TITLE 4

BUSINESS LICENSES AND REGULATIONS

Chapters:

CHAPTER 4.04

ELECTRIC FRANCHISE

Sections:

4.04.01 Electric franchise granted The city of Cotter, Arkansas, (hereinafter called Grantor) hereby grants to Entergy, its successors and assigns (hereinafter called Grantee), the exclusive right, privilege and authority within the present and all future expansion of the corporate limits of the city of Cotter, Arkansas, (1) to sell, furnish, transmit and distribute electric power and energy to Grantor and to all inhabitants and consumers within said limits, and (2) to construct, maintain, operate and extend a system for such purposes and to enter on, under and upon and use any and all of the streets, alleys, avenues, bridges and other public grounds and ways belonging to, or under the control of Grantor, for the purpose of erecting, maintaining, repairing, replacing and operating poles, wires, anchors, stubs, transformers, substations, cables, conduits and other related facilities, appliances and apparatus which are necessary for, or useful in, the furnishing, sale, transmission or distribution of said electric service (hereinafter called facilities). (Ord. No. 135, Sec. 1.)

4.04.02 Rights and responsibilities of grantor and grantee

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

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

C. Removal of hazards; clearing of right-of-ways The Grantee, its successors and assigns, is hereby given the right to trim, cut or remove trees, shrubbery or growth on or in public ways, places and public property which interfere or offer hazards to the operation of Grantee's facilities used or useful for the rendition of electric service; further, Grantee is hereby given the right, authority and permission to trim, cut and remove portions of trees, shrubbery or growth growing on private property but overhanging or encroaching on public ways, places and public property which interfere or offer hazards to the construction, operation and maintenance of Grantee's facilities. (Ord. No. 135, Secs. 2-4.)

4.04.03 Termination procedure The rights, privileges and authority hereby granted shall exist and continue from the date of passage of this ordinance, and thereafter, until termination in accordance with provisions of Section 44 of Act 324 of the 1935 Acts of the state of Arkansas, as presently enacted or hereinafter amended. (Ord. No. 135, Sec. 5.)

4.04.04 Rates The rates which are to be charged by Grantee for electric service hereunder shall be those which are now lawfully approved or prescribed, and as said rates may, from time to time, be amended by Grantee in accordance with law or by any regulatory authority having jurisdiction thereof. (Ord. No. 135, Sec. 6.)

4.04.05 City not liable for negligence of grantee In the construction, operation, and maintenance of its facilities, said Grantee shall use reasonable and proper precaution to avoid damage or injury to persons or property and shall hold and save harmless the said Grantor from damage, injury, loss or expense caused by the negligence of the Grantee or its agents, servants, or employees, in constructing, operating and maintaining said facilities or in repaving or repairing any streets, avenues, alleys, bridges or other public grounds. (Ord. No. 135, Sec. 7.)

4.04.06 Standard of care for facilities The Grantee shall endeavor at all times to keep its facilities in a reasonable state of repair and to conform to such practices and install such appliances and equipment as may be in keeping with the customary usage and practice in cities of similar size in this state during the time this franchise shall remain in force. (Ord. No. 135, Sec. 8.)

4.04.07 Franchise tax Beginning in 1966, and thereafter during the life of this franchise, the Grantee shall pay to Grantor each year a franchise tax in an amount equal to: Four and twenty-five hundredths percent (4.25%) of the preceding calendar year's gross residential and commercial electric revenues as paid to the Grantee by residential and commercial customers located within the corporate limits of the city of Cotter, Arkansas. Payments shall be made by the Grantee to the Grantor in approximately equal quarterly installments beginning in January, 1966. Residential and commercial electric revenues are those revenues so classified pursuant to Grantee's uniform classification standards. Grantor shall have the right to examine and verify, from the records of the Grantee, any data relating to the gross revenues of Grantee from customers on which said franchise tax is due. In the event of a controversy, between the Grantor and Grantee as to the amount of gross revenues received by Grantee in the city of Cotter, Arkansas, upon which said tax is due, such controversy shall be referred to the Arkansas Public Service Commission, or such successor regulatory agency which may have jurisdiction over the Grantee, for final determination, and the decision of said Commission shall be binding upon both parties hereto.

It is expressly agreed and understood by the Grantor and Grantee that the aforesaid payment shall constitute and be considered as complete payment and discharge by the Grantee, its successors and assigns, of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees, special millage taxes, general ad valorem taxes and other general taxes applicable to all citizens and taxpayers) which are now or might in the future be imposed by the Grantor under authority conferred upon the Grantor by law. In the event such other tax or taxes are imposed by Grantor, the obligation of the Grantee set forth in Section 4.04.07 hereof, to pay the city the sum of four and twenty-five hundredths percent (4.25%) annually of the gross residential and commercial electrical revenues shall immediately terminate. (Ord. No. 135, Sec. 9.)

4.04.08 Street lighting Electric service furnished the Grantor for street lighting and other purposes shall be paid for by the Grantor in accordance with the applicable rate schedules of the Grantee now on file and/or as they may in the future be filed by the Grantee and approved by the Arkansas Public Service Commission or other regulatory authority having jurisdiction. The Grantee shall have the privilege of crediting any amount due Grantor with any unpaid balances due said Grantee for electric service rendered to said Grantor. (Ord. No. 135, Sec. 10.)

4.04.09 Private generation facilities allowed Nothing herein shall be construed to prohibit any person, firm or corporation from owning and operating facilities for generating, distributing, or furnishing electric energy for his or its own use or for the use of his or its tenants, all of which facilities and use are wholly on the same premises owned by such person, firm or corporation. (Ord. No. 135, Sec. 11.)

4.04.10 Street lighting service In consideration of the Company making facilities available for street lighting purposes and/or the improvement of certain existing street lighting facilities and the benefits accruing to the parties hereto, the City agrees to purchase all street lighting service required by it from the Company in the area where Company may legally serve, and the Company agrees to supply and sell to the City, and the City agrees to pay for, all such service under Company's applicable rate schedules and service regulations as now on file with the Arkansas Public Service Commission or as provided in said schedules and regulations as they may be lawfully amended, altered or superseded in the future, with the approval of the Arkansas Public Service Commission or any other regulatory agency having jurisdiction. (Ord. No. 143-A, Sec. 1.)

4.04.11 Removal of lights Company will at its expense make the following removals from its present street lighting facilities servicing the city of Cotter:

22 405-watt Luminaires
(Ord. No. 143-A, Sec. 2.)

4.04.12 Additions to lights Company will at its expense make the following additions to its street lighting facilities serving the city of Cotter:

22 175-watt Mercury Vapor Luminaires
(Ord. No. 143-A, Sec. 3.)

4.04.13 Present street lighting facilities After completion of the hereinabove described removals and additions, the company's street lighting facilities serving the city of Cotter will consist of:

36 100-watt Mercury Vapor Luminaires
29 175-watt Mercury Vapor Luminaires
37 250-watt Mercury Vapor Luminaires
(Ord. No. 143-A, Sec. 4.)

4.04.14 Changes in street lighting facilities In order to provide for further improvements to the street lighting in the future serving the city of Cotter, company agrees to make additions or changes in its street lighting facilities when requested in writing by the Mayor, upon authorization of the City Council, provided, in Company's judgment, such changes do not constitute a major revision of the street lighting facilities. Such additional street lights or changes in existing street lights will be made at Company's expense and electric service for such lights will be supplied by the Company and will be paid for by the City in accordance with the provisions of the applicable rate schedule, and under the terms and conditions of this agreement. (Ord. No. 143-A, Sec. 5.)

4.04.15 Non-Company owned lighting facilities In addition to supplying street lighting service from Company owned street lighting facilities, Company agrees to supply and sell to the City street lighting service from non-Company owned street lighting facilities and the City agrees to purchase and pay for such service in accordance with the provisions of the applicable rate schedule, and the terms and conditions of this agreement. Non-Company owned street lighting facilities consist of: None. (Ord. No. 143-A, Sec. 6.)

CHAPTER 4.08

GAS FRANCHISE

Sections:

4.08.01 Gas franchise granted to Arkansas Western Gas Company The city of Cotter, Arkansas, hereinafter refereed to as "City," hereby grants to Arkansas Western Gas Company, a corporation organized and existing under and by virtue of the laws of the state of Arkansas, hereinafter referred to as "Corporation," the exclusive right, privilege and authority within the present and future expansions of the corporate limits of the city:

A. To sell, furnish, transmit and distribute natural gas to all inhabitants and consumers within said limits hereinafter referred to as "corporation purposes;" and,

B. Subject to the terms, conditions and stipulations mentioned in this ordinance, consents and the right, permission and franchise is hereby given to the corporation, and to its successors, lessees and assigns, to lay, construct, equip, operate, repair, and maintain a system of gas mains, pipes, conduits, feeders and the appurtenances for the purpose of supplying and distributing natural gas for light, fuel, power, and heat and for any other purposes, hereinafter referred to as "gas distribution system," from any point beyond said city limits in order to enable the Corporation to distribute and sell natural gas to the City and its residents or inhabitants and to others, the areas hereinabove set forth being hereinafter referred to as "franchise areas." As used in this ordinance the terms "natural gas" and "gas" shall be defined as including, in addition to natural gas, such alternate substitutes or supplemental fuels as (without necessarily limited to) liquefied natural gas, liquefied petroleum gas, synthetic natural gas and propane – air, but this definition shall not be construed as a prohibition against the distribution and sale of butane, propane, kerosene, wood and coal by others. (Ord. No. 80-11, Sec. 1.)

4.08.02 Rights of Corporation The Corporation herein is expressly given the permit (subject to the conditions hereinafter contained) to use the streets, avenues, roads, highways, alleys, sidewalks and other public places, as now laid out, or hereafter to be established, hereinafter referred to as "public ways," for the Corporate purposes and for the gas distribution system in order to convey or conduct to any other point within the franchise area; provided, however, that where alleys are accessible for laying mains and pipes, the city shall have the right to require that the mains and pipes shall be laid in the alleys instead of the streets, so long as this is economically feasible (does not create an economic hardship). (Ord. No. 80-11, Sec. 2.)

4.08.03 No fees for public service No fees or charges of any kind shall be imposed by City upon the Corporation or upon any successors, or upon any consumer of natural gas for the breaking or opening of any public way or for the laying of any main, service pipe or other connections therein, except as would be generally imposed on others performing similar work under similar circumstances and conditions.

Nothing in this franchise shall be construed in such manner as to in any manner abridge the right of the City to pass and enforce the necessary police regulations for the purpose of protecting the citizens of the City and their property and the property of the Corporation. (Ord. No. 80-11, Sec. 3.)

4.08.04 Corporation guarantees

A. At all times keep and display the necessary danger signals and proper guards around all excavations and obstructions, keep sufficient space in good condition for the travel of vehicles on at least one side of all excavations and obstructions, and shall as soon as practical restore all openings on the public way to a condition equally as good as before said openings and obstructions. Anything to the contrary notwithstanding, when in the judgment of Corporation it is necessary for the safety reasons to divert or detour traffic from the area of excavations or obstructions, it shall have the power to so do upon notice to said City.

B. Do no injury to any public way, bridge, stream or water course, park or public place, except as specifically allowed, nor with any public or private sewer or drainage system, or water lines, now or hereafter laid or constructed by the City or by any authorized person or corporation, but no sewer or water pipes, electric conduits, telephone or TV cables shall be so laid as to interfere unnecessarily with any gas main or pipes which shall have been laid prior to the time of laying such electric conduits, telephone and TV cables, sewer or water pipes. The Corporation shall fully indemnify and save harmless the City from any and all claims for damage for which said City shall or might be made or become liable by reason of the granting of this franchise, or any negligence or carelessness on the part of said Corporation, or because of any act or omission of the Corporation in the construction and operation of its system of mains and pipes.

C. Provide natural gas service under the terms and conditions herein specified and pursuant to the rules and regulations of the Arkansas Public Service Commission, herein referred to as "APSC," governing utility service, as well as Corporation's rules and regulations governing natural gas service on file with the APSC and is interpreted and enforced by Corporation, and corporation, upon written request by City, shall supply City with one copy of corporation's rules and regulations. All utility services shall conform with APSC rules and regulations, as well as any other applicable rules and regulations, federal or state laws, including but not limited to the Arkansas Plumbing Code. (Ord. No. 80-11, Sec. 4.)

4.08.05 Rates The rates to be charged by Corporation for natural gas service hereunder shall be those which are now lawfully approved or prescribed, and as said rates may, from time to time, be lawfully approved or prescribed by ASPC or any successor regulatory authority having jurisdiction thereof. The Corporation shall have the right to make and enforce as a part of the conditions under which it will supply natural gas for heat, power, light, fuel or other purposes as herein provided, all needful rules and regulations not inconsistent with law and the provisions of this franchise. but one copy thereof shall be supplied to the City. (Ord. No. 80-11, Sec. 5.)

4.08.06 Corporation shall furnish proper information The Corporation shall furnish promptly to the proper authorities any and all information which may be requested regarding size, location or depths of any of the pipes, mains, conduits or service pipes, in any form whatsoever, and any other information in regard to its occupation of public ways which City may demand. (Ord. No. 80-11, Sec. 6.)

4.08.07 Franchise tax During the life of this franchise, the Corporation shall pay to the City each year a franchise tax in an amount equal to: Four percent (4%) of the Corporation's gross revenues for all residential, commercial and industrial revenues as paid to the Corporation by residential, commercial and industrial customers located within the corporate limits of the City. Payments shall be made by the Corporation to the City in quarterly installments and Corporation shall have thirty (30) days after the end of each calendar quarter within which to make such payment. Residential, commercial and industrial gas revenues are those revenues so classified pursuant to Corporation's uniform classification standards. City has the right to examine and verify, from the records of the Corporation, any data relating to the gross revenues of Corporation from customers. If a controversy arises between the Corporation and City as to the amount of gross revenues received by Corporation in the City upon which said tax is due, such controversy shall be referred to the APSC, or such successor regulatory agency which may have jurisdiction over the Corporation, for final determination, and the decision of said Commission shall be binding upon both parties hereto.

It is expressly agreed and understood by the City and Corporation that the aforesaid payment shall constitute and be considered as complete payment and discharge by the Corporation, its successors and assigns, of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees, improvement districts, special millage taxes, and the general ad valorem taxes) which are now or might in the future by imposed by the City under authority conferred upon the City by law. In the event such other tax or taxes are imposed by City, the obligation of the Corporation set forth in Section 7 hereof, to pay the franchise taxes annually shall immediately terminate. (Ord. No. 80-11, Sec. 7.)

4.08.08 Renegotiation of contract At the prior request of either party in writing given to the other party at least ten (10) days prior to December 1 of any calendar year hereafter, this franchise, in whole or in part, shall be renegotiated during the month of December of that year, any changes made to be and become effective on the first day of the following January. If no such request is made, then this franchise shall be in full force and effect until same is so renegotiated. (Ord. No. 80-11, Sec. 8.)

CHAPTER 4.12

TELEPHONE FRANCHISE

Sections:

4.12.01 Franchise granted to Yelcot Telephone Company, Inc. The Yelcot Telephone Company, Inc., it successors and assigns, all hereinafter referred to as "Corporation," be, and it hereby is, granted the exclusive right and/or franchise to furnish telephone service to the citizens and residents of the city of Cotter, Arkansas, hereinafter referred to as "City," together with the right to erect, construct, maintain and lay cables, wires, poles and other equipment, as may be necessary in the furnishing of such telephone service, along the streets, avenues, highways, alleys, lanes, bridges and public grounds, and places of said city, present utility poles to be used with permission of owners; and all such right and use to be and continue on the terms and conditions herein stated. (Ord. No. 82-3, Sec. 1.)

4.12.02 Placement of poles and wires Said poles, wires and cables shall be placed and maintained so as not to interfere with travel or use of such streets, avenues, highways, alleys, lanes, bridges and public grounds and places of the City or with the flow of water in any sewer, drain or gutter, or with any gas, or water pipe, or sewer lines. (Ord. No. 82-3, Sec. 2.)

4.12.03 Privileges of franchises The rights, grants, privileges and/or franchise herein granted to the Corporation are subject to the following terms and conditions:

A. All reasonable regulations and ordinances as the City may authorize or deem proper from time to time to adopt, not destructive to the rights herein granted;

B. The Corporation shall save the City free and harmless from any and all damages, of whatsoever kind and nature, arising from, or by reason of, the rights herein granted;

C. The Corporation shall pay to the City the sum of 0.00% of the applicable local service rates defined by the Arkansas Public Service Commission, which shall be paid monthly by the Corporation on the 15th by the second month following the month for which the rates are billed the customer;

D. The rate of payment set forth in paragraph "C" of this section shall be subject to renegotiation each year. (Ord. No. 82-3, Sec. 3.)

4.12.04 Franchise end The right, grant and/or franchise shall cease and terminate on December 31, 2002. Anything to the contrary contained herein notwithstanding, this right, grant and/or franchise may be terminated at any time by the City or by the corporation by the giving to the other of sixty (60) days prior written notice thereof, by registered or certified mail, but any such cancellation must be for good and sufficient cause and undertaken only as a last resort. (Ord. No. 82-3, Sec. 4.)

CHAPTER 4.16

CABLE TV

Sections:

4.16.01 Franchise granted to Teleservice Corporation of America The Teleservice Corporation of America its successors and assigns, be and it is hereby granted an exclusive franchise to operate a continuous television cable service within the corporate limits of the city of Cotter, subject to the conditions and limitations hereinafter set out. (Ord. No. 144, Sec. 1.)

4.16.02 Construction The Teleservice Corporation of America, hereinafter referred to as "Company" shall construct, maintain, and operate a single amplifying station for receiving, amplifying and distributing, direct to the inhabitants of the city of Cotter, Arkansas, a composite signal of standard broadcasting stations. (Ord. No. 144, Sec. 2.)

4.16.03 Providing reception Said Company shall have the right, and shall be charged with the duty of providing the general public, within the corporate city of Cotter, with an amplified composite signal originally transmitted by standard broadcast studios which are licensed to transmit within the continental United States or its possession; however, the Company shall not be liable for freak or unusual reception wherein due to peculiar atmospheric conditions, a signal originating outside the United States may be received on a standard television channel which is licensed and operating in the United States. (Ord. No. 144, Sec. 3.)

4.16.04 Equipment update The Company shall, at all times, endeavor to receive, amplify, and distribute through its facilities a composite video signal containing as many standard television channels and/or networks as may reasonably be expected under the limitations of distance, natural barriers, and available equipment; provided further, that the company shall endeavor to keep its facilities reasonably modern by replacing equipment which becomes obsolete, and by altering the facilities to provide signals from new channels which may provide a reasonably receivable signal hereafter. (Ord. No. 144, Sec. 4.)

4.16.05 Safety equipment Said Company shall construct, maintain, and operate all of its equipment in a proper workmanlike manner so as not to endanger the life, health or property of any of the inhabitants of the City; provided further that the company shall install and maintain such safety equipment as a reasonably prudent person would be expected to do in the premises. (Ord. No. 144, Sec. 5.)

4.16.06 Maintaining poles and cables The Company shall construct and maintain all of its poles, transmission lines or cables and other equipment in such a manner and place as not to interfere with the normal operation, maintenance and use of the streets and alleys of the city of Cotter; provided, further, that the Company will, at its expense, move any of its poles, lines, cables or other equipment when necessary to effect changes in the location, width, construction or use of any of said streets, or alleys, when requested to do so by the City Council. (Ord. No. 144, Sec. 6.)

4.16.07 Continuous service Service rendered by the Company shall be continuous except that said Company shall not be liable for service failure due to acts of God, civil disturbances or failure of the original broadcaster. (Ord. No. 144, Sec. 7.)

4.16.08 Rates Charges to subscribers for television and radio signals shall be fair and reasonable and no higher than necessary to meet all lawful costs of operation (assuming efficient and economical management) including a fair return on the investment and shall not be higher than the rate charged subscribers outside the city of Mountain Home which is presently Nine Dollars and Ninety-Five Cents ($9.95) per month. (Ord. No. 84-2, Sec. 2.)

4.16.09 Credit on bills When a customer's service is reported or found to be interrupted, it will be restored as promptly as possible, but in the event it remains out of order through no fault of the customer, in excess of twenty-four (24) consecutive hours, after knowledge by the Company of the interruption, the Company will refund the pro-rate part of that month's changes for the period of days during which the service was not provided. This refund may be accomplished by a credit on a subsequent bill for cable service. If the trouble is fault of customer's property, no adjustment will be given and there could be a possible service charge. (Ord. No. 84-2, Sec. 3.)

4.16.10 Extension of franchise Unless construction of the above proposed facility has begun within a period of 30 days after the passage of the ordinance and/or unless operation of the system has begun within six (6) months from said date, the City may revoke and cancel this franchise; provided that nothing in this section shall prevent the City from making extensions of time by proper resolution. (Ord. No. 144, Sec. 9.)

4.16.11 Franchise tax The consideration to be paid the city of Cotter for operation under this franchise shall be three percent (3%) of the gross receipts, except charges for installation. Said amount shall be paid into the City Treasury within thirty (30) days from the date of such receipt. (Ord. No. 144, Sec. 10.)

4.16.12 Basic service rates and charges

A. The City will follow the FCC rate regulations in its regulation of the basic service rates and charges of the Company and any other cable television system operating in the City, notwithstanding any different or inconsistent provision in the franchise.

B. In connection with such regulation, the City will ensure a reasonable opportunity for consideration of the views of interested parties.

C. The Mayor or his or her designee, is authorized to execute on behalf of the City and file with the FCC such certification forms or other instruments as are now or may hereafter be required by the FCC rate regulations in order to enable the City to regulate basic service rates and charges.

D. Consultant and costs

1. The City may utilize a rate consultant to advise it on proposed rate changes and to assist it in the procedures and the standards for review adopted by the FCC. A rate consultant may be any person who has sufficient background and experience, in the sole opinion of the City, to properly evaluate and analyze rates and charges.

2. All costs for the review of initial rates or rate changes shall be paid by the cable operator upon demand of the City, unless contrary to applicable rules of the FCC governing these procedures or unless otherwise specifically preempted by state or federal law. The costs shall include, but not be limited to, rate consultants, attorney's fees and the reasonable value of services (as determined by the City) rendered by the City or any city employees, agents or representatives of the city. (Ord. No. 93-11, Secs. 1-4.)

4.16.13 FCC forms

A. The Mayor is hereby authorized and directed to file two completed FCC forms 328 by registered mail (not certified mail) with return receipt requested to:

Federal Communications Commission
Cable Franchising Authority Certification
P.O. Box 18539
Washington DC 20036

B. The Mayor is further directed to mail a completed copy of this form 328 to our local cable operator at the address listed on the form by certified mail, return receipt requested, on the same day copies are mailed to the FCC. (Ord. No. 93-08, Secs. 1-2.)

4.16.14 Length of franchise The ordinance granting a franchise be extended an additional fifteen (15) years commencing of the 7^{th} day of November, 1993 and ending on the 7^{th} day of November, 2008. (Ord. No. 91-2, Sec. 2.)

4.16.15 Satellite television signal dishes

A. No dish shall be installed unless a permit shall have been first obtained from the city. Application for permit shall be in writing, setting forth the lots and their owner, the maker, size, method in installation and exact location of the dish on the lots. The City Inspector, or, if he is not available, such other person as the Mayor may delegate, shall inspect the site and if there is no infringement of the restrictions set forth in this ordinance, the city shall issue a written permit for such installation. An inspection fee shall be charged of Seven Dollars and Fifty Cents ($7.50) which may be changed by resolution of the City Council from time to time to reflect changing conditions.

B. No dish shall be installed which will interfere with the operation, maintenance and repair of any water, sewer or utility lines; which will interfere with firefighting and firefighting equipment in the case of fire; or which will interfere with the quiet and peaceful enjoyment by others of their lands in the near vicinity of such installation. Each dish shall be installed upon a sufficiently substantial base in such manner that it will not topple, be blown down or cause damage to adjoining properties and shall conform with all zoning regulations of the city for the zone in which it is to be installed.

C. On lots abutting on a street or streets or similar passageways (excluding alleys), no dish shall be installed within an area extending across the full depth or width, as the case may be, of the lots to be served by the dish, the depth of such area or areas to be the least distance from the lot line or lines to the nearest point of the main building situated thereon.

D. An exception, called a variance, may be made in the strict application of the provisions of this ordinance as to the placement of a dish in case of a business dealing with the sale of such commodity to the public or in case strict compliance would make it impossible for a dish to properly perform the function for which it is made.

E. A fine of Fifty Dollars ($50.00) per day shall be imposed for the installation of any dish in violation of this ordinance and each and every day the violation continues shall be a separate offense. (Ord. No. 84-3, Secs. 1-5.)

CHAPTER 4.20

PRIVATE CLUBS

Sections:

4.20.01 Permit fee From and after the enactment and passage of this ordinance all private clubs selling intoxicating beverages created and existing by virtue of A.C.A. 3-9-221, situated within the city limits of the city of Cotter, Arkansas, shall pay Two Hundred Fifty Dollars ($250.00) to the City Treasurer which sum is one-half of the amount of the annual permit fee of Five Hundred Dollars ($500.00) presently charged by the state of Arkansas as provided by said statute; or, if said statute is amended from time to time to change the amount of the annual fee charged by the state of Arkansas, then the annual fee payable to the city shall be one-half thereof. (Ord. No. 76-1, Sec. 1.)

4.20.02 Percentage of gross proceeds From and after the enactment and passage of this ordinance all private clubs within the city of Cotter, Arkansas, shall pay to the City Treasurer the sum of one-half, being Five percent (5%) of the gross proceeds or gross receipts tax as provided by A.C.A. 3-9-221, the present charge by the state being ten percent (10%). If said statute is amended from time to time raising or lowering the gross receipts and gross proceeds tax from its current ten percent (10%) rate, the rate payable to the city as fixed by this ordinance shall be one-half of that charged by the state. (Ord. No. 76-1, Sec. 2.)

4.20.03 Collection of taxes The City Treasurer is hereby authorized and directed to promulgate reasonable rules and regulations for the enforcement and collection of the taxes levied herein including the requirement that records be maintained showing charges for mixed drinks or for the cooling and serving of beer and wine. (Ord. No. 76-1, Sec. 3.)

4.20.04 Fine If any club shall fail to remit any fee or taxes levied by this ordinance then the City Treasurer shall be authorized to revoke said permit. The failure to remit either the fee or the taxes, or both fee and taxes, provided herein shall be deemed a misdemeanor punishable by a fine of not less than One Hundred Fifty Dollars ($150.00) and not more than Five Hundred Dollars ($500.00) and each separate day said annual permit fee or taxes or both remain unpaid shall be a separate offense. (Ord. No. 76-1, Sec. 4.)

CHAPTER 4.24

OCCUPATIONAL LICENSE

Sections:

4.24.01 License Any person, firm or corporation engaged on the 1st day of July of any year in any trade, business, profession, vocation, occupation, or calling, shall procure from the city of Cotter, an occupation license which shall be for a period of one (1) year beginning on the 1st day of July and expiring on the last day of June the following year. Any such license which is not procured by the 1st day of August shall be subject to a penalty of 20% in addition to original cost.

Any person, firm or corporation that fails to procure a license by the 1st day of September of the licensing year, will be fined not less than Fifteen Dollars ($15.00) and not more than Fifty Dollars ($50.00) and each and every day of such violation shall be considered a separate offense. (Ord. No. 2011-4, Sec. 1.)

4.24.02 Application On the date, or within one (1) month thereafter, on which any person, firm or corporation commences to engage, in any trade, business, profession, vocation, occupation, or calling within the city of Cotter, an occupation license must be applied for. This license shall expire on June 30 of the following year. The said license shall be subject to a reduction of twenty-five percent (25%) for each three (3) months period preceding the next July due date. If the said license is not procured in thirty (30) days from commencement of work, a fine of not less than Fifteen Dollars ($15.00) and not more than Fifty Dollars ($50.00) will be levied and each day of such violation will be considered a separate violation. (Ord. No. 2011-4, Sec. 2.)

4.24.03 Employees The occupational license fees shall be based on the number of employees working for a person, firm or corporation. Following is a list of occupation license fee costs:

1 – 2 employees =	$25.00	3 -5 employees =	$50.00
6 – 10 employees =	$75.00	11 – 15 employees =	$100.00
16 – 20 employees =	$125.00	21 + employees =	$150.00

(Ord. No. 2011-4, Sec. 3.)

4.24.04 Multiple businesses Any person, firm or corporation engaged in more than one trade, business, profession, vocation, occupation, or calling shall pay the license fee for the one with the highest number of employees. (Ord. No. 2011-4, Sec. 4.)

4.24.05 License from another city Any person, firm or corporation without a home base in the city of Cotter who wishes to do business in the city of Cotter may do so if they have an occupational license from any municipality in the state of Arkansas. If they do not, they must purchase a license from the city of Cotter before beginning work. (Ord. No. 2011-4, Sec. 5.)

CHAPTER 4.28

ALCOHOLIC BEVERAGES

Sections:

4.28.01 Applicability

A. It is hereby declared that the business of manufacturing, transporting, storing, handling, receiving, distributing, selling, serving, or dispensing, either at wholesale or retail, any controlled beverage, within the City of Cotter, is a privilege, and for the exercise of such privilege there are hereby imposed the regulations, requirements, restrictions, fees, and taxes as set forth in this chapter. General provisions shall apply to all licensees in addition to any specific provisions under individual headings for each type of permit.

B. Said application shall contain a sworn statement of the name of the business sought to be licensed, the names and addresses of all of the persons owning or holding any interest in said business, and the proposed location of said business, the owner or owners of the building or premises in which said store is to be located, and said applicant's state license shall accompany such application, then the City Recorder of the city in which the proposed business is to be licensed shall issue such license upon the payment of the license fee provided hereinafter. (Ord. No. 2022-06)

4.28.02 Location It shall be unlawful for any person to sell or engage in the wholesale or retail liquor business at any location other than that zoned MU, C-1, C-2 or industrial. (Ord. No. 2022-06)

4.28.03 Certificate of Occupancy No person shall be granted a license at either wholesale or retail within the city in which said license is sought upon, in or in connection with any premises wherein, there does not exist a certificate of occupancy. At the time of application every person desiring a permit pursuant to this ordinance shall file with the Recorder of the city in which said license is sought a certificate of occupancy for the premises for which the permit is sought. (Ord. No. 2022-06)

4.28.04 Definitions For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words and phrases not specifically defined in this chapter shall have the meanings assigned by Title Three of the Arkansas Code Annotated and/or the Arkansas Alcoholic Beverage Control Division Regulations.

Alcoholic beverages means all intoxicating liquors of any sort, other than beer and wine.

Beer means any fermented liquor made from malt or any similar substance therefore and having alcohol content not in excess of 5% or less than one-half of 0.5% by weight.

City means the City of Cotter, Arkansas.

Controlled beverages mean all beverages of any kind subject to regulation under any alcoholic beverage control law of the State of Arkansas and this chapter.

Hotel means every building or other structure commonly referred to as a hotel, motel, motor lodge, or by similar name, which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers or guests, whether transient, permanent, or residential, in which 10 or more rooms are used for the sleeping accommodations of such guests and having one or more public dining rooms with adequate and sanitary kitchen facilities, and a seating capacity for at least 10 persons, where meals are regularly served to such guests, such sleeping accommodations and dining room being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation.

Light Wine means the fermented juices of grapes, berries, or fruits and any other mixture containing the fermented juices of grapes, berries, or fruits, having an alcoholic content of between one-half of one percent (0.5%) and five percent (5%) alcohol by weight. Section 1.10(A)

Malt Liquor means liquor brewed from the fermented juices of grain. Section 1.10(B) “Hard Cider” means liquor brewed from the fermented juices of fruit and containing more than three percent (3%) and not more than twenty-one percent (21%) of alcohol by weight.

Microbrewery-Restaurant Permit authorizes the operation of microbrewery-restaurants as provided in ACA § 3-5-1204. (Amended 9-16-15)

On-premises consumption means the sale of alcoholic beverages by the drink or in broken or unsealed containers for consumption on the premises where sold.

Permit means any authorization issued by the Alcoholic Beverage Control Division of the State of Arkansas and/or by the city pursuant to any Arkansas Alcoholic Beverage Control Division regulation and/or this Chapter of the Code of Cotter whether described as a permit, license, or otherwise.

Licensee means the person to whom a permit has been issued.

Person means any natural person, partnership, association, corporation, syndicate, or company.

Bed and Breakfast providing overnight accommodations to the public, not exceeding a total of twenty (20) guest rooms on the premises, whether operated by the business owner or not, where the owner or a person representing the owner lives on the premises, and where a breakfast meal is served to the lodging guests and where there is not restaurant on the premises open to the public except for the lodging guests, to serve beer and wine only to registered guests at the establishment.

Private club means a nonprofit corporation organized and existing under the laws of this state, no part of the net revenues of which shall inure directly or indirectly to the benefit of any of its members or any other individual, except for the payment of bona fide expenses of the club's operations, conducted for some common recreational, social, patriotic, political, national, benevolent, athletic, or other nonprofit object or purpose other than the consumption of alcoholic beverages. The nonprofit corporation shall have been in existence for a period of not less than one year before application for a permit. At the time of application for the permit, the nonprofit corporation must have not less than 100 members and, at the time of application, must own or lease, or be the holder of a buy-sell agreement or offer and acceptance, or have an option to lease a building, property, or space therein for the reasonable comfort and accommodation of its members and their families and their families and guests, and restrict the use of club facilities to such persons.

Restaurant means any public place or private place kept, used, maintained, advertised and held out to the public or to a private or restricted membership as a place where food is served, such place being provided with adequate and sanitary kitchen and dining equipment and a seating capacity of at least 20 people and having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests or members.

Retailer means any person who holds a permit under any alcoholic beverage control law of the State of Arkansas to sell at retail-controlled beverages to consumers only.

Spirituous means liquor distilled from the fermented juices of grains, fruits, or vegetables containing more than 21% alcohol by weight, or any other liquids containing more than 21% alcohol by weight.

State means the State of Arkansas

Vinous means the fermented juices of fruits containing more than 5% and not more than 21% alcohol by weight.

Wholesaler and distributor means any person who holds a permit under any alcoholic beverage control law of the State of Arkansas to purchase controlled beverages from a manufacturer or importer and to sell such controlled beverages to retailers only.

Wine means the fermented juices of fruits, berries, or grapes having an alcoholic content of more than 5% alcohol by weight. (Ord. No. 2022-06)

4.28.05 Alcohol License Required It shall be unlawful for any person to engage in the business of manufacturing, transporting, storing, handling, receiving, distributing, selling, or dispensing, either at wholesale or retail, any controlled beverage, within the city without an alcohol license issued by the city, or with an expired license.

In addition, to City of Cotter Alcohol License, a City of Cotter Occupational Business Licensed shall be required per Ordinance 2011-4. (Ord. No. 2022-06)

4.28.06 Application for Alcohol License

A. Application for a license required by this chapter shall be in writing on a form prescribed by the city and shall be accompanied by the required fee and a copy of the applicant's state permit. No city license will be issued until applicant has received a state permit.

B. It shall be unlawful for any person to make any false statement or representation in any application required by this chapter or to give any false answer to any question contained therein. Violations may result in suspension, revocation, or denial of license and prosecution of a city penalty.

C. Licenses required by this chapter shall be issued in such a manner that they will run for such length of time as the state permit. Annual permit renewal fees shall be due and payable on June 30th of each year for the succeeding year beginning July 1st. Failure to renew annual license by July 1st shall be subject to a 20% penalty in addition to original cost. Any person, firm or corporation that fails to procure a city license by 1st day of September of the licensing year, will be fined not less than fifty dollars ($50.00) and each and everyday of such violation shall be considered a separate offense.

D. The city will not issue or renew any license pursuant to this chapter until all outstanding state and city hotel, motel, and restaurant taxes and/or supplemental beverage taxes, if applicable, are paid.

E. All licenses issued by the city pursuant to this chapter shall be prominently displayed on the permitted premises by the licensee in the same manner as required by the state for state permits.

F. When any state permit is revoked by the state or required to be returned to the state for any reason, the city license shall be returned to the city. The city will restore the license upon proof that the state permit has been restored to the applicant, provided that no reclaimed license will be restored to an applicant until all outstanding state and city hotel, motel, and restaurant taxes and/or supplemental beverages taxes, if applicable, are paid.

G. All fees, taxes, and penalties received by the city pursuant to this chapter shall be deposited to the credit of general fund revenues.

H. Licenses shall not be transferable or assignable except as provided by A.C.A. ‘3-4-103A. The city shall have the right to inspect and examine the records of any licensee subject to any tax or license fee based on gross sales or receipts. (Ord. No. 2022-06)

4.28.07 Prohibited Activities/Warning Notice

A. Any person to whom a controlled beverage permit has been issued shall comply with all laws and regulations of the State of Arkansas, the Alcoholic Beverage Control Division of the State of Arkansas, and the City of Cotter regarding the control and regulation of controlled beverages, including but not limited to the following:

(1) Purchase by or for minors, sale to minors, or handling of minors prohibited.

(a) It shall be unlawful for any person under the age of 21 years to have in his or her possession, to purchase or attempt to purchase, or otherwise obtain any controlled beverages.

(b) It shall be unlawful for any person to, knowingly or unknowingly, purchase on behalf of, furnish to give away to, or otherwise dispose of to any person under the age of 21 years any controlled beverages or to the use of wine in any religious ceremony or rite in any established church or religion.

(c) It shall be unlawful for any person engaged in the business of manufacturing, distributing, or selling, at wholesale or retail, any controlled beverages to sell, offer for sale, or give away, under any conditions, any such controlled beverages to any person under the age of 21 years. The burden of determining the age of any person shall be upon the seller.

(d) It shall be unlawful for any wholesaler, retailer, or transporter of controlled beverages to allow any employee or other person under the age of 21 years of age to have anything whatsoever to do with the sale, transporting or handling of controlled beverages.

(2) A warning notice regarding the sale to, possession or purchase by, or furnishing to minors of controlled beverages shall be posted in a conspicuous place in public view in each place of business where controlled beverages are sold, served, or dispensed, including all drive up windows. The warning notices shall be of the size, have the content, and be posted in the manner as prescribed by the Arkansas Alcoholic Beverage Control Division.

(3) If any person engaged in the sale of controlled beverages in the city shall conduct his place of business in a manner as to constitute a nuisance, the City Council may revoke the license of such person granted under the terms of this Ordinance.

(4) Any person violating any provision of this ordinance shall be subject to the general penalties as set out in the State Code and/or the City of Cotter Code, as well as the suspension or revocation of license. (Ord. No. 2022-06)

<u>4.28.08 Penalties/Suspension/Revocation</u>

(1) Furnishing To or Consumption by Minors:

(A) Any person convicted of knowingly or unknowingly selling, serving, giving, procuring, or otherwise furnishing any controlled beverage to any person under 21 years of age shall be deemed guilty of a misdemeanor and shall be fined no more than $1,000.00.

(B) Any person under the age of 21 years who has in his or her possession, purchases or attempts to purchase, or otherwise obtain any controlled beverage shall, upon conviction, be deemed guilty of a misdemeanor and shall be subject to a fine of no more than $1,000.00.

(2) Operating Without a Current City License:

(A) Beer and light wine. Any person who sells, serves, barters, exchanges, or gives away beer or light wine without having a valid city license as provided by this chapter shall, upon conviction, be deemed guilty of a misdemeanor and shall be fined not more than $1,000.00. Each day of such operation without a valid city license shall constitute a separate and distinct offense.

(B) On-premises consumption, including private clubs. Any person who sells, serves, barters, exchanges, or gives away controlled beverages, for on-premises consumption without having a valid city license as provided by this chapter shall, upon conviction, be deemed guilty of a misdemeanor and shall be fined no more than $1,000.00. Each day of such operation without a valid city license shall constitute a separate and distinct offense.

(C) General. Any person, except as provided in (A) and (B) above, who sells, serves, barters, exchanges, or gives away controlled beverages, without having a valid city license as provided in this chapter shall, upon conviction, be deemed guilty of a misdemeanor and shall be fined no more than $1,000.00. Each day of such operation without a valid city license shall constitute a separate and distinct offense.

(3) General Penalty: Except as set forth above, any person violating any provision of this code shall be subject to the general penalties as set out in of the Code of Cotter. The City of Cotter may suspend, for a period not to exceed six months, or revoke the license of any licensee violating this chapter after due notice to the licensee and an opportunity for the licensee to be heard. When any license is revoked, no new license shall be issued to the same person within one year of such revocation. Any person aggrieved by the City of Cotter may appeal to the Baxter County Circuit Court by filing a Petition within 30 days of any final ruling of the City of Cotter. (Ord. No. 2022-06)

4.28.09 Types of Permits-Fees-Specific Provisions-Hours of Operation

Section 1. Wholesale:

(A) Wholesale liquor permit. Authorizes the purchase from licensed manufacturers or importers of spirituous and vinous beverages or malt liquor containing more than five percent alcohol by weight, and the sale of such beverages to persons holding a valid liquor off-premises permit or a hotel, motel, or restaurant on-premises consumption permit. There is hereby levied an annual license fee of $150.00 for each and every establishment engaged in storing, transporting and/or selling at wholesale any spirituous or vinous liquors within the city.

(B) Wholesale beer and wine license. Authorizes the purchase of beer, wine or malt liquor from a licensed manufacturer or importer and the sale of such beverages to retailers holding a valid license to sell beer, wine, or malt liquor for consumption on or off the premises.

(1) License fee. There is hereby levied an annual license fee of $150.00 each or $300.00 for both beer and wine for each and every wholesale dealer, broker or distributor of beer and wine.

(2) All wholesale dealers and distributors selling beer and wine to retail dealers within the city shall provide to the city’s accounting division on, or before, June 30th of each year a report of said distributor’s total sales of beer and wine for the previous calendar year to each retailer within the city. No wholesale beer and wine license will be renewed until such report has been received by the city.

Section 2. Retail:

(A) Retail Package Business liquor off-premises license. Authorizes the purchase of spirituous and vinous beverages from any person holding a valid wholesale liquor license and the sale of such beverages at retail to consumers for consumption off the premises; any holder of a liquor off-premises license may also purchase malt liquors containing more than five percent alcohol by weight from either persons holding a wholesale beer license or a wholesale liquor license, and sell such beverages to consumers for consumption off the premises described in the license. It shall be unlawful for any person to accept retail orders for any spirituous, vinous, or malt liquors for delivery outside of the premises of the store operated by such person. There is hereby levied an annual license fee of $425.00 for each and every retail liquor dealer engaged in the business of selling or dispensing, at retail any vinous, spirituous, or malt liquors for off-premises consumption.

(B) **Retail Package Business Beer and Wine off-premises license.** Authorizes the purchase of beer, wine, or malt from licensed wholesalers for consumption off the premises described in the license. For the privilege of selling beer and wine, at retail, for off-premises consumption there is hereby levied an annual license of $175.00.

(C) **Retail Beer and Wine on-premises license.** Authorizes the purchase of beer, wine, or malt liquor from a wholesaler holding a valid license and the sale of such controlled beverages for consumption on the premises described in the license. There is hereby levied an annual license fee of $175.00.

(D) **Bed and Breakfast** authorizes a corporation, partnership, individual or limited liability corporation, whose primary function is to provide overnight accommodations to the public, not exceeding a total of twenty (20) guest rooms on the premises, whether operated by the business or not, where the owner or a person representing the owner lives on the premises, and where a breakfast meal is served to the lodging guests and where there is no restaurant on the premises open to the public except for the lodging guests, to serve beer and wine only to registered guests at the establishment. $375.00

(E) **Private club license.** Authorizes the purchase of any controlled beverages from persons holding an off-premises retail liquor or beer license who have been designated by the director of the State Alcoholic Beverage Control Board as a private club distributor and authorizes the dispensing of such beverages for consumption on the premises of the private club to members and guests only of the private club. Private clubs holding a retail beer on premises license may purchase beer, wine, malt liquor mixed drinks. A Private club license shall only be issued to restaurants as defined above. For the privilege of operating a private club within the city, there is hereby levied an annual license fee of $750.00.

(F) **On-premises consumption – Hotel, motel, or restaurant license.** Authorizes the purchase of any controlled beverages from persons holding a valid wholesale license and the sale of such mixed drink beverages for consumption on the premises of the restaurant described in the license or in-room hospitality units of the hotel or motel described in the license. (Persons holding an on-premises consumption hotel, motel, or restaurant license are not required to have a retail beer or wine license).

For the privilege of selling controlled beverages for on-premises consumption by hotels, motels, or restaurants, there are hereby levied annual license fees in the following applicable amounts:

(a) Hotel or motel having fewer than 100 rooms, $375.00.

(b) Hotel or motel having 100 or more rooms, $750.00.

(c) Restaurants having a seating capacity of less than 100 persons, $375.00.

(d) Restaurants having a seating capacity of 100 or more persons, $750.00.

(e) Any new permit issued for on-premises consumption hotel, motel, or restaurant operations between January 1st and June 30th shall be at one-half the rates shown above.

(G) Off-premises caterer license. Authorizes the purchase of alcoholic beverages from a retailer to transport to a private function which is being catered by the license holder and to serve alcoholic beverages to attendees of the private function in conjunction with catered food. A license fee of $250.00 is levied annually beginning on July 1st.

(H) Restaurant Beer and Wine License. Authorizes a restaurant which has a valid state Restaurant Beer and Wine License to obtain a City of Cotter Restaurant Beer and Wine License for the retail sale and consumption of beer and wine. There is hereby levied an annual license fee of $175.00 beginning July 1st of each year as annual fees for retail beer and wine on-premises.

(I) "Festival" Permit. Authorizes the retail sale of beer or wine at special events, rallies, etc. held in city parks or on city streets sponsored by a not-for-profit entity that holds a state permit upon approval by the City Council.

(1) Permit Fee. There is hereby levied a permit fee of $125 per event for beer and wine sales per vendor.

(2) Dates and Hours. Applications must be made for specific date(s). Sales shall only be permitted between the hours of 11:00 a.m. to 10:00 p.m. No Sunday sales are permitted.

(3) The Event Permittee must provide and pay for security. A security action plan to monitor the event shall be submitted with the city application for review by

the Chief of Police. Sales shall be confined to a secured area designated by the City Council. Permittee must be responsible for clean-up and repairs. Permittee is subject to all requirements imposed by the City of Cotter.

Section 3. Manufacturing:

(A) Craft Beer or Wine manufacturing license. Authorizes the manufacture of beer containing not in excess of five percent alcohol by weight, and the sale of such beer to persons holding a valid license to wholesale or import such beer. For the manufacture and sale of beer, the annual license fee shall be $175.00 for each and every manufacturing plant. (Ord No. 2022-06)

4.28.10 License Fees Generally Acknowledging that the license fees as set by the Arkansas Alcoholic Control Board may be changed from time to time, the license fees to be paid to the City of Cotter, as contained in this Ordinance, may change from time to time, and for all classifications. Municipal License Fee shall not exceed equal to one-half (1/2) of the license fee collected by the Board for the State of Arkansas. (Ord. No. 2022-06)

4.28.11 Sale of Mixed Drinks by Restaurant Restaurants located within the City limits of Cotter, Arkansas, with the approval of the Department of Finance & Administration, Alcohol Beverage Control Division, may sell mixed drinks. (Ord. No. 2022-06)

4.28.12 Hours of Operation Unless otherwise stated herein, or unless otherwise dictated by Arkansas law, it shall be unlawful for any person to sell, offer for sale or give away at wholesale or retail, beer, wine, malt liquor or any alcoholic beverages as defined in Section 4.28.04 of this Ordinance before the hour of 7:00 a.m. or after the hour of 12:00 midnight and on Sundays. (Ord. No. 2022-06)