

## CHAPTER 14

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Sec. 14-1. Adoption of criminal law of South Carolina.

All acts or conduct violating the common law and the statutory law of South Carolina, as set forth in the Code of Laws of South Carolina, 1976 which occur within the territorial jurisdiction of the Town of Sullivan's Island and the punishment of which is within the jurisdiction of the Municipal Court, are hereby declared unlawful.

Sec. 14-2. Assault.

No person shall attempt or offer with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated.

Sec. 14-3. Assaulting, resisting or interfering with public official or police officer.

No person shall assault, resist, hinder, oppose, molest or interfere with any officer or employee of the Town, of any department or board of the Town or of any officer or employee of the Police Department in the discharge of official duties.

Sec. 14-4. Beer, wine, alcoholic liquors; prohibition of drinking on streets.

It shall be unlawful for any person to drink beer, wine or alcoholic liquors on the streets and sidewalks within the town of Sullivan's Island. (8-18-75, S1)

Sec. 14-5. Beer, wine, alcoholic liquors in open containers on streets prohibited.

It shall be unlawful for any person to have open containers of beer, wine, or alcoholic liquors on the streets and sidewalks within the Town of Sullivan's Island. (8-18-75, S2)

Sec. 14-6. Curfew for certain minors.

It shall be unlawful for a minor under the age of seventeen (17) years to remain, to stay unnecessarily upon or to loiter on the streets, beaches or parks of the Town between 11:00 o'clock P.M. and the following 5:00 o'clock A.M., unless he is accompanied by a parent or other responsible person; provided that this section shall not be held to restrict minors from using the streets and public places during said hours while actually in the process of going to or coming from places of business or amusement otherwise. (8-21-72, S1)

Sec. 14-7. Removing or damaging monuments and signs.

No person shall willfully remove, destroy, mutilate, damage or deface in any way or to any extent, any monument or sign in, on or upon any public park, street or other public or private property of the Town.

Sec. 14-8. Disorderly conduct prohibited.

A. A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder, nuisance, or if his conduct is likely to cause public danger, alarm, disorder or nuisance, he willfully does any of the following acts in a public place or within public view: (8-17-10)

1. Commits an act in a violent and tumultuous manner toward another whereby that other is placed in danger of his life, limb or health;
2. Commits an act in violent and tumultuous manner toward another whereby the property of any person is placed in danger of being destroyed or damaged;
3. Causes, provokes or engages in any fight, brawl, or riotous conduct so as to endanger the life, health, or property of another;
4. Interferes with another's pursuit of a lawful occupation by acts of violence;
5. Obstructs, either singly or together with other persons, the flow of vehicular or pedestrian traffic and refuses to clear such public way when ordered to do so by police or other lawful authority known to be such;
6. Incites, attempts to incite, or is involved in attempting to incite a riot;
7. Addresses abusive language or threats to any police officer, any other authorized official of the Town who is engaged in the lawful performance of his duties, or any other person when such words have a direct tendency to cause acts of violence. Words merely causing displeasure, annoyance or resentment are not prohibited;
8. Makes or causes to be made any loud, boisterous and unreasonable noise or disturbance to the annoyance of any other persons nearby, or near to any public highway, road, street, lane, alley, park, square, or common, whereby the public peace is broken or disturbed, or the public annoyed.
9. Is in a public place under the influence of an intoxicating liquor or drug in such a condition as to be unable to exercise care for his own safety or the safety of others. (8-17-10)
10. Resists or obstructs the performance of duties by any police officer or any other authorized official of the town, when known to be such an official. (8-17-10)
11. Damages, befouls, or disturbs public property or the property of another so as to create a hazardous, unhealthy, or physically offensive condition. (8-17-10)
12. Makes or causes to be made any loud, boisterous or unreasonable noise or disturbance to annoy other persons nearby, or near to any public highway, road, street, lane, alley, park, square, or common, whereby the public peace is broken or

disturbed or the traveling public annoyed. (8-17-10)

13. Assembles or congregates with another or others for the purpose of or with the intent to engage in gaming. (8-17-10)
  14. Frequents any public place with intent to obtain money from other persons by illegal and fraudulent schemes, tricks, and artifices or devices. (8-17-10)
  15. Assembles with any person for the purpose of engaging in any fraudulent scheme, device or trick to obtain any valuable thing in any place or from any person in the town, or who shall aid or abet therein. (8-17-10)
  16. Is at any place where gaming or the illegal or possession of alcoholic beverages or narcotics or dangerous drugs is practiced, allowed or tolerated. (8-17-10)
  17. Fails to obey a lawful order to disperse by a police officer, when known to be such an official, where one or more persons are committing acts of disorderly conduct in the immediate vicinity, and the public health and safety is imminently threatened. (8-17-10)
  18. Any person who shall use "fighting words or gestures" directed towards any other person who becomes outraged and thus creates turmoil. (8-17-10)
- B. It shall be unlawful for any person to urinate or excrete in a public place or within public view and any person so doing shall be guilty of disorderly conduct. (8-17-10)

C. This section shall not be construed to suppress the right to lawful assembly, picketing, public speaking, or other lawful means of expressing public opinion not in contravention of other laws. (8-17-10)

D. As used in this section: (8-17-10)

1. "Riot" shall mean a public disturbance involving (1) an act or acts of violence by one or more persons, part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of any other person (2) a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, when the performance of the threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual.
2. "Incite a riot" shall mean, but is not limited to, urging or instigating other persons

to riot, but shall not be deemed to mean the mere oral or written (1) advocacy of ideas or (2) expression of belief, not involving advocacy of any act or acts of violence or assertion of the rightness of, or the right to commit, any such act or acts.

Sec. 14-9. Firearms - Discharging in Town.<sup>1</sup>

It shall be unlawful for any person to fire a gun or pistol or other firearm within the Town, unless the same be on occasion of some military parade or celebration, and then only by order of some person having command. (8-5-36, S2)

Sec. 14-10. Gambling - Generally.<sup>2</sup>

It shall be unlawful for any person to participate or engage in any device of gaming whatever in any building, street, park, lot or public way within the Town. (3-18-07, S1)

Sec. 14-11. Same - Maintaining, etc., gambling house, etc.

No person shall open, keep or maintain any gaming house in any building or structure within the Town, or permit any description of gaming or playing any game of chance or skill for money, goods, chattels, or other things whatever. (3-18-07, S1)

Sec. 14-12. Same - Betting horse races, games, etc.

It shall be unlawful to bet in or sell a pool within the Town upon any horse races, boat races, foot races, baseball or other games. (3-18-07, S1)

Sec. 14-13. Loitering; police order to disperse; penalty.

A. No person shall loiter, loaf, wander, stand or remain idle either alone and/or consort with others in a public place in such manner so as to:

1. Obstruct any public street, public highway or any other public place or building by hindering or impeding or tend to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.
2. Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street,

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<sup>1</sup> For state law as to discharging firearms on or near street or highway, see S.C. Code 1976 S23-13-70.

As to carrying weapons, etc., on person, see S14-22 of this Code.

<sup>2</sup> For state law as to gambling and lotteries generally, see S. C. Code 1976, S16-19-10 to 16-19-200.

public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress, and regress, therein, thereon, and thereto.

B. When any person causes or commits any of the conditions enumerated in subsection A herein, a police officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of this section.

Sec. 14-14. Mosquitoes - Permitting breeding, etc., in cisterns, etc.<sup>3</sup>

It shall be unlawful for any lot owner or tenant thereof to have and keep within the Town any cistern, tank or other receptacle for holding rain water, unless the same be covered or screened sufficiently to prevent mosquitoes from entering or breeding therein or escaping therefrom. (3-14-10, S1)

1. Section 14-15. Noises disturbing peace. is hereby amended to read as follows:

Section 14-15. Noise.

A. It shall be unlawful for any person to create, assist in creating, permit, continue, or permit the continuance of any unreasonably loud or disturbing noise in the municipality except as expressly allowed pursuant to subsection E. hereof. The following are declared to be loud or disturbing noises in violation of this section, but such acts shall not be deemed to be exclusive.

(1) Except as required by law, no person shall blow or cause to be blown within the municipality any steam whistle, electric horn, or other signaling or warning device, except as alarm signals in case of fire or collision or other imminent danger.

(2) It shall be unlawful to keep, stable, harbor or maintain any animal or bird which disturbs the comfort or repose of any persons in the vicinity by making continually or frequently loud noise.

(3) It shall be unlawful to use, maintain or operate loudspeakers, sound trucks, amplifiers or other mechanical or electrical devices for increasing the volume of sound, upon the street, sidewalks, parks or other public places of the Town, except as permitted under subparagraph E. hereof.

(4) It shall be unlawful for any person to make any noise on a public street or in such proximity thereto as to be distinctly and loudly audible on such street by any kind of crying, calling, or shouting or by means of any whistle, rattle, bell, gong, clapper, horn, hammer, drum, musical instrument, or other device for the purpose of attracting attention or of inviting patronage of any persons to any business whatsoever. It

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<sup>3</sup> As to filling and draining of low lots, see Chapter 7 of this Code.

is the express intention of this subparagraph to prohibit hawking, peddling, soliciting or using other loud noises to attract attention to a business and not to prohibit the spill-over noise emanating from a lawfully operating business.

(5) It shall be unlawful to play any radio, hi-fi, stereo system, phonograph, c.d. player, piccolo, television or any musical instrument in such manner or with such unreasonably loud volume as to disturb any person, or to play such instrument in such a manner as to disturb the quiet, comfort or repose of any person in any dwelling or other residence.

(6) It shall be unlawful to use any automobile, motorcycle or other vehicle in such a state of disrepair, or so loaded, or used or repaired in such a manner as to create loud or disturbing noises, particularly grating, grinding, rattling, riveting or other disturbing noises.

(7) It shall be unlawful to discharge into the open air the exhaust from any steam engine, stationary internal combustion engine, motor boat engine, motorcycle or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(8) It shall be unlawful to create any excessive noise on any street adjacent to any school, institution of learning, library, or court, while the same is in session, or adjacent to any church during church services, which interferes with the work or worship at any such place or institution.

B. It shall be unlawful for any person, entity or establishment to play, operate or cause to be played or operated, any radio, amplified musical instrument (including but not limited to brass or drum instruments), or other amplification device or apparatus making or reproducing musical or other sounds after 10:00 p.m. and before 10:00 a.m. Sunday through Thursday and after 11:00 p.m. and before 10:00 a.m. Friday and Saturday in such a manner as to be plainly audible in any street or right-of-way.

C. It shall be unlawful for any person to operate or use any piledrivers, steam shovels, pneumatic hammers, derricks, steam or electric hoists, or other apparatus, the use of which is attended with loud or disturbing noises, between the hours of 7:00 PM and 7:00 AM.

D. It shall be unlawful to use, maintain or operate loudspeakers, sound trucks, amplifiers or other mechanical or electrical devices for increasing the volume of sound, upon the streets, sidewalks, parks or other public places of the town except as provided under Section 14-15 E.; provided that nothing in this section shall apply to the United States of America, the state, the county nor the town, nor to public agencies.

E. Notwithstanding any other provision of this section, on application to, and approval by the Chief of Police, written permits may be granted to broadcast programs of music, speeches, general entertainment, or announcements as a part of and incidental to

community celebrations of national, state, or town occasions, public festivals, or other public interest events, upon the public parks, public right-of-ways or other public land of the town, state or county, provided traffic on the streets is not obstructed by reason thereof. In determining whether or not to issue such a permit, the Chief of Police shall weigh the public interests in the event against the noise and disturbance anticipated to be created by the event and must consider the intensity and duration of the noise and the area that will likely be effected. The language or content emanating from the event shall not be considered.

F. None of the foregoing prohibitions shall apply to or be enforced against:

(1) any vehicle of the Town while engaged in necessary public business;

(2) excavations or repairs of bridges, streets or highways, by or on behalf of the town, county or state during the night, when the public welfare and convenience renders it impossible to perform that work during the day; nor shall the same apply to work performed by public utility companies under like conditions and circumstances, or when there is urgent necessity therefore; and

(3) the reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character.

(8-20-02)

G. Yelling, shouting, etc. It shall be unlawful for any person to yell, shout, hoot, whistle, or sing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, or in any dwelling, or other type of residence, or of any persons in the vicinity. (7-20-10)

2. Section 14-16. Noise; sound producing devices. is hereby amended to read as follows:

Section 14-16. Noise; sound producing devices in retail establishments.

A. It shall be unlawful for any person to create, assist in creating, permit, continue, or permit the continuance of any unreasonably loud or disturbing noises on any lands occupied by a retail establishment.

Retail establishment is defined as a commercial business where food, drinks, merchandise, apparel, drugs, or food products are sold to the general public.

B. It shall be unlawful for any real property where a retail establishment exists to create, assist in creating, permit, continue, or permit the continuance of the blowing of any steam whistles, electric horns, or other signaling or warning device; to operate loud speakers, sound trucks, amplifiers, or other mechanical or electrical devices for increasing the volume of sound; to cause loud noises by way of a whistle, rattle, bell,

gong, clapper, horn, hammer, drum, musical instrument, the playing of any radio, hi-fi, stereo system, phonograph, c.d. player, piccolo, or amplified musical instruments or any brass or drum instrument, or any other amplification device or apparatus making or reproducing musical or other sounds.

C. Provided, however, nothing herein shall prohibit any person or establishment operating a retail business from playing any radio, television, hi-fi, stereo system, phonograph, c.d. player, piccolo, or any musical instruments with or without amplification within an enclosed building while the doors and windows are closed, so long as the sounds generated by such playing cannot be heard by the average person 100 yards from the retail establishment's property.

D. Prohibitions contained in Section 14-16. are in addition to the prohibitions contained in Section 14-15.  
(8-20-02)

Sec. 14-17. Obscene literature - Distributing, printing, selling, etc., prohibited.<sup>4</sup>

Whoever knowingly exhibits, prints, publishes, sells, offers for sale, or distributes any book, pamphlet, picture, printed paper, or other thing containing any obscene picture, figure, or description, as defined by the laws of this state, tending to the corruption of the morals of youth, shall be guilty of a misdemeanor.

As used in this section "obscene" means that to the average person, applying contemporary standards, the predominant appeal of the matter, taken as a whole, is to prurient interest among which is a shameful or morbid interest in nudity, sex or excretion, and which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is to be distributed to minors under sixteen (16) years of age, predominant appeal shall be judged with reference to such class of minors. (3-18-68, S1)

Sec. 14-18. Posting, advertising, signs or writing on public or private property.

No person shall post, placard, attach or in any manner place any poster, bill, placard, sign or other advertising device or stamp, print or mark any writing upon land, buildings, structure or property of any kind within the Town, for any purpose whatsoever, without the consent of the owner of such land, buildings, structure, or other property, or of the public authority in charge of the same.

Sec. 14-19. Scattering or spilling materials on streets.<sup>5</sup>

Any person who shall scatter or spill, or shall permit any car, wagon or truck which he

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<sup>4</sup> For state law as to obscenity see 16-15-150 et seq., Code of Laws of S. C., 1976.

<sup>5</sup> As to putting garbage on street, see S9-5 of this Code.

is driving, or of which he has charge, to scatter or spill material of any kind on any street or road of the Town shall be guilty of a misdemeanor. (9-51, S5)

Sec. 14-20. Soil, etc. - Removing.<sup>6</sup>

It shall be unlawful for any person to take or remove any sands, earth, or soil from the streets, ways or beaches of the Town without the permission of the Committee on Streets and Maintenance of the Town Council. (4-27-06, S1)

Sec. 14-21. Trespassing.

No person shall enter upon any lot or premises in the Town without the consent of the owner or custodian of such lot or premises.

All persons entering upon such lots or premises shall be presumed to have entered without the consent of the owners or custodians of such lots or premises unless the Chief of Police or Assistant Chief shall have been notified by such owners or custodians regarding the rights of such persons to be upon such lots or premises.

No person shall neglect or refuse to depart from the property of another when ordered to do so by the owner, occupant or any other person with authority to order such departure.

Any person violating any provision of this Section shall be deemed trespasser and upon conviction, shall be punished as provided by Section 1-7. (4-27-06, S1,2)

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<sup>6</sup> As to filling and draining low lots, see Chapter 7 of this Code.

Sec. 14-22. Weapons generally - Carrying, etc., on person.<sup>7</sup>

Any person having in his possession a pistol, rifle, shot gun, dirk, slingshot, metal knuckles, razor or other deadly weapon usually used for the infliction of personal injury, either concealed or unconcealed, about his person shall be guilty of a misdemeanor, and upon conviction thereof, shall forfeit to the Town the weapon so possessed, concealed or unconcealed, and be subject to the penalty provided by Section 1-7.

Nothing contained in this section shall be construed to apply to persons possessing or carrying weapons on their own premises, or carrying or transporting unloaded weapons for hunting during the hunting season, designated by law, or to peace officers in actual discharge of their duties as such, or to persons possessing or carrying weapons on military duty, parade or celebration by order of a commanding officer. (8-5-36, S1)

Sec. 14-23. Beach Lighting Ordinance.

A. Definitions.

For the purpose of this ordinance, the following definition shall apply:

1. Artificial Light: any source of light emanating from a man made device external to or outside of a house or structure that may be visible from the beach area designated as a protected area for sea turtle nesting.
2. Beach: area between the dune line or line of stable vegetation, whichever is more landward, and the mean low water line.
3. Existing development: any structure for which a building permit has been issued by the Town of Sullivan's Island prior to the effective date of this Ordinance.
4. Nesting Season: nesting season will be observed from May 15 until October 31.
5. New development: any new construction and remodeling of existing structures when such remodeling includes alteration of exterior lighting.
6. Floodlights: reflector type light fixture which is attached directly to a building and which is unshielded. (7-21-92)
7. Low Profile Luminaries: light fixture set on a base which raises the source of the light no higher than forty-eight (48) inches off the ground, and designed in such a way that light is directed downward from a hooded light source. (7-21-92)

B. Restrictions

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<sup>7</sup> For state law as to carrying concealed weapons, see S. C. Code 1876, S16-23-460. As to discharge of firearms in Town, see S14-9 of this Code.

1. New development: no artificial light shall be allowed to illuminate the beach during nesting season between Station 12 the Breach Inlet Bridge, unless such artificial light satisfies the following provisions:

- a. Floodlights shall be prohibited. Wall mounted light fixtures shall be yellow bug lights or low pressure sodium bulbs fitted with hoods so that no light illuminates the beach.
- b. Pole lighting shall be shielded in such a way that light will be contained within an arc of three (3) to seventy-three (73) degrees on seaward side of the pole. Outdoor lighting shall be held to the minimum necessary for security and convenience.
- c. Low profile luminaries shall be used in parking lots and such lighting shall be positioned so that no light illuminates the beach.
- d. Dune crosswalks shall utilize low profile shielded luminaries.
- e. Light on balconies shall be fitted with hoods so that lights will not illuminate the beach.
- f. tinted or filmed glass shall be used in windows facing the ocean above the first floor of multi-story structures. Shade screens can be substituted for this requirement.

2. Existing development between Station 12 and Station 28 1/2: no artificial light shall be allowed to illuminate the beach during nesting season, unless such artificial light satisfies the following provisions:

- a. Lights illuminating building or associated grounds for decorative or recreational purposes shall be shielded or screened such that they are not visible from the beach, or turned off after 10:00 p.m. during the period of May 15, to October 31, of each year.
- b. Lights illuminating dune crosswalks of any areas oceanward of the dune line shall be turned off after 10:00 p.m. during the period of May 15, to October 31, of each year.
- c. Window treatments in windows facing the ocean above the first floor of multi-story structures are encouraged so that interior lights do not illuminate the beach. The use of black-out draperies or shade screens are preferred. The addition of tint or film to windows or awnings is also encouraged, as is turning off unnecessary lights if the light illuminates the beach.

Existing development must be brought into compliance with this requirement

within one year following the effective date of this Ordinance.

3. Existing development between Station 28 1/2 and Breach Inlet: exterior lights must be equipped with motion detector sensors or changed to yellow bug lights or low pressure sodium lights, as approved by SCCC and SCWMRD. Existing development must be brought into compliance with this requirement within one year following the effective date of this Ordinance. In the event that the beach in this area is nourished or recovers naturally to the extent that successful turtle nesting occurs, this provision shall be amended.

4. Publicly owned lighting: street lights and lighting at parks and other publicly owned beach access areas shall be subject to the following:

- a. Whenever possible, street lights shall be located so that the bulk of their illumination will travel away from the beach. These lights shall be equipped with shades or shields that will prevent backlighting and render them not visible from the beach.
- b. Lights at parks or other public beach access points shall be shielded or shaded or shall not be utilized during the period of May 15, to October 31, of each year.

5. Nothing herein shall prohibit the U. S. Coast Guard from operating the lighthouse.

C. Enforcement

Lighting restrictions shall be enforced during the nesting season for sea turtles as defined:

- A. First Offense: a warning shall be issued for a first offense of this Ordinance.
- B. Second Offense: a second offense and any offense thereafter shall be subject to the penalties prescribed by Sec. 21-57 of Town of Sullivan's Island Ordinances.

(12-20-90, 1-21-92, 7-21-92)

Sec. 14-24. An Ordinance for the protection of trees in the Town of Sullivan's Island, SC.

see Zoning Ordinance.

Sec. 14-25. Franchise Fee for filming, video taping and still photography for commercial purposes.

The Town of Sullivan's Island imposes a permit fee of \$500.00 per day for the filming of all, or parts thereof, of major motion picture, made for television movies, and national and regional commercials. All other types of filming, video taping and still photography shall be subject to a permit fee of \$250.00 per day. All activities must be conducted within guidelines and requirements as set forth by the Town.

Violators of the Town's permit shall be subject to the payment of required fees plus \$500.00 per day, each day being a separate offense. (1-19-93, 9-23-97)

Sec. 14-26. Prescribing regulations for rates charged to Cable Television subscribers for the basic service tier; providing that this ordinance is cumulative; providing a severability clause; providing for publication; and providing an effective date.

1. Definitions

BASIC CABLE RATES means the monthly charges for a subscription to the basic service tier and the associated equipment.

BASIC SERVICE TIER means a separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all must-carry signals, all PEG Channels, and all domestic television signals other than superstations.

BENCHMARK means a per channel rate of charge for cable service and associated equipment which the FCC has determined is reasonable.

CABLE ACT OF 1992 means the Cable Television Consumer Protection and Competition Act of 1992.

CABLE OPERATOR means any person or group of persons:

(A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such a cable system; or

(B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

CHANNEL means a unit of cable service identified and selected by a channel number or similar designation.

COST OF SERVICE SHOWING means a filing in which the cable operator attempts to show that the benchmark rate of the price cap is not sufficient to allow the cable operator to fully recover the costs of providing the basic service tier and to continue to attract

capital.

FCC means the Federal Communications Commission.

INITIAL BASIC CABLE RATES means the rates that the cable operator is charging for the basic service tier, including charges for associated equipment, at the time the Town notified the cable operator of the Town's qualification and intent to regulate basic cable rates.

MUST-CARRY SIGNAL means the signal of any local broadcast station (except superstations) which is required to be carried on the basic service tier.

PEG CHANNEL means the channel capacity designated for public, education, or governmental use, and facilities and equipment for the use of that channel capacity.

PRICE CAP means the ceiling set by the FCC on future increases in basic cable rates regulated by the Town, based on a formula using the GNP fixed weight price index, reflecting general increase in the cost of doing business and changes in overall inflation.

REASONABLE RATE STANDARD means a per channel rate that is at, or below, the benchmark or price cap level.

SUPERSTATION means any non-local broadcast signal secondarily transmitted by satellite.

## 2. Initial review of basic cable rates.

(a) NOTICE. Upon the adoption of this ordinance and the certification of the Town by the FCC, the Town shall immediately notify all cable operator in the Town, by certified mail, return receipt requested, that the Town intends to regulate subscriber rates charged for the basic service tier and associated equipment as authorized by the Cable Act of 1992.

(b) CABLE OPERATOR RESPONSE. Within 30 days of receiving notice from the Town, the cable operator shall file with the Town its current rates for basic service tier and associated equipment and any supporting material concerning the reasonableness of its rates.

(c) EXPEDITED DETERMINATION AND PUBLIC HEARING. (1) If the Town Council is able to expeditiously determine that the cable operator's rates for the basic service tier and associated equipment are within the FCC's reasonable rate standard, as determined by the applicable benchmark, the Town Council shall:

(A) hold a public hearing at which interested persons may express their views;  
and

(B) act to approve the rates within 30 days from the date the cable operator filed its basic cable rates with the Town.

(2) If the Town Council takes no action within 30 days from the date the cable operator filed its basic rates with the Town, the proposed rates will continue in effect.

(d) EXTENDED REVIEW PERIOD. (1) if the Town Council is unable to determine whether the rates in issue are within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the Town Council shall, within 30 days from the date the cable operator filed its basic cable rates with the Town and by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

(A) 90 days if the Town Council needs more time to ensure that a rate is within the FCC's reasonable rate standard; or

(B) 150 days if the cable operator has submitted a cost-of-service showing seeking to justify a rate above the applicable benchmark.

(2) If the Town Council has not made a decision within the 90 or 150 day period, the Town Council shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate and on whose behalf the amounts are paid.

(e) PUBLIC HEARING. During the extended review period and before taking action on the proposed rate, the Town Council shall hold at least one public hearing at which interested persons may express their views and record objections,

(f) OBJECTIONS. An interested person who wishes to make an objection to the proposed initial basic rate may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the Town Clerk with the objector's name and address.

(g) BENCHMARK ANALYSIS. If a cable operator submits its current basic cable rate schedule as being in compliance with the FCC's reasonable rate standard, the Town Council shall review the rates using the benchmark analysis in accordance with the standard form authorized by the FCC. Based on the Town Council's findings, the initial basic cable rates shall be established as follows:

(1) If the current basic cable rates are below the benchmark, those rates shall become the initial basic cable rates and the cable operator's rates will be capped at that level.

(2) If the basic cable rates exceed the benchmark, the rates shall be the greater of the cable operator's per channel rate on September 30, 1992, reduced by 10 percent, or

the applicable benchmark, adjusted for inflation and any change in the number occurring between September 30, 1992 and the initial date of regulation.

(3) If the current basis cable rates exceed the benchmark, but the cable operator's per channel rate was below the benchmark on September 30, 1992, the initial basic cable rate shall be the benchmark, adjusted for inflation.

(h) **COST-OF-SERVICE SHOWINGS.** If a cable operator does not wish to reduce the rates to the permitted level, the cable operator shall have the opportunity to submit a cost-of-service showing in an attempt to justify an initial basic cable rates above the FCC's reasonable rate standard. The Town Council will review a cost-of-service submission pursuant to FCC standards for cost-of-service review. The Town Council may approve initial basic rates above benchmark if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in rates below the benchmark or below the cable operator's September 30, 1992 rates minus 10 percent, will prescribe the cable operator's new rates.

(i) **DECISION. (1) BY FORMAL RESOLUTION.** After completion of its review of the cable operator's proposed rates, the Town Council shall adopt its decision by formal resolution. The decision shall include one of the following:

(A) If the proposal is within the FCC's reasonable rate standard or is justified by a cost-of-service analysis, the Town Council shall approve the initial basic cable rates proposed by the cable operator; or

(B) If the proposal is not within the FCC's reasonable rate standard and the cost-of-service analysis, if any, does not justify the proposed rates, the Town Council shall establish initial basic cable rates that are within the FCC's reasonable rate standard or that are justified by a cost-of-service analysis.

(j) **ROLLBACKS AND REFUNDS.** If the Town Council determines that the initial basic cable rates are submitted exceed the reasonable rate standard or the cable operator's cost-of-service showing justifies lower rates, the Town Council may order the rates reduced in accordance with paragraph (g) or (h) above, as applicable. In addition, the Town Council may order the cable operator to pay subscribers refunds of the excessive portion of the rates with interest (computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments), retroactive to September 1, 1993. The method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the Town Council's decision resolution.

(k) **STATEMENT OF REASONS FOR DECISION AND PUBLIC NOTICE.** If rates proposed by cable operator are disapproved in whole or in part, or if there were objectives made by other parties to the proposed rates, the resolution must state the reasons for the decision and the Town Council must give the public notice of its decision. Public notice will be given by advertisement once in newspaper of general circulation in the Town.

(1) APPEAL. The Town Council's decision concerning rates for the basic service tier or associated equipment, may be appealed to the FCC in accordance with applicable federal regulations.

3. Review or request for increase in basic cable rates.

(a) NOTICE. A cable operator in the Town who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the Town and notify all subscribers at least 30 days before the cable operator desires the increase to take effect. This notice may not be given more often than annually and not until at least one year after the determination of the initial basic cable rates.

(b) EXPELLED DETERMINATION AND PUBLIC HEARING. (1) If the Town Council is able to expeditiously determine that the cable operator's rate increase request for basic cable service is within the FCC's reasonable rate standard, as determined by the applicable price cap, the Town Council shall;

(A) hold a public hearing at which interested persons may express their views; and

(B) act to approve the rate increase within 30 days from the date the cable operator filed its request with the Town.

(2) If the Town Council takes no action within 30 days from the date the cable operator filed its request with the Town, the proposed rates will go into effect.

(c) EXTENDED REVIEW PERIOD. (1) If the Town Council is unable to determine whether the rate increase is within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the Town Council shall, by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination.

(A) 90 days if the Town Council needs more time to ensure that the requested increase is within the FCC's reasonable rate standard as determined by the applicable price cap; and

(B) 10 days if the cable operator has submitted a cost-of-service showing seeking to justify a rate increase above the applicable price cap.

(2) The proposed rate increase is tolled during the extended review period.

(3) If the Town Council has not made a decision within 90 or 150 period, the Town Council shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate increase and on whose behalf the amounts are paid.

(d) **PUBLIC HEARING.** During the extended review period and before taking action on the requested rate increase, the Town Council shall hold at least one public hearing at which interested persons may express their views and record objections.

(e) **OBJECTIONS.** An interested person who wishes to make an objection to the proposed rate increase may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the Town Clerk with the objector's name and address.

(f) **DELAYED DETERMINATION.** If the Town Council is unable to make a final determination concerning a requested rate increase within the extended time period, the cable operator may put the increase into effect, subject to subsequent refund if the Town Council after issues a decision disapproving any portion of the increase.

(g) **PRICE CAP ANALYSIS.** If a cable operator presents its request for a rate increase as being in compliance with the FCC's price cap, the Town Council shall review the Rate using the price cap analysis in accordance with the standard form authorized by the FCC. Based on the Town Council's findings, the basic cable rates shall be established as follows:

(1) If the proposed basic cable rate increase is within the price cap established by the FCC, the proposed rates shall become the new basic cable rates.

(2) If the proposed basic cable rate increase exceeds the price cap established by the FCC, the Town Council shall disapprove the proposed rate increase and order an increase that is in compliance with the price cap.

(h) **COST-OF-SERVICE SHOWINGS.** If a cable operator submits a cost-of-service showing in an attempt to justify a rate increase above the price cap, the Town Council will review the submission pursuant to the FCC standards for cost-of-service review. The Town Council may approve a rate increase above the price cap if the cable operator makes the necessary showing; however, a cost-of-service determination resting in rate below the price cap or below the cable operator's then current rate will prescribe the cable operator's new rate.

(i) **DECISION.** The Town Council's decision concerning the requested rate increase, shall be adopted by formal resolution. If a rate increase proposed by a cable operator is disapproved in whole or in part, or if objections were made by other parties to the proposed rate increase, the resolution must state the reasons for the decision. Objections may be made at the public hearing by a person in writing at anytime before the decision resolution is adopted.

(j) **REFUNDS.** (1) The Town Council may order refunds of subscribers' rate payments with interest if:

(A) the Town Council was unable to make a decision within the extended time period as described in Paragraph (c) above; and

(B) the cable operator implemented the rate increase at the end of the extended review period; and

(C) the Town Council determines that the rate increase as submitted exceeds the applicable price cap or that the cable operator failed to justify the rate increase by a cost-of-service showing, and the Town Council disapproves any portion of the rate increase.

(2) The method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the Town Council's decision resolution.

(k) APPEAL. The Town Council's decision concerning rates for the basic service tier or associated equipment, may be appealed to the FCC in accordance with applicable federal regulations.

#### 4. Cable operator information

(a) Town may require:

(1) In those cases when the cable operator has submitted initial rate standard, the Town Council may require the cable operator to produce information in addition to that submitted, including proprietary information, if needed, to make a rate determination. In these cases, a cable operator may request the information be kept confidential in accordance with this section.

(2) In cases where initial or proposed rates comply with the reasonable rate standard, the Town Council may request additional information only in order to document that the cable operator's rates are in accord with the standard.

(b) REQUEST FOR CONFIDENTIALITY. (1) A cable operator submitting information to the Town Council may request in writing that the information not be made routinely available for public inspection. A copy of the request shall be attached to and cover all of the information and all copies of the information to which it applies.

(2) If feasible, the information to which the request applies shall be physically separate from any information to which the request does not apply. If this is not feasible, the portion of the information to which the request applies shall be identified.

(3) Each request shall contain a statement of the reasons for withholding inspection and a statement of the facts upon which those reasons are based.

(4) Casual requests which do not comply with the requirements of this subsection, shall not be considered.

(c) TOWN COUNCIL ACTION. Requests which comply with the requirements of Subsection (b), will be acted upon by the Town Council. The Town Council will grant the request if the cable operator presents by a preponderance of the evidence, a case for nondisclosure consistent with applicable federal regulations. If the request is granted, the ruling will be placed in a public file in lieu of the information withheld from the public inspection. If the request does not present a case for nondisclosure and the Town Council denies the request, the Town Council shall take one of the following actions:

(1) If the information has been submitted voluntarily without any direction from the Town, the cable operator may request that the Town return the information without considering it. Ordinarily, the town will comply with this request. Only in the unusual instance that the public interest so requires, will the information be made available for public inspection.

(2) If the information was required to be submitted by the Town Council, the information will be made available for public inspection.

(d) APPEAL. If the Town denies the request for confidentially, the cable operator may seek review of that decision from the FCC within five working days of the Town Council's decision, and the release of the information will be stayed pending review.

#### 5. Automatic rate adjustments.

(a) ANNUAL INFLATION ADJUSTMENT. In accordance with FCC regulations, the cable operator may adjust its capped base per channel rate for the basic service tier annually the final GNP-PI index.

(b) OTHER EXTERNAL COSTS. (1) The FCC regulations also allow the Cable operator to increase its rate for the basic service tier automatically to reflect certain external cost factors to the extent that the increase in cost of those factors exceed the GNP-PI. The factors include retransmission's consent fees, programming cost, state and local taxes applicable to the provision of cable television service, and costs of franchise requirements. The total cost of an increase in a franchise fee may be automatically added to the base per channel rate, without regard to its relation to the GNP-PI.

(2) For all categories of external costs other than retransmission's consent and franchise fees, the starting date for measuring changes in external costs for which the basic service per channel rate may be adjusted will be the date on which the basic service tier becomes subject to regulation or February 28, 1994, whichever occurs first. The permitted per channel charge may not be adjusted for costs of retransmission's consent fees or changes in those fees incurred before October 6, 1994.

(c) NOTIFICATION AND REVIEW. The cable operator shall notify the Town at least 30 days in advance of a rate increase based on automatic adjustment items. The Town shall review the increase to determine whether the time or items qualify as automatic adjustments. If the Town makes no objection within 30 days of receiving notice of the

increase, the increase may go into effect.

#### 6. Enforcement.

(a) REFUNDS. The Town may order the cable operator to refund to subscribers a portion of previously paid rates under the following circumstances:

(1) A portion of the previously paid rates have been determined to be in excess of the permitted tier charge or above the actual cost of equipment; or

(2) The cable operator has failed to comply with a valid rate order issued by the Town.

(b) FINES. If the cable operator fails to comply with a rate decision or refund order, the cable operator shall be subject to a fine of \$500 for each day the cable operator fails to comply.

#### Sec. 14-26.1. Beer, Ale, Porter and Wine Defined.

Beer, Ale, Porter and Wine shall be defined for the propose of this section as stated in Section 61-4-10 of the Code of Laws of South Carolina 1976, as amended from time to time. (6/19/01)

#### Sec. 14-26.2. Prohibited Operation.

Commercial establishments which allow for the on-premise consumption of beer, ale, porter and/or wine shall be prohibited from operating between the hours of 2 a.m. and 6 a.m. on Mondays through Saturdays. (6/19/01)

#### Sec. 14-26.3. Refusal to Vacate.

Any person who is asked or told to vacate a commercial establishment as defined in Section 14-26.2 before 2 a.m. on Mondays through Saturdays and refuses to vacate, such refusal shall constitute a violation of this Ordinance and shall constitute a criminal offense and such person(s) shall be punishable by the Municipal Court of the Town of Sullivan's Island or other Court of competent jurisdiction. Each violation of this Ordinance shall subject the person so violating to a fine of \$500.00 and/or 30 days in jail. (6/19/01)

#### Sec. 14-26.4. Penalties.

Any owner, manager, or employee of a commercial establishment which allows for the on-premise consumption of beer, ale, porter and/or wine who allows the commercial establishment to continue operations during the hours of 2 a.m. and 6 a.m. on Mondays thorough Saturdays shall be in violation of this Ordinance and the same shall constitute a criminal offense and such person(s) shall be punishable by the Municipal Court of the

Town of Sullivan's Island or other Court of competent jurisdiction. Each violation of this Ordinance shall subject the person so violating to a fine of \$500.00 and/or 30 days in jail. (6/19/01)

Sec. 14-26.5. Validity.

Any part or parts of this Ordinance which shall be held to be unconstitutional shall not effect in any way the validity of the remaining parts of this Ordinance. (6/19/01)

Sec. 14-26.6 Ratification.

This Ordinance shall take effect 30 days after ratification. (6/19/01)

Sec. 14-27. Sleeping, Camping, and Settling in Public Places and Right of Ways is Prohibited.

(a) No person shall sleep, camp, settle, make preparations to sleep, camp, or settle on any publicly owned property within the Town of Sullivan's Island including, but not limited to, beaches, sand dunes, parks, streets, right of ways, whether open or unopened, or parking areas from sunset and sunrise.

(b) No person shall park any recreational vehicle or camper or any other vehicle which was manufactured or converted for the purpose of allowing one to camp or sleep on any public property within the town of Sullivan's Island including, but not limited to, beaches, sand dunes, parks, streets, right of ways, whether open or unopened, or parking areas from sunset to sunrise.

(c) Any persons violating any provision of this Ordinance shall be deemed guilty of a misdemeanor and shall be subject to a fine of up to \$500.00 plus court costs or imprisonment for not more than thirty (30) days or both upon conviction.

(3) Severability. It is hereby declared to be the intention of Town Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if unconstitutional or invalid by the valid judgment of decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not effect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance. (9/19/00)

Sec. 14-28. Closing and Abandonment of Unnamed Street and of Old Right-of-Way of Star of the West Street. (4-19-05)

A. Closing and Abandonment of Unnamed Street. That certain unnamed street and right-of-way having a width of approximately thirty (30') feet labeled "Formerly 30' R/W Unimproved Street" on the Preliminary Forsberg Plat and also designated as "Street 30 ft" on a Plat thereof prepared by W. L. Gaillard dated January 13, 1960, recorded in the RMC Office for Charleston County in Plat Book M, at Page

109, is hereby closed and abandoned, effective as of the dedication of the new thirty (30') foot right-of-way for Star of the West Street, as shown on the Preliminary Forsberg Plat.

B. Closing and Abandonment of Old Right-of-Way of Star of the West Street. That certain street and right-of-way having a width of approximately thirty (30') feet labeled "Formerly 30' R/W Star of the West Street" on the Preliminary Forsberg Plat and also designated as "Bates Street 30 ft" (now known as Star of the West Street) on a Plat thereof prepared by W. L. Gaillard dated January 13, 1960, recorded in the RMC Office for Charleston County in Plat Book M, at Page 109, is hereby closed and abandoned, effective as of the dedication of the new thirty (30') foot right-of-way for Star of the West Street, as shown on the Preliminary Forsberg Plat.

C. Exchange of Quit-Claim Deeds.

(1) In order to more fully accomplish the intent of the foregoing Sections, the Town of Sullivan's Island, acting by and through its Mayor and Clerk, shall execute a Quit-Claim Deed in favor of the owners of Hagerty Point, to (i) the closed and abandoned right-of-way labeled "Formerly 30' R/W Unimproved Street" on the Preliminary Forsberg Plat and also designated a "Street 30 ft" on a Plat thereof prepared by W. L. Gaillard dated January 13, 1961, recorded in the RMC Office for Charleston County in Plat Book M, at Page 109; and (ii) the closed and abandoned right-of-way labeled "Formerly 30' R/W Star of the West Street" on the Preliminary Forsberg Plat and also designated as "Bates Street 30 ft" (now Star of the West Street) on a Plat thereof prepared by W. L. Gaillard dated January 13, 1961, recorded in the RMC Office for Charleston County in Plat Book M, at Page 109.

(2) In order to more fully accomplish the intent of the foregoing Sections and in consideration of the closing and abandonment of the "Formerly 30' R/W Unimproved Street" and the old right-of-way of Star of the West Street, the owners of Hagerty Point have agreed to dedicate and Quit-claim to the Town of Sullivan's Island, and the Town has agreed to accept the newly realigned thirty (30') foot right-of-way for Star of the West Street, as shown and depicted on the Preliminary Forsberg Plat, together with an easement as shown on said Preliminary Forsberg Plat for vehicular turnaround at or near the terminus of Star of the West Street.

(3) Prior to the closing of the road and dedication of the road, Town and owners enter into a recordable maintenance agreement for the maintenance and repair of the dedicated road satisfactory to the Town and the owners.

Sec. 14-29. Franchise Fee for the delivery and supply of electric service to residents and businesses of the Town.

The Town of Sullivan's Island will grant to South Carolina Electric & Gas Company or its successors and assigns and other subsidiaries of SCANA Corporation, the non-

exclusive right, power and authority to erect and to install, maintain, and to operate in, over, upon and under the streets, alleys and public places of the Town electric lines, poles, wires, guys, push braces, transformers and appurtenant facilities, and communication lines and facilities for the sole purpose of operating controls, together with any necessary right of access thereto, for such period as the same as needed by the company to render service to its customers in the Town of Sullivan's Island, South Carolina from those facilities; to set the amount of franchise fees to be paid by South Carolina Electric & Gas Company to the Town; if so required levy franchise fees on third parties selling electricity using SCE&G's distribution or transmission systems.

#### 1. Definition of "Company"

Wherever the word "Company" appears in this Ordinance, it is hereby to designate, and shall be held to refer to the South Carolina Electric & Gas Company, a corporation duly authorized and doing business pursuant to the laws of the State of South Carolina and its successors and assigns and other subsidiaries of SCANA Corporation.

#### 2. Rights of the Company

The non-exclusive right, power and authority is hereby granted and vested in the Company to erect and to install, maintain and operate in, over, under, and upon the streets, alleys, bridges, rights-of-ways and other public places of the Town electric lines, poles, wires, guys, pushbraces, transformers, and other appurtenant facilities, and communication lines and facilities for the purpose of operating controls, with any necessary right of access thereto; and to use the facilities to conduct an electric business, and any other business or businesses which may be lawfully conducted using the permitted facilities, as approved by the Town.

#### 3. Company Obligation During Construction and Repair.

No street, alley, bridge, right-of-way or other public place used by the Company shall be obstructed longer than necessary during its work of construction or repair, and shall be restored to the same good order and condition as when said work was commenced. No part of any street, alley, bridge, right-of-way, or other public place of the Town, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be injured. However, should any such damage occur due to Company's failure to use due care, the Company shall repair the same as promptly as possible, and, in default thereof, the Town may make such repairs and charge the reasonable cost thereof to and collect the same from the Company. The Company shall save the Town harmless from all liability or damage (including judgment, decrees, and legal court costs) resulting from its failure to use due care in the exercise of the privileges hereby granted or of its rights under this section.

#### 4. Obligation of the Company

The Company shall:

(A) Construct, maintain and extend its electric system within the present Town limits and extended Town limits where such extensions are within territories assigned to the Company by the South Carolina Public Service Commission. The Company will also have the right to serve new customers in extended Town limits where such extensions are within territories left unassigned by the South Carolina Public Service Commission. The Company shall supply standard electric service at standard voltages under rates and general terms and conditions as authorized by law.

(B) Furnish, install, operate, and when called upon, expand and maintain any existing or new electric street lighting system and service along the streets, highways, alleys and public places of the Town, in areas served by the Company, or as requested by the Town. Any materials furnished shall be of standard quality and kind, and the lamps shall be in conformity with the requirements of this franchise and shall meet the requirements of good street lighting practice.

(C) Properly maintain any electric street lighting system to provide reliable street lighting service during the franchise period.

(D) Make any changes in location of installed lamps and facilities covered by this franchise upon written order of the Town.

(E) Render to the Town on or about the first day of each month a bill for any street lighting service furnished hereunder during the preceding month, in accordance with the provisions of this franchise.

(F) Maintain at its own expense a system for repairing or renewing any lamps in use. The Company, upon reviewing official notice that there is a defective standard lamp, shall within five days put the same in order, or replace same.

## 5. Obligation of the Town

The Town shall:

(A) Pay monthly, within twenty-five (25) days after receipt of a proper bill from the Company for any preceding month's electricity or services provided.

(B) Pay to the Company for any street lighting or other services provided, at the rate schedule in effect at the time, and as approved by the South Carolina Public Service Commission.

(C) Notify the Company in writing of areas annexed into Town and provide pertinent maps and tax map numbers so that newly annexed customers may be subject to franchise fees, such notification being a precondition to franchise fee payments on those accounts.

## 6. Mutual agreement

The Town and the Company agree that:

(A) Work performed within the municipal limits by the Company or its contractors shall be in accordance with the National Electric Safety Code and the applicable rules and regulations, as adopted by the South Carolina Public Service Commission.

(B) The records of the Company pertaining to any existing or new electric street lighting system are to be accepted as full and final proof of the existence and configuration of the same.

(C) Except as otherwise provided herein, the Town shall have the right at any time to order the installation of new lamps in areas of the Town, served by the Company.

(D) The Town shall have access at all reasonable times to any maps, records, and rates relating to any Street Lighting System in the Town.

(E) Throughout the life of the franchise the Company will supply to the Town, and the Town may purchase from the Company, electric energy required by the Town for its own use including traffic signal lighting, lighting and power for public buildings, pumping stations, or other installations now owned or hereafter constructed or acquired by the Town and for all other uses in all areas served by the Company. Should current laws or conditions be revised to allow the Town the right to purchase electricity from another supplier, and the Town wishes to retain the option of purchasing energy from another supplier, then the Company would have the right to change the terms and conditions under which any remaining services are provided to Town facilities.

(F) The Company shall charge and the Town shall pay to the Company monthly for all electric energy furnished by the Company for miscellaneous light and power under this franchise in accordance with rates and tariffs and terms and conditions as established by law.

(G) None of the electricity furnished hereunder shall be sold, disposed of, or exchanged by the Town to others without the expressed written consent of the Company.

(H) The electric services provided hereunder are not guaranteed or warranted to be free from minor interruptions or from major outages or electrical surges beyond the control of the Company.

## 7. General supervision of work

All work upon the streets and public places of the Town shall be done under the general supervision of the Mayor and Council (or other legally constituted governing body) of

the Town, and that all sidewalks or streets pavements or street surface which may be displaced by reason of such work shall be properly replaced and relayed by the Company, its successors and assigns, to the reasonable requirements of the Mayor and Council (or other legally constituted governing body) of the Town.

8. Franchise fee percentage and terms of payment

(A) For the right to use the streets and public ways of the Town for placement of the Company's electric facilities, in the next succeeding calendar year, the Company shall pay a franchise fee to the Town, on or before the first day of July each year, beginning with the year 2010, a sum of money equal to five percent (5%) from gross sales of electricity to all residential and commercial facilities within the municipality during the preceding calendar year and all wheeling or transportation service to such customers within the corporate limits of the Town. The fee percentage to which the gross sales revenue applies may be changed by the legally constituted governing body of said Town upon a duly advertised public notice, with positive majority amendment to this ordinance, and a ninety (90) day advanced written notice to the Company. During the term of this agreement the franchise fee shall not exceed five percent (5%) of the gross sales revenue. Any other products or businesses and other revenue accruing to the Company in the municipality will be subject to further franchise fees and/or business license taxes as may be appropriate. (3/16/10)

(B) The Town's right to receive franchise fees as provided for herein shall be in lieu of all occupation, license, excise and special franchise taxes, and shall be in full payment of all money demands, charges, or fees of any nature whatsoever imposed by the Town, except ad valorem taxes on property. The Company may at its option pay and deduct from its franchise fee payments any amount that shall be required or exacted from the Company for the benefit of the Town other than ad valorem taxes on property.

(C) It is expressly recognized that all franchise fees, or other payments imposed by the Town on the Company, shall be collected from customers of the Company within the municipal boundaries, as is presently provided for in the orders of the South Carolina Public Service Commission applicable to the Company.

(D) The Town hereby levies, and the Company may collect and transmit to the Town, a franchise fee on all electricity sold by third parties to customers within the Town using the Company lines, said fee is to be in all respects equivalent to the franchise fees established herein plus a proportional share of all other payments to the Town, or to the Fund established hereunder, which the Company is obligated to make on whatever basis during the life of this franchise.

(E) Should the Town itself ever at any time construct, purchase, lease, acquire, own, hold or operate an electric distribution system, then the payment of percentages of gross sales revenue herein provided to be paid by the Company, its successors and assigns, shall abate, cease and no longer be due.

9. Term of franchise agreement

The franchise granted by this ordinance, when accepted by the Company, shall constitute a contract between the Town and the Company, and shall be in force and effect for an initial term of twenty (20) years, and shall continue in force and effect year-to-year thereafter until properly terminated by either party. Either party may terminate the contract at the end of its initial twenty (20) year term, or its anniversary date any year thereafter, by giving written notice of its intention to do so no less than two (2) years before the proposed date of termination.

10. Franchise agreement subject to South Carolina law and code

The franchise agreement is subject to the constitution and laws of the State of South Carolina.

11. Effective date of agreement

The Ordinance shall not become effective until accepted in writing by the Company, which shall be within thirty (30) days from the date of its ratification by the Town.

12. Additional agreement by the Town and the Company:

(A) In addition to the terms and conditions of this agreement above, the Town may choose the right to require the Company to convert existing overhead electrical distribution lines to underground lines, or other “non-standard” service. If the Town chooses to make such conversion, the cost will be equally shared by the Company and the Town.

(B) Each year the Company will make available within a Fund held by the Company an amount equivalent to one-half of one percent (0.50%) of the Company’s gross revenue from the electric service within the Town, that being the same amount of electric revenue that is used in computing its municipal franchise fee payment for the year in Section 8 above. This is the Company’s available match to the Fund. The cumulative amount of Company obligation to the Fund shall never exceed the sum of the Company matches for the most recent five (5) years.

(C) For any such “non-standard” projects requested by the Town, the Company and Town matching amounts shall be used exclusively to pay the reasonable and necessary costs of planning, designing, permitting and constructing of electric utility projects that are approved by the Company and Town and/or requested by the Town.

(D) For any “non-standard” service project involving the provision of underground electric service to more than twenty-five existing customers, the Town, as its option, may designate a special franchise fee district or special tax district wherein such “non-standard” service will be provided, and at its option may entertain a petition or conduct a

referendum in that district to determine whether a project should go forward. A special franchise fee surcharge or tax may be applied to all electric customers within the boundaries of the district, in accordance with law. The special fees, surcharge or tax shall be applied to all customers within the special district. A special franchise fee surcharge shall not exceed, in combination with the general franchise fee provided for by the agreement, a total franchise fee of seven percent (7%) per customer premises. Any such charge may be applied to such customers beginning with the commencement of the project and may be applied thereafter for not more than the term remaining of the franchise agreement, or until the project's total costs are paid.

(E) If the Town chooses to undertake projects, it shall establish, in consultation with the Company, priorities. In establishing priorities, system reliability and system safety is of paramount importance, and all projects shall conform to good utility practices and meet applicable codes and standards.

(F) The Town shall use best efforts to acquire necessary right-of-way, transformer sites, or other use and access rights for "non-standard" projects. Within six (6) months of completion of an overhead to underground facilities conversion project, the Company shall remove overhead facilities and the Town shall require other utilities to remove its facilities from the Company poles and shall require property owners to connect to underground facilities.

### 13. No rights created to third parties

The rights hereunder accrue exclusively to the parties, their successors and assigns. It is the express intent of the parties that this agreement shall not create any rights in third parties. (7-19-05)

### Section 14-29 (SIC 30) Smoking of Tobacco Products in the Town of Sullivan's Island

(A) **Findings.** As an incident to the adoption of this Ordinance, the Town Council ("Town Council") of the Town of Sullivan's Island, South Carolina (the "Town") makes the following findings:

(1) Secondhand smoke as defined herein includes both smoke exhaled and smoke from the end of a burning cigarette, cigar or pipe; and includes a complex mixture of nearly 5,000 chemical compounds, including 43 chemicals that are known human carcinogens; and

(2) The health consequences of involuntary smoking have been reported by the U.S. Surgeon General to be a cause of disease, including lung cancer, in healthy non-smokers; and

(3) The U.S. Surgeon General has concluded that a simple separation of smokers and non-smokers within the same airspace does not eliminate the exposure of non-smokers; and

(4) Secondhand smoke has been classified by the Environmental Protection Agency (EPA) as a known cause of cancer in humans (Group A Carcinogen) like asbestos, arsenic, hexavalent chromium; and

(5) The National Institutes of Health, Centers for disease Control and Prevention, National Toxicology Program, Report on Carcinogens and the International Agency for Research and Cancer have all reported that secondhand smoke is a human carcinogen; and

(6) Numerous medical and scientific studies show substantial levels of exposure to secondhand smoke among the United States population, and over the past two decades, the health hazards resulting from exposure to secondhand smoke have been increasingly recognized; and

(7) Secondhand smoke inhaled by a pregnant woman can increase the risk for low weight babies; and

(8) Exposure to secondhand smoke by children leads to decreased lung function, asthma, pneumonia, ear infections, bronchitis and even sudden infant death syndrome; and

(9) Exposure to secondhand smoke nearly doubles the risk of heart attack; and

(10) 460,000 annual deaths in the United States directly attributed to tobacco use, of which 55,000 are involuntary tobacco users; and

(11) Workplaces have been shown to be locations of significant exposure to secondhand tobacco smoke by employees working in the Town of Sullivan's Island; and

(12) Both the Public Health Services National Toxicology Program and the World Health Organizations' International Agency for Research on Cancer identify secondhand smoke as a human Class A carcinogen and state that there is no safe level of exposure; and

(13) There are laws, ordinances and regulations in place that protect workers from other environmental hazards, including Class A carcinogens, asbestos, arsenic and benzene, but none which regulate exposure to secondhand smoke; and

(14) Prohibiting smoking in the workplace increases public awareness of the negative health effects of smoking, reduces the social acceptability of smoking and reduces harm to children and other nonsmokers; and

(15) The South Carolina General Assembly at Section 44-95-10 et seq. (the "Clean Indoor Air Act of 1990") imposed certain limitations on smoking. For example, it limited smoking in Government Buildings (the definition of which includes Town-owned buildings) except where the owner of such building shall designate smoking areas.

Town Council has now determined that additional regulation of smoking in areas beyond those addressed in the Clean Indoor Air Act of 1990 is appropriate in furtherance of its duty to protect the health of its citizens and employees in the workplace and therefore enacts this ordinance.

**(B) Intent.** Town Council finds that it is in the best interest of the people of this Town to protect nonsmokers from involuntary exposure to secondhand smoke in the workplace. Therefore, Town Council declares that the purpose of this act is to preserve and improve the health, comfort and environment of the people of this Town by limiting exposure to tobacco smoke in the workplace.

**(C) Definitions.**

(1) "Employee" means any person who performs services for an employer in return for wages, profit or other valuable consideration.

(2) "Employer" means any person, partnership, association, corporation, trust, school, college, university or other educational institution, nonprofit entity or other organization, including any public or private employer, any manager, supervisor, and all other persons charged with control, supervision, and operation of any Work Place, Work Space, or Work Spaces as defined herein, that employs 1 or more persons.

(3) "Enclosed" means a space bounded by walls (with or without windows), and enclosed by doors, including but not limited to, offices, rooms, foyers, waiting areas and halls.

(4) "Secondhand smoke" is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as "sidestream smoke") and smoke exhaled by the smoker. Exposure to secondhand smoke is also frequently referred to as "passive smoking," "secondhand smoking" or "involuntary smoking".

(5) "Person(s)" means a customer or other visitor on the premises regulated herein.  
(5-20-08)

(6) "Police Department" means the Town of Sullivan's Island Police Department.

(7) "Public building" means any building owned, operated or leased by the Town.

(8) "Smoking" means the inhaling, exhaling, burning, lighting or carrying of a lighted cigarette, cigar, pipe, or similar device or any other lighted tobacco product.

(9) "Smoking Materials" includes cigars, cigarettes and all other manner of smoking devices intended to be used for the purpose of inhaling, burning, carrying or exhaling lighted tobacco products.

(10) "Workplace" means any enclosed indoor area, structure, building or facility or any portion thereof at which one (1) or more employee(s) perform services for their employer, including but not limited to: retail food stores; retail stores; restaurants; bars; cabarets, cafes; public or private clubs; pool halls and bowling alleys.

(11) "Work Space or work Spaces" means any enclosed area occupied by an employee during the course of his or her employment, including but not limited to: offices, customer service areas; common areas; hallways; waiting areas; restrooms; lounges and eating areas.

**(D) Prohibition of Smoking in the Workplace.**

(1) The employer shall provide a smoke free environment for all employees working in all Work Space, Work Spaces and Work Places as those terms are defined herein. Further, the employer and all employees shall prohibit any persons present in said Work Space, Work Spaces and Work Places from smoking tobacco products therein.

(2) Smoking shall be prohibited in all Work Space, Work Spaces and Work Places in a workplace. This includes all common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms and all other enclosed areas in the workplace.

**(E) Smoking Restrictions Inapplicable.** In providing for the inapplicability of this section to the following subsections (1) through (7), it is specifically recognized that such locations are addressed in the Clean Indoor Air Act, enacted by the General Assembly of South Carolina and codified in South Carolina Code section 44-95-10, et. seq. Therefore, this section shall not apply to:

(1) Public schools and preschools where routine or regular kindergarten, elementary, or secondary educational classes are held including libraries;

(2) All other indoor facilities providing children's services to the extent that smoking is prohibited in the facility by federal law and all other child day care facilities, as defined in Section 20-7-2700, which are licensed pursuant to Subarticle 11, Article 13, Chapter 7, of Title 20 of the South Carolina Code;

(3) Health care facilities as defined in South Carolina Code Section 44-7-130;

(4) Government buildings as defined in South Carolina Code Section 44-95-20(4), except to the extent regulation by the City is authorized therein;

(5) Elevators;

(6) Public transportation vehicles, except for taxicabs;

(7) Arenas and auditoriums of public theaters or public performing art centers;

**(F) Exceptions.** Notwithstanding the provisions of Section D herein, smoking may be permitted in the following places and/or circumstances:

(1) Private residences;

(2) Hotel, motel, inn, bed and breakfast and lodging home rooms that are rented to guests, designated as "smoking rooms" ("Rooms") provided that the total percentage of such Rooms does not exceed 25% in such establishment. A Room so designated shall have signs posted indicating that smoking is allowed therein;

(3) Religious ceremonies where smoking is part of the ritual.

(G) **Posting of Signs.** The owner, manager or person in control of an establishment or area in which smoking is prohibited pursuant to this section shall post a conspicuous sign at the main entrance to the establishment or area. The sign shall contain the words "No Smoking" and the universal symbol for no smoking.

(H) **Reasonable Distance.** Smoking outside a Work Space, Work Spaces and Work Places, and any other indoor area where smoking is prohibited shall be permitted, provided that tobacco smoke does not enter the Work Space, Work Spaces and Work Places through entrances, windows, ventilation systems or other means.

(I) **Jurisdiction, Enforcement and Penalties.**

(1) The Municipal Court of the Town of Sullivan's Island shall collect the fines due hereunder for any infraction(s) of the provisions of this Ordinance. (5/20/08) (11/18/08) (7/21/09)

(2) The Police Department, as well as all code enforcement personnel of the Town, shall have the power to enforce the provisions of this Ordinance by issuing a Uniform Ordinance Summons. (5/20/08) (7/21/09)

(3) Penalties for Infractions:

A. A person, employee or employer who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by a civil fine of not less than ten (\$10.00) dollars or more than twenty-five (\$25.00) dollars. (5/20/08) (11/18/08) (7/21/09)

B. A person, employee or employer who owns, manages, operates, or otherwise controls a workplace or work space and who fails to comply with the provisions of this Ordinance shall be guilty of an infraction, punishable by a civil fine of not less than ten (\$10.00) or more than twenty-five (\$25.00) dollars. (5/20/08) (11/18/08) (7/21/09)

C. In addition to the civil fines established by this Section, repeated violations of this Ordinance by a person, employee or employer who owns, manages, operates, or otherwise controls a workplace or work space, or the failure of a person, employee or employer who owns, manages, operates, or otherwise controls a workplace or work space to timely pay the civil fine for an infraction may result in the suspension or revocation of any occupancy permit or business license issued to the person, employee or employer for the premises on which the violation occurred. (5/20/08) (11/18/08) (7/21/09)

D. Violation of this Ordinance is hereby declared to be a public nuisance, which may be abated by the Town by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Town may take action to recover the costs of the nuisance abatement. (5/20/08)

E. Each violation of this Ordinance shall be considered a separate and distinct infraction. (5/20/08) (11/18/08) (7/21/09)

F. In addition to or in lieu of assessing a civil fine, the Town may institute an action in the Court of Common Pleas for Charleston County for an injunction to require compliance with this Ordinance or pursue any other remedy as may be permitted by law. (5/20/08) (11/18/08) (7/21/09)

- (4) A business license shall not be renewed if there are delinquent fines owed hereunder by an employer. (7/21/09)
- (5) If any provision, clause, sentence or paragraph of this Section (I) or the application thereof to any person or circumstance shall be held invalid, that invalidity shall not affect the other provisions of this Section (I) which can be given effect without the invalid provision, clause, sentence or paragraph or application thereof, and to this end, the provisions of this Section (I) are declared to be severable. (11/18/08) (7/21/09)

(J) **Severability.** If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

(K) **Non-Retaliation.** No person or employer shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this section or exercises any right conferred by this section.

(L) **Conflict with Other Laws, Ordinances or Regulations.** Nothing in this section shall be deemed to amend or repeal any applicable fire, health or other, law, ordinance or regulation so as to permit smoking in areas where it is prohibited by such applicable fire, health or other law, ordinance or regulation.

(M) **Waivers.**

(1) Any employer, owner, manager or other person having control of a workplace subject to this section may apply to the Town of Sullivan's Island's Director of the Department of Budget, Finance and Revenue Collection or his designee for a waiver of any provision of this regulation for a period not to exceed ninety (90) days.

(2) All waivers shall be submitted to Town of Sullivan's Island's Director of the Department of Budget, Finance and Revenue Collection or his designee, on an application form provided by such Director along with a \$100 non-refundable filing fee.

(3) The decision to grant such a waiver shall be in the sole discretion of Town of Sullivan's Island's Director of the Department of Budget, Finance and Revenue Collection or his designee, based upon his determination that such waiver is in the public interest. In do determining, the Town of Sullivan's Island's Director of the Department of Budget, Finance and Revenue Collection or his designee may take into account, but is not limited to the following:

- (a) The efforts that the employer, owner, manager or other person having control of a workplace has made toward compliance with this section;
- (b) Whether or not the workplace will be in compliance with all terms of this section within ninety (90) days; and
- (c) Whether or not the granting of the waiver will result in an appreciable danger to the health of the public.

(4) No employer, owner, manager or other person having control of a workplace shall be granted more than one (1) waiver.

(June 20, 2006)

(Amended May 15, 2007)

(Amended May 20, 2008)

(Amended Nov. 18, 2008)

(Amended July 21, 2009)

Section 14-31 The Lease of Certain Real Property to the Sullivan's Island Gadsden Cultural Center, an Eleemosynary Corporation.

WHEREAS, the Town of Sullivan's Island is the owner of certain real property, which is more specifically described on Exhibit A attached hereto and incorporated herein, which real property borders certain real property owned by the Town of Sullivan's Island; and

WHEREAS, the Town of Sullivan's Island desires to lease said property to the Sullivan's Island Gadsden Cultural Center and finds that the lease of the property in accordance with the terms and conditions of the Lease Agreement attached hereto and marked Exhibit B is in the best interest of the Town and its citizens; and

NOW THEREFORE, BE IT ORDAINED by the Town Council of Sullivan's Island in meeting duly assembled, that the Town of Sullivan's Island lease to the Sullivan's Island Gadsden Cultural Center, an eleemosynary corporation all that real property herein before described on Exhibit A, pursuant to the terms and conditions of the Lease Agreement attached hereto and marked Exhibit B; and

BE IT FURTHER ORDAINED that the Mayor or the Town of Sullivan's Island and the Town Clerk are hereby directed and authorized to execute the said Lease Agreement.

If any part or parts of this Ordinance shall be held to be unconstitutional such unconstitutionality shall not affect the validity of the remaining parts of this ordinance.

(September 19, 2006)

Section 14-32 Execution and Acceptance of Option and Lease Agreement with American Towers, Inc.

The Town Council of Sullivan's Island shall enter into the attached Option and Lease Agreement with American Towers, Inc. and the Mayor of the Town of Sullivan's Island is hereby authorized and directed to execute the Option and Lease Agreement in his capacity as Mayor of the Town of Sullivan's Island and shall be attested to by the Town Clerk.

(August 21, 2007)

SEC. 14-33. Property – Injuring, damaging, destroying, etc.

The destruction, injuring, damaging, mutilation, unauthorized use, trespass upon or removal of the property of another is hereby prohibited. It shall be unlawful for any person to destroy, damage, mutilate or remove the property of another. The following acts, among others, are declared to be in violation of this section, but this enumeration shall not be deemed to be exclusive:

1. Personal property. Any willful, unlawful and maliciously cutting, shooting, maiming, wounding or other injuring of any personal property of another person.
2. Fixtures and real property. Any willful, unlawful and malicious cutting, mutilating, defacing or other injuring of any tree, house, outside fence or fixture of another, or the commission of any other trespass upon real property in the

- possession of another.
3. Municipal property. Unless authorized by town officials, the removal, interference with, use, trespass upon, or destruction of any town property.
  4. Cemeteries. The damaging or defacing in any way whatever of any well, pump, building, tombstone, seat, bench, chair, railing, enclosure, tree, shrub, vine, bulb, flower or other thing placed, put or growing in any cemetery.
  5. Grass plots, flowers, etc. Driving any animal or vehicle along, on or across any grass plot in any street, public place or sidewalk, or trampling, plucking, mutilating or injuring the grass, shrubs or flowers planted or growing in such place.
  6. Trees and shrubs. Cutting, scarring, mutilating, digging up or otherwise injuring or destroying any trees or shrubs on the public streets or in the parks of the town.

State law references: Injuring property, etc., S.C. Code 1976, 16-1 1-510 et seq.

(July 20, 2010)