

TITLE 4

BUSINESS LICENSES AND REGULATIONS

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CHAPTER 4.04

ELECTRIC FRANCHISE

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4.04.01 Electric franchise granted to Arkansas Power and Light Company The city of Greenland, Arkansas, (hereinafter called Grantor) hereby grants to the Arkansas Power and Light Company, its successors and assigns (hereinafter called Grantee), the exclusive right, privilege and authority within the present and all future expansion of the city limits of Greenland, Arkansas, (1) to sell, furnish, transmit and distribute electric power and energy to Grantor and to all inhabitants and consumers within said limits, and (2) to construct, maintain, operate and extend a system for such purposes and to enter on, under and upon and use any and all of the streets, alleys, avenues, bridges and any and all other public grounds and ways belonging to, or under the control of the Grantor, for the purpose of but not limited to erecting, replacing, repairing, maintaining, and operating poles, wires, anchors, stubs, transformers, substations, cables, conduits and any and all other related facilities, appliances and apparatus which are necessary for, or useful in, the furnishing, distribution of, transmission, sale, or said electric service (hereinafter called facilities).

4.04.02 Rights and responsibilities of grantor and grantee Grantee shall, and does by acceptance hereof, agree to provide to the city and its inhabitants adequate and reasonable electric service as a public utility and the facilities necessary to provide such service. Grantor, in recognition of the large and continuing investment necessary for Grantee to perform its obligations hereunder, and the need and duty to promptly construct its facilities, as defined above, required to serve customers, in all areas and zones of the city, consents to the construction of such facilities as defined in Section 4.04.01 in all such areas and zones, and Grantor agrees to protect by ordinance, regulation and otherwise, to the fullest extent permitted by law, and except as otherwise, limited herein, the grants of rights and privileges to Grantee set forth in Section 4.04.01 from interference with, or duplication by, other persons, firms or corporations seeking to engage in the sale or distribution of electric energy.

4.04.03 Rights and responsibilities of grantor and grantee All facilities of Grantee which may be located on public ways, places and public property, as authorized herein, shall be located so as to not unreasonably obstruct public use and travel. All of Grantee's facilities shall be constructed, operated and maintained in accordance with standards at least equivalent to the standards prescribed by the National Electrical Safety Code. Grantee, its successors and assigns, shall replace and repair, at its own expense, all excavations, holes or other damage caused or done by it to public streets, ways, places and public property in the construction, operation and maintenance of its facilities.

4.04.04 Rights and responsibilities of grantor and grantee The Grantee, its successors and assigns, is hereby given the right to trim, cut or remove trees, shrubbery or growth on or in public ways, places and public property which interfere or offer hazards to the operation of Grantee's facilities used or useful for the rendition of electric service, and further, Grantee is hereby given the right, authority and permission to trim, cut and remove portions of trees, shrubbery or any other growth growing on private property but overhanging or encroaching on public ways, places and public property which interfere or offer hazards to the construction, operation and maintenance of Grantee's facilities.

4.04.05 Termination procedure The rights, privileges and authority hereby granted shall exist and continue from the date of passage of this ordinance, and thereafter, until termination in accordance with provisions of Section 44 of Act 324 of the 1935 Acts of the State of Arkansas, as presently enacted or hereinafter amended.

4.04.06 Rates The rates which are to be charged by Grantee for electric service hereunder shall be those which are now lawfully approved or prescribed, and as said rates may, from time to time, be amended by Grantee in accordance with law or by any regulatory authority having jurisdiction thereof.

4.04.07 City not liable for negligence of grantee In the construction, operation, and maintenance of its facilities, said Grantee shall use reasonable and proper precaution to avoid damage or injury to persons or property and shall hold and save harmless the said Grantor from damage, injury, loss or expense caused by the negligence of the Grantee, or its agents, servants, or employees, in constructing, operating and maintaining said facilities or in repaving or repairing any streets, avenues, alleys, bridges or other public grounds.

4.04.08 Standard of care for facilities The Grantee shall endeavor at all times to keep its facilities in a reasonable state of repair, and to conform to such practices and install such appliance and equipment as may be in keeping with the customary usage and practice in cities of similar size in this State during the time this franchise shall remain in force.

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

It is expressly agreed and understood by the Grantor and Grantee that the aforementioned payment shall constitute and be considered as complete payment and discharge by the Grantee, its successors and assigns, of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees, special millage taxes, general ad valorem taxes and other general taxes applicable to all citizens and taxpayers) which are now or might in the future be imposed by the Grantor under authority conferred upon the Grantor by law. In the event such other tax or taxes are imposed by Grantor, the obligation of the Grantee set forth in Section 4.04.09 hereof, to pay the city the sum of four and twenty-five hundredths percent (4.25%) annually of the gross residential and commercial electrical revenues shall immediately terminate.

4.04.10 Street lighting Electric service furnished the Grantor for street lighting and other purposes shall be paid for by the Grantor in accordance with the applicable rate schedules of the Grantee now on file and/or as they may in the future be filed by the Grantee and approved by the Arkansas Public Service Commission or other regulatory authority having jurisdiction. The Grantee shall have the privilege of crediting any amount due Grantor with any unpaid balances due said Grantee for electric service rendered to said Grantor.

4.04.11 Private generation facilities allowed Nothing contained herein shall be construed to prohibit any person, firm or corporation from owning and operating facilities for generating, distributing, or furnishing electric energy for his or its own use or for the use of his or its tenants, all of which facilities and use are wholly on the same premises owned by such person, firm or corporation.

CHAPTER 4.08

GAS FRANCHISE

Sections:

- 4.08.01 Gas franchise granted to Arkansas Western Gas Company
- 4.08.02 Rights and responsibilities of Gas Company and city
- 4.08.03 Fees imposed
- 4.08.04 City's rights
- 4.08.05 Safety measures required
- 4.08.06 Public facilities protected
- 4.08.07 Terms of service
- 4.08.08 Providing prompt information
- 4.08.09 Franchise tax
- 4.08.10 Term of contract
- 4.08.11 Construction of chapter

4.08.01 Gas franchise granted to Arkansas Western Gas Company That the city of Greenland, Arkansas, hereby grants to the Arkansas Western Gas Company the exclusive right, privilege and authority within the present and all future expansions of the corporate limits of the city of Greenland: (1) to sell, furnish, transmit and distribute natural gas to all inhabitants and consumers within the city limits; and (2) subject to the terms, conditions and stipulations mentioned herein, consents the permission, right, and franchise to hereby be given to the Arkansas Western Gas Company, a corporation organized and existing pursuant to the laws of the State of Arkansas, Grantee, and to its successors, lessees and assigns to lay, construct, equip, operate, repair, and maintain a system of gas mains, pipes, conduits, feeders and all other the appurtenances for the purpose of supplying and distributing natural gas for light, fuel, power and heat and for any other purpose, to the residents or

inhabitants of said city; and further, the right to lay, construct, operate and maintain a system of gas mains, pipe conduits, pipe lines, feeders and all of the necessary attachments, connections, fixtures and appurtenances for the purpose of conveying, conducting or distributing natural gas from any point beyond said city limits in order to enable the said Grantee to distribute and sell natural gas to the said city and to the residents or inhabitants thereof, and to others. As used in this ordinance, the term "natural gas" and "gas" shall be defined as including, in addition to natural gas, such alternate, substitute or supplemental fuels as (without necessarily limited to) liquefied natural gas, liquefied petroleum gas, synthetic natural gas and propane - air. (Ord. No. 67, Sec. 1)

4.08.02 Rights and responsibilities of Gas Company and city The Grantee is here n expressly given the permit (subject to the proviso hereinafter contained) to use the streets, avenues, roads, highways, alleys, thoroughfares, sidewalks and other public places, as now or hereafter laid out or to be established, for the purpose of laying gas mains, pipe lines, conduits and feeders and the necessary attachments, fixtures, connections and appurtenances for the purpose of conveying or conducting natural gas from any point within the said city or to any point beyond the city limits of the said city, or to any other point, through and beyond the city limits of said city, and to operate and maintain a system of pipe lines, pipes, conduits, feeders and the necessary attachments, connections, fixtures and any and all other appurtenances for the distribution of natural gas within said city to serve said city and the residents and inhabitants thereof, and others; provided, however, that where alleys are accessible for laying mains and pipes, the city shall have the right to require that the mains and pipes shall be laid in the alleys instead of the streets, so long as this is economically feasible (does not create an economic hardship). (Ord. No. 67, Sec. 2)

4.08.03 Fees imposed No fees or charges of any kind shall be imposed by Grantor upon the Grantee or upon any successor or upon any consumer of natural gas for the breaking or opening of any highway, street, road, avenue, alley or other public places, or for the laying of any main, service pipe or other connections therein, except as would be generally imposed on others performing similar work under similar circumstances and conditions. (Ord. No. 67, Sec. 3)

4.08.04 City's rights Nothing contained within this franchise shall be construed in such a manner as to in any manner abridge the right of the city to pass and enforce the necessary police regulations for the purpose of protecting the citizens of said city and their property and the property of the Grantee. (Ord. No. 67, Sec. 3)

4.08.05 Safety measures required Grantee shall at all times keep and display the necessary danger signals and proper guards around all excavations and obstructions and shall keep sufficient space in good condition for the travel of vehicles on at least one (1) side of all excavations and obstructions, and shall as soon as practicable, restore all openings on the highway, road, street, avenue, alley and other public places to condition equally as good as before said openings or obstructions were made. Anything to the contrary notwithstanding which, in the judgment of Grantee, it is necessary for the safety of the citizens to divert or detour traffic from the area of excavation, they have the power to so do upon notice to said city. (Ord. No. 67, Sec. 3)

4.08.06 Public facilities protected The Grantee shall do no injury to any highway, road, street, avenue, alley, lane, thoroughfare, bridge, stream or water course, park or any public place, except as herein specifically allowed, nor with any public or private sewer or drainage system or water lines, now or hereafter laid or constructed by the said city or by any authorized person or corporation, but no sewer, water pipes or telephone or TV cables, electric conduits or any such appurtenance, shall be so laid as to interfere unnecessarily with any gas main or pipes which shall have been laid prior to the time of laying such telephone and TV cables, electric conduits, sewer or water pipes. The Grantee shall fully indemnify and save harmless the city from any and all claims for damage for which said city shall or might be made or become liable by reason of the granting of this franchise, or any negligence or carelessness on the part of said Grantee, or because of any act or omission of the Grantee in the construction and operation of its system of mains and pipes. (Ord. No. 67, Sec. 4)

4.08.07 Terms of service Natural gas service shall be provided under the terms and conditions hereinafter specified and pursuant to the rules and regulations of the Arkansas Public Service Commission governing utility service, as well as Grantee's rules and regulations governing natural gas service which are on file with the Arkansas Public Service Commission and as interpreted and enforced by Grantee. All utility services shall conform with these rules and regulations as well as any other applicable rules and regulations, federal or state laws, including but not limited to the Arkansas Plumbing Code.

The rates which are to be charged by Grantee for natural gas service hereunder shall be those which are now lawfully approved or prescribed and as said rates may, from time to time, be lawfully approved or prescribed by the Arkansas Public Service Commission or any successor regulatory authority having jurisdiction thereof.

The Grantee shall have the right to make and enforce as a part of the conditions under which it will supply natural gas for heat, power, light, fuel and such other purposes as herein provided, all needful rules and regulations not inconsistent with law and the provisions of this franchise. (Ord. No. 67, Sec. 5)

4.08.08 Providing prompt information The Grantee shall furnish promptly to the proper authorities any and all information which may be asked for by them in regard to the size, location or depths of any of the pipes, mains, conduits, or service pipes, in any form whatsoever and any and all other information in regard to its occupation of roads, highways, streets, avenues or public grounds of said city, which they may demand. Whenever the word "Grantee" occurs in this ordinance, it shall mean and it shall be understood to be the Arkansas Western Gas Company, its successors, lessees or assigns, and whenever the words "authorities" or "proper authorities" occur in this franchise, they shall mean and shall be understood to mean the authorized officer or officers, committee or board representing the City of Greenland, Arkansas, or Grantor. (Ord. No. 67, Sec. 6)

4.08.09 Franchise tax During the life of this franchise, the Grantee shall pay to Grantor each year a franchise tax in an amount equal to two percent (2%) of the Grantee's revenues before taxes for all residential and commercial revenues as paid to the said Grantee by all residential and commercial customers located within the corporate limits of the City of Greenland, Arkansas. Payments shall be made by the Grantee to the Grantor in three (3) equal quarterly installments and Grantee shall have thirty (30) days after the end of each calendar quarter within which to make such payment. Residential and commercial gas revenues are those revenues so classified pursuant to Grantee's uniform classification standards. Grantor shall have the right to examine and verify, at any time, from the records of the Grantee, any data relating to the gross revenues of Grantee from customers on which said franchise tax is due. In the event of a controversy between the Grantor and Grantee as to the amount of gross revenues received by Grantee in the City of Greenland, Arkansas, in the previous year upon which said tax is due, such controversy shall be referred to the Arkansas Public Service Commission or such successor regulatory agency which may have jurisdiction over the Grantee, for final determination and the decision of said Commission shall be binding upon both parties hereto.

It is expressly agreed and understood by the Grantor and Grantee that the aforementioned payment shall constitute and be considered as full and complete payment and discharge by the Grantee, its successors and assigns, of any and all licenses, fees, charges, impositions or any other taxes of any kind (other than automobile licenses fees, special millage taxes, improvement districts, and the general ad valorem taxes) which are now or might in the future be imposed by the Grantor under authority conferred upon the Grantor by law. In the event such other tax or taxes are imposed by Grantor, the obligation of the Grantee set forth in Section 4.08.09 hereof to pay the franchise taxes annually shall immediately terminate. (Ord. No. 67, Sec. 7)

4.08.10 Term of contract This franchise shall take effect and continue and remain in force perpetually as provided in Section 44 of the Acts of 1935, No. 324, Acts of the state of Arkansas, as same may be amended from time to time and upon the written acceptance by the Grantee of the terms and conditions of this franchise. (Ord. No. 67, Sec. 8)

4.08.11 Construction of chapter This chapter shall not be construed to alter or change the terms or conditions of the present franchise under which the Gas Company is operating.

Nothing in this chapter shall be construed to alter or change the present rate schedule under which the Gas Company is now operating, except by order of the Arkansas Public Service Commission or other legally constituted bodies.

CHAPTER 4.12

TELEPHONE FRANCHISE

Sections:

- 4.12.01 Authority granted for operation of telephone system
- 4.12.02 Tax imposed upon Southwestern Bell Telephone Company
- 4.12.03 Tax shall be in lieu of other charges
- 4.12.04 Temporary moving of lines
- 4.12.05 Permission to trim trees
- 4.12.06 Ordinance does not require or permit electric light or power wire attachments
- 4.12.07 Exclusive privileges not given

4.12.01 Authority granted for operation of telephone system The Southwestern Bell Telephone Company, its successors and assigns (hereinafter referred to as "Telephone Company") shall continue to operate its telephone system and all business which is incidental to or connected with the conducting of such telephone business and system in the City of Greenland, State of Arkansas, (hereinafter referred to as "City"). The plant construction and appurtenances used in or incidental to the providing of telephone service and to the maintenance of such telephone business and/or system by the Telephone Company in said the city shall remain as now constructed, subject to such changes as may be considered necessary by the city in the exercise of its inherent powers and by the Telephone Company in the conduct of its business, and said Telephone Company shall continue to exercise its rights to place, remove, construct and reconstruct, extend and maintain its said plant and appurtenances as the business and purpose for which it is or may be incorporated may from time to time require, along, across, on, over, through, above and under all the public streets, avenues, alleys, and the public grounds and places within the limits of said city as the same from time to time may be established.

4.12.02 Tax imposed upon Southwestern Bell Telephone Company The Telephone Company shall pay to the City of Greenland on or before March 1st of each year for the period January 1, 1984 to December 31, 1984, inclusive and thereafter for like periods an amount determined by multiplying the number of access lines in service within the corporate limits of the City of Greenland as of the last day of the preceding year by the sum of One Dollar and Fifty-Seven Cents (\$1.57). (Ord. No. 81, Sec. 1)

4.12.03 Tax shall be in lieu of other charges The annual payment herein required shall be in lieu of all other licenses, charges, fees or impositions (other than the usual general or special ad valorem taxes) which may be imposed by the city under authority conferred by law. The Telephone Company shall have the privilege of crediting such sums with any unpaid balance due said Company for telephone services rendered or facilities furnished to said city.

4.12.04 Temporary moving of lines The Telephone Company upon the request of any person, shall remove, raise or lower its telephone wires temporarily to permit the moving of houses or any other structures. The expense of such temporary removal, raising or lowering of wires shall be paid for by the party or parties requesting the same, and the Telephone Company may require such payment in advance. The Telephone Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

4.12.05 Permission to trim trees Permission is hereby granted to the Telephone Company to trim trees upon and overhanging streets, alleys, sidewalks and public places of said city so as to prevent the branches of such trees from coming in contact with the wires and cables of the Telephone Company, all the said trimming to be done under the supervision and direction of any city official to whom said duties have been or may be delegated.

4.12.06 Ordinance does not require or permit electric light or power wire attachments Nothing contained in this chapter shall be construed to require or permit any electric light or power wire attachments by the city or for the city. If light or power attachments are desired by the city or for the city, then a separate non-contingent agreement shall be a prerequisite to such attachments.

4.12.07 Exclusive privilege not given Nothing contained herein shall be construed as giving to the Telephone Company any exclusive privileges, nor shall it affect any prior or existing right of the Telephone Company to maintain a telephone system within the city.

CHAPTER 4.16

TAX ON PRIVATE CLUBS

Sections:

4.16.01 City tax levied

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

CHAPTER 4.20

CABLE TELEVISION FRANCHISE

Sections:

4.20.01 Franchise agreement
 4.20.02 Definition of terms
 4.20.03 Grant of franchise
 4.20.04 Standards of service
 4.20.05 Regulation by the Franchising Authority
 4.20.06 Insurance and indemnification
 4.20.07 Enforcement and termination of franchise
 4.20.08 Miscellaneous provisions

4.20.01 Franchise agreement This franchise agreement (“Franchise”) is between the city of Greenland, Arkansas, hereinafter referred to as “Franchising Authority,” and CoxCom, Inc., d/b/a Cox Communications, hereinafter referred to as “Grantee.”

The Franchising Authority, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise Agreement with the Grantee for the construction and operation of a cable system on the terms set forth herein.

4.20.02 Definition of terms For the purpose of this franchise, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not

inconsistent with the context, words used in the present tense shall include the future tense, words used in the plural number shall include the singular number and words in the singular number shall include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

Basic cable means the lowest priced tier of cable service that includes the retransmission of local broadcast television signals.

Cable Act means Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, by the Cable Television Consumer Protection and Competition Act of 1992, and by the Telecommunications Act of 1996, and as the same may be further amended from time to time.

Cable services means

- A. The one-way transmission to subscribers of
 - 1. Video programming, or
 - 2. Other programming service, and
- B. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable system means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include

- A. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- B. A facility that serves subscribers without using any public way;
- C. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) to the extent such facility is used in transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services;
- D. An open video system that complies with Section 653 of Title VI of the Cable Act; or

- E. Any facilities of any electric utility used solely for operating its electric utility system.

FCC means the Federal Communications Commission, or successor governmental entity thereto.

Franchise means the initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction and operation of the cable system.

Franchising Authority means the city of Greenland, Arkansas, or the lawful successor, transferee, or assignee thereof.

Grantee means CoxCom, Inc., d/b/a Cox Communications, or the lawful successors, transferees or assigns thereof.

Gross revenues means any subscriber revenues received by the Grantee for charges for cable services provided to subscribers in the service area. Gross revenues shall be calculated and reported based on generally accepted accounting principles (GAAP). Gross revenues shall not include:

- A. Any fees or taxes which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency and which are collected by the Grantee on behalf of such governmental unit or agency, including without limitation the franchise fee required by Section 4.1 hereof;
- B. Any tax, fee or assessment of any kind imposed by the Franchising Authority or other governmental entity on a cable operator, or subscriber, or both, solely because of their status as such, including a tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or subscribers;
- C. Any other special tax, assessment, or fee such as a business, occupation, and entertainment tax;
- D. Any fee for the recovery of costs incurred to collect late payments for cable services;
- E. Net unrecovered bad debt;
- F. Revenues from commercial advertising;

G. Sales to the Grantee's subscribers by programmers of home shopping services, and

H. Reimbursements paid by programmers for launch fees or marketing expense.

Person means an individual, partnership, association, joint stock company, trust, corporation, limited liability company or governmental entity.

Public way means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the service area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the cable system.

Public way shall also mean any easement now or hereafter held by the Franchising Authority within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing, operating, repairing and maintaining the Grantee's cable system over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, power supplies, network reliability units and other property as may be necessary or pertinent to the cable system.

Service area means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Section 3.8.

Subscriber means a person who lawfully receives cable services of the cable system with the Grantee's express permission. (Ord. No. 284, Sec. 1.)

4.20.03 Grant of franchise

Grant The Franchising Authority hereby grants to the Grantee a non-exclusive franchise which authorizes the Grantee to construct and operate a cable system in, along, among, upon, across, above, over, under, or in any manner connected with public ways within the service area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any public way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, power supplies, network reliability units and other related property or equipment as may be necessary or appurtenant to the cable system. Nothing in this

franchise shall be construed to prohibit the Grantee from offering any service over its cable system that is not prohibited by federal or state law.

Other ordinances The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this franchise. Neither party may unilaterally alter the material rights and obligations set forth in this franchise. In the event of a conflict between any ordinance and this franchise, this franchise shall control.

Equal protection The right to use and occupy the Franchising Authority's public ways for the purpose herein provided shall not be exclusive; provided, however, that no person shall enter into the Franchising Authority's public ways for the purpose of constructing or operating a cable system or other network, or for the purpose of providing cable service or other video programming service to any part of the service area, including by means of an "open video system" (as such term is defined in the Cable Act), without first obtaining a franchise, permit, license, authorization or other agreement from the Franchising Authority. In the event the Franchising Authority authorizes or permits any person other than the Grantee to enter into the Franchising Authority's public ways for the purpose of constructing or operating a cable system or other network, or for the purpose of providing cable service or other video programming service to any part of the service area, including by means of an "open video system" (as such term is defined in the Cable Act), the material provisions thereof shall be reasonably comparable to those contained herein, and the obligations imposed on the Grantee thereunder shall be no less burdensome nor more favorable than the obligations imposed upon the Grantee hereunder, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

Term The franchise granted hereunder shall be for an initial term of three (3) years commencing on the effective date of the franchise as set forth below, unless otherwise lawfully terminated in accordance with the terms of this franchise. (Ord. No. 284, Sec. 2.)

4.20.04 Standards of service

Conditions of occupancy The cable system installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways.

Restoration of public ways If during the occurs of the Grantee's construction, operation, or maintenance of the cable system there occurs a disturbance of any public way by the Grantee, the Grantee shall replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance.

Relocation at request of the Franchising Authority Upon its receipt of reasonable advance written notice, not to be less than five (5) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the public way, as necessary, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property. Such removal or relocation shall be paid for by Grantee; provided, however, that Grantee shall have substantially the same obligations with respect to the cost of such relocation as all other users of the public rights-of-way.

If any portion of the removal or relocation costs of the other right-of-way users is being borne by a non-public entity, the city will work with Grantee and such non-public entity to ensure that such non-public entity bears the cost of removal or relocation of Grantee's facilities to the same extent that it is covering such costs of removal or relocation of the facilities of other users of the right-of-way. If any portion of the city project is being funded, repaid or reimbursed by any non-public entity, the cost of removal or relocation of Grantee's facilities shall be borne by the source of the non-public funds in the same ratio as the non-public funds bear to the total project cost. To the extent that public funds are available to compensate utilities and other affected rights-of-way users for the costs of such location, Grantee shall be entitled to receive such funds on an equal basis with all other utilities and users.

Relocation at request of third party The Grantee shall, on the request of any person holding a lawful building moving permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from any public way, as necessary, any property of the Grantee, provided:

- A. The expense of such is paid by said person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and
- B. The Grantee is given reasonable advance written notice to prepare for such changes.

For purposes of this section, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

Trimming of trees and shrubbery The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the cable system.

Safety requirements Construction, operation, and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable federal, state, and local regulations and the National Electric Safety Code. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the service area.

Aerial and underground construction

- A. In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving the Grantee's cable and other equipment without technical degradation of the cable system's signal quality. In those areas of the service area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitter, directional couplers), amplifiers, power supplies, network reliability units, pedestals or other related equipment.
- B. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this franchise, the Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.
- C. The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned commercial/residential developments within the service area requiring undergrounding of cable facilities. The Franchising Authority agrees to require as a condition of issuing any permit for open trenching to any utility or developer, that the utility or developer give the Grantee reasonable access to open trenches for deployment of cable facilities and written notice of the date of availability of trenches. Such notice must be received by the Grantee at least ten (10) business days prior to availability.

Required extensions of service The Grantee agrees to provide cable service to all residences in the service area, subject to the density requirements specified in this section. Whenever the Grantee receives a request for cable service from a potential subscriber in a contiguous unserved area where there are at least forty (40) residences within one (1) mile from the portion of the Grantee's trunk or distribution cable which is to be extended, the Grantee shall extend its cable system to such subscribers at no cost to said subscribers for the cable system extension, other than the applicable installation charge; provided that such extension is technically feasible, and will not adversely affect the operation, financial condition, or market development of the cable system.

Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the cable system into any newly-annexed area which is not contiguous to the present service area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing. Grantee shall not be required to offer cable service to individual units of a multiple dwelling unit (MDU) facility within the service area unless the owner of the facility consents in writing to the following:

- A. To Grantee's providing of cable service to individual units of the facility;
- B. To reasonable conditions and times for installation, maintenance, and inspection of the portion of the cable system on the facility premises;
- C. To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the cable system; and
- D. To not demand or accept payment from Grantee for permitting Grantee to provide cable service to the facility and to not discriminate in rental charges, or otherwise, between tenants who receive cable service from the Grantee and those who do not.

Subscriber charges for extensions of service If a potential subscriber resides in an area that does not meet the density requirements of Section 3.8 above, the Grantee shall only be required to extend the cable system if the subscribers in that area are willing to share the capital costs of extending the cable system by making a capital contribution in aid of construction, including cost of material, labor, and easements. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per mile of its trunk or distribution cable, and whose denominator equals 40. Subscribers who request service hereunder shall bear the remaining construction costs on a *pro rata* basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance. Subscribers shall also be responsible for any applicable installation charges to extend the cable system from the tap to the residence.

Emergency use The Grantee shall comply with the applicable rules and regulations of the FCC regarding emergency alert systems (47 C.F.R. Part 11). If the Grantee provides an Emergency Alert System ("EAS"), then the Franchising Authority shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's cable system in any manner that results in inappropriate use thereof, or any loss or damage to the cable system. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the Franchising Authority's use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

Discrimination prohibited Grantee shall not, because of age, race, creed, color, national origin, or sex, unlawfully

- A. Refuse to hire or employ,
- B. Bar or discharge from employment, or
- C. Discriminate against any person in terms, conditions or privileges of employment. (Ord. No. 284, Sec. 3.)

4.20.05 Regulation by the Franchising Authority

Franchise fee

- A. The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5%) of gross revenues (as defined in Section 1.1 of this franchise), on a quarterly basis. The franchise fee payment shall be due and payable forty-five (45) days after the close of the preceding calendar quarter. The franchise fee payable hereunder shall be paid and received in lieu of any tax, license, charge, fee or any other character of charge for use and occupancy of the public ways.
- B. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due. Upon request, Cox shall make their financial records relevant to the provision of cable service in the franchise area available to the city to demonstrate compliance with this section for a period of up to but no more than three (3) years preceding the request.

Rates and charges

- A. The Franchising Authority may regulate rates for the provision of basic cable and equipment as expressly permitted by applicable law.

- B. The Grantee may charge a fee for the recovery of costs incurred to collect late payments for cable services if the following conditions have been met:
1. The subscriber's bill sets forth when the fee will be assessed;
 2. The fee is not assessed any earlier than the tenth (10th) day after the due date as reflected on the subscriber's bill; and
 3. The bill sets forth the amount of the fee.

Any fee imposed by the Grantee that does not exceed \$8.00 in 2007 dollars (as adjusted annually for inflation based on the Consumer Price Index) shall be presumed reasonable to cover the costs associated with the delinquent payment. The assessment of a fee pursuant to this section shall not be construed as a limitation on the Grantee's right to charge any other lawful fees or charges.

Renewal of franchise

- A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.
- B. Notwithstanding anything to the contrary set forth in this section, the Grantee and the Franchising Authority agree that at any time during the term of the then-current franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the ten-current franchise and the Franchising Authority may grant a renewal thereof.
- C. The Grantee and the Franchising Authority consider the terms set forth in this section to be consistent with the express provisions of Section 636 of the Cable Act.

Transfer of franchise The grantee's right, title, or interest in the franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the franchise or cable system in order to secure indebtedness. Within thirty (30) days after receiving the request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty

(120) days after receiving such request, consent by the Franchising Authority shall be deemed given. (Ord. No. 284, Sec. 4.)

4.20.06 Insurance and indemnification

Insurance requirements The Grantee shall maintain in full force and effect, at no cost and expense to the Franchising Authority, during the term of the franchise, commercial general liability insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be non-cancellable except upon thirty (30) days' prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a certificate of insurance showing evidence of the coverage required by this section.

Indemnification The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against

- A. Any liability for damages that arise out of the Grantee's construction, operation, or maintenance of its cable system, and
- B. Any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, or maintenance of its cable system, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority. The Grantee shall have the right to participate in or assume control of the defense of any such claim or action, including without limitation the right to select counsel. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority. (Ord. No. 284, Sec. 6.)

4.20.07 Enforcement and termination of franchise

Notice of violation In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the franchise, the Franchising Authority shall informally discuss the matter with the Grantee. If the discussions do not lead to resolution of the issue, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

The Grantee's right to cure or respond The Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1:

- A. To respond to the Franchising Authority, contesting the asserting of noncompliance, or
- B. To cure such default, or
- C. In the event that, by the nature of default, such default cannot be cured within the thirty (30) days' period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

Public hearing In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to Section 7.2(c) above, if it intends to continue its assertion of, and investigation into, the alleged default, then the Franchising Authority shall schedule a public hearing to investigate the default. The Franchising Authority shall provide the Grantee at least ten (10) days' prior written notice of such hearing, which notice shall specify the time, place and purpose of such hearing. At such hearing, the Grantee shall be provided a full and fair opportunity to be heard.

Enforcement Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in Section 7.3, determines that the Grantee is in default of any provision of the franchise, the Franchising Authority may:

- A. Seek specific performance of any provision that reasonably lends itself to such remedy, as an alternative to damages;
- B. Commence an action at law for monetary damages or seek other equitable relief;
or
- C. In the case of a substantial default of a material provision of the franchise, seek to revoke the franchise in accordance with Section 7.5.

The Grantee may appeal such determination of the Franchising Authority to an appropriate court, which shall have the power to review the decision of the Franchising Authority "do novo." Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

Revocation

- A. Should the Franchising Authority seek to revoke the franchise after complying with the procedures set forth in Section 7.1 through 7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent to revoke the franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the franchise.
- B. At the designated hearing, the Franchising Authority shall give the Grantee a full and fair opportunity to state its position on the matter, including without limitation the right to introduce evidence, to require the production of evidence to question witnesses, and to obtain a transcript of the proceeding, after which the Franchising Authority shall determine whether or not the franchise shall be revoked.
- C. The Franchising Authority may, at its sole discretion, take any lawful action that it deems appropriate to enforce the Franchising Authority's rights under the franchise in lieu of revocation of the franchise.
- D. The Grantee may appeal any determination of the Franchising Authority to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo." Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

Force majeure

- A. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the franchise, nor suffer any enforcement or penalty relating to noncompliance of default (including termination, cancellation or revocation of the franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, an act of terrorism, governmental, administrative or judicial order or regulation or other circumstances reasonably beyond the Grantee's ability to anticipate and

control. This provision includes work delays caused by waiting for utility providers to service or monitor their own utility poles to which the Grantee's cable system is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

- B. Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the franchise for so-called "technical" breach(es) or violation(s) of the franchise, which shall include but are not limited to the following:
1. In instances or for matters where a violation or a breach by the Grantee of the franchise was good faith error that resulted in no or minimal negative impact on the customers within the service area; or
 2. Where strict performance with the terms of the franchise would result in practical difficulties and hardship to the Grantee that outweigh the benefit to be derived by the Franchising Authority and/or subscribers. (Ord. No. 284, Sec. 7.)

4.20.08 Miscellaneous provisions

Actions of parties In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

Entire agreement This franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this franchise shall be mutually agreed to in writing by the parties.

Notice Unless expressly otherwise agreed between the parties, every notice or response required by this franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope:

- A. Upon receipt when hand delivered with receipt/acknowledgment,
- B. Upon receipt when sent by certified, registered mail, postage prepaid, or
- C. Within five (5) business days after having been posted in first-class mail, postage prepaid.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Greenland, Arkansas
P.O. Box 67
Greenland AR 72737
Attention: Mayor

The notices or responses to the Grantee shall be addressed as follows:

Cox Communications
901 So. George Washington Blvd.
Wichita KS 67211
Attention: V.P. Government Affairs

Cox Communications
4901 S. 48th St.
Springdale AR 72762
Attention: Dir. Government Affairs

with a copy to:

Cox Communications, Inc.
1400 Lake Hearn Drive
Atlanta GA 30319
Attention: Legal Department

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in accordance with the provisions hereof.

Descriptive headings The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein. (Ord. No. 284, Sec. 8.)

CHAPTER 4.24

OCCUPATIONAL LICENSES

Sections:

- 4.24.01 Occupational licenses required
- 4.24.02 Separate license for each trade or business

4.24.04	Appeal
4.24.05	Collection
4.24.06	Posting
4.24.07	Procurement of licenses
4.24.08	False statements or failure to furnish information
4.24.09	Schedule of license fees/Late Renewal
4.24.10	Issuance
4.24.11	Penalty
4.24.12	Revocation of license

4.24.01 Occupational licenses required The carrying on of any trade, business, vocation, occupation, profession or calling of whatever kind or nature within the city of Greenland is hereby declared to be a privilege and from and after the effective date of this ordinance, any individual, partnership, association, LLC, corporation or other legal entity engaged in such activity shall pay an annual occupation fee for this privilege. (Ord. No. 101, Sec. 1/Ord. No. 324-A.)

4.24.02 Separate license for each trade or business Any individual, partnership, association, LLC, corporation or other legal entity engaging in more than one (1) business, occupation or profession for which a license is required shall pay for and take out a license for each business, profession or occupation in same or separate quarters. Licenses shall be issued for a period of up to one (1) year from the date of issue (see Section 4.24.09). Persons affected hereby shall renew their licenses during the month preceding the expiration date of their current license. Charitable, garage, yard or firewood sales shall not be considered occupations under this ordinance nor shall the sale of produce raised within the city limits of the city of Greenland be so considered. (Ord. No. 101, Sec. 2/Ord. No. 324-A).

4.24.03 Transfer prohibited No license issued hereunder shall be transferred. (Ord. No. 101, Sec. 3)

4.24.04 Appeal The ruling body of this ordinance shall be the City Council and all requests for consideration, adjustments or complaints shall be brought before that body during a regular meeting. (Ord. No. 101, Sec. 4)

4.24.05 Collection The Recorder/Treasurer of the city of Greenland, Arkansas, or such other duly authorized person shall collect the fee and upon receipt thereof, shall issue a license under this ordinance for every individual, partnership, association, LLC, corporation or other legal entity liable to pay such fee and each license issued shall state the amount paid, and the period of time covered thereby, the name of the individual, partnership, association, LLC, corporation or other legal entity and the business occupation or profession to be carried on. No error in stating or computing the amount of a license and fee due shall prevent or prejudice the licensing and collection process by the City of the fee which shall actually be due under this ordinance. (Ord. No. 101, Sec. 5/Ord. No. 324-A).

4.24.06 Posting The license issued hereunder shall be prominently displayed at the principal place of business. (Ord. No. 101, Sec. 6)

4.24.07 Procurement of license All licenses shall be procured before any business, occupation or profession begins operation and shall be obtained from Office of the Recorder-Treasurer. If it shall be necessary for the Recorder-Treasurer or deputy to go to the business to collect, a Fifteen Dollar (\$15.00) additional fee will be imposed (Ord. No. 101, Sec. 7/Ord. No. 324-A)

4.24.08 False statements or failure to furnish information It shall be unlawful for any individual, partnership, association, LLC, corporation or other legal entity knowingly and willfully to make a false written or verbal statement in applying for a license under this chapter for the purpose of defrauding the City, by which statement a license is procured for a less sum than it is lawfully due hereunder. It shall likewise be unlawful for any person to fail or refuse to furnish the Recorder-Treasurer with all required information necessary to issue the license in accordance with the provisions of this Ordinance. (Ord. No. 101, Sec. 8/Ord. No. 324-A)

4.24.09 Schedule of license taxes Each individual, partnership, association, LLC, corporation or other legal entity engaged in any business, occupation or profession within the city limits of the City of Greenland shall pay Twenty-Five Dollars (\$25.00) for an annual license (or any portion of a year). The initial business license shall cover the period between the opening of the business and the following December 31. Thereafter, all licenses shall be renewed for the period January 1 through the following December 31, no later than January 31 of the year of renewal. Any license renewal not processed by January 31, shall require in addition to the standard license renewal fee of \$25.00, a late processing fee of \$25.00 The late processing fee is in addition to all other fees assessed under this Chapter. The fee shall not be prorated for business opening after January 1, or closing prior to December 31 in any year and the fee is nonrefundable. (Ord. No. 333, Sec. 2.)

4.24.10 Issuance No occupational license shall be issued to any applicant for such occupational license under the provisions of Section 4.24.02 and 4.24.04 of this ordinance until and unless such applicant shall demonstrate to the Recorder/Treasurer his or her compliance with all ordinances and statutes applicable to such applicant's business, trade, occupation, vocation or profession, including, those establishing codes of building, electrical work, plumbing, sanitation and health, and those regulating business and advertising signs. (Ord. No. 101, Sec. 10)

4.24.11 Penalty Any individual, partnership, association, LLC, corporation or other legal entity engaged in any trade, business, vocation, occupation, profession or calling of whatever kind or nature within the City of Greenland, without procuring the required license shall be guilty of a violation of this Ordinance and upon conviction thereof in the District Court of Washington County, Greenland Department, shall be fined in the sum of Twenty-Five Dollars (\$25.00) plus court costs and each and every day of such offense shall constitute a separate offense. (Ord. No. 101, Sec. 11/Ord. No. 324-A)

4.24.12 Revocation of license The City Council by a two-thirds (2/3) vote may revoke any license for cause without return of any license fees paid. (Ord. No. 101, Sec. 12)

CHAPTER 4.28

OUTDOOR AND MOBILE FOOD VENDORS

Sections:

4.28.01 Regulations for Outdoor and Mobile Food Vendors

- A. **Purpose and Intent** – The regulations contained herein are not intended to prohibit or hamper speech that is protected by the First Amendment of the United States Constitution, but merely to regulate specific activities that are commercial in nature. It is the intent of these regulations:
1. To serve and protect the health, safety and welfare of the general public;
 2. To establish a uniform set of rules and regulations that are fair and equitable;
 3. To provide economic development opportunities to small entrepreneurs in the city, and
 4. To promote stable vendors who will enrich the city’s ambiance and be assets to public security.
- B. **Permit Required and Types of Permits:**
1. **Applicability.**

It shall be unlawful for any person to engage in the business of outdoor vending or mobile food vending, as defined in “Definitions” herein, unless he/she has first obtained a vending permit from the Planning Department, except as exempted in “C. Exemptions” below. All permits shall be issued according to the regulations herein. (Ord. No. 360, Sec. 1, Exh. A)
 2. **Types of Permits:**
 - a. **City Wide Mobile Vendor Permits** -Vending is allowed on public streets, without limitation to area, April 1 through Oct 31; Permit holder must renew annually.

- b. **Temporary (Seasonal) Mobile Vendor Permit:** Vending is allowed on public streets without limitation to area, April 1 through Oct 31; Permit must renew annually.
- c. **Outdoor Vendors** Vending is allowed in a fixed area; permit holder must renew annually.
- d. **Outdoor Vendor (Seasonal):** Vending is allowed in a fixed area for a period of time as specified on the application and the permit; permit holder must renew annually. (Ord. No. 360, Sec. 1, Exh. A)

3. **Application for Permit**

Applicants may request a Vending Permit for either (1) outdoor vending or (2) mobile food vending. The application for a vending permit shall contain the following information:

- a. The applicant's full name, current address, telephone number and email address;
- b. A brief description of the nature, character and quality of goods, wares or merchandise to be offered for sale;
- c. Site plan showing proposed location and distances in compliance with the location requirements in Subsection D3.
- d. Photos and written description (year, make, model, VIN) of the actual mobile food vending unit or mobile food vending vehicle that will be used in connection with the permit. Substitution of mobile food vending unit or mobile food vending vehicle is not permitted, and such substitution shall require notice to the Planning Commission at its next regularly scheduled meeting and approval by the Planning Commission prior to any substitution. No vehicle which is dilapidated or constitutes a public or private nuisance shall be permitted to operate.
- e. Detailed scaled drawing, or photo, of the conveyance showing dimensions and location of any proposed signs.
- f. Written consent of the property owner, if applicable.

- g. If pursuant to conditional use permit: Proof of notification of adjacent property owner (i.e. certified mail receipt or letter from the owner, if outdoor vendor is adjacent to a residential district).
 - h. If the applicant is engaged in the sale of food or beverages, a copy of the Washington County Health Department Inspection certificate shall be provided.
 - i. If an Outdoor Vendor is engaged in the sale of alcoholic beverages of any kind, a copy of their licensing with ABC shall be provided. (Permits will not be issued to “Mobile Vendors” engaged in the sale of alcoholic beverages).
 - j. If the applicant is acting on behalf of another, the name and address of the person, firm, association, organization, company or corporation of employment.
 - k. Proof of registration to pay A&P tax.
 - l. All mobile food vendors shall also provide proof of current driver’s license for all drivers operating the mobile unit.
4. **Fee** The applicant shall pay the fee as established from time to time by City Council. (Ord. No. 360, Sec. 1, Exh. A)

5. **Permit Process**

- a. The applicant shall submit permit application packet to City Hall by the cut-off date established by the Planning Commission in order to be placed on the Planning Commission’s Agenda for the next regularly scheduled meeting.
- b. The applicant is encouraged to attend the Planning Commission meeting to represent their interests.
- c. Following the Planning Commission meeting, the applicant will be informed of:
 - i. Approval of the application;
 - ii. Tabling of the agenda item, pending the presentation of additional information as may be necessary to the Planning Commission by the applicant;

- iii. Denial of the application and the ability to appeal that decision to the City Council.
- d. Each permit shall show the name and address of the vendor, the type of permit issued, the kind of goods to be sold, the amount of the permit, the date of issuance, the permit number, an identifying description of any motor vehicle or conveyance used by the vendor plus, where applicable, the motor vehicle registration number and a photograph of the vendor not less than two inches square nor more than three inches square. Each permit shall also show the expiration date of the permit
- e. All permits issued under this section shall be both non-assignable and non-transferable.

6. **Display of Permit.**

Any permit issued by the City of Greenland shall be carried with the vendor whenever he/she is engaged in vending. Certificate of Health Inspection from the Washington County Health Department shall also be properly and conspicuously displayed at all times during the operation of the vending business. If the vendor is engaged in the sale of alcohol, a current permit issued by the ABC shall be conspicuously displayed at all times during the operation of the vending business. (Ord. No. 360, Sec. 1, Exh. A)

7. **Expiration and Renewal**

- a. **Permanent Permit.** All permanent vending permits expire annually at midnight on December 31st of each year. A vending permit may be renewed, provided an application for renewal and permit fees are received by the Planning Commission pursuant to the Submission Timeline established to be on the December Planning Commission agenda. Any application not reviewed by the Planning Commission prior to its expiration shall be processed as a new application. The Planning Commission shall review each application for renewal, and, upon determining that the applicant is in full compliance with the provisions of these regulation, shall issue a new permit.
- b. **Temporary Permit.** All temporary permits issued shall be valid only for the time period established on the permit.

8. Notification of Name or Address Change All vendors shall assure that the current and correct name, residence address and mailing address are on file with City Hall. Whenever either the name or address provided by a permitted vendor on an application for a vending permit changes, the vendor shall notify the City of Greenland in writing within 60 days of such change and provide the same with the name change or address change.

C. **Exemptions.**

1. **Exempt activities.** The provisions of the ordinance do not apply to:
- a. Goods, wares, or merchandise temporarily deposited on the sidewalk in the ordinary course of delivery, shipment, or transfer.
 - b. The placing and maintenance of unattended stands or sales devices for the sale, display or offering for sale of newspapers, magazines, periodicals and paperbound books.
 - c. The distribution of free samples of goods, wares and merchandise by any individual from this person.
 - d. Sidewalk sales by the business whose business structure attaches to the sidewalk where such sale is conducted lasting no longer than three (3) consecutive days, so long as at least 4' of sidewalk remains clear for pedestrian access. No more than three sidewalk sales per business shall be permitted per calendar year.
 - e. Temporary sales to benefit non-profit organizations and conducted on private property. Such sales shall be conducted no longer than five consecutive days.
 - f. Merchants participating in outdoor markets or special events organized or administered by the City of Greenland. Such merchants shall be approved by the organizing or administering agency.
 - g. Children's lemonade stands. (Ord. No. 360, Sec. 1, Exh. A)
2. **Claims of exemption.** Any person claiming to be legally exempt from the regulations set forth herein, or from the payment of a permit fee, shall city to the Planning Commission the statute or other legal authority under which exemption is claimed and shall present proof of qualification of such exemption.

D. **Outdoor Vending**

The following requirements shall apply to outdoor vending at fixed locations:

1. **Private Property.**

a. **Single Vendor.**

- i.. **Zoning Districts.** Outdoor vendors shall be permitted on developed private property only in commercial, or industrial zoning districts. Outdoor vendors are prohibited in residential zoning districts.
- ii. **Number of Vendors.** Only one (1) outdoor vendor shall be permitted per lot. However, if more than one vendor is proposed for a single lot, it shall be considered an outdoor vendor park and shall meet the requirements for Outdoor Vendor Park below.
- iii. **Permission required.** Outdoor vendors shall first obtain written permission from the property owner prior to submitting for an application.
- iv. **Size restrictions.** The area occupied by a vendor shall not exceed 600 sq. ft. for food vendors and 900 sq. ft. for retail.

b. **Outdoor Vendor Park**

- i. **Zoning Districts.** Outdoor vendor parks shall be permitted on private property as a conditional use in commercial and industrial zoning districts. Outdoor vendor parks are prohibited in residential zoning districts.
- ii. **Review Criteria.** The Planning Commission shall review the application based on the specific circumstances of the proposed vendor park including the location of the park, the size of the lot where the park is located, the types of surrounding land uses and the proximity to the park, parking, and any other potential impacts on public health, safety and welfare. The Planning Commission shall determine the number of outdoor vendors permitted within the outdoor vendor park. (Ord. No. 360, Sec. 1 Exh. A)

- iii. **Requirements** The property owner proposing an outdoor vendor park may be required to make any of the following necessary improvements to the property in order to meet the city development codes and be approved for this semi-permanent use:
- A. Make any improvements necessary to the site to meet the requirements of the City of Greenland's landscaping, Screening and Buffering Code.
 - B. Make any improvements necessary to the site to meet the requirements of Parking and Loading as required by the City of Greenland Building Designs Standards Pattern Book. This may include paving, striping and the construction or designations or handicapped parking spaces.
 - C. Make any necessary improvements to provide permanent utility connections for each outdoor vending unit in the outdoor vendor court. This shall include permanent water, sanitary sewer and electricity connections.
 - D. Make any improvements necessary to ensure safe pedestrian and vehicular access to the site. This may include sidewalk and curb-cut improvements and needed lighting.
 - E. Individual outdoor vendor units operating in an outdoor vendor park shall obtain an outdoor vendor permit and shall meet all of the applicable requirements.

2. **Public Property/Right of Way**

Outdoor vending on public right-of-way and public property shall not be permitted, except as provided herein.

3. **Special Events** Outdoor vendor permits issued are invalid during special events coordinated by City of Greenland, and the following provisions apply: (Ord. No. 360, Sec. 1, Exh. A)

- a. **Permission/Location:** City of Greenland may provide written permission for the outdoor vendor to continue to conduct business during the special event but may request the vendor relocate or adjust operations to within a close reasonable proximity of the assigned location to accommodate any logistical or technical necessity. A copy of such letter shall be provided to the Planning Department.
 - b. **Vending Stand.** Outdoor vendors in City of Greenland for special events which have obtained a Special Event Permit shall be limited to hand carts, push carts or peddle carts with a dimension that shall not exceed 8 feet in length, 4 feet in width, and 6 feet in height, (exclusive of canopies or umbrellas).
 - c. **Hours of Operation:** Outdoor vendor permits issued in connection with a special event shall only be permitted to operate during the time period of the special event. Set up and removal of the Vending Stand or other means of operation of the Outdoor Vendor shall be permitted no earlier than 12 hours prior to the start of the Special Event, unless: 1) the applicant presents the request in writing to the Planning Chair presenting detailed information showing a specific hardship or detriment which would occur without additional time being given; and 2) that such hardship or detriment is a result of something that is outside of the applicant's control, and 3) demonstration that the request is not made out of convenience, but it is necessitated. Upon providing such documentation and proof to the Planning Commission approval is given by the Planning Chair shall 1) issue additional time as requested, 2) issue additional time as established by the Planning Commission, 3) deny the request. (Ord. No. 360, Sec. 1, Exh. A)
 - d. **Farmer's Market** An Outdoor Vendor (Seasonal) Permit shall be obtained by participants of Farmers' Markets and all Outdoor Vendor regulations shall apply. Alcohol sales shall not be permitted at Farmers' Market venues.
4. **Size Restrictions.** The area occupied by a vendor on public property shall not exceed 200 sq. ft. for food vendors and 300 sq. ft. for retail.

5. **Location Restrictions.** No outdoor vendor shall be permitted to operate in the following areas:
- a. Within a R-1 (Residential) Zoning district
 - b. Within 10 feet of any street intersection or pedestrian crosswalk
 - c. Within 10 feet of any driveway, loading zone or bus stop
 - d. In any area within 15 feet of a building entrance
 - e. On the median strip of a divided roadway unless the strip is intended for use as a pedestrian
 - f. Within a mall or plaza
 - g. Against display windows of a fixed location
 - h. Within any business, unless written permission is given by the business owner.
 - i. In any area within 100 feet of a hospital, college, university, elementary school, middle school, or high school unless the school or school-related event approved it as a vendor
 - j. Within 10 feet of any fire hydrant or fire escape
 - k. Within 10 feet of any parking space or access ramp designated for persons with disabilities.
 - l. In a public parking space or public parking lot without property owner permission
 - m. Within 25 feet of any bus stop sign
 - n. Within 50 feet of driveway to police or fire station.
 - o. Within 50 feet of principal public entrance to food service business not owned by vendor

- p. Any area that obstructs pedestrian traffic. Must provide four (4) feet clear passageway for pedestrians at all times.
 - q. Vacant or undeveloped property
 - r. Any location other than the assigned location as expressly described on the permit
 - s. City public part property, except as provided for Special Event
 - t. On grass, except as provided for Special Events.
6. **Hours of Operation** Outdoor vendors shall be allowed to engage in the business of vending only between the hours of 7 a.m. and 10 p.m.

E. Mobile Food Vending.

The following requirements apply to mobile food vendors:

- 1. **Equipment Requirements.** All mobile food vending conveyances shall have the following features:
 - a. Convex mirror mounted on the front of the vehicle such that the driver in his normal seating position can see the area in front of the truck obscured by the hood.
 - b. “SLOW CHILDREN CROSSING” sign printed in six inch black letters on yellow background on both the front and back of the vehicle.
 - c. Passenger side mirror.
 - d. Business name, address and phone number printed in 2 inch letters on each side of the vehicle.
 - e. Trash receptacle.

- f. “Slow” signal arm that can be extended horizontally from the left side of the truck. This arm shall be yellow with six inch black lettering and two alternating flashing amber lights three to five inches in diameter. The bottom of the signal arm shall be approximately 42 inches above the roadway or street.
- g. The vehicle shall be lawfully parked or stopped before vending can take place.

2. **General Requirements**

- a. “Slow” signal arm shall be deployed when vehicle is stopped for vending purposes.
- b. The vehicle shall not be stopped for vending purposes when no customers are present
- c. Vending shall take place from the right side of the vehicle.
- d. Vending shall not occur with a customer standing within the roadway.
- e. Vending shall only include prepackaged products.
- f. Vehicles shall not be operated in reverse to accommodate a customer.

3. **Location Restrictions.**

- a. Mobile food vending shall only take place on streets where on-street parking is allowed.
- b. No vending shall be permitted within 500 feet of a school while school is in session and one hour before and after school is in session.

4. **Hours of Operation.** Mobile food vendors shall be allowed to engage in the business of vending only between 10 a.m. and 30 minutes before sunset.

F. Littering and Trash Removal

Vendors shall keep the sidewalks, roadways and other spaces adjacent to their vending sites or locations clean and free of paper, peelings and refuse of any kind generated from the operation of their business. All trash or debris accumulating within 50 feet of any vending stand shall be collected by the vendor and deposited in a trash container.

Persons engaged in food vending shall provide a receptacle for litter that shall be maintained and emptied regularly and marked as being for litter.

G. Prohibited Conduct.

No person authorized to engage in the business of vending under these regulation shall do any of the following.

1. Unduly obstruct pedestrian or motor vehicle traffic flow except for up to 20 minutes to load and unloading conveyance and/or vending merchandise.
2. Obstruct traffic signals or regulatory signs.
3. Stop, stand or park any motor vehicle or any other conveyance upon any street for the purpose of selling during the hours when parking, stopping and standing have been prohibited by signs of the markings.
4. Leave any conveyance unattended at any time or store, park, or leave such conveyance in a public way overnight.
5. Use any conveyance that when fully loaded with merchandise cannot be easily moved and maintained under control by the permittee, his employee or an attendant.
6. Sound any device that produces a loud and raucous noise or operate any loudspeaker, public address system, radio, sound amplifier, or similar device to attract public attention. However, mobile food vendors are permitted to play non-vocal music within the regulations of the City of Greenland noise ordinance, but shall not do so within 500 feet of hospitals, schools or churches.

7. Conduct his/her business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, create a nuisance, increase traffic congestion or delay, constitute a hazard to traffic, life or property, or obstruct adequate access to emergency and sanitation vehicles.
8. Use, install or display any signage that is not in compliance with the Greenland Sign Code or lighting that is not in compliance with the Greenland Municipal Code and the Greenland Designs Standards Pattern Book.
9. Altering vehicle to allow for additional signage.
10. No vending conveyance or other item related to the operation of a vending business shall be located on any city sidewalk or other public way during non-vending hours. Nor shall any mobile food vehicle be parked, stored or left overnight other than in a lawful parking place.
11. Run hoses, cords or other apparatus across a pedestrian pathway.
12. Operate a mobile or permanent vending operation with any vehicle which constitutes a public or private nuisance to adjacent vending operations of the area, in general.
13. Operate a mobile or permanent vending operation with any vehicle which gives off exhaust or offensive odors to adjacent vending operations or the area, in general.
14. Alcohol sales shall not be permitted by mobile food vendors.

H. Suspension and Revocation of Permit.

1. **Conditions for Suspension/Revocation.**
In addition to the penalties punishable as set forth in Greenland Municipal Code Section 1.52.01, any permit issued under these regulations may be suspended or revoked for any of the following reasons:
 - a. Fraud, **misrepresentation** or knowingly false statement contained in the application for the permit.
 - b. **Fraud, misrepresentation** or knowingly false statement in the course of carrying on the business of vending.

- c. Conducting the business of vending in any manner contrary to the conditions of the permit.
- d. Conducting the business of vending in such a manner as to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare or morals, or interfere with the rights of a butting property owner; or
- e. Cancellation of health department authorization for a food or beverage vending unit due to uncorrected health or sanitation violations. (Ord. No. 360, Sec. 1, Exh. A)

2. **Notification of Suspension or Revocation.**

The City of Greenland shall provide written notice of the suspension or revocation in a brief statement setting forth the complaint, the grounds for suspension or revocation, and notifying the vendor of his right to appeal. Such notice shall be mailed to the address shown on the permit holder's application by certified mail, return receipt requested.

3. **Forfeiture of Fee.** If the City revokes a vending permit, the fee already paid for the permit shall be forfeited. A person whose permit has been revoked under this Section may not apply for a new permit for a period of one (1) year from the date that the revocation took effect.

I. **DEFINITIONS**

Conveyance (Outdoor Vendors): Any publicly or privately owned vending stand, vending trailer, mobile food vehicle, or any other device designed for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise.

Ice Cream Truck: A specific type of mobile food vehicle that sells only prepackaged, single-portion ice cream or frozen confections.

Mobile Food Vehicle: A food establishment preparing and/or serving foods from a self-contained vehicle, either motorized or with a trailer, that is readily movable without disassembling for transport to another location. Mobile food vehicles may serve as a conveyance for outdoor vending at a fixed location.

Mobile Food Vending: Vending from a mobile food vehicle, in which only prepackaged, single portion food is carried for purposes of sale with traveling along city streets, making periodic stops on streets where parallel parking is permitted and that do not exceed 15 minutes to accommodate a sale or sales. The definition shall include ice cream trucks. This definition shall not include vendors who distribute or deliver their products to regular customers on established routes.

Mobile Food Vendor: Any person that owns or operates a mobile food vehicle for the purpose of mobile food vending, as defined herein.

Outdoor Vending: Exhibiting, displaying, selling or offering for sale any food, beverages, goods, wares or merchandise from a conveyance at a fixed location on public or private property.

Outdoor Vending, Private Property (Outdoor Vendors): The exhibit, display, or sale of any food, beverages, goods, wares, or merchandise from a conveyance at a fixed location on private property.

Outdoor Vending, Public Right-of Way (Outdoor Vendors): The exhibit, display, or sale of any food, beverages, goods, wares, or merchandise from a conveyance at a fixed location on public right-of-way.

Outdoor Vendor (Outdoor Vendors): Any person that exhibits, displays, sells or offers for sale any food, beverages, goods, wares or merchandise from a conveyance at a fixed location. This definition does not include a door-to-door peddler, solicitor, mobile food vending, children's lemonade stands or homeowners having garage sales.

Outdoor Vendor Park: A site that contains more than one outdoor vendor on a regular basis as the principal use of the land.

Private Nuisance: The unreasonable, unwarranted, or unlawful use of one's property in a manner that substantially interferes with the enjoyment or use of another individual's property, without an actual trespass or physical invasion to the land; an act or omission that obstructs or threatens the health, morals, safety, comfort, convenience, or welfare of a community.

Public Way (Outdoor Vendors): All areas legally open to public use such as public streets, sidewalks, roadways, highways, parkways, alleys, parks, as well as the areas surrounding and immediately adjacent to public buildings.

Pushcart or Handcart (Outdoor Vendors): Any open air wheeled device designed for the purpose of displaying exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise and or being pushed by a person without the assistance of a motor vehicle.

Sidewalk (Outdoor Vendors): All that area legally open to the public used as a pedestrian public way between the curb line and the legal property line of the abutting property.

Vending Stand (Outdoor Vendors): An non-motorized, open-air fixture or device, such as a showcase, table, bench, rack, handcart, pushcart, stall that is used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise at a fixed location. This definition does not include vending trailers.

Vending Trailer (Outdoor Vendors): A device enclosed on at least three sides with a permanent roof, moved on wheels, designed to be pulled by a motor vehicle for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise. (Ord. No. 360, Sec. 1, Exh. A)