

CHAPTER 11

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11.01 DIRECT SALES.

- (1) **Licensing and Registration Required.** It shall be unlawful for any direct seller to engage in direct sales or solicitation within the Village of Hales Corners without being registered and having a license issued for that purpose as provided herein.
- (2) **Definitions.** The following definitions shall be applicable in this Section:
 - (a) Direct Seller.
 1. “Direct Seller” means any individual who, for him/herself, or for a partnership, association, or corporation sells goods, or takes sales orders for the later delivery of goods, at any location other than the permanent business place or residence of said individual, partnership, association, or corporation, and shall include, but not be limited to, peddlers, solicitors, and transient merchants. The sale of goods includes donations required by the direct seller for the retention of goods by a donor or prospective customer and a sale in which the personal services rendered upon or in connection with the goods constitutes the greatest part of value for the price received.
 2. The term “direct seller” as herein used shall also specifically include any peddler, canvasser, solicitor, or transient merchant, agent, or employee who engages in, does, or transacts any temporary or transient business in the Village, either in one (1) location or by moving his place of business

from place to place in the Village, selling goods, wares, or merchandise, or solicits for such trade and whether or not for the purpose of carrying on such business, such individual hires, leases, occupies, or uses a building, structure, vacant lot, or vehicle for the exhibition or sale of such goods, wares, or merchandise.

3. The term “direct seller” as herein used shall also mean “solicitor”. A “solicitor” is any person, organization, corporation, institution, association, agency, or co-partnership that agrees, for whatever reason, to solicit or collect contributions or other benefits for any charitable organization.
 - (b) **Permanent Merchant.** “Permanent merchant” means a direct seller who, for at least one (1) year prior to the consideration of the application of this Section to said merchant:
 1. He previously operated an established place of business in the Village; or
 2. Has continuously resided in the Village and now does business from his/her residence.
 - (c) **Goods.** “Goods” shall include personal property of any kind and shall include goods provided incidental to services offered or sold.
 - (d) **Charitable Organization.** “Charitable organization” is any person, organization, corporation, institution, association, agency, or co-partnership which is or purports to be a charitable, benevolent, health, educational, religious, patriotic, or other similar public cause organization, or any organization to alleviate cruelty toward animals.
 - (e) **Solicitation.** “Solicitation” is any act of seeking or obtaining money through solicitors, any of the following benefits: a grant of money or property, including a promise to give any such grant; a gift of goods, wares, merchandise, or other items of value; the sale or distribution or offer for sale or distribution to the public of any item to raise money; the sale of membership, periodicals, books, or advertising space; and the promotion of any public bazaar, sale, entertainment, exhibition, or other event to secure money, goods, or property.
 - (f) **Person.** “Person” shall mean all humans of any age or sex, partnerships, corporations, associations, groups, organizations, and any other description of a collection of human beings working in concert or for the same purpose or objective.
- (3) **Exemptions.** The following persons shall be exempt from licensing and registration provisions of this Section:
 - (a) Any person delivering newspapers, fuel, fruit juices, dairy products, or bakery goods to regular customers on established routes;
 - (b) Any person selling goods at wholesale to dealers in such goods;
 - (c) Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this county and who delivers such goods in their regular course of business;
 - (d) Any person who has an established place of business where the goods being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested a home visit by, said person;
 - (e) Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer;

- (f) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law;
- (g) Any person, officer, or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided there is submitted to the Village Clerk proof that such charitable organization is registered under §440.41, Wis. Stats. Any charitable organization engaging in the sale of merchandise or services and not registered under §440.41, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this ordinance;
- (h) Any person who claims to be a permanent merchant, but against whom complaint has been made to the Village Clerk that such person is a transient merchant; provided that there is submitted to the Village Clerk proof that such person has leased for at least one (1) year, or purchased, that premises from which he/she has conducted business in the market area for at least one (1) year prior to the date the complaint was made;
- (i) Any individual licensed by an examining board as defined in §15.01(7), Wis. Stats.;
- (j) Any ex-soldier of the United States holding a license under §440.51, Wis. Stats., who shall, while engaged in the business as such merchant or peddler, carry the special license and proof required for the issuance of such special license under such section;
- (k) Trick or treaters on approved days for Halloween;
- (l) Any person selling agricultural products which the person has grown;
- (m) This ordinance does not apply to transient merchants while doing business at special events authorized by the Village Board.

(4) **Licensing and Registration Procedures.**

- (a) License Required.
 - 1. No direct seller shall solicit or sell, offer to sell, vend, or dispose of goods, wares, or merchandise within the Village without first having obtained a license.
 - 2. No charitable organization, nor any other organization or person on its behalf, intrastate or foreign, unless specifically exempted by this Section, shall solicit benefits from residents of the Village unless it has filed a request with the Village Clerk for a license and is so licensed as provided by this Section.
- (b) Application Information. Applicants for registration and license must complete and return to the Village Clerk a registration form furnished by the Village Clerk which shall require the following information:
 - 1. Name (including middle initial), permanent address and telephone number, and temporary address, if any;
 - 2. Date of birth, height, weight, color of hair and eyes;
 - 3. Name, address, and telephone number of the person, firm association, corporation, or charitable organization that he direct seller represents or is employed by, or whose merchandise is being sold;
 - 4. Temporary address and telephone number from which business will be conducted, if any;
 - 5. Nature of business or solicitation to be conducted and a brief description of the goods, membership, or services offered;
 - 6. Proposed method of delivery of goods, if applicable;

7. Make, model, and license number of any vehicle to be used by the applicant in the conduct of his/her business;
 8. Most recent cities, villages, towns, not to exceed three (3), where applicant conducted similar business or solicitations just prior to making this registration and licensing request;
 9. Place where applicant can be contacted for at least seven (7) days after leaving the Village;
 10. Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's transient merchant business or soliciting within the last five (5) years, the nature of the offense, and the place of conviction;
 11. The length of time for which the license is desired.
- (c) Documentation. Applicants shall present to the Village Clerk for examination:
1. A driver's license or some other proof of identity as may reasonably required;
 2. Whenever the business of the applicant shall require the use of weighing or measuring devices, the application shall be accompanied by a certificate from the Village Sealer of Weights and Measures stating that said devices have been examined and approved;
 3. A State health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under State law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application for license is made.
- (d) Investigation.
1. At the time of filing an application, a license fee of the less of \$20.00 per day or \$200.00 per license year, as determined by applicant's proposed time period of use at the time of application, without refund thereafter, for each person to be covered by the license shall be paid to the Village Clerk to cover the cost of administration of the application and investigation of facts stated in the application. The application shall be referred to the Chief of Police who may require additional information for the effective enforcement of this Section and the safeguarding of the residents of the Village from fraud, misconduct, or abuse.
 2. Upon receipt of each such application, the Chief of Police shall institute such investigation of the application as reasonably necessary for the protection of the public good and shall return the application to the Village Clerk with any findings and recommendations.
 3. The Village Clerk may refuse to register the applicant if it is determined, pursuant to the investigation, that: the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the applicant by authorities in the most recent cities, villages, and towns, not exceeding three (3), in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation, or ordinance violation within the last five (5) years, the nature of which is directly related to the applicant's fitness to engage in soliciting or direct selling; or the applicant failed to comply with any applicable provision of this Section.
 4. Any person refused or denied registration may appeal the denial pursuant to Article XII of the Village Bylaws.
- (e) Issuance of License.

1. Upon compliance with this Section, the Village Clerk shall issue to the applicant a license. All licenses shall be numbered in the order in which they are issued and shall state clearly the place where the business or solicitation may be carried on, the kind of goods, wares, and merchandise to be sold, disposed of, or contracted for, the dates of issuance and expiration of the license, the fee paid, and the name of the licensee. Daily or short term license shall expire at the end of the last day for which the license is issued. Other licenses shall automatically expire one (1) year following the date of issuance, but such license may specifically state and provide for an earlier expiration date. No license shall be granted to a person under the minimum ages of various employments as required under §103.67, Wis. Stats., and no applicant to whom a license has been refused or who has had a license revoked shall make further application until at least six (6) months shall have elapsed since the last previous rejection or revocation, unless he/she can show the reason for such rejection or revocation no longer exists. Every licensee, while exercising the license, shall post his/her license in a conspicuous place and shall exhibit the same upon demand of any Village official, customer, or prospective vendee.
2. The applicant shall sign a statement appointing the Village Clerk as the applicant's agent to accept service of processing in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, in the event the applicant cannot, after reasonable effort, be served personally.

(5) **Regulation of Direct Sellers.**

(a) Prohibited Practices.

1. A direct seller shall be prohibited from: calling at any dwelling or other place between the hours of 9:00 p.m. and 9:00 a.m. except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers", "No Solicitors", or works of similar meaning; calling at the rear door of any dwelling place or any garage, or out building thereof or entering the rear yard of any premises; or remaining on any premises after being asked to leave by the owner, occupant, or other person having authority over such premises.
2. A direct seller may not misrepresent or make false, deceptive, or misleading statements concerning the quality, quantity, or character of any goods offered for sale, the purpose of his/her visit, his/her identity or the identity of the organization he/she represents. A charitable organization direct seller shall specifically disclose what portion of the requested donation or the sale price of goods being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as percentage of the sale price of the goods.
3. No direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
4. No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside of a 100-foot radius of the source.

5. No direct seller shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.
 - (b) Disclosure Requirements.
 1. After the initial greeting and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his/her full name, the name of the company or organization he/she is affiliated with, if any, and the identity of goods or services he/she offers to sell.
 2. If any sale of goods is made by a direct seller or any sales order for the later delivery of goods is take by the seller, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than \$25.00, in accordance with the procedure as set forth in §423.203, Wis. Stats., the seller shall give the buyer two (2) copies of a typed or printed notice of that fact. Such notices shall conform to the requirements of §423.203(1)(a)(b) and (c), (2) and (3), Wis. Stats.
 3. If the direct seller takes a sales order for the later delivery of goods, he/she shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance, whether full, partial, or not advance payment is made, the name, address, and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.
 - (c) License Nonassignable. A license shall not be assignable and any holder of such license who permits it to be used by another person and also any persons who use a license granted to any other person, shall be guilty of a violation of this Section. Whenever a license shall be lost or destroyed, a duplicate in lieu thereof under the original application may be issued by the Village Clerk upon the filing with him by the licensee of an affidavit setting forth the circumstances of the loss and what, if any, search has been made for its recovery and upon the payment of a replacement fee.
 - (d) Mutilation of License. On the expiration of the license, the licensee shall surrender the same to the Village Clerk. No person shall alter or change in any manner any license issued under the provisions of this Section.
 - (e) Additional Regulations. A licensed direct seller shall comply with all laws, statutes, ordinances, governmental regulations, rules, and orders applicable to the licensee and the licensee's activities.
- (6) **Records.** The Chief of Police shall report to the Village Clerk all convictions for violation of this Section and the Village Clerk shall note any such violations on the record of the licensee convicted.
- (7) **Revocation of Registration.**
- (a) Registration may be revoked by the Village Board after notice and hearing if the licensee made any material omission or materially inaccurate statement in the application for registration, made any fraudulent, false, deceptive, or misleading statement or representation in the course of engaging in direct sales or solicitations, violated any provision of this Section or was convicted of any crimes or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling or solicitation.
 - (b) Written notice of the hearing shall be served personally or pursuant to subsection (4)(e)2 above on the licensee at least 72 hours prior to the time set for the

hearing; such notice shall contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

11.02 CLOSING OUT SALES. §100.18(3m) and 100.20(1m), Wis. Stats., is adopted by reference.

11.03 TAXICABS PERMIT AND LICENSE REQUIRED. Effective July 1, 2005, pursuant to §349.24 of the Wisconsin Statutes, no person may operate any motor vehicle for taxicab purposes within the Village of Hales Corners unless the person is licensed as a chauffeur and operator and unless the taxicab business is licensed by the licensing of each taxicab. Said license(s) shall be current and valid.

11.04 RACING CARS, “GO-KARTS”, AND SIMILAR VEHICLES.

(1) No person shall operate a racing car, “Go-kart”, or similar vehicle in the Village except upon a track constructed and licensed under this section.

(2) A vehicle race track license shall be issued for a license year from July 1 to June 30, subject to the following terms and conditions:

- (a) The track must be located at least 2,000 feet from any dwelling.
- (b) The track must be covered by a public liability insurance policy with limits of \$100,000/300,000/10,000, and a certificate of insurance shall be filed with the Village Clerk before the license is issued.
- (c) The track must have toilet facilities approved by the Health Officer of the Village.
- (d) All structures must comply with the Building Code and Zoning Code of the Village and must be approved by the Building Inspector.
- (e) The track shall be operated only between 9:00 a.m. and 10:00 p.m.
- (f) The track shall be hard surfaced with concrete, macadam, or equivalent material.
- (g) The licensee shall post a bond with the Village, indemnifying and holding harmless the Village in the amount of \$100,000 from any and all claims and damages which might arise from the licensing or operation of the track.

(3) License applications shall be on forms supplied by the Village Clerk. Before any license is granted, the Village Board shall hold a public hearing on the application, with at least one notice thereof to be published in the official Village newspaper. The license shall issue only if the Board finds that the public health, safety, and welfare will not be adversely affected thereby.

(4) No vehicle shall be operated on a licensed track which is not equipped with an adequate muffler in constant operation and properly maintained to prevent any excessive or unusual noise or annoying smoke.

11.05 PUBLIC DANCES AND DANCE HALLS.

(1) **Definitions.**

- (a) Public Dance. Any dance to which admission can be had, either without charge or by payment of a fee or by the purchase, possession, or presentation of a ticket or token in which a charge is made for caring for clothing or other property, or any other dance to which the public generally may gain admission with or without payment of a fee.

- (b) Public Dance Hall. Any room, place, or space in which public dance may be held.
- (2) **License Required.** No person shall hold any public dance within the Village until the public dance hall in which the same may be held shall first have been duly licensed for such purpose under this section.
- (3) **License.**
- (a) Where Permitted. Public dance hall licenses shall only be granted for premises within a zoned business district.
 - (b) Exceptions. This section shall not apply to eleemosynary and religious institutions.
 - (c) Fees. The applicant for a public dance hall license may either apply for an annual license at a fee of \$30.00 for a calendar year, or for an occasional license of \$5.00 for each occasion.
 - (d) Application. Such application shall state:
 - 1. The name, address, and age of the applicant.
 - 2. The location at which such public dance hall is intended to be conducted.
 - 3. The name of the person owning the premises for which a license is asked.
 - 4. If for an occasional license, the date and hours for which the license is sought.
- (4) **Police Supervision.**
- (a) Every licensed owner of a public dance hall shall, immediately upon application being received by him from any person, club, or society to lease or rent his hall for the purpose of holding a public dance, report to the Chief of Police the name and address of such person, club, or society and the date when such public dance is proposed to be held. The Chief of Police shall at once make or cause to be made an investigation for the purpose of determining whether such dance shall be held. If the Chief of Police shall determine that the proposed dance ought not to be held he shall, within five (5) days after receipt of the aforesaid notice of application for lease or rental, notify the licensed owner of such public dance hall in writing that the proposed public dance shall not be held therein, and the licensed owner of such public dance hall shall thereupon refuse to permit such public dance to be held in such hall. In such event, for an occasional license, the license fee shall be returned.
 - (b) All public dance halls shall be kept at all times in a clean, healthful, and sanitary condition, and all stairways and outer passages and all rooms connected with a public dance hall shall be kept open and well lighted, and it shall be unlawful to dim the lights in a public dance hall while a dance number is going on. The Chief of Police shall cause the place, hall, or room where any dance is being held or given, to be vacated whenever any indecent act shall be committed or when any disorder of a violent or vulgar character shall take place.
 - (c) Whenever practicable, the licensee shall engage the services of an off-duty law enforcement official from the Village, if possible, otherwise from some other law enforcement agency within Milwaukee County, to be in attendance during the dance.
- (5) **Minors at Public Dances.**

- (a) Within premises where no intoxicating liquor or fermented malt beverages are available, it shall be unlawful after 10:00 p.m. to permit any person to attend or take part in any public dance who has not reached the age of 18 years, unless such person be in the company of a parent or guardian, or spouse, one of whom shall be 18 years of age.
 - (b) In event the premises are licensed for the sale of intoxicating liquor or fermented malt beverages, at no time shall a person under the age of 21 be permitted to be in attendance, unless accompanied by his parent or guardian or spouse, one of whom shall be 21 years of age. Such premises shall include any shall which is attached to or under the same roof as or abutting on the same plot as one licensed for the sale of intoxicating liquor or fermented malt beverages.
 - (c) No person shall misrepresent his age in order to obtain admission to a public dance hall or be permitted to remain therein when such person in fact is under age, and no person shall represent himself to be a parent, guardian, or spouse of any person in order that such person may obtain admission to a public dance hall, nor shall he be permitted to remain therein when the party making the representation is not in fact either a parent, guardian, or spouse of the other person.
- (6) **Closing Hour.** All public dances shall be discontinued on or before 2:00 a.m. on weekdays, 2:30 a.m. on Sundays and on New Year's Day.
- (7) **Serving of Liquor.** No licensee shall permit any person to serve, dispense, sell, or drink any intoxicating liquor or fermented malt beverages upon the licensed public dance hall premises unless such premises are duly licensed for such sales.
- (8) **Marathons Prohibited.** The holding, showing, or exhibiting of dance marathons or walkathons is prohibited within the Village.
- (9) Prior to the issuance of any such dance hall license, the Village Clerk shall refer the matter to the Fire Inspector and Chief of Police of the Village to ascertain whether the premises comply in all respects with the Fire Code of the Village for such use and further to ascertain whether supervision is necessary under Subsection (4) hereof. The Village Clerk shall be empowered to issue occasional licenses upon the affirmative report of such Village personnel. For an annual dance hall license, the Village Clerk shall only be authorized to issue a license upon the affirmative approval of a majority of the License Committee of the Village Board.

11.06 AMUSEMENT DEVICES.

- (1) **Purpose.** This section is enacted to preserve the public peace and safety, and is a matter of urgency, being occasioned by the fact that various persons are or may be establishing so-called pin games, digger games, slot machines, rotary merchandisers, or other devices, in the Village of Hales Corners, which by offering chances or hazards have a tendency to adversely affect the morals of youth and to inspire gambling.
- (2) **Definitions.**
- (a) A "coin operated phonograph" and a "coin operated soundy" are machines or devices which are so constructed or installed that upon the insertion in the slot of the machine of a coin it, in return, reproduces musical sounds or speeches with or without cinema or moving picture reproduction.

- (b) An “amusement device” is any mechanical device or shuffle board used or designed to be used or operated for amusement only, but the insertion of a coin of any kind and shall include the type of mechanical device commonly known as a baseball, football, basketball, hockey, bowling, ray gun, bumper and skee ball amusement games. The aforementioned enumerated shall not be deemed to be exclusive. Nothing herein shall be construed to authorize the use or operation of any slot machine or other gambling device. A pool table in a commercial establishment, including on which does not require the insertion of a coin, shall be considered an amusement device.
 - (c) “Premises” is the place where coin operated phonographs, soundies, or amusement devices are kept for the use of the public.
 - (d) “Owner” is one who has dominion of the premises, whether a freeholder, leaseholder, person, firm, or corporation.
- (3) **License Required.** No owner shall, within the Village, place, install, or permit to be placed or installed for use by the public or any person any coin operated phonographs, soundies, or amusement devices without first having obtained a license as herein provided and prescribed, which shall be referred to as an “Amusement Device License”.
- (4) **Application for License.** Any owner desiring to obtain an amusement device license shall obtain a license application from the Village Clerk. He shall fill out this application form stating:
- (a) The name of the applicant;
 - (b) The permanent address of the applicant;
 - (c) The name and address of firm or corporation the applicant represents, if any;
 - (d) The number of coin operated phonographs, soundies, or amusement devices he intends to have on his premises;
 - (e) The premises where coin operated phonographs, soundies, or amusement devices are to be kept for the use of the public.

All applications must be signed by the applicant.

- (5) **License.** Upon the filing of the application properly filled out, and upon filing a receipt showing the payment of a license fee to the Village Treasurer who shall transfer said fee to the general fund, the Village Clerk shall issue to the applicant a license. All licenses shall be numbered in the order in which they are issued and shall state clearly the name and address of the licensee, the fee paid, the premises, the date of issuance, and the number of coin operated phonographs, soundies, or amusement devices to be used on the premises. Such license shall automatically expire on June 30, following the date of issuance unless sooner revoked in the manner herein provided.

Whenever a license is lost or destroyed without fault on the part of the holder or his agent or employee, a duplicate in lieu thereof under the original application shall be issued by the Village Clerk on satisfying himself of the facts, and upon the payment of a fee of \$1.00. No transfer from person to person of the license shall be permitted except that if any licensee shall die during any license year the administrator or, if not administrator is appointed, the surviving spouse of such deceased licensee may continue or sell, and, if he sells the same, may assign or transfer such license.

- (6) **License Fee.** The license fee shall be paid to the Village Treasurer at or before the making of the application for the license, and shall consist of the sum of \$40.00 per year

or fractional part thereof for each coin operated phonograph, sounds, or amusement device to be used on the premises.

(7) **Additional Regulations.**

- (a) No coin operated phonograph or sound movie shall be permitted to reproduce vulgar, obscene, or indecent reproductions or pictures.
- (b) No licensee shall permit any person to use any amusement device for gambling or for playing thereon a game of chance.
- (c) No person shall willfully or maliciously remove, destroy, tamper, or injure mutilate or alter any coin operated phonograph, sound movie, or amusement device or insert any slug, token, or counterfeit coin in any licensed coin machine.
- (d) No licensee shall suffer or permit any minor under the age of 18 years to operate an amusement device unless said minor is accompanied by his or her parent, guardian, or spouse of whom one shall be 18 years of age, nor shall any license hereunder be issued to any owner who permits minors to loiter on his premises.
- (e) No person shall own, operate, or use within the Village any gambling device or devices used for gambling.
- (f) No person shall use or permit the use of any device whereby any person shall or may be induced to believe that he will or may receive any money, merchandise, replay, thing, or the consideration, or any token exchangeable for any money, merchandise, replay, thing, or consideration, as the result in whole or part of any contest of skill between the person and the device whatever being so operated.
- (g) All licenses shall be posted in a conspicuous place in the premises.

11.07 CIGARETTES.

- (1) **License Required.** No person shall within the Village manufacture, sell, exchange, barter, dispose of, or give away, or keep for sale any cigarettes, cigarette paper, or cigarette wrappers, or any paper made or prepared for the purpose of being filled with tobacco without first obtaining a license therefore, as herein provided. The provisions hereof shall not apply to the sales of jobbers or manufacturers doing an interstate business with customers outside the State of Wisconsin.
- (2) **Application for License.** Any person desiring to engage in the cigarette business as aforesaid shall obtain a license application form from the Village Clerk. He shall fill out this application form stating the name of the person and the place for which such license is desired.
- (3) **License.** Upon the filing of the application properly filled out, and upon filing a receipt showing the payment of a license fee of \$100.00 to the Village Treasurer who shall transfer said fee to the general fund, the Village Clerk shall issue to the applicant a license. All licenses shall be numbered in the order they are issued, shall be signed by the Village Clerk, and shall name the licensee and the place where he is authorized to conduct such business. Every license shall be issued on July 1, in each year or thereafter whenever applied for and shall continue in force from the date of issuance until the succeeding June 30, unless sooner revoked for a violation of this section. In case of a change of ownership in any licensed location, the Village Clerk may transfer such license to the new owner.
- (4) **No Sales to Persons Under 18.** No person shall sell, give away, or otherwise dispose of to any person under the age of 18 years any cigarettes, cigarette paper, or cigarette

wrappers, or any substitute therefore, or any paper made or prepared for the purpose of being filled with tobacco for smoking.

- (5) **Possession of Cigarette or Tobacco Products by a Person Under the Age of 18.** No person under the age of 18 shall possess any cigarette or tobacco product.

11.08 LICENSING OF DOGS AND CATS; REGULATION OF ANIMALS.

(1) Definitions; Statutes Adopted.

- (a) Definitions. In this Section, unless the context or subject matter otherwise require, the following definitions shall be applicable:
1. "Owner" shall mean any person owning, harboring or keeping a domestic animal and the occupant of any premises on which a domestic animal remains or to which it customarily returns daily for a period of ten (10) days; such person is presumed to be harboring or keeping the domestic animal within the meaning of this Section.
 2. "Domestic Animal" shall include all members of the common dog (*canis familiaris*) family, common cat (*feline domesticus*) family and any other animal kept as a pet for other than utilitarian purposes, including, but not limited to rabbits, snakes, ferrets and lizards.
 3. "At Large" includes any domestic animal off the premises of its owner. A domestic animal shall not be deemed at large if:
 - a. It is attached to a leash of sufficient strength to restrain the domestic animal and not more than twelve (12) feet in length, where said leash is held by a person competent to govern the domestic animal.
 - b. When properly restrained within a motor vehicle.
 - c. When not more than six (6) feet from its owner or his agent or competent to govern such dog at such distance, if such dog is not annoying or worrying pedestrians or trespassing on private property.
 4. "Dog" shall mean any canine of the *canis familiaris* family, regardless of age or sex.
 5. "Cat" shall mean any feline of the *feline domesticus* family, regardless of age or sex.
 6. "Neutered" as used herein as describing a domestic animal having nonfunctional reproductive organs.
 7. "Animal" means mammals, reptiles and birds.
 8. "Cruel" means causing unnecessary and excessive pain or suffering or unjustifiable injury or death.
 9. "Law Enforcement Officer" has that meaning as appears in Sec. 967.02(5), Wis. Stats., and includes a humane officer under Sec. 173.03, *et seq.*, Wis. Stats., but does not include a conservation warden appointed under Sec. 23.10, Wis. Stats.
 10. "Farm Animal" means any warm-blooded animal normally raised on farms in the United States and used for food or fiber.
 11. "Pet" means an animal kept and treated as a pet.
- (b) Incorporation of Statutory Regulations. Sections 174.01 through 174.042 of the Wisconsin Statutes and such sections as they may hereafter be amended and/or renumbered are hereby incorporated by reference with respect to restraining action against dogs, the imposition of forfeitures for violations of such

regulations and other regulations of dogs imposed under this Code, and the impoundment and subsequent delivery, treatment and disposition of dogs, provided, however, that this Section shall not be construed to restrict or limit any authority heretofore granted to the Police Department with respect to the regulation of dogs and shall not operate to reduce any forfeitures or other penalties which might otherwise be imposed under this Code.

State Law Reference: Sections 174.05 through 174.15, Wis. Stats.

(2) **Rabies Vaccination Required for License.**

- (a) **Rabies Vaccination.** The owner of a dog shall have the dog vaccinated against rabies by a veterinarian within thirty (30) days after the dog reaches five (5) months of age and revaccinated within one (1) year after the initial vaccination. If the owner obtains the dog or brings the dog into the Village of Hales Corners after the dog has reached five (5) months of age, the owner shall have the dog vaccinated against rabies within thirty (30) days after the dog is brought into the Village unless the dog has been vaccinated as evidenced by a current certificate of rabies vaccination. The owner of a dog shall have the dog revaccinated against rabies by a veterinarian before the date of that immunization expires as stated on the certificate of vaccination or, if no date is specified, within three (3) years after the previous vaccination. The certificate of vaccination shall meet the requirements of Sec. 95.21(2), Wis. Stats.
- (b) **Issuance of Certificate of Rabies Vaccination.** A veterinarian who vaccinates a dog against rabies shall complete and issue to the owner a certificate of rabies vaccination bearing a serial number and in the form approved by the Village stating the owner's name and address, the name, sex, spayed or unspayed, neutered or unneutered, breed and color of the dog, the date of vaccination, the type of rabies vaccination administered and the manufacturer's serial number, the date that the immunization expires as specified for that type of vaccine by the Center for Disease Control of the U.S. Department of Health and Human Services and the Village.
- (c) **Copies of Certificate.** The veterinarian shall keep a copy of each certificate of rabies vaccination in a file maintained for this purpose until the date that the immunization expires or until the dog is revaccinated, whichever occurs first.
- (d) **Rabies Vaccination Tag.** After issuing the certificate of rabies vaccination, the veterinarian shall deliver to the owner a rabies vaccination tag of durable material bearing the same serial number as the certificate, the year the vaccination was given and the name, address and telephone number of the veterinarian.
- (e) **Tag to be Attached.** The owner shall attach the rabies vaccination tag or a substitute tag to a collar and a collar with the tag attached shall be kept on the dog at all times, but this requirement does not apply to a dog during competition or training, to a dog while hunting, to a dog securely confined indoors or to a dog securely confined in a fenced area. The substitute tag shall be of a durable material and contain the same information as the rabies vaccination tag. The requirements of this paragraph do not apply to a dog which is not required to be vaccinated under Subsection (a).
- (f) **Duplicate Tag.** The veterinarian may furnish a new rabies vaccination tag with a new serial number to an owner in place of the original tag upon presentation of the certificate of rabies vaccination. The veterinarian shall then indicate the new tag number on the certificate and keep a record in the file.

- (g) Cost. The owner shall pay the cost of the rabies vaccination and the cost associated with the issuance of a certificate of rabies vaccination and the delivery of a rabies vaccination tag.

(3) **Issuance of Dog and Cat Licenses.**

- (a) The Village Treasurer shall issue cat and dog licenses upon due application as required by State law and Milwaukee County Ordinances. The licensee, upon procuring a license, shall securely attach the license tag to a collar or harness; and this collar or harness shall, whenever the dog or cat is outside the dwelling of the licensee, be kept on the dog or cat for which the license is issued.
- (b) The owner shall be liable for the payment of the license fee of any dog or cat owned.
- (c) Upon payment of the required license tax and upon presentation of evidence that the dog is currently immunized against rabies, as required by Subsec. (2) of this Section, the Village Treasurer shall complete and issue to the owner a license for such dog containing all information required by State law.
- (d) The fact that a dog is without a tag attached to the dog by means of a collar shall be presumptive evidence that the dog is unlicensed. Any Village police or humane officer shall seize, impound or restrain any dog for which a dog license is required which is found without such tag attached.
- (e) Notwithstanding the foregoing, every dog specifically trained to lead blind or deaf persons is exempt from the dog license tax, and every person owning such a dog shall receive annually a free dog license for the Village Treasurer upon application therefor.
- (f) The license fee shall be:

Neutered Male or Spayed Female Cat or Dog - \$12.00

Un-neutered Male or Un-spayed Female Cat or Dog - \$24.00

The above mentioned fees are equal in amount to those recommended by the Milwaukee Area Domestic Animal Control Commission (MADACC) upon the adoption of this Ordinance and such fees set forth in this subsection shall be deemed amended from time to time to be equal to such amounts as recommended by MADACC from time to time, which are incorporated herein by reference.

State Law Reference: Sec. 174.053, Wis. Stats.

- (4) **Late Fees.** The Village Treasurer shall assess and collect a late fee of \$6.00 from every owner of a dog or cat five (5) months of age or over if the owner failed to obtain a license prior to April 1 of each year, or within thirty (30) days of acquiring ownership of a licensable dog or cat or if the owner failed to obtain a license on or before the dog or cat reached licensable age. Said late fee shall be charged in addition to the required license fee.

(5) **Rabies Control Program.**

- (a) District Quarantine.
 - 1. Animals Confined. If a district is quarantined for rabies, all animals within that district shall be kept securely confined, tied, leashed or muzzled. Any animal not confined, tied, leashed or muzzled is declared a public nuisance and may be impounded. All officers shall cooperate in the enforcement of the quarantine. The Village Clerk shall promptly post in at least three (3) public places in the Village notices of quarantine.

2. Exemption of Vaccinated Dog or Cat from District Quarantine. A dog or cat which is immunized currently against rabies, as evidenced by a valid certificate of rabies vaccination or other evidence, is exempt from the district quarantine provisions of Subsection (a)(1) if a rabies vaccination tag or substitute tag is attached to the dog's or cat's collar.
- (b) Quarantine or Sacrifice of an Animal Suspected of Biting a Person or Being Infected or Exposed to Rabies.
1. Quarantine or sacrifice of animal. A Village law enforcement officer, health officer, or humane officer shall order an animal quarantined if the officer has reason to believe that the animal bit a person, is infected with rabies or has been in contact with a rabid animal. If a quarantine cannot be imposed because the animal cannot be captured or there is a threat to public health and safety, the officer may kill the animal. The officer shall attempt to kill the animal in a humane manner and in a manner which avoids damage to the head of the animal.
 2. Sacrifice of Other Animals. An officer may order killed or may kill an animal other than a dog or cat if the officer has reason to believe that the animal bit a person or is infected with rabies.
 3. Report. Any person who shall suspect that any animal is infected with hydrophobia or rabies shall report his suspicions to the police or health authorities, describing the animal and giving the name of the owner, if known. Any such animal shall, upon demand of any police officer or health officer of the Village, be delivered to such officer. If, upon examination by the health authorities, the animal shall prove, in fact, to be infected with such disease, the animal may be killed by any such officer.
 4. Failure to Report. No person shall fail to report to the police or health authorities of the Village the existence of any animal which he knows to be infected with hydrophobia or rabies.
- (c) Quarantine of Animals.
1. Delivery to isolation facility or quarantine on premises of owner. An officer who orders an animal to be quarantined shall deliver the animal or shall order the animal delivered to an isolation facility as soon as possible, but no later than twenty-four (24) hours after the original order is issued or the officer may order the animal to be quarantined on the premises of the owner if the animal is immunized currently against rabies as evidenced by a valid certificate of rabies vaccination or other evidence.
 2. Health risk to humans. If an animal is ordered to be quarantined because there is reason to believe that the animal bit a person, the custodian of an isolation facility or the owner shall keep the animal under strict isolation under the supervision of a veterinarian for at least ten (10) days after the incident occurred. A vaccinated animal may be quarantined on the premises of the owner and under the supervision of a veterinarian for at least ten (10) days after the incident if the animal is kept in an escape proof enclosure or in the home. If a quarantine of a vaccinated animal cannot be adequately maintained on the premises of the owner, an officer may order a vaccinated dog or cat to be quarantined at an isolation facility. If the dog, cat or other domesticated animal or wild animal held captive is unvaccinated, such animal shall be held under strict isolation at an isolation facility under the supervision of a veterinarian for a period of

ten (10) days. In this paragraph, "supervision of a veterinarian" includes, at a minimum, examination of the animal on the first day of isolation, on the last day of isolation, and on one (1) intervening day. If the observation period is not extended and if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine at the end of the observation period.

3. Risk to animal health.
 - a. If an animal is ordered to be quarantined because there is reason to believe that the animal has been exposed to a rabid animal and if the animal is not currently immunized against rabies, the custodian of an isolation facility or the owner shall keep the animal leashed or confined for one hundred eighty (180) days. The owner shall have the animal vaccinated against rabies between one hundred fifty-five (155) and one hundred sixty-five (165) days after the exposure to a rabid animal.
 - b. If an animal is ordered to be quarantined because there is reason to believe that the animal has been exposed to a rabid animal but if the animal is immunized against rabies, the custodian of an isolation facility or the owner shall keep the animal leashed or confined for sixty (60) days. The owner shall have the animal revaccinated against rabies as soon as possible after exposure to a rabid animal.
 4. Sacrifice of an animal exhibiting symptoms of rabies. If a veterinarian determines that an animal exhibits symptoms of rabies during the original or extended observation period, the veterinarian shall notify the owner and the officer who ordered the animal quarantined and the officer or veterinarian shall kill the animal in a humane manner and in a manner which avoids damage to the animal's head. If the animal is suspected to have bitten a person, the veterinarian shall notify the person or the person's physician.
- (d) Delivery of Carcass; Preparation; Examination by Laboratory of Hygiene. An officer who kills an animal shall deliver the carcass to a veterinarian or local health department. The veterinarian or local health department shall prepare the carcass, properly prepare and package the head of the animal in a manner to minimize deterioration, arrange for delivery by the most expeditious means feasible of the head of the animal to the State Laboratory of Hygiene and dispose of or arrange for the disposal of the remainder of the carcass in a manner which minimizes the risk of exposure to any rabies virus. The State Laboratory of Hygiene shall examine the specimen and determine if the animal was infected with rabies. The State Laboratory of Hygiene shall notify the Village, the veterinarian or local health department which prepared the carcass and, if the animal is suspected to have bitten a person, that person or the person's physician.
 - (e) Cooperation of Veterinarian. Any practicing veterinarian who is requested to be involved in the rabies control program by an officer is encouraged to cooperate in a professional capacity with the Village, the State Laboratory of Hygiene, the local health department, the officer involved and, if the animal is suspected to have bitten a person, the person's physician.
 - (f) Responsibility for Quarantine and Laboratory Expenses. The owner of an animal is responsible for any expense incurred in connection with keeping the animal in an isolation facility, supervision and examination of the animal by a veterinarian, preparation of the carcass for laboratory examination and the fee for the

laboratory examination. If the owner is unknown, the county is responsible for these expenses, unless otherwise provided for under the duties of the Milwaukee Area Domestic Animal Control Commission (MADACC).

(6) **Restrictions on Keeping Domestic Animals.**

- (a) Restrictions. It shall be unlawful for any person within the Village of Hales Corners to own, harbor or keep any domestic animal which:
1. Habitually pursues any vehicle upon any public street, alley or highway in the Village.
 2. Runs at large within the Village. Any domestic animal found at large shall be deemed to be so without the permission or at the sufferance of its owner.
 3. Customarily, frequently, inveterately or habitually barks or howls, or makes other disturbing noises to the annoyance of any person or persons (see Subsec. (11) of this Section).
 4. Assaults or attacks any person in the Village or has a propensity to attack or bite persons, when such propensity is known or ought reasonably to be known to the owner.
 5. Kills, wounds, or worries any domestic animal.
 6. Is known by such person to be infected with rabies or to have been bitten by an animal known to have been infected with rabies.
 7. In the case of a dog or cat, is unlicensed.
- (b) Setting at Large Unlawful. No person other than the owner of a domestic animal or his agent shall open any door or gate of any private premises or otherwise entice or enable any domestic animal to leave any private premises for the purpose or with the result of setting such domestic animal at large. A domestic animal shall not be deemed at large if:
1. It is attached to a leash of sufficient strength to restrain the domestic animal and not more than twelve (12) feet in length, where said leash is held by a person competent to govern the domestic animal.
 2. When properly restrained with a motor vehicle.
 3. When not more than six (6) feet from its owner or his agent or competent to govern such domestic animal at such distance, if such domestic animal is not annoying or worrying pedestrians or trespassing on private property.
- (c) Restraining Action Against Dogs. A person may take restraining action with respect to any dog running at large or any dog which attacks or injures a domestic animal while the dog is not on the property of its owner. Restraining action with respect to a dog includes:
1. Notifying the dog's owner and requesting that the owner capture and restrain the dog.
 2. Notifying a police officer and requesting that the officer capture and restrain the dog.
 3. Capturing and restraining the dog.
- A person under attack by a dog may use any means the situation requires to subdue the dog to protect one's person or the person of another from bodily harm or death.
- (d) Vicious Dogs and Animals.
1. For purposes of enforcing this Subsection, a domestic animal shall be deemed as being vicious if it has a propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise threaten the safety of

human beings or domestic animals, or if it has attacked or bitten a human being or domestic animal.

2. Whenever any person is charged with harboring, owning or keeping a vicious animal as defined in this Subsection, that person shall, to the satisfaction of the Court, remove said animal from the Village until the trial of the citation. If the owner fails to remove the animal within forty-eight (48) hours of the service of the citation, the Police Department shall impound the animal until the trial on the citation.
3. In a trial or hearing upon a charge of owning or keeping a vicious animal, the Municipal Court shall make a finding that said animal is either a vicious animal, a dangerous animal, or not a danger to the community, and shall order the appropriate disposition of the animal as guided by this Section.
4. No person shall harbor, keep or maintain within the Village limits any vicious animal. If an animal is determined by plea or trial to be a vicious animal, the Court shall order that the animal either be destroyed by humane means or not be returned to the Village. Any animal returned to the Village after being determined to be a vicious animal constitutes a public nuisance. Maintaining or keeping a vicious animal within the Village limits, after a finding in Municipal Court that the owner of that animal has violated any provision of this Subsection relating to vicious animals, is hereby declared to be a public nuisance.

(e) Dangerous Dogs.

1. For purposes of enforcing this Subsection, a dog shall be deemed dangerous if, because of its aggressive nature, training or characteristic behavior, it is capable of inflicting serious physical harm or death to humans; if it constitutes a danger to human life or property if not kept in the manner required by this Subsection; or if it, when unprovoked, chases or approaches a person in a menacing fashion or apparent attitude of attack on public or private property.
2. Any person may petition the Municipal Court to declare a dog dangerous. Upon receipt by the Municipal Court Clerk of the sworn affidavit of any person setting forth the nature and date of the act, the name and address of the owner and a description of the dog, the Municipal Court Clerk shall give notice of hearing to the complainant and issue a Summons addressed to the owner. Any dog determined by the Court to be dangerous shall be subject to the restrictions for dangerous dogs as provided in this ordinance. Any dog declared dangerous shall be micro-chipped for permanent identification at the owner's expense by a local veterinarian.
3. All owners of dangerous dogs shall, on or before April 15, 2003, and annually thereafter on or before April 15th of each year, register their dog and shall provide a current color photograph of the dog to the Treasurer's office and pay a registration fee of Fifteen Dollars (\$15.00). This fee shall be in addition to any dog license fee required. At the time of registration, each owner of any dangerous dog kept within the Village limits shall provide to the Treasurer's office proof of liability insurance in the amount of at least One Hundred Thousand Dollars (\$100,000.00) for any acts of property damage or liability incurred by virtue of injury inflicted by such dog. Such insurance shall name the Village as co-insured solely for the purpose of notice of cancellation of the policy.

Upon payment of the fee, the Treasurer shall issue a current dangerous dog collar of an approved color for the purpose of identification, which collar is to be worn by the dog at all times as proof of registration. If, when due to the length of the dog's hair, the collar is not visible, an approved colored lead or chain may be used. An owner of a dangerous dog who fails to register the dog is subject to a forfeiture of not less than Twenty Five Dollars (\$25.00) nor more than Two Hundred Fifty Dollars (\$250.00) per day. An owner of a dangerous dog who registers but neglects to have the dangerous dog collar worn by the dog at all times is subject to a forfeiture of not less than Twenty Five Dollars (\$25.00) nor more than Two Hundred Fifty Dollars (\$250.00) per day, excepting that the collar may be removed for grooming or purposes of other care when the dog is secured indoors or in an approved pen.

4. While on the owner's property, a dangerous dog must be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children, and designed to prevent the animal from escaping. Such pen or structure must have minimum dimensions of five (5) feet by ten (10) feet and must have secure sides and a secure top. If it has no bottom secured to the sides, the sides must be imbedded into the ground no less than two (2) feet. The enclosures must also provide protection from the elements for the dog.
 5. The owner or keeper shall display a sign on the owner's or keeper's premises facing out from all sides of the premises warning that there is a dangerous dog on the property. This sign should be visible and capable of being read from a public highway or thoroughfare or within twenty (20) feet of its placement, whichever distance is less. In addition, the owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous dog.
 6. A dangerous dog may be off the owner's or keeper's premises if it is muzzled and restrained by an approved lead or chain not exceeding three (3) feet in length and is under the control of an adult, able-bodied person. The muzzle must be made in a manner that will not cause injury to the dog or interfere with its vision or respiration, but must prevent it from biting any person or animal.
 7. It shall be the duty of the Police Department and such others persons as from time to time may be designated by resolution of the Village Board to apprehend any dangerous dogs running at large. If any dog suspected of being dangerous is found running at large, it shall be impounded and shall be returned to its owner only upon proof of registration as a dangerous dog.
 8. The owner or keeper of any dog previously determined to be a dangerous dog, found running at large shall, upon conviction, pay a forfeiture of not less than Two Hundred Dollars (\$200.00) nor more than One Thousand Dollars (\$1,000.00).
- (f) For purposes of this Section, no dog shall be declared to be a vicious or dangerous dog if the proof of viciousness or dangerousness concerns injury or damage sustained by a person, who, at the time, was teasing, tormenting, abusing or assaulting the dog, or where the dog was protecting its owner from attack by a human being or animal.

- (g) The provisions of this ordinance regarding dangerous and vicious dogs shall not apply to animals owned by law enforcement agencies and used for law enforcement purposes.
- (h) Owner's Liability for Damage Caused by Dogs; Penalties. The provisions of Sec. 174.02, Wis. Stats., relating to the owner's liability for damages caused by dogs together with the penalties therein set forth are hereby adopted and incorporated herein by reference.

(7) **Impoundment of Animals.**

(a) Animal Control Agency.

1. The Village of Hales Corners may contract with or enter into an agreement with such person, persons, organization or corporation to provide for the operation of an animal shelter, impoundment of stray animals, confinement of certain animals, disposition of impoundment animals and for assisting in the administration of rabies vaccination programs.
2. The Village of Hales Corners does hereby delegate to any such animal control agency the authority to act pursuant to the provisions of this Section.

(b) Impounding; Repossession; Disposal.

1. Upon the complaint of any person injured by an animal or upon the complaint of any parent or guardian of a minor child injured by an animal, the Police Department shall investigate the complaint, and if the animal is alleged to be vicious, the animal may be impounded.
2. Whenever an animal is impounded, the impounding authority shall give notice to the owner or keeper whether and under what circumstances the animal may be redeemed. The owner or keeper of any animal impounded, confined or destroyed under the terms of this Section shall be responsible for all costs of such confinement, impoundment or destruction.
3. In addition to the authority to impound animals as is elsewhere provided in this Section, any police officer, health officer, representative of the Department of Public Works or humane officer finding a domestic animal at large or otherwise in violation of this Section or knowing of any unlicensed dog or cat either at large or upon private premises shall seize such domestic animal and impound it in the place provided by the Village or by the Milwaukee Area Domestic Animal Control Commission (MADACC).
4. The possession of any licensed dog or cat so seized or impounded may be obtained by the owner upon payment of an impoundment fee in the amount of \$50.00 to the Village, plus the daily boarding fee to the animal control agency for keeping such dog or cat for each day or fraction thereof during which the said dog or cat has been impounded. The possession of any unlicensed dog or cat may be obtained by the owner after obtaining a license and paying the fee provided therein.
5. If any domestic animal that has been impounded for eight (8) days has not been reclaimed by its owner, said domestic animal may be disposed of in the most humane manner by the Police Department, the health officer or the animal control agency.

(c) Report of Impounded or Killed Domestic Animals. Any person or any officer who shall kill or impound any domestic animal, after delivery of said domestic

animal or its carcass to the Police Department of the Village, shall make a report to the Village Clerk stating when and under what conditions he seized, impounded or killed such domestic animal and the owner's name, if known.

- (d) Village not Liable for Impounding Animals. The Village and/or its animal control agency shall not be liable for the death of any animal which has been impounded or disposed of pursuant to this Section.
- (8) **Domestic Animals Restricted in Cemeteries.** No domestic animal shall be permitted in any public cemetery. Every dog specially trained to lead blind persons shall be exempt from this Subsection.
- (9) **Duty of Owner in Case of Animal Bite.**
- (a) Whenever a dog, cat or other domestic animal, or wild animal held captive, bites a person within the Village, and such bite penetrates or lacerates the skin of the person bitten, such dog, cat or other domesticated animal or wild animal held captive shall be restricted to the premises of its owner, if within the Village, or to a veterinarian's care as a suspect rabies case for a period of ten (10) days. If the dog, cat or other domesticated animal or wild animal held captive is unvaccinated, such animal shall be held under strict isolation at an isolation facility under the supervision of a veterinarian for a period of ten (10) days. Additionally, such owner or keeper shall immediately, in writing, report the fact that his domestic animal has bitten a person to the Health Officer of the Village.
- (b) If, during the confinement time, said animal shows signs of illness, lameness or paralysis, the owner or veterinarian shall immediately report such condition to the health officer. Such domestic animal shall not be released from confinement until the health officer of the Village shall have given written approval. Any such domestic animal shall be surrendered to the police or health officer upon demand.
- (c) The owner of an animal is responsible for any expense incurred in connection with keeping the animal in an isolation facility and supervision and examination of the animal by a veterinarian.
- (10) **Injury to Property by Animals.**
- (a) No person who owns or is governing and accompanying a dog off the owner's premises shall permit such dog to go upon any public area, or upon private lands or premises without the permission of the owner of the lands or premises, and break, bruise, tear up, crush or injure any lawn, plant, tree, shrub or garden or any other object upon such public or private lands and premises or to defecate thereon.
- (b) Any person governing and accompanying a dog off the premises of its owner, including its owner, shall carry a waste deposit receptacle and a hand shovel or other reasonably similar device and shall utilize same to immediately remove any feces deposited by such animal on any public or private premises and shall dispose of same in any method allowable by law at the consenting owner's or such person's residence. Compliance with the requirements of this subsection shall not constitute a defense to or in any way absolve any person from any liability or penalty resulting from a violation of subsection 7(a) above.
- (c) Any person who shall violate any provision of paragraphs (a) or (b) of this subsection shall, upon conviction thereof, forfeit the sum of Forty Dollars (\$40.00), together with the costs of prosecution and in default of payment of such forfeiture or costs of prosecution, shall be imprisoned in the county jail or county

house of correction, until said forfeitures and costs are paid, but not exceeding ninety (90) days. A violation of one (1) or more of the prohibitions under paragraph (a) above, shall constitute a separate offense for each parcel of land or lot upon which such violation(s) occur. A violation of each requirement under paragraph (b) above, shall constitute a separate offense.

(11) **Barking Dogs or Crying Cats.** It shall be unlawful for any person knowingly to keep or harbor any domestic animal which habitually, customarily, frequently or inveterately barks, howls or yelps, or makes other disturbing noises to the great discomfort of the peace and quiet of the neighborhood or in such manner as to materially disturb or annoy persons in the neighborhood who are of ordinary sensibilities. Such dogs and cats are hereby declared to be a public nuisance. A dog or cat is considered to be in violation of this Section when two (2) formal, written complaints are filed with the Police Department within a four (4) week period.

(12) **Prohibited and Protected Animals, Fowls, Reptiles, and Insects.**

(a) Protected Animals.

1. Possession and Sale of Protected Animals. It shall be unlawful for any person, firm or corporation to possess, possess with intent to sell or offer for sale, or buy or attempt to buy, within the Village, any of the following animals, alive or dead, or any part or product thereof: all wild cats of the family felidae, polar bear (*Thalarctos maritimus*), red wolf (*canis niger*), vicuna (*vicugna vicugna*), or alligator, caiman or crocodile of the order of crocodilia, gray or timber wolf (*canis lupus*), sea otter (*enhydra lutis*), Pacific ridley turtle (*lepidochelys olivacea*), Atlantic green turtle (*chelonina mydas*), Mexican ridley turtle (*lepidochelys kempfi*).
2. Compliance with Federal Regulations. It shall be unlawful for any person, firm or corporation to buy, sell or offer for sale a native or foreign species or subspecies of mammal, bird, amphibian or reptile, or the dead body or parts thereof, which appears on the endangered species list designated by the United States Secretary of the Interior and published in the Code of Federal Regulations pursuant to the Endangered Species Act of 1969 (Public Law 135, 91st Congress).
3. Regulating the Importation of Certain Birds. No person, firm or corporation shall import or cause to be imported into this Village, any part of the plumage, skin or dead body of any species of hawk, owl or eagle. This paragraph shall not be construed to forbid or restrict the importation or use of the plumage, skin, body or any part thereof legally collected for use by the American Indians for ceremonial purposes or in the preservation of their tribal customs and heritage.

(b) Exceptions. The provisions of Subsection (a) above shall not be deemed to prevent the lawful importation, possession, purchase or sale of any species by any public agency, institute of higher learning, persons holding federal permits, or by a person holding a Scientific Collectors Permit issued by the Secretary of the Department of Natural Resources of the state, or to any person or organization licensed to present a circus.

(c) Wild Animals; Prohibition on Keeping. It shall be unlawful for any person to keep, maintain or have in his possession or under his control within the Village, any poisonous reptile or any other dangerous or carnivorous wild animal or hybrid thereof, insect or reptile, any vicious or dangerous domesticated animal or

any other animal or reptile of wild, vicious or dangerous propensities. Specifically, it shall constitute a public nuisance and be unlawful for any person to keep, maintain or have in his possession or under his control within the Village, any of the following animals, reptiles or insects:

1. All poisonous animals and reptiles including rear-fang snakes.
2. Apes; chimpanzees (Pan); gibbons (Hylobates); gorillas (Gorilla); orangutans (Pongo); and siamangs (Symphalangus).
3. Baboons (Papoi, Mandrillus).
4. Bears (Ursidae).
5. Bison (Bison).
6. Cheetahs (Acinonyx jubatus).
7. Crocodilians (Crocodilia) thirty (30) inches in length or more.
8. Constrictor snakes six (6) feet in length or more.
9. Coyotes (Canis latrans).
10. Deer (Cervidae); includes all members of the deer family; for example, whitetailed deer, elk, antelope and moose.
11. Elephants (Elephas, Loxodonta).
12. Game cocks and other fighting birds.
13. Hippopotami (Hippopotamidae).
14. Hyenas (Hyaenidae).
15. Jaguars (Panthera onca).
16. Leopards (Panthera pardus).
17. Lions (Panthera leo).
18. Lynxes (Lynx).
19. Monkeys, old world (Cercopithecidae).
20. Ostriches (Struthio).
21. Pumas (Felis concolor); also known as cougars, mountain lions and panthers,
22. Rhinoceroses (Rhinocero tidae).
23. Sharks (class Chondrichthyes).
24. Snow leopards (Panthera uncia).
25. Tigers (Panthera tigris).
26. Wolves (Canis lupus).
27. Poisonous insects.
28. Horses, mules, ponies, donkeys, lamas, cows, pigs, goats, sheep, ducks, chickens or farm animals if not included aforesaid or any animal raised for fur-bearing purposes unless otherwise permitted under this Section.

(d) **Exceptions; Pet Shops.** The prohibitions of Subsection (c) above shall not apply where the creatures are in the care, custody or control of: a veterinarian for treatment; agricultural fairs; shows or projects of the 4-H Clubs; a display for judging purposes; an itinerant or transient carnival, circus or other show; dog or cat shows or trials; public or private educational institutions; licensed pet shops; zoological gardens, photo studios conducting seasonal portraits, if:

1. Their location conforms to the provisions of the zoning ordinance of the Village.
2. All animals and animal quarters are kept in a clean and sanitary condition and so maintained as to eliminate objectionable odors.
3. Animals are maintained in quarters so constructed as to prevent their escape.
4. No person lives or resides within one hundred (100) feet of the quarters in which the animals are kept.

- (13) **Sale of Rabbits, Chicks, or Artificially Colored Animals.**
- (a) No person may sell, offer for sale, raffle, give as a prize or premium, use as an advertising device or display living chicks, ducklings, other fowl or rabbits that have been dyed or otherwise colored artificially.
 - (b) No person may sell, offer for sale, barter or give away living chicks, ducklings or other fowl without providing proper brooder facilities for the care of such chicks, ducklings or other fowl during the time they are in such person's care, custody or control.
 - (c) No retailer, as defined in Sec. 100.30(2)(g), Wis. Stats., may sell, offer for sale, barter or give away living baby rabbits, baby chicks, ducklings or other fowl under two (2) months of age, in any quantity less than six (6), unless the purpose of selling these animals is for agricultural, wildlife or scientific purposes.
- (14) **Providing Proper Food and Drink to Confined Animals.**
- (a) No person owning or responsible for confining or impounding any animal may refuse or neglect to supply the animal with a sufficient supply of food and water as prescribed in this Subsection.
 - (b) The food shall be sufficient to maintain all animals in good health.
 - (c) If potable water is not accessible to the animals at all times, it shall be provided daily and in sufficient quantity for the health of the animal.
- (15) **Providing Proper Shelter.**
- (a) Proper Shelter. No person owning or responsible for confining or impounding any animal may fail to provide the animal with proper shelter as prescribed in this Section.
 - (b) Indoor Standards. Minimum indoor standards of shelter shall include:
 - 1. Ambient temperatures. The ambient temperature shall be compatible with the health of the animal.
 - 2. Ventilation. Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.
 - (c) Outdoor Standards. Minimum outdoor standards of shelter shall include:
 - 1. Shelter from sunlight. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight.
 - 2. Shelter from inclement weather.
 - a. Animals generally. Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided as necessary for the health of the animal.
 - b. Dogs. If a dog is tied or confined unattended outdoors under weather conditions which adversely affect the health of the dog, a shelter of suitable size to accommodate the dog shall be provided.
 - (d) Space Standards. Minimum space requirements for both indoor and outdoor enclosures shall include:
 - 1. Structural strength. The housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.
 - 2. Space requirements. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of

movement. Inadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns.

- (e) Sanitation Standards. Minimum standards of sanitation for both indoor and outdoor enclosures shall include periodic cleaning to remove excreta and other waste materials, dirt and trash so as to minimize health hazards.

(16) **Neglected or Abandoned Animals.**

(a) Neglected or Abandoned Animals.

1. No person may abandon any animal.
2. Any law enforcement or humane officer may remove, shelter and care for an animal found to be cruelly exposed to the weather, starved or denied adequate water, neglected, abandoned or otherwise treated in a cruel manner and may deliver such animal to another person to be sheltered, cared for and given medical attention, if necessary. In all cases, the owner, if known, shall be immediately notified and such officer, or other person, having possession of the animal shall have a lien thereon for its care, keeping and medical attention and the expense of the notice.
3. If the owner or custodian is unknown and cannot, with reasonable effort, be ascertained or does not, within five (5) days after notice, redeem the animal by paying the expenses incurred, it may be treated as a stray and dealt with as such.
4. Whenever in the opinion of any such officer an animal is hopelessly injured or diseased so as to be beyond the probability of recovery, it shall be lawful for such officer to kill such animal and the owner thereof shall not recover damages for the killing of such animal unless he shall prove that such killing was unwarranted.
5. Sec. 173.10, Investigation of Cruelty Complaints, and Sec. 173.24, Wis. Stats., Reimbursement for expenses, are hereby adopted by reference and made a part of this Section.

- (b) Injured Animals. No person who owns, harbors or keeps any animal shall fail to provide proper medical attention to such animal when and if such animal becomes sick or injured. In the event the owner of such animal cannot be located, the Village or any animal control agency with whom the Village has an agreement or contract shall have the authority to take custody of such animal for the purpose of providing medical treatment, and the owner thereof shall reimburse the person or organization for the costs of such treatment.

(17) **Cruelty to Animals and Birds Prohibited.**

- (a) Acts of Cruelty Prohibited. No person except a police officer, health officer, or humane officer in the pursuit of his duties shall, within the Village, shoot, kill or commit an act of cruelty to any animal or bird or disturb any bird's nests or bird's eggs.
- (b) Leading Animal from Motor Vehicle. No person shall lead any animal upon a Village street from a motor vehicle or from a trailer or semi-trailer drawn by a motor vehicle.
- (c) Use of Poisonous and Controlled Substances. No person may expose any pet animal owned by another to any known poisonous substance or controlled substance listed in Sec. 961.14, Wis. Stats., whether mixed with meat or other food or not, where it is reasonable to anticipate the substance may be eaten by such animal or for the purpose of harming the animal. This Subsection shall not

apply to poison used on one's own premises and designed for the purpose of rodent and pest extermination, nor the use of a controlled substance used in accepted veterinarian practice or in research by persons or organizations regularly engaged in such research.

- (d) Use of Certain Devices Prohibited. No person may directly or indirectly, or by aiding, abetting or permitting the doing thereof either put, place, fasten, use or fix upon or to any animal used or readied for use for a work purpose or for use in an exhibition, competition, rodeo, circus or other performance any of the following devices: a bristle bur, tack bur or like device; or a poling device used to train a horse to jump which is charged with electricity or to which have been affixed nails, tacks or other sharp points.
- (e) Shooting at Caged or Staked Animals. No person may instigate, promote, aid or abet as a principal, agent, employee, participant or spectator, or participate in the earnings from or intentionally maintain or allow any place to be used for the shooting, killing or wounding with a firearm or any deadly weapon any animal that is tied, staked out, caged or otherwise intentionally confined in a man-made enclosure, regardless of size.

(18) **Trapping of Animals.**

- (a) In the interest of public health and safety, it shall be unlawful for any person in or on Village-owned land within the Village to set, place or tend any trap for the purpose of trapping, killing, catching, wounding, worrying or molesting any animal.
- (b) This Subsection shall not apply to trapping within the confines of building or homes.
- (c) Nothing in this Subsection shall prohibit or hinder the Village or its employees or agents from performing their official duties.

(19) **Dognapping or Catnapping.** No person may take the dog or cat of another from one place to another without the owner's consent or cause such a dog or cat to be confined or carried out of the Village or held for any purpose without the owner's consent. This Section does not apply to law enforcement officers or humane society agents engaged in the exercise of their official duties, or as otherwise permitted herein.

(20) **Number of Domestic Animals Per Residence.**

- (a) No more than three (3) dogs and three (3) cats over the age of six (6) months may be kept at any residence within the Village.
- (b) Any resident of the Village who, at the time of the adoption of this Section, owns more than three (3) dogs and three (3) cats over the age of six (6) months may continue to keep such animals, although such ownership does not conform with the provisions of this Ordinance. Such nonconforming ownership may not be extended. If such nonconforming ownership is discontinued for any reason, any future ownership shall conform to this Section.

(21) **Keeping of Bees.**

- (a) It shall be unlawful for any person to establish or maintain any hive, stand or box where bees are kept or keep any bees in or upon any premises within the corporate limits of the Village.
- (b) Nothing in this Subsection shall be deemed or construed to prohibit the keeping of bees in a hive, stand or box located within a school or university building for the purpose of study or observation.

- (22) **Penalties.** Any person or entity violating any term or provision of this Section shall be subject to the penalties set forth under §19.04 of the Municipal Code

11.11 CABLE FRANCHISE.

- (1) **Short Title.** This section shall be known and may be cited as the “Hales Corners Telecommunications Franchise Ordinance”, hereinafter “this ordinance”.

- (2) **Definitions.** As used in this ordinance:

- (a) Basic Services means any subscriber tier provided by the Grantee which includes the delivery of local broadcast stations and public, educational, and governmental access channels. The Basic service does not include optional program and satellite service tiers, a la carte services, per channel, per program or auxiliary services for which a separate charge is made. However, Grantee may include other satellite signals on the Basic tier.
- (b) Cable System or System or Cable Television System means a system of antennas, cables, wires, lines, towers, wave guides, and/or other conductors, converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying, and distributing audio, video, and/or other forms of electronic, electrical, or optical signals, which includes cable television service and which is located in the Village. This definition does not include any such facility which only serves or only will serve subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management and which does not use any Village rights-of-way.
- (c) Village means the Village of Hales Corners, Wisconsin.
- (d) Class IV Channel means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.
- (e) Control and/or Controlling Interest shall mean actual working control or ownership of a system in whatever manner exercised. A rebuttal presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or entity (except underwriters during the period in which they are offering securities to the public) of 10 percent or more of a cable system or franchise under which the system is operated. A change in the control or controlling interest of an entity which has control or a controlling interest in a Grantee shall constitute a change in the control or controlling interest of the system under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one person or entity.
- (f) Converter means an electronic device which converts signals to a frequency not susceptible to interference within a television receiver of a subscriber and by an appropriate channel selector permits a television receiver of a subscriber to televise or depict for viewing by a subscriber, more than 12 channels delivered by the system at designated converter dial locations.
- (g) FCC means the Federal Communications Commission and any legally appointed, designated, or elected agent or successor.
- (h) Franchise means the rights and privileges granted by the Village under an agreement (hereinafter “franchise agreement”) incorporating the terms and provisions of this Ordinance with a Grantee to construct, maintain, and operate a cable system in the Village.

- (i) Grantee means a person or entity to whom or which a franchise agreement under this ordinance is awarded by the Village, along with the lawful successors or assigns of such person or entity.
- (j) Gross Revenue means all revenue collected directly or indirectly by the Grantee, from the provision of cable service within the Village including, but not limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, franchise fees, leased channel fees, converter rentals, program guides, studio rental, production equipment, personnel fees, late fees, downgrade fees, revenue from the sale, exchange, use, or cable case of any programming developed on the system for community or institutional use, advertising fees, any value (at retail price levels) of any non-monetary remuneration received by Grantee in consideration of the performance of advertising or any other service of the system, and such other revenues to the maximum permitted by law; provided, however, that gross revenue shall not include any local, state, or federal taxes, denominated as a tax by statute or ordinance, upon services furnished by the Grantee to subscribers in the Village which are imposed directly upon any such subscriber any collected by the Grantee on behalf of and for full payment to the governmental unit imposing such tax. Subject to applicable federal law, the term gross revenues includes revenues attributed to franchise fees and revenues collected directly or indirectly from other ancillary telecommunications services including, but not limited to, point-to-point telecommunications, point-to-point multi-point telecommunications, and data transmissions, but only to the extent that all other providers of such telecommunications services in the Village are subject to the same compensation requirements of the Village.
- (k) Initial Service Area means all areas in the Village having at least 20 dwelling units per street mile.
- (l) Installation means the connection of the system from feeder cable to subscribers' terminals.
- (m) May is permissive.
- (n) Monitoring means observing a communications signal or the absence of a signal, where an observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever, provided "monitoring" does not mean system-wide, non-individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for pay services.
- (o) Normal Business Hours, as applied to the Grantee, shall mean those hours during which similar businesses in the Village are open and operating to server customers. In all cases, normal business hours shall include some evening hours at least one week night per week and/or some weekend hours.
- (p) Normal Operating Conditions shall mean those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand period, and maintenance or upgrade of the cable system.
- (q) Shall is mandatory.
- (r) Service Interruption and/or Outages shall mean the loss of either picture or sound or both for a single or multiple subscriber(s).

- (s) Street means the surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive, or easement now or hereafter held by the Village for the purpose of public travel and shall include other easements and rights-of-way as shall be now held or hereafter held by the Village which shall, within their proper use and meaning entitle the Grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a telecommunications system.
 - (t) Subscriber shall mean any person, firm, Grantee, corporation, partnership, or association lawfully receiving Basic and/or any additional or other services from a Grantee.
 - (u) User means a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with the receipt thereof in a subscriber capacity.
- (3) **Rights and Privileges of Grantee.** Any franchise granted by the Village pursuant to a franchise agreement incorporating the terms and provisions of this Ordinance, as authorized by Wis. Stats. 66.082, shall grant to the Grantee under the franchise agreement the rights and privileges to erect, construct, install, operate, and maintain in, upon, and along, across, above, over, and under the streets now in existence and as may be crated or established during the term of such franchise agreement, any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a cable system.
- (4) **Franchise Agreement.**
- (a) Upon adoption of any franchise agreement and execution thereof by the Grantee, the Grantee agrees to be bound by all the terms and conditions contained herein.
 - (b) Any Grantee also agrees to provide all services specifically set forth in its application, if any, and to provide cable television service within the confines of the Village; and, by its acceptance of its cable franchise application, the Grantee specifically grants and agrees that its application, if any, is thereby incorporated by reference and made a part of the franchise agreement. In the event of a conflict between the elements of the application and the provisions of this Ordinance, that term or provision which provides the greatest benefit to the Village or its residential subscribers, as determined in the sole discretion of the Village shall control.
- (5) **Franchise Territory.** Any franchise granted by the Village shall be effective for all areas within and shall extend to the Village municipal boundaries as they exist from time to time during the term of the franchise agreement.
- (6) **Duration and Acceptance of Franchise Agreement.** The franchise and the rights, privileges, and authority granted shall take effect and be in force as set forth in the franchise agreement and shall continue in force and effect for a term no longer than 15 years, provided that within 15 days after Grantee's receipt from the Village of a franchise agreement, executed by duly authorized officials of the Village before a notary public, the Grantee executes before a notary public or other officer authorized by law to administer oaths and delivers such executed franchise agreement to the Village. Such franchise shall be non-exclusive and revocable.

(7) **Franchise Renewal**

(a) Current Federal Statutory Process

1. The Village may, on its own initiative, during the six-month period, which begins with the thirty-sixth (36) month before the Franchise expiration, commence a proceeding which affords the public in the Village proper notice and participation for the purpose of
 - a. Identifying the future cable-related community needs and interests and
 - b. Reviewing the performance of the Grantee under the Franchise.If the Grantee submits, during such six-month period, a written renewal notice requesting the commencement of such proceeding, the Village shall commence such proceeding not later than six (6) months after the date such notice is submitted.
2. Upon completion of the proceeding under paragraph (a)1 above, the Grantee may on its own initiative shall at the request of the Village, submit a proposal for renewal. The Village may establish a date by which such proposal shall be submitted.
3. Upon submittal by the Grantee of a proposal to the Village for the renewal of the franchise, the Village shall provide prompt, public notice of such proposal and renew the Franchise or issue a preliminary assessment that the Franchise should not be renewed, and, at the request of the Grantee or on its own initiative, commence an administrative proceeding after providing prompt, public notice of such proceeding.
4. The Village shall consider in any administrative proceeding whether:
 - a. The Grantee has substantially complied with material terms of the existing franchise and with applicable law;
 - b. The quality of the Grantee's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;
 - c. The Grantee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the Grantee's proposal; and
 - d. The Grantee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the costs of meeting such needs and interests.
5. In any proceeding under paragraph 4, the Grantee shall be afforded adequate notice and the Grantee and the Village, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to the issues raised in the proceedings under paragraph (a)1 above), to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.
6. At the completion of a proceeding under paragraph 4 above, the Village shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding and transmit a copy of such decision to the Grantee. Such decision shall state the reasons therefore.

7. Any denial of a proposal for renewal that has been submitted in compliance with the procedures set forth above, shall be based on one or more adverse findings made with respect to the factors described in paragraph 4a through 4d above, pursuant to the record of the proceeding under said paragraph. The Village may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise agreement or on events considered under paragraph 4b above unless the Village has provided the Grantee with notice and the opportunity to cure or in any case in which it is documented that the Village has waived its right to object.
 8. The Grantee may appeal any final decision or failure of the Village to act in accordance with the procedural requirements of this section. The court shall grant appropriate relief if the court finds that:
 - a. Any action of the Village is not in compliance with the procedural requirements of this section; or
 - b. In the event of a final decision of the Village denying the renewal proposal, the Grantee has demonstrated that the adverse finding of the Village with respect to each of the factors described in paragraph 4a through 4d above on which the denial is based is not supported by the preponderance of the evidence, based on the record of the administrative proceeding.
 9. Notwithstanding the provisions of paragraphs 1 through 8 of this section, any lawful action to revoke a Grantee's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the Grantee under this section.
- b. Franchise Renewal in the Event of Change in Federal Law. In the event of an amendment or repeal of 47 U.S.C. 546 et. seq., a franchise agreement may be renewed by the Village upon application of the Grantee pursuant to and in accordance with any then applicable law which mandates different procedures. In the absence of such mandatory applicable law, a franchise agreement may be renewed as follows:
1. At least 24 months prior to the expiration of the franchise agreement, the Grantee shall inform the Village in writing of its intent to seek renewal of the franchise agreement.
 2. Concurrent with Grantee's notification of intent to renew, the Grantee shall submit to the Village a proposal for renewal which demonstrates:
 - a. That it has been and continues to be in substantial compliance with the terms, conditions, and limitations of this Ordinance and its franchise agreement;
 - b. That its system has been installed, constructed, maintained, and operated in accordance with the accepted standards of the industry, and this Ordinance and its franchise agreement;
 - c. That it has the legal, technical, financial, and other qualifications to continue to maintain and operate its system, and to extend the same as the state of the art progresses so as to assure its subscribers high quality service; and
 - d. That it has made a good faith effort to provide services and facilities which accommodate the demonstrated needs of the community as may be reasonably ascertained by the Village.
 3. After giving public notice, the Village shall proceed to determine whether the Grantee has satisfactorily performed its obligations under the

franchise agreement. To determine satisfactory performance, the Village shall consider technical developments and performance of the system, programming and other services offered, cost of services, and any other particular requirements set in this Ordinance and the franchise agreement; also, the Village shall consider the Grantee's reports made to the Village and the Federal Communication Commission; may require the Grantee to make available specified records, documents, and information for this purpose, and may inquire specifically whether the Grantee will supply services sufficient to meet community needs and interests; and shall consider Grantee's performance compared to the industry performance on a national basis. Provision shall be made for public comment.

4. The Village shall then prepare any amendments to this Ordinance that it considers reasonable.
5. If the Village finds the Grantee's performance satisfactory, and finds the Grantee's technical, legal, and financial abilities acceptable, and finds the Grantee's renewal proposal meets the future cable-related needs of the Village, a new franchise agreement shall be granted pursuant to this Ordinance as amended for a period to be determined.
6. If the Grantee is determined by the Village to have performed unsatisfactorily, as governed by applicable state and federal law, new applicants may be sought and evaluated and a franchise award shall be made by the Village according to franchising procedures adopted by the Village.

(8) **Police Powers.**

- (a) In accepting a franchise agreement, the Grantee shall acknowledge that its rights thereunder are subject to the police power of the Village to adopt and enforce general ordinances necessary for the safety and welfare of the public, and Grantee shall agree to comply with all applicable general laws and ordinances enacted by the Village pursuant to such power.
- (b) Any conflict between the provisions of this Ordinance and any other present or future lawful exercise of the Village's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the Village, or applies exclusively to the Grantee which contains provisions inconsistent with the franchise agreement, shall prevail only if upon such exercise the Village finds an emergency exists constituting a danger to health, safety, property, or general welfare or such exercise is mandated by law.

(9) **Cable Television Franchise Required.** No cable television system shall be allowed to occupy or use the Village streets for system installation and maintenance purposes or be allowed to operate in the Village without a franchise agreement.

(10) **Use of Grantee Facilities.** The Village shall have the right, during the term of the franchise agreement, to install and maintain free of charge upon the poles of the Grantee any wire or pole fixtures that do not unreasonably interfere with the cable television system operations of the Grantee. The Village shall indemnify and hold harmless the Grantee from any claim that might arise due to or as a result of the Village's aforesaid wire installation or pole fixture use.

- (11) **Initial Franchise Costs.** Costs to be borne by an initial Grantee shall include any requirements or charges incidental to the awarding or enforcing of an initial franchise, but shall not be limited to all costs of publications of notices prior to any public meeting provided for pursuant to this franchise, and any costs not covered by application fees, incurred by the Village in its study, preparation of proposal documents, evaluation of all applications, and examinations of the applicants' qualifications.
- (12) **Notices.** All notices from the Grantee to the Village pertaining to the franchise agreement or cable system shall be sent to the Village Administrator's Office. The Grantee shall maintain with the Village, throughout the term of the franchise agreement, an address for service of notices by mail. The Grantee shall maintain a central office to address any issues relating to Grantee's construction, maintenance, operation, and administration of the system and its products and services, which office address shall be the designated address of Grantee for the receipt of all notices and process by Grantee.
- (13) **Letter of Credit/Security Deposit.**
- (a) Within 15 days after the award of the initial franchise, the Grantee shall deposit with the Village either an irrevocable letter of credit from a financial institution or a security deposit in the amount of \$50,000.00. The form and content of such letter of credit or security deposit shall be approved by the Village Attorney. The letter of credit or security deposit shall be used by the Village to insure the faithful performance of an initial Grantee of all provisions of this Ordinance and initial franchise agreements and the compliance by the Grantee with all orders, permits, and rules of any agency, commission, board, department, division, or office of the Village having jurisdiction over its acts or defaults under this Ordinance and the initial franchise agreement, and the payment by the Grantee of any claims, liens, and taxes due to the Village which arise by reason of the construction, operation, or maintenance of the system.
- (b) The letter of credit or security deposit, as required by the initial Grantee, shall be "evergreen" and maintained at the \$50,000.00 amount for the entire term of the initial franchise agreement. If amounts are withdrawn by the Village pursuant to Section (11) or (13)(a), the initial Grantee shall replenish the letter of credit or security deposit with an amount equal to the amount of the withdrawal within 15 days of such withdrawal.
- (c) If the Grantee fails to pay the Village any franchise fees or costs within the time fixed herein; fails after 15 days notice to pay to the Village any taxes due and unpaid; or fails to repay the Village within 15 days any damages, costs, or expenses which the Village is compelled to pay by reason of any act or default of the Grantee in connection with this Ordinance or the franchise agreement, or fails, after three (3) days notice by the Village of such failure to comply with any provision of this Ordinance or the franchise agreement which the Village reasonably determines can be remedied by demand on the letter of credit or security deposit, the Village may immediately request payment of the amount thereof, with interest and any penalties, from the letter of credit or security deposit. Upon such request for payment, the Village shall notify the Grantee of the amount and date thereof. The letter of credit or security deposit instrument tendered by an initial Grantee shall specify that the Village may draw upon the written statement of the Village Administrator specifying the amount to be withdrawn and the purpose for each draw.
- (d) The rights reserved to the Village with respect to the letter of credit are in addition to all other rights of the Village, whether reserved by this ordinance of

authorized by law, and no action, proceeding, or exercise of a right with respect to such letter of credit, shall affect any other right the Village may have.

(14) **Performance Bond.**

- (a) Concurrent with its required delivery to the Village of an executed franchise agreement, the initial Grantee shall file with the Village a performance bond for the benefit of the Village in the amount of not less than 50 percent of the reasonably estimated cost to install the system components contemplated to be installed in the new application or franchise agreement. This bond shall be maintained in full force and effect until all such contemplated installation is complete. The form and content of such bond shall be approved by the Village Attorney and shall be incorporated into any franchise agreement.
- (b) If the initial Grantee fails to comply with any law, ordinance, or resolution governing the franchise or fails to well and truly observe, fulfill, and perform each term and condition of this Ordinance or the franchise agreement as it relates to the conditions relative to the construction of the system, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the Village as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees, including the Village's legal staff and costs up to the full amount of the bond. To the extent allowed by law, the performance bond shall also provide additional security to the Village for the faithful performance by the initial Grantee of all initial Grantee's obligations specified to be secured by a letter of credit or security deposit under Section (13).
- (c) The Village may, upon completion of construction of the system, agree to reduce the required amount of the bond. However, the Village may require an increased performance bond to be posted by an initial Grantee for any construction subsequent to the completion of the initial contemplated system installation, in a reasonable amount and upon such terms as determined by the Village.
- (d) The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the Village, by registered mail, of a written notice of such intent to cancel or to not renew."

Upon any unlawful cancellation or removal of the performance bond without Village consent, the Village shall be entitled to avail itself of all remedies and shall be entitled to the maximum relief available under this Ordinance and pursuant to law against an initial Grantee, including revocation of the franchise.

- (e) The Village at any time during the term of this Ordinance may waive Grantee's requirements to maintain a performance bond. The invitation to waive the requirement can be initiated by the Village or Grantee.

(15) **Liability Insurance.**

- (a) The Grantee shall maintain and by its acceptance of the franchise agreement specifically agrees that it will maintain throughout the term of the franchise agreement liability insurance insuring the Village and the Grantee in the minimum amount of:
 - 1. \$1,000,000.00 for property damage per claimant;

2. \$10,000,000.00 for property damage per occurrence;
 3. \$3,000,000.00 for personal injury damages per person; and
 4. \$10,000,000.00 for personal injury damages per occurrence.
- (b) The certificate of insurance obtained by the Grantee in compliance with this section must be approved by the Village Attorney and such certificate of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Village at all times during the term of the franchise agreement. The Grantee shall immediately advise the Village Attorney of any litigation that may develop that would affect this insurance. The per claim and per occurrence coverage amounts specified in this section shall not be reduced by amounts paid for other claims or other occurrences.
- (c) Neither the provisions of this section nor any damages recovered by the Village against the Grantee for any reason shall be construed to or limit the liability of the Grantee for any purpose or claim, other than to the extent Grantee has satisfied such purpose or claim.
- (d) All insurance policies maintained pursuant to this franchise shall contain the following endorsement:

“It is hereby understood and agreed that this insurance policy may not be cancelled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the Village, by registered mail, of a written notice of such intention to cancel or to not renew.”

Upon cancellation or nonrenewal of the insurance coverage without Village consent, the Village shall be entitled to avail itself of all remedies and shall be entitled to the maximum relief available under this Ordinance and pursuant to law against Grantee, including revocation of the franchise.

(16) **Indemnification**

- (a) Disclaimer of Liability. The Village shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition, or dismantling of the Grantee’s system and due to the act or omission of any person or entity other than the Village or those persons or entities for which the Village is legally liable as a matter of law.
- (b) Indemnification. The Grantee shall, at its sole cost and expense, defend, indemnify, and hold harmless the Village, and its respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as “Indemnities”) from and against:
1. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses, and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants) which may be imposed upon, incurred by, or be asserted against the Indemnities by reason of any act or omission of the Grantee, its personnel, employees, agents, contractors, or subcontractors resulting in personal injury, bodily injury, sickness, disease, or death to any person or damage to, loss of use of, or destruction of tangible or intangible property, libel, slander, invasion of privacy, and unauthorized use of any trademark, tradename, copyright, patent, service mark, or any other right of any person, firm, or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, or

condition of that Grantee's system or products or services or agents or the Grantee's failure to comply with any federal, state, or local statute, ordinance, rule, order, or regulation.

2. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses, and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and other consultants), which are imposed upon, incurred by, or asserted against the Indemnities by reason of any claim or lien arising out of work, labor, materials, or supplies provided or supplied to the Grantee, its contractors, or subcontractors for the installation, construction, operation, or maintenance of the system.
 3. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses, and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants) which may be imposed upon, incurred by, or be asserted against the Indemnities by reason of any financing or securities offering by the Grantee for violations of the common law or any laws, statutes, or regulations of the State of Wisconsin or United States, including those of the Federal Securities and Exchange Commission, whether by the Grantee or otherwise.
- (c) Assumption of Risk. The Grantee undertakes and assumes for its officers, agents, contractors and subcontractors, and employees, all risk of dangerous conditions, if any, on or about any Village-owned or controlled property, including public rights-of-way, and the Grantee hereby agrees to indemnify, defend, and hold harmless the Indemnities against and from any claim asserted or liability imposed upon the Indemnities for personal injury or property damage to any person arising out of the installation, operation, maintenance, or condition of the system or the Grantee's failure to comply with any federal, state, or local statute, ordinance, or regulation.
- (d) Defense of Indemnities. In the event any action or proceeding shall be brought against the Indemnities by reason of any matter for which the indemnities are indemnified hereunder, the Grantee shall, upon notice from any of the Indemnities, at the Grantee's sole cost and expense, resist and defend the same with legal counsel mutually acceptable to the Village and Grantee, provided that the Grantee shall not admit liability in any such matter on behalf of the Indemnities without the written consent of the Village.
- (e) Notice Cooperation and Expenses - The Village shall give the Grantee prompt notice of the making of any claim or the commencement of any action, suit, or other proceeding covered by the provisions of paragraph (4) above. Nothing herein shall be deemed to prevent the Village from cooperating with the Grantee and participating in the defense of any litigation by the Village's own counsel. The Grantee shall pay all reasonable expenses incurred by the Village in defending itself with regard to any such actions, suits, or proceedings. These expenses shall include all attorney fees and shall also include the actual expenses of the Village's agents, employees, or expert witnesses and disbursements and liabilities assumed by the Village in connection with such suits, actions, or proceedings. No withdrawal by the Village of any sum under the letter of credit or security deposit shall limit the liability of the Grantee to the Village under the terms of this section, except that any sum so withdrawn by the Village shall be deducted from any recovery which the Village might have against the Grantee under the terms of this section.

- (f) Nonwaiver of Statutory Limits. Nothing in this agreement shall be construed to in any way limit or waive the provisions of Section 893.80, Wis. Stats., as amended from time to time.
- (17) **Rights of Individuals.**
- (a) The Grantee shall not deny services, deny access, or otherwise discriminate against subscribers, channel users, or any person or entity on the basis of race, color, religion, nation or ethnic origin, income, gender, or sexual orientation. The Grantee shall comply at all times with all applicable federal, state, and local laws, statutes, rules, and regulations and all executive and administrative orders relating to discrimination which are hereby incorporated and made part of this Ordinance by reference.
 - (b) The Grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications employment opportunity requirements of the Federal Communications Commission, Equal Employment Opportunity Commission, and other applicable federal, state, and local laws and regulations, as amended from time to time.
 - (c) The Grantee shall, at all times, comply with the privacy requirements of state and federal law.
 - (d) Grantee is required to make all services available to all residential dwellings throughout the initial service area.
- (18) **Public Notice.** Public notice of any public meeting relating to this Ordinance or a franchise agreement shall be by publication of a Class I notice prior to the meeting and by announcement on at least one (1) channel of the Grantee's system between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days prior to the meeting, provided, however, Operator's failure to telecast such notice shall not invalidate any proceedings.
- (19) **System Availability and Record Request.** The Grantee shall provide cable communications service throughout the entire Village pursuant to the provisions of this Ordinance and the franchise agreement and shall maintain a record of all requests for services received by the Grantee for at least three (3) years from the date of any such request. This record shall be available for public inspection at the local office of the Grantee during normal business hours.
- (20) **System Construction.**
- (a) New Construction Timetable
 - 1. Within two (2) years from the date of the award of the initial franchise agreement, the Grantee must make cable television service available to every dwelling unit within the initial service area.
 - a. The Grantee must make cable television service available to at least 20 percent of the dwelling units within the initial service area within six (6) months from the date of the award of the initial franchise agreement.
 - b. The Grantee must make cable television service available to at least 50 percent of the dwelling units within the initial service area within one (1) year from the date of the award of the initial franchise agreement.
 - 2. The Grantee, in its application, if any, may propose a timetable of construction which will make cable television service available in the initial service area sooner than the above minimum requirements, in

which case the said schedule will be made part of the franchise agreement, and will be binding upon the Grantee.

3. Any delay beyond the terms of this timetable, unless specifically approved by the Village, will be considered a violation of this Ordinance for which the provisions of either Section (37) or (46) shall apply as determined by the Village.

(b) Line Extensions.

1. In areas of the Village not included in the initial service areas, the Grantee shall be required to extend its system pursuant to the following requirements:

- a. No customer shall be refused service arbitrarily. Grantee is hereby authorized to extend the cable system as necessary within the Village. To expedite the process of extending the cable system into a new subdivision, the Village (or developer if requested by the Village) shall forward to the Grantee an approved engineering plan of each project. Subject to the service extension requirements of this Ordinance, the Grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the Village or developer that the first home in the project has been approved for building permit, the Grantee shall have a maximum of three (3) months to complete the system construction/activation process within the project phase.
- b. The Grantee must extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least 20 dwelling units per street mile, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines.
- c. The Grantee must extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard 175 foot drop line.

2. Early Extension. In areas not meeting the requirements for mandatory extension of service, the Grantee shall provide, within 30 days of the request of a potential subscriber desiring service, an estimate of the costs required to extend service to the subscriber and a proposed agreement in writing specifying the payment terms and the time within which service will be made available. The Grantee shall then extend service upon acceptance of such agreement by the potential subscriber. The Grantee may require advance payment or assurance of payment satisfactory to the Grantee. The amount paid by the subscribers for early extensions shall be nonrefundable, and, in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension. Grantee shall specify in the aforesaid proposed agreement whether Grantee has any specific notice or knowledge that the area may attain the density required for mandatory extension.

3. New Development Undergrounding - In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Grantee reasonable notice of

such construction or development, and at least 48 hours prior notice of the particular date on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the Grantee's expense. The Grantee shall also provide specifications as needed for trenching. Costs of trenching and easement required to bring service to the development shall be borne by the developer or property owner, except that if the Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of the new trenching is to be borne by the Grantee. Except for the notice of the particular date on which trenching will be available to the Grantee, any notice provided to the Grantee by the Village or the developer of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the Grantee prior to approval of the preliminary plat request.

- (c) **Special Agreements.** Nothing herein shall be construed to prevent the Grantee from serving areas not covered under this section upon agreement with developers, property owners, or residents after obtaining any necessary property owner permission, provided that five (5) percent of those gross revenues are paid to the Village as franchise fees under Section (27).
1. The Grantee, in its application, may propose a line extension policy which will result in serving more residents of the Village than as required above, in which case the Grantee's policy will be incorporated into the franchise agreement and will be binding upon the Grantee.
 2. Any violation of this section shall be considered a breach of the terms of this Ordinance for which the provisions of either Section (37) or (46) shall apply, as determined by the Village.

(21) **Construction and Technical Standards.**

- (a) **Compliance with construction and technical standards.** The Grantee shall construct, install, operate, administer, and maintain its system in compliance with all laws, statutes, rules, orders, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, the Grantee shall provide the Village, upon request, with a written report of the results of the Grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.
- (b) **Additional Specifications.**
1. Construction, installation, and maintenance of the system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
 2. The Grantee shall at all times comply with:
 - a. National Electrical Safety Code (National Bureau of Standards);
 - b. National Electrical Code (National Bureau of Fire Underwriters);
 - c. Bell System Code of Pole Line Construction; and
 - d. Applicable FCC or other federal, state, and local regulations
 3. In any event, the system shall not endanger or interfere with the safety of persons or property.

4. Any antenna structures used in the system shall comply with the construction, marking, and lighting requirements of the United States Department of Transportation.
5. All aspects of the facilities utilized and conditions provided during construction, installation, and maintenance of the system by Grantee shall comply with the standards of the Occupational Safety and Health Administration.
6. RF leakage shall be checked forthwith by Grantee upon demand by the Village or its representative at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception sites in the normal flight patterns. FCC rules and regulations shall govern the requirements of this paragraph.
7. The Grantee shall maintain equipment capable of providing standby power for headend, transportation, and trunk amplifiers that transport system for a minimum of two (2) hours.
8. In all areas of the Village where the cables, wires, and other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground. When public utilities relocate their facilities from pole to underground, the Grantee shall concurrently relocate its facilities to underground at its sole cost, provided, however, that if the public utilities are compensated, in part or in whole, for such relocation of their facilities, the Grantee shall be similarly compensated.

(22) **Use of Streets**

- (a) Interference with Persons and Improvements. The Grantee's system, poles, wires, and appurtenances shall be located, erected, and maintained so that none of its facilities shall endanger or interfere with the lives or safety of persons or interfere with the rights or reasonable convenience of property owners who adjoin any of the streets or interfere with any improvements the Village may deem proper to make or hinder or obstruct the free use of the streets, bridges, easements, or public property.
- (b) Restoration to Prior Condition. In case of any disturbance of pavement, sidewalk, landscaping, driveway, or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the Village, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or property disturbed in as good condition as before the work was commenced and in accordance with standards for such work set by the Village.
- (c) Erection, Removal, and Common Use of Poles.
 1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the Village with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall create any vested right or interest accruing to the Grantee, and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the Village determines that the public convenience would be enhanced or served thereby.
 2. Where poles or other wire-holding structures already existing and installed by a public utility for use in serving the Village are available for

use by the Grantee, but Grantee does not make arrangements or obtain permission from the public utility for such use, the Village may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced or served thereby and the terms of the use available to the Grantee are reasonable.

3. In the absence of any governing federal or state statute where the Village or a public utility serving the Village desires to make use of the poles or other wire-holding structures of the Grantee, but agreement thereof with the Grantee cannot be reached, the Village may require the Grantee to permit such use for such consideration and upon such terms as the Village shall determine to be just and reasonable, if the Village determines that such use would enhance or serve the public convenience and would not unduly interfere with the Grantee's operations.

(d) Relocation of system facilities. If at any time during the period of this franchise agreement the Village shall lawfully elect to in any way alter any street or change the grade of any street, the Grantee, upon reasonable notice by the Village, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense unless public utilities are compensated by the Village fore removing or relocating facilities by such street alteration project, in which case the Grantee shall be similarly compensated.

(e) Cooperation with Building Movers. The Grantee shall, on the request of any person holding a building moving permit issued by the Village, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be give not less than 48 hours advance notice to arrange for such temporary wire changes and shall perform such service no later than five (5) days after such notice, unless extended with the consent of the requestor.

(f) Tree Trimming. The Grantee shall not remove any tree or trim any portion, either above, at, or below ground level, of any tree within any public place without the prior consent of the Village. The Village shall have the right to do the trimming requested by the grantee at the cost of the Grantee. Regardless of who performs the work requested by the Grantee, the Grantee shall be responsible for, indemnify, defend, and hold the Village harmless for any and all damages to any tree as a result of trimming or to the land surrounding any tree, whether such tree is trimmed or removed.

(23) **Operational Standards.**

(a) The Grantee shall install, keep, and maintain all parts of the system in good and proper operating condition throughout the term of the franchise agreement.

(b) Upon a reasonable request for service by any person located within the Village, the Grantee shall, within 30 days, furnish the requested service to such person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no trunk line installation capable of servicing that person's block has not yet been installed.

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

- (d) The Grantee shall not allow its cable or other operations to interfere with television reception of subscribers or persons not served by the Grantee, nor shall the system interfere with, obstruct, or hinder in any manner the operation of the various utilities serving the residents within the Village nor shall other utilities interfere with the Grantee's system.
- (e) The Grantee shall have representatives who have been trained and instructed in the customer service operations and practices of the Grantee available to respond to customer telephone inquiries 24 hours per day and seven days per week.
- (f) Under normal operating conditions, the time within which a Grantee representative shall answer any telephone, including wait time and the time required to transfer the call, shall not exceed 30 seconds. This standard shall be met no less than 90 percent of the time as measured on a calendar year quarter basis. Such telephone answer time requirements shall be construed to mean that a telephone shall be answered by a human being as opposed to any recorded or electronic answering.
- (g) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time as measured on a calendar year quarter basis.
- (h) Standard installations will be performed within seven (7) business days after an order has been placed. A standard installation is one that is within 175 feet of the existing system.
- (i) Excluding those circumstances which are beyond its control, the Grantee shall respond to any service interruption promptly and in no event later than 24 hours from the time of initial notification. All other regular service requests will be responded to within 36 hours. The appointment window period alternatives for installations, service calls, and other installation activities shall be either: "morning", "afternoon", or "evening" and no window period established shall exceed four (4) hours during normal business hours for the system or at a time that is mutually agreeable to the customer and Grantee. The Grantee will make available additional hours during which appointments can be scheduled based upon the needs of the community or as set forth in the franchise agreement. If at any time a Grantee installer or technician is behind schedule, a Grantee representative shall contact the customer and reschedule the appointment for a time that is convenient to the customer.
- (j) Customer service centers and bill payment locations will be open for walk-in customer transactions a minimum of eight (8) hours a day, Monday through Friday, unless there is a need to modify those hours because of the location or customers served. The Grantee and Village, by mutual consent, will establish supplemental hours on weekdays and weekends if such additional hours would better fulfill the needs of the community.
- (k) Subscriber Credit for Outages. Upon service interruption and/or outages of subscriber's cable service, the following shall apply:
 - 1. For service interruptions and/or outages of over four (4) hours and up to seven (7) days, the Grantee shall provide, at the Subscriber's request, a credit of one-thirtieth (1/30) of one month's fees for affected services for each 24-hour period service is interrupted for four (4) or more hours for any single subscriber, with the exception of subscribers disconnected because of non-payment or excessive signal leakage.
 - 2. For service interruptions and/or outages of seven (7) days or more in one (1) month, the Grantee shall provide, at the subscriber's request, a full month's credit for affected services for all affected subscribers.

3. Grantee shall provide written notice to all customers at least once in every 12-month period of Grantee's policies and procedures.
- (l) The Grantee shall provide to each customer written information at the time of installation and at any future time upon the request of the customer describing each of the following:
 1. Products and services offered;
 2. Prices and service options;
 3. Installation and service policies; and
 4. Instructions for the customer on use of the telecommunications services.
 - (m) Bills shall be clear, concise, and understandable to the subscriber and all cable services charges shall be itemized.
 - (n) Credits shall be issued promptly, but no later than the customer's next billing following the occurrence causing the credit and, if service has been terminated, the return of the equipment to the Grantee.
 - (o) Customers shall be notified a minimum of 30 days in advance of any customer billing period application to any rate increase or channel change, provided that the change is within the control of the Grantee.
 - (p) The Grantee shall maintain and operate the system in full compliance with the laws, statutes, orders, and rules of the Federal Communications Commission, the United States Congress, or the State of Wisconsin.
 - (q) The Grantee shall continue, throughout the term of the franchise agreement, to maintain the technical standards and quality of service as set forth in this Ordinance.
 - (r) The Grantee shall keep a monthly log which shall indicate the nature of each service complaint received in the last 24 months, the date and time it was received, the disposition of said complaint, and the time and date thereof. The log shall be made available to the Village upon request.
- (24) **Continuity of Service Mandatory.**
- (a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. If the Grantee elects to overbuild, rebuild, modify, or sell the system or the Village gives notice of intent to terminate or fails to renew a franchise agreement, the Grantee shall act at all times so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.
 - (b) If there is a change of franchise or if a new operator acquires the system, the Grantee shall cooperate with the Village, new franchisee, or operator in maintaining continuity of service to all subscribers. During such period, the Grantee shall be entitled to the revenues for any period during which it operates the system and shall be entitled to reasonable costs for its services until it no longer operates the system.
 - (c) If the Grantee fails to operate the system for seven (7) consecutive days without prior approval of the Village or without just cause, the Village may, at its option, operate the system or designate an operator until such time as the Grantee restores service under conditions acceptable to the Village or a permanent operator is selected. If the Village so opts, the Grantee shall reimburse the Village for all reasonable costs or damages in excess of revenues from the system received by the Village that are the result of the Grantee's failure to perform within 30 days of invoice for same.
- (25) **Complaint Procedure.**

- (a) The Village Administrator is designated as the Village liaison with the Grantee for the purpose of forwarding to Grantee any complaints received by the Village and monitoring Grantee's complaint resolution process.
- (b) During the term of a franchise agreement and any renewal thereof, the Grantee shall maintain a central office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call to receive complaints regarding quality of service, equipment functions, and similar matters. The Grantee shall arrange for one or more payment locations in or within a reasonable distance of the Village where customers can pay bills or conduct other system business activities.
- (c) Upon subscribers receiving connection or reconnection to the system, the Grantee shall provide written information describing the procedures for making inquiries or complaints, including the name, address, and local telephone number of the Grantee representative to whom such inquiries or complaints are to be addressed.
- (d) Upon any similar complaints made which, in the judgment of the Village, cast doubt on the reliability or quality of cable services, the Village shall have the right and authority to require the Grantee to test, analyze, and report on the performance of the system. The Grantee shall fully cooperate with the Village in performing such testing and shall prepare and deliver results and a report, if requested, within 30 days after notice. Such report shall include the following information:
 - 1. The nature of the complaint or problem which precipitated the special tests;
 - 2. What system component was tested;
 - 3. The equipment used and procedures employed in testing;
 - 4. The methods by which such complaint or problem was resolved;
 - 5. Any other information pertaining to the tests and analysis which may be required by the Village.

The Village may require that tests be supervised by an independent professional engineer or equivalent of the Village's choice. The engineer shall have access to all records of Grantee's special tests and other pertinent information and forward to the Village such records with a report interpreting the results of the tests and recommending actions to be taken. Should such a test prove that the Grantee failed to meet the technical standards required under this Ordinance or the franchise agreement, the Grantee shall bear the cost of the test and the independent engineer/equivalent. If the test should prove that the Grantee met the technical standards, the Village shall bear the cost of the test and independent engineer/equivalent.

The Village's rights under this section shall be limited to requiring tests, analysis, and reports covering specific subjects and characteristics based upon complaints or other evidence when and under such circumstances as the Village has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

- (26) **Grantee Rules and Regulations.** The Grantee shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this franchise and to assure an uninterrupted service to each and all of

its customers provided, however, that such rules, regulations, terms, and conditions shall not be in conflict with the franchise agreement, the provisions hereof or applicable state and federal laws, rules, orders, and regulations.

(27) **Franchise Fee.**

- (a) For the reason that the streets of the Village to be used by the Grantee in the operation of its system within the boundaries of the Village are valuable public properties acquired and maintained by the Village are valuable public properties acquired and maintained by the Village at great expense to its taxpayers and that the grant to the Grantee to the streets is a valuable property right without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee shall pay to the Village an amount equal to five (5) percent of the Grantee's gross revenues from the operations of the Grantee within the Village (the franchise fee), subject to the terms of this Ordinance. If the statutory five (5) percent limitation of franchise fees is raised or the federal statute deletes the franchise fee limitation entirely, then the franchise fee may be subject to renegotiation. (Reference: Ordinance 00-11)
- (b) The franchise fee imposed shall be in addition to any other tax or payment owed to the Village by the Grantee.
- (c) The franchise fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the Village and the Grantee shall file a complete and accurate verified statement of all gross receipts as previously defined herein within 45 days after the expiration of the calendar quarter.
- (d) The Village shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this Ordinance, provided, however, that such audit shall take place within 30 days following written notice to the Grantee by the Village, which notice shall include a copy of the audit report.
- (e) If any franchise payment or recomputed amount, cost, or penalty is not made on or before the applicable dates heretofore specified, interest shall not be paid to Village by Grantee at the rate of one and one half (1½) percent per month or any portion thereof until paid, and the Grantee shall reimburse the Village for any additional expense and costs incurred by the Village for any additional expense and costs incurred by the Village by reason of the delinquent payment(s).

(28) **Transfer of Ownership or Control.**

- (a) Except as may be otherwise provided in a franchise agreement, this franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest, or property therein, pass to or vest in any person without the prior written consent of the Village. The Grantee may, however, transfer or assign the franchise to a wholly owned subsidiary of the Grantee and such subsidiary may transfer or assign the franchise back to the Grantee without such consent, providing that such assignment is without any release of liability of the Grantee. The proposed assignee must show financial responsibility as determined by the Village and must agree to comply with all provisions of the franchise agreement. The Village shall have 120 days to act upon receipt of any written request for approval of such as sale or transfer which contains or is accompanied by such information as is required in accordance with FCC regulations and by the Village of Hales Corners. The Village shall be deemed to have consented to a proposed transfer or assignment if its written refusal to consent is not mailed to the Grantee

within 120 days following receipt of proper request unless the requesting party and the Village agree to an extension of time. The Village shall not unreasonably withhold consent to the proposed transfer.

- (b) Except as may be otherwise provided in a franchise agreement, the grantee shall promptly notify the Village of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word “control” as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation of any person or group of persons of 10 percent of the voting shares of the Grantee. Every change, transfer, or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the Village shall have consented thereto which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the Village may inquire into the qualification of the prospective controlling party, and the Grantee shall assist the Village in such inquiry.
- (c) The consent or approval of the Village to any transfer of the grantee shall not constitute a waiver or release of the rights of the Village in and to the streets, and any transfer shall by its terms be expressly subordinate to the terms and conditions of this Ordinance and the franchise agreement.
- (d) In the absence of extraordinary circumstances, the Village will not approve any transfer or assignment of an initial franchise prior to substantial completion of construction of the proposed system.
- (e) In no event shall a transfer of ownership or control be approved without successor in interest becoming a signatory to this franchise agreement.

(29) **Availability of Books and Records**

- (a) The Grantee shall fully cooperate in making available at reasonable times and the Village shall have the right to inspect and copy, where reasonably necessary to the enforcement of the franchise, books, records, maps, plans, and other like materials of the Grantee applicable to the cable television system at any time during normal business hours provided; where volume and convenience necessitate, the Grantee may require inspection and copying to take place on the Grantee premises at the Village’s expense. Grantee’s per copy charge to the Village shall not be greater than the Village’s per copy charge imposed on the general public at its offices.
- (b) The following records and/or reports are to be made available to the Village upon request, but no more frequently than on an annual basis unless mutually agree upon by the Grantee and the Village:
 - 1. Quarterly reviews and resolutions or progress reports;
 - 2. Periodic preventive maintenance reports;
 - 3. Any copies of FCC Form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies);
 - 4. Subscriber inquiry/complaint resolution data; and
 - 5. Periodic construction update reports, including as-built maps.

(30) **Other Petitions and Applications.** Copies of all petitions, applications, communications, and reports either submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any

matters affecting cable television operations authorized pursuant to the franchise or received from such agencies shall be provided to the Village upon request.

(31) **Fiscal Reports.**

(a) The Grantee shall file annually with the Village no later than 120 days after the end of the Grantee's fiscal year a copy of a gross revenues statement certified by an officer of the Grantee.

(32) **Removal of Cable Television System.** Upon termination of a franchise agreement as provided by this Ordinance and applicable federal law or the expiration and denial of the renewal application as provided by this Ordinance and applicable federal law, the Grantee shall forthwith at the option of and upon notice by the Village remove at its own expense all designated portion of the cable television system from all streets and public property within the Village. If the Grantee fails to do so, the Village may perform the work at the Grantee's expense. Upon the receipt of a notice for removal, a bond shall be furnished by the Grantee to the Village in an amount sufficient to cover this expense or a letter of credit or security deposit and any existing performance bond proceeds shall be available to and may be withdrawn by the Village to the full extent of their value.

(33) **Required Services and Facilities.**

(a) The cable television system shall have a minimum channel capacity of 77 channels and at least 750 MHz of bandwidth available for future use.

(b) The Grantee shall maintain and the system shall include a plant having the technical capacity for "two-way" communications.

(c) The Grantee shall maintain the following:

1. At least one (1) specially-designated, noncommercial public access channel available on a first-come, nondiscriminatory basis;

2. At least one (1) specially-designated channel for use by local educational authorities;

3. At least one (1) specially-designated channel for local governmental uses;

4. At least one (1) specially-designated channel for leased access uses; and

5. An Institutional Network (I-Net) of cable, optical, electrical, or electronic equipment used for the purpose of transmitting two-way telecommunications signals interconnecting designated entities as set forth in the franchise agreement and mutually agreed to by the Grantee and the Grantor. Such Institutional Network may be provided as needed by utilizing capacity on the subscriber system.

6. Provided, however, the above uses may be combined on one or more channels until such time as additional channels become necessary in the opinion of the Village. Financial and technical support, replacement, and maintenance of studios and associated equipment of this facility shall be separately incorporated into the franchise agreement.

(d) The Grantee shall incorporate into its cable television system the capacity to permit the Village, in times of emergency, to override, by remote control, the audio of all channels simultaneously which the Grantee may lawfully override. The Grantee shall provide emergency broadcast capacity pursuant to FCC rules. The Grantee shall cooperate with the Village in the use and operation of the emergency alert override system.

(e)

1. Interconnection - The Grantee may be required to interconnect its system with other adjacent cable television systems for the purpose of sharing public, educational, and governmental access programming. Such interconnection shall be made within a reasonable time limit to be established by the Village.
2. Interconnection Procedure - Upon receiving the order of the Village to interconnect, the Grantee shall immediately initiate negotiations with the other affected system or systems in order that all costs may be shared equally among cable companies for both construction and operation of the interconnection link.
3. Relief - The Grantee may be granted reasonable extensions of time to interconnect or the Village may rescind its order to interconnect upon petition by the Grantee to the Village. The Village shall grant the request if it finds that the Grantee has negotiated in good faith and has failed to obtain an approval from the operator or franchising authority of the system to be interconnected or the cost of the interconnection would cause an unreasonable increase in subscriber rates.
4. Cooperation Required - The Grantee shall cooperate with any interconnection cooperation, regional interconnection authority, or Village, local, county, state, and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the Village.
5. Initial Technical Requirements to Assure Future Interconnection Capability
 - a. All cable systems receiving franchises to operate within the Village shall use the standard frequency allocations for television signals.
 - b. All cable systems are required to use signal processors at the headend for each television signal.
 - c. Grantee shall provide local origination equipment that is compatible throughout the area so that video cassettes or videotapes can be shared by various systems.
 - d. Grantee shall provide such additional services and facilities as are contained in its application, if any.

(34) **Rules and Regulations.**

- (a) The right and power is hereby reserved by the Village to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of this franchise, provide, however, that such rules, regulations, terms, and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules, and regulations.
- (b) The Village may also adopt such regulations at the request of the Grantee upon application.

(35) **Performance Evaluation Sessions.**

- (a) The Village and the Grantee may hold scheduled performance evaluation sessions within 30 days of the third, sixth, and twelfth anniversary dates of the Grantee's award or renewal of the franchise and as may be required by federal and state law. All such evaluation sessions shall be open to the public.

- (b) Special evaluation sessions may be held at any time during the term of the franchise agreement at the request of the Village or the Grantee.
 - (c) All evaluation sessions shall be open to the public and noticed in the Village's official newspaper. The Grantee shall notify its subscribers of all evaluation sessions by announcements on at least one (1) channel of its system between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days preceding each session. Grantee's failure to televise such notice shall not invalidate any proceedings.
 - (d) Topics which may be discussed at any schedule or special evaluation session shall include, but not be limited to, service rate structures; franchise fee; penalties; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints and privacy; amendments to this ordinance; judicial and FCC rulings; line extension policies; Grantee or Village rules; and topics raised by members of the public at the session.
- (36) **Rate Change Procedures.** Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, the Village of Hales Corners is currently certified to regulate the Basic Service rates charged by the Grantee. Under these rules, the Grantee is required to obtain approval from the Village for a rate increase for any change to the rates for Basic Service. Should any federal or state law permit further rate regulation beyond the Basic Service, the Village of Hales Corners may assume such rate regulation and adopt appropriate procedures for such regulation.
- (37) **Forfeiture and Termination.**
- (a) In addition to all other rights and powers retained by the Village under this Ordinance or otherwise, the Village reserves the right to forfeit and terminate the franchise agreement and all rights and privileges of the Grantee thereunder in the event of a substantial breach of its terms and conditions. A subsequent breach by the Grantee shall include, but shall not be limited to, the following:
 1. Violation of any material provision of this Ordinance or the franchise agreement or any material rule, order, regulation, or determination of the Village made pursuant thereto;
 2. Any act or omission to evade or circumvent any material provision of the franchise or practice any fraud or deceit upon the Village or its subscribers or customers;
 3. Grantee's failure to begin or complete system construction or system extension as provided in Section (20);
 4. Grantee's failure to provide the services promised in the Grantee's application, if any, as incorporated herein by section (a)4;
 5. Grantee's failure to restore service after 96 consecutive hours of service interruption, except when prior approval of such interruption is obtained from the Village; or
 6. Grantee's material misrepresentation of fact in the application for or negotiation of the franchise.
 - (b) The foregoing shall not constitute a substantial breach if the violation occurs but is without fault of the Grantee or occurs as a result of circumstances beyond its control. The Grantee shall not be excused by mere economic hardship for by misfeasance or malfeasance of its directors, officers, or employees.
 - (c) The Village may make a written demand that the Grantee comply with any such provision, rule, order, or determination under or pursuant to this ordinance or the

franchise agreement. If the violation by the Grantee continues for a period of 30 days following such written demand without written proof that corrective action has been taken or is being actively and expeditiously pursued, the Village may place the issue of termination of the franchise agreement before the Village Board. Upon the consideration of termination, the Village shall cause to be served upon the Grantee, at least 20 days prior to the date of such meeting, a written notice of intent to see such termination and the time and place of the meeting. Class I public notice shall be give of the meeting and the issue(s) which the Village Board is to consider.

- (d) The Village Board shall hear and consider the issue(s) and shall hear any person interested therein and shall determine in its discretion whether or not any violation by the Grantee has occurred.
 - (e) If the Village Board shall determine the violation by the Grantee was the fault of the grantee and within its control, the Village Board may by resolution declare that the franchise of the Grantee shall be in forfeited and terminated unless there is compliance within such period as the Village Board may fix, such period shall not be less than 60 days, provided, however, no opportunity for compliance need be granted for fraud or misrepresentation.
 - (f) The issue of forfeiture and termination shall automatically be placed upon the Village Board agenda at the expiration of the time set by it for compliance. The Village Board then may terminate the franchise forthwith upon finding that the Grantee has failed to achieve compliance or may further extend the period in its discretion.
- (38) **Foreclosure.** Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the Grantee shall notify the Village of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Ordinance governing the consent of the Village to such change in control of the Grantee shall apply.
- (39) **Right of Acquisition by the Village.**
- (a) 47 U.S.C. 537 shall apply to the right of acquisition by the Village. In the event that the applicable federal regulations area repealed, the guidelines specified in section (b) below shall apply.
 - (b) Upon the expiration of the term of the franchise agreement and denial of any renewal or upon any other termination thereof as provided herein, the Village at its election and upon the payment to the Grantee of a price equal to the then fair market value of the system shall have the right to purchase and take over the system upon resolution by the Village Board. If the Village has denied the Grantee's petition for renewal of its franchise as provided by Section (7), the Village must exercise its option to purchase the system within 60 days of the denial of renewal and at least six (6) months prior to the end of the franchise. Nothing shall prohibit the Grantee in the event of the election of the Village to purchase the system from requesting the court to set a reasonable bond of the Village to secure the purchase price. The Grantee shall execute such warranty deeds and other instruments as may be necessary to convey the system.
- (40) **Receivership.** The Village shall have the right to terminate a franchise agreement 120 days after the appointment of a receiver or trustee appointed to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other

action or proceeding unless such receivership or trusteeship shall have been dismissed prior to the expiration of 120 days or unless:

- (a) Within 120 days after appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and the franchise agreement and remedied all defaults thereunder; and
- (b) Such receiver or trustee within the 120 after appointment shall have executed an agreement duly approved by the court having jurisdiction in the premises whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the franchise agreement granted to the Grantee.

(41) **Compliance with State and Federal Laws.**

- (a) Notwithstanding any other provisions of this Ordinance to the contrary, the Grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof, provided, however, if any such state or federal law or regulation shall require the Grantee to perform any service or shall prohibit the Grantee from performing any service in conflict with the terms of this franchise or of any law or regulation of the Village, then as soon as possible following knowledge thereof, the Grantee shall notify the Village of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Village or this Ordinance.
- (b) If the Village determines that a material provision of this Ordinance is affected by any subsequent action of the state or federal government, the Village and the Grantee shall negotiate to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement.

(42) **Landlord/Tenant.**

- (a) Interference with Cable Service Prohibited. Neither the owner or any multiple unit residential dwelling nor the owner's agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable communication service, cable installation, or maintenance from a cable communication Grantee regulated by and lawfully operating under a valid and existing franchise issued by the Village.
- (b) Gratuities and Payments to Permit Service Prohibited. Neither the owner of any multiple unit residential dwelling nor the owner's agent or representative shall ask, demand, or receive any payment, service, or gratuity in any form as a condition for permitting or cooperating with the installation of a cable communication service to the dwelling unit occupied by a tenant or resident requesting service.
- (c) Penalties and Charges to Tenants for Service Prohibited. Neither the owner of any multiple unit residential dwelling nor the owner's agent or representative shall penalize, change, or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident or discriminate in any way against such tenant or resident who requests or receives cable communication service from a Grantee operating under a valid and existing cable communication franchise issued by the Village.
- (d) Reselling Service Prohibited. No person shall resell, without the expressed, written consent of both the Grantee and the Village, any cable service program or signal transmitted by a cable communication Grantee under a franchise issued by the Village.

- (e) Protection of Property Permitted. Nothing in this chapter shall prohibit a person from requiring that cable communication system facilities conform to laws and regulations and reasonable conditions necessary to protect the safety, use, appearance, and value of premises or the convenience and safety of persons or property.
- (f) Risks Assumed by Grantee. Nothing in this chapter shall prohibit a person from requiring a Grantee to indemnify the owner or the owner's agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance, or removal of cable communication facilities.

(43) **Applicant's Bids for Initial Franchise.**

- (a) All bids received by the Village from the applicants for an initial franchise shall become the sole property of the Village.
- (b) The Village reserves the right to reject any and all bids and waive informalities and/or technicalities where the best interests of the Village may be served.
- (c) All questions regarding the meaning or intent of this Ordinance or application documents shall be submitted to the Village in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the Village as having received the application documents. The Village reserves the right to make extensions of time for receiving bids as it deems necessary. Questions received less than 14 days prior to the date for the opening of the bids will not be answered. Only replies to questions by written addenda will be binding. All bids must contain an acknowledgement of receipt of all addenda.
- (d) Bids must be sealed and submitted at the time and place indicated in the application documents for the public opening. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the applicant's bid must be executed. No bid shall be opened or inspected before the public opening.
- (e) Before submitting a bid, each applicant must:
 - 1. Examine this Ordinance and the application documents thoroughly;
 - 2. Inspect and determine any local conditions that may in any manner affect performance under the franchise;
 - 3. Examine federal, state, and local laws, ordinances, rules, and regulations affecting performance under the franchise agreement; and
 - 4. Carefully correlate the bid with the requirements of this Ordinance and the application documents.
- (f) The Village may make such investigations as it deems necessary to determine the ability of the applicant to perform under the franchise agreement, and the applicant shall furnish to the Village all such information and data for this purpose as the Village may request. The Village reserves the right to reject any bid if the evidence submitted by or investigation of such applicant fails to satisfy the Village that such applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional bids will not be accepted.
- (g) All bids received shall be placed in a secure depository approved by the Village and not opened or inspected prior to the public opening.

(44) **Financial, Contractual, Shareholder, and System Disclosure for Initial Franchise.**

- (a) No initial franchise will be granted to any applicant unless all requirements and demands of the Village regarding financial contractual, shareholder, and system disclosure have been met.
 - (b) Applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written, oral, or implied, with any person, firm, group, association, or corporation with respect to the franchise and the proposed cable television system. The Grantee of the franchise shall disclose all other contracts to the Village as the contracts are made. This section shall include, but not be limited to, any agreements between local applicants and national companies.
 - (c) Applicants, including all shareholders and parties with any interest in the applicant, shall submit all requested information as provided by the terms of this Ordinance or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the applicant.
 - (d) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the number of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.
 - (e) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other cable systems in which they hold an interest of any nature, including, but not limited to, the following:
 - 1. Locations of all other franchises and the dates of award for each location;
 - 2. Estimated construction costs and estimated completion dates for each system;
 - 3. Estimated number of miles of construction and number of miles completed in each system as of the date of this application; and
 - 4. Date for completion of construction as promised in the application for each system.
 - (f) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding pending applications for other cable systems, including, but not limited to, the following:
 - 1. Location of other franchise applications and date of application for each system;
 - 2. Estimated dates of franchise awards;
 - 3. Estimated number of miles of construction; and
 - 4. Estimated construction costs.
- (45) **Theft of Services and Tampering.**
- (a) No person may intentionally do any of the following:
 - 1. Obtain or attempt to obtain cable television service from a Grantee by trick, artifice, deception, use of an illegal device or illegal decoder or other fraudulent means with compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the presence on the property and in the actual possession of the person or entity of a device not authorized by the Grantee, the major purpose of which is to permit reception of cable television services without payment. This interference is rebutted if the

- alleged violator demonstrates that such person or entity purchased that device for a legitimate use.
2. Give technical assistance or instruction to any person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the Grantee providing that service. This paragraph does not apply if the alleged violator demonstrates that the technical assistance or instruction was given or the installation of the connection, descrambler, or receiving device was for a legitimate purpose.
 3. Make or maintain a connection, whether physical, electrical, mechanical, acoustical, or by other means with any cables, wires, components, or other devices used for the distribution of cable television services for the purpose of distributing cable service to any other dwelling unit without authority from a Grantee.
 4. Make or maintain a connection, whether physical, electrical, mechanical, acoustical, or by other means with any cable, wires, components, or other devices used for the distribution of cable television services for the purpose of obtaining cable television service without payment of all lawful compensation to the Grantee providing the service. The intent required for a violation of this paragraph may be inferred from proof that the cable service to the alleged violator's residence or business was connected under a service agreement with the alleged violator and has been disconnected by the cable television company and that thereafter there exists in fact a connection to the cable system at the alleged violator's residence or business.
 5. Make or maintain any modification or alternation to any device installed with the authorization of a Grantee for the purpose of intercepting or receiving any program or other service carried by that Grantee which that person is not authorized by that Grantee to receive. The intent required for a violation of his paragraph may be inferred from proof that, as a matter of standard procedure, the Grantee places written warning labels on its converters or decoders explaining that tampering with the device is a violation of law and the converter or decoder is found to have been tampered with, altered, or modified so as to allow the reception or interception of programming carried by the Grantee without authority to do so. The trier of fact may also infer that a converter or decoder has been altered or modified from proof that the Grantee, as a matter of standard procedure, seals the converters or decoders with a label or mechanical device, that the seal was shown to the customer upon delivery of the decoder, and that the seal has been removed or broken. The inferences under this paragraph are rebutted if the grantee cannot demonstrate that the intact seal was shown to the customer.
 6. Possess without authority any device or printed circuit board designed to receive from a cable television system any cable television programming or services offered for sale over that cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, or perform or facilitate the performance of any of the acts under paragraphs 1 to 5 above with the intent that the device or printed circuit be used to receive the Grantee's services without payment. Intent to violate this paragraph for direct or indirect commercial advantage or private financial gain may be inferred from

proof of the existence on the property and in the actual possession of the alleged violator of such a device, if the totality of circumstances, including quantities or volumes, indicates possession for resale.

7. Manufactures, imports into this state, distributes, advertises, sells, leases, or offers for sale or lease any devices, printed circuit board, or any plan or kit for a device or for a printed circuit designed to receive the cable television programming or services offered for sale over a cable television system from a cable television system, whether or not the programming or services are encoded, filtered, scrambled, or otherwise made unintelligible with the intent that the device, printed circuit, plan, or kit be used for the reception of that Grantee's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the defendant has sold, leased, or offered for sale or lease any device printed circuit board, plan, or kit for a device or for a printed circuit board in violation of this paragraph, and, during the course of the transaction for sale or lease, the alleged violator expressly states or implies to the buyer that the product will enable the buyer to obtain cable television service without charge.

(b) Civil Liability for Theft of Telecommunications Service (including Cable Television Service).

1. Any Grantee who sustains a loss as a result of a violation of section 45 may bring a civil action against the person who committed the violation as allowed by law.
2. Except as provided in subsection (b)3, if the Grantee who incurs the loss prevails, the court shall grant the prevailing party actual damages, costs, and disbursements.
3. If a Grantee who incurs a loss prevails against a person or entity who willfully violated any provision of Section (45), the court shall grant the Grantee all of the following:
 - a. Except as provided in subsection 3e and 3f, not more than \$10,000.00;
 - b. Actual damages;
 - c. Any profits of the violators that are attributable to the violation and that are not taken into account in determining the amount of actual damages under subsection 3b;
 - d. Notwithstanding the limitations under 799.25 or 814.04, Wis. Stats., costs, disbursement, and reasonable attorney fees;
 - e. If the court finds that a violation was committed willfully and for the purpose of commercial advantage, the court may increase the amount granted under subsection 3a not to exceed \$50,000.00; and
 - f. If the court finds that the violator had no reason to believe that the violator's action constituted a violation of this section, the court may reduce the amount granted under subsection 3a.
4. If damages under subsection 3c are requested, the Grantee who incurred the injury and loss shall have the burden of proving the violator's gross revenue and the violator's deductible expenses and the elements of profit attributable to factors other than the violation.
5. In addition to other remedies available under this section, the court may grant the injured Grantee a temporary or permanent injunction.

(46) **Penalties.** Any person or entity violating any term or provision of this Ordinance shall be subject to the penalties set forth under Chapter 1.06 of the Municipal Code. Penalties upon conviction of the Grantee shall be chargeable to the letter of credit, security deposit, or performance bond. The rights reserved to the Village under this section are in addition to all other rights of the Village whether reserved by this franchise or authorized by law or authorized by law or equity, and not action, proceeding, or exercise of a right with respect to penalties shall affect any other right the Village may have. Notwithstanding, Chapter 1.06 of the Municipal Code as it pertains to minimum forfeitures the following offenses shall upon conviction carry the following minimum forfeitures:

- (a) Failure to furnish, maintain, or offer all cable services to any potential subscriber within the Village upon order of the Village - \$200.00 per day.
- (b) Failure to obtain or file evidence of required insurance, construction bond, performance bond, or other required financial security - \$200.00 per day.
- (c) Failure to provide access to data, documents, records, or reports to the Village as required by Sections (19), (29), (30), (31), and (37) - \$200.00 per day.
- (d) Failure to comply with applicable construction, operation, or maintenance standards - \$300.00 per day.
- (e) Failure to comply with a rate decision or refund order - \$500.00 per day.
- (f) Any violations for noncompliance with the customer service standards of Sections (23) through (25) - \$200.00 per day.

(47) **Procedures.**

- (a) Whenever the Village believes that the Grantee has violated one (1) or more terms, conditions, or provisions of this Franchise and wishes to impose penalties, a written notice shall be given to the Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the Grantee an opportunity to remedy the violation. The Grantee shall have 30 days subsequent to receipt of the notice in which to correct the violation before the Village may impose penalties unless the violation is of such a nature so as to require more than 30 days and the Grantee proceeds diligently within the 30 days to correct the violation, or as promptly as possible thereafter to correct the violation. In any case where the violation is not cured within 60 days of notice from the Village or such other time as the Grantee and the Village may mutually agree to, the Village may proceed to imposed liquidated damages.
- (b) The Grantee may, within 10 days of receipt of notice, notify the Village there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Grantee to the Village shall specify with particularity the matters disputed by the Grantee and shall stay the running of the 30 days cure period pending Village Board decision as required below. The Village Board shall hear the Grantees dispute. Grantee must be given at least five (5) days notice of the hearing. At the hearing, the Grantee shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the Village shall provide Grantee a copy of its action, along with supporting documents. In the event the Village upholds the finding of a violation, the Grantee shall have 30 days subsequent, or other time period as the Grantee and the Village mutually agree, to correct the alleged violation before penalties may be imposed.
- (c) The rights reserved to the Village under this section are in addition to all other rights of the Village whether reserved by this franchise or authorized by law or equity, and not action, proceeding, or exercise of a right with respect to penalties shall affect any other right the Village may have.

- (d) The Village shall stay or waive the imposition of any penalty set forth above upon a finding that any failure or delay is a result of an act of nature or due to circumstances beyond the reasonable

11.12 ALARM SYSTEMS.

- (1) **Purpose.** It is the purpose of this section to establish a reasonable regulation of private alarm systems in the Village of Hales Corners. It is recognized that private alarm systems can significantly contribute to the protection of persons and property with the Village provide that the use of the alarm systems is properly coordinated with the Village's Police and Fire Departments as to minimize the unwarranted use of police and fire fighting personnel and resources in responding to false alarms.
- (2) **Legislative Findings.** It is hereby found, as a fact, that those properties which are serviced with mechanical alarm systems for alerting either the police department of the fire department have substantially more service responses made by those departments than other properties. This is due to a variety of reasons – alarms can be given easier by mechanical systems than by direct personal notification or personal notification through the telephone system; mechanical alarm systems are susceptible to the intentional or inadvertent false alarms caused by employees, customers, and others; mechanical alarm systems are also susceptible to false alarms activated by weather conditions and defects in basic equipment or in related telephone equipment. For all these reasons, the properties serviced by mechanical alarm systems tend to cause the Village more expense than properties not so serviced.
- (3) **Definitions.**
 - (a) "Alarm Systems" shall mean fire and/or burglar and/or other detection systems that are designed to be connected to the police department alarm panel or a commercial alarm company to alert the police and fire departments of danger to persons or property.
 - (b) "Intrusion Alarm System" shall mean any device designed automatically to detect an unauthorized entry into a residence or place of business and automatically sound an alarm at the police station or a commercial alarm service.
 - (c) "Fire, smoke, water flow, and heat detection systems" shall mean any device designated automatically to detect the existence of fire, smoke, automatic activation of water flow in a sprinkler system and extreme heat which automatically sounds an alarm at the police station or commercial alarm company.
 - (d) "Local alarm systems" shall mean any detecting device that gives a signal which is visible or audible to persons in the vicinity of the premises.
 - (e) "Multi-user emergency medical service (EMS Alarm Systems)" shall mean any emergency alarm system that may be activated by multiple users at multiple locations within a building or structure that signals an alarm for police, fire, or emergency medical services. This includes, but is not limited to, emergency pull-cord systems at multi-family dwellings, assisted living facilities, nursing homes, or other health care facilities."
- (4) **General Prohibitions.**
 - (a) Except for those residences connected to the alarm system of the Hales Corners Police Department on the effective date of this ordinance, no additional residential connections shall be allowed to such municipal alarm systems without

the approval of the police chief, who shall only allow such connection by reason of an unusual danger to persons or property. Such limitation shall not apply to fire, smoke, water flow, and heat detection systems.

- (b) No person, firm, or corporation shall use or cause to be used any telephone or electronic device or attachment that automatically selects a primary telephone trunk line of the police or fire department, and then reproduces a prerecorded message to report any burglary or other emergency.
 - (c) No person, firm, or corporation shall provide a private alarm system programmed to a central office unless it shall also maintain a patrol and maintenance service capable of immediately dispatching a company representative to respond within 30 minutes to the location of any alarm transmitted to the central office during the hours such system is in operation.
 - (d) All alarm systems requiring a permit which are installed within the Village shall have the Underwriter's Laboratories Approval.
 - (e) All local alarm systems must be designed and maintained to automatically reset or shut off the local portion of the alarm signal within 10 minutes of being activated.
- (5) **Exemption from Permit Requirements.**
- (a) Private smoke detectors.
 - (b) Alarm systems which are used solely to warn inhabitants of a structure of an occurrence where the signal does not carry to adjoining property or public ways.
- (6) **Permit Required.**
- (a) At least 10 days prior to the installation of an Intrusion Alarm System, or a Fire, Smoke, Water Flow, and Heat Detection Alarm System or a Local Alarm System, application must be made for a permit to install such system. Such application shall include the following:
 - 1. The name of the applicant.
 - 2. The address of the premises where the alarm system will be installed.
 - 3. Satisfactory proof that the contemplated system conforms with the Village Code requirements.
 - 4. The identity of a person or persons to be contacted in the event of an alarm signal.
 - 5. Such other information as the chiefs of the police and fire department may deem necessary for safe and proper emergency response by their department.
 - (b) An alarm permit shall be issued by the Village Clerk for a period of one (1) year renewable automatically for each succeeding 12 months, except that any change resulting in a decrease of services by, or the identity of, the commercial alarm company, shall require a new permit, upon the filing of an alarm permit application which has been approved by the Chief of the Fire Department in the case of fire, smoke, water flow, and heat detecting alarms and by the Chief of the Police Department in the case of all other alarms and upon payment of the permit fee.
 - (c) The Chief of the Fire Department, in the case of fire smoke, water flow, and heat detection alarms, and the Chief of the Police Department, in the case of all other alarms, may cancel any permit under this section if in the judgment of such chief the continued operation of the alarm system is not consistent with the stated purpose of this section or if due to malfunction, improper maintenance, or other cause, there are an unreasonable number of false alarms. Prior to cancellation,

the permit holder shall be given written notice of the intended cancellation and shall be given an opportunity to be heard in a due process hearing pursuant to Article XII of the Village Bylaws.

- (d) These persons, firms, or corporation presently having alarm systems which are prohibited in this section shall be permitted to maintain the connection until January 1, 1985, after which date failure to disconnect shall be considered a violation of this section.

(7) **Permit Fees.**

- (a) Alarm Devices. Whenever an alarm device is used for fire or police protection necessitating installation within the municipal building, the fire alarm system must be approved by the Fire Chief and the police alarm system must be approved by the Police Chief. Such system must have the approval of a recognized rating bureau. An application describing said systems shall be filed with the Village accompanied by a fee of \$225.00 for Fire Alarm Systems and \$225.00 for Police Alarm Systems which shall be used to reimburse the Village for the cost of installation within the municipal building. An annual fee of \$35.00 per year is hereby established for users of fire and police alarms so as to provide funds for necessary maintenance of Village equipment used in conjunction with the alarms.
- (b) Other Alarm Systems Requiring Permits. An annual fee of \$15.00 is hereby established for other alarm devices requiring a permit.

(8) **Conditions Which Must be Accepted by a Permit Holder.**

- (a) The Village shall not be responsible for normal line mileage charges assessed by the telephone company to subscribers from their alarm terminal to the Hales Corners Dispatch Center. Such costs are not included in the schedule of installation and maintenance fees under subsection (7) hereof.
- (b) Upon completion of installation, the system shall be tested by a factory representative or by the installer, in the presence of the permit holder or his authorized agent and by a representative of the Fire or Police Department to insure that said system operates in conformance to the specifications as approved. Subsequent tests shall be made at the frequency recommended by the appropriate standard or the Fire and/or Police Chief.
- (c) In even the Fire and/or Police Department responds to an alarm at the premises covered by the alarm system, and in further event, neither the permit holder nor his/her authorized agent is present, the permit holder consents to a municipal breaking and entering of the premises to ascertain the cause of the alarm.
- (d) The permit holder consents to the imposition of the false alarm service charge hereinafter imposed.

(9) **False Alarms.**

- (a) No person owning, using, or possessing an alarm system shall intentionally cause or permit the giving of a false alarm.
- (b) Any person, firm, or corporation having an alarm system requiring a permit shall be charged a fee for false alarms in accordance with the following schedule:
 - 1. Fire Alarms. For false alarms which result in the response of Fire Department personnel and equipment, an amount equal to the actual cost of the response as determined by the Fire Chief shall be paid for each false alarm in excess of three (3) during any calendar year.

2. Other Alarms. For any other false alarm resulting in the response of Police Department personnel, the following fees shall apply to false alarms during any calendar year.

0 to 2	No charge
3 or more	\$100 per false alarm

3. Exemption. When the Chief of Police or Fire Chief determines that the cause of false alarm was beyond the control of a permittee, that false alarm may be exempted from this provision.

4. Multi-User EMS Alarm System Alarms. For false alarms which result in no medical attention or transport by the Village, the Fire Department shall assess the following fees to the alarm system owner/permit holder during any calendar year:

0-2	No Charge
3 or more	\$100 per false alarm

- (10) **Penalty.** Anyone violating the provisions of this section shall be subject to a penalty as provided in section 19.04 of this Code.

11.13 FOOD ESTABLISHMENTS – LICENSES AND REGULATIONS

- (1) **Definitions.** The following definitions shall apply in the interpretation and enforcement of this section.

- (a) Food Establishment. Shall mean any restaurant, tavern, coffee shop, cafeteria, delicatessen, sandwich stand, luncheonette, soda fountain, and all other eating or drinking places, as businesses, bakeries, confectionaries, and any building, room, or place where food is processed, prepared, sold, served, stored, and all places used in connection therewith. However, the term shall not include vending machines or kitchens of private homes for family use only.
- (b) Food. Shall mean any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use in whole, or part, as food or drink by man.
- (c) Person. Shall mean person, firm, or corporation.
- (d) Health Officer. Shall mean the Health Officer of the Village of Hales Corners or authorized agent.
- (e) Chief of Police. Shall mean the Chief of Police of the Village of Hales Corners or authorized agent.
- (f) Potentially Hazardous Food. Shall mean any perishable food which consists in whole or part of milk, milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.
- (g) Adulterated Food. Shall mean any food that consists in whole or in part of any filthy, putrid, or decomposed substance, or if it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth.
- (h) Food Service Equipment. Shall mean all cutlery, tableware, kitchenware, and other utensils, containers, slicers, hoods, ranges, refrigerators, freezers, cutting boards, and any other auxiliary equipment used in direct conjunction with food handling in any food establishment.

- (i) **Food Processing.** Shall mean any operation whereby unpackaged, unwrapped, or otherwise unprotected food comes in contact with hands, utensils, machinery, or any other food service equipment for purposes of canning, extracting, portioning, freezing, drying, smoking, grinding, blending, mixing, packaging, cooking, frying, or otherwise treating or preserving the same for subsequent sales as food.
 - (j) **Employee.** Shall mean any person working in a food establishment.
 - (k) **Wholesome.** Shall mean in sound condition, clean and free from adulteration, and otherwise suitable for use as food.
 - (l) **Village.** Shall mean the Village of Hales Corners.
- (2) **License Required.** Unless provided in this section, no person shall operate a food establishment who does not possess a valid food establishment license from the Village.
- (3) **License Exemption.** Churches, schools, fraternal, charitable, social, or nonprofit organizations holding occasional fundraising sales, such as bake sales, or school lunch programs, both public and private, or persons selling personal property at wholesale to dealers in such articles, shall be exempt from the licensing requirements of this section. Occasional shall mean less than four (4) days during any 12-month period.
- (4) **License Fee Exemption.** Churches, schools, fraternal, charitable, social, or nonprofit organizations operated as food establishments four (4) or more days during any 12 month period shall be required to possess a valid food establishment license but shall be exempt from the food establishment license fee.
- (5) **Application.** Application for a food establishment license shall be made to the Village Clerk in writing and shall include the full name or names of the person or persons making application, business address of such applicant, nature of business to be licensed, location of business to be licensed, and, if a corporation, the full names and addresses of its officers and manager or managers.
- (6) **Investigation.** The application shall be referred to the Chief of Police who upon receipt of each such application shall institute such investigation of the applicant's business and moral character as he deems necessary for the protection of the public good and shall endorse his approval or disapproval upon said application within 72 hours after it has been filed with him, and shall return the application to the Village Clerk with his findings.
- (7) **Issuance.** Such license shall be issued by the Village Clerk upon payment of the license fee herein provided, after approval of the Chief of Police, after the Health Officer has certified that the food establishment meets the requirements of all applicable regulations, and that the applicant shall not have due and owing any personal property and/or real estate taxes to the Village. Licenses shall be issued only in the name of the operator of the food establishment and shall not be transferable from one person or place to another.
- (8) **Wisconsin Administrative Code Provisions Adopted.** Chapter HSS 196 Restaurants, Chapter AG 32 Retail Food Establishments, and Chapter AG 39 Bakeries and Confectionaries, of the Wisconsin Administrative Code, are hereby adopted and made part of this Code by reference as if fully set forth herein. Failure to comply with any of the provisions of these chapters shall constitute a violation of this section. Copies of these chapters shall be permanently on file and open to public inspection in the office of the Village Clerk.

- (9) **Inspection.** The Health Officer is hereby given the right to enter all places for which a food establishment license has been issued, at reasonable times, for the purpose of making inspections. If upon such inspection, the Health Officer finds that any licensed food establishment is operated or managed in violation of the ordinances or regulations of the Village, it shall be the Health Officer's duty to serve an order upon the licensee, his agent or employee in charge of the licensed premises, directing him within a reasonable time to comply with said ordinances or regulations.
- (10) **Suspension of License.** A food establishment license may be temporarily suspended by the Health Officer without prior notice for violation of any of the terms of this section where such violation has been determined by the Health Officer to be a direct and immediate hazard to public health. A food establishment license may also be suspended with prior notice pending correction of any violations which constitute a health hazard which is serious, but not immediate, or recurring or repeated violations. The licensee whose food establishment license has been suspended may at any time make application for reinstatement of the license. Within 48 hours after the receipt of a written application for reinstatement, including a statement signed by the applicant that the violated provisions of this section have been corrected, the Health Officer shall make a reinspection and thereafter as many additional reinspections as he deems necessary to assure himself that the applicant has complied with the regulations of this section and, in the event the inspections indicate compliance, shall reinstate the license.
- (11) **Revocation of License.** A food establishment license may be revoked on grounds of serious or repeated violations after an opportunity is granted the licensee has a hearing. Such hearing shall be conducted by the Board of Appeals as set forth in Chapter I, Article XII of this code.
- (12) **Posting.** Food Establishment licenses must be posted at all times in a conspicuous place on the premises of the licensed food establishment.
- (13) **License Fee.** The annual fee for a food establishment license shall be paid to the Village Clerk/Treasurer, due and payable before July 1 of each year. There shall be no proration of license fees.
- (a) If the food establishment is defined as a restaurant, restaurant with limited food service, temporary service, or additional physically separate food holding, serving, and preparation area by the HFS 196.04, Wis. Admin, Code, as amended, the fee shall be paid as follows:

<u>Type</u>	<u>Annual Fee</u>	<u>Pre-inspection Fee</u>
Restaurant-Simple	\$220.00	\$165.00
Restaurant-Moderate	\$330.00	\$275.00
Restaurant-Complex	\$440.00	\$385.00
Restaurant-Limited Food Service	\$110.00	\$140.00
Restaurant-Temporary	\$110.00	none
Separate Food Holding Area	\$110.00	none

except that churches, fraternal, charitable, social, or nonprofit organizations shall pay an amount equal to applicable service level restaurant permit fee pursuant to HFS 196.04, Wis. Admin. Code., as amended.

- (b) If the food establishment is not defined by paragraph (a), the fee shall be as follows:

<u>Type</u>	<u>Annual Fee</u>
Anticipated Gross Annual Sales of Less than \$20,000	\$33.00
Anticipated Gross Annual Sales of \$20,000 or More	\$140.00

except that churches, fraternal, charitable, social, or nonprofit organizations shall be exempt from the food establishment fee.

- (c) Any application for renewal of a food establishment license under this section after June 30 shall be subject to a late filing fee in an amount equal to the greater of \$75 or 50% of the license fee.

(14) **Food Establishment Regulations.** Any person to whom a Hales Corners food establishment license has been issued under §11.12 of the Municipal Code of the Village, shall maintain and operate such establishment in accordance with these regulations.

(15) **Wholesomeness of Food.** All food shall be clean, wholesome, free from spoilage or adulteration, and so prepared as to be safe for human consumption. Samples of food and other substances may be taken and examined by the Health Officer as often as may be necessary for the detection of unwholesomeness or adulteration. The Health Officer may condemn and forbid the sale of, or cause to be removed or destroyed, any food which is found to be unwholesome or adulterated.

(16) **Sanitarian.**

(a) Floors. The floors of all rooms in which food is processed or prepared or in which utensils are washed shall be of such constructions as to be easily cleaned, shall be reasonably impervious to moisture and grease, shall be smooth, and shall be kept clean and in good repair. The floors of all rooms in which food is stored or served shall be kept clean and in good repair.

(b) Walls and Ceilings. The walls and ceilings of all rooms in which food is prepared or processed or in which utensils are washed shall be kept clean and in good repair. The walls and ceilings of all rooms in which food is stored or served shall be kept clean and in good repair.

(c) Doors and Windows. Exterior doors, toilet room doors, and doors providing ingress or egress to food preparation areas shall be self-closing. All openings to the outside shall be effectively screened or otherwise protected to prevent the entrance of insects and rodents.

(d) Toilet Rooms. Every food establishment shall be provided with adequate and conveniently located toilet facilities for its employees in conformance with the ordinances of the Village and the State of Wisconsin building and plumbing codes. Toilet rooms shall be kept clean, in good repair, and well lighted and ventilated. Storage therein shall be limited to those items that pertain to the maintenance of a toilet room.

(e) Handwashing Facilities. Each food establishment shall be provided with handwashing facilities within or immediately adjacent to toilet rooms and within the food preparation or processing areas. Each handwashing facility shall be equipped with hot and cold running water, soap, and single service hand towels or hot air dryers.

(17) **Food Service Equipment Requirements.**

(a) Construction and Maintenance. All food service equipment, including, but not limited to, display cases, counters, shelves, tables, refrigerators, stoves,

ventilation hoods, and sinks, shall be so constructed as to be easily cleaned and shall be kept clean and in good repair. Equipment and utensils not suitable for use or not capable of being maintained in a sanitary condition, as determined by the Health Officer, shall be removed from the premises.

- (b) Installation. Equipment shall be so installed as to facilitate the cleaning thereof and of all adjacent areas with the equipment in place, unless the equipment is readily removable for this purpose. Fixed equipment shall be elevated at least six (6) inches off the floor to facilitate cleaning of the floor below.
- (c) Sinks. All new or replacement sinks intended for manual washing of utensils shall have four (4) compartments and be sized to permit submersion of at least 50% of the largest utensil to be washed. Stainless steel drainboards, adequately sized for the amount and type of utensils used, shall be provided at the soiled utensil side and the clean utensil side of the utensil washing sinks. Each compartment shall be provided with hot and cold running water.
- (d) Single Service. All single service utensils shall be stored, handled, and dispensed in a sanitary manner and shall be used only once.
- (e) Ice Cream Scoops. Scoops used for dispensing bulk ice cream shall be kept in running water dipper wells.
- (f) All new or replacement food service equipment which meets the standards and requirements of the National Sanitation Foundation (NSF) is approved for use in any food establishment. All other new or replacement food service equipment shall be subject to approval by the Health Officer.

(18) **Cleaning of Food Service Equipment.**

- (a) Multi-use Utensils. All multi-use eating and drinking utensils shall be thoroughly cleaned and sanitized after each usage. After sanitizing and air drying, utensils shall be stored in a clean, dry place protected from insects, dust, and other contamination.
- (b) Food Contact Equipment. All food contact equipment, other than multi-use eating and drinking utensils, including slicers, mixers, choppers, meat saws, can openers, food molding and shaping equipment, cutting boards, peelers, shredders, salad bars, trays, and any other food service equipment that comes in direct contact with food during processing, preparation, or serving shall be thoroughly cleaned and effectively subjected to a bactericidal process daily and at such other times as may be necessary in order to minimize bacterial growth or contamination between products.

(19) **Food Protection.**

- (a) Food Storage. Unless otherwise protected, food shall not be stored under sewage waste lines, pipes subject to condensate, or under other potential sources of contamination. To facilitate floor cleaning, discourage insect infestations, and to offer protection from sewage, waste water, or other seepages, all storage of food shall be on movable pallets, skids, shelves, or racks. When permanent shelves or racks are used, such storage shall be at least six (6) inches above the floor.
- (b) Temperature. Unless otherwise indicated in these regulations, all potentially hazardous foods, except during necessary periods of preparation, shall be kept under refrigeration at 40 degrees Fahrenheit or colder or shall be kept heated at 150 degrees Fahrenheit or hotter. An indicating thermometer accurate to plus or minus two (2) degrees Fahrenheit shall be provided in each cold food storage facility. Each hot food storage facility shall be provided with an indicating thermometer accurate to plus or minus two (2) degrees Fahrenheit. Where it is

impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, or insulated food transport carriers, a bayonet type product thermometer shall be available and used to check the internal food temperature.

- (c) Thawing. All frozen food requiring thawing before cooking shall be thawed under refrigeration, under cold running tap water, or by use of a microwave oven.
- (d) Food Reuse. Unwrapped or otherwise unprotected food once served, dispensed, or sold to a customer shall not be reserved, redispensed, or resold. Seasonings and condiments such as salt, sugar, cream, relishes, mustard, ketchup, etc., may be reserved if approved dispensers are used. Dispensers shall be kept clean, and, if dispensing non-dry product, shall be washed and sanitized before being refilled.
- (e) Raw Food. Raw fruits and vegetables shall be washed before using.
- (f) Displayed Food. Where unwrapped or otherwise unprotected food is placed on display in all types of food service operations, including smorgasbords, buffets, cafeterias, and any other display, whether self-service or not, it shall be protected from contamination from customers and other sources by effective, easily cleanable counter protection devices, display cases, coverings, or other similar type of protective equipment. Refrigeration or heat requirements shall be met on all potentially hazardous food items when so displayed. On self-service operations, tongs, forks, spoons, picks, spatulas, scoops, and other suitable utensils shall be provided for customer use. Food shall be so displayed in self-service operations as to prevent the necessity of reaching over unprotected food. The requirement of counter protection devices or other permanently installed protective devices shall not apply to catered operations unless permanently operated and regularly scheduled at one location.
- (g) Transported Food. Any food product while being transported or distributed in vans, trucks, or other vehicles shall be protected from dust, flies, vermin, droplet infection, and any other adulteration and shall not be handled in an unsanitary manner.
- (h) Vehicles. Every van, truck, or other vehicle operated on the street or any place within the Village for the transportation or storage of food shall be maintained in a clean and sanitary manner at all times.
- (i) Use of Hands. The use of hands where a suitable utensil could be substituted in the processing, preparation, serving, or dispensing of any food is prohibited.

(20) **Lighting.**

- (a) Light Levels. Sources of artificial light shall be provided and used to the extent necessary to provide a minimum of 20-foot candles of light on all working surfaces of food preparation, processing, utensil washing, and hand washing areas, and a minimum of five (5) foot candles of light at a distance of 30 inches from the floor in all storage, dining, and nonworking surfaces of food preparation, processing, or utensil washing areas during cleaning operations.
- (b) Protective Shields. Shielding to protect against broken glass falling onto food shall be provided for all artificial lighting fixtures located in food preparation and storage areas.

(21) **Ventilation.** All rooms in which food is stored, prepared, or served shall be well ventilated. A hood of adequate size and capacity shall be installed over each cooking area conforming with the ordinances of the Village and the State building codes. Filters, when used, shall be readily removable for cleaning or replacement. Toilet room

ventilation shall be installed according to State building codes. Ventilation systems shall comply with applicable fire prevention requirements and shall discharge in such a manner as not to create a nuisance.

(22) **Personnel Hygiene.**

- (a) Tobacco. All employees shall refrain from using tobacco in any form while on duty in food preparation and storage rooms, while serving food, and while engaged in equipment or utensil washing. Smoking areas where no contamination hazards will result may be approved by the Health Officer.
- (b) Clothing. All employees shall wear clean outer garments and wear hair nets, caps, or other suitable hair restraints while engaged in the handling of food or food service equipment. Soiled garments shall be kept in containers provided for that purpose.
- (c) Hand Washing. Employees shall wash their hands thoroughly before starting work, after using the toilet, after smoking, and as often as may be necessary to remove soil and contamination.

(23) **Garbage and Refuse.** Garbage and refuse shall be kept in covered containers that are durable, easily cleanable, insect-proof, rodent-proof, and watertight. Such containers inside food establishments shall be cleaned daily or shall have leak-proof liners. Outside refuse and garbage containers shall be emptied and cleaned often enough to prevent the development of odor and the attraction of insects and rodents.

(24) **Insect and Rodent Control.**

- (a) Control. Effective control measures shall be taken by the owners, operators, managers, or agents of all food establishments to protect against the entrance and breeding, or presence on the premises of insects and rodents. All openings to the outside shall be effectively screened or otherwise protected to prevent the entrance of insects and rodents.
- (b) Pesticide Application. The application of any pesticide in a food establishment shall be made according to the Federal Insecticide, Fungicide, and Rodenticide Act label instructions.

(25) **Harboring of Animals.** The harboring of birds, cats, dogs, or other animals, except seeing eye dogs, in any area where food is prepared, stored, or displayed is prohibited.

(26) **New Operator.** When a new operator requests a license for an existing licensed food establishment, the acceptance by the Village of existing conditions shall cease, and the establishment must comply as a new food establishment.

(27) **Establishments Located Outside the Village.** All food offered for sale, processed, or prepared within the Village shall be from approved sources. The Health Officer may request a certification of compliance from any food supplier offering food for sale within the Village. Such proof of compliance may consist of a statement to that effect made by the local, state, or federal health authority within whose jurisdiction the source is located.

(28) **Approved Comparable Compliance.** When strict adherence with the regulations of this section appear to be impractical and satisfactory proof is provided, the Health Officer may approve modifications as needed to safeguard public health, safety, and welfare.

- (29) **Conflicts.** Whenever conflicts between these rules and regulations and other Village ordinances or state and federal regulations occur, the most stringent rule shall apply.
- (30) **Penalty.** Any person who shall violate any provision of this section shall be subject to a penalty as provided in section 19.04 of this Code.

11.14 PUBLIC SWIMMING POOLS.

- (1) **Definitions.** The following definitions shall apply in the interpretation and the enforcement of this section.
- (a) **Chief of Police.** Shall mean the Chief of Police of the Village of Hales Corners or authorized agent.
 - (b) **Health Officer.** Shall mean the Health Officer of the Village of Hales Corners or authorized agent.
 - (c) **Operator.** Shall mean the licensee of a public swimming pool or authorized agent.
 - (d) **Person.** Shall mean a municipality, corporation, company, association, firm, or individual owning, controlling, or operating any public swimming pool.
 - (e) **Public Swimming Pool.** Shall mean an indoor or outdoor entirely manmade pool used for swimming, diving, or wading, including those, such as whirlpools, used for non-recreational or therapeutic purposes, and excepting those serving less than three (3) individual residential quarters such as homes or apartments. Included are buildings, equipment, and appurtenances. Public swimming pools include those serving or installed for the Village, including school districts, those serving or installed for hotels, motels, resorts, housing developments, religious, charitable, or youth organizations, or similar establishments, irrespective of whether or not a fee is charged for the use thereof.
 - (f) **Village.** Shall mean the Village of Hales Corners.
- (2) **License Required.** No person shall operate a public swimming pool who does not possess a valid public swimming pool license from the Village.
- (3) **License Fee Exemption.** Any public swimming pools operated by the Village shall be required to possess a valid public swimming pool license but shall be exempt from the public swimming pool license fee.
- (4) **Application.** Application for a public swimming pool license shall be made to the Village Clerk in writing and shall include the full name or names of the person making application, the address of such applicant, the address of the public swimming pool, and, if a corporation, the full names and addresses of its officers.
- (5) **Investigation.** The application shall be referred to the Chief of Police who upon receipt of each such application shall institute such investigation of the applicant's business and moral character as he deems necessary for the protection of the public good, and shall endorse his approval or disapproval upon said application within 72 hours after it has been filed with him, and shall return the application to the Village Clerk with his findings.
- (6) **Issuance.** Such license shall be issued by the Village Clerk upon payment of the fee herein provided, after approval of the Chief of Police, after the Health Officer has certified that the public swimming pool meets the requirements of all applicable

regulations, and that the applicant shall not have due or owing any personal property and/or real estate taxes to the Village. Licenses shall be issued only in the name of the applicant and shall not be transferable from one person or place to another.

- (7) **Public Swimming Pool Regulations.** Any person to whom a public swimming pool license has been issued under section 11.13 of the Municipal Code of the Village shall maintain and operate such swimming pool in accordance with these regulations.
- (8) **Wisconsin Administrative Code Provisions Adopted.** Chapter HSS 171 Public Swimming Places and Chapter HSS 172 Safety Maintenance and Operation of Public Swimming Pools, of the Wisconsin Administrative Code, are hereby adopted and made part of this code by reference as if fully set forth herein. Failure to comply with any of the provisions of these chapters shall constitute a violation of this section. Copies of these chapters shall be permanently on file and open to public inspection in the office of the Village Clerk.
- (9) **Operator Designated.** The licensee or an authorized agent shall be designated in writing by the licensee to the Health Officer as the individual charged with the supervision, operation, and maintenance of the public swimming pool. The appointment of an agent shall in no way relieve the licensee of the responsibility of maintaining and operating the public swimming pool in accordance with the regulations of this section.
- (10) **Inspection.** The Health Officer is hereby given the right to enter all public swimming pools for which a license has been issued at reasonable times, for the purpose of making inspections. If upon such inspection, the Health Officer finds that any licensed public swimming pool is conducted, operated, or managed in violation of the ordinances and regulations of the Village, it shall be his duty to serve an order upon the licensee, his agent, or employee in charge of the licensed premises, directing him within a reasonable time to comply with said ordinances or regulations.
- (11) **Suspension of License.** A license may be temporarily suspended by the Health Officer without prior notice for violation of any of the terms of this section where such violation has been determined by the Health Officer to be a direct and immediate hazard to public health. A license may also be suspended with prior notice pending correction of any violations which constitute a health hazard which is serious, but not immediate, or recurring or repeated violations. The licensee whose license has been suspended may at any time make application for reinstatement of the license. Within 48 hours after the receipt of a written application for reinstatement, including a signed statement by the applicant that the violated provisions of this section have been corrected, the Health Officer shall make a reinspection and thereafter as many additional reinspections as he deems necessary to assure himself that the applicant is complying with the requirements, and in the event findings indicate compliance, shall reinstate the license.
- (12) **Revocation of License.** A license may be revoked on grounds of serious or repeated violations after an opportunity is granted the license holder for a hearing. Such hearings shall be conducted by the Board of Appeals as set forth in Chapter I, Article XII of this Code.
- (13) **Posting.** Public swimming pool licenses must be posted at all times in a conspicuous place on the premises of the licensed public swimming pool.

- (14) **License Fee.** The annual fee for a public swimming pool license shall be \$200.00 paid to the Village Clerk/Treasurer, due and payable before July 1 of each year. There shall be no proration of license fees.

11.15 SPECIAL EVENT PARKING.

- (1) **Permit Required.** A special event parking permit shall be required within the no-parking lanes of State Trunk Highway 24. The Village will forward to the Wisconsin Department of Transportation no more than three (3) permit requests per year for any applicant and in no case shall the duration of such allowed parking exceed three (3) consecutive calendar days. Such requests shall be forwarded by the Village Administrator with notification provided to the Board of Trustees. Permits shall only be issued to applicants who are occupants of property abutting the old centerline or the current centerline of the State Trunk Highway 24. The permit fee shall be \$100.00, representing reimbursement to the Village.
- (2) **Conditions.** As a condition to receiving such permit, the applicant shall agree not to make claim against the State of Wisconsin or the Village of Hales Corners, its agents, or employees, by reason of the use of such parking lanes, and shall further agree to hold harmless the said governmental entities and its duly appointed agents and employees against any action for personal injury or property damage sustained by reason of the exercise of such permit. The Village Clerk shall prepare an application form incorporating such conditions.

11.16 FILING FEE FOR TAX EXEMPTION REPORT. To defray the costs to the Village of distributing and reviewing forms and of preparing the summary forms for the Wisconsin Department of Revenue, the owner of tax exempt property filing a Tax Exemption Report (PC-220) with the Village Clerk pursuant to §70.09, Wis. Stats., shall pay a filing fee of \$25.00 for each parcel listed in such report. An additional fee of \$10.00 will be charged for delinquent reports.

11.17 PAYMENT OF TAXES, SPECIAL ASSESSMENTS, AND SPECIAL CHARGES. No license or permit authorized to be issued under this Chapter shall be issued unless all general property taxes and interest and penalties thereon, special assessments, and special charges then due or owing as provided by law and attributable to any premises to be subject to the license shall have been paid.

11.18 ADULT-ORIENTED ESTABLISHMENTS.

- (1) **Definitions.**
- (a) “Adult-oriented establishment” shall include, but is not limited to, “adult bookstores”, “adult motion picture theaters”, “adult mini-motion picture establishments”, or “adult cabarets”. It further means any premises to which public patrons or members are invited to admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments, or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron, or a member, whether or not such adult entertainment is held, conducted, operated, or maintained for a profit, direct or indirect.

- (b) “Adult bookstore” means an establishment having as a substantial or significant portion of its stock in trade, for sale, rent, lease, inspection, or viewing, books, films, video cassettes, magazines, or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or related to “specified anatomical areas” or “specified sexual activities” as defined below, or an establishment with a segment or section devoted to the sale, rental, or display of such material.
- (c) “Adult motion picture theater” means an enclosed building with a capacity of 50 or more persons used for presenting materials distinguished or characterized by an emphasis on, matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas”, as defined below, for observation by patrons therein.
- (d) “Adult mini-motion picture theater” means an enclosed building with a capacity of less than 50 persons used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas”, as defined below, for observation by patrons therein.
- (e) “Adult cabaret” means a cabaret which features topless dancers, strippers, male or female impersonators, or similar entertainers.
- (f) “Adult entertainment” means any exhibition of any motion picture, live performance, display, or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, any actual or simulated “specified sexual activities” or “specified anatomical areas” as defined below.
- (g) “Specified sexual activities” means simulated or actual:
 - 1. Showing of human genitals in a state of sexual stimulation or arousal;
 - 2. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio, or cunnilingus;
 - 3. Fondling or erotic touching of human genitals, pubic regions, buttocks, or female breasts.
- (h) “Specified anatomical areas” means:
 - 1. Less than completely and opaquely covered human genitals, pubic region, buttocks, female breasts below the point immediately above the top of the areola;
 - 2. Human male genitals in a discernible turgid state, even if opaquely covered.
- (i) “Operators” means any person, partnership, or corporation operating, conducting, maintaining, or owning any adult-oriented establishment.

(2) **License.**

- (a) Except as provided in subsection (d) below, from and after the effective date of this ordinance, no adult-oriented establishment shall be operated or maintained in the Village of Hales Corners without first obtaining a license to operate issued by the Village of Hales Corners.
- (b) A license may be issued only for one (1) adult-oriented establishment located at a fixed and certain place. Any person, partnership, or corporation which desires to operate more than one (1) adult-oriented establishment must have a license for each.
- (c) No license or interest in a license may be transferred to any person, partnership, or corporation.
- (d) All adult-oriented establishments existing at the time of the passage of this ordinance must submit an application for a license within 90 days of the passage

of this ordinance. If an application is not received within said 90-day period, then such existing adult-oriented establishment shall cease operations.

(3) **Application for License.**

- (a) Any person, partnership, or corporation desiring to secure a license shall make application to the Village Clerk. The application shall be filed in triplicate with and dated by the Village Clerk. A copy of the application shall be distributed promptly to the Hales Corners Police Department and to the applicant.
- (b) The application for a license shall be upon the form provided by the Village Clerk. An applicant for a license shall furnish the following information under oath:
 - 1. Name and address;
 - 2. Written proof that the individual is at least 18 years of age;
 - 3. The exact nature of the adult-oriented use to be conducted and the address of the adult-oriented establishment to be operated by the applicant;
 - 4. If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and addresses of the registered agent, and the name and address of any shareholder who individually or jointly owns or controls more than 49% of the stock in said corporation and all persons responsible for the management and operation of the adult-oriented establishment;
 - 5. If the applicant is a partnership or joint venture or any other type of organization where two (2) or more persons have a financial interest, the application shall specify the name of the entity, the name and address of any general partner(s), and all persons responsible for the management and operation of the adult-oriented establishment.
- (c) Within 45 days of receiving an application for a license, the Village Clerk shall notify the applicant whether the application is granted or denied.
- (d) Whenever an application is denied, the Village Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within 10 days of receipt of notification of denial, a public hearing shall be held within 10 days thereafter before the Village Board as hereinafter provided.
- (e) Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this ordinance shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the Village Clerk.

(4) **Standards for Issuance of License.**

- (a) To receive a license to operate an adult-oriented establishment, an applicant must meet the following standards:
 - 1. If the applicant is an individual:
 - a. The applicant shall be at least 18 years of age;
 - b. The applicant shall not have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application.
 - 2. If the applicant is a corporation:

- a. All persons required to be named under Section (3)(b)4 shall be at least 18 years of age;
 - b. No person required to be named under Section (3)(b)4 shall have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application.
3. If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest:
- a. All persons required to be named under Section (3)(b)5 shall be at least 18 years of age;
 - b. No person required to be named under Section (3)(b)5 shall have been found to have violated any provision of this ordinance within five (5) years immediately preceding the date of the application.

(5) **Fees.**

- (a) A license fee of \$600.00 shall be submitted with the application for a license. If the application is denied, one-half (1/2) of the fee shall be returned.

(6) **Display of License.**

- (a) The license shall be displayed in a conspicuous public place in the adult-oriented establishment.

(7) **Renewal of License.**

- (a) Every license issued pursuant to this ordinance will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the Village Clerk. The application for renewal must be filed not later than 60 days before the license expires. The application for renewal shall be filed in triplicate with and dated by the Village Clerk. A copy of the application for renewal shall be distributed promptly by the Village Clerk to the Hales Corners Police Department and to the operator. The application for renewal shall be upon a form provided by the Village Clerk and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.
- (b) A license renewal fee of \$600.00 shall be submitted with the application for renewal. In addition the renewal fee, a late penalty of \$100.00 shall be assessed against the applicant who files for a renewal less than 60 days before the license expires. If the application is denied, one-half (1/2) of the total fees collected shall be returned.

(8) **Revocation of License.**

- (a) The Village Board shall revoke a license for any of the following reasons:
 1. Discovery of false or misleading information or data was given on any application or material facts were omitted from the application.
 2. The operator or any employee of the operator violates any provision of this ordinance or any rule or regulation adopted by the Village Board pursuant to this ordinance; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of 30 day if the Village Board shall find that the operator had no actual or constructive knowledge of

such violation and could not be the exercise of due diligence have had such actual or constructive knowledge.

3. The operator becomes ineligible to obtain a license.
 4. Any cost or fee required to be paid by this ordinance is not paid.
 5. Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult-oriented establishment.
- (b) The Village Board, before revoking or suspending any license or permit, shall give the operator at least 10 days written notice of the charges against him, and the opportunity for a public hearing before the Village Board, as hereinafter provided.
- (c) The transfer of a license or any interest in a license shall automatically and immediately revoke the license.
- (d) Any operator whose license is revoked shall not be eligible to receive a license for one (1) year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for six (6) months from the date of revocation of the license.

(9) **PHYSICAL LAYOUT OF ADULT-ORIENTED ESTABLISHMENT.** Any adult-oriented establishment having available for customers, patrons, or members any booth, room, or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

- (a) Access. Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the adult-oriented establishment and shall be unobstructed by any door, lock, or other control-type devices.
- (b) Construction. Every booth, room, or cubicle shall meet the following construction requirements:
1. Each booth, room, or cubicle shall be separated from adjacent booths, rooms, and cubicles and any non-public areas by a wall.
 2. Have at least one (1) side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same.
 3. All walls shall be solid and without any openings, extended from the floor to a height of not less than six (6) feet and be light colored, non-absorbent, smooth textured and easily cleanable.
 4. The floor must be light colored, non-absorbent, smooth textured and easily cleanable.
 5. The lighting level of each booth, room, or cubicle, when not in use, shall be a minimum of 10-foot candles at all times, as measured from the floor.
- (c) Occupants. Only one (1) individual shall occupy a booth, room, or cubicle at any time. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individuals shall damage or deface any portion of the booth.

(10) **Responsibilities of the Operator.**

- (a) Every act or omission by an employee constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or cause the omission.

- (b) Any act or omission of any employee constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.
 - (c) No employee of an adult-oriented establishment shall allow any minor to loiter around or frequent an adult-oriented establishment or to allow any minor to view adult entertainment as defined herein.
 - (d) The operator shall maintain the premises in a clean and sanitary manner at all times.
 - (e) The operator shall maintain at least 10-foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room, or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one (1) foot candle of illumination in said aisles, as measured from the floor.
 - (f) The operator shall insure compliance of the establishment and its patrons with the provisions of this ordinance.
- (11) **Administrative Procedure and Review.** The Village of Hales Corners Municipal Code and Wisconsin Statutes shall govern the administrative procedure and review regarding the granting, denial, renewal, non-renewal, revocation, or suspension of a license.
- (12) **Exclusions.** All private schools, and public schools as defined in Chapter 115, Wis. Stats., located within the Village of Hales Corners are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum. All licensed medical care facilities located within the Village of Hales Corners and the Hales Corners Health Department are exempt from obtaining a license hereunder when engaged in the providing of medical care or sex education.
- (13) **Penalties and Prosecution.**
- (a) Any person who shall violate any provision of this ordinance or who shall fail to obtain a license or permit as required hereunder, or who shall operate after his license is revoked, shall be subject to penalty as provided in Section 19.04 of the Hales Corners Municipal Code.

11.19 REGISTRY OF MASSAGE THERAPISTS AND BODYWORKERS REQUIRED. No person or entity shall engage in the practice of massage therapy or bodywork or perform massage therapy or bodywork for gain, unless such person has previously been issued and holds a valid license of registration under Subchapter XI of Chapter 460 of the Wisconsin Statutes, as amended.

11.20 MASSAGE ESTABLISHMENTS

- (1) **Regulation.** No person shall suffer, cause, or permit the operation of a massage establishment except in strict compliance with this section.
- (2) **Definitions.** For the purposes of this section:
Massage. The manipulation of the soft tissue of the body for therapeutic purposes and may include, but is not limited to, effleurage, petrissage, tapotement, compression, vibration, friction, stroking, or kneading, either by hand or with mechanical or electrical

apparatus, for the purpose of body massage. This may include the use of oil, salt glows, hot and cold packs, or other recognized forms of massage therapy.

Massage Establishment. A location where the primary or secondary function is to offer massage services.

Massage Room. The area where services are performed.

Waiting Area. An area adjacent to the main entrance that is separate from any other area where massages are given.

(3) **Massage Establishment License.**

- (a) No person shall suffer, cause, or permit the conduct of a massage establishment without having first obtained a license therefore from the Village Board. A separate license shall be acquired for each such establishment.
- (b) Applications shall be made in writing on forms supplied by the Village Clerk's office.
- (c) All applications shall include:
 1. A nonrefundable license fee of \$100.00.
 2. The location and mailing address of the proposed establishment.
 3. For an individual or for each person of a partnership or joint venture or agent of a corporation:
 - a. Name and present address.
 - b. The two (2) immediately previous addresses and dates of residence of each for the last five (5) years.
 - c. Height, weight, color of hair and eyes, social security number, written proof of age and date of birth.
 - d. The business or occupation for the last three (3) years immediately preceding the date of application.
 - e. Whether a similar license has been revoked or suspended and, if so, a listing of the same and the locations thereof.
 4. If the applicant is a corporation, the name and address of each officer and director and of the stockholders of such corporation, together with the extent of the ownership of each, and a statement whether such officer, director, or stockholder holds office or stock in any other corporation conducting a similar business in the State. Such application shall be made by an agent registered as such who shall have been a resident of the Village for at least 90 days.
 5. All phone numbers of the proposed establishment.
 6. The names, addresses, and phone numbers of all persons employed by the applicant at the proposed establishment at the time of application.
 7. Certification of compliance of the proposed premises with Chapter 8 and all building, fire, and health codes and regulations of this Code of Ordinances; or, in the alternative, as to building alterations, applicant shall file a bond assuring that any work required to be done to bring the premises into compliance therewith shall be accomplished prior to opening of business. Compliance with such codes and the standards contained herein shall be conditions precedent to the opening of business.

8. The application shall contain a statement signed by the applicant and each individual of a partnership or joint venture that all information contained therein is true and correct.

(4) **Granting of Licenses.**

- (a) The Village Clerk shall submit all applications for licenses hereunder to the Village Board. Approval will be subject to clearance by all appropriate departments.
- (b) The Village Board shall not issue a license for a massage establishment if it is shown that the operation as proposed by the applicant does not comply with all applicable State laws and ordinances, and for all licenses that the applicant or any partner or any officer, director, or stockholder of a corporate application has been convicted in a court of competent jurisdiction of any offense under Chapter 944, Wis. Stats.; involving substances included in Sub. II of Chapter 961, Wis. Stats.; or of an offense against the person or property of another within the past three (3) years, that the information required on the application is incomplete or that any applicant has knowingly or with intent to deceive made any false, misleading, or fraudulent statements of fact in the application or any other document required by the Village in conjunction therewith, or that the applicant has not resided in the Village for at least 90 days prior to date of application.
- (c) In the event of denial, the applicant shall receive written notification thereof setting forth the reason for the denial within 10 days after such denial.
- (d) Licenses granted by the Village Board shall be valid from July 1 to June 30 each calendar year.
- (e) No license shall be transferred between locations or persons and no massage establishment license shall be sold or be subject to transfer of corporate assets or change of corporate officers or directors.

(5) **Regulations of Operations and Licenses.**

- (a) Each establishment shall at all times maintain and comply with the following regulations:
 1. The establishment shall comply with all Village codes.
 2. No establishment shall be open for business between the hours of 10:00 p.m. and 6:00 a.m.
 3. Only a massage therapist licensed pursuant to §11.19 of this Code may be employed as a massage therapist by the establishment.
 4. No intoxicating beverages or substances included in Sub. II of Chapter 961, Wis. Stats., shall be permitted in the licensed establishment. Food shall be permitted only when there is no charge therefore and when a food preparation area, including a sink with hot and cold running water, is a part of the establishment.
 5. The establishment shall provide a waiting area for patrons separate from any area wherein massages are given. There shall be direct access to this area from the main entrance or from the hallway connected only to the main entrance.
 6. The establishment shall permit inspections of the premises at any time during business hours by building inspectors, fire inspectors, health inspectors, or personnel of any law enforcement agency.
 7. The establishment shall keep current records of the names and addresses of its massage therapist and employees and the date of employment and

termination of each. Such records shall be open to inspection by any of the personnel listed in subparagraph 6 above.

8. The establishment shall report any changes of fact required on the application form and all personnel changes in the Village Clerk's office within 10 days after the change.
9. Rooms in which massage is to be practiced or administered shall have at least 70 square feet of clear floor area and shall maintain a light level of no less than 40-foot candles as measured three (3) feet above the floor. Lighting in colors other than white shall be prohibited. Such rooms shall not be locked during business hours or during massage therapy sessions.
10. Such rooms shall be equipped with massage tables having a surface impervious to liquids. The surface of such tables shall be positioned at least two feet from the surface of the floor.
11. Massage establishments shall prominently and publicly display on the premises their licenses and permits during all hours of operation.
12. Massage equipment shall at all times be covered with an adequate supply of clean sanitary towels, coverings, and linens. Clean towels, coverings, and linens shall be stored in cabinets or other appropriate facilities. Towels and linens shall not be used on more than one (1) patron, unless they have first been laundered and disinfected. Soiled linens and paper towels shall be deposited in approved receptacles.
13. Instruments utilized in performing massage shall not be used on more than one (1) patron unless they have first been sterilized using disinfecting agents or sterilizing equipment approved by the Health Department. Massage table pads and reusable table coverings shall be disinfected between each massage.

(6) **Revocation or Suspension of License.**

(a) Cause for Revocation or Suspension. The license granted herein may be revoked or suspended for up to six (6) months by the Village Board:

1. If the applicant has made or recorded any statement by this section knowing it to be false or fraudulent or intentionally deceptive.
2. For the violation of any provision of this section, except for establishment license matters involving violations of Village codes, in which case the license shall be revoked after the second conviction thereof in any license year.
3. After any one conviction of any establishment personnel of an offense under Chapter 944, Wis. Stats.; an offense against the person or property of a patron; or of an offense involving substances in Sub. II of Chapter 961, Wis. Stats, where there is shown the participation or knowledge of any other establishment personnel or of any individual within the business structure of the applicant; and whether any such offense occurred on or off the premises of the establishment.

(b) Notice and Hearing.

1. No license shall be revoked or suspended by the Village Board, except upon due notice and a hearing to determine whether grounds for such action exist. The notice shall be in writing and shall state the grounds of the complaint against the licensee.
2. The notice shall be served upon the licensee at least 15 days prior to the date of the hearing and shall state the time and place thereof. The licensee shall be entitled to be heard, to be represented, to cross-examine

opposing witnesses and to present witnesses in his own behalf under the subpoena of the Village Board, if such is required. The hearing shall be recorded and a copy of the transcript shall be available to the licensee at the expense of the licensee. The Village Board shall decide the matter and shall prepare a written decision which shall be filed with the Village Clerk and a copy thereof mailed to the licensee within 20 days after the hearing.

- (7) **Exceptions.** This section does not apply to the following businesses or professional establishments:
- (a) Office, clinics, or establishments of physicians, surgeons, chiropractors, osteopaths, registered nurses, or physical therapists existing for the provisions of such occupational services.
 - (b) Barbershops and beauty parlors existing for the provision of such occupational services.
- (8) **Operation Without a License. A Public Nuisance.** The operation of a massage establishment without a license is deemed a public nuisance and may be enjoined by the Village.

11.23 ADMINISTRATIVE CODES ADOPTED. The following enumerated sections of the Wisconsin Administrative Code pertaining to health are hereby and by reference made a part of this code as if fully set forth herein. Any further amendments, revisions, or modifications of administrative codes incorporated herein are intended to be made part of this Chapter.

- (a) HFS 172 Safety, Maintenance, and Operation of Public Swimming Pools.
- (b) HFS 175 Recreational and Education Camps.
- (c) HFS 178 Campgrounds.
- (d) HFS 195 Hotels, Motels, and Tourist Rooming Houses.
- (e) HFS 196 Restaurants.
- (f) HFS 197 Bed and Breakfast Establishments.
- (g) HFS 198 Vending of Food

11.24 WEIGHTS AND MEASURES REGULATIONS

- (1) **Regulations Adopted.** The statutory provisions of Chapter 98, Wis. Stats., and Wisconsin Administrative Code, ATCP 92, Weighing and Measuring Devices, are hereby adopted and by reference made a part of this section as if fully set forth herein. Any act required to be performed or prohibited by any statute or code incorporated herein by reference is required or prohibited by this section. Any further amendments, revisions or modifications of the statutes incorporated herein or Wis. Adm. Code provisions incorporated herein are intended to be made a part of this section. This section is adopted pursuant to the provisions of Chapter 98, Wis. Stats.
- (2) **Appointment of Inspectors.** In order to assure compliance with this section, the Village hereby grants the authority and duties of sealers and inspectors required by this section to the State of Wisconsin Department of Agriculture, Trade and Consumer Protection.
- (3) **Definitions.**
- (a) Commercial Weighing or Measuring Devices. Devices used or employed in establishing the size, quantity, extent, area or measurement of quantities, items,

produce or articles for sale, hire or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure.

- (b) **Weights and Measures Program.** The program that includes administration and enforcement of this section, Chapter 98, Wis. Stats., and applicable Wis. Adm. Code provisions, and any related actions.
- (4) **Weights and Measures License Required.**
- (a) **License Requirements.** Except as provided in subsection B., no person shall operate or maintain any commercial weighing or measuring devices or any other weights and measures or systems and accessories related thereto which are used commercially within the Village of Hales Corners for determining the weight, measure or count unless each such device is licensed by an annual weights and measures license issued pursuant to the provisions of this section.
 - (b) **Exemptions.** Sales permitted at any farmers' market or other similar event in the Village which has been otherwise lawfully permitted, licensed or approved as required by the Village Code or sales permitted by direct seller, transient merchants and solicitors are exempt from licensing under this section.
- (5) **Application for License.** An application for a weights and measures license shall be made in writing on a form provided for such purpose by the Village Clerk and shall be signed by the owner of the commercial business or by its authorized agent. Such applications shall state the type and number of weighing and measuring devices to be licensed, location of the devices, the applicant's full name and post office address, and whether such applicant is an individual, partnership, limited liability company, corporation or other entity. If the applicant is a partnership, the application shall state the names and addresses of each partner. If the applicant is a corporation of limited liability company, the application shall state the name and address of all officers and agents of the applicant, including name and address of all officers and agents of the applicant, including the registered agent thereof.
- (6) **Weights and Measures License Fee.** Upon compliance of this section, the Village Clerk shall issue a license to the applicant upon payment of the license fee of \$10. Each store or business location shall require a separate license. The license fee shall not be prorated for a partial year.
- (7) **License Term.** A license issued under this section shall expire on June 30 of each year.
- (8) **Fees Assessment and Per Scale and Per Meter Fees.** Pursuant to §98.04(2), Stats., the Department of Agriculture, Trade and Consumer Protection enforces this chapter within the Village of Hales Corners and charges the costs thereof to the Village of Hales Corners upon an itemized service fee assessment per licensee basis following the expiration of each license year on June 30. In order to defray such costs to the Village, each license applicant, in addition to the license fee of \$10, shall pay to the Village, together with the license fee as a condition of obtaining such license, a per scale fee of \$18 and a per meter fee of \$6.
- (9) **Penalty.** Any person or entity who shall violate any provision of this chapter shall be subject to the penalties and remedial actions as provided in §19.04 of this Code and in addition thereto, the penalties and remedial actions available under §98.26, Stats.