

## **Gridley City Council – Regular Meeting Agenda**

Monday, August 21, 2023; 6:00 pm

Gridley City Hall, 685 Kentucky Street, Gridley, CA 95948

*“Our purpose is to continuously enhance our community’s vitality and overall quality of life. We are committed to providing high quality, cost-effective municipal services and forming productive partnerships with our residents and regional organizations. We collectively develop, share, and are guided by a clear vision, values, and meaningful objectives.”*

The Public is encouraged to attend and participate in person. Comments from the public on agenda items will be accepted until 4 pm on August 21<sup>st</sup>, 2023, via email to [csantana@gridley.ca.us](mailto:csantana@gridley.ca.us) or via the payment/document drop box at Gridley City Hall and will be conveyed to the Council for consideration.

You may view using the following link, ID, and passcode:

<https://us06web.zoom.us/j/88918079722?pwd=OHIEYIRtamI3TFNMT085cERJejdHdz09>

Passcode: 571459

Webinar ID: 889 1807 9722

Or Telephone:

+1 669 444 9171 US

+1 719 359 4580 US

**CALL TO ORDER** - Mayor Farr

**ROLL CALL**

**PLEDGE OF ALLEGIANCE** – Councilmember Calderon

**INVOCATION** – None

**PROCLAMATION** – None

**INTRODUCTION OF NEW OR PROMOTED EMPLOYEES** - None

**CONSENT AGENDA**

1. City Council Minutes Dated August 7, 2023 Minutes

**ITEMS FOR CONSIDERATION**

2. Review of Current State Law (SB 946, 2018, Lara) and Any Existing City of Gridley Ordinances Pertaining to Sidewalk Vendors – Councilmember Sanchez
3. Budget Book Software Subscription with ClearGov
4. Debt Management Software Subscription with DebtBook

**COMMUNITY PARTICIPATION FORUM** - *Members of the public may address the City Council on matters not listed on the agenda. The City Council may not discuss nor take action on any community participation item brought forward by a member of the community. Comments are requested to be limited to three (3) minutes.*

**CITY STAFF AND COUNCIL COMMITTEE REPORTS** - *Brief updates from City staff and brief reports on conferences, seminars, and meetings attended by the Mayor and City Council members, if any.*

**CITY ADMINISTRATOR REPORTS** - *Brief updates and reports on conferences, seminars, and meetings attended by the City Administrator, if any.*

**POTENTIAL FUTURE CITY COUNCIL ITEMS** - *(Appearing on the Agenda within 30-90 days):*

|  |           |
|--|-----------|
| 2022 Power Source Disclosure Report            | 9/5/2023  |
| Gridley Housing Pipeline Tracking Sheet Update | 9/5/2023  |
| Council Study Session – Electric Rates         | 9/12/2023 |
| Council Study Session – Water/Wastewater Rates | 9/14/2023 |
| Finance Policies                               | 9/18/2023 |
| Soccer Park Plan Review                        | 9/18/2023 |

**CLOSED SESSION** - None

**ADJOURNMENT** – adjourning to a Regular meeting on September 5<sup>th</sup>, 2023.

**NOTE 1: POSTING OF AGENDA-** This agenda was posted on the public bulletin board at City Hall at or before 6:00 p.m., August 18<sup>th</sup>, 2023. This agenda along with all attachments is available for public viewing online at [www.gridley.ca.us](http://www.gridley.ca.us) and at the Administration Counter in City Hall, 685 Kentucky Street, Gridley, CA.

**NOTE 2: REGARDING UNSCHEDULED MATTERS** – In accordance with state law, it shall be the policy of this Council that no action shall be taken on any item presented during the public forum or on unscheduled matters unless the Council, by majority vote, determines that an emergency situation exists, or, unless the Council by a two-thirds vote finds that the need to take action arose subsequent to the posting of this agenda.

## **Gridley City Council – Regular Meeting Minutes**

Monday, August 7, 2023; 6:00 pm

Gridley City Hall, 685 Kentucky Street, Gridley, CA 95948

*“Our purpose is to continuously enhance our community’s vitality and overall quality of life. We are committed to providing high quality, cost-effective municipal services and forming productive partnerships with our residents and regional organizations. We collectively develop, share, and are guided by a clear vision, values, and meaningful objectives.”*

### **CALL TO ORDER**

**Mayor Farr called the meeting to order at 6:00 pm.**

### **ROLL CALL**

#### **Councilmembers**

Present: Farr, Johnson, Calderon, Roberts, Sanchez  
Absent: None  
Arriving after roll call: None

#### **Staff Present:**

Cliff Wagner, City Administrator  
Rodney Harr, Police Lieutenant  
Tony Galyean, City Attorney  
Ross Pippitt, Public Works Director  
Jake Carter, Utility Director  
Donna Decker, Planning Director  
Elisa Arteaga, Finance Director  
Dave Harden, City Engineer

### **PLEDGE OF ALLEGIANCE**

**Councilmember Sanchez led the Pledge of Allegiance.**

**INVOCATION – None**

**PROCLAMATION – None**

**INTRODUCTION OF NEW OR PROMOTED EMPLOYEES - None**

### **CONSENT AGENDA**

1. City Council Minutes Dated July 17, 2023
2. Treasurer’s Report Ending December 2022, March 2023, and June 2023
3. Expenditure Report April 2023, May 2023, and June 2023

**After requesting to move items 4 and 5 to items of consideration, motion to approve consent agenda was made by Councilmember Sanchez, seconded by Vice Mayor Johnson.**

**ROLL CALL VOTE**

**Ayes: Johnson, Sanchez, Calderon, Farr, Roberts**

**Motion passed, 5-0**

**ITEMS FOR CONSIDERATION**

4. Resolution No. 2023-R-028: A Resolution of the City Council of the City of Gridley Accepting a Report of Weed Abatement Costs and Assessing Liens on Affected Parcels for Said Costs

**Councilmember Sanchez stated she believed the payment due date being 10 days after the invoice date was insufficient. City Administrator Wagner informed Council of the steps outlined in our City ordinance that staff carefully takes in hopes to achieve compliance before any abatement is done by the City resulting in an invoice.**

**Motion to approve Resolution No. 2023-R-028 was made by Councilmember Roberts, seconded by Councilmember Sanchez.**

**ROLL CALL VOTE**

**Ayes: Farr, Johnson, Calderon, Sanchez, Roberts**

**Motion passed, 5-0**

5. Annual Review of City Ordinance 838-2022, Gridley Police Department Policy #706 and Gridley Police Department Military Equipment Report 2022 and Inventory for 2023

**Councilmember Sanchez asked if there had been any changes to the GPD policy, to which Police Chief Harr informed her that no changes have been made to the previously adopted policy since 2021.**

**Motion to accept the annual review was made by Councilmember Sanchez, seconded by Councilmember Roberts.**

**ROLL CALL VOTE**

**Ayes: Farr, Johnson, Calderon, Sanchez, Roberts**

**Motion passed, 5-0**

6. Electric, Water and Wastewater Cost of Services Study Findings and Recommendations presentation by Mark Beachamp, President, Utility Financial Solutions LLC

**City Administrator Wagner presented the staff report and introduced UFS President, Mark Beachamp, to present his findings and recommendations after concluding a cost-of-service study for sewer, water and electric utilities. Beachamp presented a thorough analysis of his recommendations and requested Council direction for preparing a new rate design for utility services. After extensive Council and City staff discussion, City Administrator Wagner suggested**

**Council schedule study sessions for each of the utilities with the guidance of Beachamp to which Council agreed.**

**7. Fire Department Informational Update – Fire Chief, Sean Norman**

**This item was postponed to a future Council meeting date.**

**8. Gridley Industrial Park Complex Subdivision Map 2-22 (Book 207, Pgs 38-41)  
Consideration of a Proposal for the Development of Parcel 2 of the Industrial Park Complex  
(APN 021-240-027, 021-270-042)**

**Planning Director, Donna Decker, presented the proposed mini storage development plan for parcel 2 of the Industrial Park Complex from Mr. Buljit Dhami. Mr. Dhami briefly spoke to Council and informed them that he owns Mallard Mini Storage in Gridley which is at capacity. Dhami feels there is a need for additional storage units within the City as well as RV and boat storage which he plans to incorporate in the development.**

**Councilmember Sanchez noted that she would like to see more power producing development at the Industrial Park and suggested the City hold off on selling the parcels.**

**Motion to approve the development was made by Vice Mayor Johnson, seconded by Councilmember Roberts.**

**ROLL CALL VOTE**

**Ayes: Johnson, Farr, Calderon, Roberts**

**Noes: Sanchez**

**Motion passed, 4-1**

**9. Progress Update: 2023 Standard Details and Public Input**

**City Engineer, Dave Harden, presented an update to the City Council approved task order for the design and construction standards update and provided Council with the first round of completed standards. This item was information only, no vote was necessary.**

**10. Additional Engineering Services for the Feather River Sewer Crossing Project**

**City Engineer Harden presented the staff report requesting City Council authorize City Administrator Wagner to execute the task order amendment allowing Bennett Engineering to proceed with additional engineering needed for the Feather River Sewer Crossing Project. These additional services are reimbursable to the City through the Clean Water State Revolving Fund.**

**Motion to approve was made by Councilmember Roberts, seconded by Vice Mayor Johnson.**

**ROLL CALL VOTE**

**Ayes: Johnson, Farr, Calderon, Sanchez, Roberts**

**Motion passed, 5-0**

#### 11. Water Resiliency Project

**City Engineer Harden informed Council that after DWSRF instated new policies, engineering staff is working to update the scope of work and combine all City water projects into one Water Resiliency Plan grant application as recommended by DWSRF.**

#### 12. Award of Contract for an Aluminum HD Dumping Flatbed

**Utilities Director, Jake Carter, requested Council approve the purchase of a HD aluminum dumping flatbed from Royal Truck Body. Carter explained this project was previously approved in the 2022-2023 CIP projects but was unable to be completed due to supply, therefore it was pushed to the 2023-2024 CIP Budget.**

**Motion to approve the purchase was made by Councilmember Roberts, seconded by Councilmember Calderon.**

#### **ROLL CALL VOTE**

**Ayes: Calderon, Farr, Roberts, Sanchez**

**Noes: Johnson**

**Motion passed, 4-1**

#### 13. Amendment to the Budget Revenue Projections to Match Levy of Assessment Districts on the Butte County 2023-2024 Tax Roll

**Finance Director, Elisa Arteaga, requested an amendment to the budget revenue projections in our adopted 23-24 budget to reflect revenue from the tax levy for the maintenance districts.**

**Motion to approve the amendment was made by Councilmember Calderon, seconded by Councilmember Sanchez.**

#### **ROLL CALL VOTE**

**Ayes: Calderon, Farr, Sanchez, Roberts, Johnson**

**Motion passed, 5-0**

#### 14. Review and Approval of the Consulting Services for Successor Agency of the Redevelopment Agency of the City of Gridley

**Finance Director Elisa Arteaga recommended the approval of the consulting services contract with RSG, Inc. for the Successor Agency for the Redevelopment Agency. Arteaga explained that most recently the City had assistance with the specific reporting requirements from Eide Bailey but they have since lost their employee specializing in the reporting. Arteaga also explained that these consulting services costs will be recoverable through the ROPS annual reporting.**

**Motion to approve the consulting services contract was made by Councilmember Roberts, seconded by Vice Mayor Johnson.**

#### **ROLL CALL VOTE**

**Ayes: Calderon, Farr, Johnson, Roberts, Sanchez**

**Motion passed. 5-0**

#### **COMMUNITY PARTICIPATION FORUM - None**

#### **CITY STAFF AND COUNCIL COMMITTEE REPORTS**

**Councilmember Sanchez reported on her attendance for the NCPA Commission meeting. She also spoke for Amy Jernigan of the Butte County Fair to inform the public and Council of the Butte County Fair dates of August 24<sup>th</sup> – August 27<sup>th</sup>.**

**Councilmember Calderon informed Council of his attendance at the BCAG meeting.**

**Councilmember Roberts and Mayor Farr both attended National Night Out put on by the Gridley Chamber of Commerce. Councilmember Roberts thanked Ross and the Public Works Department for their great services for the event.**

**Vice Mayor Johnson reported on his attendance at the LAFCO meeting.**

#### **CITY ADMINISTRATOR REPORTS**

**City Administrator Wagner reminded Council of the Annual League of California Cities Conference and advised that he will make arrangement for those who would like to attend.**

#### **POTENTIAL FUTURE CITY COUNCIL ITEMS - (*Appearing on the Agenda within 30-90 days*):**

|  |           |
|--|-----------|
| 2022 Power Source Disclosure Report            | 8/21/2023 |
| Gridley Housing Pipeline Tracking Sheet Update | 8/21/2023 |
| Finance Policies                               | 8/21/2023 |
| Soccer Park Plan Review                        | 9/18/2023 |

#### **CLOSED SESSION - None**

#### **ADJOURNMENT –**

**With no other items left to discuss, Mayor Farr adjourned to the next regular meeting on August 21<sup>st</sup>, 2023.**

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**Cliff Wagner, City Administrator**





Item #2

Review of Current State Law (SB 946, 2018, Lara) and Any Existing  
City of Gridley Ordinances Pertaining to Sidewalk Vendors –  
Councilmember Sanchez

[Home](#)[Bill Information](#)[California Law](#)[Publications](#)[Other Resources](#)[My Subscriptions](#)[My Favorites](#)**SB-946 Sidewalk vendors.** (2017-2018)

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Date Published: 09/17/2018 09:00 PM

**Senate Bill No. 946**

## CHAPTER 459

An act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code, relating to sidewalk vendors.

[ Approved by Governor September 17, 2018. Filed with Secretary of State September 17, 2018. ]

## LEGISLATIVE COUNSEL'S DIGEST

SB 946, Lara. Sidewalk vendors.

Existing law authorizes a local authority, by ordinance or resolution, to adopt requirements for the public safety regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street.

This bill would prohibit a local authority, as defined, from regulating sidewalk vendors, except in accordance with the provisions of the bill. The bill would provide that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill. The bill would apply these provisions to a chartered or general law city, county, or city and county.

The bill would require a local authority that elects to adopt a sidewalk vending program to, among other things, not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns, and not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. The bill would authorize a local authority to, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending, as specified, if the requirements are directly related to objective health, safety, or welfare concerns. The bill would also authorize a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, as specified. A violation would be punishable only by an administrative fine, as specified, pursuant to an ability-to-pay determination, and proceeds would be deposited in the treasury of the local authority.

The bill would require the dismissal of any criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors that have not reached final judgment. The bill would also authorize a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, as specified, to petition for dismissal of the sentence, fine, or conviction.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** (a) The Legislature finds and declares all of the following:

- (1) Sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities.
- (2) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise.
- (3) Sidewalk vending contributes to a safe and dynamic public space.
- (4) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending.
- (5) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations.
- (6) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover, California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk.

(b) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

**SEC. 2.** Chapter 6.2 (commencing with Section 51036) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

#### **CHAPTER 6.2. Sidewalk Vendors**

**51036.** For purposes of this chapter, the following definitions apply:

- (a) "Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.
- (b) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.
- (c) "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.
- (d) "Local authority" means a chartered or general law city, county, or city and county.

**51037.** (a) A local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.

(b) Nothing in this chapter shall be construed to affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

**51038.** (a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

(b) A local authority's sidewalk vending program shall comply with all of the following standards:

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

(2) (A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding subparagraph (A), a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(i) Directly related to objective health, safety, or welfare concerns.

(ii) Necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(3) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise.

(4) (A) A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.

(B) Notwithstanding subparagraph (A), a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors.

(5) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority, unless the restriction is directly related to objective health, safety, or welfare concerns.

(c) A local authority may, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns, including, but not limited to, any of the following:

(1) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street.

(2) Requirements to maintain sanitary conditions.

(3) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards.

(4) Requiring the sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order.

(5) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller's permit.

(6) Requiring additional licenses from other state or local agencies to the extent required by law.

(7) Requiring compliance with other generally applicable laws.

(8) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:

- (A) The name and current mailing address of the sidewalk vendor.
- (B) A description of the merchandise offered for sale or exchange.
- (C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.
- (D) The California seller's permit number (California Department of Tax and Fee Administration sales tax number), if any, of the sidewalk vendor.
- (E) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

(d) Notwithstanding subdivision (b), a local authority may do both of the following:

(1) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter. A "swap meet" means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(2) Restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority's temporary special permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. For purposes of this paragraph, a temporary special permit is a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts. A prohibition of sidewalk vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit.

(e) For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

**51039.** (a) (1) A violation of a local authority's sidewalk vending program that complies with Section 51038 is punishable only by the following:

- (A) An administrative fine not exceeding one hundred dollars (\$100) for a first violation.
- (B) An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation.
- (C) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

(2) A local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(3) (A) If a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in paragraph (1):

- (i) An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.
- (ii) An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one year of the first violation.
- (iii) An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(B) Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph (1), respectively.

(b) The proceeds of an administrative fine assessed pursuant to subdivision (a) shall be deposited in the treasury of the local authority.

(c) Failure to pay an administrative fine pursuant to subdivision (a) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in subdivision (a) shall not be assessed.

(d) (1) A violation of a local authority's sidewalk vending program that complies with Section 51038, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.

(2) Notwithstanding any other law, paragraph (1) shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with Section 51037 shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038.

(f) (1) When assessing an administrative fine pursuant to subdivision (a), the adjudicator shall take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632, the local authority shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to subdivision (a).

(3) The local authority may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(g) (1) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the act that added this section had that act been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(2) Upon receiving a petition under paragraph (1), the court shall presume the petitioner satisfies the criteria in paragraph (1) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in paragraph (1), the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(3) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under paragraph (1).

(4) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(5) Nothing in this subdivision is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(6) Nothing in this subdivision or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this chapter.

**SEC. 3.** The Legislature finds and declares that Section 2 of this act, which adds Section 51038 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal

identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this act.

SENATE THIRD READING  
SB 946 (Lara)  
As Amended August 16, 2018  
Majority vote

SENATE VOTE: 22-10

| Committee        | Votes | Ayes  | Noes   |
|------------------|-------|---|--------|
| Local Government | 6-1   | Aguiar-Curry, Bloom, Caballero, Gabriel, Grayson, Rivas | Voepel |

**SUMMARY:** Decriminalizes sidewalk vending and establishes various requirements for local regulation of sidewalk vendors. Specifically, **this bill:**

- 1) Prohibits a local authority from regulating sidewalk vendors, except in accordance with this bill.
- 2) Provides that nothing in this bill shall be construed to affect the applicability of the California Retail Food Code to a sidewalk vendor who sells food.
- 3) Provides that nothing in this bill shall be constructed to require a local authority to adopt a new program to regulate sidewalk vendors, if the local authority has established an existing program that substantially complies with the requirements of this bill.
- 4) Declares that a local authority may adopt a program to regulate sidewalk vendors in compliance with this bill.
- 5) Requires a local authority's sidewalk vending program to comply with all of the following standards:
  - a) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns;
  - b) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire;
  - c) A local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority, if the requirements are any of the following:
    - i) Directly related to objective health, safety, or welfare concerns;
    - ii) Necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities; and,



- iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park;
  - d) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise;
  - e) A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns;
  - f) A local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors; and,
  - g) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority, unless the restriction is directly related to objective health, safety, or welfare concerns.
- 6) Allows a local authority, by ordinance or resolution, to adopt additional requirements regulating the time, place, and manner of sidewalk vending, if the requirements are directly related to objective health, safety, or welfare concerns, including, but not limited to, any of the following:
- a) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street;
  - b) Requirements to maintain sanitary conditions;
  - c) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990, as specified, and other disability access standards;
  - d) Requiring the sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed, except as required to administer the permit or licensure program or comply with a state law or state or federal court order;
  - e) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration (DTFA) seller's permit;
  - f) Requiring additional licenses from other state or local agencies to the extent required by law;
  - g) Requiring compliance with other generally applicable laws; and,

- h) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:
  - i) The name and current mailing address of the sidewalk vendor;
  - ii) A description of the merchandise offered for sale or exchange;
  - iii) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true;
  - iv) The California seller's permit number (DTFA sales tax number), if any, of the sidewalk vendor; and,
  - v) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.
- 7) Allows a local authority to do both of the following:
  - a) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with specified existing law and regulations governing the direct marketing of agricultural products. A "swap meet" means a location operated in accordance with specified existing law governing swap meets, flea markets, and open air markets; and,
  - b) Restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority's temporary special permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. A temporary special permit is a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts. A prohibition of sidewalk vendors shall only be effective for the limited duration of the temporary special permit.
- 8) States that perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern for the purposes of this bill.
- 9) Declares that a violation of a local authority's sidewalk vending program that complies with this bill is punishable only by the following:
  - a) An administrative fine not exceeding \$100 for a first violation;
  - b) An administrative fine not exceeding \$200 for a second violation within one year of the first violation; and,
  - c) An administrative fine not exceeding \$500 for each additional violation within one year of the first violation.

- 10) Allows a local authority to rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.
- 11) Declares that if a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without that permit may be punishable by the following in lieu of the administrative fines set forth in 9), above:
  - a) An administrative fine not exceeding \$250 for a first violation;
  - b) An administrative fine not exceeding \$500 for a second violation within one year of the first violation; and,
  - c) An administrative fine not exceeding \$1000 for each additional violation within one year of the first violation.
- 12) Requires, upon proof of a valid permit issued by the local authority, the administrative fines set forth in 11), above, to be reduced to the administrative fines set forth in 9), above.
- 13) Requires the proceeds of an administrative fine to be deposited in the treasury of the local authority.
- 14) States that a failure to pay an administrative fine shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in 9) and 10), above, shall not be assessed.
- 15) Prohibits a violation of a local authority's sidewalk vending program that complies with this bill, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, from being punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest, except when permitted under law. This shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.
- 16) Prohibits a local authority that has not adopted rules or regulations by ordinance or resolution that comply with this bill from citing, fining, or prosecuting a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in this bill.
- 17) Requires, when assessing an administrative fine, the adjudicator to take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.
- 18) Requires a local authority to accept, in full satisfaction, 20% of the administrative fine imposed pursuant to this bill, if a person meets the criteria in specified existing law that waives court costs due to a person's financial condition.

- 19) Permits a local authority to allow a person to complete community service in lieu of paying the total administrative fine, waive the administrative fine, or offer an alternative disposition.
- 20) Allows a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under this bill had it been in effect at the time of the offense, to petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case, as specified.
- 21) Provides the following definitions:
  - a) "Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path;
  - b) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction;
  - c) "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location; and,
  - d) "Local authority" means a chartered or general law city, county, or city and county.
- 22) Finds and declares that this bill imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of California Constitution Article I, Section 3. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest: the Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this bill.
- 23) Finds and declares all of the following:
  - a) Sidewalk vending provides important entrepreneurship and economic development opportunities to immigrant and low-income communities;
  - b) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise;
  - c) Sidewalk vending contributes to a safe and dynamic public space;
  - d) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending;
  - e) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations;

- f) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover, California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk; and,
- g) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

**EXISTING LAW:**

- 1) Allows a city or county to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws, known as the police power of cities.
- 2) Allows local governments to require businesses operating in their jurisdictions to obtain a license and impose related licensing fees.
- 3) Grants cities and counties the ability to create ordinances regulating or banning sidewalk vending.

**FISCAL EFFECT:** None

**COMMENTS:****1) Background.**

- a) **Sidewalk Vendors.** Sidewalk vendors are individuals that sell goods on streets and sidewalks from carts and other non-motorized conveyances. These vendors engage in business in many cities throughout the state, where they sell food items and other merchandise. Some sidewalk vendors are stationary, while others move from one location to another. Although there is no statewide count, there are an estimated 50,000 sidewalk vendors in the City of Los Angeles. Cities and counties throughout the state have ordinances regulating or banning sidewalk vending. These ordinances impose varying regulations on sidewalk vendors, including, restricting where they can operate, limiting the hours they may operate, requiring them to get permission to operate from nearby businesses, establishing fines and criminal penalties for violations of sidewalk vending ordinances, specifying the maximum number of sidewalk vendor permits issued in the local jurisdiction or within a single block at any given time, and imposing restrictions on stationary vending.
- b) **Existing Street Vending Ordinances.** Some local governments, including the City of Los Angeles, have taken steps to decriminalize sidewalk vending. In early 2017, the City of Los Angeles enacted an ordinance that decriminalized street vending, subjecting vendors only to administrative citations for violations. However, the ordinance did not establish a full regulatory framework. The Los Angeles City Council is currently

debating whether certain neighborhoods should be off-limits to sidewalk vendors, whether limits of two street vendors per block is reasonable, and whether sidewalk vendors must receive the permission of nearby brick-and-mortar businesses, among other issues.

- c) **Criminal Convictions and Immigration Status.** On January 25, 2017, President Trump issued Executive Order 13767 revising the ICE "criminal alien policy," which establishes rules under which unauthorized immigrants are potentially removable because they have been convicted of a crime. This revision significantly broadened the number of immigrants who would be considered a priority for deportation. The executive order prioritizes deportation of individuals who have committed acts that could have been charged as a crime, regardless of whether their actual conviction was criminal. It also prioritizes for deportation an individual who has been charged with a criminal act, but for whom the charge has not been resolved.

Since many cities and counties make violation of their sidewalk vending ordinances a criminal offense, such as a misdemeanor or infraction, sidewalk vendors have been subject to deportation. For example, in October 2017, ICE detained a sidewalk vendor in the City of Rancho Cucamonga after the vendor had been cited for a fourth violation of Rancho Cucamonga's municipal codes, which is a misdemeanor.

- 2) **Bill Summary.** This bill establishes requirements for local regulation of sidewalk vendors, defined as a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. The bill also specifies a schedule of fines and decriminalizes street vending by modifying the penalties that apply to current and past violations of sidewalk vending ordinances.

This bill would prohibit a local authority (counties and cities, including charter cities) from regulating sidewalk vendors, except in accordance with the provisions of the bill. The major provisions are:

- a) Locals cannot require a sidewalk vendor to operate within specific parts of the public right-of-way and neighborhoods, except in areas that are zoned exclusively residential and where a restriction is related to objective health, safety, or welfare concerns. They also cannot limit the number of vendors, unless the limitation is related to objective health, safety, or welfare concerns;
- b) Locals cannot make sidewalk vendors get approval from a non-governmental entity (i.e. a brick-and-mortar business) before they can sell food and/or merchandise; and,
- c) Local authorities may adopt additional requirements regulating the time, place, and manner of sidewalk vending, such as operating hours, sanitary conditions, business licenses (with restrictions surrounding social security numbers), seller's permit, and so forth.

The bill additionally decriminalizes street vending by providing that:

- a) A violation of a local authority's sidewalk vending program that complies with the bill is punishable only by fines and shall not be subject to infraction or misdemeanor penalties;

- b) Pending criminal prosecutions cannot proceed as infractions or misdemeanors and prosecutions that have not reached final judgement shall be dismissed; and,
- c) Anyone with a conviction against them for sidewalk vending can petition for dismissal of the sentence, fine, or conviction.

This bill is sponsored by the author.

- 3) **Author's Statement.** According to the author, "California's sidewalk vendors are working hard to feed their families and build their businesses, but they are trapped in a legal vacuum, unable to seek a valid business permit and exposed to criminal prosecution. California needs to start treating sidewalk vendors like any small business owner working to make it in our state – not putting more obstacles in their path. SB 946 allows local governments to regulate vendors if they first create a permit process. With Immigration and Customs Enforcement (ICE) threatening to deport any undocumented immigrant, sidewalk vendors are more vulnerable than ever. Last year ICE agents detained a sidewalk vendor and mother of four in Rancho Cucamonga after she was arrested for selling corn. This bill ends criminal penalties for sidewalk vendors statewide and puts them on a path to having a safe and legal business."
- 4) **Arguments in Support.** The American Civil Liberties Union of California (ACLU), in support, writes, "By encouraging local jurisdictions to support and properly regulate sidewalk vending, SB 946 will help protect California's low-income immigrants and workers, promote safe and regulated vending, and create new opportunity for entrepreneurship and economic mobility throughout the state. Tens of thousands of Californians work as sidewalk vendors. For many, including immigrants excluded from the formal economy, sidewalk vending offers a chance to start and grow a business while improving local economies. Studies have demonstrated that sidewalk vending generates millions in local and state tax revenue as vendors buy supplies from local businesses and circulate money within their communities. In many food desert communities, fruit, and vegetable vendors are the only available source of fresh produce. Vendors activate commercial corridors, increase pedestrian traffic, and provide eyes on the street to make neighborhoods safer and more dynamic."
- 5) **Arguments in Opposition.** The League of California Cities, in opposition, writes, "SB 946 still goes too far by restricting a local jurisdiction's ability to regulate time, place, manner, and total number of permitted sidewalk vendors to directly related objective health, safety, and welfare concerns. It is not uncommon for a jurisdiction to regulate commercial activity based on factors other than health, safety, and welfare concerns. For example, many jurisdictions appropriately designate certain areas of the community for particular uses such as medical facilities, office buildings, restaurants, bars, and nightclubs. Under the provisions of SB 946, sidewalk vendors would be regulated differently than other entrepreneurs in the community."

## **Chapter 5.44 Use of City Streets and Sidewalks for Sales of Food, Beverages or Merchandise and/or Rentals of Equipment or Other Things**

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**5.44.010 Purpose.**

**5.44.020 Administration by Chief of Police.**

**5.44.030 Administrative review by City Administrator of determination or action of Chief of Police.**

**5.44.040 Appeal to City Council from decision of City Administrator.**

**5.44.050 Prohibition on conducting business involving sales or rentals from city streets and sidewalks without permit.**

**5.44.060 Exceptions to prohibition on conduct of business without permit.**

**5.44.070 Permits authorizing the conduct of business on and from city streets and sidewalks.**

**5.44.080 Applications for a permit.**

**5.44.090 Approval of application and issuance of permit.**

**5.44.100 Denial of application for a permit.**

**5.44.110 Comprehensive liability insurance requirements for a permit.**

**5.44.120 General conditions of a permit.**

**5.44.130 Special conditions for issuance of a permit.**

**5.44.140 Term of permit.**

**5.44.150 Revocation of permits.**

**5.44.160 Violation.**

### **5.44.010 Purpose.**

This chapter is adopted for the purpose of regulating private business transactions, particularly those involving the sale of food, beverages or merchandise and/or the renting of equipment or other things, on and from a city street or sidewalk.

(Ord. 679, 1998)

### **5.44.020 Administration by Chief of Police.**

The Chief of Police, or the designee of the Chief of Police, shall have the primary responsibility for the administration of the provisions of this chapter. In carrying out such responsibilities the duties of the Chief of Police shall include, but not be limited to, acting on all applications for a permit authorizing the conduct of private business on and from a city street or sidewalk, and revocation of a permit where the permittee is conducting business in a manner that is contrary to the terms and conditions of such permit or is otherwise in violation of any state or city law or regulation applicable thereto.

(Ord. 679, 1998)



#### **5.44.030 Administrative review by City Administrator of determination or action of Chief of Police.**

A. Right to Administrative Review. Any person aggrieved by a determination made or action taken by the Chief of Police pursuant to this chapter may apply for administrative review of such determination or action.

B. Applications for Administrative review. Applications for such administrative review shall be in writing and shall be filed in the office of the City Administrator no later than 15 days following the date such determination or action was made or taken, or where written notice of such determination or action is required to be served, the date such notice is served. However, the City Administrator may extend the time for filing an application for good cause shown. Each application shall identify the determination made or action taken for which review is sought, state the reasons why the applicant believes that such determination or action does not comply with the provisions of this chapter, and set forth the relief requested from such determination or action.

C. Decision on Application for Administrative Review. When an application for administrative review is filed under this section, the City Administrator shall consider the application and render a decision affirming, reversing or modifying the determination or action of the Chief of Police. Prior to rendering a decision, the City Administrator may, at his or her sole discretion, convene an informal hearing for the purpose of reviewing evidence or hearing arguments bearing on such decision. Notice of the date, time and place of such hearing shall be given to the Chief of Police and the person who filed the application for administrative review within a reasonable time prior to such hearing. After rendering a decision, the City Administrator shall promptly inform the Chief of Police of the decision and shall cause a notice of the decision to be served on the person who filed the application for administrative review.

D. Stay of Determination Made or Action Taken by the Chief of Police Pending Administrative Review. Any determination made or action taken by the Chief of Police in accordance with this chapter, except for an order to stop work issued by the Chief of Police or the commencement or prosecution of work by the Chief of Police to remove or remedy a condition in a public right-of-way or public service easement which threatens the safety of life or property, shall be stayed pending a decision of the City Administrator on an application for administrative review of such determination or action.

(Ord 679, 1998)

#### **5.44.040 Appeal to City Council from decision of city Administrator.**

Any person aggrieved by any decision rendered by the City Administrator pursuant to this chapter may appeal to the City Council.

(Ord 679, 1998)

#### **5.44.050 Prohibition on conducting business involving sales or rentals from city streets and sidewalks without permit.**

Except as provided in this chapter, it is unlawful for any person to conduct business involving the sale of any food, beverages or merchandise and/or rental of equipment or other things on and from any city street, sidewalk without a permit issued or adopted in the manner hereinafter provided by this chapter.

(Ord 679, 1998)

#### **5.44.060 Exceptions to prohibition on conduct of business without permit.**

Notwithstanding the provisions of this chapter to the contrary, a permit shall not be required to conduct business on a city street or sidewalk under the following circumstances:

- A. Sales of food, beverages or merchandise and/or the rentals of equipment or other things when undertaken by a city employee acting in the course and scope of his or her employment;
- B. Sales of merchandise, such as t-shirts or buttons, which bear a political, religious, philosophical or ideological message when such sale is conducted in connection with and inextricably combined with the distribution of literature, the verbal articulation of a point of view or the conduct of some other activity intended to gain support for a particular cause or idea;
- C. Sales or rental of merchandise made by the owner or lessee of property adjoining a public right-of-way incident to the operation of that business, provided the merchandise is removed from the sidewalk when the business is closed, and provided the sidewalk is not blocked by the merchandise.
- D. Sales of any food, beverages or merchandise and/or rentals of equipment or other things on and from city property for a period of time not exceeding three (3) days, when conducted during a community event sponsored by the local chamber of commerce, business improvement district, or other public and/or non-profit organization, and provided that the permit required by the sponsoring agency has been obtained.

(Ord. 679, 1998)

#### **5.44.070 Permits authorizing the conduct of business on and from city streets and sidewalks.**

The Chief of Police may, by a permit issued in the manner hereinafter provided by this chapter, authorize business activity involving the sale of food, beverages or merchandise and/or the renting of equipment or other things, on and from a city street or sidewalk.

(Ord. 679, 1998)

#### **5.44.080 Applications for a permit.**

Applications of a permit authorizing the sale of food, beverages or merchandise and/or the renting of equipment or other things on and from a city street or sidewalk shall be filed in the office of the Gridley Police Department, shall be in a form and contain the information prescribed by the Chief of Police, and shall be accompanied by a permit fee in an amount established by resolution of the City Council based on the estimated cost of processing the permit application and otherwise administering the provisions of this chapter.

(Ord. 679, 1998)

#### **5.44.090 Approval of application and issuance of permit.**

Where the Chief of Police determines that a completed application has been filed for a permit and there are no grounds for denying such permit, he or she shall approve the application and issue the permit subject to all of the general and special conditions hereinafter provided for by this chapter at such time as the applicant has provided the comprehensive liability insurance and otherwise complied with all other special conditions required by this chapter as conditions precedent to the issuance of such permit.

(Ord. 679, 1998)

#### **5.44.100 Denial of application for a permit.**

- A. Grounds for Denial. Provided an applicant has provided the comprehensive liability insurance and has otherwise complied with all other special conditions required by this chapter as conditions precedent to the issuance of such permit, the Chief of Police shall deny an application for a permit that

is authorized by this chapter if and only if he or she determines that the equipment to be used by the applicant to store, convey, prepare and/or serve such food, beverage, or equipment to be sold or rented is unsafe and would present a danger to the general public using the city streets, sidewalks or parking lots, or would unreasonably block or obstruct the city streets, sidewalks or parking lots.

B. Notice of Denial. Where the Chief of Police determines to deny an application for a permit, he or she shall promptly cause a notice of such determination to be served on the applicant. Such notice shall state the reasons for the determination not to approve the application and shall set forth the right of the applicant to appeal such determination. Ord. 679, 1998

#### **5.44.110 Comprehensive liability insurance requirements for a permit.**

As a condition precedent to the issuance of a permit, the permittee shall obtain and provide to the city a comprehensive general liability insurance policy from an insurance company licensed to do business in the state of California and having a financial rating in Best's Insurance Guide of at least "B," which provides insurance coverage for all liabilities including death, personal injury or property damage arising out of or in any way relating to an activity authorized by a permit issued pursuant to this chapter in the amount of at least \$100,000.00, combined single limits. Such insurance shall be in a form satisfactory to the city's risk manager, shall include an endorsement naming the city and the city's officers, employees and agents as additional insureds under the coverage afforded, shall be primary with respect to any other insurance available to the city, shall contain a severability of interest (cross-liability) clause and shall require the insureds to provide the city at least thirty days prior notice of cancellation. Proof of such insurance, also in a form satisfactory to the city's risk manager, shall be filed with the Chief of Police prior to the issuance of the permit. Ord. 679, 1998

#### **5.44.120 General conditions of a permit.**

As a condition of the issuance of a permit, the permittee shall conduct and carry out the permitted business activity only during the following times and in the following manner:

A. Hours of Operation. The business activities authorized by a permit issued pursuant to this chapter shall be conducted only between the hours of sunrise and sunset of each day.

B. Noise Restrictions.

1. No sound, including amplified music, shall be used for advertising purposes before 11:00 a.m. or after 8:00 p.m. of each day.

2. There shall be no sound, including amplified music, permitted if and when the primary business vehicle or fixture is not moving from one location to another.

C. Equipment. Equipment used to store, convey, prepare and/or serve the food, beverages or other merchandise for sale or rent shall be maintained and operated in a safe and sanitary manner and in a manner which does not unreasonably obstruct or interfere with the use of a city street or sidewalk.

D. Litter. The person issued a permit pursuant to this chapter shall be responsible for maintaining free of litter or refuse attributable to the business, any street or sidewalk where such person is engaged in business.

E. Safety. No sales transactions shall be conducted from a vehicle that is not fully stopped and properly parked at the curb side.

F. Proof of Permits. The person conducting a business authorized by a permit issued pursuant to this chapter shall have available for inspection during business hours a copy of a such permit, as well as a copies of a license to do business in Gridley (issued pursuant to chapter 5.04 of Gridley Municipal Code), and if applicable, a permit to prepare and sell food and/or beverages (issued by Butte County Department of Environmental Health). Ord. 679, 1998

#### **5.44.130 Special conditions for issuance of a permit.**

When acting on a permit authorized by this chapter, the Chief of Police may condition issuance of such permit on compliance with any special requirements which he or she determines are necessary to ensure that the equipment used to store, convey, prepare and/or serve the food, beverages, or other merchandise for sale or rent is maintained and operated in a safe and sanitary manner and in a manner that does not unreasonably obstruct or interfere with the use of a city street or sidewalk. Ord. 679, 1998

#### **5.44.140 Term of permit.**

The initial term of a permit shall be for a period of not more than one year, commencing' on the date such permit is issued. At the end of the initial term, the permit may be renewed by the permittee for successive one-year terms by payment of a permit renewal fee on or before the date such permit expires in an amount established by resolution of the City Council based on the cost of processing permit renewals and otherwise administering the provisions of this chapter. Ord. 679, 1998

#### **5.44.150 Revocation of permits.**

A. Grounds for Revocation. The Chief of Police may revoke a permit if he or she finds that (1) the permittee is engaged in business in a manner that poses or creates an immediate risk to public health and/or safety; (2) the permittee is engaged in business in a manner that is contrary to the terms and conditions of a permit authorized by this chapter, or is in violation of any other state or city law or regulation applicable thereto; (3) the permittee has been served with a notice by the Chief of Police advising the permittee of the violation and requiring correction thereof within a reasonable time as set forth therein; and (4) the permittee has not corrected the violation within the time set forth in such notice. However, the Chief of Police may revoke a permit without first serving the permittee with notice of the violation in the manner provided herein in any case in which the permittee has been served with two other notices of violation by the Chief of Police within the preceding 12-month period.

B. Notice of Revocation. Where the Chief of Police determines to revoke a permit issued pursuant to this chapter, he or she shall cause a notice of revocation to be served on the permittee. Such notice shall state the reasons for the determination to revoke the permit and shall set forth the right of the person to whom the permit was issued to appeal such determination. Ord. 679, 1998

#### **5.44.160 Violation.**

Any person, firm, or other business organization who conducts business subject to regulation by this chapter in violation of section 5.44.120 above or who fails to obtain a permit as required by section 5.44.050 above shall be guilty of an infraction pursuant to section 1.08.040 of this Code. Ord. 679, 1998.

## TITLE 5

### BUSINESS TAXES, LICENSES AND REGULATIONS

- Chapter 5.04 Business License Fee**
- Chapter 5.08 Bankruptcy or Liquidation Sales**
- Chapter 5.12 Bingo Games**
- Chapter 5.16 Cardrooms and Gambling**
- Chapter 5.20 CATV Franchise\***
- Chapter 5.24 Handbills**
- Chapter 5.28 Public Entertainment**
- Chapter 5.32 Secondhand Dealers**
- Chapter 5.36 Taxicabs**
- Chapter 5.40 Garage Sales**
- Chapter 5.44 Use of City Streets and Sidewalks for Sales of Food, Beverages or Merchandise and/or Rentals of Equipment or Other Things**
- Chapter 5.48 Gridley Business Improvement District**
- Chapter 5.50 Massage and Bodywork Services**

#### **Chapter 5.04 Business License Fee**

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- 5.04.010 Definitions.**
- 5.04.020 License--required.**
- 5.04.030 Unlawful business not authorized.**
- 5.04.040 Application--required.**
- 5.04.050 Application--verification.**
- 5.04.060 Licenses--issuance.**
- 5.04.070 License fee as debt to city.**
- 5.04.080 Term.**
- 5.04.090 License--payment.**
- 5.04.100 When payable.**
- 5.04.110 Delinquency dates.**
- 5.04.120 Delinquency penalty.**

- 5.04.130 License payment--criminal prosecution.**
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- 5.04.160 License--display.**
- 5.04.170 Branch establishments.**
- 5.04.180 Carrying on two or more businesses at one location.**
- 5.04.190 Duplicate licenses.**
- 5.04.200 Licenses not transferable.**
- 5.04.210 License--inspectors.**
- 5.04.300 License fee basis--number of employees plus flat fee.**
- 5.04.400 Exemptions and exclusions.**
- 5.04.410 Claims for exemption.**
- 5.04.420 Exclusions.**
- 5.04.500 Appeal.**
- 5.04.550 Penalty for violation.**
- 5.04.600 Criminal and civil remedies not exclusive.**

#### **5.04.010 Definitions.**

A. Words used in this chapter are defined as follows:

1. "Average number of employees" shall be determined by taking the number of employees of a business who are earning wages for work done in the city during pay periods ending the nearest twelfth of each month as shown by Form DE3 of the State Department of Employment, or other form which may hereafter be adopted for reporting payments due under the Unemployment Insurance Act, for each month of the previous calendar year, adding the same and dividing by twelve. In determining the average number of employees for the year, fractions on one-half or more are to be considered as one whole employee. Fractions under one-half are to be excluded.

If any employer has been in business less than one year, the employer may use average number of employees for the last quarter. If the employer has not been in business for one quarter, he may estimate the average number of employees who will be employed by him in the city during the remainder of the calendar year.

Employers may be required to verify their figures by showing each relevant Form DE3 of the State Department of Employment or by another form which may hereafter be adopted for reporting payments due under the Unemployment Insurance Act.

2. "Business" includes selling, distributing, or otherwise merchandising goods at wholesale or retail, trades, callings, professions or other occupations engaged in for profit and the conducting, managing or carrying on of any trade, calling or occupation for profit.

3. "City" means the City of Gridley.

4. "Employee" means all persons engaged in the operation or conduct of any business, whether as owner, any member of the owner's family, partner, agent, manager, solicitor and any and all other



persons employed or working in the business.

5. "Engaged in business" means the conducting operating, managing or carrying on of a business, whether done as owner, or by means of an officer, agent, manager, employee, servant or otherwise.

6. "Fixed place of business" means the premises occupied in the city for the particular purpose of conducting a business thereat and regularly kept open for that purpose with a competent person in attendance for the purpose of attending to said business.

7. "License" means the certificate issued by the city to the applicant upon payment of a fee prescribed by this title evidencing payment of such fee.

8. "Nonresident merchant" means any person who as owner and for the purpose of a livelihood or profit engages in any one or more enterprises in which personal property is sold or offered for sale, either personally or through agents and employees and who has not an established place business in the city and has an established place of business outside the city.

9. "Person" includes all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, Massachusetts, business, or common law trusts, societies and individuals transacting and carrying on any business in the city, other than as an employee.

10. "Shall" is mandatory; "may" is permissive; "singular number" includes the plural and the "plural" includes the singular; words of masculine gender include female and neuter gender.

(Ord. 565, 1990)

#### **5.04.020 License--required.**

A. There are imposed upon all persons engaged in business in this city license fees in the amounts prescribed in this title. It is unlawful for any person, whether as principal or agent, clerk or employee, either for himself or for any other person, or for anybody corporate, or as officer of any corporation, or otherwise, to commence to carry on any business set forth in this chapter in the city, without first having procured a license from the city so to do or without complying with any and all regulations of such business contained in this chapter; and the carrying on of any business mentioned in this chapter without having first procured a license from the city to do so, or without complying with any and all regulations of such business, shall constitute a separate violation of this chapter for each and every day that such business is so carried on.

B. The license required to be obtained and the fee required to be paid are declared to be required pursuant to the taxing power of the city solely for the purpose of obtaining revenue.

(Ord. 565, 1990).

#### **5.04.030 Unlawful business not authorized.**

No license issued under the provisions of this title shall be construed as authorizing the conduct or continuance of any illegal or unlawful business or any business in violation of any ordinance of the city.

(Ord. 565, 1990).

#### **5.04.040 Application--required.**

Every person required to have a license under the provisions of this title shall make application for the same, or for renewal of the same, to the Finance Director of the city. Such application shall be a written statement signed by the applicant under penalty of perjury. The application shall set forth such

information as may be required therein and as may be reasonably necessary to properly determine the amount of the license fee to be paid by the applicant.

(Ord. 565, 1990)

#### **5.04.050 Application--verification.**

No application shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the city from collecting by appropriate action such fee as is actually due and payable under this title. Each application, and all statements and information contained therein, may be subject to review, audit and verification by the Finance Director, his deputies or other authorized employees of the city. All licensees, applicants for licenses and persons engaged in business in the city are required to permit examination of their books, records and papers for the purposes aforesaid. The information or data obtained from such examination or audit, or from any application required under this title, shall be deemed to be confidential, except that such may be used for the purpose of enforcing the provisions of this title.

(Ord. 565, 1990).

#### **5.04.060 Licenses--issuance.**

A. It shall be the duty of the Finance Director to prepare and issue a license under this chapter for every person liable to pay a license hereunder, and to state in each license the amount thereof, the period of time covered thereby, and the name of the person to whom issued, the business licensed and the location or place of business where such business is carried on.

B. In no case shall any mistake by the Finance Director in stating the amount of a license prevent or prejudice the collection for the city of what shall be actually due from anyone carrying on a business subject to a license under this chapter.

(Ord. 565. 1990).

#### **5.04.070 License fee as debt to city.**

The amount of any license imposed by this chapter shall be deemed a debt to the city, and any person carrying on any business mentioned in this chapter without having a license from the city to do so, shall be liable to an action in the name of the city in any court of competent jurisdiction for the amount of the license by this chapter imposed on such business.

(Ord. 565, 1990).

#### **5.04.080 Term.**

All licenses shall be issued under this title for a period of twelve (12) months unless specified otherwise. All annual licenses shall expire December 31st.

(Ord. 565, 1990).

#### **5.04.090 License--payment.**

All licenses shall be paid in advance in the legal currency of the United States, at the office of the Finance Director.

(Ord. 565, 1990).

#### **5.04.100 When payable.**



All license fees imposed under this title shall be paid in advance and annual licenses shall be due and payable on the second day of January of each year.

(Ord. 565, 1990).

#### **5.04.110 Delinquency dates.**

Unless otherwise specifically provided under other provisions of this title, all continuing business license fees required to be paid under this title shall be deemed delinquent if not paid by the 31st day of January. For new businesses commencing after the first day of January, the fee shall become delinquent thirty days after initial billing.

(Ord. 565, 1990).

#### **5.04.120 Delinquency penalty.**

Any person who fails to pay any business license fees required to be paid by this title within the time required shall pay a penalty of fifty percent of the amount of the fee in addition to the amount of such fee and shall pay an additional ten percent of the amount of fee for each month of continued delinquency after the first month, provided, that the amount of such penalty shall in no event exceed one hundred percent of the amount of the business license fee due.

(Ord. 565, 1990).

#### **5.04.130 License payment--criminal prosecution.**

The conviction and punishment of any person for transacting any business without a license shall not excuse or exempt such person from the payment of any license due or unpaid at the time of such conviction, and nothing in this chapter shall prevent a criminal prosecution for any violation of the provisions of this chapter.

(Ord. 565, 1990).

#### **5.04.140 Refunds.**

A. No refunds will be made on any amount paid as a license fee except in the case of error on the part of the city in the determination of the amount of the license tax or in the event of double payment for a license.

B. Refunds may be made by the Finance Director, pursuant to the provisions of subsection A of this section; provided that (1) a written claim for the refund, made upon a form provided therefor by the Finance Director stating under penalty of perjury the specific grounds upon which the claim for refund is founded, is filed with the Finance Director within one year of the date the city received the payment of which refund is sought; and (2) the Finance Director is satisfied, on the basis of written business records and other records submitted by the claimant, that the claimant is entitled to the refund under the provisions of subsection A of this section; provided, however, that the Finance Director (or his authorized agent) shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the refund claimed by him; and provided, further, that no claim for refund shall be allowed if the claimant therefor refuses to allow such examination of his books and business cards after request by said Finance Director to do so.

C. Any decision of the Finance Director made under this section shall be final unless the same is appealed to the city council within ten days after notice thereof. The decision of the city council shall be final and conclusive on any matter appealed to it under this section.

(Ord. 565, 1990).

#### **5.04.150 License payment--statement required.**

A. In all cases where the amount of license to be paid by any person is based upon the amount of receipts of sales or of business transacted, the number of persons employed, the average number of vehicles used, the amount of the maximum admission fee charge, the number of companies represented, the number of tables used for any game, or the number of rooms in any building, such person shall, before obtaining a license for his business and annually thereafter, file with the Finance Director for his guidance in ascertaining the amount of license to be paid by such a person, a written statement showing such information as may be required as of the date of such statement. No such statement shall be conclusive upon the city and upon any officer thereof as to the matters there-in set forth, and the same shall not prejudice the rights of the city to recover any amount that may be ascertained to be due from such person in addition to the amount shown by such statement to be due in case such statement should be found to be incorrect. If any person required to make any such statement fails to do so, such person shall be required to pay a license at the maximum rate prescribed in this chapter for the business carried on by such person, and shall be guilty of a violation of this chapter and be punishable therefor as provided in this chapter; provided, however, that in any case where the first license is to be issued for a newly established business, no statement need be made of the amount of receipts or sales or business transacted, or of the average number of persons employed and the minimum rate prescribed in this chapter shall be charged for any newly established business, the amount of license for which is regulated by the amount of receipts or sales or business transacted, or by the average number of persons employed during the first period in which such business is in operation; and provided, further, that the first license for a newly established business for which a minimum license is not fixed by this chapter, shall not be required to be paid until the termination of the license period during which the operation of such business is commenced. At such termination, the license for such license period shall be ascertained and paid in the manner provided by this section for the ascertaining and paying of licenses for other license periods.

B. In the event of any change in such business prior to the expiration of one year, a supplemental sworn statement shall be filed at the time of the renewal of such license next succeeding such change.

(Ord. 565, 1990).

#### **5.04.160 License--display.**

Every person having a license under the provisions of this chapter, and carrying on a business shall keep license posted and exhibited while in force, in some conspicuous part of the place of business. Every person having such a license and not having a fixed place of business, shall carry such license with him at all times while carrying on the business for which the same was granted. Every person having a license under the provisions of this chapter shall produce and exhibit the same, when applying for a renewal thereof, and whenever requested to do so by any police officer, or by any officer authorized to issue, inspect, or collect licenses.

(Ord. 565, 1990).

#### **5.04.170 Branch establishments.**

Separate licenses must be obtained for each branch establishment or location of the business engaged in, as if each such branch establishment or location were a separate business, and each license shall authorize the licensee to engage only in the business licensed thereby at the location or in the manner designated in such license; provided, that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this title shall not be deemed to be separate places of business or branch establishments.

(Ord. 565, 1990).

#### **5.04.180 Carrying on two or more businesses at one location.**

If a person engages in two or more separate businesses at the same location, there shall be but one license issued to him, based on the following means of computation of total license fee:

A flat rate charge for each individual business as required in this title but in determining the total average number of employees, the total employees for all businesses shall be combined.

(Ord. 565, 1990).

#### **5.04.190 Duplicate licenses.**

Duplicate licenses may be issued by the Finance Director to replace and license previously issued, which has been lost or destroyed, upon the licensee filing an affidavit attesting to such fact, and at the time of filing such affidavit, paying to the Finance Director a fee of two dollars.

(Ord. 565, 1990).

#### **5.04.200 Licenses not transferable.**

A. Licenses issued pursuant to this chapter are not transferable or assignable by the licensee to any other person, nor shall any fee paid by any person under the provisions of this title be applied in whole or in part to the payment of any fee due or to become due from any other person.

B. When a licensee transfers its principal place of business to a new location, the licensee must immediately notify the Finance Director of its new location and present its license for amendment to show the new address.

(Ord. 565, 1990).

#### **5.04.210 License--inspectors.**

A. All police officers are appointed inspectors of licenses, and in addition to their several duties as police officers, may examine all places of business and persons liable for payment of a license fee, and to see that such licenses are taken out, and shall have and exercise the power:

1. To make arrest for the violation of any of the provisions of this chapter;
2. To enter free of charge, at any time, any place of business for which a license is required by this chapter and to demand the exhibition of such license for the current term by any person engaged or employed in the transaction of such business, and if such person shall then and there fail to exhibit such license, such person shall be liable to the penalty provided for a violation of this chapter.

B. A complaint may be filed against all persons violating any of the provisions of this chapter.

(Ord. 565, 1990).

#### **5.04.300 License fee basis--number of employees plus flat fee.**

A. Every person engaged in business in the city, whether or not a fixed place of business in such city, in the business of conducting, managing, carrying on or engaging in any business, profession or occupation or service enterprise, including the businesses listed below, shall pay to the city an annual license fee of thirty dollars (\$30.00) per annum plus five dollars (\$5.00) for each employee or equivalent thereof in excess of two full-time equivalent employees.

|                      |   |
|----------------------|---|
| Accountant           | Chiropractor  |
| Abstract title       | Civil, electrical, mining, chemical, structural, consulting or hydraulic engineer |
| Advertising agent    |   |
| Advertising designer |   |

|                                 |   |
|---------------------------------|---|
| Appraiser                       |   |
| Architect                       | Collection agency                             |
| Artist                          | Commission broker                             |
| Assayer                         | Consumer finance consultant                   |
| Attorney at law                 | Dental laboratory                             |
| Auditor                         | Dentist                                       |
| Bacteriologist                  | Designer, illustrator or decorator            |
| Book agent                      |   |
| Broker or commission agent      | Detective agency and/or private patrol agency |
| Chemist                         |   |
| Certified public accountant     | Diet counseling                               |
| Chiropodist                     | Drugless practitioner                         |
| Electrologist                   | Mortgage companies                            |
| Employment agency               | Naturopath                                    |
| Engraver                        | Oculist                                       |
| Entomologist                    | Optician                                      |
| Escrow and title companies      | Optometrist                                   |
| Feed, grain and fruit broker    | Osteopath                                     |
| Finance companies               | Physician                                     |
| Geologist                       | Physiotherapist                               |
| Graphologist                    | Podiatrist                                    |
| Illustrator or show card writer | Photographers                                 |
|                                 | Professional child care                       |
| Income tax services             | Real estate                                   |
| Interior designer               | Roentgenologist                               |
| Inheritance tax referee         | Savings and loan companies                    |
| Investment counseling           | Sign painters                                 |
| Landscape architect             | Surgeon                                       |
| Management consulting services  | Surveyor                                      |
| Masseuse                        | Taxidermist                                   |
| Mercantile agency               | Travel agencies                               |
| Mortician                       | Veterinarian                                  |

B. Every person engaged in general contracting, sub-contracting or specialty contracting possessing a State License A, B, and C and all other contractors including but not limited to those listed below, shall pay to the city an annual license fee of thirty dollars (\$30.00) per annum, plus five dollars (\$5.00) for each employee or equivalent thereof in excess of two full-time equivalent employees.

|                              |            |
|------------------------------|------------|
| Air conditioning and heating | Masonry    |
| Electrical                   | Mechanical |

|                    |                          |
|--------------------|--------------------------|
| Electric sign      | Mobile home installation |
| Carpet             | Painting                 |
| Concrete/cement    | Patio                    |
| Construction       | Plumbing                 |
| Drywall            | Remodeling               |
| General            | Roofing and insulation   |
| Grading and paving | Sheet metal              |
| Landscape          | Shower door              |
|                    | Swimming pool            |

C. Any person conducting or carrying on the business consisting of selling at retail any goods, wares, merchandise or commodities, or conducting or carrying on the business of manufacturing, packing, processing or selling at wholesale any goods, wares, merchandise or commodities or conducting or carrying on any trade, occupation, service or calling, or business not otherwise specified including, but not limited to, those listed below, shall pay to the city annual license fee of thirty dollars (\$30.00) per annum, plus five dollars (\$5.00) for each employee or equivalent thereof in excess of two full-time equivalent employees.

| RETAIL, WHOLESALE AND MANUFACTURING |                              |
|-------------------------------------|------------------------------|
| Antiques and hobby crafts           | Hardware                     |
| Auto parts                          | Home cleaning products       |
| Bakery                              | Ice cream                    |
| Boats                               | Jades and gems               |
| Books, newspapers, magazines        | Jewelry                      |
| Bowling supplies                    | Lawn sprinklers              |
| Burglar alarms                      | Lapidary                     |
| Camera and film supplies            | Liquor                       |
| Carpets and rugs                    | Lumber and building supplies |
| Ceramics                            | Mobile food vendor           |
| Clocks                              | Mobile homes                 |
| Coffee shop                         | New and used cars            |
| Concrete and rock                   | Nursery                      |
| Cosmetics                           | Office machines              |
| Cottage food operation              | Oil products                 |
| Cycleries                           | Paint supplies               |
| Dehydration plant                   | Pet supplies                 |
| Delicatessen                        | Records and tapes            |
| Dog kennel operators                | Recreation vehicles          |
| Draperies                           | Restaurants                  |
| Dress shop                          | Secondhand dealers           |
| Drive-in restaurant                 | Service stations             |
| Drugstore                           | Shoes                        |

|                   |                     |
|-------------------|---------------------|
| Electronic supply | Soft water services |
| Fabric            | Sporting goods      |
| Feed and grain    | Stationery          |
| Fire extinguisher | Statue craft        |
| Florist           | Television          |
| Furniture         | Tires and supplies  |
| Garages           | Toys and hobbies    |
| Glass             | Vacuum cleaners     |
| Golfing supplies  | Variety shop        |
| Grocery           |                     |

### SERVICE ORIENTED FIRMS

|  |                                  |
|--|----------------------------------|
| Aquatics instruction                         | Car wash, waxing and polishing   |
| Air conditioning/heating repairs and service | Catering                         |
|  | Coin-operated laundry            |
| Aircraft service                             | Cold storage                     |
| Alterations                                  | Clock repair                     |
| Ambulance service                            | Community antenna television     |
| Appliance repair                             | Dance studio and instruction     |
| Automotive repair and painting               | Diaper service                   |
| Barbershop                                   | Distributor-wholesale/retail     |
| Beauty shop                                  | Distributor-petroleum products   |
| Bookkeeper                                   | Exercise salon                   |
| Carpentry                                    | Home and other repairs           |
| Installation firms                           | Refrigeration repair and service |
| Janitorial services                          |                                  |
| Laundry-dry cleaning                         | Reupholstery                     |
| Landscape/yard maintenance                   | Rototilling                      |
| Lawn aeration                                | Rubbish/Garbage collection       |
| Linen supply                                 | Rugs and carpet cleaners         |
| Locksmith                                    | Service business machines        |
| Mail order                                   | Shoe repair                      |
| Newspaper-Distributing                       | Shoeshine                        |
| Newspaper-Publisher                          | Tailoring                        |
| Outdoor/indoor advertising                   | Taxi cabs                        |
| Amusements:                                  | Telephone answering service      |
| Bowling alley                                | Telephone company                |
| Gold course                                  | Title insurance                  |
| Theater                                      | Tool and equipment rental        |
| Pest control                                 | Tow Truck service                |

|                             |                       |
|-----------------------------|-----------------------|
| Photography                 | Trading stamp service |
| Plumbing                    | Tree trimming         |
| Poodle/dog grooming         | Trucking              |
| Post setting                | Warehouse storage     |
| Printing/offset duplicating | Wedding planning      |
| Radiator repair             | Welding               |
| Radio broadcasting          | Welcome services      |
| Radio repair                | Window cleaning       |

D. Every person or firm listed in Subsection C of this section whose gross income is between one dollar and five thousand dollars per annum shall pay to the city an annual fee of fifteen dollars (\$15.00) per annum.

E. Any other business or businesses, except those excluded by the statutory provisions of Business and Professions Code Sections 16000, et seq., shall pay to the city, unless such business is specifically taxed otherwise by other provisions of this title, a license fee of thirty dollars (\$30.00) per annum, plus five dollars (\$5.00) for each employee equivalent thereof in excess of two fulltime equivalent employees.

F. Certain businesses are of a nature wherein the fee schedule listed in Subsections A through E is not equitable. These particular businesses are therefore assigned a separate rate as follows:

|  |                              |
|--|------------------------------|
| Boxing or wrestling exhibitions  | \$ 10 per exhibition         |
| Carnivals, circuses, etc.  | \$ 100 per day               |
| Public dances  | \$ 25 per day                |
| Rest/convalescent homes, hospitals   | \$ 1.50 per bed              |
| Palmistry, fortune-tellers, etc.   | \$ 100 per year              |
| Pawnbrokers  | \$ 75 per year               |
| Bars, saloons, lounges or restaurants where alcoholic beverages are served | \$ 100 per year              |
| Cardrooms, poolhalls   | \$ 5 per table per year      |
| Christmas Tree vendor  | \$ 10 per month              |
| Apartments, motels, hotels, bed and breakfasts, etc.                       |                              |
| 3-5 units  | \$ 20                        |
| 6 to 50 units  | \$ 20 + \$1 per room over 5  |
| Rooming, boarding houses   |                              |
| 0-3 rooms  | \$ 15 per year               |
| 4+ rooms   | \$ 15 + \$1 per room over 3  |
| Trailer courts   |                              |
| 0-5 spaces   | \$ 20                        |
| 5+ spaces  | \$ 20 + \$1 per space over 5 |

G. Peddlers. Any person, who, as owner and for the purpose of livelihood or profit, engages in any one or more enterprises in which personal property is sold, offered for sale at retail or delivered in the city at retail, and who has not an established place of business in the city, and who travels from place to place in the city or has a stand in any public street, sidewalk or doorway of any unoccupied room or building, and sells and offers for sale at retail any personal property in his possession, is declared a peddler. The following fees shall be assessed and paid by peddlers:

1. Peddlers of Souvenirs. For a peddler of flags, banners, balloons, canes, horns, trumpets, musical or noise making instruments of any kind, toys, badges, buttons, shoestrings, hairpins, lead pencils, combs or souvenirs of any kind, five dollars (\$5.00) per month;
2. Foodstuff Peddlers. For a peddler of meats, game, poultry, fish, fruits, vegetables, food, butter, eggs, buttermilk, milk, ice cream, bread, crackers, cakes, pies, or other breadstuffs, confections or other edibles intended for use as a food for human consumption:
  - a. By means of any wagon or other vehicle, \$2.50 per month;
  - b. By means of any hand or push cart, \$1.50 per month;
  - c. By means of any basket, tray or other container, \$1.00 per month;
  - d. Included in the definition of "foodstuff peddlers" are those who engage in the activity of the preparation of game, poultry or fish by means of skinning, removal of feathers, removal of visceral organs, dressing, or other preparation of game, poultry, or fish for human consumption. For those who engage in the activities described in this subparagraph d., \$1.00 per month.
3. Flower Peddler. For a peddler of flowers, ferns, trees, plants or nursery stock, \$2.00 per month; except any such peddler under the age of 16 years, peddling his own produce, in which case the license fee shall be \$0.50 per month.
4. Peddlers-Generally. For a peddler of any article not otherwise provided for in this chapter, \$5.00 per day.

H. Solicitors.

1. "Solicitor," within the meaning of this chapter, is defined to be any person who goes from house to house or from place to place in the city, selling or taking orders for, or offering to sell or take orders for goods, wares or merchandise, or article for future delivery, or for services to be performed in the future, or for the making, manufacturing or repairing any article or thing whatsoever, for future delivery; provided, however, that this section shall apply only to solicitors who demand, accept or receive payment or deposit of money in advance of final delivery, providing further that this shall not apply to any person or firm maintaining a regular place of business in the city.
2. Every person engaged in business as a solicitor shall pay a license fee of five dollars (\$5.00) per month in advance; provided, that before a license shall be issued to a solicitor so engaged in the business of soliciting in the city, such a person shall make formal written application for such license to the Finance Director upon forms provided for such purpose, containing the name and address of the person, firm or corporation which he represents, and the kind of goods offered for sale or the kind of services to be rendered. Such application shall be accompanied by a bond in the penal sum of five hundred dollars (\$500.00) executed by a surety company or by two responsible freeholders residing in the city or, in lieu thereof, a cash bond of an equal amount conditioned upon the making of final delivery of the goods ordered or the services to be performed in accordance with the terms of such order, or failing therein, that the advanced payment on such order be refunded.
3. Any person aggrieved by the action of such solicitor shall have a right of action on the bond for recovery of money or damages or both. Such bond shall remain in full force and effect, and, in case of cash deposit, such deposit shall be retained by the city for a period of ninety days from and after the expiration of such license unless sooner released by the city council.



4. All orders taken by solicitors shall be in writing, in duplicate, stating the terms thereof and the amount paid in advance, and one copy shall be given to the purchasers.

5. Every person soliciting or taking orders for photographic work or selling coupons for special discount offers, whether work or any part thereof is to be done outside of the city shall pay a license fee of five dollars (\$5.00) per month; provided, that such solicitor, at the time of making application for such license, shall file a bond in the manner and form required by subsections B and C of this section.

(Ord. 807-2013 § 1, 2013: Ord. 806-2012 § 1, 2012: Ord. 565, 1990).

#### **5.04.400 Exemptions and exclusions.**

A. Minors, sixteen years and younger. Every person of the age of sixteen years and under whose annual gross receipts from any and all businesses are one thousand dollars or less shall be exempt from payment of any license tax under the provisions of this title.

B. Charitable organizations. Any charitable institution, organization or association organized for charitable purposes and conducted for charitable purposes only shall be exempt from the payment of a business license fee under the provisions of this title.

C. Charitable entertainments. Any person conducting or staging any concert, exhibition, lecture, dance, amusement or entertainment where the receipts, if any, derived therefrom are to be used solely for charitable or benevolent purposes and not for private gain shall be exempt from the payment of any business license fee under the provisions of this title.

D. Nonprofit organizations. The following organizations or associations shall be exempt from the payment of any business license fee imposed by the provisions of this title upon any of the following businesses, entertainments or activities:

1. Any religious, fraternal, student cooperative, educational, military, state, county or municipal organization or association for the conducting of any business which business is open to the members thereof only and not open to the public;

2. Any religious, fraternal, educational, military, state, county or municipal organization or association for the conducting or staging of any amusement or entertainment, concert, exhibition, lecture, dance or athletic event, when the receipts derived therefrom are to be used wholly for the benefit of such organization and not for private gain of any person;

3. Any student organization, association or cooperative sanctioned by the educational institution from which the membership is drawn, for the conducting or staging of any amusement or entertainment, concert, exhibition, lecture, dance or athletic event when the receipts derived therefrom are to be used wholly for the benefit of such organization and not for private gain of any person;

4. Any organization or association for the conducting or staging of any amusement or entertainment, concert, exhibition, lecture, dance or athletic event, when the use of the premises upon which activity is conducted or staged is a municipal use. Municipal use is a use or performance which benefits the city as a whole or an organization or activity which benefits the city as a whole, and which is sponsored by an organization deriving all or part of its income from the city, or is for the benefit of an organization or activity supported in whole or part by the city.

E. Interstate Commerce. Every peddler, solicitor or other person claiming to be entitled to exemption from the payment of any business license provided for in this title upon the grounds that such license casts a burden upon his right to engage in commerce with foreign nations or among the several states, or conflicts with the regulations of the United States Congress respecting interstate commerce, shall file a verified statement with the Finance Director disclosing the interstate or other character of his business entitling such exemption. Such statement shall state the name and location of the company or firm for which the orders are to be solicited or secured, the name of the nearest local or state manager, if any, and his address, the kind of goods, wares or merchandise to be

delivered, the place from which the same are to be shipped or forwarded, the method of solicitation or taking orders, the method of delivery, the name and location of the residence of the applicant, and any other fact necessary to establish such claim for exemption.

F. Butte County Fair. Vendors and other concessionaires of the Butte County Fair shall be exempt from the payment of any license tax under the provisions of this title. The exemption shall only apply to those persons who are under contract with the Butte County Fair Board to provide goods, services or entertainment and only to those activities occurring on the fairground premises and at the time of the Butte County Fair in August. Activities occurring outside the fairground property are not exempt. Activities occurring at times of the year other than during the run of the Butte County Fair in August are, likewise, not exempt and are subject to the payment of license taxes and the other provisions of this title.

G. City Promotions. Activities associated with the promotion of the city which are of a limited duration and which are intended to promote the Gridley community may be exempt for the duration of the event in question, provided that the sponsoring organization first obtains an exemption pursuant to § 5.04.410 of this code. In determining whether or not to grant an exemption pursuant to this subsection, the Finance Director shall consider whether the event is primarily intended to promote the Gridley community and the providing of goods and services is incidental thereto or whether the event is primarily commercial in nature. Examples of the types of events that would qualify for an exemption under this subsection would be the Red Suspender's Days and Scare Crow Days as previously sponsored by the Chamber of Commerce. There shall be no exemption from the provisions of this title unless the sponsoring organization obtains an exemption in advance of the event. The exemption provided herein shall apply only at the location of and for the duration of the event in question. The exception provided by this subsection shall be subject to the conditions as the Finance Director may impose.

(Ord. 565, 1990; Ord. 721, 2003).

#### **5.04.410 Claims for exemption.**

Any person desiring to claim exemption from the payment of a license fee shall make application therefor upon forms prescribed by the Finance Director and shall furnish such information and make such affidavits as may be required. Upon the determination being made that the applicant is entitled to exemption from the payment of licenses fees for any reason set forth in this title, the Finance Director shall issue a free license to such person which shall show upon its face that the license fee is exempt. This section shall not apply to persons engaged in any business solely as an employee of another person and not as an owner, partner, associate or principal in such business.

(Ord. 565, 1990).

#### **5.04.420 Exclusions.**

Except as may be otherwise specifically provided in this title, the terms of this chapter shall not be deemed or construed to apply to any of the following businesses engaged in by any of the following persons:

A. Any gas or electric public utility which pays to the city a fee under any franchise agreement with the city;

B. Banks, including national banking associations to the extent provided by Article XIII, Section 16, subdivision 1 (a) of the State Constitution;

C. Insurance companies and associations as to the extent provided by Article XIII, Section 14 of the State Constitution;

D. Any person whom the city is not authorized to license for revenue purposes only because of any law or Constitution of the United States or the State;

E. The Finance Director may require the filing of a verified statement from any person claiming to be excluded by the provisions of this section, which statement shall set forth all facts upon which the exclusion is claimed.

(Ord. 565, 1990).

#### **5.04.500 Appeal.**

A. Any person aggrieved by any decision of the Finance Director with respect to the issuance or refusal to issue a license under this title, or with respect to the amount of a license fee payable may, after exhausting other administrative remedies available to him, appeal to the city council by filing written notice of appeal with the city clerk within ten days after the final administrative decision. Said notice shall briefly state the grounds relied upon for such appeal.

B. If such notice of appeal is filed within the time prescribed, the city council shall, within thirty days after filing of said notice of appeal with the city clerk, cause the matter to be set for hearing before the council within sixty days from and after the date of filing of the notice of appeal with the city clerk, unless a later date is agreed to by the council and by the appellant.

C. The council shall cause notice of the time and place of such hearing to be given by the city clerk to the appellant and to the Finance Director not less than ten days prior to the time of such hearing. The city clerk shall give such notice by serving it personally, or by depositing it in the United States mail in Gridley, California, postage prepaid, addressed to the appellant at the address shown on the notice of appeal, or if not shown on the notice, at the address of appellant appearing on his last license record.

D. The council may continue the hearing from time to time. At the hearing, the council shall consider all evidence offered by the appellant and by the city. The determination of the council shall be final and conclusive, and notice thereof shall be served upon appellant in the manner prescribed in this section for service of notice of the hearing.

E. The amount of any license fee finally determined, as provided in this section, shall be due and payable, together with any penalties which may be due thereon; provided, however, if the amount of such license fee is fixed in accordance with the original statement of the applicant, no penalty shall attach by reason of any delinquency.

F. In the event no appeal is taken to the council from a decision of the Finance Director or agency with respect to the issuance or refusal to issue a license, or with respect to the amount of the license fee, the decision of such Finance Director or agency shall become final and conclusive on expiration of the time fixed for appeal to the council.

(Ord. 565, 1990).

#### **5.04.550 Penalty for violation.**

Any person violating any of the provisions of this title or any regulation or rule passed in accordance therewith or intentionally misrepresenting to any officer or employee of this city any material fact in procuring the license or permit provided for in this title shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for a period not more than six months or by both fine and imprisonment.

(Ord. 565, 1990).

#### **5.04.600 Criminal and civil remedies not exclusive.**

The conviction and punishment of any person for failure to pay the required license shall not excuse or exempt such person from any civil action for the license fee debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this title or of any state law requiring the payment of all license fees.

(Ord. 565, 1990).

## **Chapter 5.08 BANKRUPTCY OR LIQUIDATION SALES**

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### **5.08.010 Fees.**

### **5.08.020 Bond.**

### **5.08.030 Inventory.**

#### **5.08.010 Fees.**

A. Any person commencing or conducting a sale or sales of goods, wares, merchandise, or personal property as a result of bankruptcy or liquidation within the city shall conduct the same only in accordance with the following regulations and shall pay the license fee therefor as set forth:

B. Any person desiring a license to sell the stock of a merchant who has become bankrupt or a liquidating merchant in the city, shall pay the license of a transient merchant as defined in Section 5.04.470, but any person desiring to augment the stock in trade of such bankrupt or liquidating merchant by bringing into the city additional merchandise to sell under the bankrupt or liquidating sale, shall pay an additional license fee, for the bringing in and selling of such additional stock, of one hundred fifty dollars per day.

(Ord. 466 § 2, 1985: Ord. 153 § 1(part), 1960: Ord. 138 § 1(A), 1958).

#### **5.08.020 Bond.**

A. Any person desiring a license under this chapter, before receiving any such license, shall furnish a surety bond in the principal sum of five thousand dollars conditioned as follows:

1. Upon the observance by the applicant of all the provisions of this chapter relating to such bankruptcy or such liquidation sale;
2. Upon the truth of all of the representations made in connection with the application for such license;
3. Upon the truth of all of the representations made in the course of any bankruptcy or liquidation sale; and
4. As a guarantee that the purchase price of any article purchased at such sale will be returned to any purchaser upon the proof that any false or misleading statement or representation has been made concerning any personal property sold or offered for sale at any such bankruptcy or liquidation sale, or where the sale is conducted.

B. The bond by its terms shall be made to inure to the benefit of any person injured or aggrieved as a result of any such sale or any purchase made thereat, and shall provide that any such injured or aggrieved person shall have a right of independent action thereon for a period of sixty days from and after the date upon which the purchase, act, statement, or representation was made which constitutes the basis of such action.

(Ord. 466 § 3, 1985: Ord 153 § 1(part), 1960: Ord. 138 § 1 (B), 1958).

### **5.08.030 Inventory.**

Before conducting any bankruptcy or liquidation sale under any license issued pursuant to this chapter, the licensee must file with the license collector a full, true and correct inventory of all items of personal property to be offered at the sale. The license collector and the chief of police, either personally or through their representatives, shall have the right to be present as official observers, representing the city at any and all such bankruptcy liquidation sales, for the purpose of seeing that no personal property is sold thereat except as is outlined in the inventory to be filed; and such officers or their representatives shall have the power to prevent the sale of any item or items not included in the inventory.

(Ord. 466 § 4, 1985: Ord. 153 § 1(part), 1960: Ord. 138 § 1 (C), 1958).

## **Chapter 5.12 BINGO GAMES**

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- 5.12.010 Eligible organizations.**
- 5.12.020 Definitions.**
- 5.12.030 Compliance.**
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- 5.12.060 License--investigation of applicant.**
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- 5.12.190 Participation.**
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- 5.12.210 Restrictions on participants.**
- 5.12.220 Violation--action by city.**

## **5.12.230 Violation--penalty.**

### **5.12.010 Eligible organizations.**

A. Bingo games may be conducted by organizations exempted from the payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, and 23701(1) of the Revenue and Taxation Code and by mobile home park associations and senior citizens organization; provided, that the proceeds of such games are used only for charitable purposes.

B. Only these organizations are permitted to play bingo.

(Ord. 314 §§ 3, 4, 1977; Ord. 295 § 1, 1977).

### **5.12.020 Definitions.**

As used in this chapter, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random.

(Ord. 314 § 18, 1977; Ord. 295 § 10, 1977).

### **5.12.030 Compliance.**

No license shall be issued to any organization unless such applicant is an eligible organization under Section 5.12.010 and its application conforms to the requirement, terms and conditions of this chapter.

(Ord. 295 § 3, 1977).

### **5.12.040 License--application.**

Eligible organizations desiring to obtain such license to conduct bingo games in the city shall file an application in writing therefor in the office of the city clerk on a form to be provided by the city clerk. The issuing authority shall be the city clerk. The license issued shall be for a term of one year from the date of issuance, subject to renewal and annual fee.

(Ord. 295 § 2, 1977).

### **5.12.050 License--application--contents.**

The application for a license shall contain the following:

A. The name of the applicant organization and statement that applicant is an eligible organization under Section 5.12.010;

B. The name and signature of at least two officers, including the presiding officer, of the corporation or community chest and the trustee of any trust;

C. The particular property within the city, including the street number, owned or leased by the applicant, used by such applicant for an office or for performance of the purposes for which the applicant is organized, on which property bingo games will be conducted, together with the occupancy capacity of such place;

D. That the applicant agrees to conduct bingo games in strict accordance with the provisions of Section 326.5 of the Penal Code and this chapter, as they may be amended from time to time, and agrees that the license to conduct bingo games may be revoked by the chief of police upon violation of any of such provisions;

E. The application shall be signed by the applicant under penalty of perjury;



F. The annual license fee fixed by the city council by resolution shall accompany the application;

G. The applicant shall also submit, with its application, a certificate or Determination of Exemption under Section 27301d of the Revenue and Taxation Code, or a letter of good standing from the Exemption Division of the Franchise Tax Board in Sacramento, showing exemption under Section 23701d.

(Ord. 295 § 4, 1977).

#### **5.12.060 License--investigation of applicant.**

Upon receipt of the completed application and the fee, the city clerk shall refer the same to interested departments of the city, including but not limited to the city attorney, police department and the fire department, for investigation as to whether or not all the statements in the application are true and whether or not the property of the applicant qualifies and the extent to which it qualifies, as property on which bingo games may lawfully be conducted, as to fire, occupancy and other applicable restrictions.

(Ord. 295 § 5, 1977).

#### **5.12.070 License--contents.**

Upon being satisfied that the applicant is fully qualified, under the law, to conduct bingo games in the city, the city clerk shall issue a license to the applicant, which shall contain the following information:

- A. The name and nature of the organization to whom the license is issued;
- B. The address where bingo games are authorized to be conducted;
- C. The occupancy capacity of the room in which bingo games are to be conducted;
- D. The date of the expiration of such license;
- E. Such other information as may be necessary or desirable for the enforcement of the provisions of this chapter.

(Ord. 295 § 6, 1977).

#### **5.12.080 License--suspension.**

A. Whenever it appears to the chief of police that the licensee is conducting a bingo game in violation of any of the provisions of this chapter, the chief of police shall have the authority to immediately cease and desist any further operation of any bingo game.

B. Any person who continues to conduct a bingo game after any summary suspension thereof under subsection A of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable as such.

C. The order issued under subsection A of this section shall also notify the licensee that it shall have five days from the date of such order to request a hearing to determine whether such license shall be revoked. Failure to request, in writing, such hearing before the chief of police within the five-day period, shall result in a revocation of the license.

D. Upon such request by the licensee, whose license has been suspended under subsection A of this section, for a hearing to determine whether such license shall be revoked, the chief of police shall provide such hearing within ten days after receipt of such request at which hearing the suspended licensee may appear before the chief of police for the purpose of presenting evidence why the license should not be revoked. No license shall be revoked under this section unless notice of the time and place of such hearing shall have first been given at least five days before the hearing thereof by

depositing in the United States Mail a notice directed to the suspended licensee at the address given in the application. The notice shall set forth a summary of the ground advanced as the basis of the suspension and revocation.

E. Any organization whose license is revoked under this section shall not conduct any bingo game in the city until such time as the city council, on appeal, determines to overrule the decision of the chief of police.

(Ord. 295 § 7, 1977).

#### **5.12.090 License--revocation.**

A. Whenever it appears to the chief of police that the licensee is conducting bingo games in violation of any of the provisions of this chapter, or that the license was obtained by fraudulent representation and no summary suspension is ordered under Section 5.12.080, the license may be revoked; provided, however, the licensee may appear before the chief of police at the time fixed by the chief of police, for the purpose of presenting evidence why the license should not be revoked. No license shall be revoked under this section unless written notice shall have first been given at least five days before the hearing thereof by depositing in the United States Mail a notice directed to the licensee at the address given in the application. The notice shall set forth a summary of the ground advanced as the basis of the revocation.

B. Any organization whose license is revoked under this section shall not conduct any bingo game in the city until such time as the city council, on appeal, determines to overrule the decision of the chief of police.

(Ord. 295 § 8, 1977).

#### **5.12.100 License--revocation--appeal.**

A. Any holder of a license whose license is revoked under this chapter shall have the right, within ten days after receiving notice in writing of the revocation, to file a written appeal to the city council. Such appeal shall set forth the specific ground or grounds on which it is based. The city council shall hold a hearing on the appeal within thirty days after its receipt by the city clerk, or at a time thereafter agreed upon, and shall cause the appellant to be given at least ten days' written notice of such hearing. At the hearing, the appellant or its authorized representative shall have the right to present evidence and a written or oral argument, or both, in support of his appeal. The determination of the city council on the appeal shall be final.

B. Any organization whose license is finally revoked may not again apply for a license to conduct bingo games in the city for a period of one year from the date of such revocation; provided, however, if the ground for revocation is cancellation of the exemption granted under Section 23701d of the Revenue and Taxation Code, such organization may again apply for a license upon proof of reinstatement of the exemption.

(Ord. 295 § 9, 1977).

#### **5.12.110 License--fee.**

An annual fee of fifty dollars shall be collected from each organization conducting a bingo game, collectible at the time application for license is made. If the license is refused by the city, one-half of the sum shall be refunded to the organization.

(Ord. 314 § 15, 1977).

#### **5.12.115 Waiver of license fee.**



A. The annual license fee prescribed by Section 5.12.110 may be waived by the city council upon a showing of reasonable cause therefor.

B. An application for a waiver of the annual license fee pursuant to this provisions shall be filed with the city clerk and shall set forth the reasons by the applicant believes that the fee should be waived.

C. The application shall be heard by the city council and acted upon within thirty days of its filing with the city clerk.

(Ord. 462 § 1, 1984).

#### **5.12.120 Profits.**

Those organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code of the state shall keep all profits derived from a bingo game in a special fund or account and these profits shall not be commingled with any other funds or accounts. Such profits shall be used only for charitable purposes.

(Ord. 314 § 13, 1977; Ord. 295 § 12, 1977).

#### **5.12.130 Proceeds.**

With respect to other organizations authorized to conduct bingo games pursuant to this chapter and Section 326.5 of the Penal Code, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Such proceeds shall be used only for charitable purposes, except as follows:

A. Such proceeds may be used for prizes.

B. A portion of such proceeds, not to exceed twenty percent of the proceeds after the deduction for prizes, or two thousand dollars per month, whichever is less, may be used for rental of property, overhead and administrative expenses, security equipment, and security personnel.

(Ord. 801-2012 §1, 2012; Ord. 314 §14, 1977).

#### **5.12.140 Financial interest.**

No individual, corporation, partnership, or other legal entity except the organization authorized to conduct a bingo game shall hold a financial interest in the conduct of such bingo game.

(Ord. 314 § 13, 1977; Ord. 295 § 12, 1977).

#### **5.12.150 Location.**

Each organization authorized to conduct bingo games pursuant to this chapter shall conduct a bingo game only on property owned or leased by it, and which property is used by such organization for an office or for performance of the purposes for which the organization is organized. Such property owned or leased by the organization need not be used or leased exclusively by such organization.

(Ord. 314 § 8, 1977; Ord. 295 § 17, 1977).

#### **5.12.160 Operation.**

A. The bingo game shall be operated and staffed only by members of the authorized organization, and such member or members shall not receive a profit, wage, or salary from any bingo game.

B. Only the organization authorized to conduct a bingo game shall operate such game, or participate in the promotion, supervision, or any other phase of such game.

(Ord. 314 § 10, 11, 1977; Ord. 295 § 14, 1977).

#### **5.12.170 Prizes.**

The total value of prizes awarded during the conduct of any bingo games shall not exceed five hundred dollars in cash or kind, or both, for each separate game which is held.

(Ord. 801-2012 §2, 2012; Ord. 314 §17, 1977; Ord. 295 §11, 1977).

#### **5.12.180 Hours of operation.**

No licensee shall conduct any bingo game for more than six hours out of any twenty-four-hour period. No bingo game shall be conducted before nine a.m. nor after two a.m. of any day.

(Ord. 295 § 20, 1977).

#### **5.12.190 Participation.**

All bingo games conducted pursuant to this chapter and section 326.5 of the Penal Code shall be open to the public, not just to the members of the authorized organization.

(Ord. 314 § 9, 1977; Ord. 295 § 15, 1977).

#### **5.12.200 Attendance limitations.**

Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which such game is conducted as determined by the fire department and public works department in accordance with applicable laws and regulations. Licensee shall not reserve seats or space of any person.

(Ord. 295 § 16, 1977).

#### **5.12.210 Restrictions on participants.**

A. No person shall be allowed to participate in a bingo game unless the person is physically present at the time and place in which the bingo game is being conducted.

B. No minor persons shall be allowed to participate in any bingo game.

C. No person who is obviously intoxicated shall be allowed to participate in a bingo game.

(Ord. 314 §§ 7, 16, 1977; Ord. 295 § 18, 19, 21, 1977).

#### **5.12.220 Violation--action by city.**

The city may bring an action in a court of competent jurisdiction to enjoin a violation of Section 326.5 of the Penal Code or of this chapter.

(Ord. 295 § 23, 1977).

#### **5.12.230 Violation--penalty.**

A. It is a misdemeanor for any person to receive or pay a profit, wage, or salary from any bingo game authorized by this chapter.

B. Violations of subsection A of this section will subject violators to prosecution under Section 326.5 of the Penal Code.

C. Violation of any section or provision of this chapter is a misdemeanor and punishable as such.

(Ord. 358, 1980; Ord. 314 §§ 4--6, 1977; Ord. 295 § 22, 1977).

## **Chapter 5.16 CARDROOMS AND GAMBLING**

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- 5.16.010 Definitions.**
- 5.16.020 Applicability.**
- 5.16.030 Gambling permitted generally.**
- 5.16.040 License--required.**
- 5.16.050 License--application.**
- 5.16.060 License--denial--appeal.**
- 5.16.070 License--limitations.**
- 5.16.080 License--fees.**
- 5.16.090 License--exemptions.**
- 5.16.100 Work permit--required.**
- 5.16.110 Work permit--application.**
- 5.16.120 Work permit--fee.**
- 5.16.130 Work permit--denial.**
- 5.16.140 Work permit--denial--appeal.**
- 5.16.150 Work permit--suspension or revocation.**
- 5.16.160 Rules and regulations.**
- 5.16.170 Violation--penalty.**

### **5.16.010 Definitions.**

A. For the purpose of this chapter, a "cardroom" is defined to be any space, room or enclosure, furnished or equipped with a table used or intended to be used as a card table for the playing of cards and similar games and the use of which is available to the public, or any portion of the public; provided, however, that this section shall not apply to any bona fide nonprofit society, club, fraternal, labor or other organization, as defined in Section 5.16.090.

B. "Gambling" is defined to be the playing of any games with cards or otherwise or the playing of any contrivance or device, mechanical or otherwise for money, credit, merchandise or other things of value. It is unlawful to gamble in the city or for a person to permit gambling on any premises occupied, leased or owned by him or under his control, except as otherwise provided in this chapter.

(Ord. 296 § 1, 3, 1977).

### **5.16.020 Applicability.**

The city council declares that it is not the intention of this chapter to permit the licensing of any cardroom for the playing of any game prohibited by the laws of the state, including, but not limited to, those games enumerated in Section 330 of the Penal Code of the state, which section includes banking and percentage games.

(Ord. 296 § 17, 1977).

#### **5.16.030 Gambling permitted generally.**

The game of draw poker, including lowball poker, is permitted when played in a cardroom or other facility having a cardroom license, or in private residences when such games are not open to the public. A game is open to the public when participation is permitted other than by direct invitation of the tenant of the residence or when the game is for other than the social enjoyment of those present.

(Ord. 296 § 2, 1977).

#### **5.16.040 License--required.**

It is unlawful for any person, for himself or any other person, to engage in, carry on, maintain or conduct, or cause to be engaged in, carried on, maintained or conducted, any cardroom in the city without first having secured a license from the city to do so according to each and every requirement of this chapter or without complying with each and every regulation contained in this chapter pertaining to such cardrooms.

(Ord. 296 § 4, 1977).

#### **5.16.050 License--application.**

An applicant for a cardroom license shall submit his application to the chief of police, which application shall be under oath, and shall include, among other things, the true names and addresses of all persons financially interested in the business. "Person financially interested" includes all persons who share in the profits of the business on the basis of gross or net revenue. The past criminal record, if any, of the applicant and of all persons financially interested in the business shall be shown on such application. The application shall also be accompanied by fingerprints, a photograph and a physical description of the applicant and of persons financially interested in the business.

(Ord. 364, 1980; Ord. 296 § 5, 1977).

#### **5.16.060 License--denial--appeal.**

A. The chief of police shall deny any applicant for a cardroom license, a license to operate such cardroom if:

1. The applicant has previously been convicted of any narcotics violation, a felony involving theft, or any crime involving moral turpitude within the past ten years; or
2. The applicant is not in the opinion of the chief of police a person of good moral character.

B. The action of the chief of police in denying such a license on the basis of the applicant not being a person of good moral character shall be subject to an appeal to the city council. Notice of such an appeal shall be filed with the city clerk within ten days after the denial of the license. Upon failure to file such notice within the ten-day period, the action of the chief of police in denying such license shall be final and conclusive.

(Ord. 296 § 6, 1977).

#### **5.16.070 License--limitations.**

No person shall be granted a license to conduct more than one cardroom. No cardroom license shall be assignable or transferable.

(Ord. 296 § 7, 1977).

#### **5.16.080 License--fees.**

Notwithstanding any of the provisions of this chapter pertaining to the licensing of cardrooms, the fee, annually, for such license shall be fixed by the city council by resolution, a copy of which shall accompany the license application.

(Ord. 296 § 8, 1977).

#### **5.16.090 License--exemptions.**

A nonprofit society, club, fraternal, labor or other organization having adopted bylaws and duly elected directors and members, may be granted a license, without payment of a fee, by the chief of police when it appears that the tables are for the exclusive use of the members of the society, club, fraternal, labor, or other organization and no charge is made for any of the facilities.

(Ord. 296 § 9, 1977).

#### **5.16.100 Work permit--required.**

Cardroom employees must obtain a work permit from the chief of police. "Card- room employees," for the purpose of this chapter, are defined as dealers, overseers and others directly connected with the operation and supervision of the card tables and excluding waitresses, bartenders, culinary workers and others not connected with such operation and supervision.

(Ord. 296 § 10, 1977).

#### **5.16.110 Work permit--application.**

Applications for work permits for cardroom employees shall be submitted under oath and contain the past criminal record, if any, of the applicant and such information as may be deemed by the chief of police necessary to determine whether the applicant is a proper person to be issued a cardroom work permit. The application shall also be accompanied by fingerprints, a photograph and a physical description of the applicant. A work permit shall be issued only to citizens of the United States of America.

(Ord. 296 § 11, 1977).

#### **5.16.120 Work permit--fee.**

Each application for a work permit shall be accompanied by a fee, which fee shall be fixed by the city council by resolution, a copy of which shall accompany the work permit application, which fee shall be an annual fee. The fee shall not be returned in the event that the work permit is refused, revoked or suspended as provided in this chapter. Only one such work permit shall be required each year, even though the holder of the work permit may change his place of employment within the city.

(Ord. 296 § 13, 1977).

#### **5.16.130 Work permit--denial.**

The chief of police shall deny to such applicant a work permit if:

A. The applicant has previously been convicted of any narcotics violation, a felony involving theft, or any crime involving moral turpitude within the past ten years; or

B. The applicant is not in the opinion of the chief of police a person of good moral character; provided, however, in the event a permit is denied thereby, that the chief of police will give the applicant his reasons in writing therefor.

(Ord. 296 § 12, 1977).

#### **5.16.140 Work permit--denial--appeal.**

The action of the chief of police in denying such a work permit on the basis of the applicant not being a person of good moral character shall be subject to an appeal to the city council. Notice of such appeal shall be filed with the city clerk within ten days after the denial of the work permit. Upon failure to file such notice within the ten-day period, the action of the chief of police in denying such work permit shall be final and conclusive.

(Ord. 296 § 14, 1977).

#### **5.16.150 Work permit--suspension or revocation.**

A. The chief of police shall have the right for cause to revoke or suspend any cardroom work permit issued under the provisions of this chapter and to take possession of such permits. Any of the grounds upon which the chief of police shall be required to refuse to issue an initial cardroom license or cardroom work permit shall also constitute grounds for such revocation or suspension. In addition, the failure of a holder of a cardroom license or cardroom work permit to comply with the provisions of this chapter shall also constitute grounds for revocation or suspension of such license or work permit.

B. The action of the chief of police in this respect shall be subject to an appeal to the city council. Notice of such appeal shall be filed with the city clerk within ten days after the revocation or suspension. Upon failure to file such notice within the ten-day period, the action of the chief of police in revoking or suspending the license or work permit shall be final and conclusive.

(Ord. 296 § 15, 1977).

#### **5.16.160 Rules and regulations.**

It is unlawful to operate a cardroom in violation of any of the following regulations and rules:

- A. Location. Not more than one cardroom shall be located at any one address.
- B. Visibility. Cardrooms shall be located and so arranged that card tables and the players at the tables shall be plainly visible from the front door opening to the cardroom when the door is opened. No wall, partition, screen, or similar structure between the front door opening and any card table located in the cardroom shall be permitted if it interferes with such visibility.
- C. Minors. No minors shall be permitted at any card table, nor shall participate in any game played thereat.
- D. Hours of Operation. All cardrooms shall be closed at two a.m. and shall remain closed until nine a.m. Cardrooms may operate seven days a week.
- E. Police Inspection. All cardrooms shall be open to police inspection during all hours of operation.
- F. Accessibility. During hours of operation, doors must be unlocked and accessible to the general public.
- G. Cashing of Bank Checks. The cashing of bank checks for players shall not be permitted in any cardroom.
- H. Supervision of Tables. Each card table shall have assigned to it a person whose duty shall be to supervise the game and to see that it is played strictly in accordance with the terms of this chapter and with the provisions of the Penal Code of the state. This person may have more than one table under his supervision. He shall not, however, participate in the game.
- I. Signs to be Posted. There shall be posted in every cardroom in letters plainly visible from all parts thereof, signs stating that no game except panguini, lowball or draw poker, without variations as defined by Hoyle, shall be played in the cardroom. These signs shall also contain such other information relating to the regulations contained in this chapter as the chief of police may require, including the amount of the time charge for participation.

- J. Intoxicated Persons. No person who is in a state of intoxication shall be permitted in a cardroom.
- K. "Cuts" of pots. The operator of a cardroom shall establish a reasonable time-charge to customers, and there shall not be permitted any "rake-off" or "cut" of any pots or bets.
- L. "Shills." No operator nor employee may use a "shill" in any card game unless a work permit is obtained under Section 5.16.100 and a copy of same is posted in a conspicuous place on the premises.
- M. Solicitation of Players. No operator nor employee nor any other person shall be permitted to solicit participants in any card game by any means indicating a thing of value will be received to participate in the game.
- N. Money on Tables. It shall be illegal to have money on any card table or to use money in any card game.
- O. Exhibit of Permits. Operators and employees are required to exhibit their permits on demand of any law enforcement officer.

(Ord. 296 § 16, 1977).

#### **5.16.170 Violation--penalty.**

Violation of this chapter or any of the provisions contained in this chapter shall be deemed a misdemeanor and punishable as such.

(Ord. 296 § 19, 1977).

## **Chapter 5.20 CATV FRANCHISE**

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## **5.20.010 Definitions.**

For the purpose of this chapter, the following terms, phrases, words and derivations shall have the meaning given in this section. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number.

A. "City" means the city of Gridley, a municipal corporation of the state of California, in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.

B. "Council" means the governing body of the city.

C. "Franchise" means and includes any authorization granted hereunder in terms of a franchise, privilege, permit, license, or otherwise to construct, operate and maintain a cable television system within all or a specified area in the city.

D. "Grantee" means the person, firm or corporation to whom or which a franchise under this chapter is granted by the city council and the lawful successor, transferee or assignee of the firm, person, or corporation.

E. "Grantor" means the city of Gridley.

F. "Gross receipts" means any and all compensation and other consideration in any form whatever and any contributing grant or subsidy received directly or indirectly by a grantee from the operation of



its CATV system in the city, including compensation from: (1) subscribers or users in payment for television or FM radio signals, or any other electrical or light signals reception or service including facsimile transmission and return or response communication received within the city, whether said signals, reception or service is included within the term "Basic Subscriber Service" or if an additional premium charge is collected for the signals, reception or services, including installation charges, (2) any fees or income received by grantee for carrying advertising or commercial messages over the CATV facilities, and (3) from any other person for utilization of or for connection to the property of grantee to the extent that he may from time-to-time legally impose a rental, lease fee, charge or requirement of any form of compensation or consideration therefor. Notwithstanding the above, gross annual receipts or gross revenue shall not include any taxes on services furnished by the grantee and imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the grantee for such governmental unit. Notwithstanding the foregoing, gross receipts shall not include any revenue from noncable services, revenue attributable to copyright fee separately billed to subscriber, refundable deposits on converters/scramblers, or other non cable-related equipment or services provided to subscribers. Notwithstanding the foregoing, gross receipts shall not include that portion up to and including thirty dollars of any payment for the installation or reconnection of a single outlet that is received from any subscriber or user. Intrastate telecommunications services subject to taxation under Part 22 (commencing with Section 44000) of Division 2, of the California Revenue and Taxation Code shall not be included, prior to July 1, 1988, in the gross receipts subject to the CATV franchise fee.

G. "Street" means the surface, the air space above the surface, and the area below the surface of any public street, other public right-of-way or public place, including public utility easements under control of the governing entity.

H. "Property of grantee" means all property owned, installed or used by a grantee in the conduct of a CATV business in the city under the authority of a franchise granted pursuant to this chapter.

I. "Subscribers" means any person or entity receiving with the grantee's authorization, for any purpose the CATV service of the grantee.

J. "Cable television system and CATV" are terms describing a system employing antenna, microwave, satellite transmission facilities, wire, wave-guides, coaxial cables and other conductors, equipment or facilities, including those that occupy the public rights-of-way and are designed, constructed or used for the purpose of receiving, collecting and transmitting television signals, radio signals, or any other kind of electrical or light signal including both off-the-air broadcast, microwave, satellite or closed-circuit television signals or other data or intelligence. This paragraph does not prohibit or purport to regulate activities by public utilities which are permitted by federal law or state regulation.

K. "City pole" means any pole owned solely by the city.

L. "Encroachment" means any property of grantee which is placed in, under or over any right-of-way.

M. "FCC" means the Federal Communications Commission.

N. "FM" means frequency modulation radio transmission.

O. "Above-ground equipment" means a CATV system constructed above ground on poles and structures including cables, guy wires, anchors, conductors, amplifiers, appliances and attachments placed on or attached to poles, overhead structures or placed above the surface of the ground and as necessary and appurtenant to the CATV system.

P. "Right-of-way" means the surface of and the space above, below, and the entire width of any street, highway, alley, lane, path, public way, sidewalk, boulevard, parkway, drive or any easement or right-of-way and any temporary or permanent fixtures or improvements located thereon now or

hereafter held by the city, or dedicated for use by the city, use by the general public or use compatible with cable system operations.

Q. "Underground equipment" means a CATV system constructed below the surface of the ground, including cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, and attachments necessary and appurtenant to the CATV system.

(Ord. 505 § 1, 1987).

#### **5.20.020 Use of telephone facilities.**

When and in the event that the grantee of any franchise granted hereunder uses, in this CATV system, distribution channels furnished to the grantee by a telephone company whose facilities are constructed, operated and maintained pursuant to its state-granted telephone franchise, and the grantee makes no use of the streets, independent of such telephone company furnished facilities, the grantee shall be required to comply with all of the provisions of this chapter as a licensee and in such event whenever the term "grantee" is used in this chapter, it means and includes licensee. No provision of this chapter shall be deemed or construed as requiring the granting of franchise hereunder to a telephone company furnishing such a channel service.

(Ord. 505 § 1(part), 1987).

#### **5.20.030 Franchise to operate.**

A. A nonexclusive franchise to construct, operate, and maintain a CATV system within all or any portion of the city may be granted by the council, by resolution, to any person, firm or corporation, whether operating under an existing franchise or not, who or which offers to furnish and provide such system under and pursuant to the terms and provisions of this chapter.

B. No provision of this chapter shall be deemed or construed so as to require the granting of a franchise when, in the opinion of the council, it is in the public interest not to do so or to restrict the number of grantees.

(Ord. 505 §1(part), 1987).

#### **5.20.040 System designed standards.**

A. Minimum system design requirements shall be as follows:

1. Twenty-four downstream channels of video in accordance with the grantor-approved construction schedule in the franchise;
2. The complete FM radio band downstream;
3. Interconnection capability as more fully described herein;
4. Head-end standby power capable of four hours continuous operation.

B. Construction techniques shall be equal to or superior to the requirements of California Public Utilities Commission General Order 95, as amended or superseded from time to time, the specifications for aerial communications systems of the Pacific Telephone Company, and to all specifications and limitations on the utilization of their materials made by their manufacturers or to rules or regulations of the Federal government, whichever are the higher standards unless grantor authorizes lower standards. Construction components shall be adequate to the design specifications and requirements of the system and shall be utilized within manufacturer's specifications. In addition, the CATV system shall be constructed in accordance with design requirements and schedules contained in the franchise agreement.

(Ord. 505 § 1(part), 1987).

#### **5.20.050 Subscriber complaints.**

In addition to other service regulations adopted by the council, and excepting circumstances beyond grantee's control, such as acts of God, riots and civil disturbances, and in providing the foregoing services, the grantee shall:

A. Limit system failures to minimum time duration by locating and correcting malfunctioning promptly, when reasonably possible within twenty-four hours after occurrence, irrespective of holidays or other nonbusiness hours;

B. Upon complaint by a subscriber, make a demonstration satisfactory to the city administrator that a signal is being delivered which is of sufficient strength and quality to meet the standards set forth in the regulations of the Federal Communications Commission;

C. Render efficient service making repairs promptly and interrupting services only for good cause and for the shortest time possible. Planned interruptions, insofar as possible, shall be preceded by notice given to subscribers no less than twenty-four hours in advance and shall occur during the period of minimum use of the system;

D. Maintain an office in the city or at a location which subscribers may call without incurring added message or toll charges and which office shall be open during all the usual business hours, with its telephone listed in directories of the telephone company serving the city, and be so operated that complaints and requests for repairs or adjustment may be received at any time, day or night, seven days a week, or provide a local telephone directory listing and toll free telephone service maintained on a seven-day, twenty-four hour basis for the receipt of service repair complaints;

E. Provide to Grantor within two (2) business days after written notice is received, a summary of service complaints from cable customers and how the Grantee resolved those complaints. If Grantor requests data more than sixty (60) days old, the Grantee will have two (2) weeks after written notice is received to provide the information. All information provided Grantor is subject to the privacy provisions of the Cable Act.

(Ord. 631 (part), 1994; Ord. 505 § 1(part), 1987).

#### **5.20.060 Subscriber complaints, failure to remedy.**

A. In addition to any other penalty provisions in the franchise, if a subscriber files in writing with the grantor a complaint for a service problem which is preventable and reasonably within the grantee's control, and if such grantee fails within a reasonable period following receipt of written notice by the grantor to remedy the problem, the grantor, upon ten days' written notice to the grantee, may require the grantee to appear before the city council to resolve such issues and may levy a penalty of up to five hundred dollars for any occurrence or series of related occurrences. If the grantee objects to the penalty in writing to the grantor within thirty days, the grantee and grantor shall commence binding arbitration in accordance with the Rules of the American Arbitration Association solely for the purpose of determining whether the five-hundred-dollar penalty was appropriate. No other action taken by the grantor shall be reviewable by way of arbitration.

B. The grantee shall provide notice to each subscriber, upon initial installation and within ninety days of franchise renewal regarding the sanctions provided in this section, and the procedure for reporting and resolving subscriber complaints, including the subscriber's right to complain in writing to the grantor about the grantee's failure to resolve a service complaint which is preventable and reasonably within the grantee's control. The proper address of the grantor to which complaints may be directed shall be included in such notice.

(Ord. 505 § 1(part), 1987).

### **5.20.070 Uses permitted by grantee.**

A. Any franchise granted pursuant to the provisions of this chapter shall authorize and permit the grantee to engage in the business of operating and providing a CATV system in the city and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any right-of-way such poles, wires, cable conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the CATV system; and, in addition, so to use, operate and provide similar facilities or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other grantee franchised or permitted to do business in the city.

B. The granting of a franchise pursuant to this chapter shall not be construed as permission or authority to enter on, occupy or otherwise use private property without the express consent of the owner or agency in possession thereof.

(Ord. 505 § 1 (part), 1987).

### **5.20.080 Term.**

A. No franchise granted by the council under this chapter shall be for a term longer than fifteen years following the date of acceptance of such franchise by the grantee or the renewal thereof.

B. Any such franchise granted hereunder may be terminated prior to its date of expiration by the council, in the event that the council shall have found, after thirty days' written notice of any proposed termination and public hearing, that:

1. The grantee has failed to comply with any material provision of this chapter, or has, by act or omission, violated any material term or condition of any franchise or permit issued hereunder; or

2. Any provisions of this chapter have become invalid or unenforceable and the council further finds that such provisions constitute a consideration material to the grant of the franchise and the parties are unable to negotiate appropriate modifications to the franchise within a reasonable time following the invalidity or unenforceability of the provisions; or

3. The city acquires the CATV system property of the grantee.

(Ord.505 § 1(part), 1987).

### **5.20.090 Renewal.**

A. During the six-month period which begins with the thirty- sixth month before the franchise expiration, the city may, on its own initiative, and shall at the request of a grantee, commence proceedings which afford the public in the franchise area appropriate notice and participation for the purpose of:

1. Identifying the future cable-related community needs and interests; and

2. Reviewing the performance of the cable operator under the franchise during, the then current franchise term presently in effect. The term of any such renewal shall commence from the effective date of the renewed franchise. The section does not confer upon the grantee any substantive or vested rights to renewal of the or vested rights to renewal of the franchise and the grantor is under no obligation to renew the franchise.

B. 1. Upon completion of the proceedings described under subsection A, a grantee seeking renewal of a franchise may, on its own initiative or at the request of the city, submit a proposal for renewal.

2. Any such proposal shall contain such material as the city may require, to include all matters specified in Section 5.20.260 and to include proposals for an upgrade of the existing cable system.

3. Such proposal for a renewal shall be submitted in writing to the city within thirty days following the completion of the proceedings under subsection A.

C. 1. Upon submittal by a grantee of a proposal to the city for the renewal of a franchise, the city shall provide prompt public notice of such proposal and, during the four-month period which begins on the completion of any proceedings under subsection A, renew the franchise or issue a preliminary assessment that the franchise should not be renewed, and at the request of grantee or on its own initiative, commence an administrative proceeding to consider whether:

a. The grantee has substantially complied with the material terms of the existing franchise and with applicable law;

b. The quality of the grantee's service, including signal quality, response to consumer complaints, and billing practices (but without regard to the mix, quality, or level of cable services or other services provided over the system) has been reasonable in light of community needs;

c. The grantee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the grantee's proposal; and

d. The grantee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of such needs and interests.

2. In any proceeding under subsection (C) (1) of this section, the grantee shall be afforded at least ten days' notice by mail of any hearing (an initial hearing may thereafter be continued time to time without any further written notice) and the grantee and the city, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection A), to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceedings.

3. At the completion of a proceeding under this subsection, the city shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the grantee. Such decision shall state the reasons therefor.

D. Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subsection (C) (1) (a) through (d) of this section, pursuant to the record of the proceeding under subsection C. The city may not base a denial of renewal on a failure to substantially comply with the terms of the franchise under subsection C. The city may not base a denial of renewal on a failure to substantially comply with the terms of the franchise under subsection (C) (1) (a) or on events considered under subsection (C) (1) (b) in any case in which a violation of the franchise or the events considered under subsection (C) (1) (b) unless the city has provided the grantee with notice and the opportunity to cure, or in any case in which it is documented that the grantee has waived its right to objection, or has effectively acquiesced.

E. No franchise granted pursuant to this chapter (or under any prior law) shall remain in effect beyond the length of its stated term, provided that any such franchise shall remain in effect at all times during which the city considers renewal of such franchise pursuant to subsection C of this section. In the event that the city denies renewal of the franchise, the franchise shall cease immediately if it has been in effect beyond the date of its stated term (and hence has remained in effect only while the city considers renewal), or it shall cease at such time as its stated term expires (in the event the city's denial of a renewal application occurs prior to the expiration of the franchise being considered for renewal). As such, the franchise shall terminate as specified in this subsection, notwithstanding the fact that an appeal from the decision of the city denying the franchise remains pending. Nothing in this subsection shall be deemed to limit the city's right to terminate any franchise as provided elsewhere in this chapter.

F. The term of any such renewal shall commence from the effective date of the renewed franchise. This section does not confer upon the grantee any substantive or vested rights to renewal of the franchise.

(Ord. 505 § 1(part), 1987).

#### **5.20.100 Franchise payments.**

Immediately upon execution of the franchise, the grantee shall pay to the city, on or before March 31st, of each year, a sum of five percent of gross receipts as defined in Section 5.20.010F, received by the franchisee for cable television operations in the city for the preceding calendar year. No other fee, charge or consideration will be imposed except such generally applicable business license fees, construction, development and inspection, and permit fees as set by the city. The grantee shall file with the city within ninety days after the expiration of any calendar year or portion thereof during which a franchise is in force, a financial statement prepared by a certified public accountant and in a form satisfactory to the director of finance for the city, showing in detail the gross annual receipts, as defined herein, of grantee. Upon reasonable notice and during regular business hours, the city shall have the right to inspect the grantee's records, and make copies thereof, covering its gross subscriber revenues under the franchise and the right of audit and recomputation of any and all amounts payable under this chapter; the cost of such audit shall be borne by grantee when the same results in increasing by more than two percent the grantee's annual payment to the city. No acceptance of any payment shall be considered as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable under this chapter or for the performance of any other legal obligation hereunder.

(Ord. 505 § 1(part), 1987).

#### **5.20.110 Limitations of franchise.**

A. Any franchise granted under this chapter shall be nonexclusive.

B. No privilege or exemption shall be granted or conferred by any franchise granted under this chapter except those specifically prescribed in this chapter.

C. Any privilege claimed under such franchise by the grantee in any right-of-way or city pole or other public property shall be subordinate to any prior lawful occupancy of the rights-of-way, city pole, or public property by any other party. The city shall be judge in determining such claims. The city reserves the right to maintain and to operate its facilities in such manner as will best enable it to fulfill its own service requirements. The city shall not be liable to the grantee for any interruption to the grantee's service or for any interference with the operation of the grantee's equipment arising in any manner from the use of any right-of-way, pole, or facility thereon by the city.

D. A franchise granted pursuant to this chapter shall not be sublet or assigned, nor shall any of the rights or privileges therein granted or authorized be leased, assigned, sold, or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except grantee, either by act of the grantee or by operation of law, without the prior written consent of the grantor, which shall not be unreasonably withheld. The granting of such consent shall not render unnecessary any subsequent consent.

E. The grantee shall promptly notify the grantor of any proposed change in control of the grantee with respect to control shall make the franchise null and void unless and until the grantor shall have consented thereto. For the purpose of determining whether it will consent to such change, transfer, or acquisition of control, the grantor may inquire into the qualifications of the prospective controlling party, and the grantee shall assist the grantor in any such inquiry. The grantor may condition such transfer upon the terms and conditions it deems reasonably appropriate.



F. For the purpose of this section, a presumptive change in control will exist upon sale and transfer of thirty percent or more of the grantee's ownership stock or other control.

G. The grantee, at least sixty (60) days prior to any transfer or change in control as described in this section, shall deliver to Grantor information concerning the definitive transfer or sales agreement, and concerning the transferee or proposed controlling entity, as reasonably appropriate. Upon closing of any such sale or change of control, and if requested by Grantor, Grantee shall deliver to Grantor a certified copy of the document or documents evidencing such transfer of change of control.

H. Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless grantee shall have filed such certified copy as is required and grantor has given approval.

I. If the grantee shall violate this section, or fail to obtain grantor consent, all of the revenues of the system from the date of violation until the date of consent, if any, shall be returned to system's subscribers, on a prorated basis, upon written notice to the grantee from the grantor. Furthermore, any transfer in violation of this section shall be void ab initio.

J. Time shall be of the essence in any franchise granted hereunder. The grantee shall not be relieved of its obligations to comply promptly with any of the provisions of this chapter or by failure of the city to enforce prompt compliance.

K. Any right, or power in, or duty impressed upon, any officer, employee, department or board of the city shall be subject to transfer by the city to any other officer, employee, department, or board of the city.

L. The grantee shall have no recourse whatsoever against the city for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or its enforcement.

M. The grantee shall be subject to all provisions, rules, regulations, and conditions prescribed by federal, state, city, and local law theretofore or hereafter enacted or established during the term of any franchise granted under this chapter; provided, that with respect to city and local law, that such laws do not materially increase the burdens and obligations assumed by the grantee nor materially diminish the rights of the grantee pursuant to such grantee's franchise agreement.

N. Any such franchise granted shall relieve the grantee of any obligation involved in obtaining pole space from the city and shall be in lieu of any obligation to obtain an encroachment permit for installation of any of the grantee's property on the rights-of-way. However, it shall not relieve the grantee from the obligation imposed in any encroachment permit.

(Ord. 505 § 1(part), 1987).

## **5.20.120 Rights reserved to the city.**

A. Nothing in this chapter shall be deemed or construed to contract away or to modify or abridge, either for a term or in perpetuity, the city's right of eminent domain.

B. There is reserved to the city every right and power which is required to be herein reserved or provided by any ordinance of the city; and the grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the city in its exercise of such rights or power, heretofore or hereafter enacted or established.

C. Neither the granting of any franchise hereunder nor any of the provisions contained in this chapter shall be construed to prevent the city from granting any identical or similar franchise to any other person, firm or corporation, within all or any portion of the city. In the event the city grants such additional franchises to construct, operate or maintain a CATV system within the city under more favorable terms and conditions than those granted to a grantee in a previous franchise agreement,

then the agreement shall be considered modified to include such more favorable terms and conditions.

D. There is reserved to the city the power to amend any section or part of this chapter so as to require additional or greater standards of construction, operation, maintenance or otherwise, on the part of the grantee. Provided, however, that any franchise in existence on the effective date of this chapter shall be subject to and governed by the law in existence prior to the effective date of this chapter except insofar as the requirements set forth in this chapter do not materially increase the burdens and obligations assumed by the grantee or materially diminish the rights of the grantee pursuant to such grantee's existing franchise agreement. Any renewal of existing franchises after the effective date of this chapter shall be governed by the law in existence at the time such renewal application is made, and any franchise so renewed shall be subject to all of the provisions of this chapter.

E. Neither the granting of any franchise nor any provisions of this chapter shall constitute a waiver or bar to the exercise of any governmental right or power of the city.

F. The council may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and may determine any question of fact which may arise during the existence of any franchise granted hereunder. The city is authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations of any grantee under this chapter, either on behalf of the city or and subscriber, in the best interest of the public.

(Ord. 505 § 1(part), 1987).

#### **5.20.130 Location of the property of grantee.**

A. Any poles, wires, cable lines, conduits or other properties of the grantee to be constructed or installed in streets, shall be so constructed or installed only at such location and in such manner as shall be approved by the public works director acting in the exercise of his reasonable discretion.

B. The grantee shall not install or erect any facilities of apparatus in or on other public property, places or rights-of-way, or within any privately owned area within the city which has not yet become a public street on any tentative subdivision map approved by the city, except those installed or erected upon public utility facilities now existing, without obtaining the prior written approval of the public works director.

C. In those areas and portions of the city where the transmission or distribution facilities of both the public utility providing telephone service and the utility providing electric service are underground, then the grantee shall construct, operate and maintain all of its transmission and distribution facilities underground. Amplifiers in grantee's transmission and distribution lines may be in appropriate housing upon the surface of the ground as approved by the public works director. The city shall not be responsible in any manner for any costs incurred by the grantee in placing grantee's facilities underground. Undergrounding shall be at the grantee's cost and expense.

(Ord. 505 § 1(part), 1987).

#### **5.20.140 Removal and abandonment of property of grantee.**

A. In the event that the use of any part of the CATV system is discontinued for any reason for a continuous period of six months, or in the event such system or property has been installed in any street or public place without complying with the requirements of grantee's franchise or this chapter, or the franchise has been terminated, canceled or has expired, the grantee, upon being given ten days' notice shall promptly at no expense to the city remove from the streets or public places all such above-ground property and poles of such system other than any which the city engineer may permit to be abandoned in place. In the event of such removal, the grantee shall promptly restore the street or other area from which such property has been removed to the condition satisfactory to the public



works director. Removal of abandoned property if not performed by grantee, may be done by the grantor and billed to the grantee at grantor's option.

B. Any property of the grantee remaining in place one year after the termination or expiration of the franchise shall be considered permanently abandoned.

C. Any above-ground property of the grantee to be abandoned in place shall be abandoned in such a manner as the city engineer shall prescribe. Subject to the provisions of any utility joint use attachment agreement, upon permanent abandonment of the property of the grantee in place, the property shall become that of the city and the grantee shall submit to the public works director an instrument in writing, to be approved by the city council, transferring to the city the ownership of such property.

D. Any and all street and public ways disturbed or damaged during the construction, operation, maintenance, or reconstruction of the system, shall be promptly restored by the grantee, at its sole expense, to their original condition unless otherwise authorized in writing by grantor.

(Ord. 505 § 1(part), 1987).

### **5.20.150 Continuity of service.**

It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to overbuild, rebuild, modify, or sell the system, or the grantor revokes or fails to renew the franchise, the grantee ensures, that all subscribers receive continuous, uninterrupted services to the maximum extent reasonably possible. System interruptions or disruptions within grantee's reasonable control, in excess of twentyfour consecutive hours or for forty-eight total hours during any month shall entitle subscriber(s) to pro rata rebates upon request for the disrupted period, unless the disrupted period is the result of termination of the franchise by the grantor, an exercise of the grantor's right of eminent domain, or other acquisition of the franchise property by the grantor. In the event of purchase by the grantor, or a change of grantee, the current grantee shall cooperate with the grantor to operate the system for a temporary period to maintain continuity of service to all subscribers. In any event, grantor may, by resolution when it deems a good and sufficient cause exists, take over operation of a system for the purpose of maintaining continuity of service until any circumstances, which may in the judgment of the grantor threaten the continuity of service, are resolved to the grantor's satisfaction.

(Ord. 505 § 1(part), 1987).

### **5.20.160 Changes required by public improvements.**

A. The grantee, at its expense, shall protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place any property of the grantee when required by the public works director by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installations of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of structures or improvements by public agencies or as may be required by public agencies; provided, however, that the grantee in all cases shall have the privileges and be subject to the obligations to abandon any property of the grantee in place, as provided in Section 5.20.140 of this chapter. If the grantee protests any requirement of the public works director, the matter shall be referred to the city administrator, whose decision shall be final and binding.

B. Nothing in this section shall be deemed a taking of the property of the grantee and grantee shall not be entitled to any surcharge or other compensation by reason of anything hereunder.

(Ord. 505 § 1(part), 1987).

### **5.20.170 Failure to perform street work.**

Upon failure of the grantee to commence, pursue or complete any work required by law or by the provisions of this chapter or by its franchise to be done in any street or other public place within the time prescribed, and to the satisfaction of the public works director, the public works director, at his option, may cause such work to be done and the grantee shall pay to the city the cost thereof in the itemized amounts reported by the public works director to the grantee within thirty days after receipt of such itemized report.

(Ord. 505 § 1(part), 1987)

#### **5.20.180 Faithful performance bond.**

A. The grantee, concurrently with the filing of an acceptance of award of any franchise granted under this chapter, shall furnish to the city and file with the city clerk, and at all times thereafter maintain in full force and effect for the term of such franchise or any renewal thereof, at grantee's sole cost and expense, a corporate surety bond in a company approved by the city, and in a form approved by the city in an amount to be determined by grantor but not to exceed fifty thousand dollars renewable annually, and conditioned upon the faithful performance of the grantee of all of the grantee's obligations under this chapter and any franchise agreement, and upon the further condition that in the event grantee shall fail to comply with any one or more of the material provisions of this chapter or of any franchise issued to the grantee under this chapter, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the city as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee as prescribed hereby which may be in default, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond, such condition to be a continuing obligation for the duration of such franchise and any renewal thereof and thereafter until the grantee has liquidated all of its obligations with the city that may have arisen from the acceptance of such franchise or renewal by the grantee or from its exercise of any privilege therein granted. The bond shall provide that thirty days' prior written notice of intention not to renew, cancellation, or material change shall be given to the city.

B. At the end of the first three years of the term of this franchise, the amount of the aforesaid corporation surety bond, which the franchise holder shall maintain in full force and effect for the remainder of the term of the franchise, shall be in an amount to be determined by grantor but not to exceed twenty-five thousand dollars, but shall correspond in all other particulars to the bond required during the first three years of the term as required in this section.

C. Neither the provisions of this section, or any bond accepted by the city pursuant hereto, nor any damages recovered by the city pursuant hereto, nor any damages recovered by the city thereunder, shall be construed to excuse faithful performance by the grantee or limit the liability of the grantee under any franchise issued under this chapter or for damages, either to the full amount of the bond or otherwise.

(Ord. 505 § 1(part), 1987).

#### **5.20.190 Indemnification of city.**

A. The grantee, concurrently with the filing of an acceptance of award of any franchise granted under this chapter, shall provide and maintain in full force and effect for the term of such franchise or any renewal thereof, at grantee's sole cost and expense, a general comprehensive liability insurance policy in an amount as from time to time set by the council and by a company approved by the city and in a form satisfactory to the city attorney, indemnifying and saving harmless the city, its officers, and employees from all claims, actions, suits, liability, loss expense or damages of every kind and description, including investigation cost, court costs, and attorney's fees which may accrue to or be suffered or claimed by a person or persons arising out of the negligence of the grantee in the ownership, construction, repair, replacement, maintenance and operation of the cable television system and by reason of any license, copyright, property right or patent of any article or system used

in the construction or use of the system and protecting the city and all persons against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of grantee under such franchise, and any antitrust claim against grantor relating to the grant or administration of a franchise granted pursuant to this chapter, with minimum liability limits of two million dollars for personal injury or death of any person and five hundred thousand dollars for damage to property resulting from any one occurrence.

Furthermore, grantee shall indemnify and hold harmless the grantor from any and all liabilities, fees, costs and damages to persons or property, or expenses of any type or nature which may accrue to the grantor by reason of the construction, operation, maintenance, repair and alteration of the grantee's facilities by the grantee, its employees or agents, excluding any claims arising out of or relating to the negligence or wilful misconduct of the grantor, its employees or agents. In case any suit or action is instituted against the grantor asserting claims for which the grantor has a right of indemnification from the grantee pursuant to this paragraph, the grantor shall provide written notice thereof to the grantee and the grantee shall have the duty to defend grantor, nor shall it be required to indemnify and hold harmless the grantor, if a suit or action is brought against the grantor by the grantee.

B. Policies mentioned in subsection A of this section shall name the city, and its officers, boards, commissions, agents and employees, as additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of the policy shall be delivered to the city thirty days in advance of the effective date thereof; if such insurance is provided by a policy which also covers grantee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement.

(Ord. 505 § 1(part), 1987).

#### **5.20.200 Worker's compensation insurance.**

The grantee shall maintain insurance throughout the term of the franchise which provides coverage in such amount as may be required by the worker's compensation insurance and safety laws of the state of California and amendments thereto. Proof of such insurance coverage shall be provided to the city and shall contain a provision that a written notice of cancellation or reduction in coverage of the policy shall be delivered to the city thirty days in advance of the effective date thereof.

(Ord. 505 § 1 (part), 1987).

#### **5.20.210 Inspection of property and records.**

A. There shall be kept in the grantee's office, records which shall show the things hereafter set forth. The grantee shall provide such information in such form as may be required by the grantor for the records and provide copies thereof:

1. The true and entire cost of construction of plant and facilities, of equipment, of maintenance and of the administration and operation thereof; the amount of stock issued, if any; the amount of cash paid in, the number per value of shares, the amount and character of indebtedness, if any; the rate of taxes, the dividends declared; the character and amount of all fixed charges; the allowance, if any, for interest, for wear and tear for depreciation; and all amounts and sources of income;
2. The amount collected annually from subscribers within the city and the character and extent of the service rendered therefor;
3. The amount collected annually regarding grantee's operation of a cable television system (as defined in Section 5.20.010J) from other users of service and the character and extent of the service rendered therefor to them. Nothing in this subsection shall be deemed to require the grantee to identify particular persons and the grantee may specifically provide a record of aggregate data;

4. The grantee at all times shall make and keep full complete plans and records showing the exact location of all CATV system equipment installed or in use in streets and other public places in the city;

5. The grantee shall file with the city engineer a current map or set of maps drawn to scale specified by the city engineer, showing all CATV system equipment installed and in place in streets and other public places of the city on base maps provided by the city. The city engineer may, upon thirty days' notice require that any such maps be updated to reflect current locations of the grantee's CATV system equipment.

B. The information required to be provided pursuant to this section, in addition to any further data which may be required by the grantor, shall be furnished by the grantee to the grantor at the grantee's own cost and expense. The grantor shall have the right to inspect any records, receive copies of all books, records, maps, construction plans, financial statements, and other like material which are kept by the grantee on its premises upon reasonable notice at any time during normal business hours, and any grantee record kept at another place shall, within ten days of grantor's request, be made available at grantee's premises within the franchise area for grantor's inspection and/or copying, provided that the grantor shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the grantee.

(Ord. 505 § 1(part), 1987).

#### **5.20.220 Operational standards.**

The performance of grantee's cable television system shall meet the technical standards as set forth in Section 5.20.040, and in FCC Rules, Part 76, Sub-part K, Section 76.610 and as amended, at the minimum, establishing technical standards relating to a cable system's technical operation.

(Ord 631 (part), 1994; Ord. 505 § 1(part), 1987).

#### **5.20.230 Emergency use of facilities.**

In the case of any emergency or disaster, the grantee shall, upon request of the city council or city administrator, make available its facilities at no cost to the grantor for emergency use during the emergency or disaster period. For any period of time during which the grantor uses the grantee's facilities under the provisions of this subsection, subscribers shall not be entitled to a refund for interruption of service.

(Ord. 505 § 1(part), 1987).

#### **5.20.240 Modifications.**

Any modifications of the applicable provisions of the rules and regulations of the Federal Communications Commission or act of Congress which apply to the grantee shall be incorporated into the franchise within one year of adoption of the modification or at the time of franchise renewal, whichever occurs first.

(Ord. 505 § 1(part), 1987).

#### **5.20.250 Use of utility poles and facilities agreement.**

When any portion of the CATV system is to be installed on public utility poles and facilities, certified copies of the agreements for such joint use of poles and facilities shall be filed with the city clerk.

(Ord. 505 § 1(part), 1987).

#### **5.20.260 Application--contents.**

Application for a franchise hereunder shall be in writing; shall be filed with the city clerk, and shall contain the following information:

A. The name and address of the applicant. If the application is a partnership, the name and address of each partner shall be set forth. If the applicant is a corporation, the application shall state the names and addresses of its directors, and main officers. In addition, the application shall state the names and addresses of all major stockholders and associates having ten percent or greater financial interest in the corporation, and the names and addresses of parent and subsidiary companies;

B. A statement and description of the CATV system proposed to be constructed, installed, maintained or operated by the applicant; the proposed location of such system and its various components; the manner in which applicant proposes to construct, install, maintain and operate the same; and particularly, the extent and manner in which existing or future poles or other facilities of other public utilities will be used for such system;

C. A description, in detail, of the rights-of-way within which applicant proposes or seeks authority to construct, install or maintain any CATV equipment or facilities; a detailed description of the equipment or facilities proposed to be constructed, installed or maintained therein; and the proposed specific location thereof;

D. A map, specifically showing and delineating the proposed service area or areas within which applicant proposes to provide CATV services and for which a franchise is requested;

E. A statement or a schedule setting forth the number of channels and all of the television or radio stations proposed to be received, transmitted, conducted, relayed or otherwise conveyed over the CATV system;

F. A copy of any contract, if existing, between the applicant and any public utility providing for the use of facilities of such public utility, such as poles, lines or conduits;

G. A statement setting forth all agreements and understandings, whether written, oral or implied, existing between the applicant and any person, firm or corporation with respect to the proposed franchise of the proposed CATV operation. If a franchise is granted to a person, firm or corporation posing as a front, or as the representative of another person, firm or corporation, and such information is not disclosed in the original application, such franchise shall be deemed void and of no force and effect whatsoever;

H. A financial statement prepared by a certified public accountant, or person otherwise satisfactory to the council, showing applicant's financial status and his financial ability to complete the construction and installation of the proposed CATV system;

I. The council may, at any time, demand and applicant shall provide, such supplementary, additional or other information as the council may deem reasonably necessary to determine whether the requested franchise should be granted.

(Ord. 505 § 1(part), 1987).

#### **5.20.270 Application--action by council.**

A. Upon consideration of any such application, the city council may refuse to grant the requested franchise, or the city council, by resolution, may grant a franchise for a CATV system to any such applicant as may appear from the application to be in its opinion best qualified to render proper and efficient CATV service to the television viewers and subscribers in the city. The city council's decision in the matter shall be final. If favorably considered, the application submitted shall constitute and form a part of the franchise as granted. It is the intention of this chapter that the franchise shall not be granted upon a cash auction bid, but that the city council shall consider those factors set forth in California Government Code Section 53066 in granting the franchise, including but not limited to the following:



1. Quality of service offered;
2. Experience and financial responsibility of the applicant;
3. Applicant's proposals for providing service to local schools and city installations;
4. Whether applicant has a contract with a public utility providing for use of facilities such as poles, lines or conduits of such public utility in the city;
5. Such other factors as the city council considers necessary in protecting the public interest.

B. Any franchise granted under this chapter shall include the following conditions:

1. The CATV system herein franchised shall be used and operated solely and exclusively for the purpose expressly authorized by ordinance of the city and no other purpose whatsoever.
2. Inclusion of the foregoing statement in any such franchise shall not be deemed to limit the authority of the grantor to include any other reasonable condition, limitation, or restriction which it may deem necessary to impose in connection with such franchise pursuant to the authority conferred by this chapter.

(Ord. 505 § 1(part), 1987).

#### **5.20.280 Effectiveness and acceptance.**

A. No franchise granted under this chapter shall become effective unless and until the resolution granting the franchise has become effective and, in addition, unless and until all things required in this chapter are done and completed, all such things being hereby declared to be conditions precedent to the effectiveness of any such franchise granted under this chapter. In addition, no franchise granted pursuant to the provisions of this chapter shall become effective until all such things declared to be conditions precedent to the effectiveness of any such franchise shall be accomplished. In the event any of such things are not done and completed in the time and manner required, the council may declare the franchise null and void.

B. Within thirty days after the effective date of the document awarding a franchise, or within such extended period of time as the council, in its discretion may authorize, the grantee shall file with the city clerk his written acceptance in a form satisfactory to the city attorney, of the franchise, together with the bonds and insurance policies required by Section 5.20.180, 5.20.190 and 5.20.200.

(Ord. 505 § 1(part), 1987)

#### **5.20.290 Construction and availability of service.**

A. Within ninety days after acceptance of this franchise, the grantee shall file all necessary applications to receive permits and authorizations which are required in the conduct of its business including, but not limited to, any utility joint-use attachment agreements, microwave carrier licenses, and any other permits, licenses, and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the cable television system, or associated microwave transmission facilities. In connection therewith, copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal, state, or regulatory commission or agency having jurisdiction with respect to any matters affecting grantee's cable television and operations, shall also be submitted simultaneously to the city clerk.

B. Within ninety days after the release of at least ten percent of all poles within the franchise area by the jurisdictional utilities, grantee shall commence physical construction and installation of the cable television system.

C. Within two years after the commencement of construction pursuant to subsection B of this section, unless the city council in its discretion designates a shorter time in the franchise, grantee shall complete construction and installation of the entire cable television system and proceed to render service to all residents of the city who desire cable television service.

D. The grantor may in its sole discretion levy a penalty not to exceed two hundred and fifty dollars per day for each day the grantee exceeds the construction and installation time table pursuant to subsections B and C of this section; provided, however, that no such penalty shall be levied where such delays are a result of war, flood, fire, drought, labor strike, inability to obtain material or other cause not within grantee's reasonable control.

(Ord. 505 § 1(part), 1987).

#### **5.20.300 Subscriber protection.**

A. The grantee shall maintain constant vigilance with regard to possible abuses of the privacy or constitutional rights of any subscriber, programmer, or citizen resulting from any device, signal, or service associated with the system. The grantee shall not utilize any capability of the system for acquisition of information not a normal part of a grantor-approved service.

B. No equipment owned by the grantee shall be installed by the grantee without first securing the written permission of the owner of any premises involved. If such permission is later revoked, the grantee upon request of the owner shall remove forthwith any of its equipment which is both visible and moveable.

C. Nothing herein shall restrict grantee's right to include additional advertising with grantee's billings.

D. Neither the grantee, nor any other person, agency, or entity, shall unlawfully tap, or arrange for the tapping, of any cable, line, signal device, signal or subscriber outlet, or receiver for any purpose whatsoever, except for the sole purpose of determining any unlawful act in violation of Section 5.20.330.

(Ord. 505 § 1(part), 1987).

#### **5.20.310 Service standards.**

A. It is the grantor's policy that the public shall have access to accurate and current information on presently available cable services. Grantee shall make a reasonable effort to provide such information.

B. Grantee shall inform grantor at least thirty days in advance of making any change in service standards. Upon request, grantee will confer with grantor's representative before taking any such action, and shall give due consideration to any recommendations grantor may make, either in response to grantee's statement of intention, or on grantor's own initiative.

C. All cable services shall be available to all subscribers who are willing to pay the charges at the rates established. No charges may be made for services except as listed in published schedules which are available to inspection by anyone at grantee's office, quoted by grantee on the telephone, or displayed or communicated to all potential subscribers prior to their signing a written order for service, except that grantee may charge less than the charges regularly assessed for such services at its discretion.

D. When a subscriber voluntarily discontinues service, grantee shall refund the unused portion of any advance payments in excess of two dollars after deducting any charges currently due. Unused payment portions shall be the percentage of time for which subscriber has paid for service and will not receive it because of his discontinuation of service.

E. Prior to any installation or delivery of services, all subscribers shall sign and deliver to grantee a written order for service. The order shall describe in detail all charges for installation of services, the method of payment and schedule of payment, and any grace periods, late charges, or any other information which will affect the total amount subscriber is to be charged.

F. Grantee shall advise each subscriber as may be set forth in the franchise that the grantor's representative is the official to whom complaints of poor service should be made if such complaints of poor service are not resolved by grantee to the satisfaction of each subscriber.

G. Grantee may, at its option, charge subscribers for service and installation no more than two months in advance. Billing periods shall not exceed two months. Bills may be due and payable upon mailing and shall not be delinquent sooner than twenty days after mailing. Grantee may offer subscribers various prepayment schemes at discounts not to exceed reasonable interest on the subscriber's money for the period of prepayment.

H. Grantee may disconnect a subscriber only for cause, which shall be limited to:

1. Payment delinquency in excess of fifteen days;
2. Wilful damage to or misappropriation of grantee's property;
3. Refusal, for more than ten days, to admit grantee to the subscriber's premises to service grantee's equipment;
4. Conviction by a court of monitoring, tapping, or tampering with grantee's system, signals, or services.

I. Grantee shall, upon subscriber's written request and payment of any grantee required deposit, reconnect service which has been disconnected for payment delinquency when payment has removed the delinquency. A published standard charge may be made for reconnections. Grantee shall not be required to make more than three reconnections for the same subscriber if the disconnections involved were caused by payment delinquency within the past twelve months.

J. Grantee shall advise each subscriber that they have the right to require their installation to be done over any route on their property, to any location within any building thereon, and in any manner they may elect, which is technically and practically feasible, consistent with grantee's standard practices. Grantee may, if it so elects, require that any such request be made in writing.

K. Grantee shall propose and secure grantor's approval for the description of standard or normal drop and shall include a determination of its cost for materials and labor. This shall be the most direct routing of drop wire from the tap to the subscriber's building construction found in the franchise area. A nonstandard drop shall be one which departs in total cost from a standard drop by more than twenty percent. For each nonstandard drop installed, the grantee may charge the subscriber for the cost of material and labor in excess of that for a standard drop. Grantee shall obtain a subscriber's written authorization in advance for all nonstandard drop charges.

(Ord. 505 § 1(part), 1987).

#### **5.20.320 Miscellaneous provisions.**

A. When not otherwise prescribed in this chapter, all matters herein required to be filed with the city shall be filed with the city clerk.

B. The grantee shall pay to the city a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of a franchise pursuant to the provisions of this chapter. Such payment shall be made within thirty days after the city furnishes the grantee with a written statement of such expenses by delivery of same to the city clerk.



C. In the termination of commercial broadcast television programs, the grantee shall not delete the commercials of the program sponsor nor shall it interrupt any programs or parts thereof and substitute commercials or advertisements for those of such program sponsor. However, this section, if preempted by federal regulations or by contract with the commercial broadcast television programmer, shall be ineffective, insofar as it is in conflict with such federal regulations.

D. Grantee shall provide all basic subscriber services of its system, including multiple connection services, on a time and materials basis, to all public and nonprofit private schools, city police and fire stations, city recreation centers, and such other buildings owned or controlled by the city, which shall from time to time be designated by the city administrator; provided, however, that such buildings shall be located within the service area. Grantee shall install, without charge to grantor or such public or private schools, within two hundred feet of service connection from the transmission cable, otherwise maintained or required to be maintained by grantee for the service of paying subscribers of grantee. The grantor or any such public or private schools shall pay to grantee the costs of all labor and materials supplied by grantee for the installation of any service connection in excess of the initial two hundred feet.

E. Before grantee shall provide service to any subscriber, grantee shall obtain a signed contract from the subscriber containing a provision substantially as follows:

Subscriber understands that in providing service, grantee is making use of public rights-of-way within the city, and that the continued use of these public rights-of-way is in no way guaranteed. Subscriber agrees it will make no claim nor undertake any action against the city, its officers, its employees or grantee if a service to be provided by grantee hereunder is interrupted or discontinued because the continued use of such rights-of-way is denied to grantee for any reason. The form of grantee's contract with its subscribers shall be subject to approval of the grantor's attorney with respect to the inclusion of this provision.

F. The grantee shall comply with all applicable city construction codes and permit procedures.

G. All construction practices shall be in accordance with all applicable sections of Federal and State Occupational Safety and Health Acts and any amendments thereto as well as all state and local codes where applicable.

H. Antennas and support structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local codes and regulations.

I. All of the grantee's plant and equipment, including but not limited to the antenna site, headend and distribution system towers, house connections, structures, poles, wire, coaxial cable, fixtures and appurtenances, shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere in any manner with the rights of any property owner, nor hinder or obstruct pedestrian or vehicular traffic.

J. The grantee shall at all times employ common care and shall use and maintain commonly accepted methods and devices for preventing failure and accidents that are likely to cause damage, injury or nuisance to the public.

K. Grounds for Revocation. The grantor reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise due to either of the following circumstances either of which shall represent a material breach of the franchise:

1. If the grantee should default in the performance of any of its material obligations under this chapter or the franchise agreement;

2. If the grantee should fail, after receiving ten days' written notice from the grantor to provide or maintain in full force and effect, the liability and indemnification coverages or bonds as required

herein. The grantee shall be deemed to have failed to maintain the required insurance or bonds if the grantee fails to provide adequate assurance to the grantor that such insurance or bonds will remain in effect after grantor has been given notice of intent to cancel coverage by the insurance company or bonding company.

**L. Procedures Governing Revocation.**

1. The city shall give written notice to the grantee of its intent to revoke the franchise and the grounds therefor. Grantee shall have thirty days from such notice to object, in writing, and to state the reasons for such objection.
2. In the event the city does not receive a response satisfactory to it, it may then proceed to place its request for revocation of the franchise on the agenda for a council meeting. The city shall serve upon the grantee, at least ten days prior to the time and place of such meeting, a written notice of its intent to request such revocation, and the time and place of the meeting.
3. At the designated meeting, the grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to be represented by counsel, and to question witnesses.
4. Any decision to revoke the franchise shall be made by a vote of three or more members of the city council.
5. Any revocation shall become effective immediately.

M. Any franchise granted pursuant to this chapter shall include the conditions that the CATV system franchise shall be used and operated solely and exclusively for the purpose expressly authorized by ordinance of the city and no other purpose whatsoever. Inclusion of this statement in any franchise shall not be deemed to limit the authority of the city or to include any other reasonable condition, limitation or restriction which it may deem necessary to impose in connection with such franchise pursuant to the authority conferred by this chapter.

N. The grantee shall offer to make a lock box available to each of its subscribers. For purposes of this paragraph, a "lock box" is a parental control device, either in the form of a separate unit or incorporated into a descrambler or other piece of equipment used to provide cable television service, which is made operational by a key or by a code, and which enables the subscriber to prevent the viewing of any pay channel offering adult programming.

O. Unless the grantee's cable television system incorporates technology to prevent unwanted reception of audio and video signals from occurring under normal operating conditions, the system shall provide a written statement to all new subscribers advising them that audio or video signals, or both, may be present on certain channels to which they do not subscribe.

(Ord. 505 § 1(part), 1987).

**5.20.330 Violation--penalty.**

A. From and after the effective date of this chapter, it shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in this city any television signals or radio signals by means of a CATV system unless a franchise therefor has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

B. From and after the effective date of this chapter, it shall be unlawful for any person to construct, install or maintain within any right-of-way in the city, or within any privately owned area within the city which has not yet become a public right-of-way but is designated or delineated as a proposed right-of-way on any tentative subdivision map approved by the city, any equipment or facilities for distributing any television signals or radio signals through a CATV system, unless a franchise authorizing such use of such right-of-way or property or area has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

C. It is unlawful for any person to make or use any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the franchised cable television system within this city for the purpose of taking or receiving or enabling himself/herself or others to receive or use any television signals, radio signals, picture, program or sound, without payment to the owner of the system. Notwithstanding the foregoing, utilization of equipment to receive directly from any satellite, any signal by an individual for his/her utilization or that of his/her invitees shall not be subject to nor be in violation of this chapter so long as such signal is not scrambled and there is no marketing program in place for the purchase of such signals and he/she does not retransmit such signal.

D. It is unlawful for any person, without the consent of the owner, to wilfully tamper with, remove or injure any cables, wires, or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

E. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding five hundred dollars or be imprisoned in the county jail for a period not exceeding six months or be both so fined and imprisoned. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(Ord. 505 § 1(part), 1987).

#### **5.20.340 Severability.**

If any material section or provision of this chapter relating to system design, line extension, service mix or levels, amendment, duration of franchise, and studio and other production facilities, or franchise awarded under it, is held to be invalid or unenforceable by a court of competent jurisdiction, grantor shall thereupon make a determination of the effect upon the public interest caused thereby. If the grantor shall find, that a negative and material effect has been produced, then an involuntary modification contrary to the public interest shall be deemed to have occurred. Upon such an occurrence, the parties shall endeavor to renegotiate the terms of the franchise issued hereunder unless, following reasonable efforts by the parties to renegotiate the franchise terms, the parties are unable to reach an agreement.

(Ord. 505 § 1(part), 1987).

## **Chapter 5.24 HANDBILLS**

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**5.24.010 Purpose.**

**5.24.020 Definitions.**

**5.24.030 Permit number required.**

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**5.24.050 Distribution in public places.**

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**5.24.090 Unlawful distribution.**

**5.24.100 Offensive matter.**

**5.24.110 Exemptions.****5.24.120 Violation--penalty.****5.24.010 Purpose.**

To protect the people against the nuisance of and incident to the promiscuous distribution of handbills and circulars, particularly commercial handbills, as defined in this chapter, with the resulting detriment and danger to public health and safety, the public interest, convenience and necessity require the regulation thereof, and to that end the purposes of this chapter are specifically declared to be as follows:

A. To protect the people against the unlawful activities or operations of dissolute persons of criminal habits or tendencies, representing themselves as handbill distributors, by regulating the business of handbill and advertising distributors, by regulating the business of handbill and advertising distribution through the imposition of reasonable regulations;

B. To protect local residents against trespassing by canvassers or handbill distributors upon the private property of such residents if they have given reasonable notice that they do not wish to be solicited by such persons or do not desire to receive handbills or advertising matter;

C. To protect the people against the health and safety menace and the expense incident to the littering of the streets and public places by the promiscuous and uncontrolled distribution of advertising matter and commercial handbills;

D. To preserve to the people their constitutional right to receive any disseminate information not restricted under the ordinance rules of decency and good morals and public order, by distinguishing between the nuisance created by the promiscuous distribution of advertising and commercial circulars and the right to deliver commercial and noncommercial handbills to all who are willing to receive the same;

E. To accomplish the purposes set forth in this section without restrictions upon the freedom of the press, including the right of bona fide newspapers to engage in the business of printing and publishing a bona fide newspaper.

(Ord. 243 § 2, 1971).

**5.24.020 Definitions.**

The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. "Commercial handbill" means and includes any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature:

1. Which advertises for sale any merchandise, product, commodity, or thing; or
2. Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interests thereof by sales; or
3. Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition, or event of any kind, when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order; provided, that nothing contained in this clause shall be deemed

to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition, or event of any kind without a license where such license is or may be required by any law of this state, or under any ordinance of this city; or

4. Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.

B. "Noncommercial handbill" means and includes any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature not included in the aforesaid definitions of a commercial handbill, or a newspaper.

C. "Private premises" means and includes any dwelling, house, building, or other structure, whether inhabited or temporarily or continuously uninhabited or vacant; and includes any yard, grounds, walk, driveway, porch, steps, vestibule, hallway, or mailbox belonging or appurtenant to such dwelling, house, building, or other structure, any vacant lot or other private property.

D. "Public place" means and includes any and all streets, boulevards, avenues, lanes, alleys, or other public ways, and any and all public parks, squares, spaces, plazas, grounds and buildings.

(Ord. 243 § 3 1971).

#### **5.24.030 Permit number required.**

It is unlawful for any person to distribute or cause to be distributed any handbills to any person on private or public property unless there shall be printed, stamped or otherwise clearly designated in legible characters in a conspicuous place on the front page of each and every piece of handbill matter, the words "Distributor's Permit No.," with the permit number designated by the city clerk thereon.

(Ord. 243 § 11, 1971).

#### **5.24.040 Distributors--license.**

A. It is unlawful for any person to engage in the business of a handbill distributor for hire or otherwise, or for any person to distribute commercial or noncommercial handbills, without first complying with the terms of this chapter, and all other relevant laws and regulations; provided, that nothing contained in this chapter shall apply to any person advertising his business or activity upon his own premises, if such business or activity is regularly established at a definite location in such city, and also if a license has been obtained therefor, if such license be required under the terms of any applicable law or ordinance.

B. Any person desiring to engage, as principal, in the business of distributing commercial or noncommercial handbills for hire or otherwise, shall make application to and receive from the city clerk a license. Such request shall contain, among other things that may be required, the name, the business address, and a brief description of the nature of the business to be conducted by the applicant, the probable number of agents and employees so to be engaged, together with a request for a license for the period for which this applicant seeks to engage in such business.

C. Without excluding other just grounds for revocation, the city council, may revoke any license obtained under an application containing a false or fraudulent statement knowingly made by the applicant with intent to obtain a license by means of false or fraudulent representations, or for violation of this chapter, or any other ground specified by law. No license issued under this chapter shall be transferrable.

(Ord. 243 § 12, 1971).

#### **5.24.050 Distribution in public places.**

It is unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill in or upon any public place within this city; and it is also unlawful for any person to hand out or distribute or sell any commercial handbill in any public place; provided, however, that it shall not be unlawful for any person to hand out or distribute, without charge to the receiver thereof, any noncommercial handbill in any public place to any person willing to accept such noncommercial handbill.

(Ord. 243 § 4, 1971).

#### **5.24.060 Distribution in vehicles.**

It is unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill in or upon any automobile or other vehicle. The provisions of this section shall not be deemed to prohibit the handing, transmitting or distributing of any noncommercial handbill to the owner or other occupant of any automobile or other vehicle, who is willing to accept the same.

(Ord. 243 § 5, 1971).

#### **5.24.070 Distribution on uninhabited or vacant private premises.**

It is unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

(Ord. 243 § 6, 1971).

#### **5.24.080 Distribution on private premises without consent.**

It is unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill upon any private premises without having first obtained the written consent of the owner, or of an adult resident or occupant thereof, except that the same may be personally delivered to anyone present on the premises who is willing to accept the same; provided, however, that if any such handbill is placed or deposited in or upon the premises pursuant to such written consent, it shall only be so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or elsewhere.

(Ord. 243 § 7, 1971).

#### **5.24.090 Unlawful distribution.**

It is unlawful to distribute or cause to be distributed any handbills in or upon private property when:

A. There is erected or painted in a conspicuous place upon such property a sign containing words indicating the owner's rejection of this type of unsolicited matter;

B. It is apparent that the property is vacant; or

C. It is apparent that the previous day's distribution of this matter has not been removed.

(Ord. 243 § 8, 1971).

#### **5.24.100 Offensive matter.**

It is unlawful for any person to distribute or circulate, or cause to be distributed or circulated, any advertising matter which may reasonably tend to incite riot or other public disorder, or which advocates disloyalty to or the overthrow of the Government of the United States or of this state by means of any artifice, scheme, or violence, or which urges any conduct which violates any local, state



or federal law; or which is offensive to public morals or decency, or which contains blasphemous, obscene, libelous, or scurrilous language.

(Ord. 243 § 10, 1971).

#### **5.24.110 Exemptions.**

The provisions of this chapter shall not apply to the distribution of mail by the United States, nor to newspapers, as defined in this chapter, except that newspapers shall be placed on private property in such manner as to prevent their being carried or deposited by the elements upon any street or other public place or upon private property.

(Ord. 243 § 9, 1971).

#### **5.24.120 Violation--penalty.**

The violation of any provision of this chapter shall be deemed a misdemeanor and is punishable upon conviction by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding six months, or by both such fine and imprisonment.

(Ord. 243 § 15, 1971).

## **Chapter 5.28 PUBLIC ENTERTAINMENT**

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### ***I. GENERAL PROVISIONS***

**5.28.010 Permits--required.**

**5.28.020 Permit--application.**

**5.28.030 Special requirements.**

**5.28.035 Required cleanup deposit.**

**5.28.040 Violation--penalty.**

### ***II. CARDROOMS, POOLHALLS AND DANCEHALLS***

**5.28.050 Definitions.**

**5.28.060 Hours of operation.**

**5.28.070 Permit required for dances.**

**5.28.080 Violation--penalty.**

### **I. GENERAL PROVISIONS**

#### **5.28.010 Permits--required.**

It is unlawful for any person, firm, corporation, club, school, organization or association to hold or conduct any public dance, exhibition, carnival or public entertainment to which attendance by the general public is invited or solicited in the city whether or not a charge for admission is made, without first obtaining a valid permit from the chief of police.

(Ord. 217 § 1, 1968).

#### **5.28.020 Permit--application.**

Any person, firm, corporation, club, school, organization or association desiring to hold or conduct a public dance, exhibition, carnival or public entertainment in the city shall file an application for a permit to hold such public dance, exhibition, carnival or public entertainment with the chief of police not less than three days prior to the date of such public dance, exhibition, carnival or public entertainment. The application shall be on a form prescribed by the chief of police and shall set forth the following:

- A. The name of the person, firm, corporation, club, school, organization or association holding or conducting the public dance, exhibition, carnival or public entertainment;
- B. The date, time and place of the public dance, exhibition, carnival or public entertainment;
- C. The amount of admission charge, if any;
- D. The type of music to be played at the public dance, exhibition, carnival, or public entertainment (live instrumental or recorded), and whether or not amplifiers will be used;
- E. The number of persons expected to be in attendance at the public dance, exhibition, carnival, or public entertainments.

(Ord. 217 § 2, 1968).

#### **5.28.030 Special requirements.**

Before issuing the permit, the chief of police shall require the applicant to exhibit to him a signed receipt indicating that all business licenses, taxes, etc., if any, as may be required by the city under other sections of this code, have been paid. The chief of police may also require as a condition to the issuance of the permit that the applicant hire and employ at applicant's expenses, such number of special police officers as the chief of police shall prescribe, who shall meet with the approval of the chief of police as to competence, training and ability, and who shall be in attendance in distinctive special police officer's uniforms at all time during the conduct of the public dance, exhibition, carnival, or public entertainment in order to maintain law and order and prevent disturbances of the peace at, or about the premises where the public dance, exhibition, carnival or public entertainment is being held. In the enforcement of the public peace, such special officers shall act under the direction and orders of the chief of police but shall in no way be deemed to be agents or employees of the city while in the performance of such duties as special officers.

(Ord. 217 § 3, 1968).

#### **5.28.035 Required cleanup deposit.**

Prior to the issuance of any permit required under the provisions of this chapter, the applicant shall post a one hundred dollar deposit with the chief of police. This deposit shall be used to pay the costs incurred by the city in cleaning up any trash, litter, or similar matter on or repairing any damage to any public property. The applicant shall be charged the actual costs incurred by the city in cleaning up the areas and/or repairing any damage. The amount remaining from the deposit shall be returned to the applicant, upon his request therefor within three business days following the completion of any required cleanup and/or repairs.

(Ord. 432 § 1, 1983).

#### **5.28.040 Violation--penalty.**

Any person violating any of the provisions of this article or knowingly or intentionally misrepresenting to any officer or employee of this city any material fact in procuring the permit provided for in Section 5.28.010, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished according to law. Each day's operation without such a permit is a separate violation.

(Ord. 217 § 4, 1968).



## II. CARDROOMS, POOLHALLS AND DANCEHALLS

### 5.28.050 Definitions.

For the purpose of this article, the following words and phrases are defined:

- A. "Cardroom" is defined as any public place where cards are played and alcoholic beverages are sold.
- B. "Poolhall" is defined as any public place where pool, billiards, or similar games are played.
- C. "Public dancehall" is defined as any place, either enclosed or in the open, where dancing is held and an admission fee is charged, or a charge is made for dances.

(Ord. 248 §§ 4--6, 1972).

### 5.28.060 Hours of operation.

It is unlawful for any cardroom, poolhall or public dancehall, where admission fee is charged or where a charge is made for dancing, in the city to remain open for the transaction of business between the hours of two a.m. and six a.m.

(Ord. 248 § 2, 1972).

### 5.28.070 Permit required for dances.

It is unlawful for any person, firm, partnership or corporation to hold, promote or manage any public dance where an admission fee is charged or where a charge is made for dancing, without first obtaining a permit for the same from the chief of police.

(Ord. 248 § 3, 1972).

### 5.28.080 Violation--penalty.

Violation of this article shall constitute a misdemeanor and shall be punishable as such.

(Ord. 248 § 7, 1972).

## Chapter 5.32 SECONDHAND DEALERS

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### 5.32.010 Record of purchases required--inspection.

### 5.32.020 Record of purchases--filing.

### 5.32.030 Limitations on property from certain persons.

### 5.32.040 Violation--penalty.

### 5.32.010 Record of purchases required--inspection.

Every secondhand dealer, junk dealer and junk collector doing business in the city shall keep a complete record of all goods, wares, merchandise or things purchased or received by him, which record shall contain the date of the purchases, a description of the items purchased, and the name and address of the person from whom the purchase was made. Every such record and all goods, wares, merchandise and things purchased or received by such secondhand dealer, junk dealer or junk collector shall be produced for inspection to any officer holding a warrant authorizing him to search for personal property, or to the sheriff of Butte County, California, or to any person appointed by the

sheriff, or by the head of the police department of any city, city and county, or town on an order of a committing magistrate directing such officer to inspect such register, record, or account or to examine such articles.

(Ord. 109 § 1, 1953).

#### **5.32.020 Record of purchases--filing.**

Every record required by the terms of this chapter to be filed or kept shall be written or printed entirely in the English language in a clear and legible manner.

(Ord. 109 § 2, 1953).

#### **5.32.030 Limitations on Property from certain persons.**

It is unlawful for any person, firm or corporation maintaining or operating a junk shop, junkyard, or secondhand store, to receive or purchase any property, article or thing from any person who shall appear to be, or who is known to be, intoxicated, or from any minor under the age of twenty-one years unless the minor is accompanied by a parent or guardian who authorizes the transaction in the presence of the dealer.

(Ord. 109 § 3, 1953).

#### **5.32.040 Violation--penalty.**

Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment. Each such person, firm, or corporation shall be deemed guilty of a separate offense for every day during any portion of which any violation of any of the provisions of this chapter is committed, continued or permitted by such person, firm, or corporation, and shall be punished therefor as provided by this chapter.

(Ord. 109 § 4, 1953).

## **Chapter 5.36 TAXICABS**

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### **5.36.010 Definitions.**

### **5.36.020 License--required.**

### **5.36.030 License--application.**

### **5.36.040 License--denial.**

### **5.36.050 License--suspension or revocation.**

### **5.36.060 Driver's permit--required.**

### **5.36.070 Driver's permit--requirements.**

### **5.36.080 Driver's permit--suspension or revocation.**

### **5.36.085 Insurance requirements**

### **5.36.090 Solicitation.**

### **5.36.100 Restrictions.**

**5.36.110 Stands.****5.36.120 Violation--penalty.****5.36.010 Definitions.**

A. Unless otherwise expressly stated, whenever used in this chapter, the following terms shall respectively be deemed to have the meanings set forth in this section:

1. "Driver" means every person in charge of, or operating, any passenger-carrying or motor propelled vehicle, as defined in this section, either as agent, employee or otherwise, of the owner, as the owner, or under the direction of the owner, as defined in this section.

2. "Owner" means every person, firm or corporation having use or control of any passenger-carrying automobile or motorpropelled vehicle, as defined in this section, whether as owner, lessee or otherwise.

3. "Person" means any individual, partnership, associate, corporation or other organization owning, or operating, or proposing to operate any taxicab within the city.

4. "Street" means any place commonly used for the purpose of public travel.

5. "Taxicab" means every automobile or motor propelled vehicle such as in common usage in this country for taxicabs, and/or operated at rates per mile, or for wait-time, or both, or at rates per trip, per hour, per day, per week or per month, and such vehicle is routed under the direction of passengers or of persons hiring the same, and used for the transportation of passengers for hire over the public streets of the city and not over a defined route, and irrespective of whether the operations extend beyond the boundary of the city.

B. The singular number includes the plural, and the plural, the singular.

(Ord. 108 § 1, 1953).

**5.36.020 License--required.**

It is unlawful to operate any taxicab in the city unless the owner thereof shall apply for, and obtain, a license so to do in compliance with all the provisions of Section 5.36.030.

(Ord. 108 § 2, 1953).

**5.36.030 License--application.**

A. The application for such owner's license shall be verified under oath and shall set forth:

1. A full identification of the applicant and all persons to be directly or indirectly interested in the license, if granted;

2. The residence and business address of the applicant, including all members of any firm or partnership, or all officers and directors of any corporation applying;

3. The location of the proposed business for which the license is requested, and the name of the owner and the present use of such premises;

4. The exact nature of the proposed business for which the license is requested, and the name under which it is to be operated;

5. The past experience of the applicant in the matter to which the requested license appertains; and the name, address, and past experience of the person to be in charge of the premises or business;

6. Whether or not any license or permit has been revoked, and if so, the circumstances of such revocation;
7. The number of vehicles proposed to be operated;
8. A complete description of the vehicles proposed to be operated and the proposed operations, together with the initial rates to be charged therefor;
9. The color scheme and characteristic insignia to be used to designate the vehicles of the owner;
10. Such further information as the city council, or such official of the city to whom the application may be referred, may require.

B. The application for an owner's license shall also be accompanied by a sworn financial statement of the applicant.

(Ord. 361 § 2, 1980; Ord. 108 § 3, 1953).

#### **5.36.040 License--denial.**

A. In addition to the grounds set forth in Section 5.36.030, governing the issuance of licenses, upon which an application for an owner's license may be denied, the city council shall deny the same if it shall appear to its satisfaction that such vehicle proposed to be operated is inadequate or unsafe; that the applicant has been convicted of a felony, or violation of any narcotic law, or of any penal law involving moral turpitude.

B. Further, the city council may deny the granting of any permit to operate any public motor vehicle in the city for the reason that there is insufficient public need or demand for the operation of the vehicle or vehicles for which a permit has been applied, or for any reasonable cause which, within its sound discretion renders the proposed operations undesirable to the city, or inadequate.

(Ord. 108 § 4, 1953).

#### **5.36.050 License--suspension or revocation.**

In addition to the grounds set forth in other sections of this chapter upon which the city council may revoke or suspend any owner's license to operate a public vehicle, the city council shall have the power to so suspend or revoke the same for a violation of any of the provisions of this chapter, or any ordinance relating to traffic or use of streets, or for a failure to pay any judgment for damages arising from the unlawful or negligent operation of the public motor vehicle for which the license was issued.

(Ord. 108 § 5, 1953).

#### **5.36.060 Driver's permit--required.**

It is unlawful for any driver to operate any taxicab in the city unless there exists a valid permit to do so as provided in this chapter. Application for such driver's permit shall be made to the city clerk, shall be in writing and in duplicate, and the original thereof shall be duly acknowledged before some person lawfully authorized to administer oaths. The application shall set forth the name, age and address of the applicant; his past experience in operating automobiles; the names and addresses of his employers during the preceding period of three years; whether or not a chauffeur's license issued to him by the state of California or any state or governmental agency has ever been revoked; the name and address of the owner by whom he is to be employed as a driver, which owner shall endorse the application; and such additional information as the city clerk may require.

(Ord. 108 § 6, 1953).

#### **5.36.070 Driver's permit--requirements.**

A. Upon application for a driver's permit, and before it shall be issued, the driver, whether the owner or otherwise, must evidence a proficient knowledge of the traffic laws of the city and the state, and demonstrate his ability to operate a taxicab, all to the satisfaction of the chief of police.

B. Upon satisfying the requirements of subsection A of this section, the driver shall be fingerprinted by, and his record filed in the police department bureau of identification. The driver shall also file with his application two recent photographs (size one and one-half by one and one-half inches), one to be filed with his application and one to be permanently attached to his driver's permit when issued, which permit shall be posted in a place conspicuous from the passenger's compartment of the taxicab while said driver is operating same. Every driver's permit issued under the provisions of this chapter shall set forth the name of the owner for which the driver is authorized to operate a taxi- cab, and shall be valid only so long as he continues in the employ of such owner. Upon the termination of such employment, the driver shall forthwith surrender his driver's permit to the city clerk. No such driver's permit shall be granted to any person under the age of eighteen years. Such driver's permit may be denied upon the substantial evidence of facts of either physical or moral deficiencies of the applicant, which in the sound discretion of the city council would render such applicant not a competent person to operate a taxicab.

C. No driver's permit issued under the provisions of this chapter shall be transferrable in any event.

D. All drivers employed by any given owner while on duty shall wear a distinctive cap, and a badge bearing the driver's number. Only such caps and badges shall be worn as have been approved by the chief of police for use by drivers employed by a particular owner. Badges shall be worn in a conspicuous position.

E. Upon the termination of the employment of the driver, the owner for whom such driver has been working shall immediately give the city clerk written notice of such termination.

(Ord. 361 § 1, 1980; Ord. 108 § 7, 1953).

#### **5.36.080 Driver's permit--suspension or revocation.**

A. The city council and the chief of police, and either of them, shall have the power to revoke or suspend any driver's permit issued under the provisions of this chapter in the event the holder thereof shall be found guilty of a violation of any provisions of this chapter or shall be found guilty of reckless driving, or for the violation of any other provision of this chapter or other law, which violation, in the sound discretion of the officials, shall be deemed sufficient evidence of the fact that the driver is not a competent person to operate a taxicab. Such revocation by the chief of police, together with the reason therefor, shall be forthwith reported to the city council.

B. In the event of such revocation or suspension of a driver's permit, such certificate as may be issued in connection therewith shall be, by the holder thereof, forthwith surrendered to the city clerk.

(Ord. 108 § 8, 1953).

#### **5.36.085 Insurance requirements.**

It shall be unlawful for any driver to operate any taxicab in the city without providing the City Clerk with proof of insurance in an amount not less than \$500,000 for injuries, including but not limited to death to any one person, and \$1,000,000 for any one occurrence and further, that property damage insurance be provided in an amount not less than \$100,000.

(Ord. 646, 1995)

#### **5.36.090 Solicitation.**

No driver of any taxicab, or agent of the owner or operator thereof, shall solicit passengers except from a taxicab stand or while standing immediately adjacent thereto on the curb side thereof.

(Ord. 108 § 9, 1953).

#### **5.36.100 Restrictions.**

No driver of any taxicab shall cruise in search of passengers at any time; and whenever all passengers have been discharged from any taxicab, it shall be the duty of the driver thereof to proceed at once by the most direct route to the regular stand of such taxicab or garage, or other point where the vehicle is stored. It is unlawful, within the central business district, to park taxicabs at any point other than a taxicab stand, except when receiving or discharging passengers or responding to calls.

(Ord. 108 § 10, 1953).

#### **5.36.110 Stands.**

Stands for taxicabs and vehicles for hire shall be maintained and occupied only as provided in the ordinances of the city.

(Ord. 108 § 11, 1953).

#### **5.36.120 Violation--penalty.**

Any person, firm, corporation or association violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(Ord. 108 § 12, 1953).

## **Chapter 5.40 GARAGE SALES**

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### **5.40.010 Definitions.**

### **5.40.020 Garage sale criteria.**

### **5.40.030 Citation authority.**

#### **5.40.010 Definitions.**

For purposes of this chapter "garage sale" means any event where items of personal property, other than a licensed commercial business, are offered for sale to the general public. "Garage sale" also includes garage, yard, patio, and similarly conducted sales.

(Ord. 525 § 1(part), 1988).

#### **5.40.020 Garage sale criteria.**

Garage sales are not permitted within the city unless they meet all of the following criteria:

- A. All items offered for sale shall have been owned by the sellers thereof for a period of not less than six months prior to the sale;
- B. No resale items shall be offered for sale;
- C. The garage sale shall not exceed seventy-two hours in length;
- D. The location of the sale shall not be conducted where there has been a prior garage sale within the past ninety days, nor shall there have been more than one sale at the location within the past



three hundred sixty-five days;

E. No person, firm or organization selling items at the sale shall have been a seller of items at a prior garage sale within ninety days of the current sale, nor shall any seller have sold items at a prior garage sale more than once within three hundred sixty-five days before the current garage sale;

F. No signs shall be permitted advertising the sale which are not located on the premises where the sale is being held, except that no more than two off-premises signs shall be allowed within a fifteen hundred foot radius of the location of the sale; provided, that these off-premises signs shall not be located on public property or rights-of-way and further provided that these signs shall be taken down within twenty-four hours of the garage sale's conclusion;

G. Only one sign shall be permitted on the premises where the sale is being held and the sign shall not exceed four square feet in size;

H. No sale items shall be displayed or stored on public property or right of way.

(Ord. 525 § 1 (part), 1988).

#### **5.40.030 Citation authority.**

Pursuant to the provisions of California Penal Code, Section 836.5, the chief of police, or specific individuals deputized by the chief of police, may arrest a person without a warrant whenever the chief or the authorized deputy has reasonable cause to believe that the person arrested has conducted a garage sale in violation of Section 17.81.020. The officer making the arrest under the authority of this section shall follow the citation-release procedures prescribed by the California Penal Code, or such procedures hereinafter enacted by the state of California.

(Ord. 525 § 1 (part) , 1988).

## **Chapter 5.44 Use of City Streets and Sidewalks for Sales of Food, Beverages or Merchandise and/or Rentals of Equipment or Other Things**

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**5.44.010 Purpose.**

**5.44.020 Administration by Chief of Police.**

**5.44.030 Administrative review by City Administrator of determination or action of Chief of Police.**

**5.44.040 Appeal to City Council from decision of City Administrator.**

**5.44.050 Prohibition on conducting business involving sales or rentals from city streets and sidewalks without permit.**

**5.44.060 Exceptions to prohibition on conduct of business without permit.**

**5.44.070 Permits authorizing the conduct of business on and from city streets and sidewalks.**

**5.44.080 Applications for a permit.**

**5.44.090 Approval of application and issuance of permit.**

**5.44.100 Denial of application for a permit.**

**5.44.110 Comprehensive liability insurance requirements for a permit.**

**5.44.120 General conditions of a permit.****5.44.130 Special conditions for issuance of a permit.****5.44.140 Term of permit.****5.44.150 Revocation of permits.****5.44.160 Violation.****5.44.010 Purpose.**

This chapter is adopted for the purpose of regulating private business transactions, particularly those involving the sale of food, beverages or merchandise and/or the renting of equipment or other things, on and from a city street or sidewalk.

(Ord. 679, 1998)

**5.44.020 Administration by Chief of Police.**

The Chief of Police, or the designee of the Chief of Police, shall have the primary responsibility for the administration of the provisions of this chapter. In carrying out such responsibilities the duties of the Chief of Police shall include, but not be limited to, acting on all applications for a permit authorizing the conduct of private business on and from a city street or sidewalk, and revocation of a permit where the permittee is conducting business in a manner that is contrary to the terms and conditions of such permit or is otherwise in violation of any state or city law or regulation applicable thereto.

(Ord. 679, 1998)

**5.44.030 Administrative review by City Administrator of determination or action of Chief of Police.**

A. Right to Administrative Review. Any person aggrieved by a determination made or action taken by the Chief of Police pursuant to this chapter may apply for administrative review of such determination or action.

B. Applications for Administrative review. Applications for such administrative review shall be in writing and shall be filed in the office of the City Administrator no later than 15 days following the date such determination or action was made or taken, or where written notice of such determination or action is required to be served, the date such notice is served. However, the City Administrator may extend the time for filing an application for good cause shown. Each application shall identify the determination made or action taken for which review is sought, state the reasons why the applicant believes that such determination or action does not comply with the provisions of this chapter, and set forth the relief requested from such determination or action.

C. Decision on Application for Administrative Review. When an application for administrative review is filed under this section, the City Administrator shall consider the application and render a decision affirming, reversing or modifying the determination or action of the Chief of Police. Prior to rendering a decision, the City Administrator may, at his or her sole discretion, convene an informal hearing for the purpose of reviewing evidence or hearing arguments bearing on such decision. Notice of the date, time and place of such hearing shall be given to the Chief of Police and the person who filed the application for administrative review within a reasonable time prior to such hearing. After rendering a decision, the City Administrator shall promptly inform the Chief of Police of the decision and shall cause a notice of the decision to be served on the person who filed the application for administrative review.

D. Stay of Determination Made or Action Taken by the Chief of Police Pending Administrative Review. Any determination made or action taken by the Chief of Police in accordance with this



chapter, except for an order to stop work issued by the Chief of Police or the commencement or prosecution of work by the Chief of Police to remove or remedy a condition in a public right-of-way or public service easement which threatens the safety of life or property, shall be stayed pending a decision of the City Administrator on an application for administrative review of such determination or action.

(Ord 679, 1998)

#### **5.44.040 Appeal to City Council from decision of city Administrator.**

Any person aggrieved by any decision rendered by the City Administrator pursuant to this chapter may appeal to the City Council.

(Ord 679, 1998)

#### **5.44.050 Prohibition on conducting business involving sales or rentals from city streets and sidewalks without permit.**

Except as provided in this chapter, it is unlawful for any person to conduct business involving the sale of any food, beverages or merchandise and/or rental of equipment or other things on and from any city street, sidewalk without a permit issued or adopted in the manner hereinafter provided by this chapter.

(Ord 679, 1998)

#### **5.44.060 Exceptions to prohibition on conduct of business without permit.**

Notwithstanding the provisions of this chapter to the contrary, a permit shall not be required to conduct business on a city street or sidewalk under the following circumstances:

- A. Sales of food, beverages or merchandise and/or the rentals of equipment or other things when undertaken by a city employee acting in the course and scope of his or her employment;
- B. Sales of merchandise, such as t-shirts or buttons, which bear a political, religious, philosophical or ideological message when such sale is conducted in connection with and inextricably combined with the distribution of literature, the verbal articulation of a point of view or the conduct of some other activity intended to gain support for a particular cause or idea;
- C. Sales or rental of merchandise made by the owner or lessee of property adjoining a public right-of-way incident to the operation of that business, provided the merchandise is removed from the sidewalk when the business is closed, and provided the sidewalk is not blocked by the merchandise.
- D. Sales of any food, beverages or merchandise and/or rentals of equipment or other things on and from city property for a period of time not exceeding three (3) days, when conducted during a community event sponsored by the local chamber of commerce, business improvement district, or other public and/or non-profit organization, and provided that the permit required by the sponsoring agency has been obtained.

(Ord. 679, 1998)

#### **5.44.070 Permits authorizing the conduct of business on and from city streets and sidewalks.**

The Chief of Police may, by a permit issued in the manner hereinafter provided by this chapter, authorize business activity involving the sale of food, beverages or merchandise and/or the renting of equipment or other things, on and from a city street or sidewalk.

(Ord. 679, 1998)

#### **5.44.080 Applications for a permit.**

Applications of a permit authorizing the sale of food, beverages or merchandise and/or the renting of equipment or other things on and from a city street or sidewalk shall be filed in the office of the Gridley Police Department, shall be in a form and contain the information prescribed by the Chief of Police, and shall be accompanied by a permit fee in an amount established by resolution of the City Council based on the estimated cost of processing the permit application and otherwise administering the provisions of this chapter.

(Ord. 679, 1998)

#### **5.44.090 Approval of application and issuance of permit.**

Where the Chief of Police determines that a completed application has been filed for a permit and there are no grounds for denying such permit, he or she shall approve the application and issue the permit subject to all of the general and special conditions hereinafter provided for by this chapter at such time as the applicant has provided the comprehensive liability insurance and otherwise complied with all other special conditions required by this chapter as conditions precedent to the issuance of such permit.

(Ord. 679, 1998)

#### **5.44.100 Denial of application for a permit.**

A. Grounds for Denial. Provided an applicant has provided the comprehensive liability insurance and has otherwise complied with all other special conditions required by this chapter as conditions precedent to the issuance of such permit, the Chief of Police shall deny an application for a permit that is authorized by this chapter if and only if he or she determines that the equipment to be used by the applicant to store, convey, prepare and/or serve such food, beverage, or equipment to be sold or rented is unsafe and would present a danger to the general public using the city streets, sidewalks or parking lots, or would unreasonably block or obstruct the city streets, sidewalks or parking lots.

B. Notice of Denial. Where the Chief of Police determines to deny an application for a permit, he or she shall promptly cause a notice of such determination to be served on the applicant. Such notice shall state the reasons for the determination not to approve the application and shall set forth the right of the applicant to appeal such determination. Ord. 679, 1998

#### **5.44.110 Comprehensive liability insurance requirements for a permit.**

As a condition precedent to the issuance of a permit, the permittee shall obtain and provide to the city a comprehensive general liability insurance policy from an insurance company licensed to do business in the state of California and having a financial rating in Best's Insurance Guide of at least "B," which provides insurance coverage for all liabilities including death, personal injury or property damage arising out of or in any way relating to an activity authorized by a permit issued pursuant to this chapter in the amount of at least \$100,000.00, combined single limits. Such insurance shall be in a form satisfactory to the city's risk manager, shall include an endorsement naming the city and the city's officers, employees and agents as additional insureds under the coverage afforded, shall be primary with respect to any other insurance available to the city, shall contain a severability of interest (cross-liability) clause and shall require the insureds to provide the city at least thirty days prior notice of cancellation. Proof of such insurance, also in a form satisfactory to the city's risk manager, shall be filed with the Chief of Police prior to the issuance of the permit. Ord. 679, 1998

#### **5.44.120 General conditions of a permit.**

As a condition of the issuance of a permit, the permittee shall conduct and carry out the permitted business activity only during the following times and in the following manner:

A. Hours of Operation. The business activities authorized by a permit issued pursuant to this chapter shall be conducted only between the hours of sunrise and sunset of each day.

**B. Noise Restrictions.**

1. No sound, including amplified music, shall be used for advertising purposes before 11:00 a.m. or after 8:00 p.m. of each day.
2. There shall be no sound, including amplified music, permitted if and when the primary business vehicle or fixture is not moving from one location to another.

C. Equipment. Equipment used to store, convey, prepare and/or serve the food, beverages or other merchandise for sale or rent shall be maintained and operated in a safe and sanitary manner and in a manner which does not unreasonably obstruct or interfere with the use of a city street or sidewalk.

D. Litter. The person issued a permit pursuant to this chapter shall be responsible for maintaining free of litter or refuse attributable to the business, any street or sidewalk where such person is engaged in business.

E. Safety. No sales transactions shall be conducted from a vehicle that is not fully stopped and properly parked at the curb side.

F. Proof of Permits. The person conducting a business authorized by a permit issued pursuant to this chapter shall have available for inspection during business hours a copy of a such permit, as well as a copies of a license to do business in Gridley (issued pursuant to chapter 5.04 of Gridley Municipal Code), and if applicable, a permit to prepare and sell food and/or beverages (issued by Butte County Department of Environmental Health). Ord. 679, 1998

**5.44.130 Special conditions for issuance of a permit.**

When acting on a permit authorized by this chapter, the Chief of Police may condition issuance of such permit on compliance with any special requirements which he or she determines are necessary to ensure that the equipment used to store, convey, prepare and/or serve the food, beverages, or other merchandise for sale or rent is maintained and operated in a safe and sanitary manner and in a manner that does not unreasonably obstruct or interfere with the use of a city street or sidewalk. Ord. 679, 1998

**5.44.140 Term of permit.**

The initial term of a permit shall be for a period of not more than one year, commencing' on the date such permit is issued. At the end of the initial term, the permit may be renewed by the permittee for successive one-year terms by payment of a permit renewal fee on or before the date such permit expires in an amount established by resolution of the City Council based on the cost of processing permit renewals and otherwise administering the provisions of this chapter. Ord. 679, 1998

**5.44.150 Revocation of permits.**

A. Grounds for Revocation. The Chief of Police may revoke a permit if he or she finds that (1) the permittee is engaged in business in a manner that poses or creates an immediate risk to public health and/or safety; (2) the permittee is engaged in business in a manner that is contrary to the terms and conditions of a permit authorized by this chapter, or is in violation of any other state or city law or regulation applicable thereto; (3) the permittee has been served with a notice by the Chief of Police advising the permittee of the violation and requiring correction thereof within a reasonable time as set forth therein; and (4) the permittee has not corrected the violation within the time set forth in such notice. However, the Chief of Police may revoke a permit without first serving the permittee with notice of the violation in the manner provided herein in any case in which the permittee has been served with two other notices of violation by the Chief of Police within the preceding 12-month period.

B. Notice of Revocation. Where the Chief of Police determines to revoke a permit issued pursuant to this chapter, he or she shall cause a notice of revocation to be served on the permittee. Such notice

shall state the reasons for the determination to revoke the permit and shall set forth the right of the person to whom the permit was issued to appeal such determination. Ord. 679, 1998

#### **5.44.160 Violation.**

Any person, firm, or other business organization who conducts business subject to regulation by this chapter in violation of section 5.44.120 above or who fails to obtain a permit as required by section 5.44.050 above shall be guilty of an infraction pursuant to section 1.08.040 of this Code. Ord. 679, 1998.

## **Chapter 5.48 Gridley Business Improvement District**

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**5.48.010 Purpose.**

**5.48.020 Definitions.**

**5.48.030 Establishment of boundaries.**

**5.48.040 Establishment of District Board of Directors.**

**5.48.050 Establishment of benefit assessment.**

**5.48.060 Purpose and use of benefit assessments.**

**5.48.070 Exclusions from benefit assessment.**

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**5.48.120 Decisions regarding expenditure of funds.**

**5.48.130 District proceeds do not offset City services.**

**5.48.140 Public parking.**

**5.48.150 Disestablishment of the District.**

#### **5.48.010 Purpose.**

The Parking and Business Improvement District is established to levy a benefit assessment on all businesses, trades, professions, and vendors within said District, the proceeds of which shall be used for the public purposes herein described to benefit the businesses in the District, pursuant to the Parking and Business Improvement Area Law of 1989, Part 6 (commencing with Section 36500) of Division 18 of the California Streets and Highways Code. This District shall be known as the "Gridley Business Improvement District" (the "District").

(Ord. 664, 1997)

#### **5.48.020 Definitions.**

In order to distinguish between District businesses and for the purpose of calculating and applying the amount of assessments owed, the following definitions shall apply:

A. Retail Businesses. "Retail Businesses" include all businesses not covered by other definitions set out in this section, at least fifty percent (50%) of whose gross income is derived from "retail sales" as that term is defined under the California Sales and Use Tax Law. The fact that a substantial part of its business consists of sales other than retail sales does not exclude said business from this classification so long as such

#### **5.48.030 Establishment of boundaries.**

The boundaries of the district and the benefit zones within the district are set forth on Exhibit "A" and are generally described as follows:

A. Zone A: the area bounded by Spruce and Magnolia Streets from Vermont to Washington Street, and by Vermont and Washington Streets from Spruce to Magnolia Streets, including both sides of the boundary streets.

B. Zone B: both sides of Highway 99 within City limits (and businesses contiguous to Highway 99); both sides of East Gridley Road within City limits; and both sides of Spruce Street from Zone "A" to Highway 99.

C. All areas of the City not included in Zones "A" and "B."

#### **5.48.040 Establishment of District Board of Directors.**

There shall be a Board of Directors of the District to administer the affairs of the District. Said Board shall be constituted by eighteen member businesses of the District. The initial Board shall be approved by the City Council from a list of business operators located in the District to be submitted on behalf of the District General Membership. Within the Board there shall be a President, Vice-President, Secretary and Treasurer elected by the membership, and such other officers as deemed necessary by the Board. Such other officers shall be appointed by the Board at their discretion. All voting within the District regarding election of Board Members and any actions regarding the normal and routine conducting of District business shall be based on one (1) vote per assessed dollar, and said business must be current in payment of their District assessment(s) to participate in such votes.

#### **5.48.050 Establishment of benefit assessment.**

All businesses, trades, and professions located within the District boundaries shall, on July 1 of each fiscal year, pay an annual benefit assessment to the District of an amount to be established by resolution of city council.

(Ord 695, 2000)

#### **5.48.060 Purpose and use of benefit assessments.**

The types of improvements and activities proposed to be funded by the levy of assessments on businesses in the District are as follows:

A. The acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following improvements:

1. Benches;
2. Trash receptacles;
3. Decorations;
4. Facade improvements;
5. Permanent landscaping

B. Activities including but not limited to the following:

1. Promotion of public events which benefit businesses in the area and which take place on or in public places within the area;
2. Furnishing of music in any public place in the area;
3. Activities which benefit businesses located and operating in the area, including but not limited to shopping and promotional programs.

**5.48.070 Exclusions from benefit assessment.**

No person or business shall be required to pay an assessment based on the following uses located within the District:

- A. A residential use of the property within the District
- B. A non-profit organization as defined by Section 501 (C) (6) of the Internal Revenue Service Code.

**5.48.080 New business assessment waiver.**

Any new business established within the District shall not be required to pay an assessment for the billing period during which said business is initiated. The business will have been considered initiated on the date of issuance of the business license. This waiver shall not apply to an existing business that has changed ownership or location within the District. The City agrees to supply the District with timely information regarding new businesses initiated within the District.

**5.48.090 Collection of benefit assessment.**

The benefit assessment authorized for Gridley businesses herein shall be billed and collected once each fiscal year on July 1. The Board will bill for the assessments. The City will receipt and account for collections of the assessments, at no charge to the District and forward all funds collected to the District within 30 days of said collections.

**5.48.100 Voluntary contributions to district.**

Contributions to the District shall be permitted on a voluntary basis. The boundary of the District shall not be modified as a result of the contribution, nor shall said contributing business be considered a member of the District for voting or other purposes. However, said business making a voluntary contribution may be entitled to participate in the programs of the District upon a finding by the Board of Directors that the District derives a benefit from said business participation in the program.

**5.48.110 Annual budget process.**

A. It shall be necessary for the District Board of Directors to present an annual budget for City Council review and approval prior to the beginning of any fiscal year. The purpose of this process is to provide public notice and hearing prior to establishing the benefit assessments for the following fiscal year.

B. The City shall not adopt, modify or otherwise amend any fiscal year budget of the District that is inconsistent in any way with said fiscal year's budget as agreed to and presented by the District Board of Directors except in the case of a written majority protest (regarding elimination or modification of any specific budget item) from business owners which will pay 50% or more of the assessments proposed to be levied as to any specific budget item pursuant to Streets and Highways Code, Section 36525 (b). In such case the written protest regarding any specific budget item shall be grounds to eliminate or modify said expenditure from the District's proposed budget pursuant to the written protest.



#### **5.48.120 Decisions regarding expenditure of funds.**

Decisions of the District Board of Directors regarding expenditure of all funds generated under this program shall be final.

#### **5.48.130 District proceeds do not offset city services.**

The funds derived from the District shall not be used to offset or diminish current maintenance, capital improvement programs, including but not limited to, public property and sidewalk cleaning, street cleaning and maintenance, tree maintenance, restroom cleaning and maintenance.

#### **5.48.140 Public parking.**

The proceeds of the benefit assessments established here under shall not be used to acquire and/or construct additional public parking, unless such use of the funds is first approved by a majority vote of the District members voting.

#### **5.48.150 Disestablishment of the District.**

A. Proceedings to disestablish the District shall be initiated by the City Council following the presentation of a petition to the City Council signed by business owners paying 50% or more of the assessments levied in the District. Proceedings to disestablish the District shall follow the procedures set forth in Streets and Highways Code, Section 36550. The City Council shall disestablish the District if, following the public hearing prescribed in Section 36550 (b), written protests are not withdrawn as to reduce the protests below the 50% level.

B. In the event of disestablishment of the District, remaining revenues of the District shall be refunded to paying business owners in a pro-rata manner calculated in the same manner as was used to establish the most recent assessments applied in the District.

## **Chapter 5.50 Massage and Bodywork Services**

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### **5.50.010 Purpose and intent**

### **5.50.020 Definitions**

### **5.50.030 Massage and/or bodywork office or establishment, home visit or outcall massage/bodywork service - Permit required**

### **5.50.040 Owner permit and practitioner permit - Education requirements**

### **5.50.050 Owner permit and practitioner permit - Application fees**

### **5.50.060 Permit - Application**

### **5.50.070 Permit - Criteria for granting and denying**

### **5.50.080 Permit - Conditional**

### **5.50.090 Massage and/or bodywork office or establishment application - Inspection**

### **5.50.100 Massage and/or bodywork office or establishment facilities and operations - Requirements**

### **5.50.110 Home occupation exception**

**5.50.120 Inspection for compliance****5.50.130 Business name****5.50.140 Business location change****5.50.150 Sale or transfer of massage and/or bodywork office or establishment or home visit and/or outcall massage/bodywork service interest****5.50.160 Display of permits****5.50.170 Grounds for revocation or suspension of permit****5.50.180 Hearing by permit authority for revocation or suspension****5.50.190 Right of appeal****5.50.200 Exemptions****5.50.210 Violation and penalties****5.50.010 Purpose and intent.**

It is the purpose and intent of this chapter to provide for the orderly regulation of offices and establishments providing massage and/or bodywork services and home visit and/or outcall massage/bodywork services in the interests of the public health, safety and welfare by providing certain minimum building, sanitation, and operation standards for businesses, and by providing certain minimum qualifications for the owners and operators of the businesses and for massage and/or bodywork practitioners. It is the further intent of this chapter to facilitate the ethical practice of massage and/or bodywork.

(Ord. 728, 2004).

**5.50.020 Definitions.**

For the purpose of this chapter, unless the context requires a different meaning, the words, terms, and phrases set forth on this section shall have the meanings given them in this section:

A. Employee. "Employee" means any and all individuals who work on the premises of a massage and/or bodywork office or establishment, in any capacity.

B. Home visit or outcall massage/bodywork service. "Home visit" or "outcall massage/bodywork service" means the engaging in or carrying on of massage and/or bodywork for consideration at a location other than a massage and/or bodywork office or establishment which has been permitted pursuant to this chapter.

C. Inspector. "Inspector" means the person or persons designated by the permit authority to conduct inspections under this chapter.

D. Massage or bodywork. "Massage" and/or "bodywork" means the skillful application of touch, including but not limited to, pressure, stroking, kneading, compression on or movement of the external surfaces of the body by a practitioner to produce increased awareness, relaxation, pain relief, injury rehabilitation, or neuromuscular reeducation. Specifically excluded for the purposes of this chapter is any manipulation of the spine as typically performed in chiropractic treatment.

E. Massage and/or bodywork office or establishment. "Massage and/or bodywork office or establishment" means any establishment having a fixed place of business, vehicle or vessel, where any person, as defined in subsection (J) of this section, engages in, conducts, carries on, or permits to be engaged in, conducted, or carried on as regular functions any of the activities mentioned in subsection (D) of this section. Any establishment engaging in or carrying on, or permitting any



combination of massage and/or bodywork shall be deemed a massage and/or bodywork office or establishment.

F. Massage and/or bodywork practitioner. "Massage and/or bodywork practitioner" means any individual who, for any consideration whatsoever, engages in the practice of massage and/or bodywork, whether or not employed on the premises of a massage and/or bodywork office or establishment or acting as an independent contractor or as an owner as defined in subsection (G) of this section.

G. Owner. "Owner" means any person or persons, as defined in subsection (J) of this section, who own(s) and/or operate(s) a massage and/or bodywork office or establishment, or home visit or outcall massage/bodywork service.

H. Owner permit. "Owner permit" means the permit required by this chapter to own and/or operate a massage and/or bodywork office or establishment, or a home visit or outcall massage/bodywork service.

I. Permit authority. "Permit authority" means the police chief or his designee charged with the administration of this chapter.

J. Person. "Person" means any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.

K. Practitioner permit. "Practitioner permit" means the permit required by this chapter for a massage and/or bodywork practitioner as defined in subsection (F) of this section.

L. Recognized school of massage and/or bodywork. "Recognized school of massage and/or bodywork" means any school or institution of learning which teaches the theory, ethics, practice, profession, or work of massage and/or bodywork, which has been approved by the state in which it is located. Any school or institution of learning offering or allowing correspondence or internet course credit not requiring actual attendance at class shall not be deemed a recognized school of massage and/or bodywork.

(Ord. 728, 2004).

#### **5.50.030 Massage and/or bodywork office or establishment, home visit or outcall massage/bodywork service - Permit required.**

A. It is unlawful for any owner or any other person as owner or operator, to engage in, conduct, or carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premise in the city, operation of a massage and/or bodywork office or establishment or home visit or outcall massage/bodywork service as defined in this chapter, without a valid owner permit issued by the permit authority as required by this chapter. A separate owner permit shall be required for each office or establishment or service.

B. It is unlawful for any owner to permit any massage and/or bodywork practitioner to work in, for, or at a massage and/or bodywork office or establishment, or home visit or outcall massage and/or bodywork service, unless the practitioner holds a valid practitioner permit issued by the permit authority as required by this chapter.

C. It is unlawful for any massage and/or bodywork practitioner to work in, for, or at any massage and/or bodywork office or establishment or home visit or outcall massage bodywork service within the city which does not hold a current owner permit issued by the permit authority as required by this chapter.

D. It is unlawful for any massage and/or bodywork practitioner to work in, for, or at a massage and/or bodywork office or establishment or home visit or outcall massage/bodywork service, or to perform massage and/or bodywork services for compensation within the city limit, unless the

practitioner holds a valid practitioner permit issued by the permit authority as required by this chapter. Provided, however, that where a massage and/or bodywork practitioner is also an owner, the practitioner shall obtain an owner permit rather than a practitioner permit.

E. An owner or practitioner permit issued pursuant to the terms of this chapter shall be valid for a term of one year from the date of issuance. A permit that has not been suspended or revoked may be renewed for another one-year period, on submittal of a written application and payment of a renewal fee to be established by resolution of the city council. An application for renewal shall be filed at least 30 days but not more than 60 days prior to the expiration date of the current valid permit. Except as specifically provided otherwise in this chapter, an application for renewal shall be in the same form, and shall be subject to the same requirements, as an initial permit application.

(Ord. 728, 2004).

#### **5.50.040 Owner permit and practitioner permit - Education requirements.**

A. No practitioner permit shall be issued unless the applicant has completed 200 hours of instruction in massage and/or bodywork from either a recognized school of massage and/or bodywork; or state approved and regionally accredited colleges and universities.

B. For renewal of any practitioner permit, in addition to the requirements in subsection (A) of this section, the applicant shall have complete six or more hours of continuing education in massage and/or bodywork and related topics during the previous 12 months.

(Ord. 728, 2004).

#### **5.50.050 Owner permit and practitioner permit - Application fees.**

Any application for an owner permit or practitioner permit under this chapter shall be accompanied by a non-refundable fee in an amount established by resolution of the city council. The application fees shall be used to defray the costs of processing the application, including but not limited to investigations and inspections, and are not made in lieu of any other fees or taxes required under this code.

(Ord. 728, 2004).

#### **5.50.060 Permit - Application.**

A. Practitioner permit - requirements. Every application for a practitioner permit under this chapter shall contain the following information:

1. Name, residence address, and telephone number of applicant;
2. California driver's license, if any, or other photographic identification, issued by a state or federal agency establishing the applicant's age as 18 years or older;
3. The previous residence addresses of the applicant, if any, for a period of five years immediately prior to the date of application, and the dates of residence at each;
4. All other names previously used by applicant and the dates of use of each name;
5. The applicant's weight, height, color of hair and eyes;
6. Two prints, two inches by two inches, of a recent portrait photograph;
7. Whether any license or permit has ever been issued to the applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any license or permit, the name and address of the issuing authority, the effective dates of the license or

permit, whether the license or permit was ever suspended, revoked, withdrawn or denied, and copies of any documentary materials relating to the suspension, revocation, withdrawal or denial;

8. Whether the applicant has within the five years immediately preceding the date of application been convicted in any state of any felony;

9. Whether the applicant is currently required to register under the provisions of Section 290 of the California Penal Code;

10. Whether the applicant, including any person as defined in subsection (J) of Section 5.50.020, or a former employer of the applicant while so employed or a building in which the applicant was so employed or a business conducted, was ever subjected to an abatement proceeding under Sections 11225 through 11235 of the California Penal Code or any similar provisions of law in a jurisdiction outside the state of California;

11. Documented proof that the applicant has satisfied the education requirements set forth in Section 5.50.040;

12. One set of the applicant's fingerprints in a form satisfactory to the police chief. Fingerprinting will be taken at a place designated by the police chief. Any fee required for fingerprinting will be the responsibility of the applicant. Any applicant who was not required to submit fingerprints with the original application shall be required to submit fingerprints with the renewal application;

13. The applicant's business, occupation, and employment history for five years preceding the date of application, and the inclusive dates of same;

14. The other information as may be required by the police chief to determine compliance with any other eligibility requirements by issuance of the permit as specified by federal, state, or local law.

B. Owner permit - requirements. The application for an owner permit shall provide all the information required under subsection (A) of this section as to any massage and/or bodywork practitioner owner or employee, and shall also state the following:

1. The exact nature of the proposed place of business and facilities therefore, and for massage and/or bodywork offices or establishments, the type of treatments to be administered;

2. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence address of each of its officers, directors, and each stockholder holding more than 10% of the stock of the corporation. The application shall include the information required by subsection (A) of this section for each of said individuals;

3. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. The application shall include information required by subsection (A) of this section for each said individuals. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply;

4. New applicants applying after January 1, 2004 shall provide the name and address of the owner and lessor of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of any written lease between the applicant and owner, or alternatively, a written acknowledgement from the owner of the property or a written statement by the applicant certifying that the owner of the property has been advised that a massage establishment will be located on the owner's property.

C. Any application for renewal of an owner permit or a practitioner permit shall contain all the information set forth in subsections (A) and (B) of this section; however, the information shall only be required as to the period of time between the date of the prior application and the date of the renewal application.

(Ord. 728, 2004).

### **5.50.070 Permit - Criteria for granting and denying.**

A. The permit authority may deny an owner permit or a practitioner permit when it is determined that:

1. The applicant, within five years immediately preceding the date of filing of the application, has been convicted in a court of competent jurisdiction of any offense which relates directly to the operation of a massage and/or bodywork office or establishment or home visit and/or outcall massage and/or bodywork service whether as a massage and/or bodywork office or establishment or home visit and/or outcall massage/bodywork service owner or operator or as a massage and/or bodywork practitioner, or as an employee of either; or has at any time been convicted in a court of competent jurisdiction of any felony, the commission of which occurred on the premises of a massage and/or bodywork office or establishment;

2. The applicant, within five years of the date of application, has been convicted in a court of competent jurisdiction of any felony offense involving the sale of a controlled substance specified in Sections 11054, 11055, 11057, or 11058 of the California Health and Saf. Code;

3. The applicant, within five years of the date of application, has been convicted in a court of competent jurisdiction of any offense involving the use of a controlled substance, other than marijuana, specified in Sections 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code;

4. The applicant is currently required to register under the provisions of Section 290 of California Penal Code;

5. The applicant, within five years of the date of application, has been convicted in a court of competent jurisdiction of any violation of Section 266, 266h, 266i, 315, 316, 318, or 647(b) of the California Penal Code, or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the state of California which is the equivalent of any of the aforesaid offenses;

6. The applicant has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Section 11225 through 11235 of the California Penal Code, or any similar provision of law in a jurisdiction outside the state of California;

7. The applicant has knowingly made a false statement or omission of a material fact in the application for the permit;

8. The applicant, if an individual, has not attained the age of 18 years;

9. The applicant, within five years of the date of application, and as established by clear and convincing evidence, has engaged in acts prohibited under California Penal Code Sections 266h, 266i, 647(b) or 653.22;

10. The applicant has not met the educational requirements set forth in this chapter;

11. The applicant, within five years immediately preceding the date of filing of the application, has had a practitioner permit or owner permit revoked by the permit authority pursuant to Section 5.50.170;

12. The applicant, within five years immediately preceding the date of filing of the application, has had a practitioner permit or owner permit denied by the permit authority pursuant to Subsection A.7 hereinabove set forth;

B. The permit authority shall grant an owner permit or practitioner permit to an applicant who has satisfied the requirements of Sections 5.50.040, 5.50.050, 5.50.060, and 5.50.090, as qualified by Section 5.50.110, the home use exception, unless the applicant is disqualified pursuant to subsection (A) of this section or unless the massage and/or bodywork office or establishment, as proposed by the

permit applicant, would not comply with all other applicable laws, including, but not limited to, the city's building, zoning, and health regulations.

C. If a practitioner permit or owner permit is denied, the permit authority shall serve on the applicant, in the manner provided in Section 5.50.190 of this code, a written notice of denial which shall specify the grounds for the denial and shall indicate the appeal procedures as set forth hereinafter.

(Ord. 728, 2004).

#### **5.50.080 Permit - Conditional.**

The permit authority may issue a conditional permit to an owner/practitioner that has operated a massage and/or bodywork office, establishment, home visit or outcall service within the city for the past 12 month period immediately prior to the adoption of this chapter and does not currently possess the minimum education requirements set forth in Section 5.50.040 of this chapter. The permit authority may issue the conditional permit if the owner/practitioner can document the operation of the massage and/or bodywork business with proof of having obtained and/or maintained a valid city business license and/or documented proof of business operation on state and/or federal income tax returns. The conditional permit may be issued for no longer than one year and be renewed one time. During the term of the conditional permit, the permittee shall obtain the requirements set forth in Section 5.50.040 of this chapter.

(Ord. 728, 2004).

#### **5.50.090 Massage and/or bodywork office or establishment application - Inspection.**

A. Within 30 days after an applicant for an owner permit for a massage and/or bodywork office or establishment has filed a completed application, the inspector shall inspect the proposed place of business to determine whether it is sanitary and otherwise conforms to the requirements of Section 5.50.100 as qualified by Section 5.50.110. Upon completion of the inspection, the inspector shall, within five days, inform the permit authority in writing of its findings of the inspection.

B. Where, due to circumstances beyond the applicant's control, the inspector is unable to perform the required inspection within the time set forth in this section, an applicant who has met all other applicable requirements to obtain an owner permit may receive a conditional permit to operate pending inspection and approval of the premises by the inspector. A conditional permit shall be valid for no more than 60 days, but may be extended at the discretion of the permit authority. An owner permit issued after the approval shall be valid only until the date that is one year from the issuance of the conditional permit.

(Ord. 728, 2004).

#### **5.50.100 Massage and/or bodywork office or establishment facilities and operations - Requirements.**

Except as provided in Section 5.50.110, all massage and/or bodywork offices or establishments shall comply with the following facilities and operations requirements:

A. A minimum of one toilet and washbasin shall be provided for every massage and/or bodywork office or establishment.

B. Cabinets or other covered space shall be provided for the storage of clean linen. Clean, covered and lined receptacles shall be provided for the storage of all soiled linen and paper towels.

C. All lavatories or washbasins shall be provided with running water, dispensed soap, and single-service towels.

D. Every portion of a massage and/or bodywork office or establishment, including appliances and apparatus, shall be kept in good repair, and all premises, appliances and apparatus, and all personnel thereon and their clothing, shall be maintained in a clean and sanitary condition at all times.

E. All massage and/or bodywork offices or establishments shall be provided with clean and sanitary towels, sheets, and linens in sufficient quantity. Towels, sheets, and linens shall not be used by more than one person; re-use is prohibited unless that same has first been laundered. Heavy white paper may be substituted for sheets, provided that the paper is used for only one person and then discarded into a sanitary receptacle.

F. Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage and/or bodywork and the instruments shall be disinfected and sterilized after each use.

G. Pads used on massage tables shall be cleaned or covered with a clean covering after each use.

H. No massage and/or bodywork office or establishment owner or employee, or massage and/or bodywork practitioner shall, while on the premises of a massage and/or bodywork office or establishment and in the presence of any patron or customer, expose his or her genitals, buttocks, or chest. No person shall, in the course of administering any massage, somatic procedure, or health treatment, intentionally make physical contact with the genitals or anus of any other person.

I. As qualified by Section 5.50.110, no massage and/or bodywork office or establishment shall be used for residential or sleeping purposes.

J. No alcoholic beverages shall be sold, served, or furnished to any customer, nor, except as qualified by Section 5.50.110, shall any alcoholic beverages be kept, or possessed on the premises of a massage and/or bodywork office or establishment.

K. No massage and/or bodywork office or establishment shall be kept open for business and no owner or massage and/or bodywork practitioner shall provide any home visit or outcall massage and/or bodywork service or administer any massages and/or bodywork or other treatment between the hours of 11:00 p.m. of one day and 5:00 a.m. of the following day.

L. Permittee shall comply with all applicable state and local laws, including, but not limited to, health, zoning, fire and safety requirements and standards.

(Ord. 728, 2004).

#### **5.50.110 Home occupation exception.**

An exception to the requirements of Section 5.50.100(I), and that part of Section 5.50.100(J) which prohibits keeping or possessing alcoholic beverages on the premises of a massage and/or bodywork office or establishment, shall be permitted where a massage and/or bodywork office or establishment is in the applicant's residence, and the applicant has complied with the provisions of Chapter 17.84 of this code pertaining to home occupations. When a home exception is granted under this section, the portions of the home or residence subject to the requirements of Section 5.50.100 shall be only those portions that are used at any time by the patron or customer.

(Ord. 728, 2004).

#### **5.50.120 Inspection for compliance.**

The inspector shall have the right to enter any massage and/or bodywork office or establishment during regular business hours to make reasonable inspection to ascertain whether the provisions of this chapter are being complied with, and the permittee shall allow such reasonable inspections. A warrant shall be obtained whenever required by law.



(Ord. 728, 2004).

#### **5.50.130 Business name.**

No person permitted to operate a massage and/or bodywork office or establishment or home visit or outcall massage and/or bodywork service shall operate under any or conduct business under any designation not specified in the owner permit and business license.

(Ord. 728, 2004).

#### **5.50.140 Business location change.**

Upon a change of location of a massage and/or bodywork office or establishment, an application shall be made to the permit authority, and the application shall be granted, provided all applicable provisions of this code are complied with as to the new location, and a change of location fee in an amount established by resolution of the city council to defray, in part, the costs of investigation and report, has been paid to the city.

(Ord. 728, 2004).

#### **5.50.150 Sale or transfer of massage and/or bodywork office or establishment or home visit and/or outcall massage/bodywork service interest.**

Upon the sale or transfer of any interest in a massage and/or bodywork office or establishment or home visit and/or outcall massage and/or bodywork service, a new owner permit shall be obtained.

(Ord. 728, 2004).

#### **5.50.160 Display of permits.**

Each holder of an owner permit and/or practitioner permit shall display that permit in an open and conspicuous place on the premises of the massage and/or bodywork office or establishment, or where the massage and/or bodywork services are being provided. A passport-size photograph of the permittee shall be affixed to each owner permit or practitioner permit on display pursuant to this section. The home address of any permittee need not be displayed.

(Ord. 728, 2004).

#### **5.50.170 Grounds for revocation or suspension of permit.**

Any permit issued pursuant to this chapter may be suspended or revoked by the permit authority after a hearing, where it is found by clear and convincing evidence that:

- A. The permittee or any employee has violated any provision of this chapter;
- B. The permittee or any employee has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of any of the following: California Penal Code Sections 266, 266h, 266i, 315, 318, 647(b) or 653.22, or conspiracy or attempt to commit any offense, or any offense in a jurisdiction outside of the state of California which is the equivalent of any of the aforesaid offenses;
- C. The permittee is required to register under Section 290 of the California Penal Code;
- D. The permittee has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California;
- E. The permittee has engage in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for a massage and/or bodywork office or establishment or while



engaging in any aspect of providing home visit and/or outcall massage/bodywork services;

F. The permittee has continued to operate the massage and/or bodywork office or establishment after the permit has been suspended;

G. The permittee has knowingly allowed a person to work as a massage and/or bodywork office or establishment or home visit and/or outcall massage/bodywork service employee or massage and/or bodywork practitioner who has engaged in conduct or has been convicted of conduct described in subsection (B) of this section;

H. There have been repeated acts of prostitution, as defined in California Penal Code Sections 266, 266h, 266i, 315, 316, 318, 647(b) or 653.22, taking place on the premises of any massage and/or bodywork office or establishment, in which case the owner permit may be suspended or revoked.

(Ord. 728, 2004).

#### **5.50.180 Hearing by permit authority for revocation or suspension.**

A. The permit authority, before revoking or suspending any permit, shall give the permittee at least ten days written notice of the alleged grounds for revocation or suspension and shall conduct a hearing in the matter of whether the permit shall be revoked or suspended. The hearing shall be conducted at least ten days from the date of written notice.

B. The permit authority shall consider all evidence at the hearing. The hearing may, after being commenced within the time specified pursuant to subsection (A) of this section, be continued for good cause by the permit authority from time to time. The permit authority shall, at the conclusion of the hearing, make findings of fact based upon the evidence submitted and shall decide whether or not the permit shall be revoked or suspended.

C. The permit authority's written notice of decision shall be served on the permittee, within 30 days of the conclusion of the hearing, in the manner provided in Section 5.50.190 of this code, and in the case of revocation or suspension of the Notice of Decision shall indicate the appeal procedures as set forth hereinafter.

(Ord. 728, 2004).

#### **5.50.190 Right of appeal.**

Any applicant for a permit or a permittee shall have the right to appeal a decision by the permit authority to deny a permit application or renewal application, or to approve an application with conditions, or to suspend or revoke a permit, by filing with the city clerk a written notice of appeal, specifying the grounds for the appeal, within 15 days after the decision has been served on the applicant or permittee. The appeal shall be heard by the city administrator or by an administrative hearing officer designated by or at the request of the city administrator, upon not less than 15 days written notice to the appellant. The city administrator or the designated administrative hearing officer shall consider all relevant evidence at the hearing, continue the hearing for good cause, and require such legal briefing as may be required to address any issues raised by the appeal. Within a reasonable time, but not more than 30 days following the conclusion of the hearing, the city administrator or the designated administrative hearing officer shall issue a written decision affirming, denying or modifying the decision from which the appeal was taken, supported by factual findings and determinations referenced by supporting evidence. The decision of the city administrator or designated administrative hearing officer shall be final. The written decision shall be served on the appellant as provided in Code of Civil Procedure Section 1094.6(b), with a copy submitted to the city clerk. The written decision shall include a notice to appellant that the decision is subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

(Ord. 728, 2004).

### **5.50.200 Exemptions.**

This chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:

A. Physicians, surgeons, chiropractors, osteopaths, physical therapists, nurses, or to any other person licensed to practice any healing art under provisions of the Division 2 (commencing with Section 500) of the Bus. and Prof. Code when engaging in such practice within the scope of his or her license;

B. Trainers of any amateur, semiprofessional, or professional athlete or athletic team;

C. Barbers, estheticians and cosmetologists who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses;

D. Individuals in the city temporarily for educational events or disaster relief;

E. Individuals administering massages or health treatments involving massage to persons participating in road races, track meets, triathlons, educational events, conferences or similar single-occurrence athletic, recreational or educational events;

F. Somatic practitioners who use no physical touch of any kind at any time in their practice.

(Ord. 728, 2004).

### **5.50.210 Violation and penalties.**

Any violation of this chapter may be enforced by any remedy available to the city under this code, or under state law.

(Ord. 728, 2004).



**City Council Agenda Item #3**  
Staff Report

**Date:** August 21, 2023

**To:** Mayor and City Council

**From:** Elisa Arteaga, Finance Director

**Subject:** Budget, Strategic Planning, Support Services and Software

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|          |           |
|----------|-----------|
| <b>X</b> | Regular   |
|          | Special   |
|          | Closed    |
|          | Emergency |

**Recommendation**

Staff respectfully requests the City Council review, consider, and approve the proposal from ClearGov, Inc and authorize the City Administrator to execute a five-year agreement with ClearGov, Inc for the one-time fee of \$7,650.00 (conversion) and a 10-month pro-rata subscription fee of \$22,370.83 for the first year, renewing annually July 1, 2024, for \$26,845.00 annual subscription fee (3% annual increase until June 30, 2027) over the next five years.

**Background**

The current budget development process consists of the Finance Director and Finance staff meeting with all department directors' multiple times over several months, reviewing and entering budget data requests manually for each department. Finance staff then gathers all the information and updates a Microsoft Excel file, then consolidates hundreds of line items into categories and inputs the information into multiple Excel spreadsheets. Each spreadsheet includes formulas and links that connects multiple spreadsheets to each other. Additional reviews will follow to either modify and/or confirm request including the final review by City Administrator. If there are suggestions or changes, staff will again manually make those after a series of meetings. Once the budget is presented and adopted, staff gathers the final budget information and imports it to the Tyler Incode ERP10 financial system. This manual process is extremely time consuming and prone to the possibility of human error. In previous budget study session, staff considered input and suggestions in those sessions of providing a simple layout to allow for ease of understanding data, internal approval process tracking and further increasing transparency. For the last two fiscal year budget rounds, finance has been researching budget software layouts presented by multiple cities and meeting with software company representatives to review options available. The Tyler financial software only includes a budget module which allows the exporting and importing of final data after budget approval, it does not have a program to create a digital budget book linking all data.

Budgeting software is a comprehensive solution that will allow staff to implement a more streamlined process, track and link all data thus avoiding manual or formula errors. Budget software will allow internal interactive approval process between department directors, finance staff, as well as report any recommendations made during the final review by the City Administrator. The benefit of accuracy and amount of time saved from manual input can be used for strategic planning, forecasting, and broader analysis of the City of Gridley's Finances. The proposed package will include a digital budget book which promotes and allows for clear and transparent financial information to all.

In the recent review of software options, Finance staff has met with a total of three budget software providers and received proposals. In consideration of costs and software formats and ease of use, staff

believes that ClearGov will meet the City of Gridley's needs for an efficient budget development, easy to read reporting, a comprehensive, and a transparency friendly digital budget book. Therefore, finance staff is recommending approving the software product by ClearGov, which provided a comprehensive demo and presented reference from other cities and counties currently using the same financial software (Tyler ERP10). The software will provide access to the city's leadership team to track, view and plan their current budget, modify for midyear and track for future budgeting considerations.

The cost of ClearGov is a one-time fee of \$7,650.00 for set up and a 10-month pro-rata subscription fee of \$22,370.83 for the first year, then renewing annually on July 1<sup>st</sup> of the upcoming fiscal year 2024/2025 for the total cost of \$26,845.00 (annual subscription fee increase capped at 3%) until June 30, 2027.

#### **Fiscal Impact**

The budget software was previously approved and included in the FY 23-24 CIP budget, during the June 27, 2023, Special Council meeting.

#### **Compliance with City Council Strategic Plan or Budget Goals**

The City Council and City staff are committed to provide the best possible financial practices and the highest possible transparency regarding all financial transactions. This presentation is consistent with our ongoing effort to be responsive and transparent regarding all financial matters, as well as be congruent with best financial practices.

#### **ATTACHMENTS**

ClearGov, Inc. Service Order



# Service Order

2 Mill & Main; Suite 630; Maynard, MA 01754

|                      |                      |
|----------------------|----------------------|
| <b>Created by</b>    | Ryan Wilson          |
| <b>Contact Phone</b> | (901) 937-9735       |
| <b>Contact Email</b> | rwilson@cleargov.com |

|                                 |                     |
|---------------------------------|---------------------|
| <b>Order Date</b>               | Aug 11, 2023        |
| <b>Order valid if signed by</b> | <b>Aug 25, 2023</b> |

| Customer Information |                     |                |                        |                        |                        |
|----------------------|---------------------|----------------|------------------------|------------------------|------------------------|
| <b>Customer</b>      | City of Gridley     | <b>Contact</b> | Elisa Arteaga          | <b>Billing Contact</b> | Elisa Arteaga          |
| <b>Address</b>       | 685 Kentucky Street | <b>Title</b>   | Finance Director       | <b>Title</b>           | Finance Director       |
| <b>City, St, Zip</b> | Gridley, CA 95948   | <b>Email</b>   | earteaga@gridley.ca.us | <b>Email</b>           | earteaga@gridley.ca.us |
| <b>Phone</b>         | (530) 846-5695      |                |                        | <b>PO # (If any)</b>   |                        |

| The Services you will receive and the Fees for those Services are...                |           |                     |
|---|-----------|---------------------|
| Set up Services   | Tier/Rate | Service Fees        |
| ClearGov Setup: Includes activation, onboarding and training for ClearGov solutions | Tier 1    | \$ 10,800.00        |
| ClearGov Setup: BCM Bundle Discount - Discount for bundled BCM solutions            | Tier 1    | \$ (3,150.00)       |
| <b>Total ClearGov Setup Service Fee - Billed ONE-TIME</b>                           |           | <b>\$ 7,650.00</b>  |
| Subscription Services   | Tier      | Service Fees        |
| ClearGov BCM Operational Budgeting - Civic Edition                                  | Tier 1    | \$ 9,100.00         |
| ClearGov BCM Personnel Budgeting - Civic Edition                                    | Tier 1    | \$ 8,300.00         |
| ClearGov BCM Capital Budgeting - Civic Edition                                      | Tier 1    | \$ 6,200.00         |
| ClearGov BCM Digital Budget Book - Civic Edition                                    | Tier 1    | \$ 5,200.00         |
| ClearGov BCM Transparency - Civic Edition   | Tier 1    | \$ 4,500.00         |
| ClearGov ClearPlans - Civic Edition   | Tier 1    | \$ 5,200.00         |
| ClearGov BCM Bundle Discount: Discount for bundled BCM solutions                    | Tier 1    | \$ (11,655.00)      |
| <b>Total ClearGov Subscription Service Fee - Billed ANNUALLY IN ADVANCE</b>         |           | <b>\$ 26,845.00</b> |

| ClearGov will provide your Services according to this schedule... |             |              |                                |
|---|-------------|--------------|--------------------------------|
| Period  | Start Date  | End Date     | Description                    |
| <b>Setup</b>  | Sep 1, 2023 | Sep 1, 2023  | ClearGov Setup Services        |
| <b>Pro-Rata</b>   | Sep 1, 2023 | Jun 30, 2024 | ClearGov Subscription Services |
| <b>Initial</b>  | Jul 1, 2024 | Jun 30, 2027 | ClearGov Subscription Services |

| To be clear, you will be billed as follows...   |                     |   |
|---|---------------------|---|
| Billing Date(s)   | Amount(s)           | Notes   |
| Sep 1, 2023   | \$ 7,650.00         | One Time Setup Fee  |
| Sep 1, 2023   | \$ 22,370.83        | 10 Month Pro-Rata Subscription Fee  |
| Jul 1, 2024   | \$ 26,845.00        | Annual Subscription Fee   |
| Additional subscription years and/or renewals will be billed annually in accordance with pricing and terms set forth herein |                     |   |
| Billing Terms and Conditions  |                     |   |
| <b>Valid Until</b>  | <b>Aug 25, 2023</b> | Pricing set forth herein is valid only if ClearGov Service Order is executed on or before this date.                |
| <b>Payment</b>  | <b>Net 30</b>       | All invoices are due Net 30 days from the date of invoice.  |
| <b>Initial Period Rate Increase</b>   | 3% per annum        | During the Initial Service Period, the Annual Subscription Service Fee shall automatically increase by this amount. |
| <b>Rate Increase</b>  | 6% per annum        | After the Initial Service Period, the Annual Subscription Service Fee shall automatically increase by this amount.  |

## General Terms & Conditions

|  |  |
|--|--|
| <b>Customer Satisfaction Guarantee</b> | During the first thirty (30) days of the Service, Customer shall have the option to terminate the Service, by providing written notice. In the event that Customer exercises this customer satisfaction guarantee option, such termination shall become effective immediately and Customer shall be eligible for a full refund of the applicable Service Fees.   |
| <b>Statement of Work</b>               | ClearGov and Customer mutually agree to the ClearGov Service activation and onboarding process set forth in the attached Statement of Work. Please note that ClearGov will not activate and/or implement services for any Customer with outstanding balance past due over 90 days for any previous subscription services.  |
| <b>Taxes</b>                           | The Service Fees and Billing amounts set forth above in this ClearGov Service Order <b>DO NOT</b> include applicable taxes. In accordance with the laws of the applicable state, in the event that sales, use or other taxes apply to this transaction, ClearGov shall include such taxes on applicable invoices and Customer is solely responsible for such taxes, unless documentation is provided to ClearGov demonstrating Customer's exemption from such taxes.   |
| <b>Term &amp; Termination</b>          | Subject to the termination rights and obligations set forth in the ClearGov BCM Service Agreement, this ClearGov Service Order commences upon the Order Date set forth herein and shall continue until the completion of the Service Period(s) for the Service(s) set forth herein. Each Service shall commence upon the Start Date set forth herein and shall continue until the completion of the applicable Service Period. To be clear, Customer shall have the option to Terminate this Service Order on an annual basis by providing notice at least sixty (60) days prior to the end of the then current Annual Term.   |
| <b>Auto-Renewal</b>                    | After the Initial Period, the Service Period for any ClearGov Annual Subscription Services shall automatically renew for successive annual periods (each an <b>"Annual Term"</b> ), unless either Party provides written notice of its desire not to renew at least sixty (60) days prior to the end of the then current Annual Term.  |
| <b>Agreement</b>                       | This ClearGov Service Order shall become binding upon execution by both Parties. The signature herein affirms your commitment to pay for the Service(s) ordered in accordance with the terms set forth in this ClearGov Service Order and also acknowledges that you have read and agree to the terms and conditions set forth in the ClearGov BCM Service Agreement found at the following URL: <a href="http://www.ClearGov.com/terms-and-conditions">http://www.ClearGov.com/terms-and-conditions</a> . This Service Order incorporates by reference the terms of such ClearGov BCM Service Agreement. In event of any conflict between the terms set forth in this ClearGov Service Order and any terms or conditions set forth in the ClearGov BCM Service Agreement, the terms of this ClearGov Service Order shall prevail. |

| Customer         |                    |
|------------------|--------------------|
| <b>Signature</b> |                    |
| <b>Name</b>      | Cliff Wagner       |
| <b>Title</b>     | City Administrator |

| ClearGov, Inc.   |                  |
|------------------|------------------|
| <b>Signature</b> |                  |
| <b>Name</b>      | Bryan A. Burdick |
| <b>Title</b>     | President        |

**Please e-mail signed Service Order to [Orders@ClearGov.com](mailto:Orders@ClearGov.com) or Fax to (774) 759-3045**

## Customer Upgrades (ClearGov internal use only)

|   |    |  |  |
|---|----|--|--|
| <b>This Service Order is a Customer Upgrade</b> | No | <b>If Yes: Original Service Order Date</b> |  |
|---|----|--|--|



# Statement of Work

This Statement of Work outlines the roles and responsibilities by both ClearGov and Customer required for the activation and onboarding of the ClearGov Service. ClearGov will begin this onboarding process upon execution of this Service Order. All onboarding services and communications will be provided through remote methods - email, phone, and web conferencing.

## ClearGov Responsibilities

- ClearGov will activate ClearGov Service subscription(s) as of the applicable Start Date(s). ClearGov will create the initial Admin User account, and the Customer Admin User will be responsible for creating additional User accounts.
- ClearGov will assign an Implementation Manager (IM) responsible for managing the activation and onboarding process. ClearGov IM will coordinate with other ClearGov resources, as necessary.
- ClearGov IM will provide a Kickoff Call scheduling link to the Customer's Primary Contact. Customer should schedule Kickoff Call within two weeks after the Service Order has been executed.
- If Customer is subscribing to any products that require data onboarding:
  - ClearGov IM will provide a Data Discovery Call scheduling link to the Customer's Primary Contact. Customer should schedule Data Discovery Call based on the availability of Customer's staff.
  - ClearGov will provide Customer with financial data requirements and instructions, based on the ClearGov Service subscription(s).
  - ClearGov will review financial data files and confirm that data is complete, or request additional information, if necessary. Once complete financial data files have been received, ClearGov will format the data, upload it to the ClearGov platform and complete an initial mapping of the data.
  - After initial mapping, ClearGov will schedule a Data Review call with a ClearGov Data Onboarding Consultant (DOC), who will present how the data was mapped, ask for feedback, and address open questions. Depending upon Customer feedback and the complexity of data mapping requests, there may be additional follow-up calls or emails required to complete the data onboarding process.
- ClearGov will inform Customer of all training, learning, and support options. ClearGov recommends all Users attend ClearGov Academy training sessions and/or read Support Center articles before using the ClearGov Service to ensure a quick ramp and success. As needed, ClearGov will design and deliver customized remote training and configuration workshops for Admins and one for End Users - via video conference - and these sessions will be recorded for future reference.
- ClearGov will make commercially reasonable efforts to complete the onboarding/activation process in a timely fashion, provided Customer submits financial data files and responds to review and approval requests by ClearGov in a similarly timely fashion. Any delay by Customer in meeting these deliverable requirements may result in a delayed data onboarding process. Any such delay shall not affect or change the Service Period(s) as set forth in the applicable Service Order.

## Customer Responsibilities

- Customer's Primary Contact will coordinate the necessary personnel to attend the Kickoff and Data Discovery Calls within two weeks after the Service Order has been executed. If Customer needs to change the date/time of either of these calls, the Primary Contact will notify the ClearGov IM at least one business day in advance.
- If Customer is subscribing to any products that require data onboarding:
  - Customer will provide a complete set of requested financial data files (revenue, expense, chart of accounts, etc.) to ClearGov in accordance with the requirements provided by ClearGov.
  - Customer's Primary Contact will coordinate the necessary personnel to attend the Data Discovery and Data Review calls. It is recommended that all stakeholders with input on how data should be mapped should attend. Based on these calls and any subsequent internal review, Customer shall provide a detailed list of data mapping requirements and requested changes to data mapping drafts in a timely manner, and Customer will approve the final data mapping, once completed to Customer's satisfaction.
- Customer will complete recommended on-demand training modules in advance of customized training & configuration workshops.
- Customer shall be solely responsible for importing and/or inputting applicable text narrative, custom graphics, performance metrics, capital requests, personnel data, and other such information for capital budget, personnel budget, budget books, projects, dashboards, etc.



**City Council Agenda Item #4**  
Staff Report

**Date:** August 21, 2023

**To:** Mayor and City Council

**From:** Elisa Arteaga, Finance Director

**Subject:** Debt, Lease, and Subscription Management Software

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|          |           |
|----------|-----------|
| <b>X</b> | Regular   |
|          | Special   |
|          | Closed    |
|          | Emergency |

**Recommendation**

Staff respectfully requests the City Council review, consider, and approve the proposal from DebtBook and authorize the City Administrator to execute a three-year agreement with DebtBook for the total amount of \$19,500.00 for the next 3 years.

**Background**

Beginning fiscal year 2021/2022, GASB 87 and GASB 96 are new reporting accounting standards for government entities which aim to increase the financial information by providing a uniform approach to accounting for and reporting of leases (GASB 87) and GASB 96 which requires subscription-based IT arrangements (SBITAs) as well to be reported on the face of the financial statements and enhances the relevance and reliability of a government's SBITA information. The City's current debt management is managed manually by a Microsoft Excel file. DebtBook will facilitate the thorough review of each lease, determine if those fall under the criteria for reporting, track of all current and future leases, confirm accurate reporting of GASB 87 and GASB 96, and allow for the best practice processes for managing the city's debt, leases, and subscriptions.

During finance staff's comprehensive review of options for debt management reporting, DebtBook software provided a the most detailed and comprehensive demo to finance staff and presented staff with references from other cities and counties that use DebtBook. Finance Staff has met with a total of three debt management providers and staff believes that DebtBook will meet the City of Gridley's needs for an efficient debt management software.

**Fiscal Impact**

The original cost of DebtBook was \$9,500.00 per year. The city received a discount from DebtBook, and finance staff negotiated a lower price of \$6,500.00 per year for the next 3 years. This amount was budgeted in the CIP for FY 2023-2024 which was approved by council in the June 27, 2023, Special Council meeting.

**Compliance with City Council Strategic Plan or Budget Goals**

The City Council and City staff are committed to provide the best possible financial practices and the highest possible transparency regarding all financial transactions. This presentation is consistent with our ongoing effort to be responsive and transparent regarding all financial matters, as well as be congruent with best financial practices.

**Attachments**

DebtBook and Gridley, CA – 36 Months

## ORDER FORM

Fifth Asset, Inc., d/b/a DebtBook (“**DebtBook**”) is pleased to provide the customer executing below (“**Customer**”) with the Services subject to the terms established in this Order Form, including DebtBook’s pricing document attached as **Exhibit A** and incorporated herein by this reference (the “**DebtBook Quote**”).

The Services are subject to DebtBook’s General Terms & Conditions, which have been provided to Customer (the “**Terms & Conditions**”), the Incorporated Documents referenced in the Terms & Conditions, and any additional terms set forth in **Exhibit B** to this Order Form (the “**Customer Terms**”), which, together with this Order Form and any other Order Form in effect from time to time, constitute the complete “**Agreement**” between the parties. The Agreement supersedes any prior discussion or representations regarding Customer’s purchase and use of the Products and Services described in this Order Form.

Each capitalized term used but not defined in this Order Form has the meaning given in the Terms & Conditions.

**Effective Date; Initial Term.** The Effective Date of this Order Form will be the date indicated beneath the Customer’s signature below unless a specific Effective Date is set forth in the Customer Terms. This Order Form will remain in effect for the Initial Term indicated in the DebtBook Quote.

**Services.** The DebtBook Quote sets forth the Services to be provided to Customer under this Order Form, including the specific Products to be provided to Customer through its access to the Application Services.

**Fees.** DebtBook will charge Customer a recurring Subscription Fee as set forth in the DebtBook Quote for Customer’s access to the Onboarding Services, the Application Services, and the Support Services. To the extent applicable, DebtBook will also charge Customer an Implementation Fee as set forth in the DebtBook Quote for the Premium Implementation Services.

**Billing.** Unless otherwise provided in the Customer Terms, (1) all Fees will be due and payable annually and subject to the payment terms set forth in the Terms & Conditions, and (2) each invoice will be emailed to Customer’s billing contact indicated in the DebtBook Quote.

**Notices.** Any Notice delivered under the Agreement will be delivered, if to the Customer, to the address indicated in the DebtBook Quote and, if to DebtBook, the address below DebtBook’s signature below.

**Authority; Execution.** Each of the undersigned represents that they are authorized to (1) execute and deliver this Order Form on behalf of their respective party and (2) bind their respective party to the terms of the Agreement. This Order Form and any other documents executed and delivered in connection with the Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. If permitted by applicable law, electronic signatures may be used for the purpose of executing this Order Form by email or other electronic means. Any document delivered electronically and accepted is deemed to be “in writing” to the same extent and with the same effect as if the document had been signed manually.

FIFTH ASSET, INC., D/B/A DEBTBOOK

By: Michael Juby  
Name: Chief Operating Officer  
Title: Michael Juby

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Notice Address**

**Date:** \_\_\_\_\_

PO Box 667950  
Charlotte, NC 28266  
Attention: Chief Operating Officer  
legal@debtbook.com

**Exhibit A**  
**DebtBook Quote**

[See attached.]

# Gridley, CA

**Gridley, CA**

685 Kentucky St  
Gridley, CA 95948

**Martin Pineda**

mpineda@gridley.ca.us  
5308465695

**Elisa Arteaga**

earteaga@gridley.ca.us  
(530) 846-5695

Quote created: July 27, 2023

Quote expires: October 25, 2023

Quote created by: Wade Maxey

Senior Account Executive  
wade.maxey@debtbook.com

**Comments from Wade Maxey**

The Initial Term of this Order Form is three years. The Application Services purchased under this Order Form include the Products listed below. The Services include the Application Services, the Onboarding Services, the Support Services, and the Implementation Services option indicated below. All invoices will be emailed to the Customer's billing contact at the following address: mpineda@gridley.ca.us.

**Products & Services**

| Item & Description                               | SKU      | Quantity | Unit Price | Total             |
|--|----------|----------|------------|-------------------|
| 2023 Tier 1 - Lease & Subscription               | 23LSST1- | 1        | \$8,000.00 | \$6,500.00 / year |
| DebtBook's lease management and SBITA            | 2        |          | / year     | after \$1,500.00  |
| management software-as-a-service                 |          |          |            | discount          |
| application provided, if applicable, to Customer |          |          |            | for 1 year        |
| through access to the Application Services.      |          |          |            |                   |

| Item & Description   | SKU      | Quantity | Unit Price | Total            |
|--|----------|----------|------------|------------------|
| 2023 Tier 1 - Lease & Subscription   | 23LSP11- | 1        | \$1,500.00 | \$0.00           |
| Premium Implementation   | 2        |          |            | after \$1,500.00 |
| The additional implementation services provided to Customer on an annual basis, including tailored implementation support, review of Application Obligations, and entry of relevant Customer Data. |          |          |            | discount         |
|  |          |          | Total      | \$6,500.00       |

Questions? Contact me



Wade Maxey  
Senior Account Executive  
wade.maxey@debtbook.com



**Exhibit B**  
**Customer Terms**

The additional terms set forth below constitute “**Customer Terms**” for all purposes of the Agreement and apply to the Products and Services purchased under this Order Form.

## DEBTBOOK'S GENERAL TERMS & CONDITIONS

Please carefully read these General Terms and Conditions (these “**Terms & Conditions**”) which govern Customer’s access and use of the Services described in the Order Form.

By executing the Order Form and using any of the Services, Customer agrees to be bound by these Terms.

### 1. Definitions.

“**Aggregated Statistics**” means data and information related to Customer’s use of the Services that is used by DebtBook in an aggregate and anonymized manner, including statistical and performance information related to the Services.

“**Agreement**” means, collectively and to the extent applicable, the Order Form, any Customer Terms, these Terms & Conditions, and the Incorporated Documents, in each case as may be amended from time to time in accordance with their terms.

“**Application Obligations**” means, collectively, each contractual or financial obligation or agreement managed by Customer using the Products made available to Customer through the Application Services.

“**Application Services**” means the Products and other application-based services that DebtBook offers to Customer through access to the DebtBook application. The specific Products offered to Customer as part of the Application Services are limited to those Products expressly described in any Order Form then in effect.

“**Appropriate Security Measures**” means, collectively, commercially reasonable technical and physical controls and safeguards intended to protect Customer Data against destruction, loss, unauthorized disclosure, or unauthorized access by employees or contractors employed by DebtBook.

“**Authorized User**” means any of Customer’s employees, consultants, contractors, or agents who are authorized by Customer to access and use any of the Services.

“**Customer**” means the person or entity purchasing the Services as identified in the Order Form.

“**Customer Data**” means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is transmitted by or on behalf of Customer or an Authorized User through the Services.

“**Customer Terms**” means the terms set forth in or otherwise identified and incorporated into the Order Form. For the avoidance of doubt, “Customer Terms” does not include any purchase order or similar document generated by Customer unless such document is expressly identified and incorporated into the Order Form.

“**DebtBook**” means Fifth Asset, Inc., d/b/a DebtBook, a Delaware corporation, and its permitted successor and assigns.

“**DebtBook IP**” means (1) the Products, Services, Documentation, and Feedback, including all ideas, concepts, discoveries, strategies, analyses, research, developments, improvements, data, materials, products, documents, works of authorship, processes, procedures, designs, techniques, inventions, and other intellectual property, whether or not patentable or copyrightable, and all embodiments and derivative works of each of the foregoing in any form and media, that are developed, generated or produced by DebtBook arising from or related to the Product, Services, Documentation, or Feedback; and (2) any intellectual property provided to Customer or any Authorized User in connection with the foregoing other than Customer Data.

“**DebtBook Quote**” means any pricing document identified and incorporated into each Order Form that may establish the Products, Services, Term, payment terms, and other relevant details applicable to each Customer purchase of Products and Services under such Order Form.

“**Documentation**” means DebtBook’s end user documentation and content, regardless of media, relating to the Products or Services made available from time to time on DebtBook’s website at <https://support.debtbook.com>.

“**Feedback**” means any comments, questions, suggestions, or similar feedback transmitted in any manner to DebtBook, including suggestions relating to features, functionality, or changes to the DebtBook IP.

“**Guided Implementation Services**” means DebtBook’s standard Implementation Services option, including basic implementation support, guidance, and training.

**“Governing State”** means, if Customer is a Government Entity, the state in which Customer is located. If Customer is not a Government Entity, “Governing State” means the State of North Carolina.

**“Government Entity”** means any unit of state or local government, including states, counties, cities, towns, villages, school districts, special purpose districts, and any other political or governmental subdivisions and municipal corporations, and any agency, authority, board, or instrumentality of any of the foregoing.

**“Implementation Services”** means DebtBook’s Guided Implementation Services or its Premium Implementation Services, in each case as requested by Customer and as provided to Customer on an annual basis.

**“Incorporated Documents”** means, collectively, the Privacy Policy, the SLA, and the Usage Policy, as each may be updated from time to time in accordance with their terms. The Incorporated Documents, as amended, are incorporated into these Terms & Conditions by this reference. Current versions of the Incorporated Documents are available at <https://www.debtbook.com/legal>.

**“Initial Term”** means the Initial Term established in the Order Form.

**“Onboarding Services”** means onboarding services, support, and training as required to make the Application Services available to Customer during the Initial Term.

**“Order Form”** means each order document (including, if applicable, any DebtBook Quote incorporated therein by reference) duly authorized by Customer and DebtBook for the purchase of any Products or Services in effect from time to time, as each such Order Form may be amended, modified, or replaced in accordance with its terms and these Terms & Conditions.

**“Premium Implementation Services”** means DebtBook’s premium Implementation Services option, including implementation support, guidance, and training, review of Application Obligations, and entry of relevant Customer Data.

**“Pricing Tier”** means, if applicable, Customer’s pricing tier for each Product as of the date of determination.

**“Privacy Policy”** means, collectively, DebtBook’s privacy policy and any similar data policies generally applicable to all users of the Application Services, in each case as posted to DebtBook’s website and as updated from time to time in accordance with their terms.

**“Products”** means, collectively, any products DebtBook may offer to Customer from time to time through the Application Services, in each case as established in any Order Form then in effect.

**“Renewal Term”** means any renewal term established in accordance with the terms of the Agreement.

**“Services”** means, collectively, the Application Services, the Onboarding Services, the Implementation Services, and the Support Services. For the avoidance of doubt, “Services” includes the underlying Products made available to Customer through access to the Application Services.

**“SLA”** means the Service Level Addendum generally applicable to all users of the Application Services, as posted to DebtBook’s website and as updated from time to time in accordance with its terms.

**“Support Services”** means the general maintenance services and technical support provided in connection with the Application, as more particularly described in the SLA.

**“Term”** means, collectively, the Initial Term and, if applicable, each successive Renewal Term.

**“Usage Policy”** means, collectively, DebtBook’s acceptable usage policy, any end user licensing agreement, or any similar policy generally applicable to all end users accessing the Application Services, in each case as posted to DebtBook’s website and as updated from time to time in accordance with its terms.

Each capitalized term used but not otherwise defined in these Terms & Conditions has the meaning given to such term in the applicable Order Form.

## 2. Access and Use.

(a) Provision of Access. Subject to the terms and conditions of the Agreement, DebtBook grants Customer and Customer’s Authorized Users a non-exclusive, non-transferable (except as permitted by these Terms) right to access and use the Application Services during the Term, solely for Customer’s internal use and for the

Authorized Users' use in accordance with the Agreement. DebtBook will provide to Customer the necessary passwords and network links or connections to allow Customer to access the Application Services.

(b) Documentation License. Subject to the terms and conditions of the Agreement, DebtBook grants to Customer and Customer's Authorized Users a non-exclusive, non-sublicensable, non-transferable (except as permitted by these Terms) license to use the Documentation during the Term solely for Customer's and its Authorized User's internal business purposes in connection with its use of the Services.

(c) Customer Responsibilities. Customer is responsible and liable for its Authorized Users' access and use of the Services and Documentation, regardless of whether such use is permitted by the Agreement. Customer must use reasonable efforts to make all Authorized Users aware of the provisions applicable to their use of the Services, including the Incorporated Documents.

(d) Use Restrictions. Customer may not at any time, directly or indirectly through any Authorized User, access or use the Services in violation of the Usage Policies, including any attempt to (1) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (2) sell, license, or otherwise transfer or make available the Services or Documentation except as expressly permitted by the Agreement; or (3) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part. Customer will not knowingly transmit any personally identifiable information to DebtBook or any other third-party through the Services.

(e) Suspension. Notwithstanding anything to the contrary in the Agreement, DebtBook may temporarily suspend Customer's and any Authorized User's access to any or all of the Services if: (1) Customer is more than 45 days late in making any payment due under, and in accordance with, the terms of the Agreement, (2) DebtBook reasonably determines that (A) there is a threat or attack on any of the DebtBook IP; (B) Customer's or any Authorized User's use of the DebtBook IP disrupts or poses a security risk to the DebtBook IP or to any other customer or vendor of DebtBook; (C) Customer, or any Authorized User, is using the DebtBook IP for fraudulent or other illegal activities; or (D) DebtBook's provision of the Services to Customer or any Authorized User is prohibited by applicable law; or (3) any vendor of DebtBook has suspended or terminated DebtBook's access to or use of any third-party services or products required to enable Customer to access the Services (any such suspension, a "**Service Suspension**"). DebtBook will use commercially reasonable efforts to (i) provide written notice of any Service Suspension to Customer, (ii) provide updates regarding resumption of access to the Services, and (iii) resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. DebtBook is not liable for any damage, losses, or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f) Aggregated Statistics. Notwithstanding anything to the contrary in the Agreement, DebtBook may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between DebtBook and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by DebtBook. DebtBook may compile Aggregated Statistics based on Customer Data input into the Services. DebtBook may (1) make Aggregated Statistics publicly available in compliance with applicable law, and (2) use Aggregated Statistics as permitted under applicable law so long as, in each case, DebtBook's use of any Aggregated Statistics does not identify Customer or disclose Customer's Confidential Information.

### 3. Services and Support.

(a) Services Generally. Subject to the terms of the Agreement, DebtBook will grant Customer access to the Application Services during the Initial Term and, if applicable, each subsequent Renewal Term. As part of the onboarding process, DebtBook will provide Customer with the Onboarding Services and the level of Implementation Services indicated in the Order Form. DebtBook will provide Customer with the Support Services throughout the Term.

(b) Implementation Services. Unless the Customer requests Premium Implementation Services in accordance with this subsection, DebtBook will provide Customer with Guided Implementation Services at no additional charge. At Customer's request, DebtBook will provide Customer with Premium Implementation Services for a 12-month period, with each such period beginning, if applicable, on the Effective Date and on each anniversary of the Effective Date thereafter (each, a "**Premium Implementation Period**"). Customer may request Premium Implementation Services at any time during the Term. If Premium Implementation Services are requested for any Implementation Period, then the Implementation Fee will be based on the Pricing Tier at the beginning of the Premium Implementation Period. The Implementation Fee will be due and payable at the later of (1) the beginning of the applicable Premium Implementation Period or (2) the date on which Customer requests Premium Implementation

Services for such Premium Implementation Period, and will entitle Customer, in each case, to Premium Implementation Services through the end of the Premium Implementation Period then in effect.

(c) Service Levels and Support. Subject to the terms and conditions of the Agreement, DebtBook will make the Application Services and Support Services available in accordance with the SLA.

4. Fees and Payment.

(a) Fees. Customer will pay DebtBook the fees set forth in each Order Form (the “**Fees**”). DebtBook will invoice Customer for all Fees in accordance with the invoicing schedule and requirements set forth in each Order Form. Customer must pay all Fees in US dollars. If Customer is a Government Entity, then Customer’s obligation to pay any Fees under the Agreement is subject in all respects to the requirements and limitations of the Governing State’s Prompt Payment Act, as amended. Except as expressly provided in the Agreement, DebtBook does not provide refunds of any paid Fees. Unless otherwise provided in the Customer Terms, and to the extent permitted by applicable law, if Customer fails to make any payment when due, DebtBook may, without limiting any of its other rights, charge interest on the past due amount at the lowest of (1) the rate of 1.5% per month, (2) the rate established in any Customer Term, or (3) the maximum rate permitted under applicable law.

(b) Taxes. All Fees and other amounts payable by Customer under the Agreement are exclusive of taxes and similar assessments. Unless Customer is exempt from making any such payment under applicable law or regulation, Customer is responsible for all applicable sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer under the Agreement, other than any taxes imposed on DebtBook’s income.

5. Confidential Information.

(a) From time to time during the Term, either party (the “**Disclosing Party**”) may disclose or make available to the other party (the “**Receiving Party**”) information about the Disclosing Party’s business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether in written, electronic, or other form or media, that is marked, designated, or otherwise identified as “confidential”, or which a reasonable person would understand to be confidential or proprietary under the circumstances (collectively, “**Confidential Information**”). For the avoidance of doubt, DebtBook’s Confidential information includes the DebtBook IP and the Application Services source code and specifications. As used in the Agreement, “Confidential Information” expressly excludes any information that, at the time of disclosure is (1) in the public domain; (2) known to the receiving party at the time of disclosure; (3) rightfully obtained by the Receiving Party on a non-confidential basis from a third party; or (4) independently developed by the Receiving Party.

(b) To the extent permitted by applicable law, the Receiving Party will hold the Disclosing Party’s Confidential Information in strict confidence and may not disclose the Disclosing Party’s Confidential Information to any person or entity, except to the Receiving Party’s employees, officers, directors, agents, subcontractors, financial advisors, and attorneys who have a need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations under the Agreement or otherwise in connection with the Services. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (1) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order must first give written notice to the other party; or (2) to establish a party’s rights under the Agreement, including to make required court filings.

(c) On the expiration or termination of the Agreement, the Receiving Party must promptly return to the Disclosing Party all copies of the Disclosing Party’s Confidential Information, or destroy all such copies and, on the Disclosing Party’s request, certify in writing to the Disclosing Party that such Confidential Information has been destroyed.

(d) Each party’s obligations under this Section are effective as of the Effective Date and will expire three years from the termination of the Agreement; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of the Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

(e) Notwithstanding anything in this Section to the contrary, if Customer is a Government Entity, then DebtBook expressly agrees and understands that Customer’s obligations under this Section are subject in all respects

to, and only enforceable to the extent permitted by, the public records laws, policies, and regulations of the Governing State.

6. Intellectual Property.

(a) DebtBook IP. As between Customer and DebtBook, DebtBook owns all right, title, and interest, including all intellectual property rights, in and to the DebtBook IP.

(b) Customer Data. As between Customer and DebtBook, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to DebtBook a non-exclusive, royalty-free, worldwide license to reproduce, distribute, sublicense, modify, prepare derivative works based on, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary or appropriate for DebtBook to provide the Services to Customer.

(c) Effect of Termination. Without limiting either party's obligations under Section 5 of the Agreement, DebtBook, at no further charge to Customer, will (1) provide Customer with temporary access to the Application Services for up to 60 days after the termination of the Agreement to permit Customer to retrieve its Customer Data in a commercially transferrable format and (2) use commercially reasonable efforts to assist Customer, at Customer's request, with such retrieval. After such period, DebtBook may destroy any Customer Data in accordance with DebtBook's data retention policies.

7. Limited Warranties.

(a) Functionality & Service Levels. During the Term, the Application Services will operate in a manner consistent with general industry standards reasonably applicable to the provision of the Application Services and will conform in all material respects to the Documentation and service levels set forth in the SLA when accessed and used in accordance with the Documentation. Except as expressly stated in the SLA, DebtBook does not make any representation, warranty, or guarantee regarding availability of the Application Services, and the remedies set forth in the SLA are Customer's sole remedies and DebtBook's sole liability under the limited warranty set forth in this paragraph.

(b) Security. DebtBook has implemented Appropriate Security Measures and has made commercially reasonable efforts to ensure its licensors and hosting providers, as the case may be, have implemented Appropriate Security Measures intended to protect Customer Data.

(c) EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, DEBTBOOK IP IS PROVIDED "AS IS," AND DEBTBOOK HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. DEBTBOOK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION, DEBTBOOK MAKES NO WARRANTY OF ANY KIND THAT THE DEBTBOOK IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

(d) DebtBook exercises no control over the flow of information to or from the Application Service, DebtBook's network, or other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt connections to the Internet. Although DebtBook will use commercially reasonable efforts to take all actions DebtBook deems appropriate to remedy and avoid such events, DebtBook cannot guarantee that such events will not occur. ACCORDINGLY, DEBTBOOK DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATING TO ALL SUCH EVENTS, AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, ANY OTHER ACTIONS OR INACTIONS CAUSED BY OR UNDER THE CONTROL OF A THIRD PARTY.

8. Indemnification.

(a) DebtBook Indemnification.

(i) DebtBook will indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) (collectively, "**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Application Services, or any use of the Application Services in accordance with the Agreement, infringes or

misappropriates such third party's US patents, copyrights, or trade secrets, provided that Customer promptly notifies DebtBook in writing of the Third-Party Claim, reasonably cooperates with DebtBook in the defense of the Third-Party Claim, and allows DebtBook sole authority to control the defense and settlement of the Third-Party Claim.

(ii) If such a claim is made or appears possible, Customer agrees to permit DebtBook, at DebtBook's sole expense and discretion, to (A) modify or replace the DebtBook IP, or component or part of the DebtBook IP, to make it non-infringing, or (B) obtain the right for Customer to continue use. If DebtBook determines that neither alternative is reasonably available, DebtBook may terminate the Agreement in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer, so long as, in each case, DebtBook promptly refunds or credits to Customer all amounts Customer paid with respect to the DebtBook IP that Customer cannot reasonably use as intended under the Agreement.

(iii) DebtBook's indemnification obligation under this Section will not apply to the extent that the alleged infringement arises from Customer's use of the Application Services in combination with data, software, hardware, equipment, or technology not provided or authorized in writing by DebtBook or modifications to the Application Services not made by DebtBook.

(b) Sole Remedy. SECTION 8(a) SETS FORTH CUSTOMER'S SOLE REMEDIES AND DEBTBOOK'S SOLE LIABILITY FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. IN NO EVENT WILL DEBTBOOK'S LIABILITY UNDER SECTION 8(a) EXCEED \$1,000,000.

(c) Customer Indemnification. Customer will indemnify, hold harmless, and, at DebtBook's option, defend DebtBook from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with the Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Customer's or any Authorized User's negligence or willful misconduct or use of the Services in a manner not authorized by the Agreement. DEBTBOOK EXPRESSLY AGREES THAT THIS PROVISION WILL NOT APPLY TO ANY CUSTOMER THAT IS A GOVERNMENT ENTITY TO THE EXTENT SUCH INDEMNIFICATION OBLIGATIONS ARE PROHIBITED UNDER APPLICABLE LAW.

9. Limitations of Liability. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS SECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS SECTION, IN NO EVENT WILL THE AGGREGATE LIABILITY OF DEBTBOOK ARISING OUT OF OR RELATED TO THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO DEBTBOOK UNDER THE AGREEMENT IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION DO NOT APPLY TO CLAIMS PURSUANT TO SECTION 8.

10. Term and Termination.

(a) Term. Except as the parties may otherwise agree in the Customer Terms, or unless terminated earlier in accordance with the Agreement:

(i) the Agreement will automatically renew for successive 12-month Renewal Terms unless either party gives the other party written notice of non-renewal at least 30 days before the expiration of the then-current term; and

(ii) each Renewal Term will be subject to the same terms and conditions established under the Agreement, with any Fees determined in accordance with DebtBook's then-current pricing schedule, as provided to Customer at least 60 days before the expiration of the then-current term.

(b) Termination. In addition to any other express termination right set forth in the Customer Terms:

(i) DebtBook may terminate the Agreement immediately if Customer breaches any of its obligations under Section 2 or Section 5;

- (ii) Customer may terminate the Agreement in accordance with the SLA;
  - (iii) either party may terminate the Agreement, effective on written notice to the other party, if the other party materially breaches the Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach;
  - (iv) if Customer is a Government Entity and sufficient funds are not appropriated to pay for the Application Services, then Customer may terminate the Agreement at any time without penalty following 30 days prior written notice to DebtBook; or
  - (v) either party may, to the extent permitted by law, terminate the Agreement, effective immediately on written notice to the other party, if the other party becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law.
- (c) Survival. Only this Section and Section 1 (Definitions), Sections 4 through 6 (Fees; Confidential Information; Intellectual Property), Section 7(c) (Disclaimer of Warranties), and Sections 8, 9 and 12 (Indemnification; Limitations of Liability; Miscellaneous) will survive any termination or expiration of the Agreement.

11. Independent Contractor. The parties to the Agreement are independent contractors. The Agreement does not create a joint venture or partnership between the parties, and neither party is, by virtue of the Agreement, authorized as an agent, employee, or representative of the other party.

12. Miscellaneous.

(a) Governing Law; Submission to Jurisdiction. The Agreement will be governed by and construed in accordance with the laws of the Governing State, without regard to any choice or conflict of law provisions, and any claim arising out of the Agreement may be brought in the state or federal courts located in the Governing State. Each party irrevocably submits to the jurisdiction of such courts in any such suit, action, or proceeding.

(b) Entire Agreement; Order of Precedence. The Order Form, the Customer Terms, the Terms & Conditions, and the Incorporated Documents constitute the complete Agreement between the parties and supersede any prior discussion or representations regarding Customer's purchase and use of the Services.

To the extent any conflict exists between the terms of the Agreement, the documents will govern in the following order or precedence: (1) the Customer Terms, (2) Order Form, (3) the Terms & Conditions, and (4) the Incorporated Documents. No other purchasing order or similar instrument issued by either party in connection with the Services will have any effect on the Agreement or bind the other party in any way.

(c) Amendment; Waiver. No amendment to the Order Form, the Terms & Conditions, or the Customer Terms will be effective unless it is in writing and signed by an authorized representative of each party. DebtBook may update the Incorporated Documents from time-to-time following notice to Customer so long as such updates are generally applicable to all users of the Services. No waiver by any party of any of the provisions of the Agreement will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, delay in exercising, or any partial exercise of any rights, remedy, power, or privilege arising from the Agreement will in any way waive or otherwise limit the future exercise of any right, remedy, power, or privilege available under the Agreement.

(d) Notices. All notices, requests, consents, claims, demands, and waivers under the Agreement (each, a "Notice") must be in writing and addressed to the recipients and addresses set forth for each party on the Order Form (or to such other address as DebtBook or Customer may designate from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid).

(e) Force Majeure. In no event will either party be liable to the other party, or be deemed to have breached the Agreement, for any failure or delay in performing its obligations under the Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including acts of God, flood, fire, earthquake, pandemic, epidemic, problems with the Internet, shortages in materials, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages



or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(f) Severability. If any provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(g) Assignment. Either party may assign its rights or delegate its obligations, in whole or in part, on 30 days prior written notice to the other party, to an affiliate or an entity that acquires all or substantially all of the business or assets of such party, whether by merger, reorganization, acquisition, sale, or otherwise. Except as stated in this paragraph, neither party may assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld, conditioned, or delayed. The Agreement is binding on and inures to the benefit of the parties and their permitted successors and assigns.

(h) Marketing. Neither party may issue press releases related to the Agreement without the other party's prior written consent. Unless otherwise provided in the Customer Terms, either party may include the name and logo of the other party in lists of customers or vendors.

(i) State-Specific Certifications & Agreements. If Customer is a Government Entity and to the extent required under the laws of the Governing State, DebtBook hereby certifies and agrees as follows:

(i) DebtBook has not been designated by any applicable government authority or body as a company engaged in the boycott of Israel under the laws of the Governing State;

(ii) DebtBook is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Agreement by any governmental department or agency of the Governing State;

(iii) DebtBook will not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state, or local law;

(iv) DebtBook will verify the work authorization of its employees using the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security and, if applicable, will require its subcontractors to do the same; and

(v) Nothing in the Agreement is intended to act as a waiver of immunities that Customer has as a matter of law as a Government Entity under the laws of the Governing State, including but not limited to sovereign or governmental immunity, public officers or official immunity or qualified immunity, to the extent Customer is entitled to such immunities.

(j) Execution. Any document executed and delivered in connection with the Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. To the extent permitted by applicable law, electronic signatures may be used for the purpose of executing the Order Form by email or other electronic means. Any document delivered electronically and accepted is deemed to be "in writing" to the same extent and with the same effect as if the document had been signed manually.