

**CITY OF O’FALLON, ILLINOIS  
ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING  
CHAPTER 114 OF THE O’FALLON,  
ILLINOIS CODE OF ORDINANCES  
RELATING TO THE REGULATION  
OF PROVIDERS OF CABLE AND  
VIDEO SERVICES IN THE CITY  
OF O’FALLON, ILLINOIS**

**WHEREAS**, the City has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and that protect the public health, safety, and welfare of its citizens; and

**WHEREAS**, this Ordinance is adopted pursuant to the provisions of the Illinois Cable and Video Competition Law of 2007, part of Public Act 95-0009 (the “Act”); and

**WHEREAS**, this Ordinance is intended to request holders of a state-issued authorization to provide cable or video services to provide PEG access in accordance with 220 ILCS 5/21-601, and to establish the service provider fee and the PEG access support fee the Act authorizes municipalities to impose on a holder under 220 ILCS 5/21-801; and

**WHEREAS**, the Cable and Video Competition Law of 2007 allows municipalities to regulate providers of cable and video services operating pursuant to a state-issued authorization in varying aspects, including such providers’ placement of facilities within the public rights-of-way of the City; and

**WHEREAS**, the public rights-of-way within the City are a limited public resource held in trust by the City for the benefit of its citizens and the City has a custodial duty to ensure the public rights-of-way are used, repaired and maintained in a manner that best serves the public interest; and

**WHEREAS**, this Ordinance is also adopted pursuant to the Cable and Video Customer Protection Law (220 ILCS 5/70-501) authorizing a City to enforce all of the customer service and privacy protection standards of Section 70-501; and

**WHEREAS**, the City desires to enforce the customer service and privacy protection standards with respect to complaints received from residents as provided by the Cable and Video Customer Protection Law;

**NOW, THEREFORE, BE IT ORDAINED** by City Council of O’Fallon as follows:

**SECTION 1.** The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

**SECTION 2.** Chapter 114, Cable Communications, of the Code of Ordinances of the City of O'Fallon shall be amended by adding thereto the following sections, to read as follows:

**§ 114.05 Cable/Video Service Provider Fees and PEG Access Support Fees on Holders of State-Issued Authorizations.** This Section shall apply to Providers of Cable and Video Services Operating Pursuant to a State-Issued Authorization.

**A. Definitions.** As used in this Section, the following terms shall have the following meanings:

- (a) "Cable service" means that term as defined in 47 U.S.C. § 522(6).
- (b) "Commission" means the Illinois Commerce Commission.
- (c) "Gross revenues" means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the holder for the operation of a cable or video system to provide cable service or video service within the holder's cable service or video service area within the City.
  - (1) Gross revenues shall include the following:
    - (i) Recurring charges for cable or video service.
    - (ii) Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.
    - (iii) Rental of set top boxes and other cable service or video service equipment.
    - (iv) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.
    - (v) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
    - (vi) Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.
    - (vii) A pro rata portion of all revenue derived by the holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or services derived from the operation of the holder's network to provide cable service or video service within the City. The allocation shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

- (viii) Compensation received by the holder that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are received by the holder as compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel, subject to subsection (ix).
  - (ix) In the case of a cable service or video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the holder's revenue attributable to the other services, capabilities, or applications shall be included in the gross revenue unless the holder can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
  - (x) The service provider fee permitted by 220 ILCS 5/21-801(b).
- (2) Gross revenues do not include any of the following:
- (i) Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).
  - (ii) Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the holder of the State-issued authorization to the extent the refund, rebate, credit, or discount is attributable to cable service or video service.
  - (iii) Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunication services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or any other revenues attributed by the holder to noncable service or nonvideo service in accordance with the holder's books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders.
  - (iv) The sale of cable services or video services for resale in which the purchaser is required to collect the service provider fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the City and pay the fee permitted by 220 ILCS 5/21-801(b) with respect to the service.
  - (v) Any tax or fee of general applicability imposed upon the subscribers or the transaction by a city, State, federal, or any other governmental entity and collected by the holder of the State-issued authorization and required to be remitted to the taxing entity, including sales and use taxes.
  - (vi) Security deposits collected from subscribers.
  - (vii) Amounts paid by subscribers to "home shopping" or similar vendors for merchandise sold through any home shopping channel offered as part of the cable service or video service.

- (3) Revenue of an affiliate of a holder shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the holder has the effect of evading the payment of the fee permitted by 220 ILCS 5/21-801(b) which would otherwise be paid by the cable service or video service.
- (d) “Holder” means a person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.
- (e) “PEG” means public, education and governmental.
- (f) “PEG access support fee” means the amount paid under this Section and 220 ILCS 5/21-801(d) by the holder to the City for the service areas within its territorial jurisdiction.
- (g) “Service” means the provision of “cable service” or “video service” to subscribers and the interaction of subscribers with the person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.
- (h) “Service provider fee” means the amount paid under this Chapter and 220 ILCS 5/21-801 by the holder to a City for the service areas within its territorial jurisdiction.
- (i) “Video service” means video programming and subscriber interaction, if any, that is required for the selection or use of such video programming services, and which is provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d) or any video programming provided solely as part of, and via, service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

**B. Cable/Video Service Provider Fee Imposed.**

- (a) Fee Imposed. A fee is hereby imposed on any holder providing cable service or video service in the City.
- (b) Amount of Fee. The amount of the fee imposed hereby shall be five percent (5%) of the holder’s gross revenues.
- (c) Notice to the City. The holder shall notify the City at least ten (10) days prior to the date on which the holder begins to offer cable service or video service in the City.

- (d) Holder's Liability. The holder shall be liable for and pay the service provider fee to the City. The holder's liability for the fee shall commence on the first day of the calendar month following thirty (30) days after receipt of the ordinance adopting this Section by the holder. The ordinance adopting this Section shall be sent by mail, postage prepaid, to the address listed on the holder's application notice sent pursuant to 220 ILCS 5/21-401(b)(6) to the City.
- (e) Payment Date. The payment of the service provider fee shall be due on a quarterly basis, forty-five (45) days after the close of the calendar quarter. If mailed, the fee is considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.
- (f) Exemption. The fee hereby imposed does not apply to existing cable service or video service providers that have an existing franchise agreement with the City in which a fee is paid.
- (g) Credit for Other Payments. An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c) with credit for prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under Section 114.05(B).

**C. PEG Access Support Fee Imposed.**

- (a) PEG Fee Imposed. A PEG access support fee is hereby imposed on any holder providing cable service or video service in the City in addition to the fee imposed pursuant to 114.05(B).
- (b) Amount of Fee. The amount of the PEG access support fee imposed hereby shall be one percent (1%) of the holder's gross revenues or, if greater, the percentage of gross revenues that incumbent cable operators pay to the City or its designee for PEG access support in the City.
- (c) Payment. The holder shall pay the PEG access support fee to the City or to the entity designated by the City to manage PEG access. The holder's liability for the PEG access support fee shall commence on the date set forth in Section 114.05(B)(d).
- (d) Payment Due. The payment of the PEG access support fee shall be due on a quarterly basis, forty-five (45) days after the close of the calendar quarter. If mailed, the fee is considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.
- (e) Credit for Other Payments. An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c) shall pay, at the time they would have been due, all monetary payments for PEG access that would have been due during the remaining term of the agreement had it not been terminated pursuant to that section. All payments made by an incumbent cable

operator pursuant to the previous sentence may be credited against the fees that that operator owes under Section 114.05(C).

- D. Applicable Principles.** All determinations and calculations under this Section shall be made pursuant to generally accepted accounting principles.
- E. No Impact on Other Taxes Due from Holder.** Nothing contained in this Section shall be construed to exempt a holder from any tax that is or may later be imposed by the City, including any tax that is or may later be required to be paid by or through the holder with respect to cable service or video service. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the City's simplified municipal telecommunications tax or any other tax as it applies to any telephone service provided by the holder. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the City's 911 or E911 fees, taxes or charges.
- F. Audits of Cable/Video Service Provider.**
- (a) Audit Requirement. The audit requirements contained in Ordinance No. 1826 are hereby incorporated by reference as though fully set forth herein. The City will notify the holder of the requirements it imposes on other cable service or video service providers to submit to an audit of its books and records. Receipt of the ordinance adopting this Section by the holder shall constitute such notice. The holder shall comply with the same requirements the City imposes on other cable service or video service providers in its jurisdiction to audit the holder's books and records and to recompute any amounts determined to be payable under the requirements of the City. If all local franchises between the City and cable operator terminate, the audit requirements shall be those adopted by the City pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.*, as codified by the City at §§ 35.55-35.73 of the O'Fallon Code of Ordinances. No acceptance of amounts remitted should be construed as an accord that the amounts are correct.
- (b) Additional Payments. Any additional amount due after an audit shall be paid within thirty (30) days after the City's submission of an invoice for the sum.
- G. Late Fees / Payments.** All fees due and payments which are past due shall be subject to penalties set forth by ordinances adopted by the City pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.*, as codified by the City at §§ 35.55-35.73 of the O'Fallon Code of Ordinances, or any other penalties the City may be authorized by law to impose on payments which are past due.

**§ 114.10 Regulations Applicable to Holders of State-Issued Authorizations; Local Franchisees.**

- A.** All holders of a state-issued authorization to provide cable or video services shall be subject to construction and technical standards and right-of-way occupancy standards set forth in Ordinance No. 1826 and other City ordinances relating to the use of public rights-

of-way, pole attachments, permit obligations, indemnification, performance bonds, penalties or liquidated damages as may apply to a provider of cable or video services operating pursuant to a franchise granted by the City under such ordinances. Notwithstanding any other provisions of law, if the City is permitted by law to require a holder of a state-issued authorization to seek a permit to install, construct, operate, maintain or remove its cable service, video service, or telecommunications network within a public right-of-way, those permits shall be deemed granted within 45 days after being submitted, if not otherwise acted upon by the City, provided the holder complies with the requirements applicable to the holder imposed by the City.

**B.** All holders of a state-issued authorization to provide cable or video service that provide such services within the City shall be subject to the additional provisions set forth in 220 ILCS 5/21-1001, as amended.

**C.** In addition to the above requirements, all holders of a state-issued authorization to provide cable or video services shall be subject to the following general requirements regarding placement and location of such a holder's facilities:

(1) No Interference with City Facilities. No facilities shall be placed in any location if the City Engineer determines that the proposed location will require the relocation or displacement of any of the City's utility facilities or will otherwise interfere with the operation or maintenance of any of the City's utility facilities.

(2) Minimum Interference and Impact. The proposed location shall cause only the minimum possible interference with the use of the rights-of-way and shall cause only the minimum possible impact upon, and interference with the rights and reasonable convenience of property owners who adjoin said rights-of-way.

(3) No Interference with Travel. No facility shall be placed in any location that interferes with the usual travel on such rights-of-way.

(4) No Limitations on Visibility. No utility facility shall be placed in any location so as to limit visibility of or by users of the Rights-of-Way.

(5) Size of Utility Facilities. The proposed installation of facilities shall use the smallest suitable vaults, boxes, equipment enclosures, power pedestals, and/or cabinets then in use by the facility owner, regardless of location, for the particular application.

(6) Location and Screening. A holder of a state-issued authorization shall comply with the City's reasonable requests to place equipment on public property where possible, and promptly comply with the City's direction with respect to the location and screening of equipment and facilities.

**D.** Insurance. All holders of a state-issued authorization to provide cable or video services shall maintain insurance, as provided in Ordinance No. 1826, or provide the City evidence of self-insurance.

- E. **Enforcement.** The requirements of the Cable and Video Competition Law of 2007 (codified at 220 ILCS 5/Art. XXI) shall apply to all holders of a state-issued authorization to provide cable and video services under the terms thereof and, to the extent provided by law, the City may enforce such provisions as a condition of this Section, consistent with 220 ILCS 5/21-1301(a).
- F. **Emergency Alert System.** A provider of cable or video services, whether providing such services pursuant to a state-issued authorization or a local franchise (“Provider”), shall comply with 47 U.S.C. § 544(g) and all regulations issued pursuant thereto in addition to the supplementary requirements herein. In addition, consistent with the provisions of 220 ILCS 5/21-701, a Provider shall on request of the City provide an override capability so that City may access the Provider’s system with a audio and visual message on all channels in the event of an emergency or disaster. A Provider will provide the necessary electronic equipment for such emergency override system. Further, a Provider will maintain said equipment and provide for regularly scheduled testing by the City to insure that the equipment is functioning properly. Except as may be otherwise agreed or required by law, the required telephone or other connection to the emergency alert system shall be the responsibility of a Provider.
- G. **Application to Local Franchisees.** The requirements of this Section 114.10 shall also apply to providers of cable service or video service providing such services pursuant to a local franchise or other authority from the City to the extent permitted by applicable law; provided such application does not violate the terms of such local franchise or authority.

#### **§ 114.15 Cable and Video Customer Protection Law.**

A. **Customer Service and Privacy Protection.**

- (a) **Adoption.** The regulations of 220 ILCS 5/70-501 (“the Cable and Video Customer Protection Law”) are hereby adopted by reference and made applicable to all cable or video providers offering services within the City’s boundaries. As such regulations are deemed necessary to the City’s exercise of the police power, the ordinance adopting this Section shall constitute an amendment to Ordinance No. 1826 and the regulations contained in 220 ILCS 5/70-501 will supersede any customer service and privacy protection standards contained in a franchise granted by the City to a provider of cable or video services.
- (b) **Amendments.** Any amendment to the Cable and Video Customer Protection Law that becomes effective after the effective date of this Section shall be incorporated into this Section by reference and shall be applicable to cable or video providers offering services within the City’s boundaries. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Section by reference without formal action by the corporate authorities of the City.

- B. **Enforcement.** The City does hereby pursuant to law declare its intent to enforce all of the customer service and privacy protection standards of the Cable and Video Customer Protection Law with respect to complaints received from residents within the City.

C. **Penalties.** The City, pursuant to 220 ILCS 5/70-501(r)(1), does hereby provide for a schedule of penalties for any material breach of the Cable and Video Customer Protection Law by cable or video providers in addition to the penalties provided in the law. The monetary penalties shall apply on a competitively neutral basis and shall not exceed \$750.00 for each day of the material breach, and shall not exceed \$25,000.00 for each occurrence of a material breach per customer.

- (a) Material breach means any substantial failure of a cable or video provider to comply with service quality and other standards specified in any provision of the Cable and Video Customer Protection Law.
- (b) The City shall give the cable or video provider written notice of any alleged material breaches of the Cable and Video Customer Protection Law and allow such provider at least 30 days from the receipt of the notice to remedy the specified material breach.
- (c) A material breach, for the purposes of assessing penalties, shall be deemed to occur for each day that a material breach has not been remedied by the cable or video service provider after the notice in (b).

D. **Customer Credits.** The City hereby adopts a schedule of customer credits that shall be paid directly to customers by the cable or video provider for violations of the requirements adopted by this Section. The schedule of credits shall be the maximum amount as provided for in the provisions of 220 ILCS 5/70-501(s) and applied on the statement issued to the customer for the next billing cycle following the violation or following the discovery of the violation. The cable or video provider is responsible for providing the credits and the customer is under no obligation to request the credit.

**§ 114.20 PEG Access Required.** Holders of a state-issued authorization to provide cable or video services that are providing such services within the City shall provide Public, Education and Government (“PEG”) Access in the manner provided in 220 ILCS 5/21-601. Receipt of the ordinance enacting this paragraph by a state-authorized provider of cable and video services shall be considered a request by the City to provide such PEG Access.

**SECTION 3.** If any provision of this Ordinance, or the application of any provision of this Ordinance, is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Ordinance, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Ordinance.

**SECTION 4.** This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

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ATTEST:  
(seal)

Approved by the Mayor this \_\_\_\_ day  
of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Philip A. Goodwin, City Clerk

\_\_\_\_\_  
Gary L. Graham, Mayor

<b>ROLL CALL:</b>	Albrecht	Bennett	J. Drolet	N. Drolet	Grogan	Schmidt	Medford	<b>SUB TOTALS</b>
<b>Aye</b>								
<b>Nay</b>								
<b>Absent</b>								

<b>ROLL CALL:</b>	Engler	Mouser	Reckamp	Polites	Renner	True	West	<b>SUB TOTALS</b>	<b>SUM OF TOTALS</b>
<b>Aye</b>									
<b>Nay</b>									
<b>Absent</b>									