

CHAPTER 50**CABLE TELEVISION SYSTEM****SUBCHAPTER 1****CATV FRANCHISE**

50.01 DEFINITIONS. The following words and phrases, when used in this Chapter, shall, for the purposes of this Chapter, have the meaning ascribed to them in this section:

1. "Cable Television System": means any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals, by wire or cable, to subscribing members of the public who pay for such services.
2. "Channel": means the segment of the electromagnetic spectrum to which a source of television transmission is assigned.
3. "City": means the City of Windsor Heights, Iowa. When the context so requires, the term "City" shall mean and include the City, its officers, agents, employees, servants and independent contractors.
4. "FCC": means the Federal Communications Commission.
5. "Franchise": means the rights, privileges and authority granted by the City to the Grantee hereunder and shall include all of the terms and conditions of this franchise ordinance.
6. "Grantee": means Heritage Cablevision, Inc., a corporation organized and existing under the laws of the State of Iowa, its successors and assigns. When the context so requires, the term "Grantee" shall mean and include the Grantee, its officers, agents, employees, servants and independent contractors.
7. "Person": means any individual, or any corporation, business, firm or other entity, and shall be construed as singular or plural, or masculine, feminine or neuter, as the context may require.
8. "Private Property": means all property, real, personal or mixed, owned by a private person, including property owned by a public utility not owned or operated by the City.

9. "Property of the Grantee": means all property, real, personal or mixed, owned or used by the Grantee however arising from or related to or connected with the franchise.

10. "Public Property": means all property, real, personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

50.02 GRANT OF FRANCHISE. Subject to the terms and conditions of this Chapter, the City hereby grants to the Grantee the non-exclusive right, privilege and authority to construct, operate, maintain, repair, replace, renew, reconstruct and remove a cable television system within the corporate limits of the City, including the non-exclusive right, privilege and authority:

1. To sell and supply audio and video communications services to persons within the City;
2. To use public property within the City;
3. To engage in such further activities within the City as may now or hereinafter be consistent with generally accepted principles applicable to the operation of a cable television system.

50.03 EFFECTIVE DATE OF FRANCHISE. The franchise shall become effective from and after the effective date of this franchise ordinance and compliance by the Grantee with Section 50.04 of this franchise ordinance.

50.04 ACCEPTANCE OF FRANCHISE. Prior to the effective date of the franchise, the Grantee shall file with the City its written unconditional acceptance of the terms and conditions of this franchise ordinance and its written promise to comply with all of the terms and conditions of this franchise ordinance.

50.05 TERM OF FRANCHISE. The term of the franchise shall be a period of twenty-five (25) years commencing on the effective date of the franchise, as hereinbefore provided, unless sooner terminated, as hereinafter provided.

50.06 USE OF PROPERTY. The Grantee may use public property within the City and, with the written consent of the owner thereof, private property within the City, in furtherance of such activities within the City as may now or hereinafter be consistent with generally accepted principles applicable to the operation of a cable television system subject, however, to the following restrictions:

1. The Grantee shall comply with all governmental laws, ordinances, rules or regulations as may now or hereinafter be applicable thereto.

2. The Grantee shall not use or occupy or permit public property or private property to be used or occupied or do or permit anything to be done on or about public property or private property which will, in any manner:
- A. Impair the owner's interest in or title thereto;
 - B. Impair any mortgage or lease as may now or hereinafter be applicable thereto;
 - C. Adversely affect the then value or character thereof;
 - D. Cause or be likely to cause structural damage thereto, or any part thereof;
 - E. Cause or be likely to cause any damage or injury to any utility service available thereto;
 - F. Create a public or private nuisance, cause any offensive or obnoxious vibration, noise, odor or undesirable effect or interfere with the safety, comfort or convenience of the owner thereof, and persons lawfully on or about the same;
 - G. Violate the rules, regulations and requirements of any person furnishing utilities or services thereto; or
 - H. Make void or voidable any insurance then in force affecting the same or cause an increase in the rates applicable thereto.

50.07 TAXES. The Grantee shall pay all real estate taxes, special assessments, personal property taxes, license fees, permit fees and other charges of a like nature which may be taxed, charged, assessed, levied or imposed upon the property of the Grantee and upon any services rendered by the Grantee.

50.08 INSURANCE. The Grantee shall, during the initial term of the franchise, or any extension thereof, maintain the broadest form of general comprehensive public liability insurance available to insure against claims for personal injury or property damage however arising from or related to or connected with the construction, operation, maintenance, repair, replacement, renewal, reconstruction and removal of the cable television system of the Grantee and/or the obligations and liabilities assumed by the Grantee under the franchise.

The limits of said coverage shall be at least \$100,000/\$300,000 for personal injury and \$100,000 for property damage, with so-called umbrella coverage of at least \$1,000,000.

The insurance shall be issued by an insurance company of recognized responsibility licensed to do business in Iowa.

The insurance shall not be changed or cancelled without fifteen (15) days written notice, to and approval by, the City.

The insurance shall name the City, its officers, agents, employees, servants and independent contractors as additional named insureds.

Within ten (10) days after the commencement of the initial term of the franchise, and thereafter within ten (10) days prior to the expiration of the insurance, the Grantee shall deliver to the City certificates of insurance certifying that the insurance is in full force and effect.

50.09 REPAIRS. During the term of the franchise, Grantee shall at its own expense, make all necessary repairs and replacements to the property of the Grantee.

Such repairs and replacements, interior and exterior, ordinary as well as extraordinary, and structural as well as non-structural, shall be made promptly, as and when needed.

50.10 HOLD HARMLESS. During the term of the franchise, Grantee absolutely assumes and agrees to pay the City for, and the Grantee forever indemnifies the City against, and agrees to hold and save the City harmless from, any and all loss, damage, injury, costs, expenses, liability, claims, settlements, judgments, decrees and awards of every kind and nature whatsoever, including attorney's fees, costs and disbursements, that may ever be claimed against the City by any person whatsoever, or on account of any actual or alleged loss, damage or injury to any Property whatsoever, however arising from or related to or connected with, directly or indirectly, (a) injury to or death of any person, or loss, damage or injury to any property owned or used by any person, while on, about or adjacent to any property of the Grantee, and/or (b) the non-observance by the Grantee of the provisions of any laws, statutes, ordinances, resolutions, regulations or rules duly promulgated by any governmental entity which may be applicable, directly or indirectly, to rights, privileges and authority, and the obligations and liabilities, assumed by the Grantee under the franchise, and/or (c) the non-observance by the Grantee of any of the terms and conditions of the franchise, and/or (d) the granting of the franchise.

50.11 ASSIGNMENT. The Grantee shall not assign or transfer the franchise, nor any part of the rights, privileges and authority granted thereunder, without the written consent of the City.

50.12 CHANGE OF STRUCTURE OR OWNERSHIP. The Grantee shall not change its corporate structure, nor change the ownership of its capital stock outstanding on the effective date of the franchise to the extent of twenty-five (25) percent, or more, without the written consent of the City.

INSOLVENCY OF GRANTEE. In the event that the Grantee shall become insolvent, or be declared a bankrupt, or the property of the Grantee shall come into the possession of any receiver, assignee or other officer acting under an order of court, and any such receiver, assignee or other such officer shall not be discharged within sixty (60) days after taking possession of such property, the City may, at its option, terminate the franchise by giving written notice thereof to the Grantee.

50.14 DEFAULT OF GRANTEE. In the event the Grantee shall fail to comply with any of the terms and conditions of the franchise within thirty (30) days after receipt of notice in writing from the City specifying the failure or default, the City may, at its option, terminate the franchise by giving written notice thereof to the Grantee. This section shall not apply to failures or defaults beyond the reasonable control of the Grantee.

50.15 TERMINATION. Upon termination of the franchise for any cause, the Grantee shall remove the property of the Grantee from all public property and private property within the City and shall return such public property and private property to the owner thereof in the same condition as when the property of the Grantee was placed thereon, ordinary wear and tear excepted.

50.16 DEFENSES OF GRANTEE. In the event that the Grantee should set up against the City any claim that any term or condition of the franchise is unreasonable, arbitrary, illegal or void, or that the City did not have the power or authority to make such term or condition the City may, at its option, terminate the franchise in the manner hereinbefore provided.

50.17 ARBITRATION. Except as otherwise provided herein, any controversy between the City and the Grantee regarding the rights, duties or liabilities of either party under the franchise shall be settled by arbitration. This section shall not apply to termination proceedings under 50.14 of this franchise ordinance.

Such arbitration shall be before three (3) disinterested arbitrators, one (1) named by the City, one (1) named by the Grantee and one (1) named by the two (2) thus chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the State of Iowa.

50.18 SEVERABILITY. If any section, provision or part of this franchise ordinance shall be adjudged to be unconstitutional, illegal, invalid or inapplicable to any person or circumstances, such adjudication shall not affect the validity of this franchise ordinance as a whole, or any section, provision or part thereof not adjudged to be unconstitutional, illegal, invalid or inapplicable to any person or circumstances.

50.19 EFFECTIVE DATE. This franchise ordinance shall be in full force and effect from and after its final passage, approval and publication as required by law.

EDITOR'S NOTE

Ordinance No. 82-2, adopting a cable television franchise for the city was passed

and adopted on July 19, 1982. Voters approved the franchise at an election held on September 21, 1982. The franchise was accepted by the Grantee on September 28, 1982.

SUBCHAPTER 2**CATV REGULATIONS**

50.20 DEFINITIONS. The words and phrases defined in Section 50.01 shall, for the purposes of this Subchapter have the same meanings ascribed to them as are ascribed to them in Section 50.01, which definitions are incorporated herein by this reference.

50.21 COMPLIANCE WITH APPLICABLE LAWS. During the initial term of the franchise, or any extension thereof, the Grantee shall comply with all governmental laws, ordinances, rules or regulations as may now or hereinafter be applicable to the construction, operation, maintenance, repair, replacement, renewal, reconstruction and removal of a cable television system, the sale and supply of audio and video communications services, the use of public property and private property and the engagement in such further activities as may now or hereinafter be consistent with generally accepted principles applicable to the operation of a cable television system.

Any modifications to Section 76.31 of Subpart C of Regulations of the FCC applicable to a cable television system shall be incorporated into the franchise by amendment to this ordinance within one (1) year of the effective date of such modification, or at the time of renewal of the franchise, whichever occurs first.

50.22 CERTIFICATE OF COMPLIANCE. Within ninety (90) days from the effective date of the franchise, the Grantee shall make application to the FCC for a certificate of compliance.

50.23 CONSTRUCTION AND OPERATION SCHEDULE. Within one (1) year after receiving FCC certification, the Grantee shall complete its studios and cablecasting facilities and the same shall be fully operational.

Within one (1) year after receiving FCC certification, the Grantee shall extend energized trunk cable to at least twenty (20) percent of the potential subscriber terminals in the City. Thereafter, the Grantee shall extend energized trunk cable to at least twenty (20) percent of the potential subscriber terminals in the City each year until the system is complete.

50.24 INSTALLATION AND MAINTENANCE OF PROPERTY OF THE GRANTEE. During the initial term of the franchise, or any extension thereof, the property of the Grantee shall be constructed, operated, maintained, repaired, replaced, renewed, reconstructed and removed in accordance with generally accepted engineering principles so as not to endanger or interfere with the lives of persons or to interfere with improvements which the City may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic or use of public property or private property.

50.25 INTERFERENCE. The Grantee's cable television system shall be so designed, engineered and maintained so as not to interfere with the radio and television reception of persons who are not subscribers of the Grantee.

50.26 INSTALLATION OF CABLES. The Grantee shall have the right, privilege and authority to lease, rent, or in any other manner obtain the use of wooden poles with overhead lines, conduits, trenches, ducts, lines, cable, and other equipment and facilities from any and all holders of public licenses and franchises within the City, and to use such poles, conduits, trenches, ducts, lines, and cable in the course of its business. The Grantee shall install its cable on existing poles owned by other holder of public licenses and franchises with the City whenever possible for the installation of its cable. When installation of cable on poles is insufficient, or when holder of another public license or franchise has installed underground cable, then in that event, the cable used by the Grantee shall be installed underground.

50.27 CITY USE OF EXISTING POLES. The City shall and does hereby retain the right to utilize the existing poles for future City use, and to require the removal of the cable by the Grantee where existing poles are not sufficient to adequately handle the proposed City use and the Grantee's cable.

50.28 PRIOR APPROVAL OF UNDERGROUND INSTALLATIONS. The Grantee shall submit detailed drawings of all proposed underground cable installations to the City for approval prior to commencement of construction and shall not deviate therefrom without approval of the City.

50.29 RESTORATION OF GROUND SURFACE. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed in as good a condition as before said work was commenced.

50.30 ALTERATION OF GRADE. In the event that, during the initial term of the franchise, or any extension thereof, the City shall elect to alter or change the grade of any street, alley, or public way, the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

50.31 TEMPORARY REMOVAL OF CABLES. The Grantee shall, on the request of any person holding a building permit issued by the City, temporarily raise or lower its cables to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of cables shall be paid by the person requesting the same and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than five (5) days' advance notice to arrange for such temporary cable changes.

50.32 TREE TRIMMING. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the cable of the Grantee. All trimming shall be done under the supervision and direction of the City and at the expense of the Grantee.

50.33 SERVICE REQUIREMENTS. During the initial term of the franchise, or an extension thereof, the Grantee shall furnish reasonable, adequate and efficient cable television service to subscriber terminals.

The foregoing requirement may be temporarily suspended due to circumstances beyond the reasonable control of the Grantee.

50.34 PERFORMANCE STANDARDS. The Grantee shall produce a picture in black and white or in color that is undistorted, free from ghost images and accompanied by proper sound on typical standard television sets in good repair. The Grantee shall also transmit signals of adequate strength to produce good pictures with good sound at all subscriber terminals throughout the City without causing cross modulation in the cables or interfering with other electrical or electronic systems.

50.35 CHANNEL CAPACITY AND PERFORMANCE. During the initial term of the franchise, or any extension thereof, the cable television system of the Grantee shall conform to the channel capacity and performance requirements contained in the then current regulations of the FCC.

50.36 SUBSCRIBER TERMINALS IN CITY BUILDINGS AND SCHOOLS. During the initial term of the franchise, or any extension thereof, the Grantee shall, at its sole cost, install and maintain subscriber terminals in such buildings owned or used by the City, and in such buildings owned or used by recognized educational authorities within the City, both public and private, as may be designated by the governing body having jurisdiction thereof. Such subscriber terminals shall be placed in such location or locations within such buildings as may be designated by the governing body having jurisdiction thereof.

50.37 USE OF EDUCATION AND LOCAL GOVERNMENT ACCESS CHANNELS. During the initial term of the franchise, or any extension thereof, the Grantee shall, at its sole cost, make available to the City, or its assigns, at least one channel to be used by the City, or its assigns, for any purpose.

During the initial term of the franchise, or any extension thereof, the Grantee shall, at its sole cost, make available to recognized educational authorities within the City, both public and private, at least one channel to be used by them for any purpose.

During the initial term of the franchise, or any extension thereof, the Grantee shall, at its sole cost, make available to the City and recognized educational authorities within the City, both public and private, at reasonable times and on reasonable notice, the use of its studio, other production facilities and related equipment for origination cablecasting. In addition thereto, the Grantee shall provide, at its sole cost, such technical assistance as may be reasonably necessary to produce such origination cablecasting.

50.38 EMERGENCY WARNING SYSTEM. The Grantee shall equip its cable television system with an emergency warning override so that emergency information can be given simultaneously on

all channels of the system.

During an emergency, the Grantee shall allow the City the complete use of the system.

50.39 TELECAST OF EDUCATIONAL ACTIVITIES. The Grantee shall not cablecast, tape, reproduce or otherwise convey to its subscribers the activities of any recognized educational authority, public or private, without the written consent of the governing body of such authority.

50.40 COLOR CABLECASTING. The cable television system of the Grantee shall be capable of color cablecasting.

Any signal received by the Grantee in color shall be cablecast in color.

50.41 PROGRAM ALTERATION. Any signal received by the Grantee from a television broadcast station shall be cablecast by the Grantee in its entirety, as received, without alteration.

50.42 SUBSCRIBER RATES AND CHARGES. Except as otherwise provided in the franchise, the Grantee shall have the right, privilege and authority to charge the rates and charges fixed in this section to its subscribers for its services.

Single-user rates and charges shall be applicable to all installations except where one billing is made for three (3) or more outlets.

Multiple-user rates and charges shall be applicable to all installations where one billing is made for three (3) or more outlets.

Single-user rates and charges may be as follows:

<u>Description</u>	<u>Charge</u>
Installation - new	\$25.00
Installation - Reconnect (no change)	7.50
Installation - additional	5.00
Installation - relocation	5.00
Service charge - initial outlet	5.00/month
Service charge - additional outlets (each)	1.50/month
Multi-channel converter (rental)	1.00/month
Multi-channel connector - purchase	35.00

Multi-user rates and charges may be negotiated between the Grantee and the subscriber, but in no event shall the multi-user rates and charges for any subscriber exceed the aggregate of rates and charges which would be charged to the multi-user if computed on the basis of single-user rates and charges.

50.43 CHANGE OF SUBSCRIBER RATES AND CHARGES. Subscriber rates and charges specified in Section 50.42 may be raised once in calendar year 1979, and once every calendar year thereafter by a percentage not to exceed the percentage increase of the Consumer Price Index, All Urban Consumers, United States City Average, All Items, for the period of time that has elapsed since the last increase of Grantee's rates and charges. The index figures provided by the Bureau of Labor Statistics, United States Department of Labor, shall be determinative for this purpose.

Prior to the effective date of any increase of rates and charges based on the Consumer Price Index, a Grantee shall file with the City Clerk a schedule of new rates and charges together with their effective date.

In the event a Grantee shall wish to increase rates beyond the percentage increase of the Consumer Price Index allowed by this section, a Grantee shall obtain the prior approval of the City Council. Such approval may be given upon a finding by the City Council that a change in rates or charges is necessary to further the public interest or to allow Grantee to realize a fair rate of return on its investment. Before any application for an increase in rates or charges upon this subsection may be considered and acted upon, it shall be filed with the City Council, which shall then publish notice of the application for two consecutive weeks in a newspaper of general circulation in the City. The notice shall specify a time and place for a public hearing. At such hearing, any interested person shall have the right to give testimony and present evidence on the change in rates or charges proposed. The City Council shall review the testimony and evidence and after such hearing shall determine whether the rates and charges in question shall be increased, decreased, or shall remain the same.

50.44 MORATORIUM ON CHANGE OF SUBSCRIBER RATES AND CHARGES. The Grantee shall not, within three (3) years from the effective date of the franchise, seek to increase the subscriber rates and changes provided in Section 50.42 hereof.

50.45 RATES AND CHARGES FOR NEW SERVICES. In the event that the Grantee may offer services for which rates and charges are not now prescribed by Section 50.42 hereof, the Grantee shall make application to the City to establish appropriate rates and charges for such services. The procedure specified in Section 50.43 hereof shall be applicable to such application.

50.46 SERVICE RULES AND REGULATIONS. The Grantee shall have the right to prescribe reasonable service rules and regulations and operating rules for the conduct of its business. Such rules and regulations shall be consistent with the terms and conditions of the franchise. The Grantee shall file such rules and regulations, and all amendments thereto, with the City.

50.47 SERVICE AGREEMENTS. The Grantee shall have the right to prescribe a reasonable form of service agreement for use between the Grantee and its subscribers.

Such service agreement shall be consistent with the terms and conditions of the franchise.

The Grantee shall submit its proposed form of service agreement, and all proposed amendments thereto, to the City for approval.

50.48 OFFICE OF GRANTEE. During the initial term of the franchise, or any extension thereof, the Grantee shall maintain an office within Polk County, Iowa, for the purpose of receiving, investigating and responding to complaints and grievances with respect to the quality of the service rendered by the Grantee, equipment malfunctions, and other similar matters pertaining to the cable television system of the Grantee.

50.49 PROCEDURE TO HANDLE COMPLAINTS AND GRIEVANCES. The procedure to handle complaints and grievances with respect to the quality of the services rendered by the Grantee, equipment malfunctions and other similar matters pertaining to the cable television system of the Grantee shall be as follows:

1. Filing of Complaint. Within thirty (30) days from the occurrence of the facts and circumstances giving rise to a complaint or grievance, and not thereafter, the complainant shall state his complaint or grievance to the Grantee in writing. In the event that a complaint or grievance is received by the City, the City shall forward such complaint or grievance to the Grantee in writing.
2. Response by Grantee. Within five (5) days from the receipt of a complaint or grievance by the Grantee, the Grantee shall state to the complainant its intentions with respect to the complaint or grievance in writing.
3. Arbitration. In the event that the complaint or grievance is not resolved to the satisfaction of the complainant within fifteen (15) days from the receipt thereof by the Grantee, the complaint or grievance shall be settled by arbitration. Such arbitration shall be before three (3) disinterested arbitrators, one (1) named by the complainant, one (1) named by the Grantee, and one (1) named by the two (2) thus chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the State of Iowa.

50.50 REPORT TO CITY. On or before the tenth (10th) day of each calendar month, the Grantee shall file a report in writing with the City stating the date and substance of each complaint or grievance received by it during the preceding calendar month, the date and nature of the action taken by the Grantee with respect thereto, and, if still pending, the status thereof.

50.51 INJURY TO PROPERTY OF THE GRANTEE. No person shall wrongfully or unlawfully injure the property of the Grantee.

50.52 INTERCEPTING SIGNALS OF THE GRANTEE. No person shall wrongfully or unlawfully intercept the signals of the Grantee.

50.53 PENALTY. Any person violating any of the provisions of Section 50.51 or Section 50.52 of this Chapter shall, upon conviction, be subject to a fine of not to exceed one hundred (100) dollars or imprisonment not exceeding thirty (30) days.

50.54 FILING OF REPORTS. On or before April 1 of each year, the Grantee shall file with the City copies of FCC Form 325 and FCC Form 326 for the preceding calendar year.

50.55 FILING OF AUDIT. On or before April 1 of each year, the Grantee shall file with the City an audit of its operations within the City during the preceding calendar year.

50.56 FILING OF MAPS AND PLATS. On or before April 1 of each year, the Grantee shall file with the City maps and plats showing the location and nature of all property of the Grantee within the City as of the end of the preceding calendar year.

50.57 FILING OF COMMUNICATIONS WITH REGULATORY AGENCIES. The Grantee shall file with the City copies of all petitions, applications, and communications submitted by the Grantee to any regulatory agency having jurisdiction over the Grantee.

50.58 ACCESS. The Grantee shall and does hereby grant to the City the right to enter upon the property of the Grantee, upon reasonable notice, at any and all reasonable times to inspect the same for purposes pertaining to the rights of the City.

50.59 DISCRIMINATION PROHIBITED. The Grantee shall not grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage with respect to rates, charges, services, service facilities, rules, regulations, or in any other respect.

50.60 OTHER BUSINESS ACTIVITIES PROHIBITED. During the initial term of the franchise, or any extension thereof, the Grantee shall not engage in the business of selling, leasing, renting or servicing television or radio receivers, or their parts and accessories, and the Grantee shall not require or attempt to direct its subscribers to deal with any particular person or firm with respect to said activities.

50.61 FRANCHISE FEE. On or before April 1 of each year during the term of the franchise, the Grantee shall pay to the City, at the office of the City, in lawful money of the United State, a franchise fee based upon a percentage of the gross subscriber receipts received by the Grantee from the operation of its cable television system within the City during the preceding calendar year. Such fee shall be based on such percentage of said gross receipts as may be approved by the FCC, but in

no event shall the same be less than three (3) percent of said gross receipts.

In the event that the franchise shall be terminated for any cause whatsoever during the calendar year, the franchise fee for that calendar year shall be payable to the City as aforesaid within thirty (30) days following the date of termination.

Any franchise fee not paid when due shall bear interest at the rate of nine (9) percent per annum from the date due.

The franchise fee shall not be considered to be in the nature of a tax.

SUBCHAPTER 3**CATV FRANCHISE**

50.31 AUTHORITY TO ADMINISTER. The City of Windsor Heights (herein called "the City") has the legal authority to administer and shall enforce against any non-municipally owned cable television system operator as permitted therein, the provisions of Part 76, Subpart N of the Rules and Regulations of the Federal Communications Commission (FCC), concerning Cable Rate Regulation, 47 C.F.R. . . 76.900 et. seq., as they currently read and hereafter may be amended, which are herein incorporated by reference.

50.32 RATE REGULATION. Any rate regulation proceedings conducted under Section 1 hereto shall provide a reasonable opportunity for consideration of the view of any interested party, including but not limited to, the City or its designee, the Cable Operator, subscribers and residents of the franchise area. In addition to all other provisions required by the laws of the State of Iowa and the City for such proceedings, and in order to provide for such opportunity for consideration of the views of any interests party, the City shall take the following actions:

A. The City shall publish notice as provided in *Code of Iowa* Section 362.4, and shall mail, by certified mail, to the Cable Operator a notice of the intent to conduct a public proceeding on basic service tier rates and/or charges for equipment to receive such basic service tier, as defined by the FCC.

B. Said notice shall state, among other things, that cable television rates are subject to municipal review and explain the nature of the rate review in question; that any interested party has a right to participate in the proceeding; that public views may be submitted in the proceeding, explaining how they are to be submitted and the deadline for submitting any such views; that a decision concerning their reasonableness of the cable television rates in question will be governed by the *FCC Rules and Regulations*; and that the decision of the City is subject to review by the FCC.

C. The City shall conduct a public proceeding to determine whether or not the rates or proposed rate increase are reasonable. The City may delegate the responsibility to conduct the proceeding to any duly qualified and eligible individual(s) or entity. If the City or its designee cannot determine the reasonableness of a proposed rate increase within the time period permitted by the *FCC Rules and Regulations*, it may announce the effective date of the proposed rates for an additional period of time as permitted by the *FCC Rules and Regulations*, and issue any other necessary or appropriate order and give notice accordingly.

D. In the course of the rate regulation proceeding, the City may require additional information from the Cable Operator that is reasonably necessary to determine the reasonableness of the basic service tier rates and equipment charges. Any such additional information submitted to the

City shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry. The City may request proprietary information, provided that the City shall consider a timely request from the Cable Operator that said proprietary information shall not be made available for public information, consistent with the procedures set forth in Section 0.459 of the *FCC Rules and Regulations*. Furthermore, said proprietary information may be used only for the purpose of determining the reasonableness of the rates and charges or the appropriate rate level based on a cost-of-service showing submitted by the Cable Operator. The City may exercise all powers under the laws of evidence applicable to administrative proceedings under the laws of the State of Iowa to discover any information relevant to the rate regulation proceeding, including, but not limited to, subpoena, interrogatories, production of documents and deposition.

E. Upon termination of the rate regulation proceeding, the City shall adopt and release a written decision as to whether or not the rates or proposed rate increase are reasonable or unreasonable, and, if unreasonable, its remedy, including prospective rate reduction, rate prescription and refunds.

F. The City may not impose any fines, penalties, forfeitures or other sanctions, other than permitted by the *FCC Rules and Regulations*, for charging an unreasonable rate or proposing an unreasonable rate increase.

G. Consistent with *FCC Rules and Regulations*, the City's decision may be reviewed only by the FCC.

H. The City shall be authorized, at any time, whether or not in the course of a rate regulation proceeding, to gather information as necessary to exercise its jurisdiction as authorized by the Communications Act of 1934, as amended, and the *FCC Rules and Regulations*. Any information submitted to the City shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry.

50.33 FCC CERTIFICATION FORM. The City shall file with the FCC the required certification form (FCC Form 328) on September 1, 1993, or as soon thereafter as appropriate. Thirty days later, or as soon thereafter as appropriate, the City shall notify the Cable Operator that the City has been certified by the FCC and that it has adopted all necessary regulations so as to begin regulating basic service tier cable television rates and equipment charges.

50.34 CABLE PROGRAMMING SERVICE TIER. With regard to the cable programming service tier, as defined by the Communications Act of 1934, as amended, and the *FCC Rules and Regulations*, and over which the City is not empowered to exercise rate regulation, the Cable

Operator shall give notice to the City of any change in rates for the cable programming service tier or tiers, any change in the charge for equipment required to receive the tier or tiers, and any changes in the nature of the services provided, including the program services included in the tier or tiers, and any changes in the nature of the service provided, including the program services included in the tier or tiers. Said notice shall be provided within five (5) business days after the change becomes effective.

50.35 DELEGATION OF POWER. The City may delegate its powers to enforce this Ordinance to municipal employees or officers ("cable official"). The cable official will have the authority to:

- (1) administer oaths and affirmations;
- (2) issue subpoenas;
- (3) examine witnesses;
- (4) rule upon questions of evidence;
- (5) take or cause depositions to be taken;
- (6) conduct proceedings in accordance with this law;
- (7) exclude from the proceeding any person engaging in contemptuous conduct or otherwise disrupting the proceedings;
- (8) hold conferences for the settlement or simplification of the issues by consent of the parties; and
- (9) take actions and make decisions or recommended decisions in conformity with this law.