

Ordinance #O.17.02

An Ordinance **AMENDING THE MUNICIPAL CODE OF THE CITY OF GALENA BY THE ADDITION OF CHAPTER 121, ESTABLISHING THE CABLE/VIDEO SERVICE PROVIDER FEE AND ADOPTING THE CABLE AND VIDEO CUSTOMER PROTECTION LAW.**

Adopted by the City Council of the City of Galena this 13<sup>th</sup> Day of March 2017.

Published in pamphlet form by authority of the City Council of the City of Galena, Jo Daviess County, Illinois, this 13<sup>th</sup> Day of March 2017.

STATE OF ILLINOIS            )  
  )  
COUNTY OF JO DAVIESS )           City of Galena

CERTIFICATE

I, Mary Beth Hyde, certify that I am the duly elected municipal clerk of the City of Galena, JoDaviess County, Illinois.

I further certify that on the 13<sup>th</sup> Day of March 2017, the Corporate Authorities of said municipality passed and approved Ordinance No. O.17.02 entitled **AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF GALENA BY THE ADDITION OF CHAPTER 121, ESTABLISHING THE CABLE/VIDEO SERVICE PROVIDER FEE AND ADOPTING THE CABLE AND VIDEO CUSTOMER PROTECTION LAW**, which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. O.17.02 including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the municipal building, commencing the 13<sup>th</sup> Day of March 2017 and commencing for at least ten (10) days thereafter.

Dated at Galena, Illinois, this 14<sup>th</sup> Day March 2017.

  
\_\_\_\_\_  
Mary Beth Hyde  
City Clerk

(Seal)

**Ordinance #O.17.02**

**AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF GALENA BY THE ADDITION OF CHAPTER 121, ESTABLISHING THE CABLE/VIDEO SERVICE PROVIDER FEE AND ADOPTING THE CABLE AND VIDEO CUSTOMER PROTECTION LAW**

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**WHEREAS**, the City of Galena, Illinois, is authorized, pursuant to the provisions of the Illinois Cable and Video Competition Law of 2007, 220 ILCS 5/21-100, et, seq. (hereinafter referred to as the "Act") to adopt this Ordinance; and,

**WHEREAS**, the City of Galena, Illinois, is authorized, pursuant to Section 801 of the Act, 220 ILCS 5/21-801, to adopt and impose a Service Provider Fee on a Holder, who has obtained State-issued authorization to provide Cable Services and/or Video Services within the Service Area of the City of Galena, Illinois; and,

**WHEREAS**, the City Council for the City of Galena, Illinois, has determined that it is fiscally responsible, and in the best interest of the public to adopt and impose a Service Provider Fee as authorized by the Act; and,

**WHEREAS**, the City of Galena, Illinois, is authorized, pursuant to the provisions of the Illinois Cable and Video Customer Protection Law, 225 ILCS 5/22-501, et, seq, to adopt and impose customer service and privacy protections; and,

**WHEREAS**, the City Council for the City of Galena, Illinois, has determined that it is necessary and in the best interest of the public to adopt and impose the customer service and privacy protections set forth in the Illinois Cable and Video Customer Protection Law.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and City Council of the City of Galena as follows:

**SECTION 1. Recitals.** 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. Adoption of Fee.** The City of Galena Code of Ordinances shall be amended by the addition of Chapter 121 that will read as follows:

**CHAPTER 121. CABLE/VIDEO SERVICE PROVIDER FEE.**

**121.01 DEFINITIONS.**

As used in this Chapter the following terms shall have the following meanings:

**CABLE SERVICE.** That term as defined in 47 U.S.C. § 522(6).

**COMMISSION.** The Illinois Commerce Commission.

**GROSS REVENUES.** 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.

(A) Gross revenues shall include the following:

- (1) Recurring charges for cable or video service.
- (2) Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.
- (3) Rental of set top boxes and other cable service or video service equipment.
- (4) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.
- (5) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
- (6) Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.
- (7) 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.
- (8) 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 (9).
- (9) 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.
- (10) The service provider fee permitted by 220 ILCS 5/21-801(b).

(B) Gross revenues do not include any of the following:

- (1) Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).
- (2) 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.

(3) 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 non-video 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.

(4) 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.

(5) 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.

(6) Security deposits collected from subscribers.

(7) 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.

(C) 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.

**HOLDER.** 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.

**PEG.** Public, education and governmental.

**SERVICE.** 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.

**SERVICE PROVIDER FEE.** The amount paid under this Chapter and 220 ILCS 5/21-801 by the holder to City for the service areas within its territorial jurisdiction.

**VIDEO SERVICE.** 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.

#### **121.02 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 Article[Chapter] by the holder. The ordinance adopting this Article[Chapter] 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 121.2(B).

#### **121.03 APPLICABLE PRINCIPLES.**

All determinations and calculations under this Chapter shall be made pursuant to generally accepted accounting principles.

#### **121.04 NO IMPACT ON OTHER TAXES DUE FROM HOLDER.**

Nothing contained in this Chapter 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 local unit of government's 911 or E911 fees, taxes or charges.

#### **121.05 Audits of Cable/Video Service Provider**

(A) Audit Requirement. 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. 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.* 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 municipality's submission of an invoice for the sum.

#### **121.06 LATE FEES / PAYMENTS.**

All fees due and payments which are past due shall be governed by ordinances adopted by this municipality pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.*

#### **121.07 CUSTOMER SERVICE AND PRIVACY PROTECTION LAW.**

(A) Adoption. The regulations of 220 Illinois Compiled Statutes 5/22-501 are hereby adopted by reference and made applicable to the cable or video providers offering services within the City's boundaries.

(B) Amendments. Any amendment to the cable and video customer protection law that becomes effective after the effective date of this chapter shall be incorporated into this chapter by reference and shall be applicable to cable or video providers offering services within the municipality's boundaries. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this chapter by reference without formal action by the corporate authorities of the City.

(C) 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 protection law with respect to complaints received from residents within the City.

(D) The City, pursuant to 220 Illinois Compiled Statutes 5/22-501(r)(1), does hereby provide for a schedule of penalties for any material breach of the cable and video 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 seven hundred fifty dollars (\$750.00) for each day of the material breach, and shall not exceed twenty-five thousand dollars (\$25,000.00) for each occurrence of a material breach per customer.

(1) "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 law.

(2) The City shall give the cable or video provider written notice of any alleged material breaches of the law and allow such provider at least thirty (30) days from the receipt of the notice to remedy the specified material breach.

(3) 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 subsection (2) of this section.

(E) The City hereby adopts the schedule of customer credits for violations. Those credits shall be as provided for in the provisions of 220 Illinois Compiled Statutes 5/22-501(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.

[end]

**SECTION 3. Severability.**

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. Effective Date.**


This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

**APPROVED** this 13<sup>th</sup> day of March, 2017 pursuant to a roll call vote as follows:

**AYES: Lincoln, Westemeier, Bernstein, Fach, Hahn, Renner**

**NAYS: None**

**ABSENT: Kieffer**

  
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**Terry Renner, Mayor**

  
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**Mary Beth Hyde, City Clerk**

ATTESTED, Filed in my office,

And published in pamphlet form

This 14 day of March, 2017.

  
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Clerk of the City of the City of Galena

Jo Daviess County, Illinois.