sale and by taking orders for future delivery; and where the goods or property proposed to be sold are manufactured or produced.
- (4) If the applicant is employed or acting as an agent, the name and address of the employer or principal, together with the credentials establishing the exact relationship.
- (5) The place or places within the City of Jasper where the applicant proposes to carry on his business and the length of time during which the applicant proposes that the business shall be conducted.
- (6) If one or more vehicles are to be used, a description of them, together with license numbers or other means of identification.
- (7) A copy of a current, valid state issued identification containing a photograph of the applicant and each person who will be selling or soliciting under the License, or if a corporation, a photograph of the person

to have the management or supervision of the applicant's business in the City of Jasper.

- (8) If the applicant is proposing to sell Food (other than locally grown produce exempted under 3.25.100) and is required by local or State ordinances, regulations or laws to have a separate permit or license, including but not limited to a Food Service Establishment Permit, the applicant will produce a copy of any and all valid permits or licenses required.
- (9) Any other reasonable information as to the identity or character of the applicant; or his agents or employees or the method or plan of doing business that the Jasper Police Department may deem proper to fulfill the purpose of this Chapter in the protection of the public good and welfare. (Ord. 1997-13, S3.25.040, 1997)

3.25.050 Investigation of Applicant.

- (1) Upon receipt by the Jasper Police Department of any application for a license under the provisions of this Chapter, the Jasper Police Department may investigate the person's criminal history and moral character as it deems necessary for the protection of the public good and welfare.
- (2) If, as a result of the investigation, the applicant's moral character and business responsibility are found to be such as to endanger or be detrimental to the public and its good and welfare, the license shall be denied or, if issued, revoked. (Ord. 1997-13, S3.25.050, 1997)

3.25.060 Suspension; Revocation; Penalties

- (1) Licenses issued under the provision of this Chapter may be revoked by the Jasper Police Department after notice and hearing for any of the following causes.
 - (a) Fraud, misrepresentation, or false statement contained in the application for the license.
 - (b) Fraud, misrepresentation, or false statement made in the course of the business for which the license is issued.
 - (c) Any violation of any of the provision of this Chapter.
 - (d) Conducting the business for which the license is issued in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

- (2) Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. The notice shall be mailed, postage prepaid, to the licensee at his last known address, at least five days prior to the date set for the hearing.
- (3) Upon the determination by the Jasper Police Department that it believes an emergency exists and that for the protection of the public welfare any license should be immediately suspended, the Jasper Police Department may forthwith suspend the license pending hearing as provided for in this Ordinance.
- (4) (a) Penalties. Any person convicted of a violation of any provision of this Chapter shall be fined in a sum not less than the applicable amounts set forth below:

First Offense:	\$ 25.00
Second Offense:	\$100.00
Third Offense:	\$300.00
Fourth Offense:	\$600.00

Each day any violation of this Chapter continues shall be considered a separate offense. The City shall also have the right to recover the costs of administering this Chapter, including but not limited to filing fees and attorney fees.

- (b) Enforcement. All officers of the Jasper Police Department shall enforce this Ordinance.
- (c) Administrative Liability. No officer, agent, or employee of the City of Jasper shall render himself personally liable for any damage that may occur to persons or property as a result of any act required or permitted in the discharge of his duties under this Chapter. Any suit brought against any officer, agent or employee of the City of Jasper as a result of any act required or permitted in the discharge of his duties under this Chapter shall be defended by the City Attorney until the final determination of the proceeding therein. (Ord. 1997-13, S3.25.060, 1997)

3.25.070 Fees.

- (1) At the time of filing the application for a license as provided for by this Chapter the applicant, unless exempt pursuant to Section 3.25.100, shall pay a \$25.00 fee to the City of Jasper for the license.

- (2) In the event the application is denied or revoked, the City of Jasper shall retain the \$25 fee to cover the expense of processing the application and the cost of investigation and shall refund any additional fees to the applicant.
- (3) All license fees must be paid in advance with the filing of the application, and no license shall be issued until the license fees have been paid. If any licensee desires to continue in business after the expiration of a license, a new license must be obtained as required under this Chapter. (Ord. 1997-13, S3.25.070, 1997)

3.25.080 Exhibition of License.

- (1) Every person holding a license under this Chapter shall exhibit it to all prospective customers before personally promoting a sale.
- (2) Persons holding a license hereunder making sales from a particular place may comply with this section by posting the license in a conspicuous location at that place. (Ord. 1997-13, S3.25.080, 1997)

3.25.090 Transferability; Expiration.

- (1) All licenses issued under authority of this Chapter shall not be transferable.
- (2) All licenses issued under the provisions of this Chapter shall expire one year after the date of issue. (Ord. 1997-13, S3.25.090, 1997)

3.25.100 Exemptions.

- (1) Licensed individuals. Those individuals who hold a valid occupational or professional license, which is issued and regulated by the State of Indiana are exempt from this Ordinance. This exemption shall only be applicable to the practice under or business conducted, pursuant to and within the terms and provision of the individual's license. Any individual claiming an exemption shall be required, upon request by the Jasper Police Department, to provide written proof of his or her valid licensure, for example, a copy of a license or certificate that was issued by the State of Indiana. The Jasper Police Department shall make any determination as to whether the activity to be conducted falls within the claimed licensure.
- (2) Yard sales. A resident of the City of Jasper who conducts a sale of tangible personal property for no more than six (6) days per calendar year at his primary residence.

- (3) Local not-for-profit. The members of any not-for-profit organization a majority of the members of which live in Dubois County, Indiana.
- (4) Locally grown produce. Fresh produce for human consumption grown within Dubois County, which produce was actually raised by the seller or the seller's immediate family.
- (5) Estate sale/auction. Items sold at sales or auctions involving estates of residents of City of Jasper or real property and the improvements located on said real property located in the City of Jasper or the personal property used and held by the decedent thereon.
- (6) Commercial salespersons. Commercial travelers or salespersons calling exclusively upon businesses, professional persons, schools, or public institutions for the purpose of taking orders or selling books, equipment, supplies or services used professionally thereby.
- (7) Handcraft shows or fairs. Organized shows, fairs, exhibitions or demonstrations involving two (2) or more different crafters of hand crafted items at an established business location within the City of Jasper. "Hand crafted" means items which have been created or crafted by the individual who is selling the item. (Ord. 1997-13, S3.25.100, 1997)

3.25.110 Right to Appeal. Any person aggrieved by the decision of the Jasper Police Department in regard to the denial or revocation of a license as provided for herein shall have the right to appeal to the Board of Public Works. Appeal shall be taken by filing with the Board of Public Works, within 14 days after notice of the decision by the Jasper Police Department has been mailed to the person's last known address, a written statement setting forth the grounds for the appeal. The Board of Public Works shall set the time and place for a hearing on the appeal and notice of the hearing shall be given to the person in the manner provided for in 3.25.060 for notice of hearing on revocation. The order of the Board of Public Works on the appeal shall be final. (Ord. 1997-13, S3.25.110, 1997)

3.25.120 Effective Date. That this Ordinance shall be in full force and effect on January 1, 1998. (Ord. 1997-13, S3.25.120, 1997)