

TITLE XI: BUSINESS REGULATIONS

Chapter

- 110. General Provisions
- 111. Fireworks Regulations
- 112. Alcoholic Beverages
- 113. Adult Businesses
- 114. Cable Communications

Big Stone City - Business Regulations

CHAPTER 110: GENERAL PROVISIONS

Section

110.01	License required
110.02	Placement of video lottery machines

§ 110.01 License Required.

It shall be unlawful for any vendor to sell, display, or offer for sale, any food, beverage, goods, or merchandise without first obtaining permission to do so from the City Council.

(Prior Code, § 5-1-1) Penalty, see § 10.99

Statutory reference:

Similar provisions, see SDCL §§ 9-34-7 to 9-34-8

§ 110.02 Placement of Video Lottery Machines.

(A) Not more than five authorizations for a video lottery machine placement in licensed establishments in addition to the video lottery machine placement provided for the municipal liquor store, will be granted within the city. No licensed establishment authorized for a video lottery machine placement may be denied authorization in subsequent years solely by reason of any limitation of the number of authorizations under the provisions of this section. The quota as established in this section does not limit other types of non-video lottery licenses issued to licensees defined in SDCL § 35-4-2, however the quota, criteria and requirement set forth below do apply to any type of on-sale licensee including those holding operating agreements, and on-sale malt and wine licensees who apply for video lottery establishment authorization after the effective date of this section.

(B) Video lottery machine placement sites shall be selected according to the following criteria;

- (1) The licensed establishment must be a bar or lounge as defined by SDCL § 42-7A-37.1;
- (2) The number of establishments currently licensed for video lottery;
- (3) The proximity of the proposed new video lottery site to the other establishments which have been licensed as video lottery establishments;
- (4) The type of business the applicant proposes for the proposed new video lottery site and the manner in which the applicant proposes to operate it;

Big Stone City - Business Regulations

(5) The location of the proposed new video lottery site to other businesses, residential areas or activities within the same general area;

(6) The extent to which minors frequent a business connected to the proposed new video lottery site; and

(7) The effect the proposed new video lottery site has on economic development.
(Ord. 2002-02, passed 4-1-2002; Ord. 2009-09, passed 12-14-2009) Penalty, see § 10.99

CHAPTER 111: FIREWORKS REGULATIONS

Section

General Provisions

- 111.01 Fireworks unlawful; exception
- 111.02 Enforcement
- 111.03 Other laws controlling
- 111.04 Special exceptions
- 111.05 Time restrictions

Licenses

- 111.20 License classifications
- 111.21 Wholesale license
- 111.22 Special retail license
- 111.23 Retail license
- 111.25 License fees

Licensing Application and Eligibility

- 111.35 Application
- 111.36 Residence requirement
- 111.37 Limitations of licenses
- 111.38 Limitations of sales facilities
- 111.39 Removal of temporary facilities
- 111.40 Application date
- 111.41 Insurance
- 111.99 Penalty

Cross-reference:

Fire prevention and protection, see Ch. 32

Firecrackers and fireworks; offenses against the public welfare, see § 130.11

Property damage offenses, see §§ 130.25 to 130.30

Big Stone City - Business Regulations

General Provisions

§ 111.01 Fireworks Unlawful; Exceptions.

It shall be unlawful and illegal for any individual, firm, partnership or corporation to sell, or to possess for sale, within the city, or within one mile of the limits thereof, any firecrackers, torpedo, rocket or pyrotechnic (commonly known as fireworks) of any description whatsoever, except upon such individual, firm partnership or corporation obtaining a license or permit from the City Council and paying the fee therefore, for each season of selling.

(Ord. 97-01, passed 1-5-1998) Penalty, see § 111.19

§ 111.02 Enforcement.

The City Council shall be empowered to nominate and direct the appointment of individuals and residents of the city to be, and to act as, special law enforcement officers, as may be and to the extent deemed necessary by the City Council, which special law enforcement officers shall be appointed to serve only during the selling season or licensing season for the sale, possession for sale, of pyrotechnics or fireworks, and for a period of 48 hours additional thereafter, and the duties of said appointed special law enforcement officers shall be the same as the lawful duties of any regularly appointed law enforcement officer, and particularly, the enforcement of this chapter; and the City Council shall further designate, in the nomination and appointment of such special law enforcement officers, the compensation that such individuals and residents of the city so appointed as special law enforcement officers shall receive during their term of appointment and service under this chapter.

(Ord. 97-01, passed 1-5-1998)

§ 111.03 Other laws Controlling.

The provisions of this chapter shall conform to and be in compliance with the provisions of SDCL Ch. 34-37, as amended.

(Ord. 97-01, passed 1-5-1998)

§ 111.04 Special Exceptions.

Nothing in this chapter shall apply to the selling or discharging of sparklers, caps pistols and toy caps, where the caps therein do not contain more than 0.25 grain of explosive composition per cap.

(Ord. 97-01, passed 1-5-1998)

Fireworks Regulations

§ 111.05 Time Restrictions.

Fireworks are not to be discharged in the city limits after 10:00 p.m. or before 8:00 a.m.
(Ord. 97-01, passed 1-5-1998) Penalty, see § 111.99

Licenses

§ 111.20 License Classifications.

The following are classes of licenses in the city;

- (A) Wholesale license;
- (B) Special retail license; and
- (C) Retail license.

(Ord. 97-01, passed 1-5-1998)

§ 111.21 Wholesale license.

A wholesale license shall entitle the holder thereof to sell fireworks within the boundaries of the city and within one mile thereof, at wholesale as provided by state law, providing such holder shall first obtain a license from the state as provided by SDCL § 34-37-2, as amended.

(Ord. 97-01, passed 1-5-1998)

§ 111.22 Special Retail license.

A special retail license shall entitle the holder thereof to sell fireworks within the boundaries of the city and within one mile thereof, to out-of-state residents only between May 1 and July 5 during the license year, providing such holder shall first obtain a special retail license from the state as provided by SDCL § 34-37-2.2. as amended.

(Ord. 97-01, passed 1-5-1998)

§ 111.23 Retail license.

A retail license shall entitle the holder thereof to sell fireworks within the boundaries of the city and within one mile thereof, to any person at retail between June 27 and July 5 in any year, providing such holder shall first obtain a retail license from the state as provided by SDCL § 34-37-2, as amended.

(Ord. 97-01, passed 1-5-1998)

§ 111.24 License Fees.

The following shall be the fees charged for each license, depending upon the type of license obtained:

(A) Whole license: \$500;

(B) Special retail license: \$500;

(C) Retail license: \$150; and

(D) New year license: \$40.

(Ord. 97-01, passed 1-5-1998; Ord. 2014-02, passed 11-3-2014)

Licensing Application and Eligibility

§ 111.35 Application.

The City Council shall approve each application for license or permit, and does hereby reserve unto itself the right to reject any and all applications by individuals, firms, partnerships or corporations for this purpose. The following eligibility requirements, to be made of each applicant, except schools, churches or public non-profit organizations, shall be met by each applicant at the time of making application for license or permit and paying the required fee, to-wit.

(Ord. 97-01, passed 1-5-1998)

§ 111.36 Residence Requirement.

The applicant shall be a resident of the city for a period of one year from the date of issuance or such license or permit; or the applicant shall be a recognized business within the city established for a period of not less than six months from the date of issuance of said license or permit.

(Ord. 97-01, passed 1-5-1998)

§ 111.Limitations of Licenses.

There shall be issued a limit of but one license or permit to a family.

(Ord. 97-01, passed 1-5-1998)

Fireworks Regulations

§ 111.38 Limitations of Sales Facilities.

There shall be a limit of one stand or sales booth per license issued under this chapter.
(Ord. 97-01, passed 1-5-1998)

§ 111.39 Removal of Temporary Facilities.

The license or party receiving a permit does agree with the city that as a condition of receiving said license or permit, his or her stand or booth from which sales of fireworks are made shall be removed from any roadside, sidewalk and the like within a period of not more than 48 hours from the closing date of the sales season. This restriction shall not apply to a license doing business under this license or permit from a regularly established place of business.
(Ord. 97-01, passed 1-5-1998)

§ 111.40 Application Date.

The wholesale and special retail license will be issued upon application at the Council meeting of the city, at the Council room, in the City Hall held the first Monday of April. The retail license or permit shall be issued at the first Council meeting of June.
(Ord. 97-01, passed 1-5-1998)

§ 111.41 Insurance.

All applicants must provide a certificate of liability insurance when applying for a fireworks license.
(Ord. 97-01, passed 1-5-1998)

§ 111.99 Penalty.

Any person, firm, partnership or corporation violating any of the provisions of this chapter shall upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$200 or by imprisonment not exceeding 30 days, or both such fine and imprisonment, and in addition thereto shall pay the costs of prosecution. In addition to the foregoing penalty, upon a second conviction for a violation of this chapter, the license shall automatically be revoked and any such person, firm, partnership or corporation shall be ineligible for any fireworks license the following year.
(Ord. 97-01, passed 1-5-1998)

Big Stone City - Business Regulations

CHAPTER 112: ALCOHOLIC BEVERAGES

Section

- 112.01 License required
- 112.02 On-sale liquor licenses
- 112.03 Off-sale liquor licenses
- 112.04 Retail malt beverage licenses
- 112.05 Retail wine and cider licenses
- 112.06 Full-service restaurant licenses
- 112.07 Special events alcohol beverage license
- 112.08 Operating hours

§ 112.01 License Required.

No person shall sell, offer for sale, keep for sale, exchange, distill, manufacture, produce, bottle, blend or otherwise prepare within the city or within one mile of its territorial limits, any alcoholic beverage as defined by statute, without having a license therefor as required by state statute.

(Ord. 2020-03, passed 4-6-2020) Penalty, see § 10.99

Statutory reference:

Similar provisions, see SDCL §§ 9-27-7 and 35-3-1

§ 112.02 On-Sale Liquor Licenses.

There shall be one retail on-sale liquor license available in the city and that shall be issued to the city at a cost of \$400 annually, and used for the operation of the city municipal bar and liquor store.

(Ord. 2020-03, passed 4-6-2020)

Statutory reference:

Similar provisions, see §§ 9-29-7, 35-3-7, 35-4-2 and 35-4-11

§ 112.03 Off-sale liquor Licenses.

There shall be one retail off-sale liquor license available in the city and that shall be issued to the city at a cost of \$1200 annually, and used for the operation of the municipal bar and liquor store.

(Ord. 2020-03, passed 4-6-2020)

Statutory reference:

Similar provisions, see SDCL §§ 9-29-7 and 35-4-2(5)

Big Stone City - Business Regulations

§ 112.04 Retail Malt Beverage Licenses.

Malt beverage and wine products by a farm winery licensee, being both package dealers and on-sale dealers shall be at a cost of \$300.

(Ord. 2020-03, passed 4-6-2020)

Statutory reference:

Similar provisions, see SDCL §§ 9-29-7 and 35-4-2(16)

§ 112.05 Retail Wine and Cider Licenses.

Wine and cider retailers, being both package dealers and on-sale dealers shall be at a cost of \$500.
(Ord. 2020-03, passed 4-6-2020)

Statutory reference:

Similar provisions, see SDCL §§ 9-29-7 and 35-4-2(12)

§ 112.06 Full Service Restaurant Licenses.

An on-premises full-service restaurant liquor license may be issued to a qualifying full-service restaurant meeting all of the requirements of SDCL §§ 35-4-111 through 35-4-120 upon payment of the license fee of \$700. A full-service restaurant liquor license may be renewed annually only if the requirements of SDCL § 35-4-113 are fulfilled and the license fee is paid.

(Ord. 2020-03, passed 4-6-2020)

Statutory reference:

Similar provisions, see SDCL §§ 9-29-7 and 35-4-111.

§ 112.07 Special Events alcoholic Beverage License.

A special on-sale license in conjunction with a special event within the city may be issued for a period not to exceed 15 consecutive days, to any civic, charitable, educational, fraternal or veterans organization in addition to any other licenses held by the special events license applicant. No public hearing is required for the issuance of a license pursuant to this section if the person applying for the license holds a retail malt beverage license in the city, and the license is to be used in a publicly-owned facility. The fee for such special events alcoholic beverage license shall be set by resolution of the City Council.

(Ord. 2020-03, passed 4-6-2020)

Statutory reference:

Similar provisions, see SDCL §§ 35-4-124 and 35-4-125

Alcoholic Beverages

§ 112.08 Operating Hours.

No person shall sell any alcoholic beverage between the hours of 1:00 a.m. and 7:00 a.m. All alcoholic beverages shall be off the bar and tables and the establishment closed to customers on or before one-half hour after the sale of alcoholic beverages must stop.

(Ord. 2020-03, passed 4-6-2020) Penalty, see § 10.99

Statutory reference:

Similar provisions, see SDCL § 9-29-7

Big Stone City - Business Regulations

CHAPTER 113: ADULT BUSINESSES

Section

- 113.01 General provisions
- 113.02 Setbacks
- 113.03 Requirements
- 113.04 Required license
- 113.05 Application; standards for issuance
- 113.06 Conditions and regulations governing operation
- 113.07 Suspension or revocation

- 113.99 Penalty

§ 113.01 General Provisions.

In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.

(Ord. 211-08, passed 11-7-2001)

§ 113.02 Setbacks.

(A) None of the following uses may be established, operated or maintained within 1,320 feet of a child welfare agency, residence, church, public or private school meeting all the requirements of the Compulsory Education Laws of the state, SDCL Ch. 13-27, a public playground, a public recreational facility or a public park.:

- (1) Adult bookstore;
- (2) Adult video store;
- (3) Adult motion picture theater;

Big Stone City - Business Regulations

- (4) Adult theater;
- (5) Adult arcade;
- (6) Adult cabaret;
- (7) Nude model studio; or
- (8) Any use intended to provide adult amusement or entertainment.

(B) Not more than two of the following uses may be established, operated or maintained within 1,000 feet of each other:

- (1) Adult bookstore;
- (2) Adult video store;
- (3) Adult motion picture theater;
- (4) Adult theater;
- (5) Adult arcade;
- (6) Adult cabaret;
- (7) Nude model studio; or
- (8) Any use intended to provide adult amusement or entertainment.
- (9) A bar; or
- (10) A liquor store.

(C) The 1,000-foot restriction provided for in division (B) above may be waived and a conditional use permit issued upon proper application if the Board of Adjustment finds that:

(1) The proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of these regulations will be observed;

(2) The proposed use will not enlarge or encourage the development of a “skid row” area;
and

(3) All applicable regulations will be observed.
(Ord. 2011-08, passed 11-7-2011)

Adult Businesses

§ 113.03 Requirements.

(A) It shall be unlawful for any person to own, manage or be employed by an adult use business within the city unless that person shall be at least 21 years of age and of good moral character.

(B) It shall be unlawful for any person engaged in any adult use business with the city to have been convicted of any offense related to prostitution, solicitation for prostitution, obscenity or public indecency by state law within two years prior to his or her involvement with such adult use business.

(Ord. 2011-08, passed 11-7-2011) Penalty, see § 113-99

§ 113.04 Required License.

(A) It shall be unlawful for any person to engage in the business of operating an adult use in the city without first having obtained a license from the city.

(B) The fee for an adult use license shall be \$500.

(Ord. 2011-08, passed 11-7-2011) Penalty, see § 113-99

§ 113.05 Application; Standards for Issuance.

(A) A verified application for an adult use license shall be made in writing and shall state the following:

(1) The name, address, telephone number and date of birth of the applicant, or, if the applicant is a corporation or other business entity, the name, address, telephone number and date of birth of the president, managing partner, managing member, or general manager, and the name of its registered agent and the address of its registered office within the state, if applicable;

(2) Whether the applicant or the principal operating the business now is or ever has had an adult use business, and if so, set forth the date such business was started (and terminated if no longer in operation), the business location, whether said business operated under an adult use license and the issuer thereof, and whether said business ever had its operation or license, if licensed, suspended, revoked or cancelled, and if so, the particulars thereof;

(3) The location of the adult use business;

(4) The exact nature of the adult use to be conducted and of the proposed place of business and the facilities related thereto;

(5) A statement by the applicant that he or she is familiar with the provisions of SDCL Ch. 11-12, this chapter and that the applicant is in compliance with all of its provisions;

Big Stone City - Business Regulations

(6) A statement of whether the business will be conducted by a manager and, if so, the name, address and telephone number and date of birth of each such manager;

(7) A statement that each applicant and manager is of good moral character;

(8) A statement that no manager or principal operating the business has been convicted of any offense or prostitution, soliciting for prostitution, or obscenity or public indecency as defined in the state statutes within the last two years, and that the applicant has not had any license for an adult use in any other community revoked within the last two years; and

(9) The application shall include a non-refundable \$500 adult use business license fee.

(B) Within 30 days after receipt of an application for an adult use license, the City Council shall investigate the information contained in the application and shall determine the following:

(1) The premises designated by the applicant as the location of the business is in full compliance with all the ordinances of the city, including zoning ordinances and the laws of the state;

(2) The premises and each manager comply with the provisions of division (A) above as such provisions apply to them;

(3) The applicant and each manager are over 21 years of age; and

(4) No applicant, manager or principal operator of the business has been convicted of any offense of prostitution, solicitation for prostitution, or obscenity or public indecency, as defined in the state statutes within the last two years, and that the applicant has not had any license for an adult use revoked within the last two years.

(C) If the investigation shows the compliance of the applicant for an adult use license, the premises upon which the business is to be conducted, and each manager, if applicable, with each of the requirements established in this chapter, and with the conditions and regulations set forth in § 113.04 of this chapter shall issue a license within 15 days after completion of such investigation, upon payment by the applicant of the license fee of \$500 as required under this chapter.

(D) If the investigation shows that the applicant for an adult use license, the premises on which the business is to be conducted, or the managers, if applicable, do not comply with each of the requirements established in division (A) above, and with the conditions and regulations set forth in this section within 15 days after completion of such investigation, the city shall notify the applicant in writing that the license has been denied. Such denial shall be the final administrative action of the city with respect to the license application, and shall be subject to appeal by the applicant.

(Ord. 2011-08, passed 11-7-2011)

Adult Businesses

§ 113.06 Conditions and Regulations Governing Operation.

(A) The following regulations shall govern and control the business of operating and adult use in the city.

(1) No person under 21 years of age shall be allowed on the licensed premises.

(2) At all times during the hours of operation, there shall be present a manager of the licensee who shall not be less than 21 years of age.

(3) Upon a change of any manager conducting business for the licensee, the licensee shall, within ten regular business days, give the City Council written notice of such change by the actual delivery or by registered or certified mail. The licensee shall, thereafter, as promptly as practicable, but in any event within five regular business days, provide the information concerning the new manager which is required in § 113.05(A) of this chapter.

(4) No adult use shall be located on premises for which a license to sell alcohol has been issued, and no alcoholic liquor, including, but not limited to beer, wine and other beverages containing any amount of alcohol, shall be permitted on such premises.

(5) No adult use shall be permitted unless the premises on which such business is located complies with the requirements of the zoning ordinance.

(6) No licensee or manager under the provisions of this chapter shall knowingly permit any person to remain in or upon licensed premises who commits any act of public indecency or obscenity as defined in the state statutes.

(7) No licensee or manager under the provisions of this chapter shall permit any act of prostitution, solicitation for prostitution or patronization of a prostitute on the licensed premises.

(8) No sign shall be posted on the licensed premises which depicts, displays or refers to specific anatomical areas or specific sexual activities.

(B) In addition to the requirements established in division (A) above, the following regulations shall govern and control the operation of an adult bookstore which offers any films or videotapes for viewing on the premises by use of motion picture devices or other operations means;

(1) All viewing areas, which shall be defined as the area where a patron or customer would ordinarily be positioned while watching a film or viewing device, shall be visible from a continuous main aisle or public room and shall not be obscured by any curtain, door, wall or other enclosure;

(2) There shall be no aperture whatsoever in any wall or partition between viewing areas; and

(3) Each viewing area shall be lighted at a minimum level of ten foot candles in all parts thereof.

Big Stone City - Business Regulations

(C) In addition to the requirements established in division (A) above, the following regulations shall govern and control the operation of an adult entertainment facility.

(1) All performers shall be at least 21 years of age.

(2) All performances, exhibits or displays shall take place on a platform raised at least two feet from the level of the floor, and located at least ten feet from any patron.

(3) No performer shall fondle or caress any patron or other performer and no patron shall fondle or caress any performer.

(4) No patron shall be permitted to pay or give any gratuity to any performer, and no performer shall solicit any pay or gratuity from any patron.

(D) It shall be unlawful for any person licensed to engage in the business of operating an adult use within the city to fail to comply with the conditions and regulations set forth in §§ 113.03, 113.05 and 113.06 of this chapter as they are applicable to the licensed business, or to suffer or permit non-compliance with such conditions and regulations on or within the licensed premises. In this regard, any act or omission of an employee shall be deemed the act or omission of the owner if such act or omission occurred either with the authorization, knowledge or approval of the owner or as a result of the owner's negligent failure to supervise the employee's conduct. All conduct occurring while on the premises shall be presumed to be the responsibility of the owner.

(Ord. 2011-08, passed 11-7-2011) Penalty, see § 113.99

§ 113.07 Suspension or Revocation.

Nothing in the terms of this chapter shall preclude the right of city to suspend or revoke the license of the licensee, as follows:

(A) The city may suspend or revoke any license issued under the terms of this chapter upon ten day's notice to the licensee of the time and place of a public hearing, and a public hearing at which the licensee may appear and present evidence, if the City Council determines upon such hearing that the licensee has failed or refused to comply with the terms of this chapter, has failed or refused to comply with other law applicable to the business or operating an adult use, has knowingly permitted the failure of any manager or employee on the premises to comply with the terms of this chapter or with other law applicable to the business of operating an adult use, has knowingly furnished false or misleading information on any application required for any license under this section or has suffered or caused another to furnish or withhold such information on his or her behalf, or has been convicted by a court of competent jurisdiction of a violation of any provision of this section; and

(B) Seek injunctive or other relief in a court of competent jurisdiction.

(Ord. 2011-08, passed 11-7-2011)

Adult Businesses

§ 113.99 Penalty.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) (1) Any person convicted of a violation of § 113.06 shall be subject to the penalties provided by § 130.99 of this code of ordinances.

(C) Each day of violation shall constitute a separate chargeable offense.
(Ord. 2011-08, passed, 11-7-2011) Penalty, see § 113.99

Big Stone City - Business Regulations

CHAPTER 114: CABLE COMMUNICATIONS

Section

- 114.01 Short title
- 114.02 Definitions
- 114.03 Grant of authority and general provisions
- 114.04 Construction and operations standards
- 114.05 System provisions and public services
- 114.06 indemnification or grantor
- 114.07 Insurance
- 114.08 Franchise fee
- 114.09 Grantor's right to revoke
- 114.10 Procedures for revocation
- 114.11 Sale or transfer of franchise
- 114.12 Franchise renewal
- 114.13 Amendment of franchise
- 114.14 Marketing

§ 114.01 Short Title.

This chapter shall be known and cited as the cable communications regulatory chapter.
(Ord. 2020-10, passed --2020)

§ 114.02 Definitions.

Basic Cable Service. Any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, or governmental access programming required by the franchise to be carried on the basic tier. ***Basic Cable Service*** shall not be inconsistent with 47 U.S.C. § 543(b) (7).

Cable Programming Service

- (1) Any video programming over a cable system, regardless of service tier other than:

Big Stone City - Business Regulations

(a) Video programming carried on the basic service tier;

(b) Video programming offered on a pay-per-channel or pay-per-program basis; or

(c) A combination of multiple channels or pay-per-channel or pay-per-program video programming offered on a multi-plexed or time-shifted basis so long as the combination service that consists of commonly identified video programming and is not bundled with any regulated tier of service.

(2) **Cable Programming Service** shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(1)(2) and 47 C.F.R. § 76.901(b) (1993).

Cable Service. The one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

Cable System or System. The meaning ascribed to it in federal law.

Council. The Big Stone City, South Dakota City Council.

Franchise. An initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system or other MVPD facility.

Franchise Area. The area within the legal boundaries of the grantor.

Grantee. The person which is granted a franchise in city pursuant of this chapter, its agents and employees, lawful successors, transferees or assignees.

Grantor. The City of Big Stone City.

Gross Revenue. Only that monthly revenue net of bad debt received from basic cable service, digital services and equipment, and pay television services. **Gross Revenues** shall not include any other revenue billed or received by the grantee including, franchise fees, late fees, any fees itemized and passed through as a result of franchise imposed requirements, cable ad sales, or any taxes or fees on service furnished by grantee imposed on any subscriber or user by any municipality, state, or other governmental unit and collected by grantee for such governmental unit.

Multi-Channel Video Program Distribution or MVPD. A person such as, but not limited to, a cable operator, a multi-channel multi-point distribution service, a direct broadcast satellite service, or OVS provider, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

Cable Communications

Open Video Services or OVS. Any video programming services provided to any person by a franchise certified by the FCC to operate an open video system pursuant to 47 U.S.C. § 573, as may be amended, regardless of the facilities used.

Pay Television. The delivery over the system of pay-per-channel or pay-per-program audio-visual signals to subscribers for a fee or charge, in addition to the charge for basic cable service or cable programming services.

Standard Installation. Any residential installation which can be completed using a drop of 150 feet or less.

Street. The surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by grantor.

Subscriber. Any person who lawfully receives cable service.

Video Programming. Programming provided by, or generally considered comparable to programming provided by a television broadcast station.
(Ord. 2020-10, passed --2020)

§ 114.03 Grant of Authority and General Provisions.

(A) *Franchise required.* It shall be lawful for any person to construct, operate or maintain a cable system or MVPD facility or to provide cable service, video programming or other MVPD service, including OVS, in the grantor without a franchise authorizing the same, unless applicable federal or state law prohibits the grantor's enforcement of such a requirement.

(B) *Grant of franchise.* Any franchise that is granted in city shall be subject to the terms and conditions contained herein.

(C) *Grant of non-exclusive authority.*

(1) A grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the streets, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in franchise area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in franchise area of a cable system.

(2) A franchise shall be non-exclusive, and grantor reserves the right to grant a similar use of said streets to any MVPD at any time, provided, however, that all franchises shall contain the same terms and conditions as this franchise in order that one MVPD is not granted a competitive advantage over another. In the event a MVPD commences operation without a franchise or is granted a franchise to operate by the grantor, the terms and conditions of which do not comply with this chapter, other grantees shall have the

Big Stone City - Business Regulations

right either to opt in to the competitor's franchise by providing ten days prior written notice to the grantor; or to petition the grantor for modification to its franchise, in which case the grantor shall work in good faith with the affected grantee(s) to review and adopt modifications which the grantee(s) deem necessary, review and approval by grantor shall not be unreasonably denied.

(3) Before granting an additional franchise, the grantor shall give written notice to all grantees of any new application, identifying the applicant for such additional franchise and providing at least 30 days prior notice of the date, time, and place at which the grantor shall consider and/or determine whether such franchise should be granted.

(4) Every franchise shall apply to the entire service area of the grantor, as it exists now or may later be configured.

(5) In the event grantor grants one or more additional franchises or one more non-franchise MVPDs commence providing cable service in the grantor, a grantee shall have the right to terminate or reduce the term of this franchise in its sole discretion.

(6) Neither the city nor grantee(s) may unilaterally alter the material rights and obligations set forth in the franchise. In the event of a conflict between any other ordinance and this franchise, the franchise shall control.

(D) *Franchise term.* A franchise shall be in effect for a period of ten years from the expiration date of the current franchise (November 14, 2020) or November 14, 2030, unless renewed, revoked, or terminated sooner as herein provided.

(E) *Territorial area involved.* A franchise shall be granted for the corporate boundaries of grantor, as it exists from time to time. In the event of annexation by grantor, or as development occurs, any new territory shall become part of the area covered, provided, however, the grantee(s) shall not be required to extend service beyond its present system boundaries unless there is a minimum of 25 houses per cable mile as measured from the last fiber node to terminating amplifier.

(F) *Written notice.* All notices, reports, or demands required to be given in writing under this chapter shall be deemed to be given when delivered personally to any officer of grantee or grantor's administrator of this chapter as specified in a franchise or deposited as first class mail with the USPS, and in the case of the grantee's address, sent to the address listed as the return address on the monthly franchise checks.
(Ord. 2020-10, passed --2020) Penalty, see § 114.99

§ 114.04 Construction and Operations Standards.

(A) A grantee shall obtain all required permits from the grantor before commencing any construction upgrade or extension of the system.

Cable Communications

(B) The grantor shall impose no permit fees upon a grantee.

(C) If at any time during the period of this franchise, the grantor shall elect to alter, or change the grade or location of any street, alley or other public way, a grantee shall, at its own expense, upon reasonable notice by grantor, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the system. If grantor reimburses other occupants of the street, a grantee shall be likewise reimbursed.

(D) A grantee shall, on request of any person holding a moving permit issued by grantor, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and a grantee shall be given not less than ten days advanced notice to arrange for such temporary changes.

(E) A grantee shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks, or public easements of grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee.

(F) Nothing contained in this chapter shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring grantee's facilities.

(G) In areas where all other utilities lines are placed underground, grantee shall construct and install its cables, wires and other facilities underground. In any area where one or more public utilities are aerial, grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

(H) A grantee shall at all times construct and operate its system in accordance with applicable FCC technical specifications.

(I) In the event that the use of any part of the system is disconnected for any reason for a continuous period of 12 months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this chapter, or rights granted hereunder have been terminated, cancelled or have expired, grantee shall, subject to the rights of the city to acquire the system as specified in division (J) below, promptly remove from the street, or public places all such property and poles of such system other than any which the city may permit to be abandoned in place. In the event of such removal, grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the city.

(J) Any property of grantee to be abandoned in place shall be abandoned in such a manner as the city may prescribe. Upon permanent abandonment of the property of the grantee in place, it shall submit to the city an instrument to be approved by the city, transferring to the city the ownership of such property.

(K) All cable and passive equipment for cable television reception service installed by grantee at a subscriber's location shall remain the property of grantee and grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the grantee shall promptly remove all its aboveground facilities and equipment from the premises of such subscriber upon his or her request.

Big Stone City - Business Regulations

(L) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the designated representative of the City Council with regard to location, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations or any pole or wire-holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.

(M) Where poles or other wire-holding structures already existing in use in serving the city are available for use by grantee, but it does not make arrangements for such use, the City Council may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(N) When the city or a public utility serving the city desires to make use of the poles or other wire-holding structures of the grantee but agree therefore with the grantee cannot be reached, the City Council may require the grantee to permit such use for such consideration as just and reasonable and upon such terms the City Council determines the use would enhance the public convenience and would not unduly interfere with the grantee's operations.

(O) Grantee shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.

(P) During the term thereof, the city may regulate rates only of authorized to do so by the Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

(Ord. 2020-10, passed --2020)

§ 114.05 System Provisions and Public Services.

(A) *Operation and maintenance of system.* A grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

(B) *Service to schools and city.* A grantee shall, subject to the line extension requirements, provide one drop and one outlet of basic cable service at no cost to two city buildings to be mutually agreed upon by the city and a grantee.

(C) *PEG channel.* The grantee shall allocate one channel to the city as a public, educational or governmental access channel. Until such time as the city files a written request with grantee for full-time use of the channel, grantee shall have the right to use that portion of the channel capacity that is not being used by the city. Grantee shall assist the city in obtaining the necessary licenses and frequency clearance to enable the city to use said channel.

Cable Communications

(D) *Emergency use.* In the case of any emergency or disaster, a grantee shall, upon request of the City Council, make available its facilities to the city for emergency use. A grantee shall comply with the emergency alert requirements of federal law.

(Ord. 2020-10, passed --2020)

§ 114.06 Indemnification of Grantor.

(A) A grantee shall indemnify, defend, and hold harmless grantor, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a franchise granted pursuant to this chapter, except claims covered by worker's compensation insurance or any claims arising from or related to grantor's negligence. Nothing in this chapter relieves a person from liability arising out of the failure to exercise reasonable care to avoid injuring the grantee's facilities while performing work connected with grading, regrading, or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system.

(B) In order for the grantor to assert its rights to be indemnified, defended, and held harmless, grantor must with respect to each claim:

(1) Promptly notify a grantee in writing of any claim or legal proceedings which gives rise to such right.

(2) Afford grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(3) Fully cooperate with reasonable requests of grantee, at grantee's expense, in a participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to division (B)(2) above.

(Ord. 2020-10, passed --2020)

§ 114.07 Insurance.

A grantee shall maintain in full force and effect as its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of grantor in its capacity as such. The policy of insurance shall be in the sum of not less than \$300,000 for personal injury or death of any one person, and \$1,000,000 for personal injury or death of two or more persons in any one occurrence, \$300,000 for property damage to any person and \$1,000,000 for property damage resulting from any one act or occurrence. (Ord. 2020-10, passed --2020)

§ 114.08 Franchise Fee.

(A) A grantee will pay grantor a monthly franchise fee in the amount of 5% of grantee's gross revenues.

(B) The franchise fee shall be payable monthly, together with a brief report showing the basis for the computation.

(C) The period of limitation for recovery of any franchise fee payable hereunder shall be three years from the date on which payment by grantee is due.

(Ord.2020-10, passed --2020)

§ 114.09 Grantor's Right to Revoke.

Grantor reserves the right to revoke, terminate or cancel a franchise, if after strictly following the procedures required by § 114-08 of this chapter, it is determined that a grantee has violated any material provision of its franchise or this chapter and has failed to substantially cure said violation.

(Ord. 2020-10, passed --2020)

§ 114.10 Procedures for Revocation.

(A) Grantor shall provide a grantee with written notice of a cause for revocation and the intent to revoke and shall allow grantee 60 days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, grantor shall provide grantee with written findings of fact which are the basis of the revocation.

(B) Grantee shall be provided the right to a public hearing affording due process before the grantor and Council prior to revocation, which public hearing shall follow the 60-day notice of its decision together with written findings of fact supplementing said decision.

(C) After the public hearing and upon written determination by grantor to revoke the franchise, grantee may appeal said decision with an appropriate state or federal court or agency.

(D) During the appeal period, the franchise shall remain in full force and effect unless the term thereof sooner expires.

(E) Upon satisfactory correction by grantee of the violation upon which said notice was given, the initial notice shall be void.

(Ord. 2020-10, passed --2020)

Cable Communications

§ 114.11 Sale or Transfer of Franchise.

No sale or transfer of a franchise shall take place without the written approval of the grantor, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this franchise shall pass to and be binding upon the successor or assign of a grantee. Said approval shall not be required where a grantee grants a security interest in its franchise and assets to secure indebtedness.

(Ord. 2020-10, passed --2020) Penalty, see § 10.99

§ 114.12 Franchise Renewal.

Any renewal of a franchise shall be done in accordance with applicable federal law.

(Ord. 2020-10, passed --2020)

§ 114.13 Amendment to Franchise.

A grantee and grantor may agree, from time to time, to amend a franchise. Such written amendments may be made at any time. (Ord. 2020-10, passed --2020)

§ 114.14 Marketing.

A grantee shall have the right to conduct selling in the franchise area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary. At least 30 days prior to conducting such sales, grantee shall register with the grantor's clerk the names of all salespeople who intend to market door to door within the city.

(Ord. 2020-10, passed --2020)

Big Stone City - Business Regulations