

## TITLE IV – MUNICIPAL UTILITIES AND SERVICES

### CHAPTER 1

#### WATER

##### Section 4.1.1            Duties of Superintendent

Under the supervision of the Mayor and City Council, the City Superintendent of Waterworks shall have the charge and management of the waterworks. He shall report to the Mayor whenever required, and to the City Council at each regular meeting thereof, the condition of his department of the public service, and shall make such suggestions for the improvement thereof as he may deem advisable. He shall perform such other duties as the Mayor and City Council may require.

##### Section 4.1.2            Application for Services

Any person, corporation or firm desiring the use of water from the waterworks system of this city shall make application thereof to the Municipal Finance Officer; such application shall be in blank form, to be furnished by the City Council. It shall be signed by the applicant, and shall contain, among other things, which may be required: Name, residential address, mailing address. It shall further contain a description of the premises to which the same is to be taken, the name of the owner of such premises, and if the applicant were not the owner then the written consent of the owner shall accompany such application. Upon receipt of such application, the applicant shall present same to the Municipal Finance Officer, and upon payment to said Finance Officer of the approximate water rent for the period of three months, shall receive a receipt from the Finance Officer of the payment of such sum. This receipt and the application shall then be presented to the City Council, who shall enter the same upon his books, and issue to the applicant a permit to use the water from the waterworks system for the purpose specified in said application. Said permit shall be conditioned upon the applicant complying with all the Ordinances, rules and regulations of the City of Mount Vernon relating to the waterworks system. Any assignment or transfer of said permit shall not be valid unless it shall have been approved by the Finance Officer, and entered upon his books.

##### Section 4.1.3            Expense of Taps

All taps to water mains and renewal of service pipes in said City shall be under the direction of the City Council, and the expense of making such taps is to be paid by the property owners, and shall be charged for from the curb stop and the amount of such charge shall be fixed by resolution as may be heretofore or hereafter agreed upon by the City Council.

##### Section 4.1.4            Water Rates

All users of water from the Municipal Plant shall pay to the City of Mount Vernon, for water used by them, rates as determined by the City Council as deemed necessary.

##### Section 4.1.5            Water Meters

All persons using City water shall be provided at the expense of the City, with water meters designated by the City Council; such meters shall be properly attached to correctly measure all water used.

Section 4.1.6            Inspection of Meters

In case the water meter fails to register the amount used for any reason it fails to properly tally, the waterworks committee of the City Council or other officer in charge of the waterworks system shall estimate the amount used and its decision shall be final.

Section 4.1.7            City Not Liable

All persons using water from the waterworks system for any purpose whatever shall do so at their own risk, and the City of Mount Vernon will not, nor will the Mayor, City Council, Superintendent or other officer in charge of the waterworks system, in any case, be liable or responsible for damages growing out of the overflow or stoppage of water, or any insufficient supply of the same.

Section 4.1.8            Use of Water During Fires

During the time of fires, the use of water for lawn purposes is prohibited, and any person violating this section is guilty of a misdemeanor.

Section 4.1.9            Turning on Water

Any person who shall turn on the supply of water to a service pipe from which the same has been turned off by the City on account of non-payment of water rates, or for any other reason without having first obtained a permit to do so, or who shall have turned on such water without having first obtained a permit from the proper city officials as in this ordinance provided, shall be subject to a penalty identified within Title \_\_\_\_ .

Any person who shall turn on the water in any hydrant, or from any part of the waterworks plant except at public drinking fountains, and except in the case of fire, without permission of the person in charge of the system, shall be deemed guilty of a misdemeanor; and any person who shall climb on the water tower or on the ladder thereon, without the permission of the person in charge of the waterworks system, shall be guilty of a misdemeanor, and upon conviction thereof, in either case, subject to the penalties identified in Title \_\_\_\_.

Section 4.1.10           Property of City

All service pipe connections, and boxes leading from the mains to the curb shall be, and remain the property of the City of Mount Vernon.

Section 4.1.11           Payment of Water Services

Water shall be supplied only upon written order of the owner of a real estate to which it is piped along with a deposit in the amount set by the City Council, and the City shall have a lien upon the property to which water shall be taken from the municipal plant, for all water rents due, and in no case shall water be turned on at any place or property at which water shall have been used and remained unpaid for, except by permission of the City Council.

The minimum rate and excess shall be payable monthly and any payment not made on or before said times shall be delinquent; and it shall be the duty of the Superintendent or other person in charge of the Municipal plant to shut off the water from all users so in default pursuant to 4.1.13. Every connection turned off under the provisions of this section shall not be turned on again except upon payment of the amount in arrears. The City will hold the amount in arrears as the sole responsibility of the owner of the real estate regardless of whether a landlord/tenant relationship exists.

Section 4.1.12                    Restrictions, Sprinkling, Air Conditioning

All water used for air conditioning or cooling systems, lawn or garden sprinkling, watering of trees or shrubs, the washing of cars, or other use other than domestic or necessary commercial use, may be restricted at any time by the Mayor of the City of Mt. Vernon should the scarcity of water or any other emergency of any kind so require. If the Mayor of Mt. Vernon is unable to act or unwilling to act for any reason a majority of City Council Members may declare, without a formal City Council meeting, a water emergency should the scarcity of water or any emergency of any kind so require. Such restrictions whether declared and imposed by the Mayor of Mt. Vernon or a majority of City Council members must be ratified by a vote of the City Council at the next scheduled City Council meeting to remain in effect during the then current calendar month. Notice of any water emergency must be given to the public by publication of such restrictions and the extent thereof in the Mitchell Daily Republic Newspaper and if possible by radio or TV announcement at least twenty-four (24) hours before the effective date of such restriction; and it shall unlawful for any person, firm, entity or corporation, to use city water in the manner or at the time restricted by such declaration of the Mayor of Mt. Vernon or a majority of City Council member acting informally or through formal resolution. The term sprinkling shall include the use in any manner of water for lawn or garden purposes where such water is distributed by the use of any hose or conduit.

Section 4.1.13                    Delinquent Water Accounts

Payment on all water accounts is due by the 15th of the month following the date of billing. Payments received after the 15th shall be considered late and assessed a late fee, the amount of which shall be fixed by resolution of the governing body. Late payment on past due accounts shall be received by the last day of such month or the service may be disconnected. The customer shall be notified by regular mail of the disconnection seven (7) days in advance. If the customer is a tenant who is not the owner, notice of the disconnection may also be provided to the owner of the real property by regular mail. To avoid disconnection, the past due amount must be paid in full prior to the disconnection. Customers or property owners shall be charged a minimum of one hundred dollars (\$100) for hookup to renew service after disconnection. (Amended May 2018)

## TITLE IV – MUNICIPAL UTILITIES AND SERVICES

### CHAPTER 2

#### SEWER

##### Section 4.2.1            Duties of Superintendent

Under the supervision of the Mayor and City Council, the City Superintendent shall have the charge and management of the sewer system. He shall report to the Mayor whenever required, and to the City Council at each regular meeting thereof, the condition of his department of the public service, and shall make such suggestions for the improvement thereof as he may deem advisable. He shall perform such other duties as the Mayor and City Council may require.

##### Section 4.2.2            Application for Services

Any person, corporation or firm desiring the use of the sewer system of this city shall make application thereof to the Municipal Finance Officer; such application shall be in blank form, to be furnished by the City Council. It shall be signed by the applicant, and shall contain, among other things, which may be required, the purpose for which the sewer is desired. It shall further contain a description of the premises to which the same is to be taken, the name of the owner of such premises, and if the applicant were not the owner then the written consent of the owner shall accompany such application. Upon receipt of such application, the applicant shall present same to the Municipal Finance Officer, and upon payment to said Finance Officer of the approximate fee for the period of three months, shall receive a receipt from the Finance Officer of the payment of such sum. This receipt and the application shall then be presented to the City Council, who shall enter the same upon his books, and issue to the applicant a permit to use the sewer system for the purpose specified in said application. Said permit shall be conditioned upon the applicant complying with all the Ordinances, rules and regulations of the City of Mount Vernon relating to the sewer system. Any assignment or transfer of said permit shall not be valid unless it shall have been approved by the Finance Officer, and entered upon his books.

##### Section 4.2.3            Connections

All connections of private drains or sewers with the public sewers of the City of Mount Vernon or the construction or modification of appurtenances to sewers or sewer connections shall be made in accordance with the rules and of the State Plumbing Code.

##### Section 4.2.4            Party Making Connection Held Responsible

The lot owner who connects with the public sewers shall be held responsible for any damage he may cause to the sewer or to the public streets. He shall restore the street to the satisfaction of the city inspector and make good any settlement of the ground caused by the excavation made under and by virtue of any permit issued under the provisions of this chapter.

##### Section 4.2.5            Rules and Regulations

- A. Trenches in public streets or alleys shall be excavated as to impede public travel as little as possible.
- B. Warning lights shall be kept around all unfinished work at night, and sufficient barricades against accidents shall be placed around excavations at all times.
- C. Street asphalt must be saw cut and asphalt replaced at owner's expense.
- D. The refilling of all trenches in streets or alleys shall be well and thoroughly done in uniform layer of not exceeding nine inches and tamped with a mechanical compacter, so as to replace all excavated material and leave the surface in as good condition as found before the commencement of the work.
- E. Commercial and industrial users must state types of discharges into sanitary system, with Council having right of approval or disapproval.
- F. No storm water connections will be permitted in the system of sewers.
- G. Entrance into manholes or the opening of same except by the City employees or agents is strictly prohibited.

Section 4.2.6                      Certain Connections Prohibited

No connection from any cesspool or privy vault shall be made with any sewer.

Section 4.2.7                      Certain Acts Prohibited

No butcher offal or garbage, dead animals or obstruction of any kind whatever, shall be placed, thrown or deposited in any receiving basin or sewer in the City of Mount Vernon, and any person, company, or corporation violating this provision shall be liable to a fine not less than one hundred dollars (\$100) and not more than five hundred dollars (\$500) for each offense.

Section 4.2.8                      Penalty for Disturbing Property

Whoever willfully and unlawfully disturbs, digs up or injures any public drain, sewer, manhole or catch basin, or appurtenance thereto shall be subject to a Class 2 misdemeanor, five hundred dollars (\$500).

Section 4.2.9                      Certain Connections May Be Ordered

Whenever in the discretion of the City Council or the Board of Health of the City of Mount Vernon the sanitary conditions require it, the owners of property shall make private drain connections with any public sewer now constructed or which may hereafter be constructed. Said Council shall direct the Finance Officer to give ten days notice in writing to the owners of such property that such owners will be required to make such connections with such public sewers, under the provisions of this chapter. And all persons who fail to comply with the requirements of such notice within twenty days after said notice is served upon him or them shall be subject to a Class 2 misdemeanor, five hundred dollars (\$500).

Section 4.2.10                      All Sewers Under Control of City Council and Sewer Committee

All sewers now or hereafter constructed shall be under the exclusive supervision and control of the City Council and the Committee on Sewers; it shall be unlawful for any person to do anything in any manner affecting the said sewer or any part thereof and any device or appliance or appurtenances used or connected in any way with the said sewer without first obtaining the special permit hereinbefore provided for, shall be punished by a fine of not less than one hundred (\$100) dollars nor more than five hundred dollars(\$500).

Section 4.2.11

Sump Pump Discharge

Between April 1 and October 31 of the calendar year, or should an emergency of any kind so require, by declaration of the Mayor or the City of Mount Vernon, no person shall discharge or cause to be discharged any storm water, surface water, spring water, ground water, subsurface drainage, building foundation drainage and/or basement drainage into sanitary sewer system by means of connecting a sump pump discharge pipe or outlet to pump or drain into sewer system.

Any person who discharges or causes to be discharged any storm water, surface water, spring water, ground water, subsurface drainage (building foundation drainage and/or basement drainage) into the sanitary sewer system by connecting a sump pump discharge pipe or drain to pump or drain into the sanitary sewer system shall, upon conviction, be guilty of a summary offense, punishable of a fine of not more than one hundred dollars (\$100.00) per violation, per day. (Amended July 2020.)



## TITLE IV – MUNICIPAL UTILITIES AND SERVICES

### CHAPTER 3

#### SOLID WASTE DISPOSAL

##### Section 4.3.1            Service and Fees

The City of Mount Vernon, South Dakota, shall provide solid waste collection service to all residential households within the Town's corporate limits, and the monthly charge for said services shall be as follows

1. The City shall have the power at any time, by passage by a majority vote of the council to lower or raise the charges paid to the city of Mt. Vernon for the collection of garbage.

##### Section 4.3.2            Service Required

Any resident who has a water or sewer hookup within the City limits is required to have and pay the municipal garbage collection service.

##### Section 4.3.3            Disposal

All garbage shall be secured in container provided by collection service and made available at their pickup area.

##### Section 4.3.4            Payment

All fees for municipal solid waste collections are due as of the first of each month and must be paid not later than the fifteenth (15th) of the month for which said amount is due. If not paid by the fifteenth (15th) of that month said amount is delinquent.

##### Section 4.3.5            Containers Accessible

Whenever the premises in which garbage and rubbish accumulates are adjacent to a street or alley, the garbage and rubbish containers for such premises shall be kept in a location convenient and accessible to such street, the garbage and rubbish containers shall be kept on the premises in such a location that they will be readily accessible to the nearest street without being unsightly.

##### Section 4.3.6            General Restrictions

- A. No person shall place, throw or deposit, or cause, suffer, or permit to be placed, thrown, or deposited any garbage or rubbish as herein defined, in any street, alley, or public ground in the City, except in containers approved by this Chapter.
- B. No person shall move any article over any street or alley within the City unless such article is entirely supported on wheels, except when such operation is specifically authorized by the City Superintendent.

- C. No person shall place, dump, or deposit or cause, suffer, or permit to be placed, dumped or deposited, any garbage or rubbish as within the City or the restricted use dump site herein provided,

Section 4.3.7            Accumulation Prohibited

It shall be unlawful for any person or business to allow garbage and rubbish to accumulate and collect in the City of Mount Vernon beyond a period of one week, and any person or business who violates this provision or any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not exceeding Five Hundred Dollars (\$500). Patrons are required to use refuse containers that have been provided by collection service.

## TITLE IV – MUNICIPAL UTILITIES AND SERVICES

### CHAPTER 4

#### RESTRICTED USE SITE

##### Section 4.4.1            Intent

The City shall provide for a Restricted Use Site as permitted by the South Dakota Department of Environment and Natural Resources.

##### Section 4.4.2            Location

The Restricted Use Site shall be located upon Irregular Tract 3 in the Southeast (SE) one quarter (1/4) of Section 2 Cityship 101 North Range 60 West all within Davison County, South Dakota

##### Section 4.4.3            Acceptable Materials

A detailed list of materials accepted at the Restricted Use Site is on file with the Municipal Finance Officer. Only materials specifically identified in the permit issued by the South Dakota Department of Environment and Natural Resources are permitted to be disposed of at the site.

##### Section 4.4.4            Modification

The City Council reserves the right to alter the materials accepted by Resolution and in accordance with the Permit to Operate as issued by the South Dakota Department of Environment and Natural Resources.

## TITLE IV – MUNICIPAL UTILITIES AND SERVICES

### CHAPTER 5

#### CABLE TELEVISION FRANCHISE

The City Council is hereby empowered and authorized to issue franchises.

##### Section 4.5.1            Franchise Granted

An ordinance granting a franchise to Sanborn Telephone Cooperative, its successors, and assigns to erect, own, operate, and maintain a community antenna television system in the City of Mount Vernon, South Dakota; setting forth conditions accompanying the grant of franchise, and providing for City regulation and use of the community antenna television system.

Be it ordained by the City Council of the City of Mount Vernon, South Dakota: whereas, Sanborn Telephone Cooperative has petitioned for the nonexclusive right to construct and operate a community antenna television system in the City of Mount Vernon, South Dakota.

Now therefore, the City of Mount Vernon, South Dakota, hereby grants to Sanborn Telephone Cooperative the rights under this Cable Television Franchise Ordinance.

##### Section 4.5.2            Grantee, Qualifications and Nonexclusive Authority

WHEREAS, The City has approved of the legal, character, financial, technical and other qualifications of the Grantee and the adequacy and feasibility of the Grantee's construction arrangements as part of a full public proceeding affording due process, including notice to all interested persons and members of the public, there is hereby granted by the City to the Grantee a nonexclusive franchise, right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, above and over and under the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a Cable Television System for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways, and public places and all manner of easements for the purposes here set forth.

##### Section 4.5.3            Duration and Acceptance of Franchise

The Franchise granted the Grantee herein shall terminate 15 years from date of grant, subject to renewal for periods of reasonable duration on the same terms and conditions as contained herein, or on such different or additional terms and conditions as may be lawfully specified by the City and as are consistent with the requirements of Rule 76.31 or other applicable rules of the Federal Communications Commission. No renewal hereof shall be granted unless authorized by the City

following a public hearing. Grantee shall be awarded a franchise renewal provided its application shows that its CATV service during the preceding franchise period has reflected material compliance with the terms of this Franchise Ordinance and a good-faith effort to serve the needs and interests of the service area.

Section 4.5.4            Compliance

- A.     The Grantee shall, at all times, operate and maintain its Cable Television System in full compliance with the rules, regulations and standards of the FCC and any applicable rules, regulations, and standards of the State of South Dakota.
  
- B.     The Grantee shall, at all times, during the life of this Franchise, be subject to all lawful exercise of the police power by the City and to any such reasonable regulations as the City shall hereafter provide.

Section 4.5.5            Territorial Area Involved

This Franchise relates to the present territorial limits of the City and to any area henceforth added thereto during the term of this Franchise. During the term of this Franchise Ordinance, Grantee shall offer CATV service upon request at its then established normal installation and monthly rates to any permanent dwelling or other building within the ten territorial limits of the City, subject to application of established credit and other business policies of Grantee.

Section 4.5.6            Liability and Indemnification

Grantee shall at all times keep in effect the following types of insurance coverage:

- A.     Workers Compensation upon its employees engages in any manner in the installation or servicing of its plant and equipment within the City of Mount Vernon.
- B.     Property Damage Liability Insurance to the extent of Fifty Thousand Dollars (\$50,000) as to any person and One Hundred Thousand Dollars (\$100,000) as to any one accident, and personal injury liability insurance to the extent of One Hundred Thousand Dollars (\$100,000) as to any one person and Three Hundred Thousand Dollars (\$300,000) as to any one accident.
- C.     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 be caused by the erection, maintenance, use or removal of any of their attachments, poles, or other undertakings, within the City, or by any action or grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, suits, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. 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 Grantee. The City shall give the Grantee prompt written notice of any such claims, demands, actions, suits, judgments, costs, expenses or liabilities. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder.

Section 4.5.7            Operation Maintenance of System





- A. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys, or other public ways and places, and said poles or fixtures shall be removed by Grantee whenever, in the opinion of the City Council the same restrict or obstruct the operation or location of any future streets or public places in the City.
- B. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with any installations of the City or of a public utility serving the City or to interfere with new improvements the City may deem proper to make.
- C. In the maintenance and operation of its television transmission and distribution system in the streets, alleys, and other public places, and in the course of any new construction or addition to its facilities, Grantee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the streets or other public places made by Grantee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.
- D. In case of disturbance of any street, sidewalk, alley, public way or paved area, the Grantee shall, at its own cost and expense and in a manner approved by the City Council, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.
- E. If at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables underground conduits, manholes and other fixtures as its own expense.
- F. All installations of equipment shall be of permanent nature, durable and installed in accordance with good engineering practices, and of sufficient height to comply with all existing City regulations, ordinance, and state laws so as not to interfere in any manner with the right of the public or individual property owner, and any equipment installed in a public way or place shall not interfere with the usual travel on such public way or usual use of such public way or usual use of such public place by the public and during the construction, repair, or removal thereof, shall not obstruct or impede traffic.
- G. The Grantee shall, on the request of any person, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such pavement in advance. The Grantee shall be given not less than forty-eight (48) hours in advance notice to arrange for such temporary wire changes.
- H. The Grantee shall have the authority to trim trees overhanging upon the streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.

- I. In all sections of the City where the cables, wires or other like facilities of public utilities are placed underground, the Grantee shall in the future place its wires, cables or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.
- J. Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of the Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, that Grantee shall in all such cases have the privileges to abandon any property of Grantee in place as hereinafter provided.
- K. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property have been installed in any street or public place without complying with the requirements of this ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, Grantee shall promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the even of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.
- L. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

Section 4.5.14            Removal of Facilities Upon Request

Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

Section 4.5.15            Transfer of Franchise

The Grantee shall not assign or transfer any rights granted under this Ordinance to any person, company or corporation without the prior approval of the City Council, which approval shall not be unreasonably withheld; provided the Grantee shall have the right to assign its rights under this Ordinance to an affiliated company without further approval of the City Council.

Section 4.5.16            Erection, Removal, and Common Use of Poles

- A. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City Engineer with regard to locations, height, type or any other pertinent aspect. 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 removed or modified by the Grantee at its own expense whenever the City Council determines that the public convenience would be enhanced thereby.

- B. There is hereby granted to the extent that the City is authorized to so do, the right and authority to Grantee to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment, and facilities from any and all holders of public licenses and franchises within the corporate limits of the City, including telephone and electric service franchises, to use such towers, poles, lines, cables and other equipment and facilities, subject to all existing and future ordinances and regulations of the City. It is the stated intention of the City that all other holders of public licenses cooperate with Grantee to allow Grantee joint usage of its poles and pole-line facilities whenever possible or wherever such usage does not interfere with the normal operation of said poles and pole lines so that the number of new or additional poles constructed by Grantee within the City may be minimized.
- C. Grantee shall grant to the City, free of expense, joint use of any and all poles owned by it for any proper municipal purpose acceptable to Grantee, insofar as it may be done without interfering with the free use and enjoyment of Grantee's own wires and fixtures, and the City shall hold Grantee harmless from any and all claims, actions, causes of action, or damages caused by the placing of the City's wires or appurtenances upon the poles of Grantee. Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction. If, in accommodating the City's joint use of their poles, Grantee is required to change or replace poles or install new poles, the City shall compensate Grantee for such additional expense.

#### Section 4.5.17

#### Rates

- A. Grantee shall at all times maintain on file with the Municipal Finance Officer a schedule setting forth all rates and charges to be made to subscribers for CATV service, including installation charges.
- B. The rates and charges for services to subscribers shall be initially set by Grantee, subject to any applicable rules and regulations of federal and state agencies. Before putting into effect any changes in the rates and charges to subscribers for basic CATV service, Grantee shall file in writing with the Municipal Finance Officer of the City of Mount Vernon the new proposed rate change at least thirty (30) days in advance of the proposed effective date for such initial rates or rate change. If the City Council takes no action to set the rate change for hearing, said proposed rate changes may become effective upon the expiration of the thirty (30) day notice.
- C. If the City Council sets the rate change for hearing, said proposed rate changes will not become effective until the City Council has taken action by means of a resolution. Any changed rates and charges shall be set in accordance with lawful rate setting procedures in amounts calculated to yield revenues at least sufficient to enable Grantee to pay and discharge all expenses of operation, including taxes and fees, when due, and on indebtedness plus an amount sufficient to enable Grantee to earn a reasonable return on its investment in cable television facilities and related properties.
- D. This provision does not limit the right of Grantee to pass along to the subscriber's state and local sales tax or any specific copyright fees.

Section 4.5.18            Complaint Procedures

Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's office. Should Grantee fail to satisfy a complaint, it may then be directed to the Municipal Finance Office for investigation. In response to a complaint, Grantee shall be afforded a reasonable opportunity to present written statements of its position, the Municipal Finance Officer shall attempt to resolve the complaints but, if this cannot be achieved, he shall submit a recommendation to the City Council, recommending that: (1) the complaint be dismissed, or (2) corrective action be taken by Grantee. Appeal from the City Council's action may be made to the appropriate judicial or administrative forum.

Section 4.5.19            Compliance with FCC Franchise Standards

Pursuant to applicable FCC standards, the following recitations and provisions are set forth:

- A.     Grantee's legal, character, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, have been approved by the City Council of the City after consideration in a full public proceeding, affording due process to all interested parties.
- B.     The initial franchise period shall be fifteen (15) years in duration, and renewal franchise periods shall also be fifteen (15) years in duration.
- C.     The City Council has specified guidelines in charging rates. No changes in rates charged to subscribers shall be made except as they shall be deemed approved by the City Council as provided herein.

Section 4.5.20            Construction Schedules and Standards

- A.     Within sixty (60) days after the effective date of this Ordinance, the Grantee shall file with the appropriate governmental authorities all initial papers, applications, contracts and other documents necessary to obtain any and all necessary waivers, consents and licenses and to permit the commencement of construction and operation of the Cable Television System and shall thereafter make diligent efforts to obtain the proper execution, delivery of such documents and any amendments thereto. In the event that all necessary waivers, consents and licenses are not obtained within one year after the effective date of this Ordinance, this Franchise Ordinance may be repealed at the option of the City by the adoption of an appropriate repealed ordinance.
- B.     Within sixty (60) day's after all necessary waivers, consents and licenses have been obtained; the Grantee shall commence the construction of the Cable Television System and pursue such with diligence.
- C.     The Grantee shall commence operation on or before December 1, 1983, or this Franchise shall be subject to repeal as prescribed in subparagraph (1) above herein.
- D.     Delays in the performance of Grantee's obligations under this ordinance which are caused by strikes, equipment shortages, and state of war, acts of God or other circumstances beyond the control of Grantee, shall not be construed to be violations of

the provisions of this ordinance, and reasonable extensions of the time shall be granted therefore.

- E. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all applicable state and local codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with all applicable codes, including the provisions of the electrical code. All of the Grantee's plant and equipment shall be installed, constructed, repaired, maintained and operated in accordance with good engineering practices. The Grantee's shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

Section 4.5.21            Grantee Rules

- A. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions covering the conduct of this business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Ordinance.
- B. All such rules, regulations, terms and conditions promulgated under the subsection (1) above shall not be in conflict with the provisions hereof, or applicable federal or state law or rules promulgated by the City in the exercise of its regulatory authority granted hereunder.
- C. One copy of all such rules, regulations, terms and conditions promulgated under subsection (1) above, together with any amendments, additions or deletions thereof, shall be kept currently on file with the Municipal Finance Officer and another copy thereof shall be maintained for public inspection during normal business hours at Grantee's office in the City; no such rules, regulations, terms, conditions or amendments, additions or deletions thereto shall take effect unless and until so filed and maintained.

Section 4.5.22            Termination of Franchise

The City reserves the right to terminate any franchise granted hereunder and rescind all rights and privileges associated therewith in the event of:

- A. Noncompliance by the Grantee with any provision of this Ordinance, Amendment hereto, or of any supplemental written agreement entered into by and between the City and the Grantee.
- B. The Grantee becomes insolvent, enters into receivership or liquidation, files an application for bankruptcy or for composition of creditors, is unable to pay its debts as they mature or is in financial difficulty of sufficient consequence so as to jeopardize the continued operation of the network.
- C. Violation by the Grantee of any FCC or applicable state order ruling or the order of any other governmental body having jurisdiction over the Grantee, unless the Grantee is lawfully contesting the legality or applicability of such rule or order.

Upon the occurrences of any of the above listed events, the City Council may, after hearing, upon thirty (30) days written notice to the Grantee citing the reasons alleged to constitute cause

for revocation, set a reasonable time in which the Grantee must remedy the cause. If, during the thirty- (30) day period, the cause shall be cured to the satisfaction of the City Council, the City Council may declare the notice to be null and void. If the Grantee fails to remedy the cause within the time specified after hearing, the City Council may revoke the franchise. In any event, before a franchise may be terminated, the Grantee shall be provided with an opportunity to be heard before the City Council.

Section 4.5.23            Unauthorized Cable Tapping

It shall be unlawful for any person or persons to obtain any Cable Television services from any cable television company, or any firm or private person by installing, rearranging, or tampering with any facilities or equipment of said Cable Television Company unless the same is done with the knowledge of and with the permission of the Cable Television Company. Any person or persons found guilty of a violation of any of the provisions of this Section shall be deemed guilty of a misdemeanor.

Section 4.5.24            Separability

- A.     If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.
- B.     Should any provision of this Franchise be inconsistent or at variance with any rule, regulation or policy, in whole or in part, of the Federal Communications Commission or any other agency having jurisdiction, such provision shall be invalid, but the remaining provisions hereof shall not be affected thereby.

