

## **Title 5**

### **BUSINESS LICENSES AND REGULATIONS**

#### Chapters:

- 5.04 Alcoholic Beverages
- 5.08 Auctions and Auctioneers
- 5.12 Cable Communications
- 5.16 Gambling
- 5.20 Games & Amusement Devices, License

Taxis/Taxi Drivers - see Chapter 8.02

Chapter 5.04

ALCOHOLIC BEVERAGES

Sections:

- 5.04.010 Administrative approval of liquor license applications.
- 5.04.020 Rules for serving alcohol at city facilities.

Ordinance History #1467, 1521

- 5.04.010 Administrative approval of liquor license applications.
  - A. The city recorder is authorized and directed to:
    - 1. Review all new, special and renewal liquor license applications with the police chief;
    - 2. Endorse on behalf of the council all applications which are not accompanied by a written negative police report;
    - 3. Collect the processing fee, including fees for special event licenses, on behalf of the city unless the fee is waived by the City Manager;
    - 4. Inform the applicant of staff's reasons for recommending denial when it is appropriate, and offer the applicant an opportunity to request a council determination at the next available regular meeting;
    - 5. Provide to the council annually the total amount of revenue collected as a processing fee.

- 5.04.020 Rules for serving alcohol at city facilities.

Rules for serving alcohol at The Barn/Community Center, City Park, Sprague Theater or other city facility are covered by council resolution, which includes information on the required liability insurance and the Hold Harmless Agreement.

## Chapter 5.08

### AUCTIONS AND AUCTIONEERS

#### Sections:

- 5.08.010 Definitions.
- 5.08.020 Classes of auctions and license fees.
- 5.08.030 Regulating and licensing auctioneers.
- 5.08.040 Payment of license fees.
- 5.08.050 Contents of license.
- 5.08.060 Display of license.
- 5.08.070 Suspension and revocation of license.
- 5.08.080 License not assignable.
- 5.08.090 Conduct of auctions generally.
- 5.08.100 Restriction on Class Two auctions.
- 5.08.110 Conduct of Class Three auctions.
- 5.08.120 Conduct of Class Four auctions.
- 5.08.130S Sales exempted.
- 5.08.140 Violation--Penalty.

Ordinance History: #1381, 1426

#### 5.08.010 Definitions.

When used in this chapter, the following words shall have the meaning ascribed to them unless the content clearly indicates otherwise.

"Auction" or "auction sale" means any public sale at which goods, wares or merchandise are offered for sale to the highest bidder.

"Auctioneer" means any person who shall conduct an auction sale, either on the person's own behalf or for another person.

"Auction house" means any permanent establishment within the city of Bandon that is designed, intended or used for the conduct of auction sales from time to time, and is known and advertised as such.

#### 5.08.020 Classes of auctions and license fees.

Except as provided in Section 5.08.130, all auctions and auctioneers within the city must be licensed by the city. Auctions shall be divided into the following classes:

- A. First Class. An auction conducted in an auction house. Auctions of the first class shall pay an annual license fee of two hundred dollars (\$200.00), and auctioneers conducting auctions of the first class shall pay an annual license fee of two hundred dollars (\$200.00).
- B. Second Class. Auctions of the second class shall be those sales of merchants desiring to close out their stocks, where the same has been kept as a continuous stock for sale within the city for not less than one year prior to the date of the sale. Auctions of the second class shall pay a license fee of twenty dollars (\$20.00) per day or one hundred dollars (\$100.00) per week.
- C. Third Class. Any auction offering for sale any diamonds, semiprecious stones, or imitations thereof, watches, clocks, jewelry, gold, silver or plated ware, china or glassware, bric-a-brac, art goods, or leather goods, shall be deemed an auction of the third class. No

auction shall offer any such goods for sale without first qualifying as, and satisfying all the requirements for, a third class auction. Auctions of the third class shall pay a daily license fee of thirty dollars (\$30.00) or one hundred fifty dollars (\$150.00) weekly.

- D. Fourth Class. Auctions of the fourth class shall be those conducted for the sale of goods, either new or used, brought into the city for the sale, whether the same be the property of the auctioneer or not. Auctions shall be deemed to be of the fourth class if they consist of stocks offered for sale within one year of the date they were brought into the city except such auctions as come within the definition of second class auctions. Auctions shall be deemed to be of the fourth class if the auctioneer conducting the same cannot give satisfactory evidence so as to establish the auction as one of the second class. Auctions of the fourth class shall pay a daily license fee of thirty dollars (\$30.00) or one hundred fifty dollars (\$150.00) weekly. Auctioneers conducting sales of the fourth class shall pay a daily license fee of thirty dollars (\$30.00) or one hundred fifty dollars (\$150.00) weekly.

5.08.030 Regulating and licensing auctioneers.

Except as provided in Section 5.08.130, all auctioneers within the city must be licensed by the city. Any person desiring to obtain an auctioneer's license may apply to the city recorder not less than ten (10) days prior to the first date of the auction for which the license is desired. The applicant must consent to a criminal background investigation. A summary of the police investigation shall become part of the application. Applications shall be in writing and contain all the facts required to be stated in the license.

5.08.040 Payment of license fees.

License fees shall be payable in advance at the time application is made for a license. If the license is for any reason not granted, the applicant shall be entitled to return of the fee, less a ten dollar (\$10.00) administrative cost. Two licenses are required for every auction regulated by this chapter. One license shall be issued for the auction as specified in Section 5.08.020; the other license shall be issued to the auctioneer, as follows:

- A. An auctioneer conducting one or more auctions of the first class per year shall pay an annual license fee of two hundred dollars (\$200.00).
- B. An auctioneer conducting auctions of the second class shall pay a license fee of twenty dollars (\$20.00) per day or one hundred dollars (\$100.00) per week.
- C. An auctioneer conducting auctions of the third class shall pay a license fee of thirty dollars (\$30.00) per day or one hundred fifty dollars (\$150.00) per week.
- D. An auctioneer conducting auctions of the fourth class shall pay a license fee of thirty dollars (\$30.00) per day or one hundred fifty dollars (\$150.00) per week.

5.08.050 Contents of license.

- A. An auction license shall state the class of auction for which it was issued, the fee paid, the duration of the auction, the exact place where the auction shall be held, and the person or entity for whom the auction is being conducted.
- B. An auctioneer's license shall state the name and permanent address of the auctioneer, the temporary address while within the city, the class of auction for which the license was issued, the fee paid, and the duration of the license.

5.08.060 Display of license.

The auction license and the license of the auctioneer conducting the auction shall be posted and prominently displayed at the place of the auction.

5.08.070 Suspension and revocation of license.

The city recorder shall have the power to suspend or revoke any auction or auctioneer's license granted by the city whenever it shall appear to the city recorder's satisfaction that the person to whom said license has been issued has been guilty of a violation of any of the terms or provisions of this chapter or has been guilty of any unlawful or fraudulent act, practice, or course of conduct in selling any articles at public auction. Action taken to suspend or revoke a license shall be in addition to any other penalties which may be brought for violation of this chapter.

5.08.080 License not assignable.

Licenses issued under the provisions of this chapter shall not be transferable or assignable.

5.08.090 Conduct of auctions generally.

- A. In a sale by auction, if goods are put up in lots, each lot is the subject of a separate sale.
- B. A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in the auctioneer's discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.
- C. Any advertisement of an auction sale shall include the name of the auctioneer who will conduct the auction sale or the person responsible for the conduct of the auction sale.
- D. No auctioneer conducting an auction shall violate, nor permit anyone else to violate, the nuisance ordinance provisions regulating noise.
- E. An auctioneer or auction mart operator shall not employ or use another person to act as a bidder or buyer at the auction on behalf of the auctioneer or operator of the auction mart.

5.08.100 Restriction on Class Two auctions.

No license for a Class Two auction shall be issued except for the purpose of enabling the person for whom the auction is being held to close out said person's stock in trade and retire from business. It is unlawful and a violation of this chapter for any person to make application for a Class Two auction license or to conduct a closeout auction when any goods have been purchased or brought into the place of business in anticipation of such auction sale. It is unlawful for any person during the progress of any Class Two auction to replenish his or her stock by substitution, fill-ins, leaders or goods of any kind. All closing-out auctions shall be held on successive days, Sundays and holidays excepted, and shall not continue for more than thirty (30) days in all from the commencement of said sale.

5.08.110 Conduct of Class Three auctions.

- A. Every article offered for sale in a Class Three auction shall have securely attached thereto a tag, card or label upon which there shall be plainly written a true and correct statement of the kind and quality of the metal or material of which said article is made or composed and the percentage or karat of purity of such metal; and in case such article is plated or overlaid, then such statement shall contain a true statement of the kind of plate and the percentage of purity of such plating, and the kind of material or metal covered; and in case such article is a precious or semiprecious stone, such statement shall contain the true name, weight, quality and fineness of said stone; and in case such article be an imitation of a precious or semiprecious stone, such article shall be described as such; and in case such article be a watch or clock, such statement shall contain the true name of the

manufacturer thereof; and in case any secondhand or old movement or substitute part of movement of any watch or clock be offered for sale in a new case, such fact shall be set forth in such statement; and no such article so sold or offered for sale shall bear any false or misleading name, description or trademark. Such tag, card or label shall remain securely attached to any such article so sold or offered for sale and shall be delivered to the purchaser by the person, firm or corporation so selling same as a correct description and representation of the article so sold.

- B. No auctioneer shall conduct a Class Three auction without providing a bond or an irrevocable letter of credit issued by an insured institution or other form of indemnity deemed adequate by the city. The purpose of the bond shall be for claimants who are purchasers at the auction who have purchased property and claim that the property is not as represented by the auctioneer.
- C. No Class Three auction shall be conducted between the hours of six p.m. and eight a.m.

5.08.120 Conduct of Class Four auctions.

Every article offered for sale in a Class Four auction shall have securely attached thereto a tag upon which shall be plainly written the name of the manufacturer of the article or the trade name by which the article is known and a statement as to whether the article is new or used. For the purposes of this chapter, any article which has been a floor model or has been on display shall be deemed used. The tag shall remain attached to the article sold and shall be delivered to the purchaser by the person selling the same. The information stated on the tag shall be deemed to be a representation to the buyer inducing him or her to purchase. Before bids are requested on any article, the information stated on the tag shall be read to the prospective bidders.

5.08.130 Sales exempted.

The provisions of this chapter shall not apply to the following:

- A. Sales by executors, administrators, receivers or trustees acting under court order, or to any sale conducted under judicial process; and
- B. Auctions conducted by local religious, fraternal or nonprofit service organizations for the purpose of raising funds to finance programs that benefit the community.

5.08.140 Violation--Penalty.

- A. Every sale made by auction in violation of the terms of this chapter or without having complied with the terms hereof shall be deemed a separate offense and shall be punished accordingly.
- B. Violation of this chapter is punishable by suspension or revocation of a license and/or a fine not to exceed seven hundred fifty dollars (\$750.00) per separate offense.

## Chapter 5.12

### CABLE COMMUNICATIONS

#### Sections:

5.12.010	Title.
5.12.020	Purpose and intent.
5.12.030	Definitions.
5.12.040	Authority.
5.12.050	Franchise requirements.
5.12.060	Applications.
5.12.070	Qualifications.
5.12.080	Term of franchise and fee.
5.12.090	Compliance with laws, rules and regulations.
5.12.100	Financial and insurance provisions.
5.12.110	System service and standards.
5.12.120	Grantee rules.
5.12.130	Use of roads, rights-of-way and private property.
5.12.140	Undergrounding of plant.
5.12.150	Discriminatory practice prohibited.
5.12.160	Transfer of franchise.
5.12.170	City rights in franchise.
5.12.180	Franchisee fee.
5.12.190	Customer service response.
5.12.200	Reports to the city--Public hearings.
5.12.210	Financial and technical system data.
5.12.220	Permit and inspection fees.
5.12.230	Remedy for franchise violation.
5.12.240	City cable ombudsmen committee.
5.12.250	Remedies not exclusive--Waiver.
5.12.260	Franchise term and franchise revocation.
5.12.270	Franchise review and modification.
5.12.280	Protection of privacy.
5.12.290	Constitutionality--Validity of franchise fee.

Ordinance History: #1340A, 1368

#### 5.12.010 Title.

This chapter shall be referred to as the "City of Bandon cable communications ordinance."

#### 5.12.020 Purpose and intent.

The Bandon city council has determined that it is in the public interest and necessary for the promotion of the safety, convenience, comfort, prosperity and general welfare of the residents of the city to regulate cable communications systems within the city.

5.12.030 Definitions.

For the purpose of this chapter the following terms, phrases, words, abbreviations and their derivations shall have the meaning herein given. 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 in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"Basic Service." The basic service tier shall include all signals of local or domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite, regardless of how such signal is received by the cable system), any public, educational and governmental programming required by the franchise to be carried on the basic tier, and any additional video programming added to the basic tier by the cable operator.

"Community channel" or "community access channel" means any television channels on the system which are reserved for the use of individuals or groups associated with the communities of government, education, or any segment of the general public.

"Cable communications system," "cable television system" or "system" means a facility or combination of facilities under the ownership or control of any persons, which consist of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include the exceptions set forth in Section 602(6) of the Federal Cable Act of 1992.

"Franchise" means the privilege conferred upon a person, firm or organization by the city to operate a cable communications system under the terms and provisions of this chapter.

"Franchisee" means the person, firm or organization to which a franchise is granted to operate a cable communications system pursuant to the authority of this chapter.

"Grantee" means the person, firm or organization to whom a franchise, as herein above defined, is granted by council under this chapter, and the lawful successor, transferee or assignee of said person, firm or organization.

"Grantor" means the city of Bandon acting through its council.

"Television systems services" or "system services" means all of the services provided by a grantee or available to the grantee to provide through its technical facilities by the grant of a franchise, and shall include, but not be limited to, the distribution of television, radio signals, and hardware equipment. (Editorially amended during 2000 codification.)

5.12.040 Authority.

To the extent allowed by law, the council recognizes, declares and establishes the authority to regulate the development and operation of cable television systems for the city and to exercise all powers necessary for that purpose, including, but not limited to, the following:

- A. To grant, by ordinance, nonexclusive franchises for the development and operation of a cable communications system or systems;
- B. To contract, jointly agree or otherwise provide with other local or regional governments, cities, or special districts for the development, operation and/or regulation of a system, or franchises therefor, notwithstanding the fact that the system extends beyond the jurisdiction of the city;
- C. To purchase, hire, construct, own, maintain or operate or lease a system and to acquire property necessary for any such purpose;
- D. To regulate and supervise all facets of a system including but not limited to:

1. Consumer complaints,
2. Disputes between the city franchisee(s) and consumers,
3. The development, management and control of a government access channel as well as development of other access channels,
4. Rates and review of finances for rate adjustments,
5. Construction timetables and standards,
6. Modernization of technical aspects,
7. Ensuring adherence to federal and state regulations,
8. Franchise transfer and transfer of control of ownership,
9. Franchise renewal and/or franchise revocation,
10. Enforcement of buy-back, lease-back, or option-to-purchase provisions,
11. Receivership and foreclosure procedures,
12. Compliance with city standards for use of public and/or private rights-of-way.

5.12.050 Franchise requirements.

- A. The city may grant one or more franchises to construct, install, maintain or operate a cable television system within the city to a person, firm, company, corporation, organization or association which the city deems qualified to operate such system pursuant to the terms and conditions of this chapter. No provision of this chapter shall be deemed or construed to require the city to grant additional franchises if, after considering any application for such additional franchise(s), it is determined by the city that it is in the public interest to restrict the number of franchises.
- B. A franchise granted to provide service within the city shall authorize and permit the franchisee to solicit, sell, distribute and make a charge to subscribers within the city for connection to the cable communications system of the franchisee.
- C. Prior to entering into any franchise agreement, the council will follow an open and fair process that provides for public input to determine the area(s) to be served, the minimum standards for service, and public benefits, including fees, to be provided by the applicants for a franchise or operator of the system. In addition to whatever terms the council finds to be in the public interest, any franchise agreement shall, at a minimum, provide the following:
  1. Any franchise agreement entered into shall be nonexclusive.
  2. Any franchise agreement shall be nontransferable, except that a change of control or ownership of the operator may occur with the consent of the council. In addition, within thirty (30) days of notification and evidence by the city that the city has incurred costs, including personnel, contract labor and other actual costs, in the process of preparing for any transfer of franchise, the grantee shall reimburse the city the actual cost of such preparations incurred by the city.
  3. A franchise agreement shall be revocable for cause.

5.12.060 Applications.

An application for a new cable communications franchise or a renewal of an existing franchise shall be submitted to the city in a form specified by or acceptable to the city, and in accordance with procedures and schedules established by the city. The city may request such facts and information as it deems appropriate.

5.12.070 Qualifications.

The city may issue a franchise only after a public hearing(s) taking into account the following factors:

- A. The ability of the applicant to provide service to the franchise area;
- B. The amount of time it will take the applicant to complete construction of the proposed system and activate service in the franchise area;
- C. The financial capabilities of the applicant and its assured commitment to make the necessary investment to install, maintain and operate the proposed cable system for the duration of the franchise;
- D. The quality and technical reliability of the proposed system, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct, operate and maintain such system;
- E. The experience of the applicant in the creation, maintenance and operation of a cable television system;
- F. The capacity of the public rights-of-way to accommodate the cable systems and the potential disruption of those public rights-of-way that may occur if one or more additional franchises are granted;
- G. The potential disruption of existing cable television service; the potential for destructive competition which would adversely impact the residents of the city; and any inordinate costs to the city and/or its residents;
- H. The likelihood and ability of an applicant to continue to provide cable television service to subscribers within the franchise area for the duration of the franchise;
- I. Any such other information that should be considered by the city prior to granting a franchise.

5.12.080 Term of franchise and fee.

- A. The term of franchise shall not exceed fifteen (15) years. However, the city and the franchisee, subject to renegotiation of their agreements, may renew franchise.
- B. The franchisee, in consideration of the privilege granted under the franchise for the operation of a cable television system within the public ways of the city and expenses of regulation of the franchise incurred by the city, shall pay to the city a franchise fee. That fee shall not exceed the amount allowed under federal law. The council shall set the fee and may change the fee with ninety (90) days' notice to the franchisee.

5.12.090 Compliance with laws, rules and regulations.

The franchisee shall comply with all applicable laws, rules and regulations of the United States of America, the state of Oregon, the county of Coos, and the city including all agencies and subdivisions thereof. The franchisee shall be subject to the lawful exercise of the police power of the city and to such reasonable regulations as the city may from time to time hereafter by resolution or ordinance provide.

5.12.100 Financial and insurance provisions.

- A. Safety of Operations. The franchisee shall at all times conduct its operations, including installation, construction or maintenance of its facilities, in a reasonably safe and workmanship-like manner.
- B. City Held Harmless. The franchisee shall indemnify and hold the city harmless from any demand or claim against the city on account of or in connection with any activity of the

grantee in the construction, operation or maintenance of its technical facilities and system services.

- C. Insurance. The franchise shall maintain a comprehensive liability insurance policy which shall contain the following provisions at a minimum:
1. Combined bodily injury and property damage policy limits of one million dollars (\$1,000,000.00) for each person and one million dollars (\$1,000,000.00) for each occurrence;
  2. Policy limits of one million dollars (\$1,000,000.00) for other types of liability;
  3. Workers compensation coverage in accordance with the laws of the state of Oregon;
  4. A designation of the city as an additional insured for liability arising from or in connection with the franchise as described above.
- D. Surety Bond. The franchisee shall, at its sole expense, obtain, file with the city and, unless otherwise authorized by the council, thereafter maintain during the full term of its franchise, or any renewal thereof, a surety bond or other adequate surety agreement running to the city in the amount of one hundred thousand dollars (\$100,000.00), in such form and issued by such person as shall have been reasonably determined by the council. The bond shall be conditioned that the franchisee shall fully observe and perform each term and condition of its franchise. Proof of the posting of such bond shall be furnished to the city prior to the effective date of the franchise. The bond shall contain the following endorsement:  
*It is hereby understood and agreed this bond shall not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City, by registered mail, of a written notice of such intent to cancel or not to renew.*
- E. Certificate of Insurance. A certificate evidencing the insurance as described in this chapter shall be delivered to the city prior to the effective date of the franchise awarded. The franchisee shall notify the city within thirty (30) days of any changes in insurance coverage.

5.12.110 System service and standards.

For the term of this franchise, the franchisee shall construct, operate and maintain its system services as follows:

- A. Quality of Television, FM Radio, and other Service. The franchisee shall provide its subscribers within the city with high quality television and radio reception on all channels transmitted on the system.
- B. Technical Standards. The franchisee shall maintain and improve the technical facilities of its cable communications system according to generally accepted practices and standards in the cable television industry and according to the technical requirements and minimum technical performance standards specified by the Federal Communications Commission (FCC) or any successor agency, including the city, as may now, or in the future, be lawfully empowered.

5.12.120 Grantee rules.

The franchisee shall have authority to promulgate such reasonable rules and regulations governing the conduct of its business as shall be necessary to enable the franchisee to exercise

its rights and perform its obligations under this franchise, and to assure uninterrupted services to its customers.

5.12.130 Use of roads, rights-of-way and private property.

- A. When Permission is Required. The franchisee shall utilize existing poles, conduits and other facilities, but may construct or install new, different or additional conduits, or other facilities (but no poles) whether on the public way or on private property with the written approval of the appropriate governmental authority, and/or of the property owner, whichever is applicable. The city's approval shall not be unreasonably withheld.
- B. Installation, Location and Maintenance Requirements. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with rights and appearance and reasonable convenience of property owners who adjoin on any public way and at all times shall be kept and maintained in a safe condition and in good order and repair. The franchisee shall at all times employ reasonable care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.
- C. Restoration. In case of any disturbance of any structure, pavement, sidewalks, driveway or other surfacing by the franchisee, the franchisee shall, at its own cost and expense, replace or restore all paving, sidewalk, driveway or surface of any road or alley disturbed, in as reasonably good a condition as before the disturbance. If the franchisee fails to make such restoration within a reasonable time not to exceed five working days after written notice by the city to the franchisee, the city shall cause the repairs to be made at the expense of the franchisee.
- D. Relocation. If at any time during the franchise period the city shall lawfully elect to alter, or change the grade of, any road, or other public way, the franchisee, upon reasonable notice by the city, shall remove and relocate its poles, wires, cables, underground conduits, manholes and other technical facilities at its own expense.
- E. Tree Trimming. The franchisee shall have the authority to trim trees on city property at its own expense as may be necessary to protect its cables and facilities, subject to the direction of the city engineer.

5.12.140 Undergrounding of plant.

Unless otherwise authorized by council, in those areas and portions of the city where the transmission and/or distribution facilities of the public utility providing telephone service, and those providing electric service, are underground or hereafter placed underground, or are to be placed underground by a builder, developer or subdivider as part of a development or subdivision, then the grantee shall likewise construct, operate and maintain all its transmission and distribution facilities underground.

5.12.150 Discriminatory practice prohibited.

The franchisee shall make its system services available to all residents of the city without discrimination and shall not give any preference or advantage not available to all persons similarly situated.

5.12.160 Transfer of franchise.

- A. City Permission Required. The franchisee shall not sell, assign, dispose of or transfer in any manner whatsoever any interest in its franchise, or transfer or permit transfer of control of the franchisee (a change in beneficial ownership of twenty-five (25) percent of stock or

other interest in the franchisee shall be presumed to be a change in control of the franchisee), without prior written approval of the council, which approval shall not be unreasonably withheld. The franchisee shall notify the city in writing sixty (60) days prior to any sale, transfer, lease, assignment, mortgage or pledge of its franchise, providing with such notification a summary explanation of the nature, purpose and terms of the transaction. If the city so requests, the franchisee shall also provide a copy, within thirty (30) days of request by the city, of any deeds, leases, mortgages, agreements or other written instruments evidencing such transactions, certified as correct by the franchisee.

B. Notification and City Inquiry into Qualifications. The franchisee shall promptly notify the city of any proposed change in control of the franchise. Control is defined in subsection A of this section. For the purposes of determining whether it will consent to any change, the city may inquire into the qualifications of the prospective controlling party, and the franchisee shall assist the city in any such inquiry. Such inquiry shall be completed in a prompt manner and any city expenses associated therewith shall be reimbursed by the franchisee as set forth in Section 5.12.050(C)(2).

5.12.170 City rights in franchise.

A. Use of the System by the City for Emergency Purposes. The city shall have the right to use the franchisee's technical facilities without service charge for police department, fire alarm or other emergency system purposes, provided that the city shall obtain any equipment necessary to connect such system to the franchisee's technical facilities.

B. City Supervision and Inspection. The city shall have the right to supervise all construction or installation of the franchisee's technical facilities, subject to the provisions of this chapter and the franchisee's franchise award ordinance, and to make such inspections as it shall find necessary to ensure compliance with governing laws, rules and regulations.

C. Rights to Regulate Reserved. The city reserves the right to regulate the franchisee's rates and charges to the full extent permitted by law and the rules and regulations of the Federal Communications Commission, as these may change or be amended from time to time.

D. Notification. The franchisee shall provide the city a minimum of thirty (30) days' written notice of and justification for any change in rates or charges. (Ord. 1340A § 17, 1994)

5.12.180 Franchisee fee.

A. Amount of Fee. As compensation for a franchise granted under this chapter, the franchisee shall pay to the city an amount equal to five percent of the gross receipts actually collected by the franchisee which are derived from the operation of all services and sale of all equipment within the city. Gross receipts shall include all amounts collected directly or indirectly by the franchisee (less any taxes collected on behalf of any person) for services provided under its franchise, including, but not limited to, charges for all system services and charges for installations; and, it shall also include, but is not limited to, receipts from any sale of advertising and/or the leasing of channels capacity.

B. Time of Payment. The fee required by this section shall be payable quarterly and shall be due on or before the last day of each January, April, July and October during each year the franchise is in effect.

C. Acceptance of Payment by the City. The city's acceptance of any payments due under this section shall not be considered a waiver by the city of any breach of the franchise.

5.12.190 Customer service response.

The franchisee shall provide customer service in accordance with the specifications and standards set forth in the franchise award ordinance.

5.12.200 Reports to the city--Public hearings.

A. Annual Report. On or prior to March 15th of each year of the term of this franchise, the franchisee shall furnish the city clerk with a written report, signed by an officer of the franchisee, which includes the following elements:

1. Audited verification of the amount of gross receipts of the franchisee derived from its operations within the city during the period covered by such payment;
2. A summary of the number of subscribers in all principal categories, with an indication of the number gained or lost;
3. A summary of any programming or other services added or dropped;
4. A summary of the technical status of the franchisee's cable communications system, including the results of the most recent system technical performance tests and the status of any construction or improvements;
5. A summary of any subscriber complaints since the previous franchise fee payment, identifying the number and nature of complaints and their disposition;
6. Certified financial statements for the franchisee including statements of income, balance sheets, and statements of sources and applications of funds, covering the previous two years on a comparative basis;
7. A list of all owners of more than a twenty-five (25) percent interest in the franchisee, provided, however, such list shall be delivered only if such ownership has changed from the date of the previous report delivered to the city;
8. Outline of plans for expansion and improvement of the system in the next two fiscal years.

B. Communications with Regulatory Agencies. Whenever any petitions, applications, communications or reports referring to actual or potential changes of a material nature in the legal, financial, technical or operational status of the franchisee are submitted by the franchisee to the Federal Communications Commission (FCC) and/or the Securities and Exchange Commission (SEC) , or any other federal or state regulatory agency having jurisdiction in matters affecting cable communications operations authorized by this chapter, such petitions, applications, communications or reports shall be submitted simultaneously to the city. Copies of responses, or any other communications from regulatory agencies to the franchisee if they refer to actual or potential material changes of franchisee status, shall likewise be furnished immediately to the city. Copies of any notice of violation of rules or procedures by any regulatory agency to the franchisee shall be furnished immediately to the city.

C. Other Reports. The franchisee shall furnish the city, at times and in the form prescribed by the city, such other reports with respect to its operations, affairs, transactions or properties as the city may deem reasonably necessary or appropriate to the performance of its function.

D. Public Review of Reports/Public Hearings.

1. The city reserves the right to conduct, at its sole expense, a public review and evaluation of any and all reports submitted by the franchisee. For this purpose, the

franchisee shall supply any additional information, documents or other materials

requested by the city reasonably necessary for such review and evaluation, upon thirty (30) days' written notice by the city. The franchisee shall also, upon thirty (30) days' written notice by the city, cause one or more appropriately knowledgeable and responsible representatives of the franchisee, or the managing general partner of the franchisee, to be present at the public hearing devoted to the public review and evaluation of franchisee's reports or for such other public hearings as the city may call from time to time.

2. The city acknowledges that certain information contained in the reports required by this section and by other sections of this chapter may be confidential. Accordingly, any information designated as confidential by the franchisee is provided for and shall be used only for the benefit of the city and the same shall not be disclosed, in whole or in part in any form or manner, to any third party without the express written permission of the franchisee or unless such disclosure is required by law or the order of a court of competent jurisdiction.

5.12.210 Financial and technical system data.

- A. The franchisee shall keep accurate books of financial accounts in compliance with generally acceptable accounting principles relating to the operation of the franchisee's cable communications system throughout the term of its franchise, and shall also maintain current system maps and other technical operations data relating to its system. The franchisee shall make all such information available for the city's inspection, at its sole expense, at any time during normal business hours, except as prohibited by law.
- B. The city, at its sole expense, may audit the franchisee's books and records from time to time. Upon request and two weeks' notice by the city, the franchisee shall supply to the city photocopies of such reports, documents, logs, financial data, technical test results, subscriber lists, billing records, or other materials, dating back for up to two years, as the city may reasonably deem necessary to carry out any review and evaluation of the franchisee's reports required pursuant to this chapter.

5.12.220 Permit and inspection fees.

Unless otherwise specified herein, nothing in this chapter or a franchise issued hereunder shall be construed to limit the rights of the city to require the franchisee to pay reasonable costs incurred by the city in connection with the issuance of a permit, making an inspection, or performing any other service for or in connection with the franchisee or its facilities, whether pursuant to this chapter or any other ordinance or regulation now in effect or hereinafter adopted by the city. The franchisee shall be responsible for ascertaining the applicability of permit requirements in connection with its operations, and for obtaining all required permits.

5.12.230 Remedy for franchise violation.

After providing (A) written notice to the franchisee of any alleged violation or breach of the material terms of its franchise, and (B) a period of sixty (60) days for cure, city may revoke this franchise pursuant to the terms of Section 5.12.260, or impose a penalty, or pursue any remedy at law or in equity including but not limited to an action for money damages.

5.12.240 City cable ombudsmen committee.

- A. The council may, at its sole discretion, establish a committee consisting of liaison and at

least three citizens to serve as cable television ombudsmen. The citizen members shall be subject to council conformation. The duties of the cable television ombudsmen shall be as

follows:

1. To receive and monitor written citizen complaints regarding the operation of the cable franchise;
  2. To serve as a liaison between cable customers, the community and the cable franchisee. The role of the committee shall be to gather information, and attempt where appropriate to resolve written complaints. It shall have no power to levy administrative penalties or sanctions, but may at its discretion recommend additional procedures to the city council for incorporation in the franchise of future franchisees and shall report all violations of the franchise agreement to the council for action.
- B. The cable television ombudsmen shall meet from time to time as may be necessary to fulfill their functions. It shall provide twenty-four (24) hours' notice of its meeting as required by state statute. Because the powers of the committee are limited and it will not hold public hearings, it is the intent of the council to provide for a flexible meeting format in order that the committee can receive comments and act independently with the cable franchisee and its customers. The committee may delegate to its individual members the ability to gather information or fulfill specific tasks, including the investigation of a specific complaint. (A copy of each complaint shall be directed to the franchisee upon receipt.) A quorum of the committee, consisting of at least two of its citizen members, shall be required at an official public meeting in order to make a recommendation to the council regarding additional oversight procedures or to forward a complaint to the council that the franchise has been violated.
- C. It shall be the duty of the committee to request, where appropriate, follow-up reports regarding the resolution of specific complaints. The cable franchisee shall not be required to produce propriety financial information which would not otherwise be available under the terms of the franchise nor shall it release private information. The franchisee shall be required to cooperate with the reasonable requests of the city ombudsmen by providing information during normal working hours to permit inspection of its records relating to an incident or complaint during normal working hours.
- D. The city reserves the right to lawfully modify the scope of duties and responsibilities of the committee by either expansion, contraction and/or revision thereof, as the council may deem appropriate.

5.12.250 Remedies not exclusive--Waiver.

All remedies under this chapter are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Failure to enforce any provision of this chapter, or a franchise award ordinance issued hereunder, shall not be construed as a waiver or a breach of any other term, condition or obligation of this chapter or such franchise award ordinance.

5.12.260 Franchise term and franchise revocation.

- A. Term of Franchise. A franchise issued under this chapter shall be granted for a term as specified in the franchise award ordinance. Upon expiration of said term the city will have the right to: (1) renew the franchise, with such changes as may be determined by the city through negotiations with the franchisee pursuant to federal law; or (2) invite additional

franchise applications or proposals; or (3) allow the franchise to expire if the city determines that it will no longer provide any cable franchise services whatsoever.

Notwithstanding anything to the contrary herein, the city and the franchisee shall respect any provisions of federal or state law, and any rules and regulations of the Federal Communications Commission, that may be in effect at any time during the duration of the franchise, regarding the renewal and extension of franchises.

- B. Franchise Revocation. In addition to any rights set out elsewhere in this chapter, the city reserves the right to revoke the franchise, including all its rights and privileges, in the event that (1) the franchisee becomes insolvent, becomes unable to or unwilling to pay its debts, or is adjudged bankrupt; (2) the franchisee is found to have practiced fraud or deceit of a material nature upon the city; (3) the franchisee fails to obtain and maintain any required federal, state, county or city permit relating to the construction, maintenance and operation of the cable system after notification from the appropriate government agency that the permit is lacking and the franchisee fails to obtain (or to commence reasonable efforts to obtain) the permit within a reasonable time; (4) the franchisee, after receiving written notice and a thirty (30) day cure period, fails to maintain the full amount of its surety bond as required in Section 5.12.100; or (5) there is no other reasonably adequate means for remedying a substantial and material violation of this franchise agreement; provided, however, a revocation of the franchise agreement shall be declared only by written decision of the city after an appropriate public proceeding before the council affording the franchisee due process and full notice of revocation; and provided further, that the city may, in its discretion and upon a finding of a material violation or failure to comply, impose a lesser penalty than revocation or excuse the violation or failure to comply upon a showing by the franchisee of mitigating circumstances. In the event of franchise revocation, the franchisee shall be afforded a six-month period within which to sell, transfer or convey its cable communications system to a qualified purchaser. During such period, which shall run from the effective date of the final order or decision imposing revocation, including any appeal, the franchisee shall have the right to operate its cable system pursuant to the provisions of the franchise agreement. In the event of franchise revocation, and the franchisee is unable to sell, transfer or convey its cable communications system to a qualified purchaser within the six-month period afforded for such system sale, transfer or conveyance, or in the event the franchisee abandons any portion or all of its system, then the franchisee shall have ninety (90) days from written notification by the city to remove the so affected portions of its system from the city's rights-of-way.

5.12.270 Franchise review and modification.

It shall be the policy of the city and the franchisee to amend the franchise, upon the request of either party, when necessary to take advantage of technological, regulatory or legal developments which will afford an opportunity to more effectively, efficiently or economically serve the subscribers. The cost of the franchise amendment process shall be the responsibility of the initiating party.

5.12.280 Protection of privacy.

- A. The franchisee and the city will constantly guard against possible abuses of the right of privacy or other rights of any subscriber or person. In particular, the franchisee shall comply with the privacy provisions of the Cable Communications Policy Act of 1984, Section 631, incorporated herein by reference.
- B. The franchisee shall not permit the transmission of any signal, aural, visual or digital,

including "polling" the channel selection, from any subscriber's premises without first

obtaining the informed consent of the subscriber, which shall not have been obtained from the subscriber as a condition of any service for which transmission is not an essential element. The request for such consent shall be contained in a separate document which enumerates and describes the transmissions being authorized and includes a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision, and shall be revocable at any time by the subscriber without penalty of any kind whatsoever. This provision is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance or used only for billing subscribers or providing optional pay services.

- C. The franchisee shall not permit the use of any special terminal equipment in any subscriber's premises that shall permit transmission from the subscriber's premises of the two-way services utilizing aural, visual or digital signals without first obtaining written permission of the subscriber.
- D. The franchisee or any of its agents or employees shall not, without the specific written authorization of the subscriber involved, sell or otherwise make available to any party any list which identifies the viewing habits or responses of individual subscribers.

5.12.290 Constitutionality--Validity of franchise fee.

If any section, subsection, sentence, clause or portion of this chapter is for any reason held invalid or rendered unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the constitutionality of the remaining portions hereof. If for any reason the franchise fee is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by such court or other governmental agency shall be the franchise fee paid by the franchisee.

## Chapter 5.16

### GAMBLING

#### Sections:

- 5.16.010 Definitions.
- 5.16.020 Gambling prohibited.
- 5.16.030 License required for card room--Application.
- 5.16.040 Granting and denial of application.
- 5.16.050 Responsibility of licensee.
- 5.16.060 License not transferable.
- 5.16.070 Change of financially interested persons.
- 5.16.080 Suspension and revocation of license.
- 5.16.090 Card room regulations.
- 5.16.100 Signs.
- 5.16.110 License fees.
- 5.16.120 Violations--Penalties.

Ordinance History: #1423

#### 5.16.010 Definitions.

As used in this chapter, except where the context indicates otherwise, the following shall mean:

"Card room" means an area within a building where any of the traditional gambling-based games commonly known as faro, monte, roulette, fan-tan, twenty-one, blackjack, poker, chemin de fer, baccarat, beat the banker, acey-deucey, or any other gambling-based game similar in form or content are played.

"Gambling" means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the control or influence of the person, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome (ORS 167.117(7)). Gambling does not mean social game.

"Social game" means (1) a game, other than a lottery, between players in a private home where no house player, house bank or house odds exist and there is no house income; and (2) if authorized pursuant to ORS 167.121, a game, other than a lottery, between players in a private business, private club or place of public accommodation where no house player, house bank or house odds exist and there is no house income from the operation.

#### 5.16.020 Gambling prohibited.

No person shall participate in, operate or assist in operating any gambling game or activity, including a lottery. No person shall have in his or her possession any property, instrument or device designed or adapted for use in any type of gambling activity. Any such property, instrument or device is a nuisance and may be summarily seized by any police officer. Property so seized shall be placed in the custody of the chief of police of the city. Upon conviction of the person owning or

controlling such property for violation of this section, the municipal judge shall order such property confiscated and destroyed.

5.16.030 License required for card room--Application.

- A. From and after the effective date of the ordinance codified in this chapter, it is unlawful for any person, firm or corporation to engage in or carry on, or to maintain or conduct, or cause to be engaged in, carried on, maintained or conducted, any card room in the city without having a valid license from said city.
- B. An applicant for a card room license shall submit his or her application to the city recorder. The application shall be under oath and shall include, among other things, the true names and addresses of all persons financially interested in the business, the personal history and business experiences of such persons, and the past criminal record, if any.
- C. The application shall be accompanied by a twenty dollar (\$20.00), non-refundable investigation fee for each person having a financial interest. The application shall also be accompanied by fingerprints and photographs of persons financially interested.
- D. "Person financially interested" means all persons who share in the profits of the business, on the basis of net revenue, including landlords, lessors, lessees, and the owner or owners of the building, fixtures or equipment.

5.16.040 Granting and denial of application.

- A. The city council shall consider the application at its next regular meeting following the filing and after completion of the investigation by the police department. The council may (1) grant the license; (2) take the application under consideration at a specified date and public hearing if the council shall so determine; (3) deny the application.
- B. The license shall not be granted if:
  - 1. Any person who has any interest in the business has been previously convicted of a felony within the last ten (10) years;
  - 2. Any person who has any interest in the business has been convicted of five misdemeanors, the last of which was within five years;
  - 3. Any person who has any interest in the business has been convicted of or forfeited bail for any crime involving gambling within the last five years;
  - 4. Any person who has any interest in the business has been directly or indirectly involved in a forfeiture proceeding regarding a gambling device as defined in the ORS where such gambling device has been ordered destroyed or a bond has been forfeited in lieu of the gambling device being destroyed within the last five years;
  - 5. Any false or misleading information is supplied in the application or any information requested is omitted from the application;
  - 6. Any person who has any interest in the business has had a license which was in his or her name revoked or suspended three times by the Oregon Liquor Control Commission, the last of which was in the last five years;
  - 7. Any person who has any interest in the business or an employee violates any section of this chapter.

5.16.050 Responsibility of licensee.

Each card room shall have assigned to it a person whose duty shall be to supervise the

games and see to it that they are played strictly in accordance with this chapter and within the provisions of the ORS.

5.16.060 License not transferable.

No card room license shall be assignable or transferable.

5.16.070 Change of financially interested persons.

A change of persons having financial interest in a licensee's business shall be reported immediately to the city recorder, who shall order an investigation by the police department, and the change shall be approved or denied by the city council. Applications for change of financial ownership shall be accompanied by a twenty dollar (\$20.00) non-refundable investigation fee for each new financially interested person, and shall contain the information required by Section 5.16.030.

5.16.080 Suspension and revocation of license.

The city manager shall temporarily suspend any card room license issued for the seven reasons specified in Section 5.16.040 for denial of a license.

- A. Suspension shall be subject to the right of appeal to the city council, meeting in regular council session. Notice of such appeal shall be filed with the city recorder within ten (10) days of receipt or such action shall be deemed final and conclusive. A temporary suspension shall be for thirty (30) days.
- B. Permanent revocation may be made only by the city council and such revocation shall only take place at a city council meeting in regular session upon application of the city manager and only after the licensee has been served with notice at least twenty (20) days prior to the city council meeting. Such notice shall include the time and date of the city council meeting and the grounds upon which the permanent revocation is sought. Notice shall be deemed to have been received by the licensee if the city manager mails such notice to the address listed by the licensee on his or her application for a license.

5.16.090 Card room regulations.

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

- A. Licensees holding or obtaining licenses under the provisions of this chapter agree to be bound by and observe each and all of the terms, conditions and provisions of this chapter and of the regulations and rules established thereby.
- B. Each and all of the games conducted or operated in the city pursuant to the provisions of this chapter shall be conducted and operated in full conformity with, and subject to, all the provisions of the laws of the state of Oregon and the city of Bandon.
- C. No licensee or person financially interested in the business of the licensed premises shall participate in any card game nor procure players, back, farm out, assign or sublet any card games lawfully permitted under this chapter on the premises in which said licensee has any interest or works.
- D. Playing of card games shall be so arranged as to provide free access and visibility to any interested party. Doors leading into the card room must remain unlocked during all hours of operation.
- E. No person under the age of twenty-one (21) shall be permitted to participate in any card

- game or to enter or remain in a licensed card room.
- F. No charge based on any percentage, or on number of games, or hands played shall be collected from any player for the privilege of participating in any game.
  - G. No employee of the licensee or any person financially interested in the business of the licensed premises shall serve as a dealer in any game.

5.16.100 Signs.

Advertising signs for a business should be cleared through the planning department of the city for zoning regulations, size and location.

5.16.110 License fees.

Each card room licensed shall pay the sum of two hundred fifty dollars (\$250.00) per year, in advance, plus one hundred dollars (\$100.00) per year for each card table, in advance. The fee schedule may be changed by resolution of the council.

5.16.120 Violations--Penalties.

Violations of gambling laws are covered by ORS 167.122 through 167.167.

Chapter 5.20

GAMING & AMUSEMENT DEVICES

Sections:

- 5.20.010 Definitions
- 5.20.020 License requires
- 5.20.030 License application
- 5.20.040 Age limit of players
- 5.20.050 Gambling prohibited
- 5.20.060 Revocation of license
- 5.20.070 Penalty

Ordinance History: #1531

5.20.010 Definitions.

Gaming device. A gaming device is any coin or token operated device for the purpose of amusement or skill which has a pushbutton for the release of free plays and a meter for registering free plays, or has a provision for multiple coin insertion for increasing odds.

Amusement device. An amusement device is any amusement device or machine which does not come under the definition of gaming device which is played, operated, or used for the amusement of or to test the skill of an operator or player and for the playing, for which a fee is charged. An amusement device may or may not be coin-operated.

Phonograph. A phonograph is a coin-operated musical device.

(The terms gaming device, amusement device and phonograph do no include coin-operated vending machines which do not incorporate gaming or amusement features.)

Proprietor. Proprietor is a person, firm, corporation, partnership, association or club who as the owner, lessee, or proprietor has under his/her/its control any establishment, place or premises in or at which any of the above defined devices is kept for use or play, or on exhibition for the purpose of use or play.

5.20.020 License Required

No person shall engage in a business using any of the devices defined without first having obtained the proper license. License fees shall be set by a resolution of the City Council and shall accompany each application.

5.20.030 License Application

- A. An application for a license shall be filed with the City Recorder, on a form provided by the City, and shall specify:
1. The name and address of the applicant and, if other than an individual, the names and addresses of the principal officers of the applicant.
  2. The address of the premises where the licensed device or devices are to be operated, together with the character of the business carried on at such place.
  3. The general description and the class according to the above definitions of each device to be licensed.
  4. The name and address of the operator of the device or devices if other than the proprietor.
- B. The application shall be referred to the Police Department for such investigation as it deems necessary. If approved by the Police Department, the City Recorder shall issue the license and receive the payment made for the various devices covered by the license.
- C. All licenses shall be for the fiscal year July 1 to June 30. Licenses for less than a year shall require quarterly fees for the quarters or parts of quarters remaining.
- D. Only one license shall be issued for each establishment. The license shall be posted in a conspicuous place in the establishment. Such licenses are not assignable and shall apply only to the premises for which issued.
- E. The license shall state the number and class of devices being licensed. Devices within the same class as defined in Section 1 may be substituted without an amendment of the license.
- F. A proprietor desiring to increase the number of devices shall surrender his or her license to the City Recorder who shall add the new devices to the license upon payment of the proper fee.

5.20.040 Age Limit of Players.

No person under eighteen years of age shall be permitted to operate any gaming device defined herein. Any employee or person in charge of a place of business or a portion of business premises shall be presumed to be in control of any such devices.

5.20.050 Gambling.

The issuance of a license under the Bandon Municipal Code (BMC) shall not be construed to permit the use of any device for gambling purposes in contravention of any statutes, city code or applicable regulations. It shall be unlawful to use, or permit the use of, any licensed device for gambling purposes.

5.20.060 Revocation of license.

The City Council may in its discretion revoke any and all licenses issued with or without notice and with or without cause. If revoked without cause, the unearned portion of any license fees paid shall be repaid on demand of the licensee.

5.20.070 Penalty.

Any person, firm, corporation, partnership, association or club violating any of the provisions of this ordinance shall, upon conviction, be fined not more than one hundred dollars for each offense. A separate offense shall be deemed committed each day during which a violation occurs

or continues, including the display for play of any and each unlicensed device.