

PART SEVEN - BUSINESS REGULATION CODE

Chapter 710	Advertising
Chapter 720	Coin-Operated Devices
Chapter 730	Community Antenna Television Systems
Chapter 734	Consumer Transactions
Chapter 736	Discontinuing Business Sales
Chapter 740	Fortunetelling
Chapter 750	Peddlers, Canvassers and Solicitors
Chapter 756	Secondhand Dealers
Chapter 760	Taxicabs
Chapter 770	Late Night Sales and Establishments
Chapter 780	Tow Trucks

CHAPTER 710: ADVERTISING

Section

- 710.01 Eyeglass advertising
- 710.02 Price advertisements

- 710.99 Penalty

§ 710.99 PENALTY.

Whoever violates any of the provisions of this chapter shall be fined not more than \$50. Any such violation shall constitute a separate offense on each successive day continued.
(70 Code, § 710.99) (Ord. 7085, passed 10-8-62)

§ 710.01 EYEGLASS ADVERTISING.

No person or any agent or employee thereof, engaged in or connected with the sale of eyeglasses, ophthalmic lenses, eyeglass frames or mountings, shall include in any advertisement by newspaper, radio, television, display or otherwise, any statement which in any manner misrepresents any such frames, mountings or other material, prices for the same or services or credit terms.

(70 Code, § 710.01) (Ord. 5736, passed 5-10-54)

§ 710.02 PRICE ADVERTISEMENTS.

No person or any agent or employee thereof, engaged in or connected with the sale of eyeglasses, ophthalmic lenses, eyeglass frames or mountings, shall include in any advertisement by newspaper, radio, television, display or otherwise, any statement advertising the price of lenses, or of complete eyeglasses, including lenses, either with or without professional services, or credit terms, installment payments, price plans, or the price of any frames or mountings, unless in conjunction therewith the words "without lenses" appear in such a manner as to be clearly discernible, or read in such a manner as to be clearly understood.

(70 Code, § 710.02) (Ord. 5736, passed 5-10-54)

CHAPTER 720: COIN-OPERATED DEVICES

Section

- 720.01 Definitions
- 720.02 Compliance with chapter
- 720.03 License required
- 720.04 Application
- 720.05 Denial or revocation; hearing and appeal
- 720.06 Removal of devices after revocation
- 720.07 Duration of licenses
- 720.08 Annual fees
- 720.09 Issuance and posting
- 720.10 Method of giving notice

- 720.99 Penalty

OPERATOR. Any person who contracts or permits any coin-operated mechanical amusement device to be installed, used and operated within the municipality irrespective of ownership.

OWNER. Any person which owns or has legal title to any coin-operated mechanical amusement device.

PERSON. Any person or entity, partnership, firm, corporation, association, organization, fellowship, institution, or foundation. ('70 Code, § 720.01) (Am. Ord. 1992-33, passed 5-26-92)

§ 720.01 DEFINITIONS.

For the purpose of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this section:

COIN-OPERATED MECHANICAL AMUSEMENT DEVICE. A machine which, upon the insertion of a coin or slug, begins to operate or which may be operated for use as a game, contest or amusement of any description, or which shall allow the playing of a game or shall cause the playing of music (e.g., pinball, video game, jukebox, pool table, and the like); provided, that nothing contained in this section shall be deemed as allowing the use or licensing of gambling devices, and that this definition shall not be deemed to be exclusive.

DEVICE. All coin-operated mechanical amusement devices.

DISTRIBUTOR. Any person which sells, leases, rents, or otherwise distributes coin-operated mechanical amusement devices within the municipality.

§ 720.02 COMPLIANCE WITH CHAPTER.

No person shall keep, maintain, permit or allow any licensed device for amusement or music-playing purpose in or upon their premises except as provided in this chapter. No person, owning or operating a device within the municipality, shall violate or fail to comply with the requirements of this chapter. ('70 Code, § 720.03) (Am. Ord. 1992-33, passed 5-26-92) Penalty, see § 720.99

§ 720.03 LICENSE REQUIRED.

(A) *Device License.* No owner or operator shall install or permit the use of any device, as defined by § 720.01 and no person shall display or offer for use such a device, without first obtaining a license for such device as provided by this chapter.

(B) *Owner/Distributor License.* No owner who owns more than two devices nor any distributor shall display, sell, lease, rent, or otherwise distribute any device within the municipality, without first obtaining

an owner/distributor license as provided by this chapter.

('70 Code, § 720.04) (Am. Ord. 1992-33, passed 5-26-92) Penalty, see § 720.99

§ 720.04 APPLICATION.

(A) *Device Application.* No license for a device shall be issued by the City Auditor until an application for a license has been made and approved by the City Auditor.

(B) *Owner/Distributor Application.* An application is required by any owner who owns more than two coin-operated mechanical amusement devices and by all distributors. This application is in addition to the device application.

(C) The above applications shall be furnished by the City Auditor and shall require the giving of information deemed necessary by the City Auditor. Such information as may be required shall be limited to a questionnaire designed and prescribed by the City Auditor for the best interests of the municipality.

('70 Code, § 720.05) (Am. Ord. 1992-33, passed 5-26-92) Penalty, see § 720.99

§ 720.05 DENIAL OR REVOCATION; HEARING AND APPEAL.

(A) The City Auditor may refuse or revoke a device or owner/distributor license for any of the following reasons: the device is determined to be objectionable for the use in the municipality; failure or refusal to abide by the regulations set forth by the City Auditor; failure or refusal to abide by the requirements of this chapter; operator, owner, or distributor has been convicted of a felony or a crime involving moral turpitude within five years next preceding the date of the application.

(B) The City Auditor may require a meeting with the licensing applicant to determine the propriety of issuing, renewing, or revoking any license. In the event that the City Auditor shall revoke or refuse to issue any license, then the person holding or applying for a license shall, within 30 days, have the right to appeal to Council. Council, by a majority vote

thereof, shall approve or disapprove of the City Auditor's findings. In the event that the City Auditor's finding is disapproved, the Council shall order a license to be issued or renewed forthwith.

('70 Code, § 720.06) (Am. Ord. 1992-33, passed 5-26-92)

Cross-reference:

Gambling devices, see § 630.10

Use of counterfeit coins or slugs, see § 642.16

§ 720.06 REMOVAL OF DEVICES AFTER REVOCATION.

In the event any license is revoked as provided by § 720.05, the fee paid to the municipality as required by § 720.08 shall be retained by the municipality. The machines involved shall be removed by the owner/distributor within three days after notice is given by registered mail. In the event the machines are not removed within the three-day period, they shall be removed by the Division of Police, held for the owner/distributor, and released upon payment of the cost of removal, storage, and any accrued penalties.

('70 Code, § 720.07) (Am. Ord. 1992-33, passed 5-26-92) Penalty, see § 720.99

§ 720.07 DURATION OF LICENSES.

All licenses required by this chapter shall be obtained for one year beginning January 1st and ending December 31st of the same calendar year. License issued during the year are valid through December 31st of that calendar year.

('70 Code, § 720.08) (Am. Ord. 1992-33, passed 5-26-92)

§ 720.08 ANNUAL FEES.

(A) *Device Fee.* The fee to be paid by the owner or distributor for each device license, granted under the provisions of this chapter, shall be \$10 per device per year.

(B) *Owner/Distributor Fee.* The fee to be paid by any owner who owns more than two devices and by all distributors for an owner/distributor's license,

granted under the provisions of this chapter, shall be \$100 per year. This fee is in addition to the device license fee.

('70 Code, § 720.09) (Am. Ord. 1992-33, passed 5-26-92)

§ 720.09 ISSUANCE AND POSTING.

The City Auditor shall deliver to each applicant who meets the requirements for issuance a device license which shall be posted in a conspicuous place where the device is located.

('70 Code, § 720.10) (Am. Ord. 1992-33, passed 5-26-92)

§ 720.10 METHOD OF GIVING NOTICE.

Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended, in a postpaid envelope addressed to such person at the address given on the last application filed pursuant to the provisions of this chapter. If no application was filed, then notice may be mailed to such address as may be obtainable. The mailing of such notice shall be prima-facie evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing such notice.

('70 Code, § 720.27) (Am. Ord. 1992-33, passed 5-26-92)

§ 720.99 PENALTY.

Whoever violates any of the provisions of this chapter shall be guilty of a misdemeanor of the fourth degree carrying a maximum penalty of 30 days imprisonment or a fine of \$250 or both. A separate offense shall be deemed committed each day during on which a violation occurs or continues.

('70 Code, § 720.99) (Am. Ord. 1992-33, passed 5-26-92)

CHAPTER 730: COMMUNITY ANTENNA TELEVISION SYSTEMS

Section

730.01	Statement of Intent and Purpose
730.02	Definitions
730.03	Grant of Authority and Franchise Conditions
730.04	Indemnity and Insurance
730.05	Rates
730.06	Construction of the Cable System
730.07	System Design and Performance Requirements
730.08	Operation and Maintenance of System
730.09	Services to the City
730.10	Limits on Grantee Recourse
730.11	Compliance with State and Federal Law
730.12	Books and Records
730.13	Rights reserved to the City
730.14	Waiver
730.15	Service of Notice
730.16	Special Provisions

§ 730.01 STATEMENT OF INTENT AND PURPOSE.

Grantor desires to have a Cable System of advanced quality and at a reasonable costs available to those citizens who desire to subscribe to same.

§ 730.02 DEFINITIONS

The words shall and will are mandatory and may is permissive. Words not defined shall be given their common and ordinary meaning:

2.1 **BASIC SERVICE TIER** - means a service tier which includes the retransmission of local television broadcast signals as required by the FCC to all locations in the City including but not limited to existing local channels so long as those channels continue to operate and retransmission of those channels is required by the FCC.

2.2 **CABLE ACT** – means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and

Act of 1996 and any amendments thereto.

2.3 **CABLE SERVICE** – shall mean: (a) the one-way transmission of video programming or other programming service; (b) subscriber interaction, if any, which is required the selection or use of such video or other programming service

2.4 **CABLE SYSTEM OR SYSTEM** – shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community.

2.5 **CITY** – shall mean the City of Marion, Ohio

2.6 **CITY COUNCIL** – shall mean the Council of Marion, Ohio which is the principle legislative body of the City, or any successor in interest.

2.7 **DAY** – shall mean “calendar” day unless otherwise specified.

2.8 **FEDERAL COMMUNICATIONS COMMISSION** or **FCC** – shall mean that agency as presently constituted by the Communications Act of 1034 as amended and includes any successor or additional Federal governmental body with authority superior to the City with regard to the regulation of any activity authorized by this agreement.

2.9 **FRANCHISE** – shall mean the non-exclusive right and privilege to construct, operate, and maintain a Cable System and related Cable system equipment in the public right-of-way of the City for the purpose of providing Cable Service as provided for in this Agreement subject to the conditions and restriction as hereinafter provided. This Franchise is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the City, as may be required by other generally applicable ordinances of the City.

2.10 **FRANCHISE AREA** – shall mean all areas within the municipal boundaries of the City which exist at any time present or future.

2.11 **GROSS REVENUES** – Gross Revenues shall mean all amounts received by the Grantee, in whatever form and from all sources, derived from the provision of video programming services over Grantee’s Cable System within the City. Gross Revenues shall include, without limitation, amounts received from Subscribers for all video programming services, including premium service, pay-per-view service, basic service, expanded basic service, converter equipment rentals, installations, late fees, reconnection fees, home shopping networks and advertising revenue less agency fees, or any future products and services deemed a cable service pursuant to federal law.

Notwithstanding the above and in accordance with generally accepted accounting practices, “Gross Revenues” shall not include:

- a) revenues from any affiliated entity to the extent that such revenues have also been reported as revenues by Grantee;
- b) Franchise Fees or other governmental assessments including but not limited to sales and/or taxes collected by the Grantee;
- c) revenues from the sale of goods and merchandise to the extent that Grantee does not retain the revenue collected;
- d) revenues from capital contributions paid by third parties to extend Cable System so as to serve such commercial location and revenues collected from Subscribers as capital contributions in order to meet identifiable cable related needs of the City; also known as aid to construction;
- e) any amounts documented as bad debt or refunds to Subscribers; and
- f) any copyright Fees.

2.12 **PUBLIC RIGHT-OF-WAY OR STREET** – shall mean the surface of, as well as the space above and below, any public street, road, highway, lane path, way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement, or any extension thereof now or hereafter held by the City (including but not limited to street highway, sidewalk, lighting, drainage, utility or cable television easements, and all public ways and

places contiguous thereto.) The Grantee is entitled to use the Public Right-of-way for the purpose of installing or transmitting cable transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinary necessary and pertinent to a Cable System so long as compliant with other applicable sections of Marion City Code, including but not limited to regulations as to cuts and repairs. In granting the Franchise, the City grants only such rights as it possesses.

2.13 **SUBSCRIBER** – means any person, company, corporation, or entity lawfully receiving a cable service whether or not a fee is paid for such service.

§ 730.03 GRANT OF AUTHORITY AND FRANCHISE CONDITIONS

3.01 Grant - There is hereby granted by the City, for a period of fifteen (15) years from and after the effective date of this Agreement (the Term) the non-exclusive right to construct, use, operate, own, modify and maintain such towers, antennae, cables, electronic equipment, and other appurtenances necessary for the operation of a Cable system and the provision of all lawful communications services subject to applicable federal law, state law and local generally applicable ordinances. The effective date of this Agreement will be immediately following acceptance by the Grantee as indicated by the signature of its’ Vice-President of the Central Region.

The Franchise shall continue until it expires, fifteen years from the effective date. The Grantee may renew this Franchise for an additional term of five (5) years by providing Council a written request no less than six (6) months prior to the aforementioned expiration date and Council’s action to accept the five year extension. Renewals shall otherwise be governed by applicable law.

3.02 Franchise Condition – Grantee and City agree that Franchise renewal shall be in accordance with applicable State and Federal Laws, including but not limited to the Cable Communications Policy Act of 1984 and any amendments thereto.

Further, Grantor agrees any additional franchises to any other entity providing video or other services similar to those herein shall require a similar service area and terms and conditions not inconsistent with those herein.

3.03 Franchise Fee – The Grantee shall pay to the City the Franchise Fee of Three Percent (3%) of the Annual Gross Revenue as defined herein, derived from the operation of the Cable System within the Franchise Area for each calendar year. The City may at any time, on its own initiative, refrain from collecting a Franchise Fee from the Grantee or reduce the amount of the Franchise Fee it collects from the Grantee. The amount of the Franchise Fee can be increased up to the maximum allowed by law. The Grantee agrees to implement a change in said Franchise Fee within ninety (90) days after of notification. A copy of Council’s action must accompany notification.

The Grantee shall pay Franchise Fees to the City on a quarterly basis. All Franchise Fee payments shall be delivered to the City sixty (60) days of the close of each quarter. The City may assess a late fee to the Grantee at a rate equal to the current monthly prime rate for any payments due, but not rendered within sixty (60) days after the close of each quarter. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this Agreement.

3.04 Amendment of Franchise Agreement - In addition to such amendments as are provided for in Federal Law and other generally applicable law, it is the intent of the parties that this Agreement may be amended from time to time. Each party agrees to bargain in good faith with the other party upon the initiation of any such proposed amendment. No amendment shall be valid unless signed by both parties.

3.05 Franchise Revocation Procedures Whenever Grantee shall willfully fail, refuse or neglect to construct, operate, or maintain its cable television system in accordance with the conditions of this Franchise, the City will notify the Grantee in writing setting forth the nature and facts of such alleged non-compliance which they believe has

occurred. If within thirty (30) days following such written notification by the City, the Grantee has not furnished proof that corrective action has been taken and is being actively expeditiously pursued, or evidence that the alleged violations did not occur the City may place a request for termination of the Franchise on the agenda for the next regular Council meeting.

If the City determines that such non-compliance was without just cause, then the City may adopt an Ordinance after thirty days (30) notice to Grantee and hold a public hearing and if the City determines at said hearing that grantee has failed to comply and has not taken appropriate steps to remedy the non-compliance within a reasonable time, the City may instruct the Grantee to promptly remove from the public right of way all of its cable television system facilities within ninety (90) days from the date the Grantee receives a written copy of the City’s findings, unless there is compliance by the grantee within such period as the City may fix.

In the event that Grantee fails to remove said facilities within one hundred eighty (180) days of the lawful termination of a Franchise, the City may remove said facilities and require the Grantee to reimburse it for the expenses thereof within sixty (60) days of the receipt of copies of all invoices for said removal.

In addition to all other rights reserved to the City by virtue of this Agreement or otherwise, the City may invoke rights as defined above in the event:

- (a) The Grantee becomes insolvent and is unable or unwilling to pay its debts, or
- (b) The Grantee is adjudged bankrupt and is unable or unwilling to abide by the terms of this agreement, or
- (c) The Grantee knowingly attempts to or does practice any fraud or deceit upon City or its Subscribers.

Marion - Business Regulation Code

No revocation or termination shall be effective unless the Council, at any meeting, special or otherwise, at which all interested parties have been heard, and upon 30 day written notice shall have adopted an Ordinance setting forth the reasons for the termination. Neither party shall waive its rights under applicable law.

3.06 Sale or Transfer of Franchise – This Franchise shall be sold, assigned, or transferred only in accordance with this section:

(a) In the event of a change of control of Grantee (change of control shall mean a change in ownership of a majority interests in voting stocks), the parties to the sale or transfer shall make a written request to City for its approval of sale or transfer. The written request shall be accompanied by information required by FCC rules and shall be presented on a form as prescribed by FCC rules.

(b) In accordance with the Cable Act, the City shall have one hundred twenty (120) days from the receipt of the information referred to above to act upon the request for approval. If the City fails to render a final decision on the request within 120 days the request shall be deemed granted unless Grantee and the City agree to extend the time period.

(c) During the 120 days, the City may advise Grantee that a public hearing is deemed necessary to evaluate the effect of the sale or transfer. In that event, Grantee shall receive written notice of the hearing, and of the opportunity to participate fully in it, as far in advance as possible, and in no event less than thirty (30) days before the start of the hearing.

(d) The City's decision upon a request pursuant to this Section shall be in writing and subject to review and appeal as provided for by the Cable Act.

(d) In reviewing a request for sale or transfer, the City may inquire into the technical, legal, and financial qualifications of the prospective Franchisee and Grantee shall assist the City in so inquiring. The City shall not unreasonably withhold its approval. In no event shall a transfer or assignment of ownership or

control be approved without the transferee or assignee assuming in writing the obligations of the Grantee under this Agreement.

(f) Notwithstanding anything to the contrary, no consent or approval by City shall be required for a transfer or assignment to any person or entity controlling, controlled by, or under common control with Grantee, or for any sale, transfer, or assignment other than a transfer requiring approval;

(g) the consent of the City to any sale, transfer, lease, trust, or mortgage shall not constitute a waiver or release of any rights of the City.

(h) This Franchise shall be binding on successors, assigns, and transferees. Grantee agrees that this franchise will not be sold, assigned or transferred, nor will there be a change in control of the franchise without the prior written consent of the Grantor, which consent shall not be unreasonably withheld. However, no consent will be required for a transfer in trust, mortgage or other hypothecation to secure indebtedness.

Notwithstanding any provision in the Franchise requiring the consent of Grantor to assign or transfer such franchise, Grantee shall have the right to assign or transfer any such Franchise, or control thereof, without the consent of Grantor pursuant to:

- (1) the terms of a plan of reorganization in the Bankruptcy Cases; or
- (2) a sale of assets of Grantee pursuant to Section 363 of the Bankruptcy Code so long as the franchise is not in default and only in accordance with and subject to the provisions of Section 365 of the Bankruptcy Code.

(i) The City of Marion approves and consents to the transaction to transfer this Franchise from Grantee to an affiliate of Time Warner as described in Transfer Resolution attached as **Exhibit A** and incorporated by reference herein. Upon the request of Grantee, the Franchising Authority will provide an originally executed copy of the Transfer Resolution to the Grantee.

§ 730.04 INDEMNITY & INSURANCE

4.01 Indemnity – The Grantee agrees to indemnify the City, its officers, Council, commission, agent, and employees from any and all claims by any person or person whatsoever:

(a) on account of injury to or death of a person or person occasioned by the negligent acts of the Grantee under the Franchise,

(b) for property damage occasioned by the negligent acts of the Grantee under the Franchise.

The City and Grantee agree to abide by Section 635A of the Cable Act.

(a) The Grantee, by its acceptance of this Franchise, specifically agrees that it shall indemnify and save harmless the City from, and shall pay all damages, losses, costs, charges and penalties which the City may legally be required to pay as a result of Grantee's operation of its cable television system in the City's community. These damages, losses, costs, charges and penalties shall include, but shall not be limited to, damage, installation, operation or maintenance of the cable system authorized herein. However, nothing herein contained shall be construed to relieve City from any and all liability due to its own negligence.

Each party shall give the other prompt written notice of any claim, demand, action, or proceeding for which indemnification will be sought under this provision of the Agreement and, if such claim, demand, or action is a third-party claim, demand, action or proceeding, Grantee shall have the right at its expense to assume the defense of such claim, demand, action, or proceedings, using counsel reasonably acceptable to City.

4.02 Insurance – The Grantee shall obtain and shall keep in force and effect during the Term of this Agreement and any renewal or extension thereof, liability insurance providing the following minimum coverage: Commercial general liability insurance in the amount of Two Million and 00/100 Dollars (\$ 2,000,000.00) per occurrence and aggregate covering bodily injury, including death

and property damage. Grantee shall name as an additional insured on any such policy the City, its officers, board, commission, elected and appointed official, agents and employees.

Grantee shall maintain in force, during the Term of this Agreement and any renewal or extension thereof Workers' Compensation Insurance, covering its obligations under the Workers' Compensation Statue and provide an insurance certificate upon request.

The insurance company issuing such policies shall carry a financial rating of not less than "A-" in the latest edition of Best Key Rating Guide, published by A.M. Best or its successor in interest, and shall be licensed to do business in the State of Ohio. Such policy or policies shall be maintained for such other period of time during which the Franchise operates or is engage in the removal of the system. Each liability insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be state until thirty (30) days written notice to the City of Marion has been served upon the Clerk of Council."

Upon written request by the City, the Grantee shall obtain and furnish to the City a Certificate of Insurance evidencing replacement insurance polices.

In the event the Grantee fails to provide proof of insurance coverage, City may procure the insurance coverage required and bill the Grantee for any costs associated with procuring insurance including but not limited to the insurance premiums.

§ 730.05 RATES

Installation charges, monthly service rates, and any other rates charged by Grantee to its Subscribers shall not be regulated under this Franchise. To the extent now or subsequently allowed by Federal law or regulation, the City reserves the right to regulate any rates so allowed.

However, irrespective of the above and applicable law, Grantee voluntarily consents and agrees to provide the Council and customers with thirty (30) days written notice of any change to charges, fees or rates, irregardless of tier.

§ 730.06 CONSTRUCTION OF THE CABLE SYSTEM

6.01 The parties acknowledge the System has been upgraded to an 860 MHZ system.

6.02 Grantee shall establish, construct, operate, and maintain the Cable System in strict compliance with all generally applicable laws, ordinances, rules and regulations of the City and any other governmental body having jurisdiction, provided that same is not in conflict with the Cable Act. Further equipment shall be durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code. Any antenna or tower shall be maintained and comply with all Federal and applicable local laws, regulations and codes.

6.03 Grantee shall utilize poles, conduits, and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property until written approval of the City is obtained which approval shall not be unreasonably withheld or delayed.

6.04 In the case of disturbance or any street, sidewalk, alley, public way, or paved area, the Grantee shall at it own expense and cost, in the manner approved by the City Engineer, replace and restore said street, sidewalk, alley, public way, or paved area to the reasonable satisfaction of the City Engineer.

6.05 If, at any time during the period of this Agreement, the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, conduits, and other fixtures at its own expense.

6.06 The Grantee shall, upon request, temporarily remove, raise or lower its wires to

permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be at the expense of the person moving the structure. The Grantee shall require fourteen (14) business days notice to arrange for such wire changes and may require advance payment.

6.07 The Grantee shall have the authority and responsibility within the generally applicable guidelines of City, to trim trees upon and overhanging streets, alleys, sidewalks, and public ways within the City, in order to prevent branches from coming in contact with wires of the Grantee. Prior to proceeding with any trimming, the Grantee shall provide written notice of the time and location to the City Engineer, unless an emergency demands otherwise. All trimmings shall be at the sole cost of the Grantee.

6.08 INTENTIONALLY LEFT BLANK

6.09 The City shall have the right to inspect the construction, operation, and maintenance of the Cable System upon reasonable notice to Grantee.

6.10 Whenever all electrical and telephone utilities are located underground, either at the time of initial construction or subsequently the Cable system shall also be located underground at Grantee's expense. If the facilities of either the electric or telephone utility are aerial, the Cable System maybe located underground at the request of the property owner provided that the excess cost over aerial locations shall be borne by the property owner making the request. In the event that any telephone, electric or other utility or entity is reimbursed for expenses incurred with the undergrounding of their facilities, Grantee shall be entitled to share in such reimbursement.

6.11 Grantee shall be required to extend the Cable System and offer the services of the Cable System to all potential Subscribers within the corporate limits of the City. Grantee shall extend its Cable System to newly annexed territory, within six (6) months of the date the development reaches the density requirement of at least thirty (30) home per cable mile.

6.12 Grantee shall keep accurate, complete and current maps and records of the Cable System and facilities, in terms of location, type, and number, to be updated periodically as warranted. Grantee shall furnish upon request maps indicating the locations of the Grantee's services over the public rights of way.

6.13 Any contractor proposed for work on installation, maintenance, or repair of the Cable System must be experienced in underground conduit and cable construction, or any other capacity for which retained. Upon request of City, Grantee shall supply a contractor's qualifications.

§ 730.07 SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS

7.01 In furtherance of Grantee's general policy that the services provided be innovative and modern the Grantee will actively pursue a continuous policy of incorporating new technical developments into the Cable System by identifying and responding to changing community interests and desires where economically and technically feasible. The parties include this provision in this Agreement to maintain City's place as a leader using innovative and new communications technology in providing services to residents, business, and industry where economically and technically feasible.

7.02 The Federal Communications Commission (FCC) Rules and Regulations Part 76 Subpart k (Technical Standards) shall apply as now exist or as amended. Grantee shall operate and maintain its cable television in accordance with § 76.601(c) of the Rules and Regulations of the Federal Communications Commission or any derivative thereof. The quality of the product shall be preserved and degradation of signal to the end user reduced to the best ability of the Grantee consistent with the generally accepted standards within the cable industry.

§ 730.08 OPERATION AND MAINTENANCE OF SYSTEM

8.01 The Grantee shall render efficient service, make repairs promptly, and interrupt service

only for good cause and or the shortest time possible. Such interruptions, in so far as possible, shall be preceded by notice, and shall occur during periods of minimum use of the system.

8.02 The Grantee shall maintain a local office in the City as long as the office remains economically feasible to maintain. The office in Marion may be terminated by Grantee at any time if all the following occurs:

a. Grantee maintains regular records of the traffic to the Marion office and the purpose of such traffic (i.e. payment of bills, return of equipment, orders, scheduling of service calls).

b. No later than ninety (90) days prior to the proposed closing, Grantee reports to the Marion City Council on the feasibility of maintaining the Marion office, taking into account such factors as amount of traffic, functions served and the cost of maintaining the office. The reports shall include the records kept pursuant to paragraph (a) above.

c. The Grantee shall give thirty (30) days notice of its preliminary decision to terminate the Marion office and allow input from the City before making its final decision.

If the Grantee closes its local office during the term of this Agreement under this section, Grantee shall maintain no less than two (2) payment centers within the City at which Marion customers may, at a minimum, make payments. Such payment centers may be at a local business with which Grantee has contracted to accept payments on its behalf.

8.03 Grantee does not now charge for any service call related to its own plant and equipment provided, however, a charge may be made if the service call is the result of repeated misuse of the equipment or cable by the Subscriber. Grantee reserves the right to charge for any service call related to its plan and equipment and agrees to notify City of any change in this policy.

8.04 Grantee shall use its best efforts to clearly identify all personnel, vehicles and other major equipment that are operating under the authority of Grantee.

8.05 Grantee agrees to follow federal rules for all closed-captioned programming and further agrees to be proactive in making commonly used devices available to impaired individuals.

8.06 Grantee shall develop a Subscriber complaint procedure which is consistent with FCC requirements, particularly Section 76.02 Annual Notifications. Grantee shall furnish to each Subscriber a written statement that clearly sets forth the following:

(a) a complete schedule of rates, fees, charges, and terms and conditions of service regarding same:

(b) a complete statement of the Subscriber's right to privacy in conformance with Section 631 of the Cable Communications Policy Act of 1984 as it now exists or is hereafter amended:

(c) information concerning the procedures for making inquiries or complaints:

(d) the address and phone number of the Grantee's office responsible for handling complaints.

Anytime the written statement is modified, Grantee shall provide the revised format to City.

8.07 In the event that full service to any customer is interrupted for a period of twenty-four (24) hours or more and the customer notifies the Grantee, the Grantee shall review the nature and cause of the interruption. Upon notification and request by the customer, Grantee shall adjust customer charges pursuant to FCC Customer Service Standards.

8.08 Grantee shall also fully comply with the FCC Customer Service Standards.

8.09 Grantee shall comply with applicable FCC rules regarding EAS system capabilities and shall cooperate with City on the use

and operation of any emergency alert system.

§ 730.09 SERVICES TO THE CITY

9.01 In order to provide the citizens of the community greater access to local government, Grantee shall continue to provide one (1) Government and Educational access channel to the City of Marion, which is currently being utilized by the Marion City School District. In the event that the existing access channel is programmed with non-repeat, non-character generated programming for five (5) hours per day, six (6) days per week and for a period of four (4) consecutive weeks, Grantee shall provide a second Government and Educational channel for utilization by the City

An Access channel is a channel made available to the City by Grantee for the purpose of cablecasting non-commercial programming City's administration and educational institutions. The Grantor agrees not to use the access channels to provide commercial or revenue-generating services or services that may compete, directly or indirectly, with services provided by Grantee, provided, however, that Grantor may cablecast acknowledgement of funding sources and the underwriting of programming costs. Grantee shall provide the transmission system, composed of a transmitter and receiver, from the Marion City Hall and the Marion City Schools facility to Grantee's principal headend. Grantee agrees to provide the necessary equipment, composed of a transmitter and receiver, and facilities within the Cable System to transmit the access channels to the Subscribers

9.02 For the duration of the Franchise Agreement, Grantee shall furnish without charge, installation of one cable drop for expanded basic cable service to buildings which now house, or may in the future house City of Marion Offices provided that it is located within one hundred twenty-five (125) feet of Grantee's existing distribution plant that is actively delivering service and within the jurisdictional limits of the City. Subject to product availability, Grantee agrees to provide a drop without charge for the downtown music system of City selected music product

Grantee shall provide City a one equipment grant of Seventeen Thousand and Five Hundred Dollars (\$ 17,500.00) to be used for the Government and Educational access channel. The grant shall be paid without demand not later than ninety (90) days after the effective date of this agreement. This grant will be used to purchase hardware/software that will be needed for programming and/or operation of the Government and Educational access channel programs.

§ 730.10 LIMITS ON GRANTEE RECOURSE

10.01 Except as provided herein or in applicable law, the Grantee shall have no recourse against the City for any loss, expenses, or damages resulting from the terms and conditions of this Agreement because of the enforcement thereof, nor the City's failure to have the authority to grant the Franchise. The Grantees expressly agrees that upon its acceptance of this Franchise it does so relying upon its own investigation and understanding of the power and authority of the City to grant said Franchise.

10.02 The Grantee, by accepting this Franchise, acknowledges that it has not been induced to accept same by any promise, verbal or written by or on behalf of the City or by any other third person regarding any term or condition of this Franchise not expressed herein.

§ 730.11 COMPLIANCE WITH STATE AND FEDERAL LAW

11.01 The City and Grantee shall, at all times, comply with State and Federal law.

11.02 The Grantee shall not deny service, deny access or otherwise discriminate against any party on the basis of race, color, religion, national origin, sex or age. Grantee shall comply at all times with all other applicable federal and state laws relating to nondiscrimination.

11.03 The Grantee shall comply with all privacy provisions of the Cable Act, as amended.

§ 730.12 BOOKS AND RECORDS

12.01 Upon written request, the Grantee shall provide City within thirty (30) days a written statement signed by an authorized representative of the company or his/her designee and signed under penalty of perjury by an officer of the Grantee, identifying sources and amounts of revenues received which form the basis of the calculations of the Franchise Fee for the preceding fiscal year.

12.02 Grantee shall keep true and accurate books and records in conformity with generally accepted accounting principles, consistently applied showing all income, expenses and all other transaction relating to the system.

12.03 Upon a thirty (30) day written notice, the City may review the company's books and records for a period not to exceed the previous three (3) years during normal business hours, as is reasonably necessary to monitor compliance with terms herein.

If after completing said review, City has just cause to believe that the Grantee had not reported revenues accurately, the City may, at the City's cost hire an independent Certified Public Accountant to conduct a complete and thorough audit of the books necessary to ascertain the correct basis for Franchise

Fee calculation. If said audit results show that the Grantee has underpaid by greater than 5% to the City than the amount due to the City as a Franchise Fee payment, Grantee shall pay the proper amount due with interest at the prime rate which was in effect on the first day the discrepancy existed.

12.03 Upon written request Grantee shall within thirty (30) days provide City with copies of all petitions, applications, and communications submitted by the Grantee to the FCC, SEC or any other Federal or State regulatory agency having jurisdiction over any matter affecting the Grantee's Cable System operations.

§ 730.13 RIGHTS RESERVED TO THE CITY

13.01 The City hereby expressly reserves the following rights:

(a) to exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the City:

(b) to adopt, in addition to the provisions contained herein, and in any existing applicable Ordinances, such additional regulations as it shall find necessary in the lawful exercise of its police power:

(c) provided, however, that in either instance such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights, herein granted. In the event there is conflict, the terms of this Franchise shall prevail.

§ 730.14 WAIVER

14.01 The failure of the City, at any time, to require performance by Grantee of any term or condition hereof shall in no way affect the right of the City hereafter to enforce same. Nor shall the waiver by the City of any breach of any terms or conditions hereof be taken or held to a waiver of any succeeding breach of such terms and conditions, or as a waiver of any terms or conditions themselves.

§ 730.15 SERVICE OF NOTICE

15.01 All notices required or permitted to be given to either party by the other under any provision herein shall be in writing and shall be deemed served:

(a) when delivered by hand or private carrier or similar service to the individual acknowledged responsible below during normal business hours:

or

(b) when mailed to the designated person below, via certified mail, return receipt requested; and

(c) notice shall be given to:

City

City of Marion
C/O Safety Service Director
233 West Center Street
Marion, Ohio 43302

And

Clerk
Marion City Council
233 West Center Street
Marion, Ohio 43302

Grantee

Adelphia Communications
C/O Legal Department
675 Peter Jefferson Place, Ste. 450
Charlottesville, VA 22911

And

Adelphia Communications
C/O General Manager
111 North 11th Street
Newark, OH 43058

§ 730.16 SPECIAL PROVISIONS

16.01 Any delay, preemption, or the failure to perform caused by factors beyond the parties' reasonable control, such as an act of God, labor dispute, non-delivery by suppliers, war, technical breakdown, or government administration or judicial order or regulation, shall not result in a default of the Agreement. Each party shall exercise its reasonable efforts to cure any such delays and the cause thereof, and performance under the terms of this Agreement shall be excused for the period of time during which such factor continues.

16.02 Whenever this Franchise Agreement sets forth any time for any act to be performed by either of the parties to this Franchise Agreement such time shall be deemed to be of the essence.

16.03 This Franchise Agreement shall be governed, construed and enforced in accordance with generally applicable local ordinances, state, and federal law, rule, regulation, legislation or order.

16.04 Nothing herein shall be deemed to create a joint venture or principal agent relationship between the parties to this Franchise Agreement and neither party to this Franchise Agreement is authorized to, nor shall either party act toward any third persons or the public in any manner which would indicate any such relationship exists.

16.05 This Franchise Agreement and all attachments hereto, represent the entire understanding and agreement between the parties and supersedes any and all understanding and agreements whether written or oral of any kind. This Agreement may only be amended by written agreement, signed by both parties.

16.05 Any additional cable television franchise, permit or license awarded to another cable operator will contain benefits and burdens substantially equivalent to those existing under this Agreement, and will not place the Grantee at a competitive disadvantage.

16.07 If any section, subsection, clause, phrase or portion of this Franchise Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of the Franchise Agreement.

('70 Code, § 730.05) (Ord. 1977-12, passed 2-14-77; Ord. 2005-78, passed 11-28-2005)

[The next page is 25]

CHAPTER 734: CONSUMER TRANSACTIONS

Section

- 734.01 Definitions
- 734.02 Items to display price
- 734.03 Items to display price on shelves or in close proximity
- 734.04 Exemptions

- 734.99 Penalty

§ 734.01 DEFINITIONS.

As used in this chapter, unless otherwise expressly stated:

BULK DISPLAY. Any unpackaged merchandise displayed in an area which exceeds 1,728 cubic inches or one cubic foot.

CONSUMER, CONSUMER TRANSACTION and **SUPPLIER** have the same meanings given in R.C. § 1345.01.

DUMP DISPLAY. Any display of merchandise built by tossing or dumping goods in an irregular fashion.
(70 Code, § 734.01) (Ord. 1977-44, passed 5-23-77)

§ 734.02 ITEMS TO DISPLAY PRICE.

(A) Every item of goods that is offered for sale by a supplier in connection with a consumer transaction shall have conspicuously, clearly and plainly displayed, in arabic numerals on the item of goods, the price at which such item of goods is offered for sale, except for the following situations:

(1) Any product prepackaged in a combination of two or more components need only be priced as a combination and need not be priced individually.

(2) Whenever a scanning device and computer is used to indicate the selling price of the package, provided the individual price of the package is prominently displayed adjacent to it.

(B) No supplier of any item of goods offered for sale in connection with a consumer transaction shall purposely fail to display on such item the price at which such item is offered for sale as required by division (A) of this section.

(C) A retailer may receive authorization to be exempt from the provisions in division (A) from the Safety/Service Director of the municipality and shall not be denied such authorization provided the retailer is in compliance with subsections (1), (2), (3) and (4) of this division (C):

(1) A computer and bar code scanning device are used to both register and display to the consumer the selling price of the item being purchased at the time of checkout.

(2) The price of any item offered for sale must be clearly and distinctly visible and prominently displayed immediately in front of said item so as not to be confused with any other item and in such a way to prevent the displayed price from being moved to another location, perhaps, in front of another item.

(3) The display price must be of a size no less than 1/2-inch high with numerals of bold enough type so as not to appear out proportion to said height.

(4) The displayed prices for items on bottom shelves shall be larger than as indicated in subsection (3) or in some way more highly visible than as indicated in subsection (3) so as to assure easier location and viewing of the displayed price.

(D) Failure to comply with division (C) shall not in any way be construed as an exemption from

compliance with this ordinance or any provisions herein.

('70 Code, § 734.02) (Ord. 1977-44, passed 5-23-77; Am. Ord. 1989-121, passed 12-11-89) Penalty, see § 734.99

shall be fined not more than \$500 or imprisoned not more than 60 days, or both.

('70 Code, § 734.99) (Ord. 1977-44, passed 5-23-77)

§ 734.03 ITEMS TO DISPLAY PRICE ON SHELVES OR IN CLOSE PROXIMITY.

Drive-through suppliers or suppliers who utilize dump displays or bulk displays shall display the price of the item on the shelf or in close proximity to the item that is offered for sale.

('70 Code, § 734.03) (Ord. 1977-44, passed 5-23-77)

§ 734.04 EXEMPTIONS.

Section 734.02 does not apply in the following consumer transactions:

(A) Items that are subject to the packaging or labeling requirements of the Federal Alcohol Administration or to any pricing requirements established by federal law;

(B) Items that are offered for sale through a vending machine;

(C) Items that are sold only by prescription;

(D) Items that are priced for \$.15 or less; or

(E) In any business establishment operated by a supplier who does less than \$250,000 in retail sales per year.

('70 Code, § 734.04) (Ord. 1977-44, passed 5-23-77)

§ 734.99 PENALTY.

Whoever violates any of the provisions of this chapter is guilty of a misdemeanor of the fourth degree and shall be fined not more than \$250 or imprisoned not more than 30 days or both. If the offender has previously been convicted of an offense under this chapter, the violation shall be a misdemeanor of the third degree and the offender

CHAPTER 736: DISCONTINUING BUSINESS SALES

Section

- 736.01 License required
- 736.02 License application
- 736.03 Effective period; renewals; fee; bond
- 736.04 Adding goods prohibited
- 736.05 Investigations; oaths
- 736.06 Advertising; transfers of interest
- 736.07 Exceptions

- 736.99 Penalty

§ 736.01 LICENSE REQUIRED.

No person shall advertise, announce, conduct or hold out by any means or device, including by auction, the sale of goods, wares or merchandise, which sale is caused, or occasioned by the intention of discontinuing business, without first obtaining a license as provided in this chapter.

('70 Code, § 736.01) Penalty, see § 736.99

§ 736.02 LICENSE APPLICATION.

An application for a license required by § 736.01 shall be filed with the Safety/Service Director and shall contain, under oath, the following information:

(A) *Names.* The true names of the owners of the goods, wares or merchandise to be offered for sale and the name of the operator, if he or she is a person other than the true owner, shall be given.

(B) *Inventory.*

(1) A dollar amount of the inventory on hand at the beginning of the sale, at wholesale cost, shall be given.

(2) A dollar amount of the merchandise on

order to be placed in stock on the premises during the pendency of the sale shall be given. However, the licensee may not add any brand of merchandise other than those that were normally handled by him or her prior to the sale.

(3) All articles included in the inventory as provided in this section shall be goods, wares or merchandise purchased by the applicant for resale on a bona fide order without cancellation privileges. Articles purchased on consignment are not permitted to be included in such inventory.

('70 Code, § 736.02)

§ 736.03 EFFECTIVE PERIOD; RENEWALS; FEE; BOND.

(A) Licenses shall be effective for not more than 60 days but may be renewed for two additional periods of 30 days each. An application for renewal must be made at least ten days prior to the end of the period covered by the license or renewal.

(B) No other such license shall be granted to the same person for one year following the expiration of a previous license or renewal under this chapter.

(C) Applicants for a license under this chapter shall pay the Safety/Service Director a license fee of \$25 and shall provide a bond conditioned upon the compliance by the applicant with the terms of the license and the provisions of this chapter, which bond shall be in the amount of \$2,500 or 2% of the value of the inventory reported, whichever is greater.

('70 Code, § 736.03)

§ 736.04 ADDING GOODS PROHIBITED.

No licensee under this chapter shall, during the continuance of such a sale, add any goods, wares or merchandise to the stock described and inventoried in

his or her original application for a license, and no goods, wares or merchandise shall be sold at or during the sale other than those included in inventories in the original application. Each and every addition of goods, wares or merchandise to such stock on the premises, and each sale of such goods, wares or merchandise as have not been included in inventories in such original application, and each false statement of fact in such application, shall constitute a separate offense.

('70 Code, § 736.04) Penalty, see § 736.99

§ 736.05 INVESTIGATIONS; OATHS.

The Safety/Service Director or his or her duly authorized agent shall make or cause to be made such investigations and inquiries throughout the conduct of any sale as he or she may deem advisable to effectuate the purposes of this chapter, and the Director is hereby authorized to administer oaths in connection with the taking of testimony pertaining thereto.

('70 Code, § 736.05)

§ 736.06 ADVERTISING; TRANSFERS OF INTEREST.

(A) If the ownership of the establishment discontinuing business has changed hands in the preceding six months, all signs and advertising relative to the sale shall bear the name of the true owner, but may refer to the former owner or the trade name used by him or her, provided that such reference is subordinated in space and letter size to the name of the true owner.

(B) The name and address of the operation of the sale, if he or she is a person other than the true owner, as well as the fact, if such a circumstance exists, that the operator is the owner of goods being brought in purposely for resale during the course of the sale, must be included in all advertising pertaining to the sale.

(C) The use of any untrue, deceptive or misleading advertising or violation of any requirement of this chapter shall, in addition to any other penalty, be grounds for revocation of the

license for such sale. All signs and other advertising of such sale shall bear the number and date of the license issued under this chapter.

(D) A business establishment owned by a corporation shall be considered to change ownership upon transfer, in one or more transactions, of more than 50% of the shares of such corporation to any one person, partnership, association or other corporation, and such person, partnership, association or other corporation so owning more than 50% of the outstanding shares of a corporation owning such business establishment shall be considered to be the true owner of such business establishment for the purposes of this chapter.

('70 Code, § 736.06)

Cross-reference:

Advertising, see Ch. 710

§ 736.07 EXCEPTIONS.

This chapter shall not apply to sales conducted by sheriffs or other public or court officials, or to any person acting under the direction or authority of any court, state or federal, selling goods, wares and merchandise in the course of his or her official duties.

('70 Code, § 736.07)

§ 736.99 PENALTY.

Whoever violates or fails to comply with any of the provisions of this chapter shall be guilty of a minor misdemeanor and shall be fined not more than \$100 for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

('70 Code, § 736.99)

CHAPTER 740: FORTUNETELLING

Section

- 740.01 License required; fee
- 740.02 Requirements of applicants

- 740.99 Penalty

§ 740.01 LICENSE REQUIRED; FEE.

No person shall practice astrology, fortunetelling, clairvoyancy, palmistry, phrenology or soothsaying, or intend to profess to tell future events, or predict or prophesy future events or happenings in the municipality, without first procuring from the Safety/Service Director a license to do so, for which he/she shall pay \$10 per day while so practicing such profession within the municipality.

('70 Code, § 740.01) (Ord. 5661, passed 10-26-53)

Penalty, see § 740.99

§ 740.02 REQUIREMENTS OF APPLICANTS.

No license shall be issued unless satisfactory proof has been furnished the Safety/Service Director that the applicant has been a bona fide resident of the municipality for 90 days prior to the filing of the application for a license.

('70 Code, § § 740.02) (Ord. 5661, passed 10-26-53)

§ 740.99 PENALTY.

Whoever violates any of the provisions of this chapter shall be fined not more than \$50. Any such violation shall constitute a separate offense on each successive day continued.

('70 Code, § 740.99) (Ord. 7085, passed 10-8-62)

CHAPTER 750: PEDDLERS, CANVASSERS AND SOLICITORS

Section

- 750.01 Definitions
- 750.02 Registration required
- 750.03 Registration application
- 750.04 Registration fee; issuance exception
- 750.05 Registration card; display
- 750.06 Municipality to post signs advising required registration
- 750.07 Registration index
- 750.08 False application; registration revocation
- 750.09 Appeal of registration revocation
- 750.10 Registration transferability
- 750.11 Hours; business on Sunday prohibited
- 750.12 Prohibited Address' Listing
- 750.99 Penalty

communication.

(B) Any person, firm or corporation doing such business within the municipality and any individual soliciting, canvassing or peddling for or on behalf of such person, firm or corporation. This definition shall not apply to a minor under the age of 16 years, nor to the local delivery of newspapers and solicitations for subscriptions for the same, nor to the sale or delivery of food products which are under the jurisdiction of the City Board of Health, nor to services offered by telephone companies, nor to the sale of services or products exclusively to commercial or industrial enterprises.
 ('70 Code, § 750.01) (Ord. 1970-79, passed 4-13-70; Am. Ord. 1970-96, passed 4-27-70)

§ 750.01 DEFINITIONS.

SOLICITOR, CANVASSER or PEDDLER.

Any individual, whether or not a resident of the municipality, traveling either by foot, wagon, automobile, motor vehicle or any other type of conveyance, from place to place, from house to house or from street to street, selling, taking or attempting to take orders for purchases of goods, wares and merchandise, services or tangible personal property of any nature whatsoever, whether or not for future delivery and whether or not such individual has, or exposes for sale, the subject of such sale, or whether or not he/she is collecting advance payments of such sales. This definition shall include but shall not be limited to the following:

(A) Any person who for himself/herself or for another person, firm or corporation hires, leases, uses or occupies any building, structure or place within the municipality for the exclusive purpose of selling to places within the municipality, or the taking of orders, or the making of appointments at places within the municipality by means of telephone

§ 750.02 REGISTRATION REQUIRED.

No person shall canvass, solicit or peddle within the municipality unless such person shall have first registered with the municipality and shall have first obtained an identification card as hereinafter provided.
 ('70 Code, § 750.02) (Ord. 1970-79, passed 4-13-70) Penalty, see § 750.99

§ 750.03 REGISTRATION APPLICATION.

Any person desiring to register as a solicitor, canvasser or peddler within the municipality shall apply to the Safety/Service Director or his/her agent shall make written application on a form to be provided by the municipality, which form shall correctly and truthfully contain the following information:

- (A) Name, age and description of the applicant;
- (B) Permanent home address and full local address;

(C) Birth date, height, weight, color of eyes, color of hair and physical description;

(D) A description of the nature of the business and the goods or services to be sold;

(E) The name and address of the employer, together with credentials establishing the exact relationship.

(F) The length of time for which the business is expected to be conducted;

(G) The place where the goods or the property proposed to be sold are manufactured or produced and the location of the goods or products at the time the application is filed, along with the proposed method of delivery;

(H) Two photographs of the applicant taken within six months prior to the date of the filing of the application; such photographs shall be one inch by one inch and shall show the head and shoulders of the applicant in a clear and distinguishing manner;

(I) A statement as to whether or not the applicant has been convicted of any felony or misdemeanor and, if any, the nature of the same and the penalty therefor, if any;

(J) The make, model, year and current registration of any motor vehicle used or to be used in the business;

(K) The number and state of issuance of the applicant's driver's license, if any;

(L) The names and addresses of two personal references who are acquainted with the applicant and who would be willing to submit, upon request, a statement of the character of the applicant;

(M) A description of the method of marketing of the product or service, including a description of the sales brochure, if any, utilized in such marketing.
(70 Code, § 750.03) (Ord. 1970-79, passed 4-13-70; Am. Ord. 1970-96, passed 4-27-70)

§ 750.04 REGISTRATION FEE; ISSUANCE; EXCEPTION.

(A) The registration application shall be filed by the applicant, who shall attest to the truthfulness of the statements contained therein. The application shall be accompanied by a fee of \$7.50 to compensate the municipality for the costs incident to the issuance of the registration.

(B) Upon receipt of the fee, the registration shall be issued by the municipality within five days from the filing of the application, during which time the municipality may verify the contents of the application. The registration shall be valid for a period of six months from and after the date of the issuance thereof. Every person desiring to exercise the occupation of a solicitor, canvasser or peddler shall register with the municipality, in addition to each firm, partnership or corporation also desiring to exercise such occupation. Trainees of persons, firms or corporations engaged in soliciting, canvassing or peddling shall not be required to be registered in accordance with this chapter. A trainee is a person who has been employed less than 30 days and who is at all times accompanied in the conduct of soliciting, canvassing or peddling by one who is registered with the municipality.

(70 Code, § 750.04) (Ord. 1970-79, passed 4-13-70)

§ 750.05 REGISTRATION CARD; DISPLAY.

The municipality shall, upon registration, issue to the applicant an identification card or badge in a form to be prescribed by the Safety/Service Director or his/her agent, indicating thereon the registration of the applicant and the dates during which the registration is valid. The registration card shall be worn by the applicant during the conduct of all soliciting, canvassing or peddling, upon the outer apparel of the applicant at all times and shall be displayed to anyone for examination upon his or her request.

(70 Code, § 750.05) (Ord. 1970-79, passed 4-13-70)

**§ 750.06 MUNICIPALITY TO POST SIGNS
ADVISING REQUIRED REGISTRATION.**

The municipality shall cause to be posted at the corporate limits of the municipality and upon all state highways, an appropriate sign indicating the necessity of registration by solicitors, canvassers or peddlers. ('70 Code, § 750.06) (Ord. 1970-79, passed 4-13-70)

§ 750.07 REGISTRATION INDEX.

The Safety/Service Director or his/her agent shall maintain a permanent index of registration of solicitors, canvassers and peddlers, indicating thereon appropriate information as taken from the application heretofore described. ('70 Code, § 750.07) (Ord. 1970-79, passed 4-13-70)

**§ 750.08 FALSE APPLICATION;
REGISTRATION REVOCATION.**

No person shall, in his/her application for registration, set forth any false information. Upon determination by the municipality that information contained in such application was false, the registration shall forthwith be revoked by the municipality and, upon demand thereof by the municipality, the applicant shall tender the card to the municipality, in addition to any other penalties in this chapter. ('70 Code, § 750.08) (Ord. 1970-79, passed 4-13-70)
Penalty, see § 750.99

**§ 750.09 APPEAL OF REGISTRATION
REVOCATION.**

Any person whose registration is revoked may, within ten days after the receipt of a revocation notice, which shall be certified by mail to the address in the application, appeal to the Mayor by filing with the Mayor a signed, written statement briefly setting forth his/her ground of appeal. The appellant may then appear, in person or by his/her attorney, before the Mayor at a time and date to be set by the Mayor. The Mayor shall reconsider the revocation and uphold the revocation or reverse the same. The decision of the Mayor shall be final. ('70 Code, § 750.09) (Ord. 1970-79, passed 4-13-70)

**§ 750.10 REGISTRATION
TRANSFERABILITY.**

No registration granted or issued under this chapter shall be assignable or transferable, nor shall any such registration authorize any person, other than the one named therein, to do business as a solicitor, canvasser or peddler, or authorize any other business than is therein mentioned or named to be done or transacted. ('70 Code, § 750.10) (Ord. 1970-79, passed 4-13-70)
Penalty, see § 750.99

**§ 750.11 HOURS; BUSINESS ON SUNDAY
PROHIBITED.**

All soliciting, canvassing or peddling done under registration issued hereunder shall be done between the hours of 9:00 a.m. and 9:00 p.m. on weekdays, including Saturday, and no such soliciting, canvassing or peddling shall be done on Sundays. ('70 Code, § 750.11) (Ord. 1970-79, passed 4-13-70; Am. Ord. 2001-82, passed 6-25-2001)
Penalty, see § 750.99

§ 750.12 PROHIBITED ADDRESS' LISTING

All Solicitors, Peddlers and Canvassers shall, prior to beginning to solicit, peddle or canvass, obtain from the Safety/Service Director his office's Prohibited Address' Listing and shall not solicit, peddle, sell or attempt to or explain a cause to or at any person located at or upon any address listed upon said Prohibited Address' Listing or in anyway enter upon those listed premises for any of the aforementioned purposes whatsoever. (Am. Ord. 2001-122, passed 10-22-2001)

§ 750.99 PENALTY.

Whoever violates any of the provisions or requirements of this chapter shall be fined not more than \$50. Each sale or attempted sale made by any person in violation of the provisions of this chapter shall be deemed a distinct and separate offense. Upon conviction, the municipality shall revoke the registration of any person and shall demand the return of the identification card issued hereunder, and no further registration shall be issued for six months following the date of the conviction. ('70 Code, § 750.99) (Ord. 1970-79, passed 4-13-70)

Cross-reference:

Trespassing, see § 642.12

Statutory reference:

Power to regulate, see R.C. § 715.61

CHAPTER 756: SECONDHAND DEALERS

Section

- 756.01 Definitions
- 756.02 Permit required; display; scope
- 756.03 Records; information
- 756.04 Reports to police
- 756.05 Retention of articles
- 756.06 Hours of operation
- 756.07 Inspection of records
- 756.08 Use of fictitious name, address or identification
- 756.09 Prohibited activities

- 756.99 Penalty

secondhand dealer to engage in such business shall be displayed in a conspicuous place on the permit premises.

(C) Upon issuance, the secondhand dealer's permit is valid only for use by the person named thereon, and only for the address or location described therein, and cannot be sold, transferred or in any other manner used by, or apply to, another person or location other than which is described on the permit as issued by the Director.

('70 Code, § 756.02) (Ord. 1981-21, passed 3-9-81)

§ 756.01 DEFINITIONS.

As used in this chapter:

SECONDHAND ARTICLE. Any item which has previously been used or worn by another, such as something which is not new, including jewelry, coins, gold, silver, platinum or other precious metals, stones or gems, in any form.

SECONDHAND DEALER. A person operating a store, shop or other business outlet for the purpose of purchasing, selling, exchanging or receiving any secondhand article.

('70 Code, § 756.01) (Ord. 1981-21, passed 3-9-81)

§ 756.02 PERMIT REQUIRED; DISPLAY; SCOPE.

(A) Any person wishing to operate as a secondhand dealer in the municipality shall apply to the office of the Safety/Service Director for a permit before conducting any business and shall conduct such business only upon the issuance of such permit.

(B) The permit issued by the Director to the

§ 756.03 RECORDS; INFORMATION.

(A) Every secondhand dealer shall keep and use proper books and forms in which shall be legibly written in the English language, at the time each purchase or exchange is made, an accurate description of the goods, articles or items purchased or exchanged, the date of the purchase or exchange, the amount paid per item, the name, address, social security number and driver's license number, or the State of Ohio identification number, of the person from whom the item was purchased or exchanged.

(B) When any watch is purchased or acquired through exchange, the secondhand dealer shall write in the record book the number of the movement, the number of the case and the name of the maker and/or the brand name. Where jewelry, gold or silver articles of any kind are purchased or acquired through exchange, the permit holder shall write in the record book all identifying letters or marks inscribed thereon.

(C) Every record book entry shall be numbered consecutively commencing with the number "1". Each item purchased or acquired by such secondhand dealer shall have attached to it in a conspicuous place a tag with a plainly written number on it which corresponds with the same item as entered in the

record book. All entries in the record book shall be in permanent type ink.

('70 Code, § 756.03) (Ord. 1981-21, passed 3-9-81)

§ 756.04 REPORTS TO POLICE.

Every secondhand dealer in the municipality shall deliver or cause to be delivered to the Chief of Police or head of the Division of Police, each day by 12:00 noon, on forms furnished by the Chief of Police, a legible and correct copy, written in English, of a complete description of each article purchased or received during the preceding day. The information shall include the date of purchase, a description which includes the name, address and signature of the seller from whom an item was purchased or acquired, and such other information as prescribed by the Division of Police on the form.

('70 Code, § 756.04) (Ord. 1981-21, passed 3-9-81)

§ 756.05 RETENTION OF ARTICLES.

Articles purchased or exchanged shall be retained within the municipality for at least 120 hours from the time of purchase or exchange and shall not be altered in any manner whatsoever during the retaining period without the permission of the Division of Police.

('70 Code, § 756.05) (Ord. 1981-21, passed 3-9-81)

§ 756.06 HOURS OF OPERATION.

No person shall operate a secondhand store or carry on the business of a secondhand dealer, as provided in this section, between the hours of 9:00 p.m. and 7:00 a.m. of the following day, daily.

('70 Code, § 756.06) (Ord. 1981-21, passed 3-9-81)
Penalty, see § 756.99

§ 756.07 INSPECTION OF RECORDS.

All books and records which are required to be maintained under this chapter shall be open to inspection by any of the following persons: The Mayor, the Safety/Service Director, the Chief of Police and any duly authorized police officer. Upon

demand by any of the previously specified persons, the secondhand dealer shall also produce and show the article or articles thus listed and described which are in his or her possession.

('70 Code, § 756.07) (Ord. 1981-21, passed 3-9-81)

§ 756.08 USE OF FICTITIOUS NAME, ADDRESS OR IDENTIFICATION.

No person shall use a fictitious name or address or provide incorrect or misleading information when selling, trading, exchanging or otherwise doing business with a secondhand dealer.

('70 Code, § 756.08) (Ord. 1981-21, passed 3-9-81)
Penalty, see § 756.99

§ 756.09 PROHIBITED ACTIVITIES.

No secondhand dealer shall receive, purchase or otherwise acquire any item, article or thing from any minor, or from any habitual drunkard, or from any person who is known by him or her to be a thief or a receiver of stolen property, or from any person whom he or she has reason to suspect or believe to be any of the foregoing.

('70 Code, § 756.09) (Ord. 1981-21, passed 3-9-81)
Penalty, see § 756.99

§ 756.99 PENALTY.

Whoever violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor of the third degree and shall be fined not more than \$500 or imprisoned for not more than 60 days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

('70 Code, § 756.99) (Ord. 1981-21, passed 3-9-81)

Statutory reference:

Pawnbrokers, See R.C. Ch. 4727

Secondhand dealers; junkyards, see R.C. Ch.

4737

CHAPTER 760: TAXICABS AND CHAUFFEURED LIMOUSINE

Section

- 760.01 Definition
- 760.02 License required
- 760.03 Application information
- 760.04 License issuance and fee
- 760.05 License plate
- 760.06 License renewal, revocation or suspension
- 760.07 Liability insurance requirements
- 760.08 Driver's license required
- 760.09 Application for driver's license
- 760.10 Issuance
- 760.11 Driver's license fees; initial, renewal and loss
- 760.12 Denial and new application
- 760.13 Driver's license displayed in vehicle
- 760.14 Nontransferability
- 760.15 Driver's license renewals
- 760.16 Disposition of driver's license upon discontinuance of driving
- 760.17 Suspension and revocation
- 760.18 Taxicab or Chauffeured Limousine condition and equipment
- 760.19 Limitation on number of passengers
- 760.20 Delivery of property left in taxicab or chauffeured limousine
- 760.99 Penalty

§ 760.01 DEFINITION.

TAXICAB COMPANY. Any motor transportation company which is a corporation, company, association, joint stock association, firm, person or copartnership, their licensees, lessees, personal or legal representatives, trustees, receivers or trustees appointed by any court, when engaged or proposing to engage in a business of transporting persons or furnishing such transportation for hire, whether directly or by lease or by other arrangement for the public in general, in or by motor-propelled

CHAUFFEURED LIMOUSINE. A motor vehicle that is designated to carry fewer than nine passengers and is operated for hire on an hourly basis pursuant to a prearranged contract for transportation of passengers on public roads and highways along a route under the control of the person hiring the vehicle and not over a defined and regular route.

PREARRANGED CONTRACT. An agreement, made in advance of boarding, provide transportation from a specific location in a chauffeured limousine at a fixed rate per hour or trip. "Chauffeured Limousine" does not include any vehicle that is used exclusively in the business of funeral directing.
(70 Code, § 760.01; Am. Ord. 1998-120, passed 7-13-98)

§ 760.02 LICENSE REQUIRED.

No taxicab company or chauffeured limousine shall operate motor vehicles for the transportation of persons for hire within the municipality until an application has been filed and approved by Council, and a license has been issued. (70 Code, § 760.02; Am. Ord. 1998-120, passed 7-13-98) Penalty, see § 760.99

§ 760.03 APPLICATION INFORMATION.

Each person or taxicab company or chauffeured limousine desiring to obtain a license shall make application therefor to the City Council setting forth the following facts:

(A) The name of the taxicab company or chauffeured limousine with the names of owners, agents and officers.

(B) The principal place of business and address in the municipality.

(C) Whether or not the applicant is an individual, association, partnership, corporation or other legal entity.

(D) The nature of the applicant's business being conducted at the time the application is filed or any other business proposed to be conducted after the license is granted.

(E) The number, make, model, serial number, engine number, horsepower, capacity and year of the vehicle, together with the state license and identification tag number.

(F) The number of the drivers used with the vehicles and the dates and numbers of their chauffeur's license.

(G) A copy of the insurance policy carried by the company as required by § 760.07.

(H) A list of all accidents, collisions, arrests, suits, findings, executions or judgments against the company and its drivers or individuals connected therewith during the past five years.

('70 Code, § 760.03)

§ 760.04 LICENSE ISSUANCE AND FEE.

The Safety/Service Director, upon approval of the application in accordance with Ch. 760 shall issue the license required by § 760.02 upon payment of a license fee of \$100 for the first vehicle of the company being licensed and \$10 for each vehicle thereafter.

('70 Code, § 760.04) (Ord. 1982-34, passed 3-22-82)

§ 760.05 LICENSE PLATE.

Upon the issuance of the license as provided by § 760.04, Council shall provide for the issuance of a license plate to the licensee for each motor vehicle to be used as a taxicab or chauffeured limousine. Such license plates shall be carried upon all taxicabs or chauffeured limousine, and no taxicab or chauffeured limousine shall be operated without a license plate affixed thereto.

('70 Code, § 760.05; Am. Ord. 1998-120, passed 7-13-98)

§ 760.06 LICENSE RENEWAL, REVOCATION OR SUSPENSION.

The license shall be renewed annually by the Safety/Service Director upon the payment of the fees required by § 760.04, unless the license has been revoked or suspended by Council for a violation of this chapter.

('70 Code, § 760.06) (Ord. 1982-74, passed 6-14-82)

§ 760.07 LIABILITY INSURANCE REQUIREMENTS.

Each taxicab company or chauffeured limousine company filing an application as provided by § 760.03 shall carry liability insurance on each motor vehicle operated as a taxicab protecting the passengers and the public against all accidents arising out of the ownership, maintenance or use of such taxicab in the amount of \$12,500 because of bodily injury to or

death of one person in any one accident, in the amount of \$25,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$7,500 because of injury to property of others in any one accident. Duplicate copies of insurance policies covering every piece of equipment must be filed with the Safety/Service Director. No person shall file a duplicate policy containing a limitation clause of any kind. The penalty for filing a duplicate policy containing a duplicate clause shall be forfeiture of the license on the equipment specifically covered by the duplicate policy. It shall be the obligation of the taxicab company or chauffeured limousine company to notify the Safety/Service Director at least 30 days prior to cancellation of any policy.

('70 Code, § 760.07) (Ord. 1982-74, passed 6-14-82; ; Am. Ord. 1998-120, passed 7-13-98)

§ 760.08 DRIVER'S LICENSE REQUIRED.

No person shall drive a taxicab or chauffeured limousine within the municipality until he/she has procured a license to drive such taxicab as provided by this chapter.

('70 Code, § 760.08; ; Am. Ord. 1998-120, passed 7-13-98) Penalty, see § 760.99

§ 760.09 APPLICATION FOR DRIVER'S LICENSE.

(A) Every application for a license as a driver of a taxicab or chauffeured limousine shall make application to the Safety/Service Director on blank forms to be supplied and shall furnish such information as may be required. The application shall be sworn to by the applicant before filing and shall contain a statement that the applicant is:

(1) A citizen of the United States;

(2) Able to speak, read and write the English language;

(3) Over 18 years of age; and

(4) Not addicted to the use of alcohol or drugs.

(B) Such affidavit shall be accompanied by the

certificates to two reputable citizens of the municipality to the effect that:

(1) They have known the applicant for more than one year;

(2) They have read over his or her affidavit and from their own knowledge are satisfied that the statement contained in the affidavit are true.

(C) The applicant shall also furnish, to the Director, evidence that he or she holds a valid operator's license under the laws of the state. The applicant shall further file with his/her application two photographs of himself or herself which shall have been taken within 30 days next preceding the date of application. One photograph shall be attached to the application.

('70 Code, § 760.09) (Ord. 1981-9, passed 1-12-81; Am. Ord. 1998-120, passed 7-13-98)

§ 760.10 ISSUANCE.

If the Safety/Service Director is satisfied that the applicant for a driver's license is of good moral character and is a suitable and proper person to operate a taxicab or chauffeured limousine within the municipality, he/she shall then issue a license to the applicant upon payment of the proper fees.

('70 Code, § 760.10) (Ord. 1974-133, passed 11-11-74; Am. Ord. 1998-120, passed 7-13-98)

§ 760.11 DRIVER'S LICENSE FEES; INITIAL, RENEWAL AND LOSS.

Every driver of a taxicab or chauffeured limousine shall pay to the Safety/Service Director, upon issuance of the license, an annual license fee of \$5 terminating one year from the date of issuance of the license. Taxicab driver's shall also pay the Safety/Service Director an annual renewal fee of \$3 to be issued only on the basis of one year commencing one year from the date of issuance. A fee of \$1 shall be charged for each lost or destroyed license replaced by the municipality.

('70 Code, § 760.11) (Ord. 1974-133, passed 11-11-74; Am. Ord. 1998-120, passed 7-13-98)

§ 760.12 DENIAL AND NEW APPLICATION.

When the application for a license to drive a taxicab or chauffeured limousine has been denied, no new application for a license shall be considered for a period of three months.

('70 Code, § 760.12) (Am. Ord. 1998-120, passed 7-13-98)

§ 760.13 DRIVER'S LICENSE DISPLAYED IN VEHICLE.

The license issued to the driver of a taxicab or chauffeured limousine shall be in writing, and shall have affixed thereto one of the photographs filed with the Safety/Service Director at the time application for license is made as required by § 760.09. Such license and photograph shall be at all times conspicuously displayed in the vehicle driven by such driver.

('70 Code, § 760.13) (Am. Ord. 1998-120, passed 7-13-98) Penalty, see § 760.99

§ 760.14 NONTRANSFERABILITY.

The license to drive a taxicab or chauffeured limousine shall not be assigned or transferred.

('70 Code, § 760.14) (Am. Ord. 1998-120, passed 7-13-98) Penalty, see § 760.99

§ 760.15 DRIVER'S LICENSE RENEWALS.

Any licensed driver of a taxicab or chauffeured limousine who fails to procure a renewal of the license within 30 days after the expiration thereof shall make a new application, as in the case of original applications.

('70 Code, § 760.15) (Ord. 1974-133, passed 11-11-74; Am. Ord. 1998-120, passed 7-13-98)

§ 760.16 DISPOSITION OF DRIVER'S LICENSE UPON DISCONTINUANCE OF DRIVING.

Every person to whom a license has been issued under the provisions of this chapter shall, upon discontinuing or abandoning the driving of a taxicab, or chauffeured limousine, return such license to the Safety/Service Director unless the same has been lost or destroyed.

('70 Code, § 760.16) (Ord. 1974-133, passed 11-11-74; Am. Ord. 1998-120, passed 7-13-98)

§ 760.17 SUSPENSION AND REVOCATION.

(A) Whenever it shall appear, upon investigation and hearing by the Safety/Service Director, that a license has been obtained by misrepresentation, the Director shall revoke such license.

(B) Whenever a driver of a taxicab or chauffeured limousine is convicted of driving a taxicab or chauffeured limousine during a period for which his/her license has been suspended, it shall be mandatory upon the Director to revoke the license of such driver. Such driver shall not be eligible to receive a new license for a period of one year from the date of such revocation.

(C) Upon the violation by any driver of a taxicab or chauffeured limousine of any provisions of this chapter, or of any traffic ordinance of the municipality, or if any such driver shall violate any ordinance of the municipality or law of the state involving moral turpitude or be found guilty of intoxication, the Director may forthwith suspend the driver's license for a period of not to exceed the unexpired period of the license or ninety days, whichever is the longer.

('70 Code, § 760.17) (Am. Ord. 1998-120, passed 7-13-98) Penalty, see § 760.99

§ 760.18 TAXICAB OR CHAUFFERED LIMOUSINE CONDITION AND EQUIPMENT.

Every taxicab or chauffeured limousine shall be kept in a safe and sanitary operating condition at all times.

('70 Code, § 760.18) (Am. Ord. 1998-120, passed 7-13-98) Penalty, see § 760.99

§ 760.19 LIMITATION ON NUMBER OF PASSENGERS.

No driver shall carry more passengers in at taxicab or chauffeured limousine than the seating capacity of the vehicle, exclusive of the driving seat, as stated in the license application required by § 760.03.

('70 Code, § 760.19) (Am. Ord. 1998-120, passed 7-13-98) Penalty, see § 760.99

§ 760.20 DELIVERY OF PROPERTY LEFT IN**TAXICAB OR CHAUFFERED LIMOUSINE.**

It shall be the duty of a taxicab or chauffeured limousine to promptly deliver, to the police or to the operator of the taxicab or chauffeured limousine or his/her authorized agent, all property of value left in such taxicab or chauffeured limousine by passengers. ('70 Code, § 760.20) (Am. Ord. 1998-120, passed 7-13-98) Penalty, see § 760.99

§ 760.99 PENALTY.

Whoever violates any provisions of this chapter shall be fined not more than \$50. Any such violation shall constitute a separate offense on each successive day continued.

('70 Code, § 760.99) (Ord. 7085, passed 10-8-62; Am. Ord. 1998-120, passed 7-13-98)

Cross-reference:

Taxicab stands, see § 351.10

Statutory reference:

Power to establish standards and fix rates, see R.C. § 715.25

Power to regulate, see R.C. §§ 715.22 and 715.66

CHAPTER 770: LATE NIGHT SALES AND ESTABLISHMENTS

Section

- 770.01 Definitions
- 770.02 Requirements for late night sales
- 770.99 Penalty

§ 770.01 DEFINITIONS.

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

LATE NIGHT GAS STATION. Any person, partnership, corporation or other entity which sells gasoline or other petroleum fuel to the public between the hours of midnight and 6:00 a.m.

LATE NIGHT RETAIL ESTABLISHMENT. Any person, partnership, corporation or other entity which:

(1) Derives 50% or more of its gross income from the sale of goods, merchandise or other articles of value; and

(2) Sells goods, merchandise or other articles of value in their original containers between the hours of 10:00 p.m. and 6:00 a.m. (Am. Ord. 1999-65, passed 5-24-99)

(B) Specifically excluded from these definitions are establishments whose owners are the sole operators and/or clerks present during the subject hours of operation.

('70 Code, § 770.01(a)) (Ord. 1985-117, passed 12-23-85; Am. Ord. 1986-3, passed 1-6-86)

§ 770.02 REQUIREMENTS FOR LATE NIGHT SALES.

(A) All late night retail establishments and late night gas stations shall:

(1) Post a sign in the window which is conspicuous and states that there is a safe on the premises and it is not accessible to the employees on the premises.

(2) Post a sign in the window which is conspicuous and states that the cash register has \$50 or less in it.

(3) So arrange the signs posted in the windows so as to provide a clear and unobstructed view of the interior of the store. In no case, shall signs obstruct the view of the register from the street.

(4) Have a dropsafe on the premises which is bolted to the floor or weighs at least 500 pounds.

(5) Position their registers so that those in close proximity to the registers are visible from the street.

(6) The area of the parking lots of late night retail establishments and gas stations commonly utilized by customers and employees shall be lighted and maintained at a minimum of five footcandles per square foot. The level of lighting shall be measured at a height of three feet above pavement level.

(7) Have an enclosed, secured area for employees, or maintain more than one employee during the hours set forth above and acceptable alarms or systems that are designed to directly provide immediate notification to the Marion Police Department of a robbery or other life threatening situation.

(B) All ordinances previously enacted remain in effect, except changes made to section 770.01 (A)(2) and 770.02 (A)(7) which shall be effective September 1, 1999.

('70 Code, § 770.01(b)) (Ord. 1985-117, passed 12-23-85; Am. Ord. 1986-3, passed 1-6-86; Am. Ord. 1999-65, passed 5-24-99)

§ 770.99 PENALTY.

Any person, partnership, corporation or entity which violates any provision of this chapter is guilty of a misdemeanor of the third degree; on each subsequent offense such

person, partnership, corporation or other entity is guilty of a misdemeanor of the first degree.

('70 Code, § 770.99) (Ord. 1985-117, passed 12-23-85; Am. Ord. 1999-65, passed 5-24-99)

CHAPTER 780: TOW TRUCKS

Section

- 780.01 Definitions
- 780.02 License required
- 780.03 License application
- 780.035 License for partial year
- 780.04 Issuance of license
- 780.05 Expiration of licenses
- 780.06 Assignment or transfer of licenses
- 780.07 License denial, suspension or revocation
- 780.08 Hearings on charges; decisions
- 780.09 Advisory board
- 780.10 Function of the board
- 780.11 Judicial review
- 780.12 Official acts used as evidence
- 780.13 Separability clause
- 780.14 Liability insurance required
- 780.15 Extent of insurance
- 780.16 Identification of tow trucks
- 780.17 Transport sheet required
- 780.18 Required records
- 780.19 Authority to issue rules and regulations

- 780.99 Penalty

§ 780.01 DEFINITIONS.

CLASS I LICENSE. That type of license required for a business whose TOW VEHICLE GVW (Gross Vehicle Weight) is less than 15,000 pounds.

CLASS II LICENSE. That type of license required for a business whose TOW VEHICLE GVW (Gross Vehicle Weight) rating is 15,000 pounds or more.

DIRECTOR. The Safety/Service Director of the City of Marion.

DRIVER or OPERATOR. Every person who drives or is in actual physical control of a tow truck on a public street or public right of way within the municipality.

OWNER. A person who holds the legal title of a tow truck, or in the event a tow truck is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, then such conditional vendee or lessee, shall be deemed the owner for purposes of this chapter.

PERSON. Every natural person, firm, copartnership, association of corporation.

TOWING. The act of pulling or dragging any vehicle behind the wrecker or tow truck which is doing such pulling or dragging. Said towed vehicle can be self supporting, carried on a dolly type platform, or be supported on any other item necessary to facilitate such towing.

WRECKER or TOW TRUCK. Every motor vehicle which is designed and used to tow or transport any other motor vehicle chapter, the terms wrecker and tow truck shall be synonymous.
(Ord. 1991-34, passed 3-11-91)

§ 780.02 LICENSE REQUIRED.

Any owner and/or operator conducting towing services and related activities with the municipality is required to obtain all licenses pursuant to this chapter prior to engaging in this type of activity or business.
(Ord. 1991-34, passed 3-11-91) Penalty, see § 780.99

§ 780.03 LICENSE APPLICATION.

Every application for such license as required by § 780.02 shall be made in person at the office of the Safety/Service Director on forms provided and such pertinent information as the Director may deem necessary shall be given under oath. It shall be mandatory rejection of such application or revocation of any issued license if any of the required applications information is misrepresented or untrue.

(A) Each towing owner or business shall be issued a license upon payment of a \$40 fee per year, for each license classification requested. Each application for the replacement of a lost, stolen or missing license shall be accompanied by \$5.

(B) Each tow truck operator license shall be issued upon payment of a \$15 fee, and renewals thereof may be issued for a fee of \$8. Each application for the replacement of a lost, stolen or missing license shall be accompanied by a fee of \$5.

(C) If for any reason an application is rejected and no license issued, all accompanying fees shall be returned to the applicant, otherwise the fees collected under the provisions of this chapter shall be placed to the credit of the General Fund of the municipality. (Ord. 1991-34, passed 3-11-91)

§ 780.035 LICENSE FOR PARTIAL YEAR.

(A) The fee for any owner or business license obtained after the first day of July of any year shall be one-half of the original fee.

(B) The fee for any tow truck operator's license required pursuant to this chapter shall remain unaffected by the terms of this section. (Ord. 1991-34, passed 3-11-91)

§ 780.04 ISSUANCE OF LICENSES.

(A) Upon approval of the tow truck owner's application, a license and window sticker shall be issued to the owner by the Safety/Service Director. The window sticker shall be placed in the lower right hand corner of the windshield of all the owners tow

trucks covered by the class of license.

(B) Upon approval of a tow truck operator's application, an I.D. card shall be issued to the operator which will be carried when in physical control of a tow truck. This license shall be available for inspection upon request of the Director or a police officer. (Ord. 1991-34, passed 3-11-91)

§ 780.05 EXPIRATION OF LICENSE.

(A) All licenses issued pursuant to the provisions of this chapter, shall expire on the last day of December following issuance, unless revoked by the Safety/Service Director.

(B) The unused portion of any fee collected for a currently existing license shall be credited toward the purchase of any new license required under this section. Such credit shall be computed on the basis of the number of entire quarters remaining in the term of the existing license, which shall expire hereunder. (Ord. 1991-34, passed 3-11-91)

§ 780.06 ASSIGNMENT OR TRANSFERS OF LICENSES.

(A) No license issued for any towing business under the provisions of this chapter shall be assigned or transferred to any other business or truck without the approval of the Safety/Service Director.

(B) No license issued to any tow truck operator under the provisions of this chapter shall be assigned or transferred to any other person. (Ord. 1991-34, passed 3-11-91) Penalty, see § 780.99

§ 780.065 RESPONDING TO THE SCENE OF AN ACCIDENT.

No person, firm, corporation, or other entity shall respond to the scene of an accident, vehicle breakdown or other disabled vehicle for the purpose of soliciting business, or service for compensation of any kind whatsoever unless either summoned by a

person having a direct interest in the vehicle or vehicles involved or dispatched thereto as provided in the rules and regulations promulgated by the Safety/Service Director pursuant to § 780.19. (Ord. 1991-34, passed 3-11-91) Penalty, see § 780.99

§ 780.07 LICENSE DENIAL, SUSPENSION OR REVOCATION.

(A) The Safety/Service Director may deny the issuance of any tow truck owner's or operator's license to any person who fails to furnish satisfactory evidence of a good moral character, or to any person, who upon investigation, clearly lacks qualifications and fitness to be licensed under this chapter. Any license granted or issued pursuant to the terms of this chapter to an owner or an operator may be suspended or revoked at any time by the Director upon satisfactory proof of the violation of any provision of this chapter, or upon satisfactory proof of the violation of any of the rules and regulations which the Director promulgates pursuant to § 780.020, or for any of the reasons which could have been grounds for the refusal to issue an original license. If a license is suspended or revoked after a hearing as set forth in § 780.08, said license shall be surrendered to the Director's Office within five days of notification of such suspension or revocation and the window sticker shall be destroyed.

(B) Any violation of the rules and regulations pertaining to the volunteer towing list will, upon satisfactory proof to the Director, result in the immediate removal of the offending tow truck business or tow truck operator from said list. The removed party shall be given the opportunity to appear before the Wrecker Advisory Board for the purpose of explaining the activities which led to the removal from said list, or for the purposes of refuting any evidence presented which led to the removal from said list. Notice of the removal from the volunteer towing list shall be sent to the removed party within three days following removal. Notice of intent on the part of the removed party to appear before the Wrecker Advisory Board shall be sent to the Safety/Service Director's Office within three days following receipt of notification of removal from the list. In the event the said violation warrants, further

action may be taken against the tow truck or tow truck operator pursuant to the terms as set forth in this section.

(Ord. 1991-34, passed 3-11-91)

§ 780.08 HEARINGS ON CHARGES; DECISION.

No license shall be suspended or revoked until after a hearing had before a hearing officer or employee designated for such purpose by the Safety/Service Director. Notice to the licensee shall be at least ten days prior to the hearing; notice shall be served either personally or by registered mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee. The licensee or registrant shall be heard in his/her defense either in person or by counsel and may produce witnesses and testify in his/her own behalf. A stenographic record of the hearing may be taken. The hearing may be adjourned from time to time. The person conducting the hearing shall make written report of his/her findings and a recommendation to the Director for a decision. A copy of the written report shall be sent to the counsel and to the Advisory Board. The Director shall review such findings and recommendations and, after due deliberation, shall issue an order, accepting, modifying or rejecting such recommendation and dismiss the charges or suspending or revoking the license. For the purpose of this section the Director or any hearing officer or employee designated by him/her, may administer oaths, take testimony, subpoena witnesses, and compel the production of books, papers, records, and documents deemed pertinent to the subject of investigation.

(Ord. 1991-34, passed 3-11-91)

§ 780.09 ADVISORY BOARD.

(A) There is hereby established a Wrecker Advisory Board in the Office of the Director. The Board shall consist of the Director or his/her designate, and four other members appointed by the Mayor, and one of the members so appointed shall be designated by the Mayor as Chairperson. Of the four appointed members, two shall be actively engaged in the wrecker, towing business, one representing the

owners and one the drivers; and one shall be a public member; and one shall be a member of the insurance industry. Each appointed member shall serve a term of four years and until his/her successor is appointed and qualified except for the first two appointees who shall serve for two years each. Of the first members appointed to serve on this Advisory Board, two shall be appointed for a term of two years, and two for a term of four years.

(B) The members of the Board shall serve without compensation but may be reimbursed for their actual and necessary expenses in attending meetings of the Board.

(C) The Advisory Board shall meet at least two times each year at a time and place within the municipality designated by the Director.
(Ord. 1991-34, passed 3-11-91)

§ 780.10 FUNCTION OF THE BOARD.

(A) The Board shall advise and consult with the Safety/Service Director concerning practices in the wrecker, towing business, the administration of this chapter, and the rules and regulations adopted to implement this chapter.

(B) The Board shall undertake activities to encourage high standards of honesty, fair business practices, and public responsibility in the wrecker, towing business, and

(C) The Board shall hear and make recommendations to the Director in any application revocation or suspension proceeding in which the Director may request the Board to conduct such hearing.

(D) The City Attorney shall designate a member of his/her staff to act and serve as counsel to the Advisory Board to be present at or to review and summarize all hearings and proceedings for suspension and revocation of licenses.
(Ord. 1991-34, passed 3-11-91)

§ 780.11 JUDICIAL REVIEW.

The action of the Safety/Service Director in suspending, revoking, or refusing to issue or renew a license may be reviewed by appeal to the Board of License Appeals pursuant to § 780.06. The Director shall be represented by the Law Director.
(Ord. 1991-34, passed 3-11-91)

§ 780.12 OFFICIAL ACTS USED AS EVIDENCE.

The official acts of the Safety/Service Director and the Department shall be prima-facie evidence of the facts therein and shall be entitled to be received in evidence in all actions at law and other legal proceedings in any court or before any board, body or officer.
(Ord. 1991-34, passed 3-11-91)

§ 780.13 SEPARABILITY CLAUSE.

If any portion of this chapter, or any section or part of a section shall be declared by a court of competent jurisdiction to be invalid, such declaration shall be limited solely to that portion, section, or part of section that was directly involved in the controversy before the court upon which judgment was rendered, and shall not affect or impair the validity of the remainder of the chapter.
(Ord. 1991-34, passed 3-11-91)

§ 780.14 LIABILITY INSURANCE REQUIRED.

(A) No license to operate any wrecker or tow truck shall be issued or renewed by the Safety/Service Director and it shall be unlawful to operate or permit the operation of any such wrecker unless and until the owner of the same shall deposit and maintain on deposit with the Director a copy of an existing insurance policy or evidence acceptable to the Director of such policy of an insurance company duly licensed to transact such business in the state, provided such insurance is written through a citizen of the state duly licensed as provider by R.C. § 3905.30 et seq., insuring within the amounts specified in such policy the owner of such tow truck

and also any person operating the same in the municipality under the authority of such owner, whether such authority be under contract or employment, lease, or other transaction of the owner or owner's assignee or lessee and such person operating such wrecker against loss from liability imposed by law for damages on account of bodily injuries or death or for damages to property, other than employees, resulting from such ownership, maintenance or use of such wrecker in the municipality, and agreeing to pay to any judgment creditor to the extent of the respective amounts specified in such policy, any final judgment rendered against the insured or such operator by reason of such liability.

(B) In addition to the insurance required in division (A) of this section, a garage keeper's legal liability policy covering fire, theft, and explosion shall be required. A company not storing vehicles may, on approval of the Safety/Service Director, submit an affidavit which shall state that liability coverage is in effect to cover each vehicle towed while in their cars, custody and control pursuant to § 780.15(B). A violation of the terms contained in the tow owner insurance affidavit will be cause for the suspension or revocation of tow truck owner licenses.

(C) The policy or policies must contain an endorsement providing for ten days notice to the municipality in the event of any material change or cancellation.
(Ord. 1991-34, passed 3-11-91) Penalty, see § 780.99

§ 780.15 EXTENT OF INSURANCE.

(A) The limit in any such insurance policy described in § 780.14 of such liability of the insured or account of the ownership, maintenance, and use of each tow truck shall not be less than \$50,000 for bodily injuries to or death of one person, and subject to such limit as to injury or death of one person; \$100,000 on account of any one accident resulting in injuries to or death of more than one person; and \$25,000 on account of legally liable damage to property in any one accident.

(B) Fire, theft, and explosion liability policy shall be in a minimum amount of \$10,000.
(Ord. 1991-34, passed 3-11-91)

§ 780.16 IDENTIFICATION OF TOW TRUCKS.

Every person owning and/or operating a tow truck under a license from the municipality may adopt any trade name, design, color scheme or method of painting or lettering such tow trucks that is approved by the Safety/Service Director. Such approved trade name, design, color scheme or method of painting or lettering shall include the following matter as specified:

(A) The name of the owner or trade name under which the business is conducted shall be painted on each side of the tow truck in lettering at least four inches in height. The telephone number shall also be painted on each side of the tow truck in lettering to be clearly visible. Whenever the word *PAINT* or *PAINTED* is used in the chapter, it shall mean the application of coloring matter in oil solution; not water solution, but decals may be used instead of paint.

(B) The owner of the tow truck may have until the second annual inspection to comply with the size requirement of lettering if at the time of the original inspection the tow truck is lettered with a trade name, and telephone number.
(Ord. 1991-34, passed 3-11-91) Penalty, see § 780.99

§ 780.17 TRANSPORT SHEET REQUIRED.

Tow truck operators shall at all times, when transporting and storing vehicles under the authority of this chapter, have and maintain a copy of the Towed Vehicle Authorization Form. This form shall not be required when the vehicle involved is owned by the municipality.
(Ord. 1991-34, passed 3-11-91) Penalty, see § 780.99

§ 780.18 REQUIRED RECORDS.

The owner/operator of a towing business, operating under the authority of this chapter shall maintain an accurate and complete file of all vehicles towed, impounded or assistance provided. The owner/operator of the business shall file by date of occurrence, all Towed Vehicle Authorization Forms.

(A) Fifteen days after a vehicle has been in storage the owner or his/her designee shall file the required and appropriate forms to cause for the proper disposal of the held vehicle.

(B) Each towing business operating under the authority of this chapter shall, be responsible to forward to the Marion Police Department at the beginning of each month a list of all vehicles being held pursuant to Chapter 549.

(C) Upon the request of the Safety/Service Director or his/her designee, these records shall be immediately available for inspection.

(Ord. 1991-34, passed 3-11-91) Penalty, see § 780.99

§ 780.19 AUTHORITY TO ISSUE RULES AND REGULATIONS.

The Safety/Service Director shall promulgate a set of rules and regulations to implement this chapter as he/she deems proper.

(Ord. 1991-34, passed 3-11-91)

§ 780.99 PENALTY.

Whoever violates any provision of this chapter shall be guilty of a minor misdemeanor. Any such violation shall constitute a separate offense on each consecutive day continued.

(Ord. 1991-34, passed 3-11-91)