

TITLE 4

BUSINESS LICENSES AND REGULATIONS

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CHAPTER 4.04

ELECTRIC FRANCHISE

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4.04.01 Electric franchise granted to Arkansas Power and Light Company. The City of Pottsville, Arkansas, (hereinafter called Grantor) hereby grants to the Arkansas Power and Light Company, its successors and assigns, (hereinafter called the Grantee), the exclusive right, privilege and authority within the present and all future expansion of the corporate limits of the City of Pottsville, Arkansas, (1) to sell, furnish, transmit and distribute electric power and energy to Grantor and to all inhabitants and consumers within said limits and (2) to construct, maintain, operate and extend a system for such purposes and to enter on, under and upon and use any and all of the streets, alleys, avenues, bridges and other public grounds and ways belonging to or under the control of Grantor, for the purpose of erecting, maintaining, repairing, replacing and operating poles, wires, anchors, studs, transformers, substations, cables, conduits and other related facilities, appliances and apparatus which are necessary for or useful in, the furnishing, sale, transmission or distribution of said electric service (hereinafter called facilities). (Ord. No. 22, Sec. 1)

4.04.02 Rights and responsibilities of grantor and grantee. Grantee shall, and does by acceptance hereof, agree to provide to the city and its inhabitants adequate and reasonable electric service as a public utility and the facilities necessary to provide such service. Grantor, in recognition of the large and continuing investment necessary for Grantee to perform its obligations hereunder, and the need and duty to promptly construct its facilities, as defined above, required to serve customers, in all areas and zones of the city, consents to the construction of such facilities as defined in Section 4.04.01 in all such areas and zones, and Grantor agrees to protect by ordinance, regulation and otherwise, to the fullest extent permitted by law, and except as otherwise limited herein, the grants of rights and privileges to Grantee set forth in Section 4.04.01 from interference with, or duplication by, other persons, firms or corporations seeking to engage in the sale or distribution of electric energy. (Ord. No. 22, Sec. 2)

4.04.03 Rights and responsibilities of grantor and grantee. All facilities of Grantee which may be located on public ways, places and public property, as authorized herein, shall be located so as to not unreasonably obstruct public use and travel. All of Grantee's facilities shall be constructed, operated and maintained in accordance with standards at least equivalent to the standards prescribed by the National Electrical Safety Code. Grantee, its successors and assigns, shall replace and repair, at its own expense, all excavations, holes or other damage caused or done by it to public streets, ways, places and public property in the construction, operation and maintenance of its facilities. (Ord. No. 22, Sec. 3)

4.04.04 Rights and responsibilities of grantor and grantee. The Grantee, its successors and assigns, is hereby given the right to trim, cut or remove trees, shrubbery or growth on or in public ways, places and public property which interfere or offer hazards to the operation of Grantee's facilities used or useful for the rendition of electric service, and, further, Grantee is hereby given the right, authority and permission to trim, cut and remove portions of trees, shrubbery or growth growing on private property but overhanging or encroaching on public ways, places and public property which interfere or offer hazards to the construction, operation and maintenance of Grantee's facilities. (Ord. No. 22, Sec. 4)

4.04.05 Termination procedure. The rights, privileges and authority hereby granted shall exist and continue from the date of passage of this ordinance, and thereafter, until terminated in accordance with provisions of Section 44 of Act 324 of the 1935 Acts of the State of Arkansas, as presently enacted or hereafter amended. (Ord. No. 22, Sec. 5)

4.04.06 Rates. The rates which are to be charged by Grantee for electric service hereunder shall be those which are now lawfully approved or prescribed, and as said rates may, from time to time, be amended by Grantee in accordance with law or by any regulatory authority having jurisdiction thereof. (Ord. No. 22, Sec. 6)

4.04.07 City not liable for negligence of grantee. In the construction, operation, and maintenance of its facilities, said Grantee shall use reasonable and proper precaution to avoid damage or injury to persons or property and shall hold and save harmless the said Grantor from damage, injury, loss or expense caused by the negligence of the Grantee, or its agents, servants or employees, in constructing, operating and maintaining said facilities or in repaving or repairing any streets, avenues, alleys, bridges or other public grounds. (Ord. No. 22, Sec. 7)

4.04.08 Standard of care for facilities. The Grantee shall endeavor at all times to keep its facilities in a reasonable state of repair, and to conform to such practices and install such appliances and equipment as may be in keeping with the customary usage and practice in cities of similar size in this State during the time this franchise shall remain in force. (Ord. No. 22, Sec. 8)

4.04.09 Franchise tax. Beginning with the date of this ordinance and thereafter during the life of this franchise, the Grantee shall pay to Grantor each year, a franchise tax in an amount equal to: Four and twenty-five hundredths percent (4.25%) of the preceding calendar year's gross residential and commercial electric revenues as paid to the Grantee by residential and commercial customers located within the corporate limits of the City of Pottsville. Payments shall be made by the Grantee to the Grantor in approximately equal quarterly installments. Residential and commercial electric revenues are those revenues so classified pursuant to Grantee's uniform classification standards. Grantor shall have the right to examine and verify, from the records of the Grantee, any data relating to the gross revenues of Grantee from customers on which said franchise tax is due. In the event of a controversy between the Grantor and Grantee as to the amount of gross revenues received by Grantee in the City of Pottsville upon which said tax is due, such controversy shall be referred to the Arkansas Public Service Commission, or such successor regulatory agency which may have jurisdiction over the Grantee, for final determination, and the decision of said Commission shall be binding upon both parties hereto.

It is expressly agreed and understood by the Grantor and Grantee that the aforesaid payment shall constitute and be considered as complete payment and discharge by the Grantee, its successors and assigns, of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees, special millage taxes, general ad valorem taxes and other general taxes applicable to all citizens and taxpayers) which are now or might in the future be imposed by the Grantor under authority conferred upon the Grantor by law. In the event such other tax or taxes are imposed by Grantor, the obligation of the Grantee set

forth in Section 4.04.09 hereof, to pay the city the sum of four and twenty-five hundredths percent (4.25%) annually of the gross residential and commercial electrical revenues shall

immediately terminate. (Ord. No. 81-8, Sec. 1)

4.04.10 Street lighting. Electric service furnished the Grantor for street lighting and other purposes shall be paid for by the Grantor in accordance with the applicable rate schedules of the Grantee now on file and/or as they may in the future be filed by the Grantee and approved by the Arkansas Public Service Commission or other regulatory authority having jurisdiction. The Grantee shall have the privilege of crediting any amount due Grantor with any unpaid balances due said Grantee for electric service rendered to said Grantor. (Ord. No. 22, Sec. 10)

4.04.11 Private generation facilities allowed. Nothing herein shall be construed to prohibit any person, firm or corporation from owning and operating facilities for generating, distributing, or furnishing electric energy for his or its own use or for the use of his or its tenants, all of which facilities and use are wholly on the same premises owned by such person, firm or corporation. (Ord. No. 22, Sec. 11)

Chapter 4.08

GAS FRANCHISE

Sections:

4.08.01 Franchise tax

4.08.01 Franchise tax. There is hereby levied an annual privilege and franchise tax against the Arkansas Louisiana Gas Company of four and one-quarter percent (44%) of the gross billings of Arkansas Louisiana Gas Company on all residential, industrial, commercial, private or public facilities in the City of Pottsville, Arkansas. That this tax shall be paid at the end of each quarter of every calendar year. (Ord. No. 81-2, Sec. 1)

Chapter 4.12

TELEPHONE FRANCHISE

Sections:

- 4.12.01 Authority granted for operation of telephone system
- 4.12.02 Location of poles and other installations
- 4.12.03 Supervision by city
- 4.12.04 Responsibilities of company
- 4.12.05 Exclusive privileges not given
- 4.12.06 Franchise tax
- 4.12.07 Permission trim trees
- 4.12.08 City examination of records

4.12.01 Authority granted for operation of telephone system. That permission be and is hereby granted to Continental Telephone Company of Arkansas, its successors and assigns, to construct, maintain and operate its poles, posts, cables, wires and all other necessary overhead apparatus or, over and along, and its conduits, ducts, mains, pipes, cables, wires, manholes, distributing poles and all other necessary underground appliances on, in, under and through the streets, alleys and highways, within the limits of the City of Pottsville, State of Arkansas, for a period of twenty-five (25) years from the date of the enactment hereof, and to use the property of other companies and permit other companies to use its property upon such arrangements as the two companies may agree, subject to the following conditions: (Ord. No. 81-6, Sec. 1)

4.12.02 Location of poles and other installations. That all poles erected by said Company shall be located so they will not interfere with the safety or convenience of persons traveling on or over the said streets, alleys and highways, and in the work of installing and maintaining its underground system, said Company shall not open or encumber more of any street, alley or highway than will be necessary to enable it to perform same with proper economy and efficiency; nor shall it permit such opening or encumbrance to remain for a longer period than shall be necessary to do the work for which said opening shall have been made. (Ord. No. 81-6, Sec. 2)

4.12.03 Supervision by city. That all work done under the provisions of this ordinance in said city, shall be subject to the supervision of the City Engineer or some other representative appointed by said Council and said Company shall replace and properly relay any sidewalk or street pavement which may have been displaced or damaged by it in the construction and maintenance of its system in said city. (Ord. No. 81-6, Sec. 3)

4.12.04 Responsibilities of company. That said Company shall maintain all poles, cables,

wires, conduits, ducts, mains, pipes, manholes, distribution poles and all other apparatus erected or constructed under the provisions of this ordinance, in good and safe order and condition; and shall at all times fully indemnify, protect, and save harmless the said city from and against all loss and necessary expenditures arising from the erection, construction and maintenance of its system in said city, or from its neglect or failure to maintain the said apparatus in good and safe order and condition. (Ord. No. 81-6, Sec. 4)

4.12.05 Exclusive privileges not given. That nothing in this ordinance shall be construed to grant unto the said Continental Telephone Company of Arkansas, any exclusive right, or to prevent a grant of similar privileges to other companies. (Ord. No. 81-6, Sec. 5)

4.12.06 Franchise tax. Beginning in 1981 and thereafter so long as Continental Telephone Company of Arkansas, its successors or assigns, shall operate a telephone system within the city, it shall pay to the city a franchise tax in an amount equal to four and twenty-five hundredths percent (4.25%) of basic local service excluding extension, terminal equipment, toll, yellow pages, and other miscellaneous equipment revenues within the corporate boundaries of the city at the end of the preceding calendar quarter, payment to be made to the city within thirty (30) days of the end of each calendar quarter, the first remittance to be made within thirty (30) days of September 30, 1981; provided, the amount of the tax levied herein by the city may be collected by the Telephone Company from those of the Telephone Company customers receiving local exchange telephone service within the corporate boundaries of the City of Pottsville, in accordance with the tariffs of the telephone company and the rules, regulations and orders of the Arkansas Public Service Commission. This ordinance does not restrict the city from the right to alter the tax, upon proper notification in advance, to the Telephone Company. (Ord. No. 81-6, Sec. 6)

4.12.07 Permission to trim trees. Permission is hereby granted to the Continental Telephone Company of Arkansas, to trim trees upon and overhanging streets, alleys, sidewalks and other places within the city so as to prevent the branches of such trees from coming into contact with the wires and cables of the telephone company. All of said trimming shall be done under the supervision and direction of any city official to whom said duties have been, or may be, delegated. (Ord. No. 81-6, Sec. 8)

4.12.08 City examination of records. The City of Pottsville shall have the right to examine and verify from the records of the Continental Telephone Company of Arkansas any data relating to the gross revenues of the telephone company derived from telephone service provided by the telephone company within the boundaries of the City of Pottsville. (Ord. No. 81-6, Sec. 9)

CHAPTER 4.16

TAX ON PRIVATE CLUBS

Sections:

4.16.01 City tax levied

4.16.01 City tax levied. All private clubs within the City serving alcoholic beverages shall pay to the City a supplemental tax equal to one-half (2) of the amount paid to the state. Proceeds from this tax shall be deposited in the City's General Fund.

CHAPTER 4.20

CABLE TELEVISION FRANCHISE

Sections:

4.20.01 Definitions
4.20.02 Grantee rights and responsibilities
4.20.03 Use permit
4.20.04 Construction and maintenance
4.20.05 Grantee rules and regulations
4.20.06 Quality
4.20.07 Extending service
4.20.08 Subscriber charges
4.20.09 Failure to perform
4.20.10 Indemnification of City
4.20.11 Removal of apparatus
4.20.12 Construction requirements
4.20.13 Relocations
4.20.14 Complaints
4.20.15 Interruptions
4.20.16 Failures beyond Grantee's control
4.20.17 Franchise tax
4.20.18 Financial reports
4.20.19 Interference with private signals
4.20.20 Right to repeal

4.20.01 Definitions For the purpose of the Agreement, the following terms, phrases, words, and abbreviations shall have the meanings outlined below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

Basic Cable Service means any serviced tier which includes the retransmission of local television broadcast signals.

City means for the purpose of this ordinance all areas within the city limits of Pottsville, a municipal corporation located in the county of Pope, state of Arkansas.

Cable Communication System, Cable Television System, System sometimes referred to as **Cable TV Systems** or **Broadband Communications Network** means a system of antennas, cables, amplifiers, towers, microwave links, cable casting studios, and any other conductors, terminals, converters, equipment or facilities, designed and constructed for the primary purpose of distributing video programming to subscribers and the secondary or additional purpose of producing, receiving, amplifying, storing, processing or distributing audio, video and digital signals.

Franchising Authority means the City Council of the city of Pottsville, or the lawful successor, transferee or assignee thereof.

Grantee means TCA Cable Partners, A Delaware general partnership or the lawful successor, transferee, or assignee thereof.

Gross Revenues means all revenues received for monthly cable service received by Grantee from subscribers of the System located within the city; provided, however, that such phrase not include any taxes or fees on cable service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.

Franchise Fee includes any tax, fee or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both solely because of their status as such.

Person means any individual firm, partnership, association, corporation, company, or organization of any kind.

Public Way shall mean the surface of and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips

or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the city which shall entitle the Franchise Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the System.

Rights-of-Way Easements and Private Property Subject to federal and state law, Grantee is authorized to provide cable television services to or to install any equipment or facilities upon, across, in or through governmental rights-of-way, public utility easements located on private property included but not limited to rights-of-way and easements located in apartment complexes, condominiums, mobile home parks and residential subdivision developments with private roads. (Ord. No. 2001-2, Sec. 1.)

4.20.02 Grantee rights and responsibilities There is hereby granted to TCA Cable Partners, its successors and assigns, hereinafter called Grantee, the right, privilege and permission for a period of fifteen years (15 years) from the effective date of this ordinance to construct, maintain and operate in the present and future streets, avenues, alleys and public ground and places of the city of Pottsville, Arkansas, and its successors, towers, poles, lines cables, necessary wiring and other apparatus and appurtenances for the purpose of receiving, amplifying and distributing television signals to the said city, the inhabitants thereto, and persons firms and corporations thereof, and to use and occupy such present and future streets, avenues, alleys and public ground and places for such purposes. There is hereby granted the further right, privilege and authority to the Grantee to lease, rent, or in any other manner obtain the use of such towers, poles, lines, cables and other equipment and facilities from any and all holders of public licenses and franchises within the corporate limits of the city of Pottsville, Arkansas, and to use such towers, poles, cables and other such equipment and facilities, subject to all the existing and future ordinances and regulation of the city. (Ord. No. 2001-2, Sec. 2.)

4.20.03 Use permit. This right-of-way for the use and purposes herein set forth shall not be exclusive but is merely a permit allowing Grantee to use the streets, roads and alleys of the city of Pottsville for the purposes herein set forth. Where any aerial plant is placed, the poles used for the Grantee's distribution system shall include those erected and maintained by the Grantee, the telephone company, the power and light company and others when and where practical. (Ord. No. 2001-2, Sec. 3)

4.20.04 Construction and maintenance The Grantee's transmission and distribution system, poles, wires and appurtenances shall be located, erected and maintained so as not to endanger or interfere with the lives of persons or to interfere with any improvements the city may deem proper to make or to hinder unnecessarily or obstruct the free use of the streets, alleys, bridges, or other public property.

Construction and maintenance of the transmission and distribution system, including house connections, shall be in accordance with the provisions of the National Electrical Safety Code,

of Fire Underwriters and such applicable ordinances and regulations of the city of Pottsville affecting electrical installations which may be presently in effect or may be enacted by the city of Pottsville. Installation and house drop hardware shall be uniform throughout the city, except the Grantee shall be free to change their hardware and installation procedure as improvements therein are developed except where changes are not permitted or required by regulations and ordinances of the city of Pottsville presently in effect or which may be enacted. (Ord. No. 2001-2, Sec. 4)

4.20.05 Grantee rules and regulations The Grantee shall have the right to prescribe reasonable service rules and regulations for the conduct of their business. Such service rules and regulations shall be kept on file at all times with the City Clerk. (Ord. No. 2001-2, Sec. 5)

4.20.06 Quality The antenna, receiving and distribution equipment shall be installed and maintained so as to provide pictures on subscriber receivers throughout the system essentially of the same quality as those received at the antenna site and/or transmitted by the Grantee. (Ord. No. 2001-2, Sec. 6)

4.20.07 Extending service Grantee shall extend service to any area within the city requiring up to 300 feet of cable per home adjacent to and contiguous with existing cable plant as measured from the extremity of the trunk cable nearest the unserved area. In such a case, a newly installed subscriber shall not be assessed or apportioned the cost for installation, except for the usual and normal connection fees paid by subscribers, so long as the system expansion is technically feasible.

However, where the residence, building, structure, development, or subdivision of a person requesting to be served cable television service by the Grantee in the city is located in areas requiring greater than 300 feet of cable per home, Grantee shall have the right to establish and collect an extension charge for erecting, constructing, or extending its cable, wire, or lines to the residence, building, structure, development, or subdivision desiring connection to Grantee's System. Grantee's charge for and decision to extend service will be based on the following criteria:

- A. Commercial feasibility
- B. Technical practicability
- C. Current cost to construct cable plant and facilities
- D. The number of permanent homes in and/or between the area to be served
- E. The day-to-day operational and maintenance costs of cable plant after it is constructed

This extension charge shall be uniform and shall be applied indiscriminately to all persons desiring service from or connection to Grantee's system. Grantee shall have the right to determine the

commercial feasibility of any request for service extension and shall have the right to refuse to serve an area or areas that would cause financial harm to the Grantee or be technically

impracticable to build or both.

Grantee shall provide basic cable service to all city buildings, and any public elementary or secondary school, at no charge, under the terms and conditions set forth in this agreement as long as same shall be and remain in full force and effect. (Ord. No. 2001-2, Sec. 7.)

4.20.08 Subscriber charges The Grantee herein, its employees and servants, shall have the right and privilege of soliciting subscribers to the service to be furnished by Grantee.

The Grantee shall be allowed to impose an administrative fee of \$5.00 to each subscriber invoice which has not been paid in full within twenty-one (21) days of the date of invoice to cover Grantee's expenses and costs of collection of such invoice amount. (Ord. No. 2001-2, Sec. 8.)

4.20.09 Failure to perform In the event of the failure of the Grantee to render community television service to the city of Pottsville as contemplated and provided for in this ordinance within a period of sixty (60) days from the effective date of this ordinance, the City Council of the city of Pottsville shall have the right, on reasonable notice to the Grantee, to declare this ordinance and the rights granted thereunder forfeited; provided, however, that failure to comply with the provisions by reason of cause or causes beyond the reasonable control of the Grantee, which could not be anticipated at the time of their acceptance by the Grantee, shall not be sufficient ground to declare a forfeiture. The Grantee shall not be held in default or noncompliance with the provisions of the franchise nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control. (Ord. No. 2001-2, Sec. 9)

4.20.10 Indemnification of city The Grantee shall indemnify and hold the city harmless at all times during the term of this grant from and against all claims for injury or damages to persons or property both real and personal caused by construction, erection, operation or maintenance of any structure, equipment, appliance or products authorized or used pursuant to authority of this ordinance.

The Grantee, upon receipt of due notice in writing from the city, shall defend at their own expense any action or proceedings against the city of Pottsville in which it is claimed that injury or damage arose from the Grantee's activities in the construction or operation of their television system; and in the event of a determination of liability, shall indemnify the city. (Ord. No. 2001-2, Sec. 10)

4.20.11 Removal of apparatus Upon termination or forfeiture of this grant, the Grantee shall, within a reasonable time, remove its poles, cables, wires and appliances from the city streets, lanes, roads, sidewalks, alleys, bridges, highways, other public places and from the premises of

Grantee's customers within the city and subsequent additions thereto. (Ord. No. 2001-2, Sec. 11)

8.20.12 Construction requirements In the maintenance and operation of the television transmission and distribution system of Grantee in the streets, alleys and other public places and in the course of any new construction or addition to the facilities of the Grantee, the Grantee shall proceed as to cause the least possible inconvenience to the general public any opening or obstruction in the streets or other public places, made by the Grantee in the course of its operations, shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which during periods of dusk and darkness shall be clearly designated by red warning lights.

Whenever the Grantee shall take up or disturb any pavement, sidewalk or other improvement of any street, avenue, alley or other public place, the same shall be replaced and the surface restored in as good condition as before entry within forty-eight (48) hours after completion of the Grantee's work. Upon failure of the Grantee to make such restoration within such time, or to begin such restoration within such time if the restoration cannot reasonably be completed within such time, or upon the Grantee's delay of more than twenty-four (24) hours in the continuation of restoration previously begun, the city may serve upon the Grantee notice of the city's intent to cause the restoration to be made, and, unless the Grantee, within twenty-four (24) hours after receipt of such notice, shall begin or resume the proper restoration to be made, the city may cause the proper restoration to be made, including the removal of excess dirt and the expense of same shall be paid by the Grantee upon demand by the city.

The Grantee shall at all times comply with any and all rules and regulations which the city has made or may make to apply to the public generally with reference to the removal or replacement of pavements and to excavations in streets and other public places, not inconsistent with its use for the purposes contemplated by this ordinance. (Ord. No. 2001-2, Sec. 12)

4.20.13 Relocations Whenever the city of Pottsville finds that the construction of any of its streets and properties require the relocation of any part of Grantee's system, the city of Pottsville may order the Grantee to relocate the Grantee's properties therefor, and such shall be done at the sole expense of the Grantee. (Ord. No. 2001-2, Sec. 13)

4.20.14 Complaints As expeditiously as reasonably possible after receipt of subscriber complaints regarding cable television operation, Grantee shall investigate such complaints and resolve them to the extent reasonably possible and agents shall be available in the city for such purposes. The Grantee shall provide a local telephone number or toll free telephone number to the inhabitants of the city of Pottsville which can be used by inhabitants of the city of Pottsville to contact the Grantee for

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purposes of registering subscriber complaints. The Mayor of the city of Pottsville has primary responsibility for the continuing administration of the Grantee's rights and privileges herein and of the reasonable implementation of the foregoing complaint procedures. Notice of the foregoing will be given by the Grantee to each new subscriber at the time of the initial regular subscription

to the cable system. (Ord. No. 2001-2, Sec. 14)

4.20.15 Interruptions When a customer's service is reported or found to be interrupted, it shall be restored as promptly as possible, but in the event it remains out of order though no fault of the customer, in excess of twenty-four (24) consecutive hours after knowledge by the company of the interruption, the company will refund the pro-rata part of that month's charges for the period of days during which the service was not provided. This refund may be accomplished by a credit on a subsequent bill for cable service. (Ord. No. 2001-2, Sec. 15)

4.20.16 Failures beyond Grantee's control In the event the television section or the community antenna system shall be interrupted or fail to function by reason of an act of God, accident or cause otherwise beyond the control of the Grantee, the Grantee shall restore the service in a reasonable time and such interruption shall not constitute a breach of this ordinance. (Ord. No. 2001-2, Sec. 16)

4.20.17 Franchise tax All provisions by law provided and prescribed for the granting of this permit and authority are hereby to have been fully complied with and the permit shall be in full force and effect from and after its execution and approval. The Grantee shall pay to the city of Pottsville as a franchise tax and as compensation for the right and privileges enjoyed hereunder, the maximum allowable franchise fee under federal law, five percent (5%) of gross subscriber revenue, payable quarterly at the end of March, June, September and December of each year. Payment shall be made to the city of Pottsville within forty-five (45) days after the expiration of each quarter. The consideration set forth in this section shall be paid and received in lieu of any tax, license, charge, fee, or any other character of charge for use and occupancy of streets, alleys, and public places of the city; and in lieu of any imposition other than the usual general or special ad valorem taxes now or hereafter levied.

Should the city not have the legal power to agree that the payment of the foregoing cash consideration shall be in lieu of the taxes, license, charges, fees, rentals, and taxes afore said, then the city agrees that it will apply so much of said payment as may be necessary to the satisfaction of the Grantee's obligations, if any, to pay any such taxes, licenses, charges, fee or rentals.

The period of any limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due. Unless the Franchising authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, within three (3)

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years from and after such payment due date, such recovery shall be barred and the Franchising Authority shall be stopped from asserting any claims whatsoever against the Grantee relating to such alleged deficiencies. (Ord. No. 2001-2, Sec. 17)

4.20.18 Financial reports Annually, Grantee shall supply to the city a copy of a financial

statement prepared by a Certified Public Accountant reporting the gross annual basic subscriber revenues of the Grantee for the applicable fiscal period. The city shall have the right to inspect either by employees or by an independently retained Certified Public Accountant at any reasonable time, the financial records of the Grantee. (Ord. No. 2001-2, Sec. 18)

4.20.19 Interference with private signals That the 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 receive by private receiver's sets owned by persons not subscribing to Grantee's service. (Ord. No. 2001-2, Sec. 19)

4.20.20 Right to repeal If the Grantee shall fail to comply with any of the provisions of this grant or default in any of its obligations except for causes beyond the reasonable control of the Grantee and shall fail, within thirty (30) days after written notice from the city to correct such default or non-compliance, the city shall have the right to repeal this ordinance and all rights of the Grantee hereunder after giving the Grantee reasonable notice of any meeting called for such purposes and an opportunity for the Grantee to be heard at such meetings. (Ord. No. 2001-2,- Sec. 20)

HOME SOLICITATION SALES PERMIT

Sections:

4.24.01	Required
4.24.02	Fee
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4.24.04	Bond
4.24.05	Charitable solicitations on streets
4.24.06	Permit for charitable solicitations for hire
4.24.07	Penalty
4.24.08	Damages

4.24.01 Required. Prior to any "home solicitation sales" no person, party, company or other entity shall solicit or request contributions or sell goods, tickets of admission, advertising or any other thing of value prior to registering and receiving a permit for such solicitations at the following address:

Pottsville Water Works Department
P. O. Box 93, Ash Street
Pottsville, Arkansas 72858
Phone: 968-3029

(Ord. No. 93-6)

4.24.02 Fee. Each application for such a requested permit for solicitation shall be assessed in the sum of Fifty Dollars (\$50.00) for said permit. (Ord. No. 93-6)

4.24.03 Definitions.

A. "Home Solicitation Sale" means a cash sale or consumer credit sale of goods, other than insurance, or other services which the seller or person acting for him engages in a personal solicitation of the sale other than appropriate trade premises in an amount more than Twenty-Five

Dollars (\$25.00). This shall not include a sale made pursuant to negotiations between the parties at a business establishment, at a fixed location, or goods or services where offered or exhibited for sale, or a sale in which the buyer has initiated to contact and specifically requested to seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If, in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion.

B. "Appropriate Trade Premises" means the premises in which the owner or seller normally carries on a business or where goods are normally offered or exposed for sale in the course of business carried on at those premises.

C. "Goods" means tangible chattels bought for use primarily for personal, family or household purposes.

D. "Services" means work, labor and services furnished in connection with the repair, alteration or improvement of residential premises, but does not include the services of lawyers, real estate brokers, securities dealers or investment counselors, physicians, optometrists or dentists.

E. "Seller" means any person, partnership, corporation or association engaged in the "door-to-door" or telephone sale of consumer goods or services. (Ord. No. 93-6)

4.24.04 Bond.

A. For Solicitors, Peddlers, Hawkers, etc. Any party or parties making home solicitation sales within the City of Pottsville, Arkansas, offering or selling merchandise or services and not having a regular permanent place of business in the City, prior to engaging in such activity, shall execute a bond with good and sufficient surety payable to the City for the use and benefit of any person damaged by a breach thereof. The bond shall ensure performance of services, delivery of merchandise and proper application of moneys received therefor.

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B. The bond shall be in an amount approved by the Chief of Police or designated agent, which amount is found, after considering the money likely to be involved or the value of services to be rendered or merchandise to be delivered, to be adequate to protect the public against fraud or dishonest dealing. The bond shall not be an amount less than Five Hundred Dollars (\$500.00) cash or an equivalent commercial bond.

C. A fee of Fifteen Dollars (\$15.00) shall be paid to the City by each person executing

such a bond in order to defray the costs of administering this section. The fee so collected shall be deposited into the General Fund. (Ord. No. 93-6)

4.24.04 Charitable solicitation on streets.

A. No person shall solicit donations on the streets for charitable, religious or other bona fide non-profit purposes without a permit from the City.

B. To obtain such a permit, a person shall submit in writing to the City an application, to be provided, giving the name, headquarters, address of the organization they represent and shall solicit for, and the name and addresses of any and all solicitors and any and all other information which may be required by the City.

C. The City Manager shall administer the provisions of this section and promulgate regulations governing procedure for application and issuance of permits. (Ord. No. 93-6)

4.24.06 Permit for charitable solicitors for hire. A person soliciting funds for charitable purposes either by means of the sale of tickets or otherwise where such person receives remuneration for such services or is in any manner financially interested in the results of such ticket sale, shall, before engaging in any such business, secure a permit. Before any such permit shall be issued, the Chief of Police or designated agent shall investigate the objects of charity involved and shall approve the objects as being bona fide projects. (Ord. No. 93-6)

4.24.07 Penalty. Any person, firm, partnership, corporation or other entity who knowingly and willfully commits a violation of this ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than Two Hundred Fifty Dollars (\$250.00) or to imprisonment of not exceeding one (1) year or both a fine and imprisonment. (Ord. No. 93-6)

4.24.08 Damages. For violation which is subject to provisions of this chapter, the consumer shall recover from the persons violating this chapter an amount equal to:

1. Ten percent (10%) of the transaction total or One Hundred Dollars (\$100.00), whichever

is greater, and

2. The actual damages, including any incidental, consequential and special damages sustained by the consumer as a result of the violation. (Ord. No. 93-6)

CHAPTER 4.28

BUSINESS PERMITS

Sections:

4.28.01	Definitions
4.28.02	Permit required
4.28.03	Procurement of permit
4.28.04	Application
4.28.05	Peddlers - Permit required
4.28.06	Garage sales, etc.
4.28.07	Enforcement
4.28.08	Non-transferable
4.28.09	Display
4.28.10	Penalties

4.28.01 Definitions The term Aperson@ as used herein shall refer to any sole proprietorship, partnership, corporation, association, firm, or other legal entity which engages in, carries on or follows any trade, business, vocation, profession or calling within the City of Pottsville except such persons who are exempt from payment of occupation taxes and licensing procedures by the laws of the State of Arkansas or the laws of the United States. (Ord. No. 97-5, Sec. 1.)

4.28.02 Permit required It shall be unlawful for any person, firm, individual or corporation, within the city limits of the City of Pottsville to engage in, carry on or follow any trade, business vocation, profession or calling without first procured from the Pottsville City

Hall, a business permit, and having paid therefore a fee of \$25.00 for the privilege of engaging in, carrying on or following such trade, business, profession, vacation or calling in said city.

Current business will obtain their permit within thirty (30) days of the passage of this Ordinance and will be responsible for a \$12.50 fee prorated for the remainder of this year.

New business will pay a lesser fee for the remainder of this year at a rate of \$2.00 per month. (Ord. No. 97-5, Sec. 2.)

4.28.03 Procurement of permit All permits provided for in this Ordinance shall be issued by the City of Pottsville. The permit shall be issued for a term beginning as of January 1. Business holding permits that intend to remain in business during the following year should renew their permit for a fee of \$5.00 during the month of December. (Ord. No. 97-5, Sec. 3.)

4.28.04 Application Application for permit under this chapter shall be made at the Pottsville City Hall in writing, upon blank forms to be furnished by the city. Each application shall indicate the character of business for which permits is asked; number of employees; location of business; owner, manager or person responsible in case of an emergency, and any other information requested by the City of Pottsville and be subscribed and sworn by the proper person or officer of the firm or corporation making application. (Ord. No. 97-5, Sec. 4.)

4.28.05 Peddlers - Permit required It shall be unlawful for any person not having an established business in the city, to haul or bring into the city, either directly or indirectly, any goods, wares, merchandise, provisions, fruits, or other food products, with the intention of selling or disposing of same from any truck or vehicle, railroad car, room store, warehouse, building, lot or in any other manner, whatsoever, either at wholesale or retail; by soliciting orders therefore from house to house, or from store to store, or taking orders for the future delivery thereof, or selling directly or otherwise, at wholesale, retail, without a bona fide intention of selling or disposing of such goods, wares, merchandise, fish meats, provision, fruit, food products, or other such property, through a regularly established place of business within the city, without first obtaining a permit for such purpose, as is herein provided.

Peddlers and other Aroad-side vendors@ will be required to designate on their permit application the location of their road-side business. No permit shall be issued unless the road-side vendor produces, at the time of the application, written permission from the property owner allowing the vendor to conduct his business at said location. (Ord. No. 97-5, Sec. 5.)

4.28.06 Garage sales, etc. Property owners shall be allowed to, on a limited basis, carrying on the sale of merchandise in the form of garage sales, porch sales, rummage sales, or any similar type sale as long as the provisions of this Ordinance are followed.

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The property sold at the aforementioned sales must be personal property owned by the person or persons conducting said sale, and shall not be property that was purchased for the purpose of resale. No permit shall be required for a garage sale or other similar sale. Said sales shall be for a maximum of three days and no person shall engage in garage sales of this nature more than three times per year. Garage sales that last longer than three consecutive days, or persons conducting more than three sales per year in a residential area shall be deemed to be conducting a business, and shall be in violation of this Ordinance.

No signs advertising said sale will be placed on utility poles, trees or street right-of-ways

and no such signs will be placed on private property without written authorization by the owner of said private property. Any sign put up shall be removed within twenty-four (24) hours after termination of sale. (Ord. No. 97-5, Sec. 6.)

4.28.07 Enforcement The Pottsville Police Department, when other duties permit, shall ensure that all businesses have a permit posted at the location of the business or sale. (Ord. No. 97-5, Sec. 7.)

4.28.08 Non-transferable No permit issued under this Ordinance shall be transferred, except from one location to another location, and no permit shall be transferred in any event from one business to another. (Ord. NO. 97-5, Sec. 8.)

4.28.09 Display Each permit shall be posted in a conspicuous place where such business or corporation is carried on and the holder of such permit shall immediately show the same to any office of the City upon being requested to do so. Each road-side vendor shall display his permit in a manner such that it may be seen from the curb or road-side by city inspectors. (Ord. No. 97-5, Sec. 9.)

4.28.10 Penalties Any person violating the provisions of this ordinance and/or any person who makes a false affidavit or statement or report to the City as a part of the procedures recognized by this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in an amount not less than \$5.00 nor more than \$500.00 and each day of violation shall constitute a separate offense. (Ord. No. 97-5, Sec. 10.)

