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## CHAPTER X

### FRANCHISES AND PERMITS

#### 10.01 Gas Safety.

(A) Purpose. The purpose of this Section is to provide minimum standards and requirements for the safe installation of gas utilization appliances, gas utilization equipment and utilization piping.

(B) Scope. All gas utilization appliances, gas utilization equipment, and utilization piping hereafter installed within the corporate limits of the Village shall conform to the requirements of this Section.

(C) Definitions.

(1) **Appliance** - A device or piece of equipment, fixed or portable, which utilizes a gaseous fuel as a source of energy, including but not limited to, for example, gas water heaters, gas central heating, gas stoves, gas refrigerators, etc.

(2) **Gas Utilization Piping** - Piping installed on the customer's premises, from the termination of the supplier's facilities to gas utilization appliances, used to transport a gaseous fuel from the supplier's facilities to such appliance.

(3) **Gas Utilization Equipment** - All valves, fittings, appliance regulators, and other materials, devices or apparatus used with gas utilization piping as a part of the installation of gas utilization appliances.

(4) **Gas** - Vaporous fuels, including natural, manufactured or mixed gas distributed to customers by means of underground piping, by deposit in bulk containers on the customer's premises, or by delivery in portable containers to the customer's premises.

(5) **Gas Company or Supplier** - Any person engaged in the business of selling, installing, or distributing gas or gas appliances within the corporate limits of the

Village.

(6) **Minor Repairs** - Adjustment of gas appliances, replacement of parts or exchange of similar units or repairing of leaks.

(D) Licenses Required. No person shall hereafter engage in the business or install, alter, repair or service gas utilization equipment as defined herein within the Village without first securing a license from the Village Administrator. The requirements herein shall not be construed to limit the gas utility's right to render necessary service.

(1) Requirements. At least one officer, member or employee of a partnership, firm or corporation which desires a license must qualify for a license before the corporation may conduct its gas installation business in the Village. Each partner or employee who engages in the installation of gas burner equipment shall have an appropriate license.

(2) Licenses--Application and Issuance.

(a) Applicants shall be at least 18 years of age and united States citizens. Applications shall be submitted to the Village Administrator in such form as may be prescribed and shall be accompanied by a detailed statement of experience and training as required and the location of the applicant's place of business. Any change of the applicant's business location shall be reported, in writing in the form prescribed, to the Village Administrator within five days.

(b) The Village Administrator shall not issue such license until the applicant meets all requirements of this Section. Licenses shall be kept posted in a conspicuous place in the office of said place of business at all times.

(3) Term of License, Fee. The annual fee for said license shall be as set forth in Appendix "A" Fee Schedule. All licenses shall expire on December 31st of the year of issuance, unless sooner revoked or forfeited. Each licensee may renew such license by

Amended: May 26, 2011

paying the annual fee to the Village Administrator on or before the expiration date of the existing license. Upon failure of said renewal, the license shall expire, together with all rights to engage in or work at the business covered by each such license. Reinstatement of expires licenses may be made upon the payment as set forth in Appendix "A" Fee Schedule in addition to the regular license fee. The annual license fee shall be applied to the first ten installation permits issued to the licensee during each annual term of the license.

(E) Installation Regulations. No gas utilization appliances or equipment and utilization piping shall be installed within the corporate limits of the Village until a permit therefor has been issued. After the issuance of such permit, no gas utilization appliance or gas utilization equipment or piping shall be installed except in compliance with the applicable standards hereinafter set forth:

(1) All gas appliances utilizing gaseous fuels deposited in bulk containers on or delivered in portable containers to the customer's premises, and the gas utilization equipment and utilization piping appurtenant thereto, shall be installed in accordance with Chapter Ind 9 of the Wisconsin Administrative Code, entitled "Liquefied Petroleum Gases", a copy of which is on file with the Village Administrator.

(2) All gas appliances utilizing natural, manufactured or mixed gas distributed to the customer's premises by means of underground piping, and the gas utilization equipment and utilization piping appurtenant thereto, shall be installed in accordance with American Standards Association Code ASA Z21.30-1959, sponsored by the American Gas Association, which is also referred to as National Fire Protection Association Pamphlet No. 54 of the same date, and entitled "Installation of Gas Appliances and Piping" or revisions thereto.

(3) In addition to or in substitution of the requirements in the references at paragraphs 1 and 2 above, the following shall be required:

(a) All liquefied petroleum gas appliances having automatic controls shall have safety shut-off equipment on pilot and main burner. All natural gas appliances

having automatic controls shall have safety shut-off equipment on main burners.

(b) Water heater installations shall provide a temperature-pressure release valve to be installed on the hot water line as near the heater as is practicable, or on special outlet if the heater is equipped with a special outlet.

(c) A manually operated shut-off valve shall be installed in the gas supply line to central heating units ahead of all controls, approximately 5 feet above the floor, and near or adjacent to the unit. A manually operated shut-off valve shall be installed in the gas supply line to space heating units ahead of all controls, located in the exposed utilization piping as near to the unit as practicable; provided that no such shut-off valve shall be required in the event that all utilization piping from the supplier's facilities to the appliance is concealed.

(d) There shall be a master shut-off valve on the outside of the building ahead of the meter and pipes.

(e) Where appliances require a vent, such vent shall be of the approved single wall type, except that it shall be double wall when it is inserted between walls, roofs, ceilings, and other obstructions.

(4) Installation Permits. A permit for the installation of gas utilization appliances or gas utilization equipment and gas utilization piping shall be issued by the Village Administrator only to a licensee hereunder. Such permits shall be issued upon application therefor in the form prescribed and upon the payment of a fee as set forth in Appendix "A" Fee Schedule. The annual license fee of each individual licensee shall be applied to the first ten installation permits such licensee applies for during the year for which the annual fee was paid. The installation permit shall be displayed in a prominent place on the premises where the installation is to take place before the

installation begins and until its completion. An installation permit is not required for minor repairs, as defined herein.

(F) Bonds and Insurance.

(1) No license shall become effective until the licensee shall have filed with the Village Administrator a Surety Bond in the sum of \$5,000.00 operating in favor of the Village and conditioned that the Village will be saved harmless from any cause or damage by reason of work performed under this Section or by reason of improper or inadequate performance under this Section by the licensee. The form and execution of such bond shall be approved by the Village Attorney.

(2) Licensees shall carry insurance of the kind specified below and in the amounts herein specified as follows:

(a) For personal injuries - Liability insurance in the amount of \$50,000.00 for each person and \$100,000.00 for each accident.

(b) For property damage - Liability insurance in the amount of \$50,000.00.

(c) For completed operations insurance - Insurance for completed operations with coverage sufficiently broad to cover installation, service and repair of equipment sold by the licensee and servicing, installation and repair of equipment not sold by the licensee, with coverage for personal injuries to be in the amount of \$50,000.00 for each person, and \$100,000.00 for each accident; and for property damage \$50,000.00 with \$100,000.00 aggregate limit.

(d) Copies of such insurance policies, or certificates of insurance indicating such coverage must be filed with the Village Administrator before any such license shall become effective.

(G) Connection and Supply.

(1) No person except an authorized representative of the gas supplier shall connect gas service to any premises or turn on any sealed valve in a location not presently receiving gas service. This provision shall apply to the service to the premises and not to the connection and reconnection of particular equipment and appliances on the premises.

(2) No person shall install any gas burner equipment without first determining from the gas supplier that gas is available in quantities that will assure reasonably safe and uninterrupted operation.

**10.02 Gas Distribution Lines.** Excavations or openings made to install gas distribution lines shall comply with Section 5.05 of this Code. In addition, all single gas main installations in the Village shall be installed at a proper depth below the established grade of the street or streets in which said main is laid. The Village Board may require detailed plans and specifications for all installations of gas mains. Whenever it shall become necessary to take up and renew any gas main, it shall be unlawful for any person to relay or renew such gas main except as prescribed in this Section. When the grade of any gas main interferes with the placement of storm or sanitary sewers such mains shall be re-laid to eliminate such obstructions to such sewers and the expense of such relaying shall be borne by the appropriate utility. Nothing herein contained shall be construed to permit the installation of through gas transmission lines.

**10.03 Wisconsin Gas Company.**

(A) The Village hereby grants to Wisconsin Gas Company, a corporation organized and existing under the State laws, its successors and assigns, upon the conditions hereinafter set forth, the exclusive right, authority and permission to

construct, maintain, operate, enlarge and repair in the Village a system for the furnishing and distribution of natural gas and natural gaseous fuels, and to use the streets, alleys, lanes, boulevards, parks, public ways, public grounds and bridges in the Village for constructing, maintaining, operating, enlarging and repairing its transmission and distribution pipe lines with all the necessary, usual or convenient manholes, valves, passageways and appurtenances for the purpose of supplying and selling natural gases and natural gaseous fuels to said Village, its residents and to any building, structure, factory, processing plant, industry or



public or private house or any gas user therein.

(B) Provided, however, that this franchise is granted subject to such reasonable rules and regulations as the Village Board may from time to time prescribe, and is further subject to all general provisions of statutory laws in force and applicable thereto and to the general orders, rules and regulations of the State Public Service commission and to such reasonable rules and regulations restricting the use of said streets, highways, public ways, alleys and bridges and to construction, maintenance and operation of such natural gas transmitting system as the public bodies of the State having authority under the law may from time to time enact.

#### **10.04 Utility Wires and Poles.**

(A) Erection of Poles. All telegraph, telephone, and electric light poles or any poles erected by any person, either as a repair to an existing line or as a part of a new line, for the carrying of an aerial wire thereon, shall be not less than 30 feet in length and 5 inches in diameter at the top, and shall be set 5 feet in the ground and be properly shaved and tamped. Every such pole, except poles carrying high potential current only, shall be provided with a place at the top for a standard 6 pin cross-arm and pins, pins to be not less than 12 inches apart, which cross-arm shall be placed thereon by said person, either at the time such pole is erected or at such time thereafter as the Board may direct, at the expense of the individual erecting said pole and shall be properly fastened to said pole with lag screws or bolts and nuts in the most approved manner. The Village hereby reserves said cross-arm exclusively for the use of the Village for wires for municipal fire alarm and police telegraph purposes, and the Village shall have the right and privilege of placing and keeping its fire alarm and police telegraph wires thereon without expense, and no other such cross-arm or any pole shall be located thereon or within 2 feet of said cross-arm so reserved.

(B) Removing Improper Poles. All telegraph, telephone and electric light poles, and all other poles which are not 25 feet in length and 5 inches in diameter at the top, and all poles except those standing in alleys, which shall not be properly tamped, and all wires that are not insulated as required in this Section, within 30 days after written notice, personally served upon the owners or one of the owners thereof, or his or their agent, or upon any officer or agent of the company or corporation, which is the owner thereof, by the Board, to so tamp said poles, or to so insulate said wires, are hereby condemned, and the owner or owners

thereof shall immediately remove, or cause the same to be removed, and if they fail to do so, the Board shall remove the same at the expenses of the owner or owners.

(C) Painting Poles. It shall be the duty of every person setting or maintaining any electric light, telephone, telegraph, trolley, fire alarm or other pole of a similar nature in any street, alley or public ground where said street or alley is paved, to cause the same to be painted in a good substantial manner for a distance to at least 12 feet from the ground. All poles shall be painted within 30 days after their erection and each 2 years thereafter, provided, however, that poles set after the first day of November need not be painted until after May 1st next ensuing.

(D) Insulation of Wires. All aerial wires carrying high potential currents shall be thoroughly insulated at joints as well as elsewhere, and all wires carrying high or low potential currents shall be attached to proper insulators upon the pins of all cross-arms, and all wires entering building or coming in contact therewith shall be thoroughly insulated therefor and to the satisfaction and approval of the Board.

(E) Height of Wires. It shall be unlawful to run aerial wires or to maintain the same within 20 feet of any of the established grade immediately beneath the same.

(F) Rights Reserved by Village. The Village of West Salem shall have and it hereby reserves to itself the right to extend, at the top, any telegraph, telephone, electric light or other pole heretofore or hereafter erected by any person, and to place thereon a cross-arm with pins and insulators and fasten said cross-arm to said pole with lag screws or bolts and nuts and to place and keep its municipal fire alarm and police telegraph lines or wires on said cross-arm, and no such person shall hereafter place and keep any wires above the wires of the municipal fire alarm wires.

(G) Interference with Village Wires. It shall be unlawful to change or interfere in any way with the wires of the municipal fire alarm and police telegraph without permission from the Village President or Chief of the Police Department.

(H) Installation of Utility Telecommunication Fiber Lines and Cabinet System Improvements. Installation of utility telecommunication fiber lines and cabinet system improvements capable of providing voice, high-speed internet access, and

video services over internet protocol requires a special permit from the Village Board if located in Village owned right-of-way.

- (1) All transmission and distribution structures, lines and equipment erected by a Grantee within the Village shall be so located as not to cause interference with the proper use of streets, alleys and other public ways and places, and not to cause interference with the rights of or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways and places.
- (2) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall first give notice to the Director of Public Works of any contemplated disturbances of pavement, sidewalk, driveway or other surfacing, and shall at its own cost and expense and in a manner approved by the Director of Public Works, replace and restore all pavement, sidewalk, driveway or other surface of any street or alley disturbed in as good condition as before such work commenced. The Grantee shall otherwise comply with Village ordinances relating to street openings.
- (3) If, at any time during the period of operating under the permit, the Village shall elect to alter or change the location or grade of any street, alley or other public way, the Grantee, upon reasonable notice by the Village, shall remove, relay and relocate its conduit and other fixtures at its own expense.
- (4) The Grantee shall not place conduit or other fixtures where the same will interfere with any existing gas, electric, telephone, or other fixture, water hydrant, or main, or result in safety hazard for traffic.
- (5) The Grantee shall defend and save the Village and its agents and employees harmless from all claims, damages, losses and expenses including attorney's fees sustained by the Village on account of any suit, judgment, execution, claim or demand whatsoever arising out of the installation, operation or maintenance of the system except for acts of the Village, its agents or employees, unless said acts are at the request of and under the direction or supervision of the Grantee.
- (6) By accepting this permit the provider Grantee agrees on behalf of itself and its affiliates that it will not provide video programming, (including but not limited to programming delivered using internet

protocol) over its facilities located within the Village rights-of-way to subscribers within the Village without first obtaining a cable franchise from the Village.

#### **10.05 Underground Wires.**

(A) Where Required. All electric light, telegraph, and telephone companies and all persons using or operating electric light, telegraph or telephone wires in that part of the Village on those certain streets and alleys which shall be designated by the Village Board shall lay and construct underground, in public streets, alley, and other places, proper conduits necessary for the purpose of laying and protecting all electric light, telegraph, and telephone wires and cables owned, used or operated by such companies or persons, and shall place through such conduits all such electric light, telephone and telegraph wires and cables as may be necessary for the proper conduct of the business of such electric light, telegraph or telephone companies or persons using electric light, telegraph or telephone wires. Such company or persons shall have the right and privilege, within the territory designated of constructing such manholes, distributing poles, and other appliances and fixtures as shall be necessary and proper in the laying of such conduits and the carrying of wires and cables therein.

(B) Improved Streets and Alleys. The Village Administrator shall notify all electric light, telephone and telegraph companies and all persons using or operating electric light, telephone and telegraph wires in any part of the Village where streets or alleys are about to be improved with permanent street improvement of cement or asphalt paving in the imminence of such improvement and shall indicate to such utilities whether, in the opinion of the Village Board the removal, replacement or construction underground of any facility thereon shall be necessary. Such person shall have the right or privilege within the territory so improved, to construct manholes and other appliances and fixtures and erect such distributing poles as shall be necessary and proper in the reconstruction of the utilities located therein.

(C) General Privilege to Lay Underground Wires. All electric light, telephone or telegraph companies or persons conducting such business shall, in addition to the rights and privileges heretofore given and granted to them, their successors or assigns, have the right and privilege of laying and constructing underground in the public streets, alleys, and other

public places, all conduits necessary for the wires or cables, and also the right and privilege of construction of any manholes, distributing poles, appliances, and fixtures necessary and proper in the laying of said conduits, in any other part of the Village not mentioned in Subsections (A) or (B), under the terms and conditions provided in this Code.

(D) Removal of Overhead Wires. All electric light, telegraph or telephone companies or persons using electric light, telegraph or telephone wires in the district or territory in which underground wires are required shall, within one year after the underground wires are laid, remove from the streets and alleys and other places beneath which underground conduits have been laid, all overhead wires, poles or posts, framework or other support for wires. The Board shall remove all such wires and conductors not removed at the time or times mentioned without further action of the Board and any and every said company or person who shall fail to comply with the provisions of said section shall forfeit all rights and franchises that heretofore may have been or hereafter may be granted to it.

(E) Village Board to Approve. All conduits, manholes and other appliances and fixtures erected pursuant to the provisions of this Chapter shall be of such material and size and dimensions as shall be approved by the Board and the same shall be laid and constructed under the direction and with the approval of the said Board.

(F) Village Wires. In all underground conduits or manholes sufficient and necessary space shall be reserved, free of expense, for wires belonging to or to be used by the Village, and said conduits shall at all times be accessible to the Village for the purpose of putting in, taking out or repairing its wires.

(G) Before any electric light, telegraph or telephone company, or person using electric light, telegraph or telephone wires, shall lay and construct any conduits or manholes or erect any distributing poles, pursuant to the provisions of this Section, they or their officers or agents shall submit to the Board the route of the proposed conduit or conduits stating the name of the street or streets, or if in an alley, the proper designation thereof, and the exact line and location of the proposed conduit or conduits, its distance from the gutter, its depth, manner of laying same, and of carrying said wires, and the location of the manholes, distributing poles and buildings to be served. No such conduit shall be laid until the said Board consents.

(H) Laying of Conduit. All conduits shall be laid so as not to disturb the drainage of the streets or alleys or interfere with or damage the streets, water or sewer pipes, or other public or private property. When a conduit or conduits come in contact with any water, sewer, gas or other pipe, it shall be laid as directed by the Village Engineer. Nothing herein contained shall prevent the laying of said conduits under any steam or electric railway.

(I) Grade of Conduits. It shall be the duty of the Board to see that the grade of every conduit is sufficiently deep so that it shall not be necessary thereafter to relay said conduit in improving the street, but, if whenever any street in which any conduit shall have been laid shall be graded or otherwise improved, it shall be necessary to lower or change said conduit, it shall be done by the electric light, telephone or telegraph companies or persons using electric light, telephone or telegraph wires, upon reasonable notice from the Board, and in case of the refusal by such electric light, telegraph or telephone companies or persons using such electric light, telegraph or telephone wires to lower or change such conduit, then it shall be done by the Board at the expense of such electric light, telegraph or telephone companies or persons using electric light, telephone or telegraph wires.

(J) Damages in Laying. All electric light, telephone or telegraph companies or person using electric light, telegraph or telephone wires, shall save the Village harmless of and from injury and damage of any kind caused or occurring by reason of laying or constructing any conduit, manholes or distributing poles, by reason of negligent management in the construction or operation thereof or the wires connected therewith.

(K) Change of Location. Whenever any underground conduits have once been laid in the streets and alleys, they shall not be removed, relocated or changed without first obtaining permission from the Board.

(L) Repair of Streets. It shall be the duty of the electric light, telegraph or telephone companies or persons using electric light, telegraph or telephone wires, when laying conduits, to refill the opening of the ditch with reasonable diligence, and the ditch shall be so filled as to leave the street in as good condition as it was before the work was commenced, as required by Section 5.05 of this Code.

(M) Penalties. Any person violating any provision of this

Section, including those provisions of the Wisconsin Statutes, Wisconsin Administrative Code or other materials incorporated by reference, shall upon conviction thereof forfeit not less than \$20.00 nor more than \$500.00.

#### **10.06 Television Cable System Franchises.**

(A) Purposes. The purposes of this Ordinance are to:

- (1) Protect the public health, safety and welfare;
- (2) Provide for the granting of one or more franchises to permit the use of Village streets and other public ways for cable communication systems;
- (3) Provide for the regulation by the Village of the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of such systems in, upon, along, across, above, over, and under or in any manner connected with the streets or other public ways within the Village, as it now or in the future may exist;
- (4) Provide for the payment of reasonable and fair fees and other valuable consideration to the Village for the use of Village streets and other public ways by such systems and to compensate the Village for costs associated with such use;
- (5) Provide for the development of cable communication systems as a means to improve communications between and among and to otherwise serve the present and future needs of the citizens, government, and private and public institutions, organizations, and enterprises of the Village; and
- (6) Provide remedies and prescribe penalties for violations of this Ordinance and any franchise agreements executed pursuant to this Ordinance.

(B) Franchise Required. Any person desiring to own, maintain, or operate a cable television system as defined by the Federal Cable Communications Policy Act of 1984, 47 USC 521, et seq. (the "Cable Act"), and Section 66.0419, Wis. Stats., and amendments thereto, within the Village shall secure a license from the Village Board and shall be subject to all of the provisions of this Section.

(C) Conflicting Provisions.

(1) This Ordinance is adopted pursuant to the authority of the Village under the Constitution and Statutes of the State of Wisconsin and the United States of America, including but not limited to the Cable Act and Section 66.0419 of the Wisconsin Statutes. Where any provision of this Ordinance conflicts with any provision of state or federal law, this Ordinance shall control to the full extent permitted by law.

(2) In the case of an express conflict or any ambiguity between a provision in this Ordinance and either a provision in a franchise agreement executed pursuant to this Ordinance or a provision in a franchise proposal that is incorporated by reference into such franchise agreement, this Ordinance shall control.

(D) Definitions.

(1) When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number.

(2) For the purpose of this Ordinance, the following terms phrases and words and their derivations have the meanings given herein, unless it is clearly stated that another meaning is intended.

(a) Village. The Village of West Salem, County of La Crosse, State of Wisconsin, in its present incorporated form or in any later recognized, consolidated, enlarged, or reincorporated form.

(b) Cable System. Coaxial and/or fiber cables, wave guides, or other conductors and equipment for transmitting video, audio, data and other telecommunication services by cable or through its facilities as herein contemplated, and including closed-circuit special event programs and educational television.

(c) Control or Controlling Interest. Actual working control or ownership of the cable system in whatever manner exercised. A



rebuttable presumption of the existence of control or a controlling interest shall raise from the beneficial ownership, by any person, group of persons acting in concert (except underwriters during the period in which they are offering securities to the public) or entity of twenty (20%) per cent or more of the Village cable system or the franchise under which the system is operated. A change in the control or controlling interest of a parent of a grantee shall constitute a change in the control or controlling interest of the City cable system under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one person, group or persons or entities.

(d) Board. The present governing body of the Village or any future body constituting the legislative body of the Village.

(e) Franchise. An authorization issued by the Village of West Salem to construct and operate a cable system.

(f) Grantee. Any entity including a corporation, joint venture, association, partnership, or individual to whom or which a franchise under this Ordinance is granted or lawfully transferred under this Ordinance.

(g) Gross Revenues. All revenues actually received by the Grantee, including revenues received from its affiliates or subsidiaries, from subscribers in connection with the operation of the cable system in the Village, including: basic subscriber services fees, pay channel service fees, installation and reconnection fees, converter and remote control rentals, and any other billable subscriber services except those excluded herein. The term does not include advertising revenues, leased channel fees, enhanced telecommunication services revenues, studio rentals, production equipment rentals,

or any taxes on services provided by a grantee and imposed directly upon any subscriber or user by the State, County, or Village or other governmental unit and collected by a grantee on behalf of said unit.

(h) Street or Public Way. The surface of and space above and below any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway, or drive, now or hereafter existing as such within the Village. A franchise granted under this Ordinance shall be deemed to confer only such rights to use property in the Village as the Village may have the right and power to grant in such agreements.

(i) Subscriber. Any person or entity receiving for any purpose the cable television services of a grantee herein.

(3) Any word, phrase, or term defined in Section 602 of the Cable Act but not defined in this Section shall have the meaning set forth in Section 602 of the Cable Act (47 USC 522).

(E) Franchise Territory. A franchise granted under this Ordinance is for the present territorial limits of the Village of West Salem, unless otherwise granted by the Board. Any area henceforth added to the Village during the term of the franchise shall become part of the franchise territory. For any area within the franchise territory not served under the franchise, service under the franchise must be offered when subscriber requests reach thirty (30) per mile (or a fraction thereof) of trunk or distribution cable, measured from the existing distribution plant.

(F) Grant of Franchise.

(1) This Ordinance allows the Village of West Salem to grant a franchise for a term of ten (10) years, provided that the grantee confirms to the conditions, limitations, and requirements of this Ordinance. No portion of a franchise or any right granted thereunder may be separated or transferred, except as provided in Section (I).

(2) The Board will use its discretion and judgment to determine if the granting of one or more franchises under this Ordinance will serve the public's needs and protect the public's health, safety, and welfare. If the Board grants more than one franchise for the provision of cable television service to any part of the Village, all terms of this Ordinance shall apply equally to all grantees.

(3) No provision of this Ordinance shall be deemed or construed to require the Board to grant a franchise.

(4) A franchise granted under this Ordinance shall not take the place of any other license or permit legally required of a grantee, unless expressly provided in a franchise agreement made pursuant to this Ordinance.

(G) Description of System. A grantee shall, as part of the acceptance of a franchise, file with the Village a general description of the cable system, including the technical characteristics, channel capacity, initial channel carriage, and location of the distribution plant. The grantee shall update such description as substantial changes occur, such as, but not limited to, changes in the megahertz capacity, channel capacity, and main trunk design.

(H) Franchise Acceptance.

(1) To accept a franchise granted under this Ordinance, a grantee must file written notice of acceptance with the Village Administrator within thirty (30) days of the approval of the franchise by the Village board.

(2) Such written notice shall include a certification that the grantee:

(a) Will comply with this Ordinance, any franchise agreements made pursuant to this Ordinance, and all applicable Village, County, State, and Federal regulations in regard to the construction, operation, and maintenance of a cable system;

(b) Accepts the franchise relying on its own investigation and understanding of the power and authority of the Village to grant the franchise and the terms and conditions thereof;

(c) Acknowledges that it has not been induced to enter into the franchise agreement by any understanding or promise or by other statement, whether written or verbal, by or on behalf of the Village or by any other third person concerning any term or condition of the franchise or Ordinance no expressed herein;

(d) Shall have no recourse whatsoever against the Village for any loss, cost, expense or damage arising out of any provision or requirement of a franchise or the enforcement thereof; and

(e) Will not at any time set up against the Village in a claim or proceeding any condition or term of the franchise or Ordinance as unreasonable, arbitrary or void, or that the Village has no power or authority to make any such term or condition, but shall accept the validity of the terms and conditions of the franchise and Ordinance in their entirety.

(I) Transfer of Franchise.

(1) A franchise granted hereunder, or control or controlling interest of it, shall not be sold, assigned or transferred in any manner, nor shall the title, either legal or equitable, or any right, interest or property or assets relating to a franchise or system, pass to or vest in any person or entity without the written permission of the Board; provided, however, that the Board shall not unreasonably withhold or delay its permission, except that a grantee may transfer or assign its rights and obligations under a franchise to any of its affiliates, including any limited partnership(s) of which grantee is a general partner or any joint venture or general partnership of which grantee or any such limited partnership(s) is a constituent partner or any other entity controlled by, controlling, or under common control with grantee. This Section shall not apply to the granting of a security or mortgage interest in grantee's assets by the grantee to a financing institution for purposes of financing either the

construction, maintenance or operation of the cable system.

(2) A grantee wishing to sell control of or a controlling interest in a Village franchise or system shall make a written request to the Village Board for such approval. The Village shall rule on the transfer request within the earlier of sixty (60) days of receiving such request or thirty (30) days of providing the information provided pursuant to (3) below whichever is later.

(3) Upon receipt of such a request, the Village may require the grantee or any other party involved in the transfer to provide such information as is necessary to evaluate the transfer.

(4) The Village shall not unreasonably refuse to approve the transfer. Conditions that the Village may attach to the transfer approval may include, but are not limited to: Remedy of any existing or historical violations of Village Ordinances or the franchise agreement; payment of all fees and penalties owed by the grantee at the time of transfer approval; and a guarantee by the prospective new grantee to abide by any and all ordinances, agreements, and conditions placed upon the franchise and system by the Village and existing grantee, unless mutually removed by the Village and grantee.

(5) When the Village approves a transfer under this Section, the new grantee shall file an acceptance of the franchise as specified in (H).

(J) Franchise Term and Renewal.

(1) The franchise granted pursuant to this Ordinance shall be effective for a period up to ten (10) years from the date of acceptance.

(2) A franchise granted under this Ordinance may be renewed for an additional 10-year period if the grantee files a written request of such a renewal. The Village may use the written request as a signal to update this Ordinance and re-evaluate the community needs served by the grantee.

(a) To the extent applicable, Section

626 of the Cable Act (47 USC 546) shall govern the procedures and standards for renewal of any franchise awarded pursuant to this Ordinance.

(b) To the extent that Section 626 of the Cable Act is not applicable after affording the public and grantee adequate notice and opportunity for comment, the Village in its sole discretion and judgment shall have the right to grant, deny, or conditionally grant renewal of a franchise; provided, however, the Village may not unreasonably refuse to renew the franchise. Conditions that the Village may place on its approval shall include, but are not limited to: Reimbursement for legitimate expenses incurred in evaluating the request for renewal, updating the Ordinance and surveying community cable needs; remedy of historical or existing violations of the franchise or Ordinance; payment of all fees and penalties owed by the grantee at the time of the renewal; and acceptance of any updated Ordinance or franchise agreement.

(3) When the Village approves a franchise renewal, the grantee shall accept the renewed franchise under the procedures set out in Section (H).

(K) Revocation and Expiration.

(1) The Village shall have the right to revoke a franchise in the event that the grantee defaults in the performance of its obligations under the franchise in which case the Board shall, after hearing and a finding of default, upon thirty (30) days written notice to the grantee citing the reasons alleged to constitute cause for revocation, set a reasonable time in which the grantee must remedy the cause. If, during such period, the cause shall be cured to the satisfaction of the Village, the Village shall declare the notice to be null and void. If the grantee fails to remedy the cause within the time specified and such failure is due to causes within grantee's control, the Board may revoke the franchise. In any event, before the franchise may be revoked, the grantee must be provided with an

opportunity to be heard at a hearing affording due process. It is the spirit and intent of this provision that the grantee be given an opportunity to remedy all alleged defaults.

(2) Should a franchise be revoked or expire and there is no judicial or administrative review of the revocation or expiration taking place, the grantee shall begin to remove, within ninety (90) days of revocation or expiration, all property owned by the grantee and placed on a public right-of-way unless permitted by the Village to abandon said property to a purchaser or abandon nonrecoverable property.

(3) In the event that a franchise has been revoked or terminated or has expired and not renewed for cause, the Village shall have the option, to the extent then permitted by law, to purchase the tangible assets of the grantee's cable television system previously governed by the franchise at its fair market value, to assign such rights to purchase, but not to broker (i.e., assign at fair market value less grantee's good will) or to require removal of all grantee's property located within the public ways of the Village at the grantee's expense. Such an option must be exercised within ninety (90) days from the date of the revocation, termination or expiration of the franchise, the entry of a final judgment by a court reviewing the question or the revocation, termination or expiration, or the entry of a final order upon appeal of the same, whichever is later.

(L) Village Rights.

(1) The Village may amend this Ordinance and a franchise granted hereunder to incorporate amendments to federal and state law which are applicable to grantee's cable system. Any provisions herein in conflict which or pre-empted by federal and state law shall be superseded.

(2) The Village reserves the right to further amend this Ordinance or adopt additional Ordinances if it finds it necessary to protect the public health, safety, and welfare. Such amendments and new Ordinances shall be reasonable and not be in conflict with the rights granted in this Ordinance or with federal or

state law.

(3) In the event that the federal government cedes any power vested in the federal government at the time a franchise is granted under this Ordinance, the Village reserves the right to exercise that power subject to notification of grantee.

(4) During the term of a franchise and within the Village limits, the Village may, where aerial construction exists, maintain free-of-charge upon the poles of the grantee wire and pole fixtures necessary for a police and fire alarm system. Such wires and fixtures shall be constructed and maintained to the satisfaction of the grantee in accordance with the standards set out in (N) of this Ordinance.

(5) The Village may inspect all construction or installation work during such construction or installation, or at any time after completion thereof, in order to insure compliance with the provisions of this Ordinance and all other governing Ordinances.

(6) A grantee shall, within its service area, provide one drop free basic service to any and all existing public or parochial schools and public libraries. In the event of the construction of a new school or library, within its service area, subsequent to the grant of this franchise, grantee shall provide free basic service to such school or library so long as it is reasonable accessible to the distribution plant. The grantee may charge reasonable installation costs.

(M) Grantee Rules. A grantee may 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 the franchise and to assure uninterrupted service to all its subscribers. However, such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Ordinance, other Village Ordinances, or the laws of the State of Wisconsin.

(N) Technical Performance.

(1) The cable system shall be operated to comply at a minimum with all guidelines and standards set by



the F.C.C. for signal quality and leakage. The Village reserves the right to test the system and independently measure the signal quality. The system shall comply a all times with the National Electrical Code of the National Fire Protection Association.

(2) A grantee shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with signals received by electronic equipment not connected to the grantee's system.

(0) Conditions on Street Occupancy.

(1) All transmission and distribution structures, lines, and equipment erected by a grantee within the Village shall be so located as not to cause interference with the proper use of streets, alleys, and other public ways and places, and not to cause interference with the rights or reasonable convenience of the property owners who adjoin any of the streets, alleys, or other public ways and places.

(2) The grantee shall give notice to the Village Administrator of the placement of poles or installation of cable within rights-of-way, or major tree trimming, and of any contemplated disturbances of pavement, sidewalk, driveway, or other surfacing, and shall, at its own cost and expense and in a manner approved by the Village Administrator, replace and restore all pavement, sidewalk, driveway, or other surface of any street, alley, or rights-of-way disturbed in condition as reasonably good as may be attained to the condition existing before such work commenced. The grantee shall otherwise comply with Village Ordinances relating to street openings.

(3) If, at any time during a franchise, the Village shall elect to alter or change the location or grade of any street, alley or other public way, the grantee, upon reasonable notice by the Village which shall provide grantee an opportunity to be heard, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense. If any construction by the grantee is in violation of the provisions of subsection (1), the grantee shall likewise, upon reasonable notice by the

Village which shall provide grantee an opportunity to be heard, remove, relay and relocate its property in such a manner as to remedy such violation at its own expense.

(4) The grantee shall not place poles or other fixtures where the same will interfere with any gas, electric, telephone or other fixture, water hydrant or main. All such poles or other fixtures placed in any street shall be placed between the outer edge of sidewalk and the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on such alley in such a manner as not to interfere with the usual travel on the streets, alleys, and public ways. However, nothing in this Chapter shall prohibit the use by the Grantee of existing public utility poles where practical, providing mutually satisfactory rental agreements can be entered into.

(5) A 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 expenses of such temporary raising or lowering of the wires shall be paid by the person requesting the same, and the grantee may require such payment in advance. The grantee shall be given at least seventy-two (72) hours advance notice to arrange for such temporary wire changes.

(6) The grantee, to the same extent that the Village has such authority, may trim trees that overhang streets, alleys, sidewalks, and public places of the Village so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee.

(P) Work Performed by Others.

(1) A grantee shall give prior notice to the Village specifying the name and address of any entity, other than the grantee, which performs construction services costing in excess of Twenty-five Thousand (\$25,000.00) Dollars pursuant to the franchise; provided, however, that all provisions of the franchise remain the responsibility of the grantee.

(2) All provisions of a franchise shall apply to any subcontractor or others performing any work or

services pursuant to the provisions of the franchise.

(3) Nothing in this Section shall be construed as allowing the transfer of any rights or responsibilities of the Grantee without Village approval.

(Q) Indemnity.

(1) The grantee shall defend and save the Village and its agents and employees harmless from all claims, damages, losses and expenses, including attorney's fees, sustained by the Village on account of any suit, judgment, execution, claim, or demand whatsoever arising out of the installation, operation, or maintenance of the cable system; provided, however, that this Section shall not apply to any damage or liability or portion thereof caused by acts of the Village, its agents, or employees.

(2) The Village shall notify the grantee within a reasonable period of time after the presentation of any claim or demand, either by suit or otherwise, made against the Village.

(3) The grantee shall furnish to the Village before any franchise becomes effective satisfactory evidence in writing that the grantee has in force and will maintain in force during the term of the franchise public liability insurance.

(4) A grantee shall maintain throughout the term of the franchise a general comprehensive liability insurance policy naming as additional insured the Village, its officers, boards, commissions, agents and employees, in a company rated B or better and licensed to do business in the State of Wisconsin and in a form satisfactory to the Village Attorney. The policy shall protect the Village and its agencies and employees against liability for loss or damage for personal injury, death, or property damage occasioned by the operations or grantee under any franchise granted hereunder, in the amounts of

- (a) \$1,000,000.00 for bodily injury or death to any one person with the limit, however, of \$10,000,000.00 for bodily injury or death resulting from any one accident, and
- (b) \$1,000,000.00 for property damage

resulting from any one accident. The Village shall be named as an additional insured under such insurance and certification that such a policy is currently in force shall be deposited with the Village Administrator.

(R) Bond and Security Fund. During the initial construction of a cable system, or any major reconstruction thereof, the grantee shall file with the Village a performance bond in the amount of \$50,000. The bond shall be released when the grantee certifies to the Village that the construction is complete, and the Village accepts such certification as proven.

(S) Franchise Fee.

(1) As compensation for permission to use the streets and public ways of the Village and for the Village's costs in establishing a regulatory program for a grantee, the grantee shall pay to the Village an annual amount equal to five (5%) per cent of the grantee's annual gross revenues.

(2) The franchise fee shall be paid on a quarterly basis according to the following schedule: Revenues for January through March shall be reflected in a May 1 payment; revenues for April through June shall be reflected in an August 1, payment; revenues for July through September shall be reflected in a November 1 payment; and revenues for October through December shall be reflected in a February 1 payment.

(3) No later than May 1 of each year, the grantee shall present to the Village a report of the previous calendar year's gross revenues. In addition, the report must contain a current listing of each officer, director, and manager of the cable system, and each person or entity holding control or controlling interest in the grantee. Any discrepancy between the previous year's franchise fee paid and the amount verified in the annual report shall be reflected in the quarterly payment for May 1.

(4) No acceptance of any payment by the grantee to the Village shall be construed as a release or as an accord and satisfaction of any claim the Village may have for further or additional sums payable as a franchise fee.

(5) Grantee shall pay the Village one and one-half

(1½%) per cent interest per month on all due but unpaid franchise fees.

(T) Rates Charged by the Grantee.

(1) Rates charged by a grantee for service under a franchise granted under this Ordinance shall be fair and reasonable. Before any service is sold to any subscriber, the grantee shall file with the Village Administrator for the purpose solely to provide consumer information its schedule of rates for installation and monthly service charges, together with a statement of the rights and obligations of subscribers.

(2) Subsequent additions or amendments to rates and service charges shall be filed with the Village Administrator for the purpose solely to provide consumer information.

(3) In the event that any federal or state law or regulation is at any time after the effective date of this Ordinance changed, modified, interpreted, amended, repealed, or invalidated so as to allow for the Village's regulation of rates paid by cable subscribers, the grantee shall not increase its rates without further permission of the Village.

(U) Open Books and Records.

(1) The Village shall have the right to inspect, at its expense, upon notice, during normal business hours at grantee's office, all maps, plans, statements, service complaint logs, performance test results, and records of request for service and other like materials of the grantee that relate to the operation of the system within the Village. The Village, its officers, and its agents shall keep such information confidential to the extent permitted by law.

(2) The Village may retain an independent certified public accountant, at the Village's expense, to conduct an audit of the grantee's books and records for the purpose of calculating the franchise fee and the certified public accountant shall disclose only that information necessary to inform the Village of the accuracy of the payment.

(V) Subscriber Rights.

(1) No monitoring of any terminal connected to the system shall take place without, on each occasion, except sweeps for purposes of system integrity, specific written authorization by the user of the terminal in question.

(2) A grantee shall not, except as required by governmental action, provide any data concerning specific subscribers or users or their use of subscriber services except in compliance with the Cable Act; provided, however, that it may provide such information to its parent, affiliates, or subsidiaries.

(3) Subscribers and users shall retain the right to deactivate their terminals, but shall continue to be responsible for charges until the grantee is notified to terminate service.

(4) A grantee shall be required to maintain a local office within the County of La Crosse. During normal business working hours, the grantee's office must be open and able to accept payments, exchange, or accept return of converters, schedule and conduct service or technician calls, and answer subscriber inquiries.

(5) The grantee shall provide subscribers with a local or toll-free line, either staffed or with answering capabilities, which shall be available to subscribers 24 hours a day.

(6) The grantee shall answer service requests within 24 hours, excluding weekends and holidays. Problems should be rectified within 48 hours or, in case of a dispute, in fewer than thirty (30) days.

(7) Upon interruption of a subscriber's cable service for periods in excess of forty-eight (48) hours, except for acts of God or with express prior permission of the Village, the grantee shall rebate to the subscriber that portion of the monthly service charge equal to that portion of the month for which service is interrupted.

(W) Rights of Residents.

(1) An owner or operator of an apartment building, condominium, nursing home, mobile home park, or any

other rental facility may not interfere with or charge a fee for the installation of cable system facilities for the use of a lessee of said property or premises, except that such owner or operator may require:

(a) Installation to conform to reasonable conditions necessary to protect the safety, appearance, and functioning of the premises.

(b) The grantee, occupant, or tenant to pay for the installation, operation, or removal of such facilities.

(c) The grantee, occupant, or tenant to agree to indemnify the owner or operator for any damages caused by the installation, operation, or removal of such facilities.

(2) It shall be unlawful for the grantee to reimburse or offer to reimburse any person, or for any person to demand or receive reimbursement from the grantee, for the placement upon the premises of such person's premises to the distribution lines of grantee to provide cable service to said premises.

(3) A landlord may not discriminate in the amount of rent charged to tenants or occupants who receive cable service and those who do not.

(X) Severability. Should any word, phrase, clause, sentence paragraph, or portion of this Ordinance and/or franchise thereunder be declared to be invalid by a court or agency of competent jurisdiction, such adjudication shall not affect the validity of this Ordinance and/or the franchise as a whole, but shall only affect the portion thereof declared to be invalid; and the Village Board hereby expressly states and declares that it would nonetheless have passed this Ordinance and/or granted the franchise had it known that any such word, phrase, clause, sentence, paragraph, or portion of said Ordinance and/or franchise were invalid.

(Y) Foreclosure; Condemnation; Receivership. Upon the occurrence of any event that may lead to the foreclosure, condemnation, or receivership of any part of the cable system, the grantee shall immediately provide written notification to the Village.

(Z) Non-enforcement by the Village. The grantee shall not be relieved of any obligation by reason of any failure of the Village to enforce prompt compliance with any provision of this Ordinance, a franchise, or a franchise agreement.

(AA) Complaint Procedure. The licensee shall at all times maintain a La Crosse County business office readily accessible to customers wherein customers may bring inquiries and complaints regarding quality of service, equipment malfunctions, and similar matters.

(1) Customers and potential customers shall be able to communicate with the business office without incurring any long distance toll charges.

(2) In the event that a complaint or dispute about its cable television service is not resolved by the grantee, it may be submitted in writing to the Finance Committee for resolution at a public meeting of said Committee after notice to the complaining party and the grantee. The recommendation of the Finance Committee shall not be binding on the parties, but may be submitted as evidence in any subsequent legal proceedings which the parties are involved in.

(BB) General Rights and Remedies.

(1) All rights and remedies given to the Village under this Ordinance, a franchise, and a franchise agreement shall be in addition to and cumulative with each other and with any and all other rights or remedies, existing or implied, now or hereafter available to the Village, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the Village in its sole judgment and discretion, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by the Village shall not release the grantee from its obligations or any liability under this Ordinance, a



franchise, or a franchise agreement.

(2) A grantee is not responsible for failure to provide service when that failure is caused by acts of God, strikes, governmental or military action, or other conditions beyond its control including the lack of material or parts.

**(10.06 - Repealed and Recreated 10/10/91)**

**10.07 Penalties.** Any person violating any provision of this Chapter, including those provisions of the Wisconsin Statutes, Wisconsin Administrative Code, or other materials which are incorporated by reference, shall suffer one or all of the following penalties:

A. Suspension or Revocation. Any license issued pursuant to this Chapter may be suspended by the Village Administrator for 30 days to 1 year or may be revoked after providing notice and a hearing to the licensee.

B. Forfeiture. Upon conviction, shall forfeit not less than \$10.00 nor more than \$200.00 for each offense. A person who is convicted for violating Section 10.06(R)(1) of this Code shall be liable for the treble damages sustained thereby.