ARTICLE X - REVENUE AND TAXATION

CHAPTER 1 - LOCAL SALES AND USE TAX REGULATIONS AND LAW

Sec. 10000. Short Title. This chapter shall be known as the Uniform Local Sales and Use Tax Ordinance of the City of Grover City. (Ord. 1)

Sec. 10001. Purpose. The City Council of the City of Grover City hereby declares that this ordinance is adopted to achieve the following, among other, purposes and directs that the provisions hereof be interpreted in order to accomplish those purposes. (Ord. 1)

Sec. 10001.1. Same. To adopt a sales and use tax ordinance which complies with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code of the State of California. (Ord. 1)

Sec. 10001.2. Same. To adopt a sales and use tax ordinance which incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.5 of Division 2 of the said Revenue and Taxation Code. (Ord. 1)

Sec. 10001.3. Same. To adopt a sales and use tax ordinance which imposes a one (1) percent tax and provides a measure thereof that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practical to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes. (Ord. 1)

Sec. 10001.4. Same. To adopt a sales and use tax ordinance which imposes a one (1) percent tax and provides a measure thereof that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practical to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes. (Ord. 1)

Sec. 10001.5. Same. To adopt a sales and use tax ordinance which can be administered in a manner that will, to the degree possible consistent with the provisions of Part 1.5 of Division 2 of the said Revenue and Taxation Code, minimize the cost of collecting city sales and use taxes and at the same time minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance. (Ord. 1)

Sec. 10001.6. Same. To adopt a sales and use tax ordinance which can be administered in a manner that will exclude the receipts of particular sales from the measure of the sales tax imposed by this City which have been included in the measure of the sales tax imposed by any other city and county, county other than the county in which this City is located, or city in this State, and avoid imposing

a use tax on the storage, use or other consumption of tangible personal property in this City when the gross receipts from the sale of, or the use of, that property has been subject to a sales or use tax by any other city and county, county other than the county in which this City is located, or city in this State, pursuant to a sales and use tax ordinance enacted under the provisions of Part 1.5 of Division 2 of the said Revenue and Taxation Code. (Ord. 1)

Sec. 10002. Operative Date, Contract with State. This ordinance shall become operative on January 1, 1960, and prior thereto this City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this sales and use tax ordinance, provided, that if this City shall not have contracted with the said State Board of Equalization as above set forth, prior to January 1, 1960, this ordinance shall not be operative until the first day of the first calendar quarter following the execution of such a contract by the City and by the State Board of Equalization. (Ord. 1)

Sec. 10003. Sales Tax. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the City at the rate of one (1) percent of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the City of Grover City on and after the operative date of this ordinance. (Ord. 1)

Sec. 10003.1 Same. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-State destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the Board of Equalization. (Ord. 1; Am. Ord. 30)

Sec. 10003.2 Same. Except as hereinafter provided and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of said Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of said Code as amended and in force and effect on January 1, 1960, applicable to sales taxes are hereby adopted and made a part of this section as though fully set forth herein. (Ord. 1)

Sec. 10003.3. Same. Wherever, and to the extent that, in Part 1 of Division 2 of the said Revenue and Taxation Code the State of California is named or referred to as the taxing agency, the City of Grover City shall be substituted therefor. Nothing in this subdivision shall be deemed to require the substitution of the name of the City of Grover City for the word "State" when that word is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization or the name of the State Treasury, or of the Constitution of the State of California; nor shall the name of the City be substituted for that of the State in any section when the result of that substitution would require action to be taken by or against the City or any agency thereof, rather than by or against the State Board of Equalization in performing the functions incident to the administration or operation of this ordinance; and neither shall the substitution be deemed to have been made in those sections, including, but not necessarily limited to, sections referring to the

exterior boundaries of the State of California, where the result of the substitution would be to provide an exemption from this tax with respect to certain gross receipts which would not otherwise be exempt from this tax while those gross receipts remain subject to the tax by the State under the provisions of Part 1 of Division 2 of the said Revenue and Taxation Code; nor to impose this tax with respect to certain gross receipts which would not be subject to tax by the State under the said provisions of that Code; and, in addition, the name of the City shall not be substituted for that of the State in Sections 6701, 6702, (except in the last sentence thereof), 6711, 6715, 6737, 6797 and 6828 of the said Revenue and Taxation Code as adopted. (Ord. 1)

Sec. 10003.4. Same. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional seller's permit shall not be required by reason of this chapter. (Ord. 1; Amd. Ord. 73-12)

Sec. 10003.5. Same. There shall be excluded from the gross receipts by which the tax is measured:

(A) The amount of any sales or use tax imposed by the State of California upon a retailer or consumer;

(B) The gross receipts from the sale of tangible personal property to operators of waterborne vessels to be used or consumed principally outside the City in which the sale is made and directly and exclusively in the carriage of persons or property in such vessels for commercial purposes.

(C) The gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the City in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government. (Ord. 1; Amd. Ord. 30; Amd. Ord. 73-12)

Sec. 10004. Use Tax. An excise tax is hereby imposed on the storage, use or other consumption in the City of Grover City of tangible personal property purchased from any retailer on or after the operative date of this ordinance, for storage, use or other consumption in the City at the rate of one (1) percent of the sales price of the property. The sales price shall include delivery charges when such charges are subject to State sales or use tax regardless of the place to which delivery is made. (Ord. 1)

Sec. 10004.1 Same. Except as hereinafter provided and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of the said Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of said Code, as amended, and in force and effect on January 1, 1960, applicable to use taxes are hereby adopted and made a part of this section as though fully set forth herein. (Ord. 1)

Sec. 10004.2. Same. Wherever, and to the extent, that in Part 1 of Division 2 of the said Revenue and Taxation Code the State of California is named or referred to as the taxing agency, the City of Grover City shall be substituted therefor. Nothing in this subdivision shall be deemed to require the substitution of the name of the City of Grover City for the word "State" when that word is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, or the name of the State Treasury, or of the Constitution of the State of

California; nor shall the name of the City be substituted for that of the State in any section when the result of that substitution would require action to be taken by or against the City or any agency thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this ordinance; and neither shall the substitution be deemed to have been made in this section as though fully set forth herein. (Ord. 1)

Sec. 10004.3 Same. Whenever, and to the extent that, in Part 1 of Division 2 of the said Revenue and Taxation Code the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. Nothing in this subdivision shall be deemed to require the substitution of the name of this City for the word "State" when that word is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, or the name of the State Treasury, or of the Constitution of the State of California; nor shall the name of the City be substituted for that of the State in any section when the result of that substitution would require action to be taken by or against the City or any agency thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this ordinance; and neither shall the substitution be deemed to have been made in those sections, including but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to provide an exemption from this tax with respect to certain storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such storage, use or other consumption remains subject to tax by the State under the provisions of Part 1 of Division 2 of the said Revenue and Taxation Code, or to impose this tax with respect to certain storage, use or other consumption remains subject to tax by the State under the provisions of Part 1 of Division 2 of the said Revenue and Taxation Code, or to impose this tax with respect to certain storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the said provisions of that Code; and in addition, the name of the City shall not be substituted for that of the State in Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 and 6828 of the said Revenue and Taxation Code as adopted, and the name of the City shall not be substituted for the word "State" and the phrase "retailer engaged in business in this State" in Section 6203 nor in the definition of that phrase in Section 6203. (Ord. 1; Amd. Ord. 30)

Sec. 10004.4. Same. There shall be exempt from the tax due under Section 10004:

(A) The amount of any sales or use tax imposed by the State of California upon a retailer or consumer;

(B) The storage, use or other consumption of tangible personal property, the gross receipts from the sale of which has been subject to sales tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county, or city in this State.

(C) The storage, use or other consumption of tangible personal property purchased by operators of waterborne vessels and used or consumed by such operators directly and exclusively in the carriage of persons or property in such vessels for commercial purposes.

(D) In addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code, the storage, use or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a

certificate of public convenience and necessity issued pursuant to the laws of this State, the United State, or any foreign government. (Ord. 1; Amd. Ord. 30; Amd. Ord. 73-12)

Sec. 10005. Amendments. All amendments of the said Revenue and Taxation Code enacted subsequent to the effective date of this ordinance which relate to the sales and use tax and which are not inconsistent with Part 1.5 of Division 2 of the said Revenue and Taxation Code shall automatically become a part of this ordinance. (Ord. 1)

Sec. 10006. Enjoining Collection Forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any Court against the State or this City, or against any officer of the State or this City to prevent or enjoin the collection under this ordinance, or Part 1.5 of Division 2 of the Revenue and Taxation Code, or any amount of tax required to be collected. (Ord. 1)

CHAPTER 2 - BUSINESS CERTIFICATE TAX

Sec. 10200. Purpose. The purpose of this chapter is to raise revenue for municipal purposes. The provisions of this chapter shall be applicable to all business tax certificates issued by the City unless otherwise stated. (Ord. 3, Amd. Ord. 91-10)

Sec. 10201. Certificate required. Any person who engages in any business, profession or occupation within the City limits shall first procure a business tax certificate pursuant to this chapter, unless alternative or additional procedures are provided for within this code. This section shall not be construed to require any employee or agent of one engaged in a business, profession or occupation to obtain a tax certificate. (Ord. 3, Amd. Ord. 91-10)

Sec. 10202. Separate certificate for each place of business. (A) Every person engaged in an activity requires a certificate under this chapter and shall obtain a certificate for each and every separate office or place of business conducted by such person.

(B) A separate certificate must be obtained for each kind or class of business, profession or occupation carried on at one location.

(C) Any person engaged in the business of renting out or placing mechanical amusement devices or vending machines in various locations within the City, shall be required to have a separate certificate for each location; and to have it posted at the site of the machines. (Ord. 3, Amd. Ord. 91-10)

Sec. 10203. Exceptions. Persons selling agricultural and dairy food products which have been grown or produced by the seller at that location are exempt from the requirements of this chapter. (Ord. 3, Amd. Ord. 91-10)

Sec. 10204. Application for tax certificate. Application for any certificate required by this chapter shall be made in writing on forms furnished by the Finance Department. No person shall make a

known misrepresentation or false statement on an application. The application shall be filed with the Finance Department and shall include:

(A) The applicant's full name and address, the address of the business establishment and the exact nature of the business;

(B) The name or title of the proposed business, profession or occupation;

(C) If the applicant is not the owner of the premises in which the business is to be conducted, the name and address of the owner;

(D) If the applicant is acting as an agent or employee, the name and address of the principal or employer;

(E) If the applicant is a partnership, corporation or other association, the names and addresses of all partners or principal officers;

(F) The proof of payment of the business tax;

(G) Information required by State or County agencies. (Ord. 3, Amd. Ord. 91-10)

Sec. 10205. Business certificate tax payment. (A) The City Council shall by resolution, identify taxes and categories, and prescribe first year taxes and annual renewal fees for business tax certificates.

(B) The fee shall be paid to the Finance Department upon the filing of an application for a business tax certificate. The Finance Department shall provide a receipt for the sum received. (Ord. 3, Amd. Ord. 91-10)

Sec. 10206. Duration of certificate-prorated fee. All certificates issued under this chapter, unless specified otherwise on the certificate, shall be issued for the duration of the calendar year for which they were issued, and all certificates shall expire on the thirty-first day of December of each such calendar year. In the event of an application for a certificate to go into effect at any time after the first of January of any calendar year, the applicant shall be required to pay for the certificate a pro rata part for the portion of the year remaining up to the last day of December of that year. The pro rata schedule shall be one-half effective July first, and one-quarter effective October first. (Ord. 3, Amd. Ord. 91-10)

Sec. 10207. Inspection of commercial establishments. The Finance Department shall not issue any new certificate, nor issue any transfer of any previously issued certificate to a new location, until an inspection of the premises at which the business is proposed to be located has been made by the Building Inspector and the Fire Chief, or designated representatives, and a certificate of inspection from each of them has been filed with the Finance Department certifying that no conditions exist on the premises which constitute a fire or health hazard, or an otherwise dangerous condition. Provided that, nothing in this section shall be deemed to place any duty or liability on the City, its officials or employees, for any damages or injuries resulting from any such condition of the premises. This section shall not apply to annual renewals of existing certificates to the same persons and for the same premises. (Ord. 3, Amd. Ord. 91-10)

Sec. 10208. Action on application. The City shall approve the application for a tax certificate unless one or more of the following conditions exist:

(A) The applicant knowingly made a false statement of fact required to be revealed in the application for the certificate, or in any amendment or report to be made thereunder: or

(B) The applicant has failed to provide any required information. (Ord. 3, Amd. Ord. 91-10)

Sec. 10209. Notice of action. If an application for business certificate is not approved within thirty days from the date of application, it shall be processed for denial. Upon denial of a license by the City Administrator, the Finance Department shall give written notice of such action to the applicant by certified mail, such notice shall state reasons for the denial. Any applicant whose application is denied may, within ten calendar days after the mailing of the above notice, request a hearing on such action. A hearing shall be scheduled within thirty days after the receipt of a request for hearing and payment of appeal fees. If no request for hearing is made within the ten day period, the City Administrator's decision shall be final. (Ord. 3, Amd. Ord. 91-10)

Sec. 10210. Hearing. The hearing shall be held before the City Council, which may reverse, modify or affirm the decision of the City Administrator. (Ord. 3, Amd. Ord. 91-10)

Sec. 10211. Contents of certificate. (A) Every certificate shall state by name, the person to whom it is issued, the business, profession or occupation, the address of the place where the business, profession or occupation shall be conducted, if applicable, and the date of issuance and date of expiration of the certificate.

(B) In case of vendors, the certificate shall state the name of the company that owns the machines, the name of the business and the location where the machines are located and the number of machines at that location. (Ord. 3, Amd. Ord. 91-10)

Sec. 10212. Renewal of certificate-late renewal fees-hearings. Every person desiring to continue in business after the expiration of the certificate period shall file an application for renewal within thirty days prior to the expiration of the certificate period. The Finance Department may accept an application for renewal within the time specified above if the application for renewal is filed before the expiration of the former certificate; provided, however, that the certificate fee in such case shall be the renewal fee plus ten percent thereof. The Finance Department may accept an application for renewal filed not more than sixty days after expiration of the former certificate; provided, however, that the certificate fee in such case shall be the renewal fee plus twenty-five percent. Except as otherwise provided by this section, the Finance Department shall not accept an application for a renewal of a certificate which has expired, or which for any other reason is not in full force and effect. If a certificate holder fails to renew his certificate within the time limits set by this section, he may apply for a new certificate, in which case he shall pay the fee required of first year certificate holders. If, on any renewal application, the Finance Department has received notice of a significant change in operation of the business, it shall be considered a new business, not a renewal. In all other cases involving certificate renewals, such certificate shall be automatically renewed by the Finance Department effective upon the expiration of the former certificate. (Ord. 3, Amd. Ord. 91-10)

Sec 10213. Transfer of certificate prohibited. (A) No certificate issued under this chapter shall be transferred or assigned to another person for a purpose other than that for which it was issued.

(B) A business tax certificate may be transferred to another person or location subject to paying a transfer fee as set forth by resolution by the City Council. (Ord. 3, Amd. Ord. 91-10)

Sec. 10214. Duplicate certificate. A duplicate certificate may be issued by the Finance Department to replace any certificate previously issued which has been lost or destroyed upon the certificate holder filing an affidavit attesting to such fact, and at the time of filing an affidavit, paying the City a duplicate certificate fee as established by resolution of the City Council. (Ord. 3, Amd. Ord. 91-10)

Sec. 10215. Display of certificate. Every person who is issued a certificate under the provisions of this chapter shall display the certificate in a conspicuous place on the premises in which the activity is being conducted, or, if there are no premises, shall carry the certificate while engaged in the activity for which the certificate was issued, and, moreover, shall exhibit the same to any official of the City upon request. (Ord. 3, Amd. Ord. 91-10)

Sec. 10216. Enforcement. The Finance Department shall have the authority to enforce each and all of the provisions of this chapter. The Community Development, Fire and Police Departments shall render such assistance in the enforcement, hereof, as may, from time to time, be required. The employees of said department, upon presentation of proper identification, shall have the power and authority to enter free of charge, and at any reasonable time and place of business, and demand an exhibition of its license certificate. Any person having such certificate, theretofore issued in his possession or under his control, who willfully fails to exhibit the same on demand, shall be guilty of a misdemeanor and subject to the penalties provided for by the provisions of this code. The Finance Department shall have the authority to cause a complaint to be filed against any and all persons found to be violating any of said provisions. (Ord. 3, Amd. Ord. 91-10)

Sec. 10217. Suspension or revocation. Tax certificates issued under this chapter may be suspended or revoked by the City Administrator. A certificate shall be revoked or suspended if there is a finding that the person complained of has willfully violated a term or condition of his certificate. (Ord. 3, Amd. Ord. 91-10)

Sec. 10218. Garage sales. No certificate shall be required for a person to sell from his own personal residence for a period of not to exceed four days in any calendar year, of household furniture furnishings, appliances and goods, belonging to the occupant of said residence and not acquired for the purpose of sale. Such sales shall be referred to as "garage sales." Any sale taking place for more than four days, whether consecutive or not, during any calendar year, or otherwise not strictly complying with the provisions of this section, shall be deemed to constitute the conduct of a "retail store", and shall be conducted in compliance with all applicable provisions of this code. (Ord. 3, Amd. Ord. 91-10)

CHAPTER 3 - FRANCHISES

Sec. 10300. Definitions. Whenever in this chapter the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following

definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

(A) Grantee shall mean the corporation to which the franchise contemplated in this chapter is granted and its lawful successors or assigns.

(B) City shall mean the City of Grover City, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated or reincorporated form;

(C) Streets shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within said City;

(D) Engineer shall mean the City Engineer of the City;

(E) Gas shall mean natural or manufactured gas, or a mixture of natural and manufactured gas;

(F) Pipes and Appurtenances shall mean pipe, pipeline, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, appurtenance and any other property located or to be located in, upon, along, across, under or over the streets of the City, and used or useful in transmitting and distributing gas.

(G) Lay and Use shall mean to lay, construct, erect, install, operate, maintain, use, repair, replace or remove. (Ord. 18)

Sec. 10301. South Counties Gas Company Franchise. (A) That the right, privilege and franchise, subject to each and all of the terms and conditions contained in this Chapter, and pursuant to the provisions of Division 3 of Chapter 2 of the Public Utilities Code of the State of California, known as the Franchise Act of 1937, be and the same is hereby granted to SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, a corporation organized and existing under and by virtue of the laws of the State of California, herein referred to as the "Grantee," to lay and use pipes and appurtenances for transmitting and distributing gas for any and all purposes, under, along, across or upon the streets, of the City, for an indeterminate term or period from and after the effective date hereof, that is to say, this franchise shall endure in full force and effect until the same shall, with the consent to the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by its possessor, or until the State of California or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of this franchise, and situate within the territorial limits of the State, municipal or public corporation purchasing or condemning such property, or until this franchise shall be forfeited for noncompliance with its terms by the possessor thereof.

(B) The Grantee shall pay to the City at the times hereinafter specified, in lawful money of the United States, a sum annually which shall be equivalent to two (2) percent of the gross annual receipts of Grantee arising from the use, operation or possession of said franchise; provided, however, that such payment shall in no event be less than one (1) percent of the gross annual receipts of the Grantee derived from the sale of gas within the limits of the City under this franchise.

The Grantee of this franchise shall file with the Clerk of the City within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the grant of this franchise, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of the Grantee, its successors or assigns, during the preceding calendar year, or such fractional calendar year, from the

sale of the utility service within the City for which this franchise is granted. It shall be the duty of the Grantee to pay to the City within fifteen (15) days after the time for filing such statement, in lawful money of the United States, the specified percentage of its gross receipts for the calendar year, or such fractional calendar year, covered by such statement. Any neglect, omission or refusal by said Grantee to file such verified statement, or to pay said percentage, at the times or in the manner hereinbefore provided, shall be grounds for the declaration of a forfeiture of this franchise and of all rights thereunder.

(C) This grant is made in lieu of all other franchises, rights, or privileges owned by the Grantee, or by any successor of the Grantee to any rights under this franchise, for transmitting and distributing gas within the limits of the City, as said limits now or may hereafter exist, and the acceptance of the franchise hereby granted shall operate as an abandonment of all such franchises, rights and privileges within the limits of this City as such limits now or may hereafter exist, in lieu of which this franchise is granted.

(D) The franchise granted hereunder shall not become effective until written acceptance thereof shall have been filed by the Grantee thereof with the Clerk of the City. When so filed, such acceptance shall constitute a continuing agreement of the Grantee that if and when the City shall thereafter annex or consolidate with, additional territory, any and all franchise rights and privileges owned by the Grantee therein shall likewise be deemed to be abandoned within the limits of such territory.

(E) The franchise granted hereunder shall not in any way or to any extent impair or affect the right of the City to acquire the property of the Grantee hereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the City's right of eminent domain in respect to the Grantee or any public utility. Nor shall this franchise ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the City therefor at the time of the acquisition thereof.

(F) The Grantee of this franchise shall:

(1) Construct, install and maintain all pipes and appurtenances in accordance with and in conformity with all of the ordinances, rules and regulations heretofore or hereafter adopted by the legislative body of this City in the exercise of its police powers and not in conflict with the paramount authority of the State of California, and, as to the State highways, subject to the provisions of general laws relating to the location and maintenance of such facilities;

(2) Pay to the City, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this franchise;

(3) Indemnify and hold harmless the City and its officers from any and all liability for damages proximately resulting from any operations under this franchise; and be liable to the City for all damages proximately resulting from the failure of said Grantee well and faithfully to observe and perform each and every provision of this franchise and each and every provision of Division 3, Chapter 2 of the Public Utilities Code of the State of California; and

(4) Remove or relocate, without expense to the City, any facilities installed, used and maintained under this franchise if and when made necessary by any lawful change of grade, alignment or width of any public street, way, alley or place including the construction of any subway or viaduct by the City; and

(5) File with the legislative body of the City within thirty (30) days after any sale, transfer, assignment or lease of this franchise, or any part thereof, or of any of the rights or privileges granted thereby, written evidence of the same, certified thereto by the Grantee or its duly authorized officers;

(G) The Engineer shall have power to give the Grantee such directions for the location of any pipes and appurtenances as may be reasonably necessary to avoid sewers, water pipes, conduits or other structures lawfully in or under the streets; and before the work of constructing any pipes and appurtenances is commenced, the Grantee shall file with said Engineer plans showing the location thereof, which shall be subject to the approval of said Engineer (such approval not to be unreasonably withheld); and all such construction shall be subject to the inspection of said Engineer and done to his reasonable satisfaction. All street coverings or openings of traps, vaults and manholes shall at all times be kept flush with the surface of the streets; provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets when said vents are located in parkways, between the curb and the property line.

Where it is necessary to lay any underground pipes through, under or across any portion of a paved or macadamized street, the same, where practicable and economically reasonable shall be done by a tunnel or bore, so as not to disturb the foundation of such paved or macadamized street; and in the event that the same cannot be so done, such work shall be done under a permit to be granted by the Engineer upon application therefor.

(H) If any portion of any street shall be damaged by reason of defects in any of the pipes and appurtenances maintained or constructed under this grant, or by reason of any other cause arising from the operation or existence of any pipes and appurtenances constructed or maintained under this grant, said Grantee shall, at its own cost and expense, immediately repair any such damage and restore such street, or portion of street, to as good a condition as existed before such defect or other cause of damage occurred, such work to be done under the direction of the Engineer, and to his reasonable satisfaction.

(I) If the Grantee of this franchise shall fail, neglect or refuse to comply with any of the provisions or conditions hereof, and shall not, within ten (10) days after written demand for compliance, begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then the City, by its legislative body, may declare this franchise forfeited.

(J) The City may sue in its own name for the forfeiture of this franchise, in the event of noncompliance by the Grantee, its successors or assigns, with any of the conditions thereof.

(K) The Grantee of this franchise shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this franchise; such payment to be made within thirty (30) days after the City shall furnish such Grantee with a written statement of such expenses.

(L) Not later than thirty (30) days after the publication of this ordinance, the Grantee shall file with the City Clerk a written acceptance of the franchise hereby granted, and an agreement to comply with the terms and conditions hereof. (Ord. 18)

Sec. 10302. Community Antenna Television System Franchise. (Repealed by Ordinance 98-2)

Sec. 10303. Special Provisions Applicable to Holders of State Video Franchise. (A) Franchise Fees. A state video franchise holder operating in the City shall pay to the City a franchise fee that is equal to five (5%) percent of the gross revenues of that state video franchise holder. The term "gross revenue" shall be defined as set forth in Public Utilities Code Section 5860. Each state video franchise holder shall remit the

franchise fee to the City quarterly, within forty-five (45) days after the end of the quarter for that calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the franchise fee. If the state video franchise holder does not pay the franchise fee when due, the state video franchise holder shall pay a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus one (1%) percent. If the state video franchise holder has overpaid the franchise fee, it may deduct the overpayment from its next quarterly payment.

(B) Audit Authority. Not more than once annually, the City may examine and perform an audit of the business records of a holder of a state video franchise to the extent reasonably necessary to ensure compliance with all applicable statutes and regulations related to the computation and payment of franchise fees. A state video franchise holder shall keep all business records reflecting any gross revenues, even if there is a change in ownership, for at least four (4) years after those revenues are recognized by the state video franchise holder on its books and records. If the examination discloses that the state video franchise holder has underpaid franchise fees by more than five (5%) percent during the examination period, the state video franchise holder shall pay all of the reasonable and actual costs of the examination in addition to the underpaid franchise fees and interest imposed under subsection (A) above. If the examination discloses that the state video franchise holder has not underpaid franchise fees, the City shall pay all of the reasonable and actual costs of the examination. In every other instance, each party shall bear its own costs of the examination.

(C) Customer Service Penalties Under State Video Franchises.

(1) The holder of a state video franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.

(2) The City shall monitor the compliance of state video franchise holders with respect to state and federal customer service and protection standards. The City will provide to the state video franchise holder written notice of any material breaches of applicable customer service and protection standards, and will allow the state video franchise holder thirty (30) days from receipt of the notice to remedy the specified material breach. A material breach for the purposes of assessing penalties shall be deemed to have occurred for each day within the City, following the expiration of the thirty (30)-day time period specified herein, that any material breach has not been remedied by the video service provider, irrespective of the number of customers or subscribers affected. Material breaches not remedied within the thirty (30)-day time period will be subject to the following monetary penalties to be imposed by the City in accordance with state law:

a. For the first occurrence of a violation, a monetary penalty of five hundred dollars ($500.00) shall be imposed for each day the violation remains in effect, not to exceed one thousand five hundred dollars ($1,500.00) for each occurrence of a material breach of applicable customer service and protection standards.

b. For a second violation of the same nature within twelve (12) months, a monetary penalty of one thousand dollars ($1,000.00) shall be imposed for each day the violation remains in effect, not to exceed three thousand dollars ($3,000.00) for each occurrence of a material breach of applicable customer service and protection standards.

c. For a third or further violation of the same nature within twelve (12) months, a monetary penalty of two thousand five hundred dollars ($2,500.00) shall be imposed for each day the violation remains in effect, not to exceed seven thousand five hundred dollars ($7,500.00) for each occurrence of a material breach of applicable customer service and protection standards.

(3) A state video franchise holder may appeal a monetary penalty assessed by the City within sixty (60) days. After relevant evidence and testimony is received, and staff reports are submitted, the City Council will vote to either uphold or vacate the monetary penalty. Except as otherwise provided in Public Utilities Code Section 5900, the City Council's decision on the imposition of a monetary penalty shall be final.

(D) City Response to State Video Franchise Applications.

(1) Applicant for state video franchises within the boundaries of the City must concurrently provide to the City complete copies of any application or amendments to applications filed with the California Public Utilities Commission. One (1) complete copy must be provided to the City Clerk.

(2) The City will provide any appropriate comments to the California Public Utilities Commission regarding an application or an amendment to an application for a state video franchise.

(E) PEG Channel Capacity. A state video franchise holder that uses the public rights-of-way shall designate sufficient capacity on its network to enable the carriage of at least three (3) public, educational, or governmental (PEG) access channels.

(1) PEG access channels shall be for the exclusive use of the City or its designees to provide public, educational or governmental programming.

(2) The PEG access channels shall be used only for noncommercial purposes. Notwithstanding the foregoing sentence, advertising, underwriting or sponsorship recognition may be carried on the PEG access channels for the purpose of funding PEG-related activities.

(3) The PEG access channels shall be carried on the basic service tier. The PEG signal shall be receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than the equipment necessary to receive the lowest cost tier of service. The PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the state cable franchise holder at a lower quality or with less functionality.

(4) To the extent feasible, the PEG access channels shall not be separated numerically from other channels carried on the basic service tier, and the channel numbers for the PEG access channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law.

(5) After the initial designation of PEG access channel numbers, the channel numbers shall not be changed without the prior written consent of the City, unless the change is required by federal law.

(6) Each PEG access channel shall be capable of carrying a National Television System Committee (NTSC) television signal.

(F) PEG Support Fee and Payments. In accordance with Public Utilities Code section 5870(n), state video franchise holders shall pay to the City a PEG support fee in the amount of one and one-half (1.5%) percent of gross revenues. State franchise holders shall remit PEG support fees in the same manner as franchise fees as set forth in subsection (A) above. The PEG support fee may be shown as a separate line item on the regular bill of each subscriber.

(G) Emergency Alert System and Emergency Overrides. A state video franchise holder must comply with the Emergency Alert System requirements of the Federal Communications Commission in order that emergency messages may be distributed over the holder's network.

(H) Interconnection. Where technically feasible, a state video franchise holder and incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG access channel programming. Interconnection may be accomplished by direct cable, microwave link,

satellite, or other reasonable method of connection. State video franchise holders and incumbent cable operators shall provide interconnection of the PEG access channels on reasonable terms and conditions and may not withhold the interconnection. If a state video franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the City may require the incumbent cable operator to allow the state video franchise holder to interconnect its network with the incumbent's network at a technically feasible point on the state video franchise holder's network as identified by the state video franchise holder. If no technically feasible point for interconnection is available, the state video franchise holder shall make an interconnection available to the channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state video franchise holder requesting the interconnection unless otherwise agreed to by the parties.

(I) Applicability of Article X Chapter 5. This Section superseded any inconsistent provisions of Chapter 5 Community Antenna Television Systems. (Ord. 14-02)

CHAPTER 4 -- CARD TABLE LICENSES AND REGULATIONS

Sec. 10400. Card Table Defined. The term "card table," as used in this Chapter, shall mean a card table within a business premises where there is carried on any card game for hire or for compensation, which game is not unlawful under the provisions of California Penal Code §330, or any other provision of law. (Ord. 19; Amd. Ord. 79-6)

Sec. 10401. Card Table Licenses. It is unlawful for any person, firm, association, corporation or partnership to engage in or carry on the business of conducting or operating one or more card tables unless there is in effect a card table license covering each such card table, issued pursuant to the provisions of this Chapter. (Ord. 19: Amd. Ord. 79-6)

Sec. 10402. Standards for Issuance of Card Table Licenses. (A) No more than a total of nine (9) card tables shall be licensed to operate within the City under the provisions of this Chapter.

(B) No one (1) permittee shall be authorized to operate more than a total of six (6) card tables within the City.

(C) No more than six (6) card tables shall be operated or maintained within any single business premises within the City.

(D) No card table license shall be transferable to another location or permittee.

(E) No card table license shall be issued to any person who has been convicted of any felony, nor to any association, partnership, or corporation of which any owner thereof has been convicted of a felony. (Amd. Ord. 06-13; Amd. Ord. 13-02)

Sec. 10403. Applications for Licenses. Any person desiring to obtain a card table license shall apply to the City Clerk and shall furnish such information as is requested by the City Clerk which pertains to the identification and background of the applicant and the owners thereof, and to the nature and location of the proposed business for which the application is made. The City Clerk shall deliver such application to the Chief of Police for his investigation and for a report to the City Council thereon. The Chief of Police s h a l l

have the power to require the applicant and/or any of the owners thereof to submit to fingerprinting and to furnish such additional information as he deems necessary to assist in such investigation.

Upon receipt of the report of the Chief of Police the City Council shall grant a card table license or licenses to the applicant if the City Council determines the following:

(A) That the applicant and its members are of good moral character and otherwise qualified to carry on such business under the terms of this Chapter;

(B) That the carrying on of a card table at the location proposed is in compliance with all applicable zoning and building ordinances and regulations of the City;

(C) That the issuance of the permit is not contrary to the public health, safety or welfare. (Ord. 19; Amd. 79-6)

Sec. 10404. Revocation of Licenses. The City Council shall have the right to revoke any card table license when the possessor thereof has violated, or permitted the violation of, any of the terms of this chapter or if the license is unused for a period longer than two (2) years. The City Council may also revoke any card table license when the business being operated is not implementing the approved Security Plan for the protection of its patrons, or is not being conducted in accordance with the public health, safety or welfare or when, in the discretion of the City Council, it is found that the continued operation of said business will create or is creating a policing problem to the City. Prior to revoking any card table license, the City Council shall cause to be served on the applicant a notice of its intention to do so at least five (5) days prior to the date upon which it intends to consider the matter of such revocation, and also stating the right of the licensee to appear before the City Council and to show cause why such license should not be revoked. The decision of the City Council with respect to the revocation shall be final. (Ord. 19; Am. Ord. 79-6; Am. Ord. 04-05; Am. Ord. 13-02)

Sec. 10405. Card License Fee. There shall be an annual fee in the amount set forth in the Master Fee Schedule for each card table licensed pursuant to the terms of this Chapter. (Ord. 19; Amd. Ord. 79-6; Amd. Ord. 06-13)

Sec. 10406. Access to Premises. The City Council finds that it is necessary and in the public interest that law enforcement officers have access to any premises in which a card table is being operated under the terms of this Chapter, in order to insure that the terms of this Chapter are being complied with. Any premises for which a license has been issued under the provisions of this Chapter shall be deemed to constitute a public place, and all police officers and peace officers shall at all times have access thereto during business hours. (Ord. 19: Amd. Ord. 79-6)

Sec. 10407. Hours of Operation. (Repealed by Ordinance 13-02)

Sec. 10408. Attendance by Minors. No person under the age of twenty-one (21) shall be employed in or allowed to frequent, remain in or visit any room or premises wherein is conducted or operated any card table licensed under the provisions of this chapter. (Ord. 19: Amd. Ord. 79-6)

Sec. 10409. Conflict with Other Laws and Savings Clause. The City Council expressly finds and declares that it is not the intent of the Ordinance codified in this Chapter to authorize or permit any form of gaming which is contrary to any provisions of state law, and in the event of any such conflict state law shall control.

The provisions of this Chapter shall control all matters pertaining to the licensing, control, and regulation of card games and card tables, regardless of the provisions of any other law of the City, and in the case of direct conflict shall supersede any other such law.

If any section, subsection, clause, or portion of this Chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. (Ord. 19; Amd. Ord. 79-6)

Sec. 10410. Wagering Limits. No card table permittee, owner, or employee may allow any player to make a single wager exceeding Five Hundred Dollars ($500) or allow any player to wager more than One Thousand Dollars ($1,000) on any single hand played within the licensed premises. (Ord. 99-7)

Sec. 10411. Patron Security and Safety. Any holder of a card table licenses shall submit a Security Plan for the premise where a card table or tables are operated. Said Security Plan must be reviewed and approved by the Chief of Police prior to issuance or renewal of a Business Tax Certificate. The holder of a card table license must pay a full cost recovery fee for the review and approval of a Security Plan as may be established by the City Council in the Master Fee Schedule. (Ord. 04-05)

CHAPTER 4.20 - LICENSING OF TOBACCO RETAILERS

Sec. 10420. Purpose. It is the purpose and intent of this Chapter to discourage violations of laws which prohibit or regulate the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by state or federal law are criminally proscribed or to alter the penalty provided therefor. (Ord. 05-06)

Sec. 10421. Definitions. The following words and phrases, whenever used in this Chapter, shall have the meanings defined in this Section unless the context clearly requires otherwise:

(A) "Person" means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(B) "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

(C) "Tobacco product" means: (1) any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or another preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body but does not include any product specifically approved by the Federal Food and Drug Administration for use in treating nicotine or tobacco product dependence.

(D) "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, or tobacco products; "tobacco retailing" shall mean engaging in any of these activities.

(E) "Licensing Agent" means a City employee designated by the City Manager to serve in this capacity.

(F) "Enforcement Agency" means the Grover Beach Police Department.

(G) "Hearing Officer" means the City employee designated by the City Manager to serve in that capacity. (Ord. 05-06)

Sec. 10422. Requirement for Tobacco Retailer License. (A) It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's license issued pursuant to this Chapter for each location at which that activity is to occur.

(B) No license will be issued to authorize tobacco retailing at other than a fixed location; itinerant tobacco retailing and tobacco retailing from vehicles are prohibited.

(C) No license will be issued to authorize tobacco retailing at any location that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control); tobacco retailing in bars and restaurants serving alcoholic beverages is prohibited.

(D) No person shall sell a tobacco product without first examining the identification of the purchaser and confirming that the proposed sale is to a purchaser who is at least the minimum age in state law for being sold the tobacco product.

(E) Licenses issued hereunder are valid for one (1) year and each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license prior to its expiration. A tobacco retailer license does not confer any new rights under any other law and does not exempt any business that otherwise would be subject to the smoke-free work place provisions of Labor Code Section 6404.5.

(F) A tobacco retailer operating legally on the date that the ordinance enacting this Chapter was first introduced and that would otherwise be entitled to receive a license may receive a license and may continue to operate so long as (1) the license is renewed continually without lapse; (2) the tobacco retailer is not closed for business for more than sixty (60) consecutive days; (3) the tobacco retailer does not substantially change the business premises or business operation; and (4) the tobacco retailer maintains the right to operate under the terms of other applicable laws, including without limitation, the zoning ordinance, building codes, and business tax certificate ordinance. (Ord. 05-06)

Sec. 10423. Application Procedure. An application for a tobacco retailer's license shall be submitted to the Licensing Agent in the name of each Proprietor/Person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the Licensing Agent and shall contain the following information:

(A) The name, address, and telephone number of the applicant;

(B) The business name, address, and telephone number of each location for which a tobacco retailer's license is sought;

(C) Such other information as the Licensing Agent deems necessary for enforcement of this Chapter;

(D) Whether or not any Proprietor has previously been issued a license pursuant to this Chapter that is, or was at any time, revoked and, if so, the dates of the revocation and the period of revocation. (Ord. 05-06)

Sec. 10424. Issuance of License. The Licensing Agent shall issue a tobacco retailer's license unless substantial record evidence demonstrates one of the following bases for denial:

(A) The application is incomplete or inaccurate; or

(B) The application seeks authorization for tobacco retailing by a person or at a location for which a revocation is in effect pursuant to Section 10430 of this Chapter; or

(C) The application seeks authorization for tobacco retailing in an area that is in violation of City zoning pursuant to Article IX, Chapter 1 of this Code or that is unlawful pursuant to any other local, State, or Federal law. (Ord. 05-06)

Sec. 10425. Display of License. Each licensee shall prominently display the license in a public place at each location where tobacco retailing occurs. (Ord. 05-06)

Sec. 10426. Fees for License. The fee for a tobacco retailer's license shall be established by Resolution of the City Council amending the Master Fee Schedule. The fee shall be calculated so as to recover the total cost, but no more than the total cost, of license administration and enforcement, including, for example, but not limited to, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violation, and prosecution of violators. The fee for tobacco retailer's license shall be paid to the Licensing Agent. (Ord. 05-06)

Sec. 10427. Licenses Nontransferable. A tobacco retailer's license is nontransferable to a different person or a different location. For example, if a Proprietor to whom a license has been issued changes business location, that Proprietor must apply for a new license prior to acting as a tobacco retailer at the new location. Or if the business is sold, the new owner must apply for a license for that location before acting as a tobacco retailer. (Ord. 05-06)

Sec. 10428. License Violation. It shall be a violation of a license for a licensee or his or her agents or employees to violate any local, State, or Federal tobacco-related law. (Ord. 05-06)

Sec. 10429. License Compliance Monitoring. Compliance with this Chapter shall be monitored by the Grover Beach Police Department. At least four compliance checks of each tobacco retailer shall be conducted during each twelve-month period. The cost of compliance monitoring shall be incorporated into the license fee. (Ord. 05-06)

Sec. 10430. Revocation of a License. In addition to any other penalty authorized by law, a tobacco retailer's license may be revoked if the City finds, after notice to the licensee and opportunity to be heard, that the licensee or his or her agents or employees has violated the conditions of the license imposed pursuant to this Chapter.

(A) After revocation for a first violation of this Chapter at a location within any five-year period, no new license may be issued for the location until thirty (30) days have passed from the date of revocation.

(B) After revocation for a second violation of this Chapter at a location within any five-year period, no new license may be issued for the location until ninety (90) days.

(C) After revocation for a third violation of this Chapter at a location within any five-year period, no new license may be issued for the location until one (1) year.

(D) After revocation for four or more violations of this Chapter at a location within any five-year period, no new license may be issued for the location until five (5) years have passed from the date of revocation. (Ord. 05-06)

Sec. 10430.1. Revocation of License Issued In Error. A tobacco retailer's license shall be revoked if the City finds, after the licensee is afforded reasonable notice and opportunity to be heard, that one or more of the bases for denial of a license under Section 10424 existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the City. The revocation shall be without prejudice to the filing of a new application for a license. (Ord. 05-06)

Sec. 10431. Appeal of Suspension and/or Revocation. (A) A decision of the City to revoke a license is appealable to a Hearing Officer and must be filed with the Hearing Officer at least ten (10) working days prior to the commencement date of the license revocation. An appeal shall stay all proceedings in furtherance of the appealed action. Following appeal, the decision of the Hearing Officer may be appealed to the City Manager or his/her designee. A decision of the City Manager or his/her designee shall be the final decision of the City.

(B) During a period of license revocation, the tobacco retailer must remove from public view all tobacco products and shall not display any advertisement relating to tobacco products that promotes the sale or distribution of such products from the tobacco retailer's location or that would lead a reasonable consumer to believe that such products can be obtained at the tobacco retailer's location. (Ord. 05-06)

Sec. 10432. Penalties, Enforcement. (A) Any violation of the provisions of this Chapter by any person is a misdemeanor and is punishable as provided in Chapter 1200 of this Code.

(B) Each day that an unlicensed person offers tobacco products or tobacco for sale or exchange shall constitute a separate violation.

(C) Violations of this Chapter are hereby declared to be a public nuisance.

(D) In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the City Attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity. (Ord. 05-06)

CHAPTER 5 - COMMUNITY ANTENNA TELEVISION SYSTEMS

(Ordinance No. 80 repealed and replaced by Ordinance No. 98-1)

Sec. 10501. Intent. (A) The City of Grover Beach, pursuant to applicable Federal and State law, is authorized to grant one or more non-exclusive franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

(B) The City Council finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the residents of Grover Beach. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such persons as the City may designate. It is the intent of this Chapter

and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any franchises issued pursuant to this Chapter shall be deemed to include this as an integral finding thereof. (Ord. 98-1)

Sec. 10502. Definitions. For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

(A) "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals.

(B) "Cable Television" or "System," also referred to as 'Cable Communications System" or "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:

(1) A facility that serves only to transmit television signals of one (1) or more television broadcast stations;

(2) A facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any public rights-of-way;

(3) A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or

(4) Any facilities of any electric utility used solely for operating its electric utility system.

(C) "Cable Service" means the total of the following:

(1) The one-way transmission to subscribers of video programming of other programming service; and

(2) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(D) "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system which is capable of delivering a television channel as defined by the Federal Communications Commission.

(E) "Council" means the City Council of the City of Grover Beach.

(F) "Franchise" means an initial authorization, or renewal thereof, issued by the Council, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

(G) "Franchise Agreement" means a franchise grant ordinance or a contractual agreement, containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

(H) "Franchise Fee" means any tax, fee or assessment of any kind imposed by the City on a Grantee as compensation for the Grantee's use of the public rights-of-way. The term "franchise fee" does not include:

(1) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);

(2) Capital costs which are required by the franchise to be incurred by Grantee for public, educational, or governmental access facilities;

(3) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(4) Any fee imposed under Title 17, United States Code.

(I) "Grantee" means any "person" receiving a franchise pursuant to this Chapter and under the granting franchise ordinance or agreement, and its lawful successor, transferee or assignee.

(J) "Grantor" or "City" means the City of Grover Beach as represented by the Council or any delegate acting within the scope of its jurisdiction.

(K) "Gross Annual Receipts" means the annual gross receipts received by a Grantee from all sources of operations of the Cable Television System within the City utilizing the public streets and rights-of-way for which a franchise is required in order to deliver such cable service, excluding refundable deposits, rebates or credits, except that any sales, excise or other taxes or charges collected for direct payment or pass-through to local, State or Federal government, other than the franchise fee, shall not be included.

(L) "Initial Service Area" means the area of the City which will receive service initially, as set forth in any Franchise Agreement.

(M) "Installation" means the connection of the system to subscribers' terminals, and the initiation of service.

(N) "Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

(O) "Public". Educational or Government Access Facilities" or "PEG Access Facilities" means the total of the following:

(1) Channel capacity designated for noncommercial public, educational, or government use; and

(2) Facilities and equipment for the use of such channel capacity.

(P) "Section" means any section, subsection or provision of this Chapter.

(Q) "Service Area" or "Franchise Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise granting ordinance or agreement.

(R) "Service Tier" means a category of cable service or other services provided by a Grantee and for which a separate rate is charged by the Grantee.

(S) "State" means the State of California.

(T) "Street" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the Grantor shall permit to be included within the definition of street from time to time.

(U) "Subscriber" means any person who or which elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connection with the cable system, and who pays the charges therefor. (Ord. 98-1)

Sec. 10503. Franchise to Install and Operate. A franchise granted by the City under the provisions of this Chapter shall encompass the following purposes:

(A) To authorize Grantee to engage in the business of providing cable television service, and such other services as may be permitted by law, which Grantee chooses to provide, to subscribers within the designated service area.

(B) To authorize Grantee to erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain, cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the cable system in, on, over, under, upon, along and across streets or other public places within the designated service area.

(C) To authorize Grantee to maintain and operate its properties for the origination, reception, transmission, amplification, and distribution of television and radio signals and for the delivery of cable services, and such other services as may be permitted by law.

(D) To set forth the respective obligations of a Grantee and the City under the franchise. (Ord. (98-1)

Sec. 10504. Franchise Required. It shall be unlawful for any person to construct, install or operate a cable television system in the City within any public street without a properly granted franchise awarded pursuant to the provisions of this Chapter. (Ord. 98-1)

Sec. 10505. Term of the Franchise. (A) A franchise granted hereunder shall be for a term established in the franchise agreement, commencing on the date established in the franchise agreement.

(B) A franchise granted hereunder may be renewed upon application by the Grantee pursuant to the provisions of applicable State and Federal law and of this Chapter. (Ord. 98-1)

Sec. 10506. Franchise Territory. Any franchise shall be valid within all the territorial limits of the City, and within any area added to the City during the term of the franchise, unless otherwise specified in this Chapter or the franchise agreement. (Ord. 98-1)

Sec. 10507. Federal or State Jurisdiction. This Chapter shall be construed in a manner consistent with all applicable Federal and State laws and shall apply to all franchises granted or renewed after the effective date of this Chapter to the extent permitted by applicable law. (Ord. 98-1)

Sec. 10508. Franchise Non-Transferable. (A) Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, without the prior

consent of the Council and then only upon such terms and conditions as may be reasonably prescribed by the Council, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the consent of the Council shall be null and void. The granting of a security interest in any Grantee assets, or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this Section.

(B) The requirements of Subsection A. shall apply to any change in control of Grantee. The word "control" as used herein is not limited to major stockholders or partnership interests, but includes actual working control in whatever manner exercised. In the event that Grantee is a corporation, prior authorization of the Council shall be required where ownership or control of more than ten percent (10%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of the Grantee as of the effective date of the franchise, singularly or collectively.

(C) Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notification shall be considered by Grantor as notice that a change in control of ownership of the franchise has taken place and the provisions under this Section governing the consent of Grantor to such change in control of ownership shall apply.

(D) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist Grantor in such inquiry. In seeking Grantor's consent to any change of ownership or control, Grantee shall have the responsibility of ensuring that the transferee completes an application in form and substance reasonably satisfactory to Grantor, which application shall include the information required under Subsections A. through C. of Section 10513 of this Chapter. An application shall be submitted to Grantor not less than sixty (60) days prior to the date of transfer. In addition to the information included in the application, Grantor also may require from the proposed transferee such additional information as Grantor may reasonably deem to be applicable. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If the legal, financial, character, and technical qualifications of the applicant are satisfactory, the Grantor shall consent to the transfer of the franchise. The consent of the Grantor to such transfer shall not be unreasonably denied or delayed.

(E) Any financial institution having a pledge of the Grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor shall take control of and operate the cable television system, in the event of a Grantee default of its financial obligations. Further, said financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one (1) year unless extended by the Grantor in its discretion and during said period of time it shall have the right to petition the Grantor to transfer the franchise to another Grantee.

(F) Upon transfer, Grantee shall reimburse Grantor for Grantor's reasonable processing and review expenses in connection with a transfer of the franchise or of control of the franchise, including without limitation, costs of administrative review, financial, legal and technical evaluation of the proposed transferee, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication costs and document preparation expenses, not to exceed any maximum that may be specified in the franchise agreement. Any such reimbursement shall not be charged against any franchise fee due to Grantor during the term of the franchise. (Ord. 98-1)

Sec. 10509. Geographical Coverage. (A) Grantee shall design, construct and maintain the cable television system to have the capability to pass every dwelling unit in the City, subject to any service area line extension requirements of the franchise agreement.

(B) After service has been established by activating trunk and/or distribution cables for any service area, Grantee shall provide service to any requesting subscriber within that service area within thirty (30) days from the date of request, provided that the Grantee is able to secure any additional rights-of-way necessary to extend service to such subscriber within such thirty (30) day period on reasonable terms and conditions. (Ord. 98-1)

Sec. 10510. Nonexclusive Franchise. Any franchise granted shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional franchises for a cable television system or any component thereof, as it deems appropriate, subject to applicable State and Federal law, provided that no such additional franchise shall be granted on terms materially more favorable or less burdensome than any other franchise granted hereunder. (Ord. 98-1)

Sec. 10511. Multiple Franchises. (A) Grantor may grant any number of franchises subject to applicable State or Federal law. Grantor may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:

(1) The capacity of the public rights-of-way to accommodate multiple cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewerage.

(2) The benefits that may accrue to cable subscribers as a result of cable system competition, such as lower rates and improved service.

(3) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.

(B) Each Grantee awarded a franchise to serve the entire City shall offer service to all residences in the City, in accordance with construction and service schedules mutually agreed upon between Grantor and Grantee, and consistent with applicable law.

(C) Developers of new residential housing with underground utilities shall provide conduit to accommodate cables for at least two (2) cable systems in accordance with the provisions of Section 10520.

(D) Grantor may require that any new Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the rights-of-way in any particular area cannot feasiblely and reasonably accommodate additional cables. (Ord. 98-1)

Sec. 10512. Franchise Applications. Any person desiring an initial franchise for a cable television system shall file an application with the City. A reasonable nonrefundable application fee established by the City shall accompany the application to cover all costs associated with processing and reviewing the application, including without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, the selected applicant(s) shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs. (Ord. 98-1)

Sec. 10513. Applications - Contents. An application for an initial franchise for a cable television system shall contain, where applicable:

(A) A statement as to the proposed franchise and service area;

(B) Resume of prior history of applicant, including the expertise of applicant in the cable television field;

(C) List of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a corporation which is not publicly traded;

(D) List of officers, directors and managing employees of applicant, together with a description of the background of each such person;

(E) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant;

(F) A current financial statement of applicant verified by a Certified Public Accountant audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the City;

(G) Proposed construction and service schedule; and

(H) Any additional information that the City deems reasonably necessary. (Ord. 98-1)

Sec. 10514. Consideration of Initial Applications. (A) Upon receipt of any application for an initial franchise, the City Manager shall prepare a report and make recommendations respecting such application to the City Council.

(B) A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing the Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and, if granted, subject to what conditions. The Council may grant one (1) or more franchises, or may decline to grant any franchise. (Ord. 98-1)

Sec. 10515. Franchise Renewal. Franchise renewals shall be in accordance with applicable law. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. Upon mutual execution of a franchise renewal agreement, Grantee shall reimburse Grantor for costs incidental to the franchise renewal award, not to exceed any maximum specified in the franchise agreement. Any such reimbursement shall not be charged against any franchise fee due to the Grantor during the term of the franchise. (Ord. 98-1)

Sec. 10516. Minimum Consumer Protection and Service Standards. (A) Except as otherwise provided in the Franchise Agreement, Grantee shall maintain a local office or offices to provide the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal conditions of operation:

(1) Sufficient toll-free telephone line capacity during normal business hours, and excepting unusual events such as system outages, to assure that a minimum of ninety-five percent (95%) of all calls will be answered before the fourth (4th) ring and ninety percent (90%) of all callers for service will not be required to wait more than thirty (30) seconds, after the call pickup and the conclusion of any automated telephone response procedures before being connected to a service representative.

(2) Emergency telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays.

(3) A local business and service office open during normal business hours and at least some period weekly on evenings and/or weekends, and adequately staffed to accept subscriber payments and respond to service requests and complaints.

(4) An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunction on a twenty-four (24) hour per day basis.

(5) An installation staff, capable of installing service to any subscriber within seven (7) working days after receipt of a request, in all areas where trunk and feeder cable have been activated.

(6) At the subscriber's request, Grantee shall schedule, within a specified four (4) hour time period, all appointments with subscribers for installation of service.

(B) Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the cable system, preferably between midnight and six A.M. (6:00 A.M.).

(C) The Grantee shall maintain a repair force of technicians normally capable of responding to subscriber requests for service within the following time frames:

(1) For a system outage: Within two (2) hours, including weekends, of receiving subscriber calls or requests for service which by number identify a system outage of sound or picture of one (1) or more channels, affecting at least ten percent (10%) of the subscribers of the system.

(2) For an isolated outage: Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one (1) or more channels that affects three (3) or more subscribers. On weekends, an outage affecting fewer than three (3) subscribers shall result in a service call no later than the following Monday morning.

(3) For inferior signal quality: Within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this Section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, the technician shall leave written notification of arrival. Three (3) successive subscriber failures to be present at an appointed time shall excuse Grantee of the duty to respond. Grantee shall not charge for the repair or replacement of defective equipment provided by Grantee to subscribers, except when the damage resulted from the subscriber's wilful or deliberate act.

(D) Unless excused, Grantee shall determine the nature of the problem within forty-eight (48) hours of beginning work and resolve all cable system related problems within five (5) business days unless technically infeasible.

(E) Upon request, Grantee shall provide appropriate credits to subscribers whose service has been materially interrupted due to cable system problems.

(F) Upon five (5) days notice, Grantee shall establish its compliance, on an average monthly basis, with any or all of the standards required above. Grantee shall provide sufficient documentation to permit Grantor to verify the compliance.

(G) A repeated and verifiable pattern of non-compliance with the consumer protection standards of A-F above, after Grantee's receipt of due notice and an opportunity to cure, may be deemed a material breach of the franchise agreement.

(H) Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the Grantor. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction. Grantee shall file a copy of these procedures with Grantor.

(I) Following prior written notice to Grantee, Grantor shall have the right to review Grantee's response to subscriber complaints in order to determine Grantee's compliance with the franchise requirements, subject to the subscriber's right to privacy.

(J) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify' or sell the system, or the Grantor gives notice of intent to terminate or not to renew the franchise, the Grantee shall act so as to ensure that all subscribers receive service so long as the franchise remains in force. In the event of a change of control of Grantee, or in the event a new operator acquires the system, the original

Grantee shall cooperate in all reasonable respects with the Grantor, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system.

(K) In the event Grantee fails to operate the system for seven (7) consecutive days without prior approval or subsequent excuse of the Grantor, the Grantor may, at its sole option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or a permanent operator is selected. If the Grantor should fulfill this obligation for the Grantee, then during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from the system, and the Grantee shall indemnify the Grantor against any damages Grantor may suffer as a result of such failure.

(L) All officers, agents or employees of Grantee who, in the normal course of work require entry onto subscribers' premises shall carry a photo-identification card in a form approved by Grantor. Grantee shall account for all identification cards at all times. Every vehicle of the Grantee utilized for field maintenance shall be clearly identified. (Ord. 98-1)

Sec. 10517. Additional Service Standards. Additional service standards and standards governing consumer protection and response by Grantee to subscriber complaints not otherwise provided for in this Chapter may be established in the franchise agreement, and Grantee shall comply with such standards in the operations of the cable television system. A verified and continuing pattern of noncompliance may be deemed a material breach of the franchise, provided that Grantee shall receive due process, including written notification, an opportunity to be heard and an opportunity to cure, prior to any sanction being imposed. (Ord. 98-1)

Sec. 10518. Franchise Fee. (A) Following the issuance and acceptance of the franchise, the Grantee shall pay to the Grantor a franchise fee in the amount set forth in the franchise agreement.

(B) The Grantor, on an annual basis, shall be furnished a statement within sixty (60) days of the close of the calendar year, either audited and certified by an independent Certified Public Accountant or certified by an officer of the Grantee, reflecting the total amounts of gross receipts and all franchise fee payments, deductions and computations for the period covered by the payment. Upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records for the preceding three (3) calendar years, in accordance with Generally Accepted Auditing Standards, and if such audit indicates a franchise fee underpayment of two percent (2%) or more, the Grantee shall assume all reasonable costs of such an audit and the audit may be extended to include the preceding five (5) year period.

(C) Except as otherwise provided by law, no acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a franchise fee under this Ordinance or for the performance of any other obligation of the Grantee.

(D) In the event that any franchise payment or recomputed amount is not made on or before the dates specified in the franchise agreement, Grantee shall pay as additional compensation:

(1) An interest charge, computed from such due date, at an annual rate equal to the prime lending rate published in the Wall Street Journal on the due date plus one percent (1 %) during the period for which payment was due; and

(2) If the payment is late by forty-five (45) days or more, a sum of money equal to five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the Grantor by reason of delinquent payment.

(E) Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement. (Ord. 98-1)

Sec. 10519. Security Fund. (A) Grantor may require Grantee to provide a security fund, in an amount and form established in the franchise agreement. The amount of the security fund shall be established based on the extent of the Grantee's obligations under the terms of the franchise.

(B) The security fund shall be available to Grantor as provided in Section 10534 to satisfy all claims, liens and/or taxes due Grantor from Grantee which arise by reason of construction, operation, or maintenance of the system, and to satisfy any actual or liquidated damages arising out of a franchise breach, subject to the procedures and amounts designated in the franchise agreement.

(C) If the security fund is drawn upon by Grantor in accordance with the procedures established in this Ordinance and the franchise agreement, Grantee shall cause the security fund to be replenished to the original amount no later than thirty (30) days after each withdrawal by Grantor. Failure to replenish the security fund shall be deemed a material breach of the franchise. (Ord. 98-1)

Sec. 10520. Design and Construction Requirements. (A) Grantee shall not construct any cable system facilities until Grantee has secured the necessary permits from Grantor, or other cognizant public agencies.

(B) In those areas of the City where transmission lines or distribution facilities of the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

(C) In those areas of the City where the Grantee's cables are located on the aboveground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground at full cost to such public utilities, then the Grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground enclosures, unless otherwise provided in the franchise agreement.

(D) Any changes in or extensions of any poles, anchors, wires, cables, conduits, vaults, laterals or other fixtures and equipment (herein referred to as "structures"), or the construction of any additional structures, in, upon, along, across, under or over the streets, alleys and public ways shall be made under the direction of Grantor's City Engineer or a designee, who shall, if the proposed change, extension or construction conforms to the provisions hereof, issue written permits therefor. The height above public thoroughfares of all aerial wires shall conform to the requirements of the California Public Utilities Commission or other regulatory body having jurisdiction thereof.

(1) All transmission and distribution structures, lines and equipment erected by the Grantee shall be located so as not to interfere with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and not to interfere with existing public utility installations.

(2) In the event that any property or improvement of the Grantor in the public rights-of-way is disturbed or damaged by the Grantee or any of its contractors, agents or employees in connection with undertaking any and all work pursuant to the right granted to the Grantee pursuant to this Chapter, the Grantee shall promptly, at the Grantee's sole cost and expense, restore as nearly as practicable to their former condition said property or improvement which was so disturbed or damaged, and in the event that any such property or improvement shall at any later time become uneven, unsettled or otherwise require restoration, repair or replacement because of such disturbance or damage by the Grantee, then the Grantee, as soon as reasonably possible, shall, promptly upon receipt of notice from the Grantor and at the Grantee's

sole cost and expense, restore as nearly as practicable to their former condition said property or improvement which was disturbed or damaged. Any such restoration by the Grantee shall be made in accordance with such materials and specifications as may, from time to time, be then provided for by Grantor Ordinance.

(3) Prior to commencing any work in the public rights-of-way, the Grantee shall obtain any and all permits lawfully required by such Grantor codes and ordinances of general application for such work. In the event that emergency work may be required by the Grantee, however, the Grantee shall obtain any and all such permits within three (3) working days after the beginning of such emergency work.

(4) There shall be no unreasonable or unnecessary obstruction of the public rights-of-way by the Grantee in connection with any of the work herein provided for, and the Grantee shall maintain such barriers, signs and warning signals during any such work performed on or about the public rights-of-way or adjacent thereto as may be necessary to reasonably avoid injury or damage to life and property.

(5) If at any time during the period of this franchise the Grantor shall lawfully elect to alter or change the grade or location of any street, alley or other public rights-of-way, the Grantee shall, upon reasonable notice by the Grantor, remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at it own expense, and in each instance comply with the requirements of the Grantor; provided, that Grantee shall have no such obligation if other public utilities occupying the same public rights-of-way are not also required to remove, relay or relocate their poles, wires, cables, underground conduits, manholes and other fixtures at their own expense.

(6) The Grantee shall not place poles, conduits or other fixtures above or below ground where the same will interfere with any gas, electric, telephone fixtures, water hydrants or other utility, and all such poles, conduits or other fixtures placed in any street shall be so placed as to comply with all Ordinances of the Grantor.

(7) The Grantee may be required by the Grantor to permit joint use of its utility poles and appurtenances located in the streets, alleys or other public rights-of-way, by utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefor; provided that in the absence of agreement regarding such joint use, the City Council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefrom, which award shall be final.

(8) The Grantee shall, on request of any person holding a moving permit issued by the Grantor, temporarily move its wires or fixtures to permit the moving of buildings, the expense of such temporary removal to be paid by the person requesting the same, and the Grantee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary changes.

(9) The Grantee shall have the authority, except when in conflict with existing Grantor Ordinances, to trim any trees upon and overhanging the streets, alleys, sidewalks and public places so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the Grantor, such trimming may be done by it, or under its supervision and direction, at the expense of the Grantee.

(E) In the event of multiple franchisees desiring to serve new residential developments in which the electric power and telephone utilities are underground, the following procedure shall apply with respect to access to and utilization of underground easements.

(1) The developer shall be responsible for contacting and surveying all franchised cable operators to ascertain which operators desire to provide cable television service to that development. The developer may establish a reasonable deadline to receive cable operator responses. The final development map shall indicate the cable operators that have agreed to serve the development.

(2) If one (1) or two (2) cable operators wish to provide service, they shall be accommodated in the joint utilities trench on a nondiscriminatory shared cost basis. If fewer than two (2) operators indicate interest, the developer shall provide conduit to accommodate two (2) sets of cable television cables and

dedicate to the City any initially unoccupied conduit. The developer shall be entitled to recover the costs of such initially unoccupied conduit in the event that Grantor subsequently leases or sells occupancy or use rights to any Grantee.

(3) The developer shall provide at least ten (10) working days' notice of the date that utility trenches will be open to the cable operators that have agreed to serve the development. When the trenches are open, cable operators shall have two (2) working days to begin the installation of their cables, and five (5) working days after beginning installation to complete installation.

(4) The final development map shall not be approved until the developer submits evidence that:

(a) It has notified each Grantee that underground utility trenches are to be open as of an estimated date, and that each Grantee will be allowed access to such trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and

(b) It has received a written notification from each Grantee that the Grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and the Grantee, or has received no reply from a Grantee within ten (10) days after its notification to such Grantee, in which case the Grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.

(5) Sharing the joint utilities trench shall be subject to compliance with State regulatory agency and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire cost shared among the participating operators. With the concurrence of the developer, the affected utilities and the cable operators, alternative installation procedures, such as the use of deeper trenches, may be utilized, subject to applicable law.

(6) Any cable operator wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs.

(7) In the event that more than one (1) franchise is awarded, the City reserves the right to limit the number of drop cables per residence, or to require that the drop cable(s) be utilized only by the cable operator selected by the resident to provide service.

(8) The City reserves the right to grant an encroachment permit to a cable franchisee applicant to install conduit and/or cable in anticipation of the granting of a franchise. Such installations shall be at the applicant's risk, with no recourse against the City in the event the pending franchise application is not granted. The City may require an applicant to provide a separate trench for its conduit and/or cable, at the applicant's cost. The construction of such separate trench, if provided, shall be coordinated with, and subject to, the developer's overall construction schedule. (Ord. 98-1)

Sec. 10521. Technical Standards. (A) The Grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and any detailed standards set forth in its franchise agreement. In addition the Grantee shall provide to the Grantor, upon request, a written report of the results of the Grantee's periodic proof of performance tests conducted pursuant to FCC and franchise standards and guidelines.

(B) Repeated and verified failure to maintain specified technical standards shall constitute a material breach of the franchise. (Ord. 98-1)

Sec. 10522. Hold Harmless. Grantee shall indemnify, defend and hold Grantor, its officers, agents and employees harmless from any liability, claims, damages, costs or expenses, to the extent provided in the franchise agreement. (Ord. 98-1)

Sec. 10523. Insurance. (A) On or before commencement of franchise operations, the Grantee shall obtain policies of liability, Workers' Compensation and property insurance from appropriately qualified insurance companies.

(B) The policy of liability insurance shall:

(1) Be issued to Grantee and name Grantor, its officers, agents and employees as additional insureds;

(2) Indemnify for all liability for personal and bodily injury, death and damage to property arising from activities conducted and premises used pursuant to this Chapter by providing coverage therefor, including but not limited to:

(a) Negligent acts or omissions of Grantee, and its agents, servants and employees, committed in the conduct of franchise operations, and/or

(b) Use of motor vehicles;

(3) Provide a combined single limit for comprehensive general liability and comprehensive automobile liability insurance in the amount provided for in the franchise agreement. Such insurance policy shall be subject to review and approval by Grantor's legal counsel; and

(4) Be noncancellable and nonmodifiable without thirty (30) days' prior written notice thereof directed to Grantor.

(C) The policy of Workers' Compensation Insurance shall comply with the laws of the State of California.

(D) The policy of property insurance shall provide fire insurance with extended coverage on the franchise property used by Grantee in the conduct of franchise operations in an amount adequate to enable Grantee to resume franchise operations following the occurrence of any risk covered by this insurance.

(E) Grantee shall file with Grantor, by the deadline provided in the franchise agreement, a certificate of insurance for each of the required policies executed by the company
issuing the policy or by a broker authorized to issue such a certificate, certifying that the policy is in force and providing the following information with respect to said policy:

(1) The policy number;

(2) The date upon which the policy will become effective and the date upon which it will expire;

(3) The names of the named insureds and any additional insured required by the franchise agreement;

(4) The subject of the insurance;

(5) The type of coverage provided by the insurance; and

(6) The amount or limit of coverage provided by the insurance.

If the certificate of insurance does not provide all of the above information, Grantor reserves the right to inspect the relevant insurance policies.

(F) In the event Grantee fails to maintain any of the above-described policies in full force and effect, Grantor shall, upon forty-eight (48) hours' notice to Grantee, have the right to procure the required insurance and recover the cost thereof from Grantee. Grantor shall also have the right to suspend the franchise during any period that Grantee fails to maintain said policies in full force and effect. (Ord. 98-1)

Sec. 10524. Records Required and Grantor's Right to Inspect. (A) Grantee shall at all times maintain:

(1) A record of all service calls and interruptions or degradation of service experienced for the preceding two (2) years, provided that such complaints result in or require a service call, subject to the subscriber's right of privacy.

(2) A full and complete set of plans, records and "as-built" maps showing the locations of the cable television system installed or in use in the City, exclusive of subscriber service drops and equipment provided in subscriber's homes.

(3) If requested by Grantor, a summary of service calls, identifying~the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the Grantor within thirty (30) days following any Grantor request, in a form reasonably acceptable to the Grantor.

(B) The Grantor may impose reasonable requests for additional information, records and documents from time to time, provided they reasonably relate to the scope of the City's rights under this Chapter or the Grantee's franchise agreement.

(C) Upon reasonable notice, and during normal business hours, Grantee shall permit examination by any duly authorized representative of the Grantor of all franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within or without the City, and all records relating to the franchise, provided they are necessary to enable the Grantor to carry out its regulatory responsibilities under this Chapter or the franchise agreement. Grantee shall have the right to be present at any such examination. (Ord. 98-1)

Sec. 10525. Annual Reports. Within ninety (90) days after the end of the calendar year, if requested by Grantor, Grantee shall submit a written annual report to Grantor with respect to the preceding calendar year in a form approved by Grantor, including, but not limited to, the following information:

(A) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including, but not limited to, services begun or discontinued during the reporting year;

(B) A list of Grantee's officers, members of its board of directors, and other principals of Grantee;

(C) A list of stockholders or other equity investors holding five percent (5 %) or more of the voting interest in Grantee;

(D) An indication of any residences in Grantee's service area where service is not available, and a schedule for providing service;

(E) Information as to the number of homes passed, subscribers, additional television outlets, and the number of basic and pay subscribers;

(F) Information as to the degree of compliance with the provisions contained in Section 10543 herein and all steps required by this Chapter and applicable law have been taken to assure that the privacy rights of individuals have been protected; and

(G) Any other information relevant to franchise regulation which the Grantor shall reasonably request, and which is relevant to its regulatory responsibilities. (Ord. 98-1)

Sec. 10526. Copies of Federal and State Communications. Upon request, Grantee shall submit to Grantor copies of all pleadings, applications and reports submitted by Grantee to, as well as copies of all decisions, correspondence and actions by, any Federal, State or local court, regulatory agency, or other governmental body which are non-routine in nature and which will materially affect its cable television operations within the franchise area. (Ord. 98-1)

Sec. 10527. Public Reports. If Grantee is publicly held, a copy of each Grantee's annual and other periodic reports and those of its parent, shall be submitted to Grantor within forty-five (45) days of its issuance. (Ord. 98-1)

Sec. 10528. Opinion Survey. Upon request of the Grantor, but not more than once annually, the Grantee shall conduct a subscriber satisfaction survey pertaining to quality of service, which may be in a postcard format that can be transmitted to subscribers in Grantee's invoice for cable services. The results of such

survey shall be provided to the Grantor on a timely basis. The cost of such survey shall be borne by the Grantee. (Ord. 98-1)

Sec. 10529. Reports - General. (A) All reports required under this Chapter, except those required to be kept confidential, as provided in Subsection E. below, shall be available for public inspection in the Grantor's offices during normal business hours.

(B) All reports and records required under this Chapter shall be furnished at the sole expense of Grantee, except as otherwise provided in this Chapter or the franchise agreement.

(C) The willful refusal, failure, or neglect of Grantee to file any of the reports required as and when due under this Chapter, may be deemed a material breach of the franchise agreement if such reports are not provided to Grantor within thirty (30) days after written request therefor, and may subject the Grantee to all remedies, legal or equitable, which are available to Grantor under the franchise or otherwise.

(D) Any materially false or misleading statement or representation made knowingly and willfully by the Grantee in any report required under this Chapter or under the franchise agreement may be deemed a material breach of the franchise and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under the franchise or otherwise.

(E) Notwithstanding the provisions of Sections 10524, 10525 and 10526, Grantee shall have no obligation to provide copies of documents or information to Grantor which contain trade secrets of Grantee or which are otherwise of a confidential or proprietary nature to Grantee unless it receives satisfactory assurances from Grantor that such documents or information can and will be held in strictest confidence by the Grantor and- not made available for public inspection. To the extent possible, Grantee will provide Grantor with summaries of any required documents or information or copies thereof with trade secrets and proprietary matters deleted therefrom. The burden of proof shall be on Grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of the Grantor. (Ord. 98-1)

Sec. 10530. Annual Review of System Performance. Each year throughout the term of the franchise, if requested by the City Council, Grantor and Grantee shall meet publicly to review system performance and quality of service. The various reports required pursuant to this Chapter, results of technical performance tests, the record of subscriber complaints and Grantee's response to complaints, and the information acquired in any subscriber surveys, shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. Within thirty (30) days after the conclusion of a system performance review meeting, Grantor may issue findings with respect to the cable system's franchise compliance and quality of service. If Grantor determines that Grantee is not in compliance with the requirements of this Chapter or the Grantee's franchise, Grantor may direct Grantee to correct the areas of noncompliance within a reasonable period of time. Failure of Grantee, after due notice, to correct the areas of noncompliance within the period specified therefor or to commence compliance within such period and diligently achieve compliance thereafter, shall be considered a material breach of the franchise, and Grantor may exercise any remedy within the scope of this Chapter and the franchise agreement considered appropriate. (Ord. 98-1)

Sec. 10531. Special Review of System Performance. When there have been complaints made or where there exists other evidence which, in the judgment of the Grantor, casts reasonable doubt on the reliability or quality of cable service to the effect that the Grantee is not in compliance with the requirements of this Chapter or its franchise, the Grantor shall have the right to compel the Grantee to test, analyze and report on the performance of the system in order to determine whether the Grantee is in compliance with the terms of this chapter and the franchise agreement. Grantor may not compel Grantee to provide such tests or reports unless and until Grantor has provided Grantee with at least thirty (30) days' notice of its intention

to exercise its rights under this Section and has provided Grantee with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report shall be delivered to the Grantor no later than thirty (30) days after the Grantor notifies the Grantee that it is exercising such right, and shall be made at Grantee's sole cost. Such report shall include the following information: The perceived problem areas that initiated the special review, the tests performed, what system components were tested, the equipment used and procedures employed in said testing and the results of such tests. Any other information pertinent to the special tests shall be recorded. (Ord. 98-1)

Sec. 10532. Special State-of-the-Art and Services Evaluation Sessions. The Grantor may hold special state-of-the-art and services evaluation sessions at any time during the term of a franchise, provided such sessions are held no more often than once every four (4) years. The intent of this review shall be to review the quantity of services offered to the public, compared to the services available in comparable communities. The Grantee shall be notified of the place, time and date thereof and the topics to be discussed. Such sessions may be open to the public and advertised in a newspaper of general circulation at least thirty (30) days before each session. The sessions may include an evaluation of any items considered relevant to the stated intent of this evaluation. Either the Grantor or the Grantee may propose items for discussion or evaluation. By agreement between the Grantor and the Grantee, this evaluation may be combined with the performance review provided in Section 10530. (Ord. 98-1)

Sec. 10533. Remedies for Franchise Violations. If Grantee fails to perform in a timely manner any material obligation required by this Chapter or a franchise granted hereunder, following notice from the Grantor, an opportunity for Grantee to be heard, and an opportunity to cure such nonperformance in accordance with the provisions of Section 10534 of this Chapter and the franchise, Grantor, by resolution of the City Council, may at its option and in its sole discretion:

(A) Cure the violation and recover the actual cost thereof from the security fund established herein if such violation is not cured within thirty (30) days after written notice to the Grantee of Grantor's intention to cure and draw upon the security fund;

(B) Assess against Grantee liquidated damages in an amount set forth in the franchise agreement for any such violations(s) if such violation is not cured, or if Grantee has not commenced a cure, on a schedule acceptable to Grantor, within thirty (30) days after written notice to the Grantee of Grantor's intention to assess liquidated damages. Such assessment may be withdrawn from the security fund, and shall not constitute a waiver by Grantor of any other right or remedy it may have under the franchise or applicable law, including without limitation, its right to recover from Grantee such additional damages, losses, costs and expenses, including actual attorney's fees, as may have been suffered or incurred by Grantor by reason of or arising out of such breach of the franchise; and

(C) Exercise its right to revoke the franchise as provided in Section 10535 of this Chapter. (Ord. 98-1)

Sec. 10534. Procedure for Remedying Franchise Violations. Prior to imposing any remedy or other sanction against Grantee specified in this Chapter, Grantor shall give Grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:

(A) Grantor shall first notify Grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than five (5) days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Chapter or the Grantee's franchise and thirty (30) days in all other cases. If Grantee fails to correct the violation within the time prescribed or if Grantee fails to commence correction of the violation within the time prescribed and diligently remedy such violation thereafter, the Grantor shall then give written notice of not

less than twenty (20) days of a public hearing to be held before the Council. Said notice shall specify the violations alleged to have occurred.

(B) At the public hearing, the Council shall hear and consider all relevant evidence, and thereafter render findings and its decision.

(C) In the event the Council finds that the Grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

(D) In the event the Council finds that the material violations alleged in the notice to Grantee exist and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation after notice thereof from Grantor and is not diligently proceeding to fully remedy such violation, the Council may impose one (1) or more of the remedies provided in this Ordinance and the franchise agreement as it, in its discretion, deems appropriate under the circumstances. (Ord. 98-1)

Sec. 10535. Grantor's Power to Revoke. Subject to limitations imposed by applicable Federal or State law, Grantor reserves the right to revoke any franchise granted pursuant to this Chapter and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by Grantee and a material breach under the franchise grant:

(A) If Grantee shall default in the performance of its material obligations under this Chapter or the franchise agreement and shall continue such default after receipt of due notice and reasonable opportunity to cure the default;

(B) If Grantee shall fail to provide or maintain in full force and effect the insurance coverage or security fund as required in the franchise agreement;

(C) If Grantee shall violate any order or ruling of any regulatory body having jurisdiction over the Grantee relative to the Grantee's franchise, unless such order or ruling is being contested by Grantee by appropriate proceedings conducted in good faith;

(D) If Grantee practices any material fraud or deceit upon Grantor;

(E) Except as provided in Section 10540 herein, if Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt. The termination and forfeiture of the Grantee's franchise shall in no way affect any right of Grantor to pursue any remedy under the franchise or any provision of law. (Ord. 98-1)

Sec. 10536. Force Majeure: Grantee's Inability to Perform. In the event Grantee's performance of any of the terms, conditions or obligations required by this Chapter or a franchise granted hereunder is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Section, causes or events not within the control of Grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, weather conditions, restraints imposed by order of a governmental agency or court, explosions, safety incidents involving nuclear facilities, acts of public enemies, and natural disasters such as floods, earthquakes, landslides and fires, but shall not include financial inability of the Grantee to perform or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Grantee, or the failure of the Grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable communications system where the Grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment. (Ord. 98-1)

Sec. 10537. Abandonment or Removal of Franchise Property. (A) In the event that the use of any property of Grantee within the public rights-of-way is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that franchise property. Any part of the cable system that is intended for use only when needed because it is parallel or redundant to other parts the system, or otherwise, shall not be deemed to have been abandoned because of its lack of use.

(B) Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this Chapter, the Grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from Grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. Grantor shall have the right to inspect and approve the condition of the pubic ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Chapter and the security fund as provided herein shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section.

(C) Upon abandonment of any franchise property in place, the Grantee, if required by the Grantor, shall submit to the Grantor an instrument, satisfactory in form to the Grantor, transferring to the Grantor the ownership of the franchise property abandoned.

(D) At the expiration of the term for which the franchise is granted, or upon its revocation or earlier expiration, as provided herein, in any such case without renewal, extension or transfer, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

(E) Notwithstanding anything to the contrary set forth in this Chapter, the Grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable Grantee. (Ord. 98-1)

Sec. 10538. Restoration by Grantor: Reimbursement of Costs. In the event of a failure by Grantee to complete any restoration work required herein or by any other law or ordinance, and if such work is not completed within thirty (30) days after receipt of written notice thereof from Grantor or, if more than thirty (30) days are reasonably required therefor, if Grantee does not commence such work within such thirty (30) days period and diligently complete the work thereafter (except in cases of emergency constituting a threat to public health, safety or welfare), Grantor may cause such work to be done and Grantee shall reimburse Grantor the costs thereof within thirty (30) days after receipt of an itemized list of such costs, or Grantor may recover such costs through the security fund provided by Grantee. (Ord. 98-1)

Sec. 10539. Extended Operation and Continuity of Services. Upon expiration or revocation of the franchise, the Grantor shall have the discretion to permit Grantee to continue to operate the cable television system for an extended period of time. Grantee shall continue to operate the system for a reasonable period of tine under the terms and conditions of this Chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. It shall be the right of all subscribers to continue to receive all available services provided that financial and other obligations to Grantee are honored. The Grantee shall use reasonable efforts to provide continuous, uninterrupted

service to its subscribers, including operation of the system during transition periods for a reasonable period of time following franchise expiration or termination. (Ord. 98-1)

Sec. 10540. Receivership and Foreclosure. (A) A franchise granted hereunder shall, at the option of Grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Chapter and the franchise granted pursuant hereto, and the receivership or trustees within said one hundred twenty (120) days shall have remedied all defaults under the franchise or provided a plan for the remedy of such defaults which is satisfactory to the Grantor; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise granted.

(B) Except as provided in Section 10508 (E) herein, in the case of a foreclosure or other judicial sale of the franchise property, or any material part thereof, Grantor may serve notice of termination upon Grantee and the successful bidder at such sale, in which event the franchise granted and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless: (1) Grantor shall have approved the transfer of the franchise, as and in the manner that this Chapter provides; and (2) such successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all terms and conditions of the franchise. (Ord. 98-1)

Sec. 10541. Rights Reserved to Grantor. (A) In addition to any rights specifically reserved to the Grantor by this Chapter, the Grantor reserves to itself every right and power which is required to be reserved by a provision of any Ordinance or under the franchise.

(B) The Grantor shall have the right to waive any provision of the franchise, except those required by Federal or State regulation, if the Grantor determines (1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the Grantee or the subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the Grantor. Waiver of any provision in one (1) instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the franchise unless the statement so recites. (Ord. 98-1)

Sec. 10542. Rights of Individuals. (A) Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable Federal, State and local laws and regulations relating to nondiscrimination.

(B) Grantee shall adhere to the applicable equal employment opportunity requirements of Federal, State and local regulations, as now written or as amended from time to time.

(C) Neither Grantee, nor any person, agency, or entity shall, without the subscriber's consent, tap, or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participation, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

(D) In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, Grantee shall take reasonable steps to prevent the invasion of a subscriber's or general

citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. Grantee shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen for any purpose unrelated to the operation of the cable system.

(E) No cable line, wire amplifier, converter, or other piece of equipment owned by Grantee shall be installed by Grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed.

(F) The Grantee, or any of its agents or employees, shall not sell, or otherwise make available to any party for any purpose other than the operation or transfer of the cable system without consent of the subscriber pursuant to State and Federal privacy laws:

(1) Any list of the names and addresses of subscribers containing the names and addresses of subscribers who request in writing to be removed from such list; and

(2) Any list which identifies the viewing habits of individual subscribers. This does not prohibit the Grantee from providing composite ratings of subscriber viewing to any party. (Ord. 98-1)

Sec. 10543. Separability. If any provision of this Ordinance is held by any court or by any Federal or State agency of competent jurisdiction, to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this Chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so-that the provision thereof which had been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantor and Grantee, provided that Grantor shall give Grantee thirty (30) days' written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision. (Ord. 98-1)

CHAPTER 6 - TRANSIENT OCCUPANCY TAX

Sec. 10600. Short Title. This ordinance shall be known as the Transient Occupancy Tax Ordinance of the City of Grover City. (Ord. 87)

Sec. 10601. Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this ordinance:

(A) Person means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(B) Hotel means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio, hotel, bachelor hotel, lodging house, rooming house, apartment

house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure or portion thereof.

(C) Occupancy means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

(D) Transient means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this ordinance may be considered.

(E) Rent means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

(F) Operator means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employ, the managing agent shall also be deemed an operator for the purposes of this ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall, however, be considered to be compliance by both.

(G) Tax Administrator means the City Clerk. (Ord. 87)

Sec. 10602. Tax Imposed. For the privilege of occupancy in any hotel/motel, each transient is subject to and shall pay a tax in the amount of ten (10%) percent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel/motel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transients ceasing to occupy space in the hotel/motel. If for any reason the tax due is not paid to the operator of the hotel/motel, the Tax Administrator may require that such tax shall be paid directly to the Tax Administrator. (Ord. 87; Amd. Ord 78-7; Amd. 91-6)

Sec. 10603. Exemptions. (A) No tax shall be imposed upon:

(1) Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax herein provided;

(2) Any federal or State of California officer or employee when on official business;

(3) Any officer or employee of a foreign government who is exempt by reason of express provisions of federal law or international treaty.

(B) No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the Tax Administrator. (Ord. 87)

Sec. 10604. Operator's Duties. Each operator shall collect the tax imposed by this ordinance to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that if added, any part will be refunded except in the manner hereinafter provided. (Ord. 87)

Sec. 10605. Registration. Within thirty (30) days after the effective date of this ordinance, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the Tax Administrator and obtain from him a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

(A) The name of the operator;

(B) The address of the hotel;

(C) The date upon which the certificate was issued;

(D) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct an unlawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit." (Ord. 87)

Sec. 10606. Reporting and Remitting. Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Administrator, make a return to the Tax Administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Administrator. The Tax Administrator may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this ordinance shall be held in trust for the account of the City until payment thereof is made to the Tax Administrator. The information furnished or secured pursuant to this section shall be confidential. Any unwarranted disclosure or use of such information by any officer or employee of the City of Grover City shall constitute a misdemeanor and such officer or employee shall be subject to the penalty provisions of this ordinance. (Ord. 87)

Sec. 10607. Penalties and Interest. (A) Original Delinquency. Any operator who fails to remit any tax imposed by this ordinance within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax.

(B) Continued Delinquency. An operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10%) percent of the amount of the tax in addition to the amount of the tax and the ten (10%) percent penalty first imposed.

(C) Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs (A) and (B) of this Section.

(D) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one-half of one (1%) percent per month or fraction thereof on the amount of the tax, exclusive of
penalties, from the date on which the remittance first became delinquent until paid.

(E) Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this Section shall become a part of the tax herein required to be paid. (Ord. 87)

Sec. 10608. Failure to Collect and Report Tax. Determination of Tax Administrator. If any operator shall fail or refuse to collect said tax and to make, within the time provided in this ordinance, any report and remittance of said tax or any portion thereof required by this ordinance, the Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this ordinance and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this ordinance. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may within ten (10 days after the serving or mailing of such notice make application in writing to the Tax Administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in Section 10609. (Ord. 87)

Sec. 10609. Appeal. Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the Council by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator at his last known place of address. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 87)

Sec. 10610. Records. It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this ordinance to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the City, which records the Tax Administrator shall have the right to inspect at all reasonable times. (Ord. 87)

Sec. 10611. Refunds. (A) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this ordinance it may be refunded as provided in subparagraphs (B) and (C) of this Section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

(B) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in

a manner prescribed by the Tax Administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

(C) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subparagraph (A) of this Section, but only when the tax was paid by the transient directly to the Tax Administrator, or when the transient having paid the tax to the operator, establishes to the satisfaction of the Tax Administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

(D) No refund shall be paid under the provisions of this Section unless the claimant establishes the right thereto by written records showing entitlement thereto. (Ord. 87)

Sec. 10612. Actions to Collect. Any tax required to be paid by any transient under the provisions of this ordinance shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this ordinance shall be liable to an action brought in the name of the City of Grover City for the recovery of such amount. (Ord. 87)

Sec. 10613. Violations: Misdemeanor. Any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the County jail for a period of not more than six (6) months or by both such fine and imprisonment. Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Tax Administrator, or who renders a false or fraudulent return or claim is guilty of a misdemeanor and is punishable as aforesaid. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this ordinance to be made, is guilty of a misdemeanor and is punishable as aforesaid. (Ord. 87)

Sec. 10614. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance or any part thereof is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional. (Ord. 87)

CHAPTER 7 - REAL PROPERTY TRANSFER TAX ORDINANCE

Sec. 10701. This ordinance shall be known as the "Real Property Transfer Tax Ordinance of the City of Grover City." It is adopted pursuant to the authority contained in Part 6.7 (commencing with section 11901) of Division 2 of the Revenue and Taxation Code of the State of California. (Ord. 89)

Sec. 10702. There is hereby imposed on each deed, instrument or writing by which any lands, tenements, or other realty sold within the City of Grover City shall be granted, assigned, transferred or otherwise

conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrances remaining thereon at the time of sale) exceeds one hundred dollars ($100.00), a tax at the rate of twenty-seven and one-half cents ($0.275) for each five hundred dollars ($500.00) or fractional part thereof. (Ord. 89)

Sec. 10703. Any tax imposed pursuant to Section 10702 hereof shall be paid by any person who makes, signs or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued. (Ord. 89)

Sec. 10704. Any tax imposed pursuant to this ordinance shall not apply to any instrument in writing given to secure a debt. (Ord. 89)

Sec. 10705. The United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, or the District of Columbia shall not be liable for any tax imposed pursuant to this ordinance with respect to any deed, instrument, or writing to which it is a party, but the tax may be collected by assessment from any other party liable therefor. (Ord. 89)

Sec. 10706. Any tax imposed pursuant to this ordinance shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization or adjustment:

(A) Confirmed under the Federal Bankruptcy Act, as amended;

(B) Approve in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;

(C) Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or

(D) Whereby a mere change in identity, form or place of organization is effected.

Subdivisions (A) to (D), inclusive, of this section shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five (5) years from the date of such confirmation, approval or change. (Ord. 89)

Sec. 10707. Any tax imposed pursuant to this ordinance shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

(A) The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;

(B) Such order specifies the property which is ordered to be conveyed;

(C) Such conveyance is made in obedience to such order. (Ord. 89)

Sec. 10708. (A) In the case of any realty held by a partnership, no levy shall be imposed pursuant to this ordinance by reason of any transfer of an interest in a partnership or otherwise, if:

(1) Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and

(2) Such continuing partnership continued to hold the realty concerned.

(B) If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this ordinance, such partnership shall be treated as having executed

an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.

(C) Not more than one tax shall be imposed pursuant to this ordinance by reason of a termination described in subdivision (B), and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination. (Ord. 89)

Sec. 10709. The County Recorder shall administer this ordinance in conformity with the provisions of Part 6.7 of Division 2 of the Revenue and Taxation Code and the provisions of any County ordinance adopted pursuant thereto. (Ord. 89)

Sec. 10710. Claims for refund of taxes imposed pursuant to this ordinance shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code of the State of California. (Ord. 89)

Sec. 10711. This ordinance shall become operative upon the operative date of any ordinance adopted by the County of San Luis Obispo, pursuant to Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code of the State of California, or upon the effective date of this ordinance, whichever is the later. (Ord. 89)

Sec. 10712. Upon its adoption the City Clerk shall file two (2) copies of this ordinance with the County Recorder of San Luis Obispo County. (Ord. 89)

Sec. 10713. This ordinance, inasmuch as it provides for a tax levy for the usual and current expenses of the City, shall take effect immediately. (Ord. 89)

CHAPTER 8 - COMMUNITY DEVELOPMENT FEE

Sec. 10800. Definitions. (A) Building shall mean any structure having a roof constructed for the support, shelter or enclosure of persons, animals, chattels or property of any kind. A mobile home shall not be deemed a building.

(B) Construct means the putting together, assembling, erecting or altering of construction materials, components or modules into a structure, or portion of a structure, and includes reconstructing, enlarging or altering any structure. "Construct" also includes the moving and locating of a building, or portion thereof, onto a lot or parcel of land, and also includes the improvement of land as a mobile home space.

(C) Dwelling Unit means a building or portion of a building planned or designed for use as a residence for one family only, living independently of other families or persons, and having its own bathroom and housekeeping facilities included in said unit (e.g., a one-family dwelling, each unit in a two-family dwelling, and each unit in multiple dwelling).

(D) Family shall mean an individual or two or more persons related by blood or marriage living together as a single housekeeping unit.

(E) Floor Area is the area of the several floors of a building included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts, courts, car ports and garages. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be usable area under the horizontal projection of the roof or floor above.

(F) Mobile home Space shall mean each space in a mobile home, travel trailer or recreational vehicle park designed to be used for parking a mobile home, travel trailer or recreational vehicle on a temporary, semi-permanent or permanent basis, as the area of such space is described on plans submitted for a construction permit.

(G) Person shall mean every person, firm, or corporation constructing a building, or portion thereof, or a mobile home park space directly or through the service of an employee, agent or independent contractor.

(H) City shall mean the City of Grover City, California. (Ord. 135)

Sec. 10801. Fee: Imposition and Application. A fee is hereby imposed in amounts set forth in Section 10802 upon the construction of any building, or portion thereof, or any mobile home space, in the City for which a building permit or a construction permit by the State is issued after the effective date of this Chapter. (Ord. 135)

Sec. 10802. Fee: Rates. The fee imposed by this Chapter is as follows, and in the event of a problem in the interpretation or construction of said fee to a particular application, said fee shall be determined by the Grover City Building Department whose findings shall be conclusive:

(A) An amount equal to .3% of the value of the construction of any building;

(B) An amount equal to 1.2% of the assessed value of land for developments not consisting of buildings. (Ord. 135)

Sec. 10803. Fee: When Payable: Refund. The fee imposed by Section 10802 shall be due and payable upon issuance of the building permit for the construction of any such building, or portion thereof, or prior to the issuance of a construction permit for the construction of any mobile home space. For all buildings, or portions thereof, the fee shall be in addition to the fee required to be paid for the building permit and no such building permit shall be issued until the fee is paid. For all mobile home spaces, the fee shall be in addition to all inspection fees required to be paid in the construction of a mobile home park and no construction permit shall be issued until the fee is paid on all mobile home spaces. Such fee shall be refunded only if the building permit for the construction of any such building, or portion thereof, or the construction permit for the construction of any mobile home spaces has expired and no construction is commenced. (Ord. 135)

Sec. 10804. Place of Payment. Fees imposed under this Chapter shall be paid to the Grover City Clerk. (Ord. 135)

Sec. 10805. Exemptions. The fee imposed under this Chapter shall not apply to the following:

(A) The City of Grover City, the United States or any agency or instrumentality thereof, the State of California or any county, city and county, district or any political subdivision of the State of California, or any other governmental agency or nonprofit organization duly qualified as exempt by the Federal and State taxing authorities:

(B) Enlargement, remodeling and/or alteration of a building, but only if the number of dwelling units therein is not increased and the number of square feet of floor area devoted to any use other than dwelling unit use is not increased. If the number of dwelling units in the building is increased, and/or the number of square feet in the building devoted to any use other than dwelling unit use is increased, then the fee imposed under this ordinance shall apply to such increased number of dwelling units and/or such increased floor area;

(C) Reconstruction of a building which was damaged or destroyed by earthquake, fire, flood, or other cause over which the owner had no control (provided that compliance with any building code or other ordinance requirement of the City or of any other applicable law shall not be deemed a cause over which the owner has no control), but only if the number of dwelling units in the building is not increased and the number of square feet in the building devoted to any use other than dwelling unit use is not increased. If the number of dwelling units in the building and/or the number of square feet in the building devoted to any use other than dwelling unit use is increased, then the fee imposed under this ordinance shall apply to such increased number of dwelling units and/or increased floor area. (Ord. 135)

Sec. 10806. Disposition and Use of Tax Receipts. There is hereby established a Parks Development Fund. All of the sums collected pursuant to this Chapter shall be deposited in said Parks Development Fund and shall be used solely for the acquisition, improvement, expansion and maintenance of public parks, playgrounds and/or recreation facilities. (Ord. 135)

CHAPTER 9 - INTERIM SCHOOL FACILITIES

Sec. 10900. Title. This Chapter shall be known and may be cited as the "Interim School Facilities Ordinance." (Ord. 84-2)

Sec. 10905. Purpose. The purpose of this Chapter is to provide a method for financing interim school facilities necessitated by conditions of overcrowding caused by new residential developments. (Ord. 84-2)

Sec. 10910. Authority. This Chapter is adopted pursuant to the provisions of Chapter 4.7 (commencing with § 65970) of Division 1 of Title 7 of the Government Code. (Ord. 84-2)

Sec. 10915. General Plan. The City's General Plan provides for the location of public schools. Interim school facilities to be constructed from fees or land required to be dedicated or both shall be consistent with the General Plan. (Ord. 84-2)

Sec. 10920. Regulations. The City Council may from time to time, by resolution, issue regulations to establish fees, administration procedures, interpretation and policy direction for this ordinance. (Ord. 84-2)

Sec. 10925. Definitions. The following terms shall have the following meanings when used in this Chapter:

(A) Attendance area means that area established by the governing board of the school district, within which children must reside to attend a particular school;

(B) City Council means City Council of the City of Grover City;

(C) Conditions of overcrowding means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of such school;

(D) City Clerk means City Clerk of City;

(E) Developer means any person, association, firm, partnership, corporation, other business entity, or public agency establishing, installing, or constructing a residential dwelling unit;

(F) Dwelling unit means a building or portion thereof, or a mobile home, designed for residential occupation by one person or a group of two or more persons living together as a domestic unit. Dwelling unit shall not mean remodels or room additions to existing residential structures nor shall it include hotel or motel units;

(G) Interim school facilities means temporary classrooms not constructed with a permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended and equipped for use as a place for formal instruction of pupils by a teacher in a school; temporary classroom toilet
facilities not constructed with a permanent foundation; and reasonable site preparation and installation of temporary classrooms and toilet facilities;

(H) Community Development Director means the Community Development Director of City;

(I) Reasonable methods for mitigating conditions of overcrowding include, but are not limited to:

(1) The use of all available revenues, including general fund, to the full extent authorized by law;

(2) Attendance area boundary adjustments;

(3) The use of school district property for temporary use buildings;

(4) The temporary or permanent use of other schools in the district not having overcrowded conditions;

(5) The use of student transportation;

(6) The use of existing and proposed relocatable structures;

(7) The full use of funds which could be available from the sale of surplus school district real property;

(8) Eliminating non-mandated school programs and facilities;

(9) The use of classroom double sessions;

(10) The use of year-round school programs; and

(11) The pursuit and use of available tax, bond and other revenue procedures to the full extent authorized by law.

(J) Residential development means a project requiring a building permit for residential dwellings, including mobile homes, of one or more units. (Ord. 84-2)

Sec. 10930. Notification of Conditions of Overcrowding. Pursuant to Government Code §§ 65970 et seq., the governing board of any school district operating an elementary or high school may, with respect to any of its attendance areas located in whole or in part within the City of Grover City, make and file with the City Council written findings supported by clear and convincing evidence that:

(A) Conditions of overcrowding exist in the school or schools of such attendance area which will impair the normal functioning of educational programs, including the reasons for such conditions existing; and

(B) All reasonable methods for mitigating conditions of overcrowding have been evaluated and no feasible method for reducing such conditions exists.

Sec. 10935. Content of Findings. Findings filed pursuant to § 10930 shall contain the following:

(A) A precise description of the geographic boundaries of the attendance areas to which the findings relate:

(B) A list of the mitigation measures evaluated by the governing board of the school district and a statement of the reasons why such measures were found to be infeasible:

(C) The evidence upon which such findings were based; and

(D) Such other information as may be required by the Community Development Director or City Council to carry out the purposes of this Chapter. (Ord. 84-2)

Sec. 10940. City Council's Public Hearing on Overcrowding. Within thirty (30) days of receipt of a school district's complete notice of overcrowding pursuant to §§ 10930 and 10935, the City Council shall commence a public hearing, and shall thereafter do one of the following:

(A) Concur in the school district's findings of overcrowding;

(B) Request additional information to verify the school district's findings of overcrowding; or

(C) Reject the school district's findings of overcrowding and inform the school district of the reasons for such rejection.

If the City Council concurs with a school district's findings that conditions of overcrowding exist within an attendance area, it shall adopt a
resolution specifying its concurrence based upon the evidence provided in the school district's notice and findings. (Ord. 84-2)

Sec. 10945. School District Plan to Solve Overcrowding. After the City Council's adoption of a resolution of concurrence with the school district's notice and findings, the governing body of the school district shall submit a detailed plan or schedule specifying for such affected attendance area how it will use land or fees, or both, to solve the conditions of overcrowding. The schedule shall include, for each attendance area, the school sites to be used, the classroom facilities to be made available, and the times when such facilities will be available. In addition, the school district shall provide data showing the least expensive methods for financing the district's plan, including the cost of leasing for a maximum period of five (5) years interim use facilities. In the event the governing body of the school district cannot meet the schedule, it shall submit modifications to the City Council together with the reasons for the modifications.

The City Council shall review such plan at a regular meeting, and may report to the school district any recommendations for revisions of the plan. No fees or land dedication shall be required of any developer prior to the City Council's review of the school district's plan adopted pursuant to this section. (Ord. 84-2)

Sec. 10950. Dedication of Land or Payment of Fees by Developers. After the City Council's approval of the school district's plan, no building permit shall be approved in the attendance area described in said notice and findings, until the developer has either dedicated land, paid fees, or provided both dedicated land and fees or agreed to dedicate land, pay fees, or provide both dedicated land and fees to the school district as hereinafter provided.

(A) Fees. The City Council shall establish fees by resolution and may amend such fee schedules from time to time.

The City may require the school district to provide updated information to the City Council from time to time which the City Council may utilize in electing to adjust fees. Such information may consist of, but is not limited to, new census data for the City or portions thereof, school census data for the City or portions thereof, new lease and purchase data for relocatables, and changes in classroom maximums or standards.

The amount of fees to be paid shall bear a reasonable relationship and will be limited to the needs of the community for interim school facilities and shall be reasonably related and limited to the need for schools caused by the development.

(B) Land Dedication. If the developer and the school district propose to agree to land dedication in lieu of fees or a combination of dedicated land and fees, the City Council shall consider the proposal within thirty (30) days of receipt of a written proposal by the school district, and may approve or

disapprove the dedication or combination of dedication and fees after considering at least the following factors:

(1) Whether lands offered for dedication will be consistent with the general plan;

(2) The topography, soils, soil stability, drainage, access, location and general utility of land in the development available for dedication;

(3) Any recommendations made by affected school districts concerning the location and amount of lands to be dedicated; and

(4) Whether the location and amount of lands proposed to be dedicated or the combination of dedicated land and fees will bear a reasonable relationship and will be limited to the needs of the community for interim elementary and/or high school facilities and will be reasonably related and limited to the need for schools caused by the development. (Ord. 84-12)

Sec. 10955. Processing of Application. Prior to final approval of a building permit for a residential dwelling unit or units which is located in whole or in part in an attendance area where a school has been determined to be overcrowded pursuant to this Chapter and for which the City Council has approved the school district's plan to solve overcrowding, the applicant shall present to the Community Development Director evidence of one of the following:

(A) Payment to the school district of the fees required by resolution of the City Council adopted pursuant to § 10950 which is in effect at the time the applicant applies for a building permit;

(B) An agreement in writing with the affected school district by which the applicant agrees to dedicate to the school district and the school district agrees to accept land to be used to relieve the overcrowding in the district's schools as an alternative to payment of fees under subsection (A) above;

(C) An agreement in writing with the affected school district by which the applicant agrees to both dedicate land and pay fees to the school district and the school district agrees to accept the combination of dedicated land and fees to relieve the overcrowding in the district's schools as an alternative to only the payment of fees under subsection (A) above and to only the dedication of land under subsection (B) above. The amount of the fees shall be determined by the City Council pursuant to § 10950; or

(D) A written statement of the applicant, with supporting documentation, that there are specific overriding fiscal, economic, social or environmental factors benefiting the city which will justify the approval of such residential development without compliance with the fee payment or land dedication requirements of this Chapter.

If the applicant provides such a statement of overriding factors under subsection (D), the Community Development Director shall place the matter on the agenda of the City Council for public hearing to be held not less than forty-five (45) days after receipt of the statement, and shall give the school district at least ten (10) days written notice of the hearing along with a copy of the statement.

If after public hearing, the City Council agrees that overriding factors benefiting the City justify approval without the payment of fees or dedication of land, it shall direct the Community Development Director to continue processing the application. If the City Council finds that there are not sufficient overriding factors, it shall direct the Community Development Director to take no further action to process the application until the documentation required by subsections (A), (B), or (C) has been provided.

The Community Development Director shall refuse to grant final approval to a building permit for a residential dwelling unit which is within a school attendance area in which the City Council has found that conditions of overcrowding exist and for which the City Council has approved the school district's plan to solve overcrowding, until the applicant has complied with this section. (Ord. 84-2)

(E) An agreement with the school district for payment of fees pursuant to Section 10965(G), along with evidence of payment to the school district of the fee specified in such agreement. (Ord. 86-1)

Sec. 10960. Use of Land and Fees. Except as provided in Section 10965(G), all fees collected by a school district pursuant to this Ordinance shall be used only for the purpose of providing interim school facilities as defined in Section 10925(G). (Ord. 84-2; Amd. Ord. 86-1)

Sec. 10965. Exemptions. Residential development shall be exempt from the requirements of this ordinance when it consists of any one or more of the following:

(A) Any modification or remodeling of an existing legally established dwelling unit;

(B) The proposed development is located within a redevelopment area designated by a redevelopment agency pursuant to the Community Redevelopment Law, Health and Safety Code §§ 33000, et seq.;

(C) A condominium project converting an existing apartment building into condominiums where no new dwelling units are added or created;

(D) Any rebuilding of a legally established dwelling unit destroyed or damaged by fire, explosion, act of God or other accident or catastrophe;

(E) Any rebuilding of a historical building recognized, acknowledged and designated as such by the City Planning Commission or City Council;

(F) Any residential development where the City Council finds there are specific overriding fiscal, economic, social or environmental factors benefiting the City which, in the sole judgment of the City Council would justify the approval of such development without the payment of fees or dedication of land.

(G) Any residential development where the developer and the school district have entered into a written agreement to mitigate the impacts of overcrowding by providing to the school district, for its use for permanent or interim facilities as it deems best, fees and/or land, at least equal in value to the amounts required by this Ordinance for interim facilities. The City Council finds that such a mitigation measure is a specific overriding fiscal, social, and economic factor benefiting the City which justifies approval of any such development without compliance with the interim facilities fee payment requirements of this Ordinance and without requirement for the hearing process specified in Section 10955(D). This exemption shall also be applicable to previously approved residential developments in the event that the payor of any fee charged for interim facilities pursuant to this Ordinance, enters into a written agreement with the school district authorizing use of such funds for permanent facilities. (Ord. 84-2; Amd. Ord. 86-1)

Sec. 10970. Payment of Fee. If the payment of fees is required, such payment shall be made by the developer to the school district prior to the time of issuance of the building permit. (Ord. 84-2)

Sec. 10975. Refunds of Paid Fees. If a building permit approval is vacated or voided and if the affected school district still retains the land or fees collected therefor, and if the applicant so requests in writing, the governing body of the school district shall order the land or fees returned to the applicant. (Ord. 84-2)

Sec. 10980. Termination. As soon as overcrowding conditions cease to exist or reasonable methods of mitigating conditions of overcrowding are feasible, the school district shall immediately notify the City Council. Upon receiving such notice, or upon City Council's determination that overcrowding conditions cease to exist or that reasonable methods for mitigating conditions of overcrowding are feasible, the City Council shall cease the requirement of fees or land dedication required by this Chapter. (Ord. 84-2)

Sec. 10985. Accounting and Annual Report. Any school district receiving funds or land pursuant to this ordinance shall maintain a separate trust account for any funds paid and shall file a report and an independent audit with the City Council on the balance in the account at the end of the previous fiscal year

and the facilities leased, purchased or constructed during the previous fiscal year. In addition, the reports shall specify which attendance areas will continue to be overcrowded when the fall term begins and when and where conditions of overcrowding will no longer exist. Such report shall be filed no later than three months following the close of each fiscal year of the school district and shall be filed more frequently if requested by the City Council. The City may, at any reasonable time, cause an independent audit to be conducted of the fees collected by the governing board of the school district for the purposes authorized by this section. (Ord. 84-2)

CHAPTER 10 - PLANNING AND ZONING APPLICATION FEE REGULATIONS

Sec. 101001. Title. This Chapter shall be known and may be cited as the "Planning and Zoning Application Fee Regulations". (Ord. 90-8)

Sec. 101002. Council May Establish and/or Modify Rates by Resolution. The City Council of the City of Grover City is hereby authorized to establish Planning and Zoning Application Fees and make such changes and adjustments from time to time as, in its opinion, may be necessary and in the best interests of the City. All such fees may be established and any such changes in said fees may be accomplished by resolution of the City Council adopted in a regular meeting of said Council after notice has been provided as required by State law. (Ord. 90-8)

CHAPTER 11 - DEDICATION OF LAND, PAYMENT OF FEES, OR BOTH, FOR PARK AND RECREATION LAND IN SUBDIVISIONS

Sec. 101101. Purpose. This ordinance is enacted pursuant to the authority granted by Section 66477 of the Government Code of the State of California. The park and recreational facilities for which dedication of land and/or payment of a fee is required by this ordinance are in accordance with the Park and Recreation Element of the General Plan of the City of Grover City adopted by the City of Grover City on July 15, 1991. (Ord. 91-5)

Sec. 101102. Requirements. At the time of approval of the tentative map or parcel map, the City Council shall determine pursuant to Section 101104 hereof the land required for dedication or in lieu fee payment. As a condition of approval of a final subdivision map or parcel map, the subdivider shall dedicate land, pay a fee in lieu thereof, or both, at the option of the City, for neighborhood and community park or recreational purposes at the time according to the standards and formula contained in this ordinance. In the event park and recreational services are provided by a public agency other than the City, the amount and location of land to be dedicated or fees to be paid shall be jointly determined by the City and such public agency. (Ord. 91-5)

Sec. 101103. General Standard. It is hereby found and determined that the public interest, convenience, health, welfare, and safety require that five acres of property for each 1,000 persons residing within this City be devoted to neighborhood and community park and recreational purposes. (Ord. 91-5)

Sec. 101104. Formula for Dedication of Land. (A) Where a park or recreational facility has been designated in the Parks and Recreation Element, of the General Plan of the City, and is to be located in whole or in part within the proposed subdivision to serve the immediate and future needs of the residents of the subdivision, the subdivider shall dedicate land for a local park sufficient in size and topography that bears a reasonable relationship to serve the present and future needs of the residents of the subdivision. The amount of land to be provided shall be determined pursuant to the following formula.

The formula for determining acreage to be dedicated has been established pursuant to Section 66477(b) of the Government Code:

Dwelling Structure Type	Acres/Dwelling Unit 1990 Census	(5 Acre Standard)
Single Family	2.79	.0140
2-4 Plexes	2.54	.0127
Apartments	2.30	.0112
Mobile Homes	1.68	.0084

Dedication of land shall be made in accordance with the procedures contained in Section 101111 hereof.

For the purposes of this Section, the number of new dwelling units shall be based upon the number of parcels indicated on the map when in an area zoned for one dwelling unit per parcel. When all or part of the subdivision is located in an area zoned for more than one dwelling unit per parcel, the number of proposed dwelling units in the area so zoned shall equal the maximum allowed under that zone. In the case of a condominium project, the number of new dwelling units shall be the number of condominium units. The term "new dwelling unit" does not include dwelling units lawfully in place prior to the date on which the parcel or final map is filed.

The subdivider shall, without credit:

(1) provide full street improvements and utility connections including, but not limited to, curbs, gutters, street paving, traffic control devices, street trees, and sidewalks to land which is dedicated pursuant to this Section;

(2) provide for fencing along the property line of that portion of the subdivision contiguous to the dedicated land;

(3) provide improved drainage through the site; and

(4) provide other minimal improvements which the City Council determines to be essential to the acceptance of the land for recreational purposes.

In the event proposed subdivision land is required by the General Plan Element in excess of that which is being dedicated to the City, the City may purchase such excess land at appraised value. The appraised value shall be based upon the estimated market value of the excess or additional land and its improvements at the time of the subdivision's final map acceptance. Improvements for the excess land shall be the same as required by the City in the tentative map approval. Purchase shall take place immediately following final map approval.

The land to be dedicated and purchased and the improvements to be made pursuant to this Section shall be approved by the Director of Parks and Recreation. (Ord. 91-5)

Sec. 101105. Formula for Fees in Lieu of Land Dedication.

(A) General Formula. If there is no park or recreational facility designated in the City of Grover City Parks and Recreation Element, to be located in whole or in part within the proposed subdivision to serve the immediate and future needs of the residents of the subdivision, the subdivider shall, in lieu of

dedicating land, pay a fee equal to the value of that land, plus 50% toward the costs of off-site improvements, prescribed for dedication in Section 101104 hereof and in an amount determined in accordance with the provisions of Section 101107 hereof, such fee to be used for a local park which bears a reasonable relationship to serve the present and future residents of the area being subdivided.

For the purposes of this ordinance, off-site improvements are defined as those improvements which would have been required if land had been dedicated using the provisions of Section 101104.

(B) Fees in Lieu of Land, 50 Parcels or Less. If the proposed subdivision contains fifty (50) parcels or less, the subdivider shall pay a fee equal to the land value, plus 50% toward costs of off-site improvements, of the portion of the local park required to serve the needs of residents of the proposed subdivision. However, nothing in this Section shall prohibit the dedication and acceptance of land for park and recreation purposes in subdivisions of fifty parcels or less, where the subdivider proposes such dedication voluntarily and the land is acceptable to the City Council.

(C) Use of Money. The money collected hereunder shall be used only for the purpose of acquiring necessary land and developing new or rehabilitating existing park or recreational facilities reasonably related to serving the subdivision. (Ord. 91-5)

Sec. 101106. Criteria for Requiring Both Dedication and Fee. In subdivisions of more than fifty (50) parcels, the subdivider shall both dedicate land and pay a fee in lieu thereof in accordance with the following formula:

(A) When only a portion of the land to be subdivided is proposed on the City of Grover City Parks and Recreation Element as the site for a local park, such portion shall be dedicated for local park purposes and a fee computed pursuant to the provision of Section 101107 hereof shall be paid for the value of any additional land, plus 50% toward costs of off-site improvements, that would have been required to be dedicated pursuant to Section 101104 hereof.

(B) When a major part of the local park or recreation site has already been acquired by the City and only a small portion of land is needed from the subdivision to complete the site, such remaining portion shall be dedicated and a fee computed pursuant to the provision of Section 101107 hereof shall be paid in an amount equal to the value of the land, plus 50% toward costs of off-site improvements, which would otherwise have been required to be dedicated pursuant to Section 101104 hereof, such fees to be used for the improvement of the existing park and recreation facility or for the improvement of other local parks and recreational facilities in the area serving the subdivision. (Ord. 91-5)

Sec. 101107. Amount of Fee in Lieu of Land Dedication. When a fee is to be paid in lieu of land dedication, value of the amount of such fee shall be based upon the fair market value of the amount of land which would otherwise be required for dedication pursuant to Section 101104, plus 50% toward costs of off-site improvements. The fee shall be determined by the following formula:

DUs x Pop./Du x 5 Acres/1000 People x FMV/Buildable Acre
= Subtotal x 1.5 = In Lieu Fee

WHERE:

DUs = Number of Dwelling Units as defined in Section 101104
Pop = Population per dwelling unit as defined in Section 101104
FMV = Fair Market Value, as determined by Section 101108
Buildable Acre = A typical acre of the subdivision, with a slope

less than 10% and located in other than an area on which building is excluded because of flooding, easements, or other restrictions.

Fees to be collected pursuant to this Section shall be approved by the Director of Parks and Recreation. (Ord. 91-5)

Sec. 101108. Determination of Fair Market Value. The fair market value shall be determined by the assessed value of all the land located in the City of Grover City divided by the number of acres within the City limits. The determination shall be made immediately prior to the filing of the final map. The subdivider shall notify the City of the expected filing date at least six (6) weeks prior to filing of the final map. If more than one (1) year elapses prior to filing the final map, the City shall prepare a new determination.

If the subdivider objects to the determined fair market value, he/she may appeal to the City Council who shall hear the appeal under the same rules and obligations current for local Board of Equalization hearings, except that the burden of proof shall lie with the subdivider.

For the purposes of appeal, the determination of the fair market value of a buildable acre, as defined in Section 101107, shall consider, but not necessarily be limited to, the following:

(A) Approval of and conditions of the tentative subdivision map
(B) The General Plan
(C) Zoning
(D) Property location
(E) Off-site and on-site improvements facilitating use of the property
(F) Site characteristics of the property

For the purposes of appeal, the City Council shall consider the estimated or actual costs of on-site and off-site improvements rather than the estimated 50% of land value provision defined in Section 101107. (Ord. 91-5)

Sec. 101109. Determination of Land or Fee. Whether the City Council accepts land dedication or elects to require payment of a fee in lieu thereof, or a combination of both, shall be determined by consideration of the following:

(A) The natural features, access, and location of land in the subdivision available for dedication
(B) The size and shape of the subdivision and land available for dedication
(C) The feasibility of dedication
(D) The compatibility of dedication with the City of Grover City Parks and Recreation Element
(E) The location of existing and proposed park sites and trailways

The determination of the City Council as to whether land shall be dedicated or whether a fee shall be charged or a combination thereof, shall be final and conclusive. (Ord. 91-5)

Sec. 101110. Credit for Private Open Space. No credit shall be given for private open space in the subdivision except as hereinafter provided. Where private open space usable for active recreational purposes is provided in a proposed planned development or real estate development as defined in Sections 11003 and 11003.1 of the Business and Professions Code, partial credit, not to exceed 50%, shall be given against the requirements of land dedication or payment of fees in lieu thereof if the City Council finds that it is in the public interest to do so and that all the following standards are met:

(A) Yards, court areas, setbacks, and other open areas required by the zoning and building ordinances and regulations shall not be included in the computation of such private open space; and

(B) Private park and recreational facilities shall be owned by a home owners association composed of all property owners in the subdivision and being an incorporated nonprofit organization capable of dissolution only by a 100% affirmative vote of the membership, operated under recorded land agreements through which each lot owner in the neighborhood is automatically a member, and each lot is subject to a charge for a proportionate share of expenses for maintaining the facilities; and

(C) Use of the private open space is restricted for park and recreational purposes by recorded covenant which runs with the land in favor of the future owners of the property and which cannot be defeated or eliminated without the consent of the City or its successor; and

(D) The proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and locations; and

(E) Facilities proposed for the open space are in substantial accordance with the provisions of the Recreation Element of the General Plan; and

(F) The open space for which credit is given is generally a minimum of three acres and provides all of the local park basic elements listed below, or a combination of such and other recreational improvements that will meet the specific recreation needs of future residents of the area:

(1) Recreational open spaces, which are generally defined as park areas for active recreational pursuits such as soccer, golf, baseball, softball, and football, and have at least one acre of maintained turf with less than 5% slope.

(2) Court areas, which are generally defined as tennis courts, badminton courts, shuffleboard courts, or similar hard-surfaced areas especially designed and exclusively used for court games.

(3) Recreational swimming areas, which are defined generally as fenced areas devoted primarily to swimming, diving, or both. They must also include decks, lawned area, bathhouses, or other facilities developed and used exclusively for swimming and diving and consisting of no less than 15 square feet of water surface area for each 3% of the population of the subdivision with a minimum of 800 square feet of water surface area per pool together with an adjacent deck and/or lawn area twice that of the pool.

(4) Recreation buildings and facilities designed and primarily used for the recreational needs of residents of the development.

The determination of the City Council as to whether credit shall be given and the amount of credit shall be final and conclusive. (Ord. 91-5)

Sec. 101111. Land Required. At the time of approval of the tentative map or parcel map, the City Council shall determine pursuant to Section 101104 hereof the land required for dedication. If the City Council requires in-lieu fee payment by the subdivider, the City Council will set the amount of land upon which the in-lieu fee will be based at the time of final map approval.

At the time of the filing of the final subdivision map or parcel map, the subdivider shall dedicate the land as required by the City Council. Where the City Council has determined that fees shall be paid in lieu of or in addition to the dedication of land, the City Council shall set the in-lieu fees based on the land dedication requirements as established at the time of the tentative map approval using current land values at the time of final map approval with the formula set forth in Section 101107 and using the process for determining fair market value as set forth in Section 101108. The subdivider shall pay said fees in accordance with the following schedule:

(A) For any subdivision consisting of ten (10) or more lots, fees shall be paid, in their entirety, prior to the issuance of any building permit for any building or structure to be located upon any lot in the subdivision.

(B) For any subdivision consisting of nine (9) or less lots, fees shall be paid on a lot-by-lot basis and prior to the issuance of any building permit for any building or structure to be located upon any one of the lots in the subdivision.

Open space covenants for private park or recreation facilities shall be submitted to the City prior to approval of the final subdivision map or parcel map and shall be recorded contemporaneously with the final subdivision map or parcel map. (Ord. 91-5)

Sec. 101112. Disposition of Fees. Fees determined pursuant to Section 101107 shall be paid to the City and shall be deposited into the Park Construction Fund. Money is said fund, including accrued interest, shall be expended solely for acquisition or development of park land, or improvements related thereto.

Collected fees shall be appropriated by the local agency to which the land or fees are conveyed or paid for a specific project to serve residents of the subdivision in a budgetary year within five years upon receipt of payment or within five years after the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later.

If such fees are not so committed, these fees, less an administrative charge, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots in the subdivision. (Ord. 91-5)

Sec. 101113. Exemptions. Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this ordinance; provided, however, that a condition shall be placed on the approval of such parcel map that if a building permit is requested for construction of a residential structure or structure on one or more of the parcels the fee may
be required to be paid by the owner of each such parcel as a condition to the issuance of such permit.

The provisions of the ordinance do not apply to commercial or industrial subdivisions; nor do they apply to condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building which is more than five years old when no new dwelling units are added. (Ord. 91-5)

Sec. 101114. Subdivider Provided Park and Recreation Improvements. The value of on-site park and recreation improvements provided by a subdivider to the dedicated land shall be credited against the fees or dedication of land and off-site improvement costs required by this ordinance. The City Council reserves the right to approve such on-site improvements prior to agreeing to accept the dedication of land and to require in-lieu fee payments should the land and improvements be unacceptable. (Ord. 91-5)

Sec. 101115. Agency to Accept Land and Fees. Land or fees required under this ordinance shall be conveyed or paid directly to the local public agency which provides park and recreational services on a community-wide level and to the area within which the proposed development will be located, if such agency elects to accept the land or fee. At the time of tentative map approval, the City Council shall determine whether the City is the appropriate local agency. The City, County, or other local public agency, to which the land or fees are conveyed or paid shall develop a schedule pursuant to Section 66477 of the Government Code specifying how, when, and where it will use the land or fees, or both, to develop park and recreational facilities to serve residents of the subdivision. (Ord. 91-5)

Sec. 101116. Access. All land offered for dedication to local park or recreational purposes shall have access to at least one existing or proposed public street. This requirement may be waived by the City Council if the City Council determines that public street access is unnecessary for the maintenance of the park area or use thereof by residents. (Ord. 91-5)

Sec. 101117. Sale of Dedicated Land. If during the ensuing time between dedication of land for park purposes and commencement of first stage development, circumstances arise which indicate that another site would be more suitable for local park or recreational purposes serving the subdivision and the neighborhood (such as receipt of a gift of additional park land, a change in school location or amendment of the General Plan), the land may be sold upon the approval of the City Council with the resultant funds being used for purchase and development of a more suitable site. (Ord. 91-5)

CHAPTER 12 - UTILITY USERS TAX

Sec. 101201. Description and Purpose. This Chapter shall impose a tax upon the use of utility services in the City. The purpose of this tax is to provide additional general revenue for the City. (Ord. 91-7)

Sec. 101202. Definitions. The following words and phrases whenever used in this Chapter shall be construed as defined in this section:

(A) Person shall mean any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society, or individuals.

(B) City shall mean the City of Grover City.

(C) Gas shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefore.

(D) Telephone Corporation, Electrical Corporation, Gas Corporation, Water Corporation, and Cable Television Corporation shall have the same meanings as defined in Sections 234, 218, 222, 241, and 215-5, respectively, of the California Public Utilities Code except, Electrical Corporation, Gas Corporation and Water Corporation shall also be construed to include any municipality, public agency or person engaged in the selling or supplying of electrical power or gas or water to a service user.

(E) Tax Administrator shall mean the Finance Director of the City of Grover City.

(F) Service Supplier shall mean any entity required to collect or self-impose and remit a tax as imposed by this Chapter.

(G) Service User shall mean a person required to pay a tax imposed by this Chapter.

(H) Month shall mean a calendar month.

(I) Non-Utility Supplier shall mean:

(1) a service supplier, other than an electrical corporation serving within the City, which generates electrical energy in capacities of at least 50 kilowatts for its own use or for sale to others; or

(2) a gas supplier other than a gas corporation, that sells or supplies gas to users within the City. (Ord. 91-7)

Sec. 101203. Exemptions. (A) Nothing in this Chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the State of California.

(B) The City Council may, by order or resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by the Chapter and provide that such classes of persons or service shall be exempt, in whole or in part from such tax.

(C) The Tax Administrator shall prepare a list of the persons exempt from the provisions of this Chapter by virtue of this section and furnish a copy thereof to each service supplier. (Ord. 91-7)

Sec. 101204. Telephone Users Tax. (A) There is hereby imposed a tax on the amounts paid for any intrastate telephone services by every person in the City using such services. The tax imposed by this section shall be at the rate of one
percent (1%) of the charges made for such services and shall be paid by the person paying for such services.

(B) As used in this Section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor shall the term "charges" include charges for any type of service or equipment furnished by a service supplied subject to Public Utility regulations during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulations; nor shall the words "telephone communication services" include land mobile service or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations, as said section existed on January 1, 1970. The term "telephone communication services" refers to that service which provides access to a telephone system and the privilege of telephone quality communication with substantially all persons having telephone stations which are part of such telephone system. The Telephone Users Tax is intended to, and does, apply to all charges billed to a telephone account having a situs in the City, irrespective of whether a particular communication service originates and/or terminates within the City.

(C) The tax imposed by this section shall be collected from the service user by the person providing the intrastate telephone communication services, or the person receiving payment for such services. The amount of the tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month; or at the option of the person required to collect and remit the tax, an estimated amount of tax collected, measured by the tax bill in the previous month, shall be remitted to the Tax Administrator on or before the last day of each month.

(D) Notwithstanding the provisions of subsection (A), the tax imposed under this section shall not be imposed upon any person for using intrastate telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Division 2, Part 20 of the California Revenue and Taxation Code, or the tax imposed under Section 4251 of the Internal Revenue Code. (Ord. 91-7)

Sec. 101205. Electricity Users Tax. (A) There is hereby imposed a tax upon every person other than an electric or gas corporation using electrical energy in the City. The tax imposed by this section shall be at a rate of one percent (1%) of the charges made for such energy by an electrical corporation providing service in the City and shall be billed to and paid by the person using the energy. The tax applicable to electrical energy provided by a non-utility supplier shall be determined by applying the tax rate to the equivalent charge the service user would have incurred if the energy used had been provided by the electrical corporation franchised by the City. Rate schedules for this purpose shall be available from the City. Non-utility suppliers shall install, maintain and use an appropriate utility-type metering system which will enable compliance with this section. "Charges", as used in this section, shall include charges made for:

(1) metered energy, and

(2) minimum charges for services, including customer charges, service charges, demand charges, standby charges and all other annual and monthly charges, fuel or other cost adjustments, authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

(B) As used in this section, the term "using electrical energy" shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery device apart from the premises upon which the energy was received, provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include electricity used and consumed by an electric utility supplier in the conduct of its business; nor shall the term include the mere receiving of such energy by an electric corporation or governmental agency at a point within the City for resale; nor shall the term include the use of such energy in the production or distribution of water by a water utility or a governmental agency.

(C) The tax imposed in this section shall be collected from the service user by the service supplier or non-utility supplier. The tax imposed in this section on use supplied by self-generation or from a non-utility supplier not subject to the jurisdiction of this Chapter, shall be collected and remitted to the Tax Administrator in the manner set forth in Section 101207. The amount of tax collected by a service supplier or a non-utility supplier in one month shall be remitted by U.S. mail to the Tax Administrator, postmarked on or before the last day of the following month; or at the option of the person required to collect and remit the tax, an estimate amount of tax measured by the tax billed in the previous month, shall be remitted by U.S. mail, to the Tax Administrator, postmarked on or before the last day of each month. (Ord. 91-7)

Sec. 101206. Gas Users Tax. (A) There is hereby imposed a tax upon every person in the City other than a gas corporation or electrical corporation, using, in the City, gas which is transported through mains or pipes or by mobile transport. The tax imposed by this section shall be at the rate of one percent (1%) of the charges made for the gas and shall be billed to and paid by the person using the gas. The tax applicable to gas or gas transportation provided by non-utility suppliers shall be determined by applying the tax rate to the equivalent charges the service user would have incurred if the gas or gas transportation had been provided by the gas corporation franchised by the City. "Charges" as used in this section shall include:

(1) that billed for gas which is delivered through mains or pipes;

(2) gas transportation charges; and

(3) demand charges, service charges, customer charges, minimum charges, annual and monthly charges, and any other charge authorized by the California Public Utility Commission or the Federal Energy Regulatory Commission.

(B) The tax otherwise imposed by this section is not applicable to:

(1) charges made for gas which is to be resold and delivered through mains and pipes;

(2) charges made for gas used and consumed by a public utility or governmental agency in the conduct of its business; or

(3) charges made by a gas public utility or gas used and consumed in the course of its public utility business; and

(4) charges made for gas used in the propulsion of a motor vehicle, as authorized in the Vehicle Code of the State of California.

(C) The tax imposed in this section shall be collected from the service user by the person selling or transporting the gas. A person selling only transportation services to a user for delivery of gas through mains or pipes shall collect the tax from the service user based on the transportation charges. The person selling or transporting the gas shall, on or before the 20th of each calendar month, commencing on the 20th day of the calendar month after the effective date of this Chapter, make a return to the Tax Administrator stating the amount of taxes billed during the preceding calendar month. At the time such returns are filed, the person selling or transporting the gas shall remit tax payments to the Tax Administrator in accordance

with schedules established or approved by the Tax Administrator. The tax imposed in this section on use supplied by self-production or a non-utility supplier not subject to the jurisdiction of this Chapter, shall be collected and remitted to the Tax Administrator in the manner set forth in Section 101207. (Ord. 91-7)

Sec. 101207. Service Users Receiving Direct Purchase of Gas or Electricity. (A) Notwithstanding any other provision of this Chapter, a service user receiving gas or electricity directly from a non-utility supplier not under the jurisdiction of this Chapter, or otherwise not having the full tax due on the use of gas or electricity in the City directly billed and collected by the service supplier, shall report said fact to the Tax Administrator within thirty (30) days of said use and shall directly remit to the City the amount of tax due.

(B) The Tax Administrator may require said service user to provide, subject to audit, filed tax returns or other satisfactory evidence documenting the quantity of gas or electricity used and the price thereof. (Ord. 91-7)

Sec. 101208. Water Users Tax. (A) There is hereby imposed a tax upon every person in the City using water which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of one percent (1%) of the charges made for such water and shall be paid by the person paying for such water.

(B) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through mains or pipes; and charges made by a municipal water department, public utility or a city or municipal water district for water used and consumed by such department, utility or district.

(C) The tax imposed in this section shall be collected from the service user by the person supplying the water. The amount collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month. (Ord. 91-7)

Sec. 101209. Cable Television Users Tax. (A) There is hereby imposed a tax upon every person in the City using cable television service. The tax imposed by this section shall be at the rate of one percent (1%) of the charges made for such service and shall be paid by the person paying for such service.

(B) The tax imposed in this section shall be collected from the service user by the person furnishing the cable television service. The amount collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month.

(C) The tax imposed in this section shall apply to all services, including special programs, tiers, or other similar rate structures or billing arrangements furnished by the cable television corporation (provider) to the service user. (Ord. 91-7)

Sec. 101210. Remittance of Tax. (A) Taxes collected from a service user which are not remitted to the Tax Administrator on or before the due dates provided in this Chapter are delinquent. Should the due date occur on a weekend or legal holiday, the return may be postmarked on the first regular working day following a Saturday, Sunday, or legal holiday. (Ord. 91-7)

Sec. 101211. Actions to Collect. Any tax required to be paid by a service user under the provisions of this Chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has willfully been withheld from the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit. Any person owing money to the City under the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount. (Ord. 91-7)

Sec. 101212. Duty to Collect - Procedures. The duty to collect and remit the taxes imposed by this Chapter shall be performed as follows:

(A) Notwithstanding the provisions of Section 101207, the tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with the regular billing practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the service charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the utility charge first until such charge has been fully satisfied. Any remaining balance shall be applied to taxes due. In those cases where a service user has notified the service supplier of his refusal to pay the tax imposed on said energy charges Section 101213(C) will apply.

(B) The duty to collect the tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing. (Ord. 91-7)

Sec. 101213. Additional Power and Duties of Tax Administrator. (A) The Tax Administrator shall have the power and duty, and is hereby directed to enforce each and all of the provisions of this Chapter.

(B) The Tax Administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this Chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed.

A copy of such rules and regulations shall be on file in the Tax Administrator's office.

(C) The Tax Administrator may made administrative agreements to vary the strict requirement of this Chapter so that collection of any tax imposed here may be made in conformance with the billing procedures of particular service suppliers so long as said agreements result in collection of the tax in conformance with the general purpose and scope of this Chapter. A copy of each such agreement shall be on file in the Tax Administrator's office.

(D) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this Chapter. The Tax Administrator shall provide the service supplier with the name of any person who the Tax Administrator determines is exempt from the tax imposed hereby, together with the address and account number to which service is supplied to any such exempt person. The Tax Administrator shall notify the service supplier of termination of any person's right to exemption hereunder, or the change of any address to which service is supplied to any exempt person.

(E) The Tax Administrator shall provide notice to all service suppliers, at least 90 days prior to any annexation or other change in the City's bound-aries. Said notice shall set forth the revised boundaries by street and address, along with a copy of the final annexation order from LAFCO. (Ord. 91-7)

Sec. 101214. Assessment - Service User Administrative Remedy. (A) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by him from the amounts remitted to a person required to collect the tax, or that a service user has refused to pay the amount of tax, such person may be relieved of the obligation to collect taxes due under this Chapter from certain named service users for specified billing periods as set forth below.

(B) The service supplier shall provide the City with amounts refused and/or unpaid along with the names and addresses of the service users neglecting to pay the tax imposed under provisions of this Chapter. Whenever the service user has failed to pay the amount of tax for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due.

(C) The Tax Administrator shall notify the service user that the Tax Administrator assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him personally or by deposit of the notice in the U.S. mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user's address change, to the last known address. If a service user fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five percent (25%) of the amount of the tax set forth in the notice shall be imposed, but not less than $5.00. The penalty shall become part of the tax herein required to be paid. (Ord. 91-7)

Sec. 101215. Records. It shall be the duty of every person required to collect and remit to the City any tax imposed by this Chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at all reasonable times. (Ord. 91-7)

Sec. 101216. Refunds. (A) Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, it may be refunded as provided in this section.

(B) Notwithstanding the provisions of subsection (A) of this section, a service supplier may claim a refund; or take as credit against taxes remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established that the service user from whom the tax has been collected did not owe the tax; provided however, that neither a refund nor a credit shall be allowed unless the amount of the tax erroneously or illegally collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit. A service supplier that has collected any amount of tax in excess of the amount of tax imposed by this Chapter and actually due from a service user, may refund such amount to the service user and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns, provided such credit is claimed in a return dated no later than three (3) years from the date of overpayment.

(C) Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this Chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this Chapter is repealed, the amounts of any refundable taxes will be borne by the City.

(D) A service supplier may refund the taxes collected to the service user in accordance with this section or by the service supplier's customary practice. (Ord. 91-7)

Sec. 101217. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrases be declared unconstitutional. (Ord. 91-7)

Sec. 101218. Termination or Suspension of Utility Users Tax. The service supplier shall, upon notification, terminate or suspend any utility users tax commencing with the first full billing period which occurs after the effective date of such action by the City Council. (Ord. 91-7)

CHAPTER 13 - DEVELOPMENT IMPACT FEE ORDINANCE

Sec. 101301. Short Title. This chapter shall be known as the "Grover Beach Development Impact Fee Ordinance". (Ord. 95-10)

Sec. 101302. Purpose. The Council declares that the fees required to be paid hereby are established for the purpose of protecting the public health, safety and general welfare, and implementing the policies of the General Plan, by providing for the provision of adequate public facilities to support orderly development. (Ord. 95-10)

Sec. 101303. Definitions. Unless otherwise required by the context, the following definitions shall govern the construction of this chapter:

(A) "Commercial development" means the development or use of land for any retail, office, service commercial or other business purpose.

(B) "Council" means the City Council of the City of Grover Beach.

(C) "Development" or "development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(D) "Dwelling Unit" means a structure, or portion of a structure which is used for separate residential occupancy by an individual, a family or a group of unrelated individuals.

(E) "Hotel or Motel" means any development or use of land for temporary lodging purposes.

(F) "Impact fee" means a monetary exaction charged to the applicant in connection with approval of a development project for the purpose of defraying all or a part of the cost of public facilities related to the development project. This definition does not include fees specified in Section 66477, Government Code, or fees for processing applications for permits or approvals.

(G) "Industrial development" means the development or use of land for any manufacturing, storage, or other industrial purpose.

(H) "Mobile Home" means any mobile or manufactured dwelling subject to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.).

(I) "Multi-family residential development" means development or use of land for residential purposes involving more than one dwelling unit in a single structure.

(J) “Public facilities" means public improvements, public services or community amenities.

(K) “Single Family Residential" means development or use of land for residential purposes involving no more than one dwelling unit in a single structure. (Ord. 95-10)

Sec. 101304. Fees - Imposition and Application. This chapter establishes development impact fees which are imposed as a condition of approval upon all development projects for which a building permit is issued after on or after the effective date of this ordinance. Those impact fees are hereby established for the following public facilities:

(A) Transportation improvements.

(B) Water system improvements.

(C) Law enforcement facilities.
(D) Administrative facilities.
(E) Fire protection facilities.

These impact fees are established in order to pay for the capital costs of public facilities reasonably related to the needs of new development in the City . At least once every five years, the Council shall review the basis for the impact fees to determine whether the fees are still reasonably related to the needs of new development.

In establishing these fees, the Council has considered the effects of the fees with respect to the City's housing needs as established in the Housing Element of the General Plan. (Ord. 95-10)

Sec. 101305. Fees to be Set by Resolution. From time to time, the Council shall, by resolution, set forth the specific amount of the impact fees, the specific public facilities to be paid for by the fees and the estimated cost of those facilities, and describe the reasonable relationship between the fees and the developments on which they will be imposed. (Ord. 95-10)

Sec. 101306. Payment of Fees. Except as otherwise provided in Section 66007 of the Government Code, impact fees shall be paid to the City at the time a building permit is issued. In cases where payment or all or part of the required fee is deferred at the time of building permit issuance, the Director of Community Development may require that the applicant, at the applicant's expense, execute a contract with the City to pay all deferred impact fees prior to final inspection and/or issuance of a certificate of occupancy for the project. The contract shall specify the amount of the unpaid fee and a legal description of the property affected. It shall be recorded in the office of the

County recorder, and shall constitute a lien for the payment of the fees, which shall be enforceable against the successors in interest of the property owner. When impact fees are paid in full, the City, at the expense of the applicant or property owner, shall execute a release of any lien securing those impact fees. (Ord. 95-10)

Sec. 101307. Appeals. Any party subject to the fees established by this chapter may appeal the imposition of those fees by meeting the following requirements:

(A) Serving written notice on the Director of Community Development stating the reason for the appeal, including relevant factual and legal considerations. Appeals must be filed within thirty (30) days following notification of the imposition of the fees.

(B) Paying any fee required for the processing of the appeal.

The Council shall consider the appeal at a hearing to be held within sixty (60) days after the filing of the appeal. The decision of the Council shall be final.

If the applicant wishes to receive a building permit for the affected development project prior to a decision on the appeal, the required fee may be paid under protest, or the applicant may make arrangements satisfactory to the Director of Community Development to ensure payment of the fee if the appeal is unsuccessful. (Ord. 95-10)

Sec. 101308. Exemptions. The fees imposed under this chapter shall not apply to the following:

(A) The United States or to any agency or instrumentality thereof, the State of California or any County or other political subdivision of the State of California.

(B) Remodelling or alteration of an existing residential building, but only if the number of dwelling units is not increased or the use changed.

(C) That portion of a structure which existed before the addition of dwelling units or the enlargement of floor area in a non-residential structure. If a structure is destroyed or demolished, and replaced within two years from the date of demolition, the impact fees shall be based on the service requirements of the new development less the service requirements of the development which it replaced. (Ord. 95-10)

Sec. 101309. Credits and Reimbursement. If the applicant for approval of any development project is required by the City, as a condition of approval, to construct facilities whose cost has been used in the calculation of impact fees which apply to that project, the applicant shall receive a credit against those impact fees, up to the amount charged for the same type of facility. If the cost of the improvements constructed by the applicant exceeds the amount of the impact fees charged to the development project for the same type of facility, the excess cost shall be reimbursed to the applicant from other impact fee revenues within a reasonable time. To qualify for reimbursement, the applicant must enter into a reimbursement agreement with the City, and any such agreement must specify the amount to be reimbursed and the approximate schedule of the reimbursement. (Ord. 95-10)

Sec. 101310. Disposition and Use of the Fees. The Director of Finance shall establish a separate fund or account for each type of facility listed in Section 101304. All impact fees collected by the City shall be deposited in the fund or account established for the specific type of facility for which the fee is collected. Any interest earned on funds deposited in a fund or account shall be deposited in that fund or account.

Funds deposited in those accounts shall be used only to pay for design and construction, including construction administration, of projects identified in resolutions adopted pursuant to Section 101305 as the basis for the impact fees, or for reimbursements as provided in Section 101309. (Ord. 95-10)

Sec. 101311. Refunds. If impact fees collected by the City have not been expended for the intended purpose within five (5) years following their collection, the City shall either refund those unexpended fees, together with the pro rata portion of the interest earned thereon by the City, as provided in Section 66001 of the Government Code, or make findings as required by that Section to retain the fees.

The refund provisions of this chapter shall apply only to monies in possession of the City and need not be made with respect to any bonds, letters of credit or other items given to secure payment at a future date. (Ord. 95-10)

CHAPTER 14 - MASTER FEE SCHEDULE

Sec. 101401. Master Fee Schedule Adopted by Reference. The Master Fee Schedule of the City of Grover Beach, California is hereby adopted by reference as if fully set out herein. (Ord. 03-02)

CHAPTER 15 - TRANSACTIONS AND USE TAX

Sec. 101500. Title. This chapter shall be known as the "Transactions and Use Tax Ordinance of the City of Grover Beach". The City of Grover Beach hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the City. (Ord. 06-12)

Sec. 101501. Purpose. This chapter is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

(A) To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

(B) To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

(C) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

(D) To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter. (Ord. 06-12)

Sec. 101502. Operative Date. "Operative date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter, the date of such adoption being November 7, 2006. (Ord. 06-12)

Sec. 101503. Contract with State. Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract. (Ord. 06-12)

Sec. 101504. Transactions Tax Rate. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one-half percent (0.5%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date of this chapter. (Ord. 06-12)

Sec. 101505. Place of Sale. For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization. (Ord. 06-12)

Sec. 101506. Use Tax Rate. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this chapter for storage, use or other consumption in said territory at the rate of one-half percent (0.5%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. (Ord. 06-12)

Sec. 101507. Adoption of Provisions of State Law. Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this chapter as though fully set forth herein. (Ord. 06-12)

Sec. 101508. Limitations on Adoption of State Law and Collection of Use Taxes. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

(A) Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

(1) The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

(2) The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter.

(3) In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

(a) Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or

(b) Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

(4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

(B) The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203. (Ord. 06-12)

Sec. 101509. Permit not Required. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this chapter. (Ord. 06-12)

Sec. 101510. Exemptions and Exclusions. (A) There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

(B) There are exempted from the computation of the amount of transactions tax the gross receipts from:

(1) Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

(2) Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

(a) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

(b) With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

(3) The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this chapter.

(4) A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this chapter.

(5) For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(C) There are exempted from the use tax imposed by this chapter, the storage, use or other consumption in this City of tangible personal property:

(1) The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

(2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

(3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this chapter.

(4) If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this chapter.

(5) For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(6) Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

(7) "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

(D) Any person subject to use tax under this chapter may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax. (Ord. 06-12)

Sec. 101511. Amendments. All amendments subsequent to the effective date of this chapter to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter. (Ord. 06-12)

Sec. 101512. Enjoining Collection Forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this chapter, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected. (Ord. 06-12)

Sec. 101513. Annual Report. The City shall prepare and make available to the public an annual report, which presents in summary form expenditures from the prior fiscal year from revenue generated from the Transactions and Use Tax and budgeted expenditures for the upcoming fiscal year. (Ord. 06-12)

Sec. 101514. Periodic Review. The City Council shall appoint a citizen committee to review the annual report, and who will provide a report on expenditures of the revenues generated from the Transaction and Use Tax to the City Council. (Ord. 06-12)