

# TITLE 4

## COMMERCIAL REGULATION

Chapter 4-1: Alcoholic Beverages

Chapter 4-2: Local Taxation

Chapter 4-3: Franchises

### CHAPTER 4-1: ALCOHOLIC BEVERAGES

#### **4-1-1: 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 or within one mile of its territorial limits without having a license therefore as required by state statute.

#### **4-1-2: Non-Intoxicating Liquor - Restrictions.**

Every licensee authorized to keep for sale, or offer or sell non-intoxicating beer or wine within the City shall keep the premises upon which such business is conducted in such condition that view through the windows of such premises shall be completely unobstructed either by advertising, curtains, window glazing or any other obstruction whatsoever. No non-intoxicating beer or wine shall be served in any booth on such premises wherein all of the occupants are not within view of every other occupant in the room and observable from any and all points within the room. Additionally, such premises shall be adequately lighted at all times with sufficient bright lights so that the occupants of such room may be easily observable from any and all points within the room, and no licensee shall allow any game of chance or skill or athletic contest on said premises or permit any slot machine or other like device in or about the licensed premises.

#### **4-1-3: Sale of Alcoholic Beverages.**

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. All alcoholic beverages, including malt beverages, must be purchased by an operator directly from a wholesaler, and subsequently delivered by the wholesaler directly to the operator provided each operator maintains a complete and detailed record of all beverages purchased, and submits a copy of all invoices from the wholesaler which reflects the actual cost, brand, date, quantity and transportation charges, and each such invoice shall reflect the signature of operator or an authorized representative. The purchase price of all malt beverages shall include a minimum markup percentage of 4% (of actual cost) which shall be paid by the operator unto the City. All alcoholic beverages may be sold only on those dates and during such time of the day as is permitted by state statute. *Updated 11.6.18 Ord. No. 565*

**4-1-4: 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.

**4-1-5: 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.

**4-1-6: Dances and Spiking Permit.**

A “spiking permit” to blend or consume alcoholic beverages as provide by state statute may only be issued by the City Council prior to any event on property which is publicly owned or owned by a nonprofit corporation. The fee for a “spiking permit” shall be \$20.00 and the permit shall specify the hours for which it is valid. Before a spiking permit will be issued, the City requires proof of “Special Events” insurance with liquor liability coverage to be purchased by the host(s) of the event, which needs to name the City as an additional named insured. The applicant must be at least twenty-one (21) years of age and provide an acceptable form of identification. Per SDCL 35-1-5.5, the permit may not exceed twenty-four (24) hours and the hours of authorized consumption may not exceed those permitted for on-sale licensees.

*Updated 11.6.18 – Ord. No. 566*

**4-1-7: Temporary License.**

A public hearing is not required for a temporary license provided the applicant for the temporary license is the holder of an on-sale alcoholic beverage license or a malt beverage license, including applicants with an operating agreement, and the temporary license is to be used in a publicly-owned facility, or on public property, or property owned by a nonprofit corporation during a special event. An applicant may not receive more than 100 temporary licenses in any calendar year.

## **CHAPTER 4-2: LOCAL TAXATION**

### **4-2-1:**

Section 1. PURPOSE. The purpose of this ordinance is to provide additional needed revenue for the Municipality of Clear Lake, Deuel County, South Dakota, by imposing a municipal retail sales and use tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL Chapter 10-52 entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.

Section 2. EFFECTIVE DATE AND ENACTMENT OF TAX. From and after the 1<sup>st</sup> day of January, 2004, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by two percent (2%) on the gross receipts of all persons engaged in business within the jurisdiction of the Municipality of Clear Lake, Deuel County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL Chapter 10-45 and acts amendatory thereto. Tax will not be applied to items specifically exempt under SDCL Chapter 10-52-2.6, 10-52-11 and 10-52-12. Items exempted from municipal tax include: Farm Machinery and Irrigation Equipment, Parts or Repairs for Farm Machinery, Agricultural Animal Health Products and Medicine, Transportation Service, Collection and Disposal of Solid Waste, Veterinarian and Animal Specialty Services and Air Transportation.

Section 3. 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 tangible personal property or services purchased from and after the 1<sup>st</sup> day of January, 2004, at the same rate as the municipal sales and service tax upon all transactions or use, storage and consumption which are subject to the South Dakota Use Tax Act, SDCL Chapter 10-46, and acts amendatory thereto.

Section 4. COLLECTION. Such tax is levied pursuant to authorization granted by SDCL Chapter 10-52 and acts amendatory thereto, and shall be collected by the South Dakota Department of Revenue and Regulation 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 and Regulation of the State of South Dakota shall lawfully prescribe.

Section 5. INTERPRETATION. It is declared to be the intention of this ordinance and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Act, SDCL Chapter 10-45 and acts amendatory thereto and the South Dakota Use Tax, SDCL Chapter 10-46 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

Section 6. PENALTY. Any person failing or refusing to make reports or payments prescribed by this ordinance 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 not more than \$500 or imprisoned for thirty (30) days or both such fine and imprisonment. In addition, all such collection remedies authorized by SDCL Chapter 10-45, and acts amendatory thereto, and SDCL Chapter 10-46, and acts amendatory thereto are hereby authorized for the collection of these excise taxes by the Department of Revenue and Regulation.

Section 7. SEPARABILITY. If any provision of this ordinance is declared unconstitutional or the application thereof to any person or circumstances held invalid the

constitutionality of the remainder of the ordinance and applicability thereof to other persons or circumstances shall not be affected thereby.

#### **4-2-2: Liquor Lodge & Dining**

Section 1. PURPOSE. The purpose of this ordinance is to provide additional needed revenue for the Municipality of Clear Lake, Deuel County, South Dakota, by imposing a municipal gross receipts tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL Chapter 10-52A, and acts amendatory thereto.

Section 2. EFFECTIVE DATE AND ENACTMENT OF TAX. From and after the first day of January, 2008, there is hereby imposed as a municipal gross receipts tax of One Percent (1%) upon the gross receipts from the sale of leases or rentals of hotel, motel, campsites or other lodging accommodations within the municipality for periods of less than twenty-eight (28) consecutive days, the sale of alcoholic beverages as defined in SDCL 35-1-1, establishments where the public is invited to eat, dine or purchase and carry out prepared food for immediate consumption, and ticket sales or admissions to places of amusement, athletic and cultural events. The tax applies to the gross receipts of all persons engaged in business within the jurisdiction of the municipality of Clear Lake, Deuel County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto.

Section 3. COLLECTION. Such tax is levied pursuant to authorization granted by SDCL Chapter 10-52A and acts amendatory thereto, and shall be collected by the South Dakota Department of Revenue and Regulation 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 of South Dakota shall lawfully prescribe.

Section 4. INTERPRETATION. It is declared to be the intention of this ordinance and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Act, SDCL 10-45 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

Section 5. USE OF REVENUE. Any revenues received under this ordinance may be used only for the purpose of land acquisition, architectural fees, construction costs, payment for civic center, auditoriums or athletic facility buildings, including the maintenance, staffing and operations of such facilities, and the promotion and advertising of the municipality, its facilities, attractions and activities.

Section 6. PENALTY. Any person failing or refusing to make reports or payments prescribed by this ordinance 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 not more than \$200 or imprisoned in the municipal jail for thirty (30) days or both such fine and imprisonment. 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.

Section 7. SEPARABILITY. If any provision of this ordinance is declared unconstitutional or the application thereof to any person or circumstances held invalid the

constitutionality of the remainder of the ordinance and applicability thereof to other persons or circumstances shall not be affected thereby.

## **CHAPTER 4-3: FRANCHISES**

### **4:3-1: Northwestern Public Service Company Franchise.**

**Section 1.** The right is hereby granted to NorthWestern Corporation, its successors and assigns, to occupy any of the streets, alleys, or public places of the City of Clear Lake, South Dakota, for the purpose of transmitting or distributing natural gas for a period of 20 years from the 1<sup>st</sup> day of August, 2012, provided, however, that the right herein granted will not be exclusive.

**Section 2.** NorthWestern Corporation will be liable for all damages due to its negligence in constructing, operating, or maintaining its natural gas system within the City of Clear Lake, and shall at all times hold the City of Clear Lake harmless from any and all liability arising out of NorthWestern Corporation's negligence.

**Section 3.** This ordinance shall not be effective unless NorthWestern Corporation files its unconditional acceptance of this ordinance with the Finance Officer of the City of Clear Lake within 45 days after the publication of this ordinance.

### **4-3-2A: Interstate Telecommunications Cooperative, Inc. Franchise.**

#### SECTION I - TITLE

This Ordinance shall be known and may be cited as the "ITC Cable Television Ordinance."

#### SECTION II - DEFINITIONS

For the purposes of this Ordinance, the following phrases, terms and words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, and words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. "Basic Cable Service" means the service tier which includes the retransmission of local television broadcast signals.
2. "Cable Television Reception Service" means 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.
3. "Cable Television System" or "Cable System" is a system utilizing certain electronic and other components which deliver to subscribing members of the public various communications services.
4. "City" is the City of Clear Lake, South Dakota.
5. "Council" is the City Council of Clear Lake, South Dakota.

6. "FCC" shall mean the Federal Communications Commission.
7. "Grantee" is Interstate Telecommunications Cooperative, Inc., in accordance with the provisions of this Ordinance.
8. "ITC" is Interstate Telecommunications Cooperative, Inc.
9. "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
10. "Subscribers" are those persons contracting to receive cable television reception services furnished under this ordinance by Grantee.

### SECTION III - GRANT OF NON-EXCLUSIVE AUTHORITY

There is hereby granted by the City to the Grantee, and to its assigns, or designees or successors, the non-exclusive 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 of Clear Lake, South Dakota, 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 (5) years, commencing from and after the 1<sup>st</sup> day of October, 2002.

### SECTION IV - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

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, as amended or which are regulated by the FCC.

### SECTION V - TERRITORIAL AREA INVOLVED

1. This Ordinance relates to the present territorial limits of the City and to any area annexed thereto during the term of this Ordinance. 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 fifty (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. Grantee may negotiate directly with such subscribers the amount to be charged for the bringing of the service to the subscriber.

### SECTION VI - LIABILITY AND INDEMNIFICATION

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

(a) Worker's Compensation upon its employees engaged in any manner in the installation or servicing of its equipment and plant within the City of Clear Lake, South Dakota.

(b) Property Damage Liability insurance to the extent of Five Hundred Thousand (\$500,000.00) Dollars as to any person and Five Hundred Thousand (\$500,000.00) Dollars as to any one accident and personal injury liability insurance to the extent of Five Hundred Thousand (\$500,000.00) Dollars as to any one person and Five Hundred Thousand (\$500,000.00) Dollars as to any one accident.

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 Worker's Compensation law which may arise out of their erection, maintenance, removal or use of any of their attachments, poles or other undertakings within the City, or by any other act of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts 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. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Worker's Compensation laws in effect that may be applicable to Grantee. 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.

## SECTION VII - GENERAL SYSTEM SPECIFICATIONS

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.

## SECTION VIII - TECHNICAL STANDARDS

Grantee shall be governed by technical standards established by the FCC.

## SECTION IX - MAINTENANCE AND OPERATION OF SYSTEM

1. The Grantee shall render efficient and safe service, and 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.

2. The Grantee shall maintain a force of sufficient personnel to provide an adequate, prompt and safe service for the facilities.



## SECTION X - SERVICE TO SCHOOLS AND CITY

The Grantee shall provide basic cable service at no cost to public schools within the City at one terminal junction for educational purposes upon request of the school system subject to the line extension provisions of Section V.

Grantee shall also provide one junction terminal without charge to one City owned building other than an apartment, or building at the airport, or hospital or nursing home, to be selected by the Council of Clear Lake, and Grantee shall also furnish the basic service to all sets connected within such building to the terminal junction without charge.

## SECTION XI - EMERGENCY USE OF FACILITIES

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.

## SECTION XII - 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.

## SECTION XIII - 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.

## SECTION XIV - LIMITATIONS ON RIGHTS GRANTED

1. 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 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.

2. 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.

3. 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, 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. Grantee shall not be required to pay a fee for street openings.

4. All work in any way necessitated by the business of 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 Section VI of this Ordinance. 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.

5. If at any time during the period of this Ordinance 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.

6. 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 usual use of such public place by the public and during the construction, removal or repair thereof shall not unduly impede or obstruct traffic.

7. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same alley, or public place, or street, or remove from the alley, public place, or street any property of 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 Grantee shall in all cases have the privilege to abandon any property of Grantee in place as hereinafter provided.

8. 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.

9. 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 property or system has been

installed in any public place or street without complying with the requirements of this Ordinance, or the rights granted hereunder have been canceled, expired or terminated, then Grantee shall promptly remove all above ground facilities, wires, etc. 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 Section XVIII. In the event of such removal, then Grantee shall promptly restore the other area or street from which such property has been removed to a condition satisfactory to the City.

10. 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.

#### SECTION XV - OWNERSHIP AND REMOVAL OF FACILITIES

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 Grantee shall have the right to remove said cable and equipment except as otherwise agreed in writing at the time of installation. Grantee shall have the right, at anytime, 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. 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. 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. 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.

#### SECTION XVI - ASSIGNMENT OF ORDINANCE

The Grantee shall not assign this Ordinance to another person without prior approval of the City Council and which approval shall not be unreasonably withheld.

#### SECTION XVII – CITY’S COMPENSATION

Grantee shall pay three (3%) percent of the annual “gross subscriber revenues” as defined hereinafter 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. “Gross subscriber revenues” shall include those revenues derived from the monthly service charge paid by subscribers unto 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.

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 anyway relieve Grantee from the obligation of paying property taxes unto the City of Clear Lake or any other governmental subdivision of the State of South Dakota or any other taxes lawfully levied by the

State of South Dakota on 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.

Grantee shall file a statement prepared by a Certified Public Accountant with the City showing the "gross subscriber revenues" as defined herein within ninety (90) days after the expiration of Grantee's fiscal year during the term set forth hereinbefore. It shall be the Grantee's duty to pay the amount due for the fiscal year covered by such statement unto the City within fifteen (15) days after the time for filing such statement. No such payments shall be due and payable by the Grantee unto the Grantor until the Grantee's system is providing services to subscribers.

#### SECTION XVIII - ANNUAL FINANCIAL REPORT AND BOND

Grantee shall file an annual financial report with the City within ninety (90) days after the expiration of its fiscal year. Grantee shall not be required to post a bond or cashier's check for the faithful performance of its obligations under this Ordinance.

#### SECTION XIX - DURATION AND RENEWAL OF ORDINANCE

The rights granted to Grantee herein shall terminate on the 30<sup>th</sup> day of September, 2007, subject to the provisions of this section. This Ordinance shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984, as amended, applicable to new ordinances that are in the nature of a franchise. The Ordinance shall remain in effect even if the original five (5) year term has expired pending final completion of renewal proceedings. If this Ordinance is not renewed or if it is revoked for cause by the City, then the transfer of Grantee's system shall be governed by Section 627 of the Cable Communications Policy Act of 1984, as amended.

#### SECTION XX - ERECTION, REMOVAL AND COMMON USE OF POLES

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. 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.

2. Where there are poles or other wire-holding structures already existing in use in serving the City available for use by Grantee, but Grantee does not make arrangements for such use, then the City Council may require 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.

3. 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 Grantee insofar as it may be done

without interfering with the enjoyment and free use of Grantee's own fixtures and wires, and the City shall hold 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. 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, then the City shall compensate Grantee for such additional expense.

4. 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 therefore 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.

#### SECTION XXI - RATES

1. 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. 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 thirty (30) days in advance of the effective date of the rate change.

2. Grantee shall comply with the rate regulation rules of the FCC during the term hereof.

3. The monthly rate set forth in the schedule filed pursuant to subsection (1) above shall be payable in advance.

4. 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, as amended and FCC regulations.

#### SECTION XXII - MISCELLANEOUS

Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to 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.

#### SECTION XXIII - MODIFICATION OF OBLIGATIONS

In addition to any other remedies provided by law or regulation, Grantee's obligations under this ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists or as hereafter amended.

#### SECTION XXIV - SEVERABILITY

If any clause, phrase, portion, section, sentence or subsection of this Ordinance 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.

#### SECTION XXV - PUBLICATION

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 Ordinance. Such payment to be made to the City by Grantee within thirty (30) days after the City shall furnish Grantee with a written statement of such expense.

#### SECTION XXVI - ORDINANCE REPEAL

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

#### **4-3-2B: Amended ITC Ordinance.**

##### SECTION I.

This Ordinance amends Ordinance No. 419 and grants Interstate Telecommunications Cooperative, Inc., its nonexclusive right set forth in Ordinance No. 419 to continue for five (5) additional years commencing 10/1/2007. Furthermore, the rights granted herein shall continue indefinitely to renew for additional five (5) year periods hereafter upon the expiration of each five (5) year period unless either party notifies the other party to the contrary in writing at least ninety (90) days prior to the expiration date.

##### SECTION II.

(replaces Section XVII)

Grantee shall pay three (3%) percent of the annual "gross subscriber revenues" as defined hereinafter 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. "Gross subscriber revenues" shall include those revenues derived from the monthly service charge paid by subscribers unto 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. Grantee shall pay the amount due for the past calendar year unto the City within ninety (90) days after the conclusion of the calendar year.

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 anyway relieve Grantee from the obligation of paying property taxes unto the City of Clear Lake or any other governmental subdivision of the State of South Dakota or any other taxes lawfully levied by the State of South Dakota on 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.

SECTION III.  
(replaces Section XVIII)

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

SECTION IV.

All Ordinances or parts of any Ordinance in conflict herewith are hereby repealed.

**4-3-3: Franchises.**

The City Counsel is granted the authority to authorize the franchise to any entity or individual for services deemed necessary for the residents of the municipality.