

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: LICENSING; PERMITS; TAXES

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GENERAL PROVISIONS

§ 110.01 SALES AND SERVICE TAX.

(A) *Effective date and enactment of tax.* From and after July 1, 2022, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business, a tax measured by 2% on the gross receipts of all persons engaged in business within the jurisdiction of the city who are subject to the State Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto.

(B) *Use tax.* In addition, there is hereby imposed an excise tax on the privilege of use, storage, and consumption, within the jurisdiction of the municipality, of items purchased from and after July 1, 2022 at the same rate as the municipal sales and service tax upon all transactions or use, storage, and consumption, which are subject to the State Use Tax, SDCL § 10-46 and acts amendatory thereto.

(C) *Collection.* Such tax is levied pursuant to the authorization granted by SDCL § 10-52 and acts amendatory thereto and shall be collected by the State Department of Revenue in accordance with the same rules and regulations applicable to the State Sales Tax and under such additional rules and regulations as the Secretary of Revenue or the state shall lawfully prescribe.

(D) *Interpretation.* It is declared to be the intention of the ordinance codified herein and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the State Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto, and the State Use Tax, SDCL § 10-46 and acts amendatory hereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

(Prior Code, § 5-2-1) (Ord. 2021-339-377, passed 2-7-2022)

§ 110.02 GROSS RECEIPTS TAX.

(A) *Effective date and enactment of tax.*

(1) From and after July 1, 2022, there is hereby imposed a municipal gross receipts tax of 1 % upon the gross receipts from:

(a) The sale of leases of rentals of hotels, motels, campsites, or other lodging accommodations within the municipality for periods of less than 28 consecutive days;

(b) The sale of alcoholic beverages as defined in SDCL § 35-1-1;

(c) Establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption; and

(d) Ticket sales or admissions to places of amusement, athletics, and cultural events.

(2) The tax applies to the gross receipts of all persons engaged in business with the jurisdiction of the city who are subject to the State Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto.

(B) *Collection.* Such tax is levied pursuant to authorization granted by SDCL § 10-52A and acts amendatory thereto, and shall be collected by the State Department of Revenue in accordance with the

same rules and regulations applicable to the State Sales Tax and under such additional rules and regulations as the Secretary of Revenue of the state shall lawfully prescribe.

(C) *Interpretation.* It is declared to be the intention of the ordinance codified herein and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the State Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to the tax.

(D) *Use of revenue.* Any revenue received under this section may be used only for the purpose of:

(1) Land acquisition, architectural fees, construction costs;

(2) Payment for civic centers, auditoriums, or athletic facility buildings including the maintenance, staffing, and operations of such facilities; and

(3) The promotion and advertising of the municipality, its facilities, attractions, and activities.
(Prior Code, § 5-2-1) (Ord. 378, passed 2-7-2022)

TEMPORARY BUSINESSES

§ 110.15 LICENSE REQUIRED.

(A) It shall be unlawful for any entity or person to engage in any temporary business, occupation, or trade within the city without first obtaining a license from the City Finance Officer for a fee established via resolution by the City Council unless the temporary business, occupation, or trade is by a charitable, educational, or religious organization which has its principal place of activity within the limits of the city.

(B) The license shall expire ten days after the date it is issued unless it is revoked for a violation of any municipal ordinance or federal or state statute.

(C) A ***TEMPORARY BUSINESS, OCCUPATION, OR TRADE*** is one which will last for ten days or less within the limits of the city.

(Prior Code, § 6-3-1) Penalty, see § 110.99

§ 110.16 PEDDLING; SOLICITING.

(A) It shall be unlawful for any peddler, solicitor, or transient merchant to peddle or solicit within the limits of the city unless a permit shall have been obtained from the City Finance Officer for a fee established via resolution by the City Council per day unless the items being peddled or solicited are made by either a charitable, educational, or religious organization which has its principal place of activity within the limits of the city.

(B) Any authorized entity or person with a license or permit shall peddle or solicit within the limits of the city between 9:00 a.m. and 6:00 p.m.
(Prior Code, § 6-3-2) Penalty, see § 110.99

§ 110.17 BOND.

A bond in such amount as is deemed necessary and reasonable may be required by the City Finance Officer before any license or permit is issued.
(Prior Code, § 6-3-3)

§ 110.18 DISPLAY OF LICENSE/PERMIT.

Each authorized entity or person with a license or permit shall display the license or permit upon the request of any person; and should the person fail to display the necessary license or permit, then such shall be deemed a violation of this subchapter.
(Prior Code, § 6-3-4) Penalty, see § 110.99

SALES AND SERVICES**§ 110.30 MOBILE FOOD VENDORS.**

(A) Mobile food vendors wishing to work in the city must obtain a permit to do so. Permits issued under this section shall be nontransferable.

(B) The application for a permit required by the provisions of this section shall contain:

- (1) The applicant's name, permanent address, phone number, and government issued ID;

- (2) The business name, permanent address, and business phone number;
- (3) A description of the goods or services the applicant wishes to sell;
- (4) The location/site where the mobile food vendor will be set up;
- (5) The dates the applicant will be working in this jurisdiction; and
- (6) Provide a copy of:

- (a) An applicable state sales tax license;
- (b) A certificate of liability insurance; and

(c) A copy of license issued by the State Department of Health for food-related establishments.

(C) Prior to any permits issued to mobile food vendors under the provisions of this section, the applicant shall pay a fee tendered at the time of application pursuant to the fees established via resolution by the City Council.

(D) The vendor shall not conduct any vending in a way that causes congestion or blocking of vehicle or pedestrian traffic or fire lanes.

(E) A mobile food-vending establishment cannot be permanently located on any property and cannot function as a permanent structure.

(F) Every mobile food-vendor operator licensed under this section shall display, in a conspicuous place, the license provided by the city.

(G) All mobile food-vendor businesses must abide by and follow all federal, state, and local laws, rules, and regulations.

(H) Licenses shall be subject to revocation by the city for violation of any provisions of this section.

(I) The following are exempt from license fees due to the city but still must make application:

(1) Any city nonprofit organization, including schools and school-related fundraisers and churches and church-related fundraisers; and

(2) Businesses located within the city limits that use additional locations or spaces as extensions of their primary operations.
(Ord. 385, passed 7-7-2025)

§ 110.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) (1) Any person failing or refusing to make reports or payments prescribed by § 110.01 and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and, upon conviction, shall be fined as established via resolution by the City Council or imprisoned in the municipal jail for 30 days or both such fine and imprisonment.

(2) In addition, all such collection remedies authorized by SDCL § 10-45 and acts amendatory thereto and SDCL § 10-46 and acts amendatory thereto are hereby authorized for the collection of these excise taxes by the Department of Revenue.

(C) (1) Any person failing or refusing to make reports or payments prescribed by § 110.02 and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and, upon conviction, shall be fined as established via resolution by the City Council or imprisoned in the municipal jail for 30 days or both such fine and imprisonment.

(2) In addition, all such collection remedies authorized by SDCL § 10-45 and acts amendatory thereto are hereby authorized for the collection of these excise taxes by the Department of Revenue.
(Prior Code, § 5-2-1) (Ord. 378, passed 2-7-2022; Ord. 2021-339-377, passed 2-7-2022)

CHAPTER 111: ALCOHOLIC BEVERAGES

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- 111.01 Alcohol license required
- 111.02 Sales
- 111.03 Fee for license
- 111.04 Procedure for revocation of license
- 111.05 Time of sales of intoxicating liquor and malt beverages

- 111.99 Penalty

§ 111.01 ALCOHOL LICENSE REQUIRED.

No person shall blend, bottle, distill, exchange, keep for sale, manufacture, offer for sale, produce, or sell any alcoholic beverage as defined by statute within the city without having a license therefor as required by state statute.

(Prior Code, § 5-1-1) Penalty, see § 111.99

§ 111.02 SALES.

(A) Any party intending to operate a business selling alcoholic beverages either off sale or on sale shall enter into an annual alcoholic beverages operating agreement with the city in the manner and method provided by law.

(B) All alcoholic beverages, including malt beverages, may be purchased by a licensee directly from the distributor and subsequently delivered by the distributor directly to the licensee provided each licensee maintains a complete and detailed record of all beverages purchased and submits a copy of all invoices from the distributor which reflects the actual cost, brand, date, quantity, and transportation charges, and each such invoice shall reflect the signature of the licensee or an authorized representative.

(C) The purchase price of all malt beverages shall include a minimum markup percentage of 10% (of actual cost) which shall be paid by the licensee unto the city. All alcoholic beverages may be sold only on those dates and during such times of the day as are permitted by state statute.
(Prior Code, § 5-1-3)

§ 111.03 FEE FOR LICENSE.

The city shall charge and collect from each licensee such amount or sums as it believes necessary and reasonable under the circumstances and is permitted by state statute. In the event such amount or sum is not timely satisfied in full, then the failure to do so shall be grounds for revocation of a license.
(Prior Code, § 5-1-4)

§ 111.04 PROCEDURE FOR REVOCATION OF LICENSE.

A licensee shall be given ten days' advance notice of a hearing before any license granted earlier is revoked by the Council. A majority vote of all the City Council is required for the revocation of a license.
(Prior Code, § 5-1-5)

§ 111.05 TIME OF SALES OF INTOXICATING LIQUOR AND MALT BEVERAGES.

(A) It shall be unlawful for any off-sale licensee to sell any intoxicating liquor between the hours of 12:00 midnight and 7:00 a.m. of the following day, or between 12:00 midnight on Saturday and 7:00 a.m. on Monday following.

(B) It shall be unlawful for any on-sale licensee to sell any intoxicating liquor after 1:00 a.m. on Sunday, or after 1:00 a.m. on Memorial Day, or at any time on Christmas Day; and that on all other days, it shall be lawful to sell such intoxicating liquor only between the hours of 7:00 a.m. and 1:00 a.m. of any following day.

(C) It shall be unlawful for any off-sale licensee to sell any malt beverages except between the hours of 7:00 a.m. and 1:00 a.m. of any following day.

(D) It shall be unlawful for any on-sale licensee to leave any intoxicating liquor or malt beverage on the bar and for patrons to remain in an establishment after the hour of 1:00 a.m.
(Ord. 2015-359, passed 5-4-2015)

§ 111.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person violating any of the provisions of § 111.05 shall be subject to a fine of not more than \$100.

(Ord. 2015-359, passed 5-4-2015)

CHAPTER 112: CANNABIS PRODUCTS

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- 112.14 Hours of operation
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§ 112.01 PURPOSE AND INTENT.

The City Council enacts the following licensing chapter in order to ensure that cannabis establishments within the municipal boundaries of the city operate in a manner which complies with state laws and regulations; protects the health, safety, and welfare of the general public; prevents potential conflicts and issues arising from ownership and employees; recognizes certain safety and security considerations; and minimizes risk of unauthorized use or access of cannabis by the general public.
(Ord. 373, passed 9-20-2021)

§ 112.02 DEFINITIONS.

Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for cannabis-related terms which are defined by SDCL § 34-20G-1.

CANNABIS or **MARIJUANA**. All parts of any plant of the genus *Cannabis*, whether growing or not, in its natural and unaltered state except for drying or curing and crushing or crumbling.

(1) The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant or oil or cake made from the seeds of such plant.

(2) The term does not include the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry-weight basis.

CANNABIS CULTIVATION FACILITY. In addition to the definition in SDCL § 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

CANNABIS DISPENSARY. In addition to the definition in SDCL § 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

CANNABIS ESTABLISHMENT. A cannabis cultivation facility, cannabis testing facility, cannabis product manufacturing facility, or cannabis dispensary.

CANNABIS PRODUCT MANUFACTURING FACILITY. In addition to the definition in SDCL § 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

CANNABIS PRODUCTS. Any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures.

CANNABIS TESTING FACILITY. In addition to the definition in SDCL § 34-20G-1, this term is further defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

DEPARTMENT. The South Dakota Department of Health.
(Ord. 373, passed 9-20-2021)

§ 112.03 LICENSE REQUIRED.

(A) No cannabis establishment may be located or operate in the city without the appropriate valid and current cannabis establishment license issued by the city pursuant to this chapter. A violation of this provision is subject to the general penalty provision in § 10.99. Each day of the violation constitutes a separate offense.

(B) No cannabis establishment may be located or operate in the city without the appropriate valid and current cannabis establishment registration certificate issued by the Department pursuant to rules promulgated under SDCL § 34-20G. A violation of this provision is subject to the general penalty provision in § 10.99. Each day of the violation constitutes a separate offense.
(Ord. 373, passed 9-20-2021) Penalty, see § 112.99

§ 112.04 LICENSE APPLICATION.

(A) An application for a cannabis establishment license must be made on a form provided by the city. No other application form will be considered.

(B) The applicant must submit the following:

(1) A minimum application fee established via resolution by the City Council, with the highest bidder being granted a license. The city will reimburse \$0 for applicants who fail to obtain a registration certificate from the State Department of Health; and

(2) An application that will include, but is not limited to, the following:

(a) The legal name of the prospective cannabis establishment;

(b) The physical address of the prospective cannabis establishment that meets the zoning ordinance requirements in Article II as well as any location requirements pursuant to SDCL § 34-20G and the administrative rules promulgated thereunder;

(c) The name, address, and birth date of each principal officer, owner, and board member of the proposed cannabis establishment;

(d) A sworn statement that no principal officer, owner, or board member has been convicted of a violent felony offense in the previous ten years in any jurisdiction; and

(e) Any additional information requested by the city.
(Ord. 373, passed 9-20-2021)

§ 112.05 ISSUANCE OF LICENSE.

(A) The city will issue a license unless:

(1) The applicant has made a false statement on the application or submits false records or documentation;

(2) Any owners, principal officer, or board member of the applicant is under the age of 21 years;

(3) Any owner, principal officer, or board member of the applicant has been convicted of a violent felony offense in the previous ten years in any jurisdiction;

(4) The proposed location does not meet the applicable zoning requirements under Article II;

(5) The proposed location does not meet all location requirements under SDCL § 34-20G and the administrative rules promulgated thereunder;

(6) The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation;

(7) Any owner, principal officer, or board member of the applicant has had a cannabis establishment license revoked by the city or a registration certificate revoked by the state;

(8) An applicant or an owner, principal officer, or board member thereof, is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment; or

(9) The applicant will not be operating the business for which the license would be issued.

(B) In the case of an application for a cannabis dispensary license, the city will reject the application if the limit on the number of cannabis dispensaries has been reached.

(C) The license must be posted in a conspicuous place at or near the entrance to the cannabis establishment so that it may be easily read at any time.

(Ord. 373, passed 9-20-2021)

§ 112.06 CITY NEUTRALITY.

(A) Upon request from the Department as to the city's preference of applicants, the city will neither support nor oppose any registration certificate application under consideration by the Department.

(B) Likewise, if inquiry is made by the Department, the city will abstain from endorsing any application as beneficial to the community.

(Ord. 373, passed 9-20-2021)

§ 112.07 LIMIT ON DISPENSARIES.

No more than one cannabis dispensary shall be allowed to operate in the city at any time.

(Ord. 373, passed 9-20-2021) Penalty, see § 112.99

§ 112.08 LICENSE EXPIRATION; RENEWAL.

(A) Each license expires one year from the date of issuance and may be renewed only by making application as provided in § 112.04. Application for renewal must be submitted at least 30 days before the expiration date. The license holder must continue to meet the license requirements to be eligible for a renewal.

(B) The renewal fee is established via resolution by the City Council. The city will reimburse \$0 for applicants who fail to obtain a renewal of their registration certificate from the Department.

(C) Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the city may order closure of the cannabis establishment.

(D) If a license holder has not operated an establishment for which he or she holds a license in the preceding 12 months, the license will not be renewed.

(Ord. 373, passed 9-20-2021)

§ 112.09 SUSPENSION.

(A) A license may be suspended if the license holder or an employee or agent of the license holder:

(1) Violates or is otherwise not in compliance with any section of this chapter;

(2) Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment; and/or

(3) Knowingly dispenses or provides cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.

(B) A license may be suspended if the license holder has his or her Department-issued registration certificate suspended, revoked, or not renewed by the Department or if the registration certificate is expired.

(C) A license may be suspended if the license holder creates or allows to be created a public nuisance at the cannabis establishment.

(Ord. 373, passed 9-20-2021)

§ 112.10 REVOCATION.

(A) A license may be revoked if the license is suspended under § 112.09 and the cause for the suspension is not remedied.

(B) A license may be revoked if the license is subject to suspension under § 112.09 because of a violation outlined in that section and the license has been previously suspended in the preceding 24 months.

(C) A license is subject to revocation if a license holder or employee of a license holder:

(1) Gave false or misleading information in the material submitted during the application process;

(2) Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises;

(3) Operated the cannabis establishment or the business of the cannabis establishment for which a license is required under this chapter while the license was suspended;

(4) Repeated violations of any section of this chapter;

(5) Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility conducting cannabis testing functions without a cannabis testing establishment license);

(6) A license holder or an owner, principal officer, or board member thereof is delinquent in payment to the city, county, or state for any taxes or fees related to the cannabis establishment;

(7) A license holder or an owner, principal officer, or board member thereof has been convicted of, or continues to employ an employee who has been convicted of, a disqualifying felony offense as defined by SDCL § 34-20G;

(8) The license holder has his or her Department-issued registration certificate suspended, revoked, or not renewed, or the registration certificate is expired; or

(9) The license holder allows a public nuisance to continue after notice from the city.
(Ord. 373, passed 9-20-2021)

§ 112.11 SUSPENSION AND REVOCATION PROCESS.

(A) (1) The license holder will receive a notice of intent to suspend or notice of intent to revoke, informing the license holder of the violation and the city's intention to suspend or revoke the license.

(2) The notice will be hand delivered to the license holder or an employee or agent of the license holder or sent by certified mail, return receipt requested, to the physical address of the cannabis establishment.

(B) (1) If the license holder disputes the suspension or revocation, the license holder has ten days from the postmark date on the notice or the date the notice was hand delivered to request a hearing before a hearing panel, which will consist of the Mayor, Finance Officer, and the full Council.

(2) The license holder will be responsible for paying the Council fees for a special meeting.

(C) A suspension will be for 30 days and begins ten days after the postmark date on the notice or the date the notice is hand delivered unless the license holder exercises his or her rights to process and appeal, in which case the suspension takes effect upon the final determination of suspension.

(D) A revocation will be for one year and begins ten days after the postmark date on the notice or the date the notice is hand delivered unless the license holder appeals the revocation, in which case the revocation takes effect upon the final determination of revocation.

(E) The license holder who has had the license revoked may not be issued any cannabis establishment license for one year from the date the revocation became effective.
(Ord. 373, passed 9-20-2021)

§ 112.12 APPEAL.

(A) An applicant or license holder who has been denied a license or renewal of a license or who has had a license suspended or revoked under this chapter may appeal to the City Council by submitting a written appeal within ten days of the postmark on the notice of denial, nonrenewal, suspension, or revocation.

(B) The written appeal must be submitted to the City of Gary, 1113 Summit Street, PO Box 127, Gary, South Dakota, 57237. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt of the appeal.
(Ord. 373, passed 9-20-2021)

§ 112.13 LICENSE NONTRANSFERABLE.

No cannabis establishment license holder may transfer the license to any other person or entity either with or without consideration, nor may a license holder operate a cannabis establishment at any place other than the address designated in the application.
(Ord. 373, passed 9-20-2021) Penalty, see § 112.99

§ 112.14 HOURS OF OPERATION.

No cannabis dispensary may operate between the hours of 5:01 p.m. and 7:59 a.m., Monday through Friday. Cannabis dispensaries must be closed Saturday and Sunday along with all federal holidays.
(Ord. 373, passed 9-20-2021) Penalty, see § 112.99

§ 112.15 LIABILITY.

Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee or agent of a cannabis establishment that constitutes grounds for suspension or revocation will be

imputed to the cannabis establishment license holder for purposes of finding a violation of this chapter, or for purposes of license denial, suspension, or revocation only if an officer, director, or general partner or a person who managed, supervised, or controlled the operation of the cannabis establishment knowingly allowed such act to occur on the premises.
(Ord. 373, passed 9-20-2021)

§ 112.99 PENALTY.

Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this chapter is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations are punishable by a maximum fine as established via resolution by the City Council. Each day a cannabis establishment so operates is a separate offense or violation.
(Ord. 373, passed 9-20-2021)

CHAPTER 113: FRANCHISES

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GENERAL PROVISIONS

§ 113.001 AUTHORITY TO FRANCHISE.

The City Council is granted the authority to authorize a franchise to any entity or individual for services deemed necessary for the residents of the municipality.
(Prior Code, § 5-4-1)

INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC.

§ 113.015 CITATION.

This subchapter shall be known and may be cited as the "ITC Cable Television Ordinance."
(Prior Code, § 5-3-1) (Ord. 306, passed 12-30-2002)

§ 113.016 DEFINITIONS.

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

BASIC CABLE SERVICE. The service tier which includes the retransmission of local television broadcast signals.

CABLE TELEVISION RECEPTION SERVICE. The delivery by the grantee to television receivers or any other suitable type of electronic receiver or terminal of the electronic signals and other communications services carried over said system.

CABLE TELEVISION SYSTEM or CABLE SYSTEM. A system utilizing certain electronic and other components which delivers, to subscribing members of the public, various communications services.

CITY. The City of Gary, South Dakota.

COUNCIL. The City Council of Gary, South Dakota.

FCC. The Federal Communications Commission.

GRANTEE. Interstate Telecommunications Cooperative, Inc., in accordance with the provisions of this subchapter.

ITC. Interstate Telecommunications Cooperative, Inc.

PERSON. Any person, firm, partnership, association, corporation, or organization of any kind and any other legally recognized entity.

SHALL. Always mandatory and not merely directory.

SUBSCRIBERS. Persons contracting to receive cable television reception services furnished under this subchapter by the grantee.

(Prior Code, § 5-3-1) (Ord. 306, passed 12-30-2002)

OTTERTAIL POWER COMPANY

§ 113.030 GRANTED PERMISSION/RIGHTS.

(A) There is hereby granted to Ottertail Power Company, a Minnesota Corporation, its successors and assigns, hereinafter called the **GRANTEE**, for five years from and after the passage and approval of this subchapter and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to:

(1) Construct, install, and maintain an electric light and power system and transmission line, and operate and maintain the same within and through the city;

(2) Transmit electricity to and from the other towns or cities for the purposes of light, power, and heat; and

(3) Erect, construct, install, and maintain conduits, poles, wires, pipes, and other necessary fixtures and attachments upon and under the streets, alleys, bridges, and public grounds of said city for the purpose of furnishing and selling electricity for light, heat, and power, and such other purposes for which electricity may be used by the inhabitants of said city.

(B) Said permission and franchise to become operative and continue under the conditions hereinafter set forth, and provided further that this franchise shall be effective for an additional five years if the municipality does not elect to terminate said franchise within 60 days prior to the commencement of the second five-year period.

(Prior Code, § 5-3-2)

§ 113.031 POLE PLACEMENT; OBSTRUCTIONS.

(A) All poles where set in alleys shall be set at or near the boundary line thereof, and where set in streets shall be located at such distances as shall be directed by the city from the property line of the abutting owner, and shall be placed as not to interfere with the construction or placing of any waterpipes, sewers, or drains or the flow of water therefrom which has been or may be placed by authority of said city.

(B) In the event that said grantee shall make any unnecessary obstructions of said streets, alleys, public grounds, or places not designated by the governing body, the city may cause the removal of such obstructions and charge and collect from such grantee the actual cost of such removals.

(Prior Code, § 5-3-2)

§ 113.032 RESERVED CITY RIGHTS.

The city reserves the right for itself and its agents to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interests of the city, but the city will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the grantee carrying on its business in accordance with the franchise hereby granted.

(Prior Code, § 5-3-2)

§ 113.033 MOVING BUILDINGS.

(A) It is further provided that, in case any person shall desire to remove a building along the streets occupied by said wires or pole lines and it becomes necessary to have said wires temporarily removed, said grantee shall be entitled to 48 hours' notice in writing to that effect and when such notice is given, it shall be the duty of said grantee to remove such wires and without cost to said city, but the person desiring the same removed shall deposit with said city the reasonable cost of the same, and after the work has been completed, the grantee shall render a bill in full for such expense and shall collect from the amount so deposited the cost of doing said work. If the expense is less than the estimated cost, the balance shall be returned to the person who moved such building.

(B) It is further provided that the said grantee shall not be required to make such removal except at a reasonable time of the day. No person, other than an authorized agent of the grantee, shall interfere with the property of the grantee within the corporate limits of said city.

(Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.034 DUE DILIGENCE.

The grantee shall use due diligence and care in furnishing electric service as herein provided.

(Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.035 RATES FOR ELECTRIC ENERGY.

The rates to be charged by the Ottertail Power Company, its successors and assigns, for the electric energy sold within the said city shall be reasonable and shall not exceed the company's standard schedule of rates and minimum charges effective for and in communities of like size adjoining territory which are similarly served and situated.

(Prior Code, § 5-3-2)

§ 113.036 CITY VOTE.

(A) The proposition of issuing the franchise provided for in this subchapter shall be submitted to a vote of the electors of the city at a special election to be held not sooner than 30 days after the publication thereof in full compliance with SDCL § 9-35-4, and this franchise ordinance codified herein shall not be effective unless the proposal to grant the same be approved at such election by a majority vote of the electors of the city voting thereon.

(B) The said grantee shall specify its acceptance of this franchise in writing to be filed with the City Clerk, and in no event shall this subchapter be binding on said grantee until the filing of such acceptance. (Prior Code, § 5-3-2)

FRANCHISE REGULATIONS

§ 113.050 GRANT OF NONEXCLUSIVE AUTHORITY.

There is hereby granted by the city to the grantee and to its assigns, designees, or successors the nonexclusive right to erect, maintain, and operate across, along, in, over, under, and upon the present and future alleys, avenues, bridges, highways, lanes, sidewalks, streets, easements dedicated for compatible uses, and other public places in the city and subsequent additions thereto: cables, lines, manholes, poles, towers, wires, and all other equipment and fixtures necessary for the maintenance and operation in the city of a cable television system for the purpose of distribution and transmission of audio, visual electric, and electronic impulses in order to furnish digital audio, radio, and television programs and various other communications services to the public for a period of five years commencing from and after March 1, 2003.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002)

§ 113.051 COMPLIANCE.

The grantee shall be subject to all lawful exercise of the police and regulating powers of the city during the term hereof except in those areas which have been preempted by the Federal Cable Communications Policy Act of 1984, being 47 U.S.C. §§ 521 et seq., as amended, or which are regulated by the FCC.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002)

§ 113.052 TERRITORIAL AREA.

This subchapter relates to the present territorial limits of the city and to any area annexed thereto during the term of this subchapter. The grantee shall not be required to service residents of newly annexed areas of the city or to extend service to new subscribers in areas within the city limits unless the area has a population density of 50 or more homes per linear mile of cable system, except upon payment by such residents of the capital costs incurred by the grantee in bringing service to such areas or individual homes adjoining but outside the city limits that may be served from its existing facilities.

The grantee may negotiate directly with such subscribers the amount to be charged for the bringing of the service to the subscriber.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002)

§ 113.053 LIABILITY; INDEMNIFICATION.

(A) The grantee shall keep in effect the following types of insurance coverage at all times:

(1) Workers' compensation upon its employees engaged in any manner in the installation or servicing of its equipment and plant within the city; and

(2) Property damage liability insurance to the extent of \$500,000 as to any person and \$500,000 as to any one accident, and personal injury liability insurance to the extent of \$500,000 as to any one person and \$500,000 as to any one accident.

(B) (1) The grantee shall indemnify, protect, and save harmless the city from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any workers' compensation law which may arise out of its erection, maintenance, removal, or use of any of its attachments, poles, or other undertakings within the city; or by any other act of the grantee, its agents, or employees.

(2) The grantee shall carry insurance in the described amounts in division (A)(2) above to protect the parties hereto from and against all actions, claims, costs, demands, expenses, judgments, and liabilities which may arise or result, directly or indirectly, from or by reason of such damage, injury or loss. The grantee shall also carry such insurance as it deems necessary to protect it from all claims under the workers' compensation laws in effect that may be applicable to the grantee.

(3) The city shall give the grantee prompt written notice of any such actions, claims, costs, demands, expenses, judgments, liabilities, or suits. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder. Insurance certificates evidencing such insurance coverage shall be approved by the City Attorney and deposited with and kept on file by the city.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002) Penalty, see § 10.99

§ 113.054 SYSTEM SPECIFICATIONS; TECHNICAL STANDARDS.

(A) The facilities used by the grantee shall have a minimum capacity of 115 video channels and 45 digital audio channels, which will be offered to the public via various packages at various costs.

(B) The grantee shall be governed by technical standards established by the FCC.
(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002) Penalty, see § 10.99

§ 113.055 MAINTENANCE AND OPERATION.

(A) The grantee shall render efficient and safe service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions shall be preceded by notice insofar as possible and shall occur during periods of minimum use of the system.

(B) The grantee shall maintain a force of sufficient personnel to provide an adequate, prompt, and safe service for the facilities.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002) Penalty, see § 10.99

§ 113.056 SERVICE TO SCHOOLS AND CITY BUILDINGS.

The grantee shall provide two junction terminals without charge to two city-owned buildings other than an apartment, or building at the airport, or hospital or nursing home, to be selected by the Council; and the grantee shall also furnish the basic service to all sets connected within such buildings to the terminal junctions without charge.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002) Penalty, see § 10.99

§ 113.057 EMERGENCY USE.

In the case of any disaster or emergency, the grantee shall make available its facilities to the city for emergency use during the disaster or emergency upon request of the City Council.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002) Penalty, see § 10.99

§ 113.058 SAFETY REQUIREMENTS.

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

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002) Penalty, see § 10.99

§ 113.059 NEW DEVELOPMENTS.

It shall be the policy of the city to liberally amend this franchise upon application of the grantee when necessary to enable the grantee to take advantage of any developments in the field of transmission of digital audio, radio, and television signals which will afford it an opportunity to more economically, effectively, or efficiently serve its subscribers. However, this section shall not be construed to require the city to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002)

§ 113.060 LIMITATIONS ON GRANTED RIGHTS.

(A) All distribution and transmission equipment, lines, and structures erected by the grantee within the city shall be so located as to cause minimum interference with the proper use of alleys, streets, and other public places and ways; and to cause minimum interference with the reasonable convenience and rights of property owners who adjoin any of the said alleys, streets, or other public places and ways; and said poles or towers shall be removed by the grantee whenever the City Maintenance Supervisor reasonably finds that the same obstructs or restricts the location or operation of any future streets or public places in the city.

(B) Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code prepared by the National Bureau of Standards, and the National Electrical Code of the National Board of Fire Underwriters, and such applicable ordinances and regulations of the city affecting electrical installation which may be presently in effect or changed by future ordinances.

(C) In case of disturbance of any alley, paved areas, public way, sidewalk, or street, the grantee shall barricade, replace, and restore such alley, paved areas, public way, sidewalk, or street in as good a condition as before the work involving such disturbance was done at its own cost and expense and in a manner approved by the City Maintenance Supervisor. The grantee shall not be required to pay a fee for street openings.

(D) (1) All work in any way necessitated by the business of the grantee which may involve the breaking up or opening of a portion of a sidewalk, street, or other part of any city-owned or city-controlled property shall, at the option of the city, be done by the city at the expense of the grantee. In such instances, the grantee shall save the city harmless against all damage or loss to any person or property in accordance with the provisions of § 113.053.

(2) In the event the city does not exercise its option, then the grantee shall, at its own expense and in a manner approved by the City Maintenance Supervisor, replace and restore such alley, paved

area, public walk, sidewalk, or street in as good as condition as before the work involving such disturbance was done.

(E) If at any time during the period of the ordinance codified herein the city shall lawfully elect to alter or change the grade of any alley, sidewalk, street, or other public way, then the grantee shall relay, relocate, and remove its cables, manholes, underground conduits, wires, and other fixtures at its own expense upon reasonable notice by the city.

(F) All installations of equipment shall be of a permanent nature, durable, and installed in accordance with good engineering practices and comply with all existing city ordinances, regulations, and state laws so as not to interfere in any manner with the right of the individual property owner or public, and any equipment installed in a public place or public way shall not interfere with the usual travel on such public way or the usual use of such public place by the public, and during the construction, removal, or repair thereof shall not unduly impede or obstruct traffic.

(G) The grantee shall, at its expense: protect, support, or temporarily disconnect; relocate on the same alley, or public place, or street; or remove from the alley, public place, or street any property of the grantee when required by the city by reason of traffic conditions, public safety, street construction or vacated; or change or establishment of street grade, installation of drains, power lines, signal lines, sewers, water pipes, and tracks, or any other types of improvements or structures by governmental agencies when acting in a governmental or proprietary capacity; provided however, that the grantee shall in all cases have the privilege to abandon any property of the grantee in place as hereinafter provided.

(H) The grantee shall place its cables and wires underground on the same conditions and time schedule that are applicable to the providers of other ground services in those sections of the city where the city designates an area where all presently above ground services are to be placed underground.

(I) (1) In the event that the use of any part of the system is discontinued for any reason for a continuous period of 12 months; or in the event such property or system has been installed in any public place or street without complying with the requirements of this subchapter; or the rights granted hereunder have been canceled, expired or terminated, then the grantee shall promptly remove all above ground facilities, wires, and the like from the public places and streets other than any which the city may permit to be abandoned in place, subject to the rights of the city to acquire or transfer the system as specified in § 113.064.

(2) In the event of such removal, then the grantee shall promptly restore the other area or street from which such property has been removed to a condition satisfactory to the city.

(J) The grantee shall submit to the city an instrument to be approved by the city which transfers the ownership of any such permanently abandoned property in place to the city.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002) Penalty, see § 10.99

§ 113.061 OWNERSHIP; REMOVAL OF FACILITIES.

(A) All cable and passive equipment for cable television reception service installed by the grantee at a subscriber's location shall remain the property of the grantee, and the grantee shall have the right to remove said cable and equipment except as otherwise agreed in writing at the time of installation.

(B) The grantee shall have the right at any time to disclaim any further ownership rights to the interior wiring and specified equipment and fittings at a subscriber's residence or other building by giving written notice to the subscriber.

(1) The interior wiring and any equipment or fitting specified in the notice shall become the property of the subscriber upon such a notice being given without any payment obligations on the part of the subscriber.

(2) However, the grantee shall have the right to use said interior wiring and specified equipment without charge when it is providing service to the premises.

(C) The grantee shall promptly remove all its above ground equipment and facilities from the premises of such subscriber upon the subscriber's request to terminate service, and all of which is subject to FCC regulations.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002) Penalty, see § 10.99

§ 113.062 ASSIGNMENT.

The grantee shall not assign the ordinance codified herein to another person without prior approval of the City Council and which approval shall not be unreasonably withheld.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002) Penalty, see § 10.99

§ 113.063 CITY COMPENSATION.

(A) The grantee shall pay 3% of the annual gross subscriber revenues, as defined in division (A)(1) below, annually unto the city as compensation for the said franchise as long as the grantee operates its cable system for audio and video services within the city.

(1) **GROSS SUBSCRIBER REVENUES** shall include those revenues derived from the monthly service charge paid by subscribers unto the grantee. **GROSS SUBSCRIBER REVENUES** shall not include any federal or state taxes relating to services provided by or fees charged by the grantee, nor revenues received as installation charges and fees for reconnections, inspections, modifications, or repairs of any installations.

(2) The grantee shall pay the amount due for the past calendar year unto the city within 90 days after the conclusion of the calendar year.

(B) The annual payments by the grantee unto the city shall be in lieu of any license tax, occupation tax, or similar levy. However, nothing contained herein shall in any way relieve the grantee from the obligation of paying property taxes unto the city or any other governmental subdivision of the state or any other taxes lawfully levied by the state on the grantee's cable system. Furthermore, such payments do not affect the responsibility of the grantee to collect state and local sales tax on the services provided. (Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002; Ord. 2007-340, passed 12-28-2007) Penalty, see § 10.99

§ 113.064 ANNUAL FINANCE REPORT; BOND.

The grantee shall provide a copy of its latest audited annual financial report to the city upon request by the city. The grantee shall not be required to post a bond or a cashier's check for the faithful performance of its obligations under this subchapter.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002; Ord. 2007-340, passed 12-28-2007) Penalty, see § 10.99

§ 113.065 DURATION; RENEWAL.

(A) (1) The rights granted to the grantee herein terminated on February 29, 2008, subject to the provisions of this section.

(2) This subchapter shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984, being 47 U.S.C. §§ 521 et seq., as amended, applicable to new ordinances that are in the nature of a franchise.

(3) The ordinance codified herein shall remain in effect even if the original five-year term has expired pending final completion of renewal proceedings. If the ordinance codified herein is not renewed or if it is revoked for cause by the city, then the transfer of the grantee's system shall be governed by § 627 of the Cable Communications Policy Act of 1984, being 47 U.S.C. § 547, as amended.

(B) (1) Ordinance 2007-340, incorporated herein, grants Interstate Telecommunications Cooperative, Inc., in its nonexclusive right set forth in Ordinance 306, to have continued for five additional years commencing February 29, 2008.

(2) Furthermore, the rights granted herein shall continue indefinitely to renew for additional five-year periods hereafter upon the expiration of each five-year period unless either party notifies the other party to the contrary in writing at least 90 days prior to the expiration date.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002; Ord. 2007-340, passed 1-16-2008)

§ 113.066 USE OF POLES; ERECTION; REMOVAL.

(A) (1) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the City Maintenance Supervisor with regard to height, locations, or type or any other pertinent aspect, which approval shall not be unreasonably withheld.

(2) However, no locations of any pole or wire-holding structure of the grantee shall be a vested interest, and such poles or structures shall be modified or removed by the grantee at its own expense whenever the City Maintenance Supervisor determines that the public convenience would be enhanced thereby.

(B) Where there are poles or other wire-holding structures already existing in use in serving the city available for use by the grantee, but the grantee does not make arrangements for such use, then the City Council may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(C) (1) The grantee shall grant joint use of any and all poles owned by it to the city, free of expense, for any proper municipal purpose acceptable to the grantee insofar as it may be done without interfering with the enjoyment and free use of the grantee's own fixtures and wires, and the city shall hold the grantee harmless from any and all actions, causes of actions, or damages caused by the placing of the city's appurtenances or wires upon the poles of the grantee.

(2) Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction.

(3) If, in accommodating the city's joint use of its poles, the grantee is required to change or replace poles or install new poles, then the city shall compensate the grantee for such additional expense.

(D) Where the city or a public utility serving the city desires to make use of poles or other wire-holding structures of the grantee but an agreement therefor with the grantee cannot be reached, then the Council may require the grantee to permit such use for such consideration as is just and reasonable

and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the grantee's operations.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002) Penalty, see § 10.99

§ 113.067 RATES.

(A) The grantee shall at all times maintain on file with the City Finance Officer a schedule setting forth all charges and rates to be made to subscribers for basic cable service, including installation charges. The grantee shall file in writing with the City Finance Officer any changes in the rates or charges for basic service unless exempted by FCC regulations at least 30 days in advance of the effective date of the rate change.

(B) The grantee shall comply with the rate regulation rules of the FCC during the term hereof.

(C) The monthly rate set forth in the schedule filed pursuant to this division (B) shall be payable in advance.

(D) The grantee shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984, being 47 U.S.C. §§ 521 et seq., as amended and FCC regulations.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002) Penalty, see § 10.99

§ 113.068 MISCELLANEOUS.

Complaints regarding the quality of service, equipment malfunctions, and similar matters shall first be directed to the grantee's office: 312 Fourth Street West, Clear Lake, South Dakota 57226, or call 611 or 1-800-417-8667 or 605-874-2181 for resolution.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002)

§ 113.069 MODIFICATION OF OBLIGATIONS.

In addition to any other remedies provided by law or regulation, the grantee's obligations under this subchapter may be modified at its request in accordance with § 625 of the Cable Communications Policy Act of 1984, being 47 U.S.C. § 545, as it now exists or as hereafter amended.

(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002)

§ 113.070 SEVERABILITY.

If any clause, phrase, portion, section, sentence, or division of this subchapter is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or is preempted or superceded by FCC regulation, then such portion shall be deemed a distinct, independent, and separate provision, and such holding shall not affect the validity of the remaining portions thereof.
(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002)

§ 113.071 PUBLICATION.

The grantee shall pay to the city a sum of money sufficient to reimburse it for all expenses incurred by it in connection with the publication of this subchapter. Such payment to be made to the city by the grantee within 30 days after the city shall furnish the grantee with a written statement of such expense.
(Prior Code, § 5-3-2) (Ord. 306, passed 12-30-2002) Penalty, see § 10.99

