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## **TITLE VI. BUSINESS AND OCCUPATION**

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## **TITLE VI. BUSINESS AND OCCUPATION**

### **CHAPTER 600: ALCOHOLIC BEVERAGES**

*Cross Reference—As to driving while intoxicated, see ch. 342 of this code.*

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#### **SECTION 600.010: DEFINITIONS**

When used in this Chapter, the following words shall have the following meanings:

*AMUSEMENT PLACE:* Any establishment whose business building contains a square footage of at least six thousand (6,000) square feet, and where games of skill commonly known as billiards, volleyball, indoor golf, bowling or soccer are usually played or any outdoor golf course with a minimum of nine (9) holes, and which has annual gross receipts of at least one hundred thousand dollars (\$100,000.00) of which at least fifty thousand dollars (\$50,000.00) of such gross receipts is in non-alcoholic sales.

*CLOSED PLACE:* A place where all doors are locked and where no patrons are in the place or about the premises.

*COMMON EATING AND DRINKING AREA:* An area or areas within a building or group of buildings designated for the eating of food and drinking of liquor sold at retail by establishments which do not provide areas within their premises for the consumption of food and liquor, where the costs of maintaining such area or areas are shared by the payment of common area maintenance charges, as provided in the respective leases permitting the use of such areas or otherwise, and where the annual gross income from the sale of prepared meals or food consumed in such common eating and drinking area is, or is projected to be, at least two hundred seventy-five thousand dollars (\$275,000.00).

*INTOXICATING LIQUOR:* Alcohol for beverage purposes, including alcoholic, spirituous, vinous, fermented, malt, or other liquors, or combination of liquors, a part of which is spirituous, vinous, or fermented, and all preparations or mixtures for beverage purposes, containing in excess of one-half of one percent (0.5%) by volume, except for non-intoxicating beer as defined herein. All beverages having an alcoholic content of less than one-half of one percent (0.5%) by volume shall be exempt from the provisions of this Chapter.

*LIGHT WINES:* An intoxicating liquor consisting of wine containing not in excess of fourteen percent (14%) of alcohol by weight exclusively from grapes, berries and other fruits and vegetables.

*MALT LIQUOR:* An intoxicating liquor containing alcohol in excess of three and two-tenths percent (3.2%) by weight and not in excess of five percent (5%) by weight, manufactured from pure hops or pure extract of hops or pure barley malt or wholesome grains or cereals and wholesome yeast and pure water.

*NON-INTOXICATING BEER:* Any beer manufactured from pure hops or pure extract of hops, and pure barley malt or other wholesome grains or cereals, and wholesome yeast, and pure water, and free from all harmful substances, preservatives and adulterants, and having an alcoholic content of more than one-half of one percent (0.5%) by volume and not exceeding three and two-tenths percent (3.2%) by weight.

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**ORIGINAL PACKAGE:** Any package sealed or otherwise closed by the manufacturer so as to consist of a self-contained unit, and consisting of one (1) or more bottles or other containers of intoxicating liquor or non-intoxicating beer, where the package and/or container(s) describes the contents thereof as intoxicating liquor or non-intoxicating beer.

**PERSON:** An individual, association, firm, joint stock company, syndicate, partnership, corporation, receiver, trustee, conservator, or any officer appointed by any State or Federal Court.

**RESORT:** Any establishment having at least thirty (30) rooms for the overnight accommodation of transient guests, having a restaurant or similar facility on the premises at least sixty percent (60%) of the gross income of which is derived from the sale of prepared meals or food, or means a restaurant provided with special space and accommodations where, in consideration of payment, food, without lodging, is habitually furnished to travelers and customers, and which restaurant establishment's annual gross food sales for the past two (2) years immediately preceding its application for a license shall not have been less than seventy-five thousand dollars(\$75,000.00) per year, or means a seasonal resort restaurant with food sales as determined in Subsection (2) of Section 311.095, RSMo., or means a new restaurant establishment having been in operation for at least ninety (90) days preceding the application for such license, with a projected experience based upon its sale of food during the preceding ninety (90) days which would exceed not less than seventy-five thousand dollars (\$75,000.00) per year. Any facility which is owned and operated as a part of the resort may be used to sell intoxicating liquor by the drink for consumption on the premises of such facility and, for the purpose of meeting the annual gross food sales requirements of this Subsection, if any facility which is a part of the resort meets such requirement, such requirement shall be deemed met for any other facility which is a part of the resort.

**RESTAURANT BAR:** Any establishment having a restaurant or similar facility on the premises at least fifty percent (50%) of the gross income of which is derived from the sale of prepared meals or food consumed on such premises or which has an annual gross income of at least two hundred thousand dollars (\$200,000.00) from the sale of prepared meals or food consumed on such premises.

**SALE BY THE DRINK:** Sale of any intoxicating liquor except malt liquor, in the original package, in any quantity less than fifty (50) milliliters shall be deemed "*sale by the drink*" and may be made only by a holder of a retail liquor dealer's license and when so made, the container in every case shall be emptied and the contents thereof served as other intoxicating liquors sold by the drink are served.

## **SECTION 600.020: LICENSE REQUIRED—CLASSES OF LICENSES**

- A. No person shall sell or offer for sale intoxicating liquor or non-intoxicating beer in the City of Cassville without a currently valid liquor license issued by the City. A separate liquor license shall be required for each of the categories and sub-categories of liquor sales in which the licensee desires to engage as set forth herein.
- B. *General Licenses.* Any person possessing the qualifications and meeting the requirements of this Chapter may apply for the following licenses to sell intoxicating liquor or non-intoxicating beer:
  - B.1. *Package liquor—malt liquor only:* Sales of malt liquor at retail in the original package not for consumption on the premises where sold. [Back to Index](#)

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- B.2. *Package liquor—non-intoxicating beer*: Sales of non-intoxicating beer at retail in the original package not for consumption on the premises where sold. [Back to Index](#)
- B.3. *Package liquor—all kinds*: Sales of all kinds of intoxicating liquors in the original package at retail not for consumption on the premises where sold, including sales as set forth in Subsection (B)(1 and 2) of this Section.
- B.4. *Liquor by the drink—malt liquor/light wine only*: Sales of malt liquor and light wines at retail by the drink for consumption on the premises where sold, including sales as set forth in Subsection (B)(1) of this Section.
- B.5. *Liquor by the drink—non-intoxicating beer*: Sales of non-intoxicating beer at retail by the drink for consumption on the premises where sold, including sales as set forth in Subsection (B)(2) of this Section.
- B.6. *Resort*: Sales of intoxicating liquor of all kinds at retail by the drink for consumption on the premises where sold, including package sales as set forth in Subsection (B)(3) of this Section.
- B.7. *Restaurant bar*: Sales of intoxicating liquor of all kinds at retail by the drink for consumption on the premises where sold, including package sales as set forth in Subsection (B)(3) of this Section.
- C. *Sunday Sales*. Any person who is licensed under the provisions of this Chapter or who otherwise possesses the qualifications and meets the requirements of this Chapter may apply for the following licenses to sell intoxicating liquor or non-intoxicating beer on Sundays between the hours of 9:00 A.M. and Midnight:
- C.1. *Package liquor—all kinds*: Sales of liquor of all kinds in the original package at retail, not for consumption on the premises where sold.
- C.2. *Liquor by the drink—restaurant bar*: Sales of liquor of all kinds by the drink at retail for consumption on the premises of any restaurant bar.
- C.3. *Liquor by the drink—resort*: Sales of liquor of all kinds by the drink at retail for consumption on the premises of any resort.
- D. *Permits*.
- D.1. *Temporary permit for sale by drink*. Any person who possesses the qualifications, meets the requirements and complies with the provisions of Section 600.030(C), below, may apply for a special permit to sell intoxicating liquor for consumption on premises where sold.
- D.2. *Tasting permit*. Any person who is licensed to sell intoxicating liquor in the original package at retail under Subsection (B)(3) of this Section, above, may apply for a special permit to conduct wine, malt beverage and distilled spirit tastings on the licensed premises; however, nothing in this Section shall be construed to permit the licensee to sell wine, malt beverages or distilled spirits for on-premises consumption. (Ord. No. 1425 §1, 11-3-03)

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## **SECTION 600.030: LICENSE REGULATIONS**

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### *A. Package Sales, Limitations.*

A.1. No license shall issue for the sale of intoxicating liquor in the original package, not to be consumed upon the premises where sold, except to a person engaged in, and to be used in connection with, the operation of one (1) or more of the following businesses: a drug store, a cigar and tobacco store, a grocery store, a general merchandise store, a confectionery or delicatessen store, nor to any such person who does not have and keep in his/her store a stock of goods having a value according to invoices of at least one thousand dollars (\$1,000.00), exclusive of fixtures and intoxicating liquors. Under such license, no intoxicating liquor shall be consumed on the premises where sold nor shall any original package be opened on the premises of the vendor except as otherwise provided in this Chapter.

A.2. No license for the sale at retail of any and all kinds of intoxicating liquor in the original package shall be granted or issued to any person if the gross sales of said intoxicating liquor shall exceed fifty percent (50%) of the gross sales generated by said person at the licensed location.

### *B. Newly-Opened Restaurant Bars, Amusement Places.*

B.1. Any new restaurant bar having been in operation for less than ninety (90) days may be issued a temporary license to sell intoxicating liquor by the drink at retail for consumption on the premises between the hours of 9:00 A.M. and Midnight on Sunday for a period not to exceed ninety (90) days if the restaurant bar can show a projection of annual business from prepared meals or food consumed on the premises of at least fifty percent (50%) of the total gross income of the restaurant bar for the year or can show a projection of annual business from prepared meals or food consumed on the premises which would exceed not less than two hundred thousand dollars (\$200,000.00). The license fee shall be prorated for the period of the temporary license based on the cost of the annual license for the establishment.

B.2. Any new amusement place having been in operation for less than ninety (90) days may be issued a temporary license to sell intoxicating liquor by the drink at retail for consumption on the premises between the hours of 11:00 A.M. and Midnight on Sunday for a period not to exceed ninety (90) days if the amusement place can show a projection of gross receipts of at least one hundred thousand dollars (\$100,000.00) of which at least fifty thousand dollars (\$50,000.00) of such gross receipts are in non-alcoholic sales for the first (1st) year of operation. The license fee shall be prorated for the period of the temporary license based on the cost of the annual license for the establishment.

### *C. Temporary Permit For Sale By Drink—Certain Organizations.*

C.1. The City Clerk may issue a permit for the sale of intoxicating liquor and non-intoxicating beer for consumption on premises where sold to any church, school, civic, service, fraternal, veteran, political or charitable club or organization at a picnic, bazaar, fair, or similar gathering. The permit shall be issued only for the day or days named therein and it shall not authorize the sale of intoxicating liquor for more than seven (7) days by any such club or organization.

C.2. If the event will be held on a Sunday, the permit shall authorize the sale of intoxicating liquor and non-intoxicating beer on that day beginning at 9:00 A.M.

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C.3. At the same time that an applicant applies for a permit under the provisions of this Section, the applicant shall notify the Director of Revenue of the holding of the event by certified mail and by such notification shall accept responsibility for the collection and payment of any applicable sales tax. [Back to Index](#)

C.4. No provision of law or rule or regulation of the City shall be interpreted as preventing any wholesaler or distributor from providing customary storage, cooling or dispensing equipment for use by the permit holder at such picnic, bazaar, fair or similar gathering.

D. *Operating Hours, Days.*

D.1. No licensee or any employee of such licensee shall sell, give away or otherwise dispose of, or allow the same to be done, on or about the premises, any intoxicating liquor in any quantity between the hours of 1:30 A.M. and 6:00 A.M. on weekdays, and between the hours of 1:30 A.M. on Sunday and 6:00 A.M. on Monday, except as otherwise authorized and licensed for Sunday sales. Any person licensed to sell intoxicating liquor by the drink shall keep a closed place during the aforementioned prohibited times.

D.2. When January first (1st), March seventeenth (17th), July fourth (4th), or December thirty-first (31st) falls on Sunday, and on the Sundays prior to Memorial Day and Labor Day and on the Sunday on which the national championship game of the National Football League is played, commonly known as "Super Bowl Sunday", any person having a license to sell intoxicating liquor by the drink may be open for business and sell intoxicating liquor by the drink under the provisions of his or her license on that day from the time and until the time which would be lawful on another day of the week, notwithstanding any provisions of this Chapter to the contrary.

E. *Number Of Licenses Limited.*

E.1. One (1) license for the sale of malt liquor and wine by the drink may be issued by the City for each two thousand (2,000) persons or fraction thereof residing within the City.

E.2. The number of licenses for persons who qualify for a "resort" license under Section 311.095, RSMo., shall not be limited by this Section and the issuance of a license shall not reduce the number of licenses which may be issued under Subparagraph (1) of this Subsection.

E.3. *Non-intoxicating beer licenses.* Not more than one (1) non-intoxicating beer license for each seven hundred fifty (750) inhabitants of the City, as established by the last United States Government census in the City, shall be issued at any given time.

E.3.a. The issuance of a license as provided in Section 600.020 (B)(6) of this Chapter (Liquor by the drink—all kinds), shall be counted as being commensurate with the issuance of one license for every subcategory of liquor by the drink provided in Sections 600.020 (B)(4) and (B)(5).

F. *General License Regulations.*

F.1. Each license issued hereunder shall be conspicuously posted on the premises for which the license has been issued.

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F.2. A separate license shall be required for each place of business. Every license issued under the provisions of this Chapter shall particularly describe the premises at which intoxicating liquor

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may be sold thereunder, and such license shall not be deemed to authorize or permit the sale of intoxicating liquor at any place other than that described therein. [Back to Index](#)

F.3. No license issued under this Chapter shall be transferable or assignable except as herein provided. In the event of the death of the licensee, the widow or widower or the next of kin of such deceased licensee, who shall meet the other requirements of this Chapter, may make application and the Clerk may transfer such license to permit the operation of the business of the deceased for the remainder of the period for which a license fee has been paid by the deceased. Whenever one (1) or more members of a partnership withdraws from the partnership the Clerk, upon being requested, shall permit the remaining partner, or partners, originally licensed, to continue to operate for the remainder of the period for which the license fee has been paid, without obtaining a new license.

F.4. In the event any licensee desires to change the location of his/her place of business in the City, it shall be necessary for him/her to file an application in the same manner as herein provided for an original application, except that no additional fee shall be charged and the amended license, describing the new location, shall be issued immediately upon the approval of the application by the Board. Any change of location of the enterprise prior to issuance of such an amended license shall constitute a violation of this Section.

G. *Druggists May Sell And Physicians Prescribe Liquor.* Any druggist may have in his/her possession intoxicating liquor purchased by him/her from a licensed vendor under a license pursuant to State law, or intoxicating liquor lawfully acquired at the place of acquisition and legally transported into this State, and lawfully inspected, gauged and labeled as provided by State law; such intoxicating liquor to be used in connection with the business of a druggist, in compounding medicines or as a solvent or preservative; provided, that nothing in this Chapter shall prevent a regularly licensed druggist, after he/she procures a license therefor, from selling intoxicating liquor in the original package, but not to be drunk or the packages opened on the premises where sold; and provided further, that nothing in this Chapter shall be construed as limiting the right of a physician to prescribe intoxicating liquor in accordance with his/her professional judgment for any patient at any time, or prevent a druggist from selling intoxicating liquor to a person on prescription from a regularly licensed physician as above provided.

H. *Fees Taken In Lieu of Proportionate Part of Merchant's Tax and Ad Valorem Tax.* The fees to be charged under the provisions of this Section shall be taken in lieu of the proportionate part of any merchant's license fee and ad valorem tax for the stock and sales of intoxicating liquor or non-intoxicating beer under the provisions of this or any other ordinance of the City, and the aggregate amount of the sales thereof made by any license hereunder shall not be returned by such merchant for purposes of merchant's license or ad valorem tax, nor shall such stock of sales be included in the computation of any merchant's license or ad valorem tax. (CC 1989 §§3-66, 3-91; Ord. No. 95-1183 §§3-66, 3-91, 8-28-95; Ord. No. 1425 §1, 11-3-03)

**SECTION 600.040: SCHEDULE OF LICENSE FEES**

The following categories and sub-categories of licenses shall be issued upon compliance with the provisions of this Chapter and payment of the license fee indicated:

- .1. *General licenses.*
    - .1.a. Malt liquor—original package..... \$ 52.50
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.1.b. ....	Non-
intoxicating beer—original package.....	22.50
.1.c. Intoxicating liquor (all kinds)—original package .....	75.00
(When liquor by drink is permitted) .....	150.00
.1.d. ....	Malt liquor and
light wines—by drink .....	52.50
.1.e. ....	Non-
intoxicating beer—by drink.....	37.50
.1.f. Resort license.....	450.00
.1.g. ....	Restaurant bar
450.00	
.2. <i>Sunday sales.</i> (Additional fees)	
.2.a. Intoxicating liquor—original package .....	300.00
.2.b. Restaurant bars .....	300.00
.2.c. ....	Amusement
places 300.00	
.2.d. ....	Common
eating and drinking places .....	300.00
.2.e. Liquor by the drink—charitable organizations .....	300.00
.3. <i>Permits.</i>	
.3.a. Temporary permit—by the drink for certain organizations (7 days max.)	37.50
.3.b. ....	Tasting permit
37.50	

Of the license fee to be paid for any such license, the applicant shall pay as many twelfths (12ths) as there are months (part of a month counted as a month) remaining from the date of the license to the next succeeding July first (1st).

**SECTION 600.050: APPLICATION FOR LICENSE AND RENEWAL**

A. *Filing Of An Application.* Each application for an original or renewal license shall be filed with the City Clerk on a form to be provided by the City, signed and sworn to by the applicant. Each application shall be accompanied by a proper remittance reflecting the appropriate license fee made payable to the City. [Back to Index](#)

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- B. *Bond Requirements.* Each application for a license shall be accompanied by a bond, to be given to the City in the amount of two thousand dollars (\$2,000.00) with sufficient sureties, conditioned that the person obtaining such license shall at all times abide by the provisions of the Liquor Control Act of the State of Missouri, this Chapter and all other ordinances of the City. Only one (1) bond shall be required under this Section from any one (1) person and such bond shall, while in force, cover all licenses held by any one applicant and all classes of sales carried on hereunder. Such bond may be sued on in the name of the City for the use and benefits of any person damaged by the breach of any of the conditions thereof. [Back to Index](#)
- C. *Qualifications.* Neither the applicant nor any officer, director or shareholder of a corporate applicant shall have been convicted of a felony or of any distribution, sale or possession of any controlled substances or dangerous drugs. The applicant shall present with the application a bona fide sale contract or option duly executed, which may be subject to the applicant obtaining a liquor license, or a bona fide lease duly executed by the lessor, or an option for a lease duly executed, subject to the applicant obtaining a liquor license, covering the property for which a liquor license is requested. If the applicant is a corporation, the petition shall set forth all of the above information with respect to the managing officer or officers, identifying such officer or officers. The application shall further state the full name of the corporation, its date of incorporation, its registered agent and registered address, the names and addresses of all shareholders of the corporation, and whether said corporation operates any other business or controls or is controlled by any other corporation or business, and if so, the application shall further state the name of such controlled or controlling corporation or business, its registered agent and registered address, and the location of all businesses operated by it and the name and address of any such businesses with a liquor license, whether within or without the City; and the application shall also state if such controlling corporation or any controlled corporation is doing business under a fictitious name, and the address where said business is located. The Board of Aldermen also may request such additional information of an applicant as it may deem necessary for it to make a determination with respect to the issuance of a liquor license.
- D. *Hearing On Application.* Upon the filing of the application with the Clerk, the Clerk shall fix a date for a hearing before the Board not more than thirty-one (31) days from the date of filing of the application, and shall give the applicant written notice of the date of the hearing. The hearing shall be conducted in accordance with Section 600.090 of this Chapter.
- D.1. The Board shall consider the location of the proposed business for which a license is sought with respect to its proximity to a school, a church, a public park or playground and to other places of the character for which a license is sought, and shall have authority to refuse to issue a license when in their judgment the issuance thereof would not be in the best interests of the locality in which the applicant applies for a location of such place. In no event shall the Board approve the issuance of a license for the sale of liquor within three hundred (300) feet of any school, church or other building regularly used as a place of worship unless the applicant for the license shall first obtain the consent in writing of the board of directors of the school, or the consent in writing of the majority of the managing board of the church or place of worship; except that when a school, church or place of worship shall thereafter be established within three hundred (300) feet of any place of business licensed to sell intoxicating liquor, renewal of the license shall not be denied for lack of consent in writing as herein provided. Nor shall any such activity be carried on within one hundred fifty (150) feet of any private residence not a business building, unless the written consent of the owner and tenant of such private property is first obtained.
- D.2. The Board shall approve the application if after the hearing it finds that:

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- D.2.a. Issuance of the requested license would be in the best interests of the locality of the proposed business; [Back to Index](#)
- D.2.b. The applicant is a person of good moral character, a native born or naturalized citizen of the United States of America, a registered voter and a taxpaying citizen of the City;
- D.2.c. No license theretofore issued to such applicant to sell intoxicating liquors has been revoked within two (2) years of the date of the application;
- D.2.d. The applicant has not been convicted since the ratification of the Twenty-First Amendment to the Constitution of the United States of the violation of any law applicable to the sale of intoxicating liquor, or that such applicant has not employed in his/her business any person whose license has been revoked or who has been convicted of violating the provisions of such law since the date aforesaid;
- D.2.e. The application is supported in writing by a majority of the property owners within three hundred (300) feet of the location in which the applicant proposes to conduct a retail liquor business; and
- D.2.f. The applicant plans and proposes to conduct a retail liquor business in compliance with the laws of the State of Missouri, the ordinances of the City and the provisions of this Chapter.
- E. Upon approval of any application for a license the Clerk shall grant the applicant a license to conduct business in the City for a term to expire with the thirtieth (30th) day of June next succeeding the date of such license, unless such license be revoked or suspended for cause before the expiration of such time.
- F. Applications for renewal of licenses must be filed on or before the first (1st) day of May of each calendar year. Such renewal application shall be reviewed by the Board at its next meeting. Upon approval of the majority of the Board and payment of the license fee provided herein, the Clerk shall renew the license. In the event that any person residing or conducting businesses within two hundred (200) feet of the applicant's place of business shall file a written protest against the renewal of such license, the Board shall conduct a hearing on the application for license renewal as provided in Subsection (E) of this Section.

#### **SECTION 600.060: MINORS**

- A. *Persons Eighteen Years Of Age Or Older May Sell Or Handle Liquor Or Beer, When.*
  - A.1. Except as otherwise provided in this Section, no person under the age of twenty-one (21) years shall sell or assist in the sale or dispensing of intoxicating liquor or non-intoxicating beer.
  - A.2. In any place of business licensed in accordance with this Chapter, where at least fifty percent (50%) of the gross sales made consists of goods, merchandise, or commodities other than intoxicating liquor or non-intoxicating beer in the original package, persons at least eighteen (18) years of age may stock, arrange displays, accept payment for, and sack for carry-out intoxicating liquor or non-intoxicating beer. Delivery of intoxicating liquor or non-intoxicating beer away from the licensed business premises cannot be performed by anyone under the age of twenty-one (21) years. [Back to Index](#)

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A.3. Persons eighteen (18) years of age or older may, when acting in the capacity of a waiter or waitress, accept payment for or serve intoxicating liquor or non-intoxicating beer in places of business which sell food for consumption on the premises if at least fifty percent (50%) of all sales in those places consists of food; provided that nothing in this Section shall authorize persons under twenty-one (21) years of age to mix or serve across the bar intoxicating beverages or non-intoxicating beer. [Back to Index](#)

B. *Sales To Minor—Exceptions.* No licensee, his or her employee, or any other person, shall procure for, sell, vend, give away or otherwise supply any intoxicating liquor in any quantity whatsoever to any person under the age of twenty-one (21) years, except that this Section shall not apply to the supplying of intoxicating liquor to a person under the age of twenty-one (21) years for medical purposes only, or to the administering of such intoxicating liquor to such person by a duly licensed physician. No person shall be denied a license or renewal of a license issued under this Chapter solely due to a conviction for unlawful sale or supply to a minor while serving in the capacity as an employee of the licensee.

C. *Misrepresentation Of Age By Minor To Obtain Liquor—Use Of Altered Driver's License, Passport Or I.D. Cards, Penalties.*

C.1. No person under the age of twenty-one (21) years shall represent, for the purpose of purchasing, asking for or in any way receiving any intoxicating liquor, that he/she has attained the age of twenty-one (21) years, except in cases authorized by law.

C.2. In addition to Subsection (C)(1) of this Section, no person under the age of twenty-one (21) years shall use a reproduced, modified or altered chauffeur's license, motor vehicle operator's license, identification card issued by any uniformed service of the United States, passport or identification card established in Section 302.181, RSMo., for the purpose of purchasing, asking for or in any way receiving any intoxicating liquor.

D. No person under the age of twenty-one (21) years shall purchase, attempt to purchase, be under the influence of, possess or attempt to possess any intoxicating liquor or non-intoxicating beer except as otherwise authorized by law. For purposes of prosecution, a beer need not be opened or the contents tested to establish the contents as intoxicating liquor or non-intoxicating beer or a person under the age of twenty-one (21) shall not emit the odor of intoxicants. (Ord. No. 1399 §1, 3-3-03)

## **SECTION 600.070: MISCELLANEOUS OFFENSES**

A. *Unlawful For Licensed Retailer To Purchase From Other Than Licensed Wholesaler.* It shall be unlawful for any licensee to purchase any intoxicating liquor except from, by or through a duly licensed wholesale liquor dealer in this State. It shall be unlawful for such retail liquor dealer to sell or offer for sale any intoxicating liquor purchased in violation of the provisions of this Section.

B. *Mixing Liquor With Drugs Prohibited.* No licensee, or any other person, shall for any purpose whatsoever mix or permit or cause to be mixed with any intoxicating liquor kept for sale, sold or supplied by him/her as a beverage, any drug or form of methyl alcohol or impure form of alcohol.

C. *Unlawful To Sell Unlabeled Liquor—Penalty.* It shall be unlawful for any person to sell any intoxicating liquor which has not been inspected and labeled according to the provisions of the Liquor Control Law of Missouri, and any such person upon conviction shall have his/her license revoked and shall be ineligible to receive any subsequent liquor license for a period of two (2) years thereafter. [Back to Index](#)

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- D. *Only Those Liquors Authorized By License To Be Kept On Premises.* It shall be unlawful for any licensee to keep in or upon the premises described in such license any intoxicating liquor other than the kind of liquor expressly authorized to be sold by such licensee. [Back to Index](#)
- E. *Off-Premises Consumption.*
- E.1. No licensee shall sell intoxicating liquor at retail in the original package, not to be consumed on the premises where sold, in any original package containing less than eight (8) ounces.
- E.2. No licensee shall permit any person to remove from the licensed premises any intoxicating liquor or non-intoxicating beer in any unsealed glass, bottle, can or other open container of any type.
- E.3. All licensees shall post a notice at each exit of the premises which is used by customers or patrons that "NO ALCOHOLIC BEVERAGES MAY BE CARRIED IN AN OPEN CONTAINER OUT OF THIS BUILDING."
- F. *Persons Apparently Intoxicated Not To Be Provided With Intoxicating Liquor Or Non-Intoxicating Beer.* It shall be unlawful for any licensee, or his or her employee or agent, to sell or supply intoxicating liquor or non-intoxicating beer, or permit such to be sold or supplied, to a habitual drunkard or to any person who is under or apparently under the influence of intoxicating liquor.
- G. *Drinking In Public Places Prohibited.*
- G.1. For purposes of this Section, the term "*public place*" shall mean any public street, highway, alley, sidewalk, thoroughfare or other public way of the City, or any parking lot.
- G.2. No person shall drink or ingest any intoxicating liquor or non-intoxicating beer in or on any public place.
- G.3. No person shall possess or have under his/her control any unsealed glass, bottle, can or other open container of any type containing any intoxicating liquor or non-intoxicating beer while in or upon any public place.
- G.4. No person shall possess or have under his/her control any unsealed glass, bottle, can or other open container of any type containing any intoxicating liquor or non-intoxicating beer while within or on any motor vehicle while the same is being operated upon, or parked or standing in or upon, any public place. Any person operating a motor vehicle shall be deemed to be in possession of an open container contained within the motor vehicle he/she has control of whether or not he/she has actual physical possession of the open container.
- H. *Live Entertainment On Premises Prohibited.* No person licensed for the sale of intoxicating liquor by the drink for consumption on the premises shall permit or allow any live entertainment on the premises. The playing and singing of music solely shall not be considered entertainment under this Section.

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**SECTION 600.080: ADMINISTRATION OF LAW–LICENSE SUSPENSION** [Back to Index](#)

- A. *Suspension Or Revocation Of License–When–Manner.* The Board may suspend or revoke the license of any person for cause shown. In such cases the City Clerk shall schedule a hearing before the Board not less than ten (10) days prior to the effective date of revocation or suspension, and prior to the hearing the Clerk shall give not less than five (5) days written notice to the licensee of the grounds upon which the license is sought to be revoked or suspended and the time, date and place of the hearing. Notice may be accomplished by personal delivery, U. S. Mail or by posting on the licensed premises. The hearing shall be conducted in accordance with Section 600.090 of this Chapter.
- B. *Grounds For Suspension Or Revocation.* A license may be suspended or revoked for any of the following reasons:
- B.1. Violating any of the provisions of either this Chapter, Chapter 311, RSMo., or any ordinance of the City;
  - B.2. Failing to obtain or keep a license from the State Supervisor of Liquor Control;
  - B.3. Making a false affidavit in an application for a license under this Chapter;
  - B.4. Failing to keep an orderly place or house;
  - B.5. Selling, offering for sale, possessing or knowingly permitting the consumption on the licensed premises of any kind of intoxicating liquors, the sale, possession or consumption of which is not authorized under the license;
  - B.6. Selling, offering for sale, possessing or knowingly permitting the consumption of any intoxicating liquor which has not been inspected and labeled according to the laws of the State of Missouri; or
  - B.7. Selling, giving, or otherwise supplying intoxicating liquor to:
    - B.7.a. Any person under the age of twenty-one (21) years,
    - B.7.b. Any person during unauthorized hours on the licensed premises,
    - B.7.c. A habitual drunkard or to any person who is under or apparently under the influence of intoxicating liquor, or
    - B.7.d. Any person on the licensed premises during a term of suspension as ordered by the Board.
- C. *Automatic Revocation/Suspension.* A license shall be revoked automatically if the licensee's State liquor license is revoked or if the licensee is convicted in any court of any violation of Chapter 311 of the Revised Statutes of Missouri. A license shall be suspended automatically if the licensee's State liquor license is suspended, and the suspension shall be for a term not less than that imposed by the State.
- D. *Effect of Suspension.* No person whose license shall have been suspended by order of the Board shall sell or give away any intoxicating liquor or non-intoxicating beer during the time such

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suspension is in effect. Any licensee desiring to keep premises open for the sale of food or merchandise during the period of suspension shall display the Board's order of suspension in a conspicuous place on the premises so that all persons visiting the premises may readily see the same.

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#### **SECTION 600.090: HEARINGS UPON APPLICATIONS FOR, OR TO SUSPEND OR REVOKE LICENSES**

- A. *Testimony—Evidence.* Hearings before the Board shall be in the nature of informal investigations. Testimony of witnesses and other evidence pertinent to the inquiry may be taken in such hearings, and all proceedings in such hearings shall be recorded. Any person residing or conducting a business within two hundred (200) feet of the proposed establishment shall have the right to produce witnesses and testimony.
- B. *Witnesses—How Summoned.* Subpoenas may be issued by the Board for any person whose testimony is desired at any hearing. Such subpoenas may be served and returns thereon made by any agent and in the same manner as provided by law for the service of subpoenas in civil suits in the Circuit Courts of this State. The Board also may issue subpoenas duces tecum requiring the production of documents or other items pertaining to the subject of the inquiry.
- C. *Witnesses To Be Sworn.* Before any witness shall testify in any such hearing he/she shall be sworn by the City Clerk to tell the truth and nothing but the truth.
- D. *Decision—License Application.* If the evidence supports a finding that a license should be granted, such license shall be issued in accordance with Section 600.050 of this Chapter. If the evidence supports a finding that the license should be disapproved, the Board shall so notify the applicant in writing, setting forth the grounds and reasons for disapproval, and shall return therewith the applicant's remittance.
- E. *Decision—Suspension Or Revocation.* If the evidence supports a finding that the license should be revoked or suspended pursuant to Section 600.080 of this Chapter, the Board shall issue a written order which shall include specific findings of fact setting forth the grounds for the action taken. If the evidence fails to support a finding that the license should be revoked or suspended then no such order shall issue.
- F. *Appeal.* Any applicant or licensee aggrieved by a decision of the Board may appeal such decision to the Circuit Court as provided in Chapter 536, RSMo., provided such appeal is filed within ten (10) days of the date of the Board's decision. The Board may delay the implementation of its order pending appeal.

#### **SECTION 600.100: PENALTIES**

Any person violating any of the provisions of this Chapter, including but not limited to the Miscellaneous Offenses of Section 600.070, of this Chapter shall upon conviction be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for a term not exceeding ninety (90) days, or by both such fine and imprisonment.

#### **CHAPTER 605: LICENSES AND BUSINESS REGULATIONS**

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*Cross References—Alcoholic beverages, ch. 600; taxation, ch. 140; franchises, ch. 610.*

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**SECTION 605.010: RESERVED**

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*Editor's Note—Ord. no. 2001-1350 §1, adopted December 3, 2001, repealed section 605.010: Business License Fees—Generally, with no replacement provisions. Former section 605.010 derived from ord. no. 96-1194 §1, 1-22-96. At the editor's discretion we have left this section reserved for the City's future use.*

**SECTION 605.020: RETAIL SALE OF MERCHANDISE GENERALLY—PEDDLERS**

- A. No merchandise, goods or wares, or produce shall be sold upon any street, public right-of-way or alley within the corporate limits of the City of Cassville.
- B. No merchandise, goods, wares or produce shall be offered by persons or corporations from temporary stands, trucks or trailers within the corporate limits of the City unless said person or corporation has established a permanent business location within the City or such persons utilize the specific location designated by the City to sell produce.
- C. No person or corporation may solicit merchandise, goods, wares or produce door-to-door within the corporate limits of the City.
- D. Not-for-profit community and charitable organizations are exempt from Subsections (A), (B) and (C). (CC 1989 §7-1; Ord. No. 929 §§1–6, 8-25-81; Ord. No. 2000-1303 §1, 5-30-00; Ord. No. 1415 §1, 8-4-03)

**SECTION 605.030: RESERVED**

*Editor's Note—Ord. no. 2001-1350 §2, adopted December 3, 2001, repealed section 605.030: Merchant's License, with no replacement provisions. Former section 605.030 derived from CC 1989 §7-2 and ord. no. 985 §§1–2, 9-9-85. At the editor's discretion we have left this section reserved for the City's future use.*

**SECTION 605.040: TAXICABS**

- A. No person shall operate a taxicab within the corporate limits of the City, for the purpose of carrying and transporting fare-paying passengers, without first obtaining from the City Clerk a license for the operation of the same.
- B. Each motor vehicle used for the purpose of carrying fare-paying passengers within the City limits as a taxicab shall be licensed with the City, such license to be obtained from the City Clerk upon the payment of the fee therefor.
- C. No taxicab or vehicle carrying fare-paying passengers within the City limits shall be so operated without first being insured against the liability of the driver thereof for not less than three hundred thousand dollars (\$300,000.00) per person, five hundred thousand dollars (\$500,000.00) per occurrence, and one hundred thousand dollars (\$100,000.00) for property damage, with a liability insurance carrier authorized to do business in the State.

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- D. Any owner, driver, or operator of a motor vehicle used as a taxicab in violation of the terms of this Section shall be deemed guilty of a misdemeanor. (CC 1989 §7-3; Ord. No. 970 §§1-4, 3-12-85)

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#### **SECTION 605.050: GARAGE OR YARD SALES**

- A. For the purposes of this Section, the term "*garage or yard sale*" means the sale at wholesale or retail of new or used merchandise, clothing, furniture, appliances, utensils, kitchenware, or other merchandise upon property located in any area of the City which is zoned residential by the City.
- B. Garage or yard sales shall not be maintained or held for more than two (2) consecutive days of any month upon any property in the City zoned as residential, and not more than one (1) such sale shall be held at the same location during a six (6) month term.
- C. All garage or yard sales signs shall be removed within twenty-four (24) hours of the last day of the sale. (CC 1989 §7-4; Ord. No. 917A §§1-3, 4-22-80; Ord. No. 99-1280 §1, 5-3-99; Ord. No. 2001-1350 §3, 12-3-01)

#### **SECTION 605.060: TATTOOING AND BODY PIERCING**

- A. *Definitions.* As used in this Section the following terms shall have these prescribed meanings:

*OPERATOR:* A person who practices the art of tattooing or body piercing.

*PERSON:* Any individual, firm, or corporation, owner or operator of a tattooing or body-piercing establishment.

*TATTOOING/BODY PIERCING:* Any method of placing designs, letters, scrolls, figures, symbols, metal or any other marks or material upon, in, through or under the skin with or without the aid of needles or instruments.

*TATTOOING/BODY PIERCING ESTABLISHMENTS:* Any place or facility where the art of tattooing or body piercing is performed.

- B. *Permit Required.* It shall be unlawful for any person, firm, or corporation owning, controlling or leasing, acting as agent for, conducting, managing or operating any establishment to practice the art of tattooing or body piercing or to engage in the practice of tattooing or body piercing without first applying for and receiving a permit from the City in the manner herein provided.

- C. *Regulations As To Operation.*

C.1. *General regulations.*

- C.1.a. No tattoo or body piercing may be administered by any person under twenty-one (21) years of age. No tattoo may be administered on any person less than eighteen (18) years of age without parental consent. Where there is doubt about such age, the operator will obtain proof of age before the tattoo or body piercing procedure is done. [Back to Index](#)

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C.1.b. Before administering a tattoo or body piercing, the patron must be advised that the tattoo should be considered permanent; tattoos can be removed only with surgical procedure; and that any effective removal may leave permanent scarring and disfigurement. The patron must be advised that body piercing are not permanent and must be cared for and free of infection. A written cautionary notice to that effect shall be furnished to and signed by the patron and retained on file at the establishment. [Back to Index](#)

C.1.c. The skin surface to be tattooed or pierced must be free of rash, pimples, infection or recent scar tissue. The patron must be in apparent good health, and the skin to be tattooed or pierced generally free of all appearances of pathological conditions.

C.1.d. Tattoos or body piercing may not be administered to any person under the influence of drugs or alcohol, and the operator is charged with the responsibility of making reasonable observation and inquiry to assure himself/herself that the patron is, in fact, sober and not under the influence of drugs.

C.1.e. Written instructions, regarding the proper care of the tattooed or pierced skin as a precaution against infections shall be provided to each patron following the tattoo or piercing procedure.

C.1.f. The regulations herein provided shall in no way be construed to allow nor permit the removal of any tattoo nor shall the tattoo operator perform or attempt to perform any procedure which is intended to remove any tattoo. Any known attempt by a tattoo operator to perform a tattoo removal procedure shall result in the immediate suspension of the tattoo operator's permit. The above procedure shall not preclude prosecution of the operator during the same period of permit suspension.

C.1.g. Prior to receiving an operator's permit, the operator shall furnish the Code Enforcement Officer with a written statement from a licensed physician that he/she is free of communicable disease.

C.1.h. Prior to receiving an operator's permit, the operator shall furnish the Code Enforcement Officer with a written statement from a licensed physician that he/she is free of blood borne diseases.

## C.2. Premises.

C.2.a. Premises and equipment must be maintained in a sanitary manner. This includes physical cleanliness as well as antiseptic precautions.

C.2.b. All tattoo and/or body piercing parlors shall be equipped with hot and cold running water. Adequate toilet facilities with soap and towels properly installed and in compliance with applicable ordinances, rules and regulations of the City of Cassville shall be provided.

C.2.c. All tattoo and/or body piercing parlors shall be well lit with not less than fifty (50) foot candles in all cleaning and working areas.

C.2.d. All tattoo and/or body piercing parlors shall have ventilation as required by applicable ordinances and regulations of the City of Cassville.

C.2.e. All tattoo and/or body piercing parlors shall be of sufficient size to accommodate required equipment and business done therein. [Back to Index](#)

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C.2.f. Floors, walls and ceilings shall be clean and in good repair and maintained in a clean condition. [Back to Index](#)

C.2.g. Adequate equipment and facilities shall be provided for the disposal of cigarette butts and other disposable items.

C.2.h. All tables and chairs used in the tattooing process shall be constructed of a material allowing easy and thorough cleaning and shall be maintained in a clean and sanitary conditions.

C.2.i. The Code Enforcement Officer shall inspect monthly and be permitted access to all areas of the premises and records at any reasonable time.

### C.3. *Equipment.*

C.3.a. Individual cups of ink or colors shall be used for each patron and be discarded after use.

C.3.b. Needles and other instruments used in administering the tattoo or piercing, including hand pieces, piercing jewelry, needle bars and razor blade holders must be thoroughly disinfected by sterilization prior to each use.

C.3.c. Sterilization of equipment may be either by:

C.3.c.(1) Dry heat at a temperature of three hundred fifty-seven degrees Fahrenheit (357F)(180C) for not less than two (2) hours; or

C.3.c.(2) Steam pressure sterilization (autoclave), for a minimum of thirty (30) minutes at two hundred fifty degrees Fahrenheit (250F)(121C), followed by a drying time of not less than fifteen (15) minutes.

C.3.c.(2)(a) To prepare for steam pressure sterilization, each needle shall be flushed with distilled water and left distinctly moist, just before the sterilization process is initiated. The tubes containing the needles should rest on their sides in the sterilizer to facilitate air removal and steam contact to each tube and needle.

C.3.c.(2)(b) When an autoclave procedure is used, indicator tape or other acceptable test method shall be used to check the effectiveness or sterilization.

C.3.c.(2)(c) Records of methods of sterilization together with temperature cycle for each sterilization process shall be kept on file for inspection by the Code Enforcement Officer.

C.3.c.(2)(d) All instruments and needles shall be stored in a closed metal or glass container.

C.3.c.(2)(e) All acetate tattoo stencils shall be cleaned with seventy percent (70%) isopropyl alcohol between customers or individual transfer of tattoo designs shall be used once and discarded.

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C.4. *Minimum acceptable aseptic technique.*

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- C.4.a. Neither the patron nor operator shall consume or bring food or drink into the tattooing or body piercing area and shall not smoke during the procedure or in the room(s) where the tattooing takes place.
- C.4.b. The tattoo operator must be free from blood borne disease while administering tattoos or piercing and present no pustular lesions of the hands or arms.
- C.4.c. Immediately before administering a tattoo or piercing, the operator must thoroughly wash his/her hands in hot water with soap, using a short-bristled brush and then dry the hands with a disposable towel.
- C.4.d. The operator shall wear a clean and easily cleanable smock while administering the tattoo or piercing procedure.
- C.4.e. The operator, while administering a tattoo or piercing shall wear an effective hair restraint, must have clean fingernails and shall in general pay particular attention to his/her personal hygiene.
- C.4.f. The skin surrounding the area where the tattoo or piercing is to be placed shall first be washed with a germicidal soap and then shaved with a disposable blade. Following shaving, the skin must be gently scrubbed with seventy percent (70%) isopropyl alcohol, using a sterile gauze pad, which shall be disposed of after use.
- C.4.g. Individual razor blades shall be used when customer is shaved and razor then disinfected and prepared as in Subsection (3)(b) and (c) herein and between each use.
- C.4.h. During any phase of the tattoo or piercing procedure, should the operator be interrupted for other duties, i.e., answering the phone, etc.; the operator shall wash his/her hands as in Subsection (4)(c) herein before resuming the tattoo or piercing procedure.
- C.4.i. The tattoo shall be bandaged with a sterile non-stick bandage when tattoo is finished.
- C.4.j. All infections resulting from the practice of tattooing or piercing shall be reported to the Code Enforcement Officer by the person owning or operating the tattooing or piercing establishment.

- D. *Violation And Penalty.* Any person, firm or corporation who shall violate any of the provisions of this Section or fail to comply with any order or regulation made shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). (Ord. No. 1379 §1, 8-19-02; Ord. No. 1382 §1, 9-16-02)

## CHAPTER 610: FRANCHISES

*Cross References—Buildings, ch. 500; licenses and business regulations, ch. 605; streets, ch. 505; utilities, Title VII.*

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## **ARTICLE I. ELECTRICITY**

### **SECTION 610.010: FRANCHISE GRANTED**

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The Barry Electric Cooperative, hereinafter called the cooperative, its successors and assigns, are hereby authorized and empowered to use the streets, avenues, lanes, alleys and other public grounds and ways in the City of Cassville, Missouri, as its limits now exist or may be altered, for the purpose of erecting and maintaining an electric distribution system, with the poles, wires (aboveground or thereunder) and other apparatus, equipment and appliances necessary therefor; for the purpose of conducting, supplying and selling electric energy to the City and the inhabitants thereof for light, power, heat and any other purposes; for the purpose of transmitting electric energy through the City; for the purpose of erecting and maintaining a plant or plants in said City for the generation of such electric energy, or any part thereof, with the right in said cooperative also to generate or procure said electric energy, or any part thereof, at other points and carry same into said City and there distribute and sell same. (CC 1989 App. A, Art. I §1; Ord. No. 894, 6-13-78)

### **SECTION 610.020: CONTINUOUS SERVICE**

The cooperative agrees that it will furnish continuous and uninterrupted electric service from the beginning of such service to the end of the franchise period, except for interruptions caused by strikes, riots, governmental interference or regulation, acts of providence, or accidents beyond the control of the cooperative. (CC 1989 App. A, Art. I §2; Ord. No. 894, 6-13-78)

### **SECTION 610.030: REGULATIONS**

The distribution and sale of the electric energy to consumers shall be governed by such operating rules, regulations and practices of the cooperative as may now or hereafter be prescribed. (CC 1989 App. A, Art. I §3; Ord. No. 894, 6-13-78)

### **SECTION 610.040: PROVISIONS BINDING**

All the terms and provisions of this Article shall be binding upon the parties hereto, and upon their respective successors and assigns. (CC 1989 App. A, Art. I §4; Ord. No. 894, 6-13-78)

### **SECTION 610.050: TIME OF EFFECT**

This Article shall take effect and be in force from and after its passage and approval; and all the rights hereby granted shall continue and remain in full force and effect for a period of twenty (20) years from and after the date of passage of the Article (June 13, 1978); provided that written acceptance by the cooperative shall be filed with the Clerk. (CC 1989 App. A, Art. I §5; Ord. No. 894, 6-13-78)

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## ARTICLE II. CABLE TELEVISION

### SECTION 610.060: TITLE

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This Article shall be known and may be cited as "The Cassville Cable Television Ordinance." (CC 1989 App. A, Art. II §1; Ord. No. 932, 1-12-82)

### SECTION 610.070: DEFINITIONS

For the purposes of this Article, the following terms, phrases, words and their derivations shall have the meaning given herein. Where not inconsistent with the context, words used in the present tense shall include the future; words in the singular number include the singular number. The word "*shall*" is always mandatory and not merely directive.

*BOARD OF ALDERMEN*: The present Governing Body of the City of Cassville or any future Board constituting the legislative body of the City.

*CITY*: The City of Cassville, Missouri, a municipal corporation of the State of Missouri, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

*COMMUNITY ANTENNA TELEVISION SYSTEM, HEREINAFTER REFERRED TO AS "CATV SYSTEM"*: A system of antennae, coaxial cables, wires, wave guides, microwave, or other conductors, equipment or facilities designed, constructed or used primarily but not exclusively for the interception and receipt of television or radio signals, directly or indirectly off the air, and the distribution or transmission of such signals by means of cables or other similar devices to subscribers, and said term shall also include the transmission of original cablecase programming and transmitting television pictures, films and videotape programs not received through television broadcast signals.

*COMPANY*: City Vision Inc., a division of Southwest Missouri Cable TV, Inc., a Missouri corporation and the lawful successor, transferee or assignee of said corporation, subject to the provisions hereinafter contained with regard to transfer of permit.

*FCC*: The Federal Communications Commission.

*GROSS ANNUAL RECEIPTS*: Any and all compensation and other consideration in any form whatsoever and any contributing grant or subsidy received directly or indirectly by any CATV company or permittee hereunder from subscribers or users in payment for television or FM radio signals or service(s) received within the City. Gross annual receipts shall not include the following:

- D.1. Any taxes on services furnished by any CATV company or permittee hereunder imposed directly upon any subscriber or user by any State, City or other governmental unit and collected by the permittee hereunder on behalf of said governmental unit;
- D.2. Any refunds made to subscribers or users by any CATV company or permittee hereunder;
- D.3. Any installation charge paid by any subscriber or user to any CATV company or permittee hereunder; and
- D.4. Subscriber revenue for premium subscribed services, which can be obtained at the option of the subscriber at additional cost such as Home Box Office, Showtime or The Movie Channel.

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*PERMIT:* The non-exclusive permission, license, franchise or authority given hereunder to conduct, operate and maintain a community antenna television system in the City. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the City as required by other ordinances and laws of the City.

*PERSON:* Any individual or association of individuals, or any firm, corporation or other business entity.

*PROPERTY OF PERMITTEE:* All property owned, installed, or used within the City by any CATV company or any permit granted by the City for the conduct of a CATV business pursuant to this Article.

*STREET:* The surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, drive or other easement now or hereafter held by the City for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the City which shall, within their proper use and meaning entitle the City and the company to the use thereof for the purpose of installing or transmitting CATV transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a CATV system.

*SUBSCRIBER:* Any person or entity receiving for any purpose any service of any CATV company granted a permit under the terms of this Article. (CC 1989 App. A, Art. II §2; Ord. No. 932, 1-12-82)

## **SECTION 610.080: GRANT OF NON-EXCLUSIVE AUTHORITY**

- A. There is hereby granted from the City to the company the non-exclusive right and privilege to construct, erect, operate and maintain a CATV system within the City of Cassville, and in so doing to use the streets of said City by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, under, upon or across any such streets, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to a CATV system and in addition, so to use, operate and provide for all or part of such facilities by service offering obtained from the telephone company, or from the electrical utilities in the City.
- B. The authority hereby granted to conduct a CATV system in the City of Cassville and to use and occupy the streets therefore is not and shall not be deemed to be an exclusive right or permission, and the City of Cassville expressly reserves the right to grant similar non-exclusive permits to other persons, firms or corporations to conduct CATV and to use the streets of the City therefore within the same or other areas of the City at the time or any period of time, and in no such additional permit granted by the City of Cassville shall in anywise affect the obligations of the company hereunder. (CC 1989 App. A, Art. II §3; Ord. No. 932, 1-12-82)

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**SECTION 610.090: TERM OF PERMIT**

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- A. Any permit granted hereunder shall be for an initial term of fifteen (15) years unless the same shall sooner expire or be terminated by reason of other provisions herein. The term of any permit granted hereunder shall commence on the first day of the first month next following the date that any CATV company or permittee hereunder has filed its unconditional acceptance and agreement in writing to abide by the terms and conditions of this Article with the City Clerk of the City of Cassville.
- B. If the company does not file its unconditional acceptance and agreement to abide by the terms and conditions of this Article within thirty (30) days immediately following the passage of this Article by the Board of Aldermen, then this Article shall be deemed void and of no further force and effect and the offer of permit contained herein shall stand revoked.  
(CC 1989 App. A, Art. II §4; Ord. No. 932, 1-12-82)

**SECTION 610.100: PERMIT FEE**

- A. As compensation for a permit granted pursuant to this Article, and in consideration of permission to use the streets of the City for the construction, operation and maintenance of a CATV system within the City, the City shall receive the maximum percent of its gross annual receipts, as hereinbefore defined, which is permissible under FCC regulations and which shall be three percent (3%) of the permittee's gross annual receipts during the term of the permit granted hereunder; provided however, that should the FCC regulations permit an increased permit fee during the term of the permit granted hereunder, the City may, in its sole discretion, immediately increase said fee to the maximum fee permitted by applicable FCC regulations; and provided further that in no event shall said fee exceed five percent (5%) of the permittee's gross annual receipts during the term of the permit granted hereunder. In addition the City shall receive one-half percent (0.5%) of net annual premium subscribed revenues.
- B. Payments due the City under this Section shall be computed semi-annually, for the preceding six (6) months, as of June thirtieth (30th), and December thirty-first (31st), of each year. Each semiannual payment shall be due and payable no later than thirty (30) days after the relevant computation date. Each payment shall be accompanied by a brief report showing the basis for the computation and such other relevant facts as may be required by the City. The first payment due hereunder shall be for the six (6) month period ending after operation of the system commences.
- C. No acceptance of any payment shall be construed as an agreement that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claims the City may have for further or additional sums payable under the provisions of this Article. All amounts paid shall be subject to audit and recomputation by the City. In the event that recomputation results in additional revenue to be paid to the City, such amount shall be subject to a ten percent (10%) interest charge and will be payable thirty (30) days after assessed.
- D. The City shall have the right to inspect the records of any permittee hereunder showing the gross receipts from which its franchise payments are computed.
- E. In addition to the permit payments provided in this Section, all applicants for a permit hereunder shall pay an initial application fee of five hundred dollars (\$500.00) which said fee shall be used by the City to pay all expenses incurred by the City in connection with said application.  
(CC 1989 App. A, Art. II §5; Ord. No. 932, 1-12-82)

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## **SECTION 610.110: COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES**

- A. Any CATV company or permittee hereunder shall, at all times during the life of its permit, be subject to all lawful exercise of the Police power by the City including all codes, zoning ordinances, and subdivision regulations.
- B. The right is hereby reserved to the City to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations, resolutions and ordinances as the City shall deem reasonable and necessary.
- C. At the expiration of the term for which any permit hereunder is granted, or upon the termination and cancellation of any such permit as provided for herein, the City shall have the right to require any CATV company or permittee hereunder to remove, at its own expense, all portions of the CATV system from all public ways within the City.
- D. In the event that any street, alley, public highway or utility easement, or any portion thereof, used by any CATV company or permittee hereunder shall be vacated by the City or the use thereof be discontinued by the permittee during the term of its permit, said permittee shall forthwith remove its facilities therefrom unless specifically authorized to continue the same, and upon the removal thereof, restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be required by the Board of Aldermen. (CC 1989 App. A, Art. II §6; Ord. No. 932, 1-12-82)

## **SECTION 610.120: COMPANY LIABILITY—INDEMNIFICATION**

Any CATV company or permittee hereunder shall indemnify and save the City and its officers, agents and employees harmless from any and all claims for personal injuries or property damages or damage for copyright infringements, and any other claims and costs, including attorneys' fees, expenses of investigation and litigation of claims and suits thereon which may arise from the installation and/or operation of the company's CATV system or any equipment of the company. In case suit shall be filed against the City, either independently or jointly with said company, to recover for any said claim or damages, said company, upon notice by said City, shall defend said City, its officers, agents, and employees against said action, and, in the event of a final judgment being obtained against said City, either independently or jointly with said company, said company will pay said judgment and all costs and hold City harmless therefrom.  
(CC 1989 App. A, Art. II §7; Ord. No. 932, 1-12-82)

## **SECTION 610.130: INSURANCE**

Any CATV company or permittee hereunder shall maintain, and by its acceptance of a permit hereunder specifically agree to maintain throughout the term of its permit, public liability insurance in a solvent insurance company authorized to do business in the State of Missouri with regard to the following damages in the minimum amounts of:

- D.1. Three hundred thousand dollars (\$300,000.00) for property damage resulting from any one (1) accident;

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- D.2. One million dollars (\$1,000,000.00) for bodily injury or death to any one (1) person and three million dollars (\$3,000,000.00) for personal injury or death of two (2) or more persons in any one (1) occurrence. [Back to Index](#)
- D.3. Provided however, that all such insurance may contain a reasonable deductible provision not to exceed one thousand dollars (\$1,000.00) for any type of coverage. A certificate of such insurance indicating such insurance is in force shall be kept filed with the City Clerk at all times during the term of any permit granted hereunder and shall be maintained in full force and effect at the sole cost and expense of the company. (CC 1989 App. A, Art. II §8; Ord. No. 932, 1-12-82)

#### **SECTION 610.140: PERFORMANCE BOND/SECURITY FUND**

- A. Any CATV company or permittee hereunder shall maintain throughout the term of its permit a faithful performance bond running to the City, executed by a corporate surety company authorized to do business in the State of Missouri, in the penal sum of twenty thousand dollars (\$20,000.00), conditioned that the company shall well and truly observe, fulfill and perform each term and condition of its permit and this Article and that in case of any breach of condition of the bond, the amount thereof shall be recoverable from the principal and surety thereof by the City for all damages resulting from the failure of the company to well and faithfully observe and perform any provision of this Article and its permit. If the company shall abandon the system, and the City shall dismantle and take down all or any part of the CATV system, the cost of such dismantling and taking down shall be recoverable from the said bond.
- B. After the first two (2) years of its permit, any CATV company or permittee hereunder, at its option, may petition the City to establish a Security Fund in a bank or banks within the City in the amount of twenty thousand dollars (\$20,000.00), which said fund may be maintained by the permittee throughout the term of its permit for the benefit of the City, upon terms and conditions to be agreed upon by the City and the permittee. If said Security Fund is established upon terms and conditions mutually agreeable to the City and the permittee the requirement of a performance bond shall be waived during the remainder of the permit term. Otherwise said performance bond shall remain in full force and effect during the term of the permit granted hereunder.
- C. No recovery by the City of any sum by reason of the performance bond or Security Fund required in this Section shall be in limitation upon the liability of any CATV company or permittee hereunder to the City under the terms of this Section, except that any sum so received by the City shall be deducted from any recovery which the City might have against said company under the terms of this Article. (CC 1989 App. A, Art. II §9; Ord. No. 932, 1-12-82)

#### **SECTION 610.150: RECORDS AND REPORTS**

The City shall have access at all reasonable hours to all of the plans, contracts, and engineering, accounting, financial, statistical, customer and service records of any CATV company or permittee hereunder relating to the property and the operation of said company and to all other records required to be kept hereunder. The following records and reports shall be made available to the City upon request:

- .1. Copies of rules, regulations, terms and conditions established by said permittee for the conduct of its business. [Back to Index](#)

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- .2. An annual summary report showing gross revenues received by any permittee hereunder from its operations during the preceding year and such other information as the City shall request with respect to properties and expenses relating to the permittee's service. The company shall also continually keep on file with the City Clerk a current list of its shareholders, officers, directors and employees with their current addresses. In addition, all books and records of the company concerning its operations within the City of Cassville shall be made available for inspection and audit by the City or its designee within thirty (30) days after any request for such inspection or audit has been made. (CC 1989 App. A, Art. II §10; Ord. No. 932, 1-12-82)

**SECTION 610.160: CONDITIONS OF STREET OCCUPANCY AND INSTALLATION OF CATV FACILITIES**

- A. Any CATV company or permittee hereunder or any person, firm or corporation erecting, constructing or maintaining any of the property used by or for said company shall at all times employ due care or the highest degree of care required by the law under the facts and circumstances and shall maintain and install the property of the company in accordance with commonly accepted methods and principles so as to prevent failure and accidents likely to cause or which might tend to cause damage, injury or a nuisance to the public.
- B. All transmission and distribution structures, lines and equipment erected by or for the company shall be so located as to cause minimum interference with the proper use of streets and other public ways and places, and so as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin said streets or other public ways and places, and in no event shall any such structures, lines or equipment be located so as to substantially interfere with the usual public travel upon any street of the City.
- C. In the event that, at any time during the period of any permit issued hereunder, the City shall lawfully elect to alter, or change the grade or width of any street, alley or other public way, the company, upon notice by the City, shall immediately remove, relocate and reinstall its poles, wires, underground conduits, manholes and other system fixtures at the sole cost and expense of the company.
- D. In case of any disturbance of pavement, sidewalks, driveways or other surfacing, the company shall, at its own cost and expense and in a manner approved by the City, place and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced.
- E. The company shall have the authority to trim trees upon and overhanging the streets of the City so as to prevent the branches of such trees from coming in contact with the wires, cables and other facilities of the company, except that the City may require through its Maintenance Department that such work be done by the City or under its supervision and direction at the expense of the company.
- F. No installation of any CATV facilities shall be performed or conducted within any of the streets of the City unless plans therefore shall have been first submitted to the City Engineer and approved by him/her.
- G. All CATV facilities and system components shall be constructed and operated in compliance with all City, State and National Construction and Electrical Codes in effect on the date this Article is adopted and shall be kept current to codes as they are adopted as necessary to maintain the safety of the public. The company shall maintain its wires, cables, fixtures and other equipment in such

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manner that they will not interfere with any installations of the City or of any public utility serving the City. [Back to Index](#)

- H. The company shall, upon the request of any person holding a building or moving permit issued by the City, temporarily raise or lower its wires or other property or relocate the same temporarily so as to permit the moving or erection of buildings. The expense of any such temporary removal, raising or lowering of wires or other property shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less than forty-eight (48) hours' prior written notice in order to arrange for the action required as aforesaid.
- I. No asphalt, concrete or other street surface shall be broken by the company without the approval in writing of the Mayor of the City. (CC 1989 App. A, Art. II §11; Ord. No. 932, 1-12-82)

#### **SECTION 610.170: USE OF EXISTING POLES**

- A. Except when absolutely necessary to service a subscriber and not simply because it shall be more convenient, economical or profitable for the company to so operate, and then only when expressly permitted in writing by the Board of Aldermen of the City of Cassville, the company shall not erect or authorize or permit others to erect any poles or other facilities within the streets of the City for the conduct of its CATV system, but shall use the existing poles and other equipment of the City, Barry Electric Cooperative or Continental Telephone.
- B. The company shall enter into agreements with the said Barry Electric Cooperative or Continental Telephone for the joint use of their poles and equipment. (CC 1989 App. A, Art. II §12; Ord. No. 932, 1-12-82)

#### **SECTION 610.180: LOCATION OF FACILITIES UNDERGROUND**

Whenever, in any place within the City, all or any part of the electric and telephone utilities are located underground, it shall be the obligation of the company to locate or to cause its property to be located underground within such places. If the electric and telephone utilities are located underground in any place within the City after the company shall have previously installed its property, nevertheless, the company shall, at the same time or immediately thereafter, remove and relocate its property also underground in such places. All location by the company of its property underground shall be at the sole cost and expense of the company. In all uninhabited existing platted lands or subdivisions, or in all new subdivisions or developments, the subdivider, developer and/or landowners shall bear all costs for CATV plant extension and service.  
(CC 1989 App. A, Art. II §13; Ord. No. 932, 1-12-82)

#### **SECTION 610.190: REMOVAL OF FACILITIES UPON REQUEST BY SUBSCRIBER**

Upon termination of service to any subscriber, upon the subscriber's request, the company shall promptly remove all its facilities and equipment from the premises of such subscriber.  
(CC 1989 App. A, Art. II §14; Ord. No. 932, 1-12-82)

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**SECTION 610.200: SERVICE TO PUBLIC FACILITIES**

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- A. The company shall provide service to public schools, colleges and parochial schools, upon request of such institutions. Service for the first primary service connection to each such building shall be without charge or cost to the institution for connection or monthly service fee. Additional service connections shall be at the cost of labor and material only, and in no event shall there be a monthly service charge. The company shall provide service to hospitals, nursing homes and day care centers on a multi-unit basis.
- B. The company shall provide basic cable service free of charge to the Cassville community building. (CC 1989 App. A, Art. II §15; Ord. No. 932, 1-12-82)

**SECTION 610.210: EMERGENCY USE OF FACILITIES**

In the event of an emergency or disaster, the company shall, upon the request of the City, make available its facilities to the City for emergency use during the period of such emergency or disaster and shall provide such personnel necessary to promptly operate under the circumstances. (CC 1989 App. A, Art. II §16; Ord. No. 932, 1-12-82)

**SECTION 610.220: PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED**

The company shall not, as to rates, charges, service, service facilities, rules, regulations, or in any other respect make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage; provided, that nothing in this Article shall be deemed to prohibit the establishment of a graduated scale of charges and classified rating schedules to which any customer coming within such classification would be entitled. This Section shall not prohibit special rates for promotional sales, commercial rate structures or free connections and service to company employees. (CC 1989 App. A, Art. II §17; Ord. No. 932, 1-12-82)

**SECTION 610.230: SYSTEM CONSTRUCTION SCHEDULE**

- A. Within two hundred seventy (270) days after the date the company shall accept the terms of this Article, the company shall start construction and installation of the CATV system. The City may, upon a showing that the company by using all reasonable diligence will not be able to start construction within such period of two hundred seventy (270) days, grant such extension of the time for initial commencement of construction as the City may seem [deem] absolutely necessary. Within three hundred ten (310) days after the commencement of the construction of the CATV system, the company shall be able and willing to render service to at least one thousand (1,000) subscribers and shall within five hundred ten (510) days after the commencement of the construction be able and willing to render service to anyone living within the City. The aforesaid period of time may be extended by the City whenever the City is satisfied that the company has diligently attempted to meet the requirements of this Article but has been unable to do so for reasons beyond the control of the company.
- B. Because of the time lag between the approval of this Article and the completion of construction, the company reserves the right to substitute equivalent signals, add or modify carriage commitments or make other adjustments to comply with Federal regulations and the current state of the art. (CC 1989 App. A, Art. II §18; Ord. No. 932, 1-12-82)

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**SECTION 610.240: SYSTEM EXPANSION**

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- A. The company shall extend CATV service to any dwelling unit at the standard rate if requested by the owner and such connection would require no more than a standard one hundred fifty (150) foot aerial dropline. The company shall extend CATV service as soon as possible to any dwelling unit at the standard rate if requested by the owner and the dwelling is within one thousand (1,000) feet of existing service and within the City limits at the standard rate.
- B. Where there exists a requirement for underground cable or for a drop from distribution cable to the subscriber's television receiver of more than one hundred fifty (150) feet within the company service area in order that existing subscribers shall not be unfairly burdened, an installation charge limited to the cost of materials, labor and easements for distances exceeding one hundred fifty (150) feet from the distribution system may be assessed.
- C. The company may, at its option, extend energized or unenergized cable, or conduit to all new residential developments as they are constructed. Costs of trenching, conduit, pedestals and/or vaults and laterals, as well as easements therefore required to bring service to the development shall be paid by the developer and/or landowner. All installations in construction by the developer and/or landowner shall be to the specifications of the company and in accordance with the specifications established hereunder. (CC 1989 App. A, Art. II §19; Ord. No. 932, 1-12-82)

**SECTION 610.250: OPERATION AND MAINTENANCE**

- A. The CATV system shall be installed and maintained in accordance with the highest accepted standards of the industry to the end that the subscriber may receive the highest and most desirable form of service.
- B. The company shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest period of time possible. Interruptions for system maintenance insofar as possible shall be preceded by notice and shall occur during periods of minimum use of the system.
- C. The company shall fully comply with the technical standards of the FCC at all times.
- D. In order to limit failures and malfunctions of the CATV system to a minimum and to ensure that the same might be promptly corrected at all times after notice of malfunction or failure, the company shall consistently maintain a sub-office or agent, which shall have a listed telephone, which telephone shall be so operated that complaints or requests for repairs or adjustments because of malfunctions can be received at any time of the day, seven (7) days a week.
- E. Failures or malfunctions of the system shall be corrected by the company within twenty-four (24) hours after notice of such failure or malfunction, except or unless such failure or malfunction shall be over a substantial portion of the company's system and shall have been caused by storm, fire, lightning, explosion, civil disorder or other similar catastrophe.  
(CC 1989 App. A, Art. II §20; Ord. No. 932, 1-12-82)

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**SECTION 610.260: SERVICE CALLS**

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The technical staff of the company will be available during all daylight hours and reasonable evening hours to answer service calls without charge pertaining to the operation of the CATV system, but will not be required to service, repair, or make adjustments to the subscriber's television receiver. (CC 1989 App. A, Art. II §21; Ord. No. 932, 1-12-82)

**SECTION 610.270: TRANSFER OF PERMIT**

- A. Any permit granted pursuant to the provisions of this Article shall be deemed a privilege to be held in personal trust by the permittee. It shall not in any event be sold, transferred, leased, assigned or disposed of in whole or in part either by forced or voluntary sale, merger, consolidation, or otherwise without the prior consent of the City expressed by resolution of the Board of Aldermen, and then only under such conditions as may therein be prescribed. The permittee shall not have such property rights in this permit that the same may be affected, transferred or disposed of voluntarily or involuntarily without the consent of the City.
- B. Should the company desire to transfer any permit granted hereunder, a joint application to transfer shall be filed by the company and the proposed transferee with the City Clerk at least ninety (90) days prior to the intended date of transfer. The transfer application shall contain the following information, without limitation, to wit:
  - B.1. The names and addresses of the parties thereto;
  - B.2. The kind of business organization of the proposed transferee;
  - B.3. If the proposed transferee is incorporated, a copy of its articles of incorporation, the names and addresses of all officers and directors of the proposed transferee, the names and addresses of all shareholders of the proposed transferee, and the number of shares held by each;
  - B.4. If the proposed transferee is an association or partnership, showing the names, addresses and interests of all parties thereto;
  - B.5. The consideration to be paid for the assignment of said permit and the method of payment thereof;
  - B.6. A financial statement of the proposed transferee prepared by a reputable certified public accountant;
  - B.7. Such additional information as the Board of Aldermen shall require.
- C. The company shall have the right at any time to mortgage the whole of its system or any part thereof, provided that any such mortgage shall be upon the express condition that the rights of the mortgage holder shall be subject to the rights of the City under the terms of this Article and any permit issued hereunder, including the right of the City to purchase all or a part of the company. Any division of the system by foreclosure or otherwise under any mortgage shall not affect the right of the City to purchase the system as a whole. (CC 1989 App. A, Art. II §22; Ord. No. 932, 1-12-82)

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## **SECTION 610.280: FORFEITURE OF PERMIT**

In addition to all other rights, privileges and powers pertaining to the City by virtue of this Article, the City reserves as an additional and as a separate and distinct remedy the right to terminate, cancel and revoke any permit issued hereunder in any of the following events or for any of the following reasons:

- .1. The company fails, after ten (10) days' prior written notice, to comply with any of the provisions of this Article or any rule, order or determination of the City made pursuant to this Article; or
- .2. The company becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or foreclosure proceedings or judicial sale proceedings are instituted against any assets of the company which are a substantial part of the CATV system operated under the provisions of this Article; or
- .3. The company attempts to evade any of the provisions of this Article or knowingly practices any fraud or deceit upon the City or upon any person who [whose] interest or rights may be affected by the terms of this Article; or
- .4. Any provision of this Article shall be finally adjudged by a Court of law invalid or unenforceable and the Board of Aldermen further finds that such provision constitutes at that time a consideration material to the continuance of the permit granted hereunder; or
- .5. The company abandons the CATV system, or, after having constructed and placed all or any portion thereof in operation for any reason, fails to operate it for a period of thirty (30) days. (CC 1989 App. A, Art. II §23; Ord. No. 932, 1-12-82)

## **SECTION 610.290: PROCEDURE UPON TERMINATION**

- A. At the expiration of any permit granted hereunder, whether by termination, revocation or forfeiture, the City shall have and is hereby granted the option to purchase the entire CATV system of the company including such portions thereof as may exist beyond the limits of the City and which the City may find necessary or desirable to the proper function and operation of the CATV system in the City.
- B. In order to avail itself of this option, the City shall give written notice to the company of its desire to exercise this option, which notice shall be valid if given on or before the day that said permit shall so expire. Upon the exercise of this option by the City, the company shall immediately transfer to the City possession and title to all facilities and property, real and personal, of the CATV system, including such portions as are located beyond the City, as aforesaid which the City shall identify in its exercise of the option, free from all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price hereinafter set forth; and the company shall execute such warranty deeds or other instruments of conveyance as shall be necessary for the transfer of the system to the City.

The purchase price for the system of the company shall be based upon reasonable market value of the system in place at the expiration of any permit granted hereunder, but shall not include nor shall the company receive any sum whatsoever for the valuation of any right or privilege appertaining to the company because of this Article or any permit granted hereunder.

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- C. In the event that the City elects not to exercise its option, the company may enter upon the streets and public ways of the City for the purpose of moving therefrom any or all of its property. In removing said property, the company shall refill, at its own expense, any excavation that shall be made by it and shall leave such streets and public ways and public places in as good a condition as that prevailing prior to the company's removal of its property.
- D. If the City and the company are unable to agree upon the purchase price within three (3) months from the date the City gives the company written notice of its intention to purchase the system, then the City and company no later than two (2) months thereafter shall each select an appraiser, and the appraisers selected by them shall select a third appraiser and the purchase prices to be paid shall be determined by a majority of the three (3) appraisers. If the company fails to select an appraiser within the time specified the City shall select the initial two (2) appraisers. If the initial appraisers cannot agree upon a third appraiser within thirty (30) days from their own selection, then the Circuit Judge of Barry County, Missouri, shall select the third appraiser upon written request of either the City or the company. The report of the appraisers shall be made within sixty (60) days from their appointment and shall be filed with the City Clerk and with the company. The City shall have ninety (90) days after the filing of said report to pay the company the purchase price specified therein, or to reject said report. If the City approves the report and elects to exercise its option, then upon payment of the purchase price, the company shall execute all deeds, conveyances, instruments and documents as deemed necessary by the City to transfer title to the City.  
(CC 1989 App. A, Art. II §24; Ord. No. 932, 1-12-82)

#### **SECTION 610.300: LOCAL OFFICE COMPLAINTS**

The company shall maintain within the corporate limits of said City, a sub-business office and agent therein, which subscribers may telephone during regular business hours without incurring added message or toll charges, so that CATV maintenance service shall be promptly and regularly available. The company shall maintain a log at its sub-business office, which shall list all complaints received by said company and shall also keep on hand at said office a supply of spare parts so as to avoid delays in maintaining and making repairs to the CATV system.  
(CC 1989 App. A, Art. II §25; Ord. No. 932, 1-12-82)

#### **SECTION 610.310: INITIAL RATES AND CHARGES**

The following rates and charges are hereby authorized to be imposed and collected by the company, and shall for at least a period of one (1) year from the date that the company shall first commence service to its initial subscriber be deemed fair and reasonable charges not subject to change by the City nor the company. Thereafter, no change or modification of the rates and charges hereinafter set forth shall be made or allowed except with the prior approval of the Board of Aldermen. Should the Board of Aldermen expressly decline to approve any submitted modification of rates or charges within a period of thirty (30) days after the submission thereof, the company shall be entitled to a public hearing before the Board of Aldermen upon the question of such modifications or changes with a reasonable time after such refusal. The following rates and charges are hereby initially approved and authorized to be imposed and collected by the company:

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**Basic Cable—12 Channels**

\$8.00 per month service ..... \$15.00 installation  
 \$2.00 per month, each additional outlet..... 7.50 additional outlet installation  
 (original installation)  
 15.00 installation second trip

<i>Ch.</i>	<i>Call Sign</i>	<i>Original</i>	<i>Network</i>
2	24 hr. sports	Bristol, Conn.	ESPN
3	KYTV	Springfield, Mo.	NBC
4	24 hr. news	Atlanta, Ga.	CNN
5	KOZK	Springfield, Mo.	PBS
6	KTVJ	Joplin, Mo.	CBS
7	KOAM	Pittsburg, Ks.	NBC
8	Christian Broadcasting Network	Virginia Beach, Va.	CBN
9	WTBS	Atlanta, Ga.	Indep.
<i>Ch.</i>	<i>Call Sign</i>	<i>Original</i>	<i>Network</i>
10	KOLR	Springfield, Mo.	CBS
11	KMTC	Springfield, Mo.	ABC
12	KODE	Joplin, Mo.	ABC
13	WGN	Chicago, IL.	Indep.

**Premium Movie Service I**

**Second Tier—The Movie Channel—24-Hour First Run Movies**

\$9.00 per month each service ..... \$15.00 installation each service  
 \$4.50 per month, each additional outlet..... \$15.00 installation each outlet

**Premium Movie Service II**

**Third Tier—Home Box Office (HBO)—First Run Movies**

\$9.00 per month each service ..... \$15.00 installation each service  
 \$4.50 per month, each additional outlet..... \$15.00 installation each outlet

**Total Connection**

**All Three Tiers**

\$25.00 monthly service..... \$20.00 installation charge

Advance yearly service—Deduct \$6.00 from 12-month service rate.

Special low income senior citizen rates—Deduct \$1.00 per month.

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Basic or expanded basic. To qualify:

- Must be age 62 or over
- Income under \$4,300.00 annually
- One (1) set connected with cable service

Multiple unit installations—quotes available on request

*Operational Charges:*

Reconnect, move outlet, transfer charge.....	\$10.00 (each)
Longer cable .....	5.00
Temporary disconnect (payable in advance) .....	7.50
Insufficient check charge.....	5.00
(CC 1989 App. A, Art. II §26; Ord. No. 932, 1-12-82)	

**SECTION 610.320: RATES AND REGULATIONS OF COMPANY**

- A. The rates and charges of the company for its service to any subscriber shall be fair and reasonable and no higher than necessary to meet all costs of service, assuming efficient and economical management including a fair return on the fair value of the properties devoted to such service, and such rates and charges shall not be unreasonably discriminatory.
- B. The Board of Aldermen shall have the power, authority and right to cause the company's rates and charges to conform to the provisions of this Section and for that purpose it may deny increases or order reductions in rates and charges when it determines after notice and opportunity for hearing that such action is necessary to reasonably bring about conformity with Subsection (A) of this Section. (CC 1989 App. A, Art. II §27; Ord. No. 932, 1-12-82)

**SECTION 610.330: CHANGE IN REGULATIONS**

If, at any future date, any provision of this Article should be finally determined to be in conflict with any Federal or State law or regulation, said provision shall be revised and this Article amended to comply with said law or regulation. (CC 1989 App. A, Art. II §28; Ord. No. 932, 1-12-82)

**SECTION 610.340: COMPANY TO HAVE NO RECOURSE**

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The company shall have no recourse whatsoever against the City for any loss, cost or expense or damage arising out of any of the provisions or requirements of this Article or because of the enforcement thereof by the City nor for the failure of the City to have the authority to grant all or any part of this franchise.

The company expressly acknowledges that upon accepting the terms of this Article and any permit granted hereunder it did so relying upon its own investigation and understanding of the power and authority of the City to grant such permit; the company, by acceptance of any permit granted hereunder, acknowledges that it has not been induced to enter into this permit by any understanding or promise of other statement, whether verbal or written, by or on behalf of the City of Cassville or by any other third person concerning any term or condition of this Article not expressed herein. The company further acknowledges by the acceptance of any permit granted hereunder that it has carefully read the terms and conditions hereof, and is willing to and does accept all of the risks of the meaning of such terms and

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conditions and agrees that in the event of any ambiguity therein or in the event of any other dispute over the meaning thereof the same shall be construed strictly against the company and in favor of the City. (CC 1989 App. A, Art. II §29; Ord. No. 932, 1-12-82)

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**SECTION 610.350: FAILURE OF CITY TO ENFORCE THIS ARTICLE—NO WAIVER OF THE TERMS THEREOF**

The company shall not be excused from complying with any of the terms or conditions of this Article by any failure or of the City upon any one (1) or more occasions to insist upon or to seek compliance with such terms or conditions. (CC 1989 App. A, Art. II §30; Ord. No. 932, 1-12-82)

**SECTION 610.360: TIME ESSENCE OF THIS AGREEMENT**

Whenever this Article shall set forth any time for any act to be performed by or on behalf of the company, such time shall be deemed of the essence and any failure of the company to perform within the time allotted shall always be sufficient grounds for the City to revoke or terminate any permit granted hereunder. (CC 1989 App. A, Art. II §31; Ord. No. 932, 1-12-82)

**SECTION 610.370: COMPANY WILL NOT TEST VALIDITY OF ARTICLE OR PERMIT**

The company agrees by the acceptance of any permit granted hereunder that it will not at any time set up against the City in any claim or proceeding any condition or term of this Article or any permit granted hereunder as unreasonable, arbitrary or void, or that the City had no power or authority to make such term or condition, but shall be required to accept the validity of the terms and conditions of this Article in their entirety. (CC 1989 App. A, Art. II §32; Ord. No. 932, 1-12-82)

**SECTION 610.380: RIGHTS RESERVED TO THE CITY**

Without limitation upon the right which the City may otherwise have, the City hereby expressly reserves the following rights, powers and authorities:

- .1. To exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to said City;
- .2. To determine through its Board of Aldermen any question of fact relating to the meaning, terms, obligations or other factors of this Article and any permit granted hereunder;
- .3. To grant additional franchises within the City of Cassville to other persons for the conduct of CATV under any conditions whatsoever acceptable to the City, notwithstanding the same might be alleged to be more favorable and the rights granted herein subject to Section 610.080 of this Article. (CC 1989 App. A, Art. II §33; Ord. No. 932, 1-12-82)

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**SECTION 610.390: NOTICE TO THE PARTIES**

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Whenever under the terms of this Article either party shall be required or permitted to give notice to the other, such notice shall be in writing and is to be served upon the City, it shall be delivered either by first class United States mail or by handing the same to the City Clerk at the Cassville City Hall, Cassville, Missouri, and if to the company, then by delivery by first class United States mail or by handing same to such officer or agent at such address as the company shall from time to time direct. The original name and address of such officer or agent on behalf of the company shall be filed with the City at the time of the company's acceptance of this Article.

(CC 1989 App. A, Art. II §35; Ord. No. 932, 1-12-82)

#### **SECTION 610.400: EMERGENCY WARNING**

The company shall install emergency warning equipment in the City Hall which would allow the City Police to cut in on all cable channels in the event of an emergency. The cost of the emergency warning system shall be figured on the basis of actual cost of time and materials. The cost shall be paid one-half (½) by the City and one-half (½) by the company.

(CC 1989 App. A, Art. II §37; Ord. No. 932, 1-12-82)

### **ARTICLE III. GAS**

#### **SECTION 610.410: FRANCHISE GRANTED**

There is hereby granted to The Gas Service Company, a corporation operating a gas distribution system in the City of Cassville, Missouri, herein called the grantee, its successors and assigns, the rights, privileges and franchise, for a period of twenty (20) years from the effective date hereof, to construct, maintain and operate in the present and future streets, alleys, bridges and public places in said City, its gas distribution system as now located, together with the right, privilege and franchise to acquire, construct, maintain and operate therein and thereon such additions and extensions thereto as may be necessary or desirable, all for the purpose of supplying natural gas for all purposes to the inhabitants of said City and consumers in the vicinity thereof.

(CC 1989 App. A, Art. III §1; Ord. No. 942, 9-14-82)

#### **SECTION 610.420: ORDERS, REGULATIONS, ETC.**

All rates established and charges made by grantee for gas distributed and sold hereunder shall be subject to valid and lawful orders of the Public Service Commission of the State of Missouri, or other competent authority having jurisdiction in the premises, and the sale of gas to consumers shall be governed by the present operating rules, regulations and customs of grantee and such rules and regulations as may hereafter be prescribed or approved. (CC 1989 App. A, Art. III §2; Ord. No. 942, 9-14-82)

#### **SECTION 610.430: GENERAL DUTIES OF GRANTEE**

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In consideration of and as compensation for the right, privilege and franchise hereby granted, the grantee, its successors and assigns, shall furnish gas at such pressure and of such quality as shall be designated by lawful orders of the Public Service Commission of said State, if

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such gas is reasonably procurable; shall furnish free of cost to each consumer a recognized standard meter or other instrument for measurement of gas sold or computation of consumer's bills and keep same in repair at its cost, which meter shall at all times be subject to inspection by said City; shall at all times save the City harmless from any and all damages which said City may be liable to pay that may arise from the construction, maintenance and operation of its plant system or any part thereof; shall limit all excavations of streets, alleys or public places to the necessity of efficient operation and shall not at any one (1) time open or encumber more of any highway or public place than shall be reasonably necessary to enable grantee to proceed with advantage in laying or repairing mains or pipes and shall not permit such highway or public place to remain open longer than necessary for the purpose for which it was opened; shall refill all excavations and replace all pavements with like material and leave same in as good condition as when altered or removed; shall perform all work on streets, alleys and public places under supervision of a representative of said City, if so desired; and shall repay said City all expense to which it has been put in the repair or replacement of streets, highways or pavements in the event such work is done by said City after the neglect or refusal of grantee to perform same in a reasonable time. (CC 1989 App. A, Art. III §3; Ord. No. 942, 9-14-82)

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#### **SECTION 610.440: REPORT, PAYMENT TO CITY**

Grantee shall, not later than February first (1st) and August first (1st) respectively of each year, make a report to the Governing Body of the City of Cassville of its gross receipts from the sale of

gas for domestic and commercial purposes within the corporate limits of said City for the six (6) months' period ending at the last meter reading preceding December thirty-first (31st) and June thirtieth (30th) respectively; and at the time of making such reports, pay into the City Treasury a sum equal to four percent (4%) of said gross receipts subsequent to the effective date of this franchise, which shall be charged to the operating expenses of the company. Domestic and commercial sales shall be considered as sales made other than on special contracts providing for standby fuel and interruption of service at any time demands of domestic and commercial consumers may so require. Said percentage of grantee's gross receipts is hereby levied and assessed as an occupation and license tax for the privilege of engaging in the business herein recited during the term hereof; and as a further consideration for this franchise, grantee agrees to recognize the same as a valid tax and make said payments during such period. (CC 1989 App. A, Art. III §4; Ord. No. 942, 9-14-82)

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