

Council Bill/General Ordinance No. 3033-2023

Sponsor: \_\_\_\_\_

AN ORDINANCE

AMENDING Chapter 30, "CABLE/VIDEO SERVICE PROVIDER FEE AND CUSTOMER PROTECTION," of the Moline Code of Ordinances, by repealing Chapter 30 in its entirety and enacting in lieu thereof one new Chapter 30 dealing with the same subject matter.

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WHEREAS, the City is an Illinois municipal corporation possessing home rule powers under Section 6 of Article VII of the Illinois Constitution; and

WHEREAS, City staff has decided to do a complete review of all chapters of the Moline Code of Ordinances to correct those items that are merely housekeeping in nature; and

WHEREAS, staff finds that a number of housekeeping changes are necessary in Chapter 30 of the Moline Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

**Section 1** – That Chapter 30, "CABLE/VIDEO SERVICE PROVIDER FEE AND CUSTOMER PROTECTION," of the Moline Code of Ordinances, is hereby amended by repealing Chapter 30 in its entirety and enacting in lieu thereof one new Chapter 30 dealing with the same subject matter, which shall read as attached (additions in underline; deletions in strikethrough):

**Section 2** – All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed to the extent necessary to give effect to the provisions of this Ordinance.

**Section 3** – This ordinance and every provision thereof shall be considered severable. If any word, phrase, clause, sentence, paragraph, provision, section, or part of this Ordinance is found to be void, unconstitutional, or otherwise unenforceable, all remaining portions of this Ordinance not so declared void, unconstitutional, or unenforceable shall remain in full force and effect.

**Section 4** – This Ordinance will be in full force and effect upon passage, approval and publication in pamphlet form in the manner provided by law.

Council Bill/General Ordinance No. 3033-2023

CITY OF MOLINE, ILLINOIS

DocuSigned by:  
*S. Kaypata*  
\_\_\_\_\_  
Mayor  
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August 8, 2023  
\_\_\_\_\_  
Date

Passed: August 8, 2023

Approved: August 22, 2023

Attest: *B. Russell* Deputy City Clerk  
\_\_\_\_\_  
City Clerk  
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## Memorandum



To: Bob Vitas, City Administrator  
City Council

From: Amy Saunders, Legal Services Specialist

Date: July 18, 2023

Re: Chapter 30 – Executive Summary of Proposed Amendments

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This memorandum represents a summary of the proposed amendments to Chapter 30 of the Moline Code of Ordinances. This information was received from Adam Simon at Ancel Glink. The proposed amendments are as follows:

1. **Section 30-1100(c)** – Adam Simon removed the enumerated list, because anytime a list is enumerated, it normally results in the exclusion of items not on the list. Given the rapid evolution of service and technology, he prefers a more general definition that is flexible and can capture new revenue streams without an amendment being necessary. Moreover, since this definition is taken from the statute, it really is not necessary to restate it here since it will automatically apply by virtue of the application of the statute.
2. **Section 30-1100(e)** – The term service is designed to combine “cable service” and “video service,” each of which have their own unique definitions. We do not need to repeat any part of the definitions for cable service or video service in this context.
3. **Section 30-2100(c)** – Adam Simon added a sentence here to include a requirement to provide an address for all notices to be sent from the City.
4. **Section 30-2103** – The City cannot levy a tax against cable/video service providers solely by reason of them providing such services. That is the reason for adding “generally applicable.” An example is the amusement tax. The other change just eliminates unnecessary language, because the definition of “holder” is sufficient to express the intent.
5. **Section 30-2104** – The Illinois Municipal Code section that governs audits was amended in 2015 and 2018, and the Code needs to be updated to mirror said amendments.
6. **Section 30-3102 (first paragraph and subsection (b))** – There was no schedule of fines – just a maximum. Adam Simon added a minimum fine so there is a schedule, or range, of potential fines. The second change is intended to clarify the intent.

The remainder of the proposed amendments to Chapter 30 are merely housekeeping in nature (i.e., changing a department name to reflect the new department name, etc.).

## CHAPTER 30

### CABLE/VIDEO SERVICE PROVIDER FEE AND CUSTOMER PROTECTION

Art. I. In General, §30-1100

Art. II. Cable/Video Service Provider Fee, §30-2100 - §30-2106

Art. III. Cable and Video Customer Protection, §30-3100 - §30-3104

#### ARTICLE I. IN GENERAL

##### SEC. 30-1100. DEFINITIONS.

For the purpose of this chapter, the following terms shall have the meanings respectively ascribed to them:

(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. Gross revenues shall also include such other revenue sources from cable service or video service delivered over the holder's system as may now exist or hereafter develop, provided that such revenues, fees, receipts, or charges may be lawfully included in the gross revenue base for purposes of computing the City's permissible revenue under State or Federal law, as amended from time to time. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5<sup>th</sup> Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the "Pasadena Decision," *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Rcd. 18192 (2001)*, and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5th Cir. 2003). ~~Without limiting the generality of the foregoing:~~

~~(1) Gross revenues shall include the following:~~

~~a. Recurring charges for cable or video service.~~

~~b. Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.~~

~~c. Rental of set top boxes and other cable service or video service equipment.~~

~~d. Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.~~

~~e. Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.~~

~~f. Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.~~

~~g. 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.~~

~~h. 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).~~

~~i. 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.~~

~~j. The service provider fee permitted by 220 ILCS 5/21-801(b).~~

~~(2) Gross revenues do not include any of the following:~~

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

~~b. 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.~~

~~c. 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.~~

~~d. 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.~~

~~e. 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.~~

~~f. Security deposits collected from subscribers.~~

~~g. 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)(1) 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) **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.~~

(f) **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.

(g) **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.

(Ord. No. 3028-2018; Sec. 30-1100(e) and (f), "PEG" and "PEG access support fee, respectively, repealed in their entirety; remaining subsections consecutively renamed; 07/17/18)

## ARTICLE II. CABLE/VIDEO SERVICE PROVIDER FEE

### SEC. 30-2100. 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's ~~accounts and finance office~~ department of finance at least ten (10) days prior to the date on which the holder begins to offer cable service or video service in the City. The notice shall include the address to which all notices from the City should be mailed.

(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 chapter by the holder. The ordinance adopting this 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 to the City's ~~accounts and finance office~~ department of finance 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 Sec. 30-2100(b).

### SEC. 30-2101. RESERVED FOR FUTURE USE.

(Ord. No. 3028-2018; Sec. 30-2101, "PEG ACCESS SUPPORT FEE IMPOSED," repealed in its entirety and section reserved for future use; 07/18/18)

**SEC. 30-2102. APPLICABLE PRINCIPLES.**

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

**SEC. 30-2103. NO IMPACT ON OTHER TAXES DUE FROM HOLDER.**

Nothing contained in this chapter shall be construed to exempt a holder from any generally applicable 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.

**SEC. 30-2104. AUDITS OF CABLE/VIDEO SERVICE PROVIDER.**

~~(a) Audit requirement. A holder that has received State-issued authorization is subject to an audit of its service provider fees derived from the provision of cable or video services to subscribers within any part of the City which is located in the holder's service territory. Any such audit shall be conducted by the local unit of government or its agent for the sole purpose of determining any overpayment or underpayment of the holder's service provider fee to the local unit of government. Any audit conducted pursuant to this Section shall be governed by Section 11-42-11.05 of the Illinois Municipal Code. 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 City's submission of an invoice for the sum.~~

**SEC. 30-2105. LATE FEES AND PAYMENTS.**

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

**SEC. 30-2106. SEVERABILITY.**

The provisions of this ordinance are declared to be severable, and if any provision of this ordinance is declared unconstitutional or held invalid by a court of competent jurisdiction, this determination shall not affect, impair, or invalidate the remainder of this ordinance, but shall be confined in its operation to the section, paragraph, subparagraph, clause or phrase of this ordinance in which such determination shall have been made.

**ARTICLE III. CABLE AND VIDEO CUSTOMER PROTECTION LAW****SEC. 30-3100. CUSTOMER SERVICE AND PRIVACY PROTECTION.**

(a) Adoption. The regulations of the Cable and Video Customer Protection Law, 220 ILCS 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 City'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 City Council.

**SEC. 30-3101. ENFORCEMENT.**

The City does hereby declare its intent pursuant to law 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.

**SEC. 30-3102. PENALTIES.**

The City, pursuant to 220 ILCS 5/22-501(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 be not less than two hundred fifty dollars (\$250.00) and 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.

(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 law.

(b) 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 before exercising any available remedies.

(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 subsection (b).

**SEC. 30-3103. CUSTOMER CREDITS.**

The City hereby adopts the schedule of customer credits for violations. Those credits shall be as provided for in the provisions of 220 ILCS 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.

**SEC. 30-3104. SEVERABILITY.**

If any provision of this article, or the application of any provision of this article, is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this article, 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 article.

(Ord. No. 3012-2014; Chapter 30, formerly reserved for future use, amended by enacting new Chapter 30; 05/20/14)

(Art. III scrivener's errors corrected 03/09/15 by correcting ILCS citations to 220 ILCS 5/22-501)