

**AN ORDINANCE AMENDING: CHAPTER 605, BUSINESS LICENSE AND REGULATIONS, REPUBLIC CITY CODE, BY ADDING ARTICLE IV, VIDEO SERVICE PROVIDER AND UTILITY USE OF RIGHT-OF-WAY AND OTHER PROPERTY, SO THAT THE CITY CAN EXERCISE CERTAIN LIMITED AUTHORITY RELATING TO OPERATION OF VIDEO SERVICES PROVIDERS AND PROVIDING SUPPLEMENTARY REGULATION OF THE PLACEMENT OF FACILITIES OF VIDEO SERVICE PROVIDERS AND OTHER UTILITIES MAINTAINING FACILITIES WITHIN THE CITY**

**Whereas**, the 94th General Assembly enacted SB284, codified as Sections 67.2675 through 67.2714 RSMo., inclusive, (“2007 Video Services Providers Act”) establishing a state-wide franchise scheme for cable television and video service providers; and

**Whereas**, the 2007 Video Services Providers Act authorizes municipalities to continue to regulate use of their rights-of-way, authorizes municipal fees on gross revenues attributable to providers of such services that use the public rights-of-way, and authorizes certain other requirements or obligations that may be imposed by franchise entities within which such services are provided; and

**Whereas**, the City was an entity authorized to require franchises and impose franchise fees prior to the enactment of the 2007 Video Services Providers Act and therefore has the authority of a “franchise entity” for purposes of such Act; and

**Whereas**, the City further is authorized to adopt the regulations herein applicable to video service providers and to utilities and other service providers installing facilities in the rights-of-way or on private property within the City pursuant to the City’s reasonable police powers, authority provided by Sections 67.2707 RSMo. and 67.1830 RSMo., et seq., and further by Chapter 89 RSMo., granting zoning authority and authority to regulate the extent and manner of the placement of public utilities and infrastructure, whether publicly or privately owned;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF REPUBLIC, MISSOURI, AS FOLLOWS:**

**Section 1:** That Chapter 605, Business License and Regulations, Republic City Code, is hereby amended by adding Article IV, Video Service Provider and Utility Use of Right-of-Way and Other Property, such added Article to read as follows:

**SECTION 605.150:** That nothing in herein shall be deemed to alter the continuing obligations of the current cable franchisee of the city as more fully set forth in Section 605.160 (f) of this ordinance.

**SECTION 605.160:** The following provisions relating to video service providers are hereby adopted as ordinance provisions of a general and permanent nature:

**Video Services Providers**

**a. Definitions.** The words and phrases used in this Section of this Ordinance shall have the meaning as set forth in Section 67.2677 RSMo. or, if not defined therein, shall have such meanings as established by City Code.

b. Franchise fee. Pursuant to Section 67.2689 RSMo., and as partial compensation for use of the City's public rights-of-way, each video service provider or other person providing cable services or video services within the City shall, to the extent permitted by law, pay to the City a fee of five percent (5%) of the gross revenues from such video services provider in the geographic area of the City. Such payment shall be made as required by Section 67.2689 RSMo. The City shall have the right to audit any video service provider as authorized by Section 67.2691 RSMo. Late payments shall accrue interest due to the City compounded monthly at one and one-half percent (1.5%) or such other maximum rate as may be established by law.

c. Customer Service Requirements. All video service providers providing service within the City shall adopt and comply with the minimum customer service requirements set forth in Section 67.2692 RSMo. Notice or receipt of this Ordinance by the video service provider shall be deemed notice of the City invoking such customer service requirements.

d. Rights-of-Way regulation; indemnification; permits and compliance with other laws. Video service providers shall comply with the requirements of Sections 67.2707, 67.2709 and Chapter 515 of this Code relating to use of the City rights-of-way. Each video service provider shall indemnify and hold harmless the City and its officers, employees and agents from any loss or damage, including, but not limited to attorneys' fees, as provided in such ordinances or regulations, but in no event less than the obligation on video service providers set forth in Section 67.2695 RSMo. The City may require documentation of such indemnification by written agreement or other instrument to the extent permitted by law. In addition, video service providers shall be subject to and comply with such supplementary provisions relating to placement, screening and relocation of facilities as provided in Article, and such other applicable laws of the City, except as may be otherwise validly preempted. Notwithstanding any other ordinance to the contrary, no facilities to be used for video services shall be installed without obtaining a permit from the City authorizing the location and plans for such facilities; provided that this provision shall not apply to installation of otherwise lawful and authorized poles or wires.

e. Public, Educational and Governmental Channels. Each video service provider shall designate a number of channels for public, educational and governmental programming consistent with Section 67.2703 RSMo; provided that any greater number of channels, as may be required in the incumbent cable franchise or franchise ordinance, shall be required pursuant to Section 67.2703.2 RSMo. The City shall bear no cost relating to the transmission, availability or maintenance of such channels unless expressly authorized by the City in writing and approved by the governing body. Incumbent Cable operators and other video service providers shall provide support for such public, educational and governmental channels consistent with Section 67.2703.8 RSMo.

f. Continued Obligations. The obligations of a cable service provider or video service provider as set forth in any existing cable services or video services franchise or ordinance shall also continue to apply to the full extent permitted by applicable law.

**g. Reservation of Rights.** The City retains all rights in Sections 67.2675 through 67.2714 RSMo., inclusive, and may take any and all actions permitted by law to exercise such rights or to enforce such obligations on providers of video service.

**h. Notice.** A copy of this Ordinance shall be delivered to each video service provider operating in the City after notice to the City that such provider is authorized to provide service within the City; provided that the provisions of this Ordinance shall, to the extent permitted by law, not be affected by any claimed or actual failure of a service provider to have received delivery of a copy of this Ordinance.

**SECTION 605.170:** The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 2: This ordinance shall be in full force and effect from and after its date of passage.

Passed and approved at a regular meeting of the City Council of the City of Republic, Missouri, on this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Mayor, James H. Collins

ATTEST:

\_\_\_\_\_  
Brenda Jackson, City Clerk

Approved for Council Action: \_\_\_\_\_, City Administrator

Approved as to Form: \_\_\_\_\_, City Attorney