

**COUNTY OF Mc LEAN, STATE OF ILLINOIS**

**ORDINANCE NO. 17-05-01-50**

**AN ORDINANCE ADOPTING CABLE & VIDEO REGULATIONS**

ADOPTED BY THE CITY COUNCIL OF THE CITY OF LE ROY THIS  
**1st Day of May 2017**

PRESENTED: **May 1, 2017**

PASSED: **May 1, 2017**

APPROVED: **May 1, 2017**

RECORDED: **May 1, 2017**

PUBLISHED: **May 1, 2017**

In Pamphlet Form


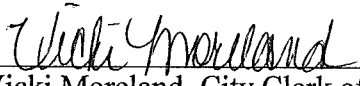
Voting "Aye" 6

Voting "Nay" 0

---

The undersigned being the duly qualified and Acting City Clerk of the City of LeRoy does hereby certify that this document constitutes the publication in pamphlet form, in connection with and pursuant to Section 1-2-4 of the Illinois Municipal Code, of the above-captioned **ordinance** and that such **ordinance** was presented, passed, approved, recorded and published as above stated.

(SEAL)

  
  
\_\_\_\_\_  
Vicki Moreland, City Clerk of the  
City of Le Roy, McLean County, Illinois

Dated: May 1, 2017

**CITY OF LEROY  
MCLEAN COUNTY, ILLINOIS**

**ORDINANCE NO. 17-05-01-50**

**AN ORDINANCE ADOPTING CABLE & VIDEO REGULATIONS**

**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, Public Act 95-0009 (the "Act") and Section 501(r) of the Cable and Video Customer Protection Law (220 ILCS 5/22-501) (the "Law") authorizing a City to enforce all of the customer service and privacy protection standards of the Law; and

**WHEREAS**, this Ordinance is intended to establish the service provider fee the Act authorizes municipalities to impose on a holder under 220 ILCS 5/21-801; and

**WHEREAS**, each incumbent cable operator to whom the City has issued a franchise under 65 ILCS 5/11-42-11 pays a franchise fee to the City at a rate equal to 5% of gross revenues.

**WHEREAS**, the City desires to enforce the customer service and privacy protection standards as provided by the Cable and Video Customer Protection Law.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and City Council of the City of LeRoy, McLean County, 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 Cable and Video Regulations.** Title 3, Chapter 10 of the City Code of the City of LeRoy shall be created by the addition of the regulations described in Exhibit A to this Ordinance, attached hereto and incorporated as though fully set forth herein.

**Section 3. Service on Video Service Providers.** The City Clerk is hereby authorized and directed to serve on any cable or video service provider, from which the City receives notice under the Act of either its intent to provide cable or video service under a state-issued authorization or the filing of an application therefor, a copy of this Ordinance and all regulations pertaining to the management and regulation of the City's right-of-way. The ordinances 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. Together with such information the City Clerk shall send the holder instructions for remitting the payment and statements required hereby.

**Section 4. 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 5. Effective Date.**

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

**EXHIBIT A**  
**TITLE 3, CHAPTER 10**  
**CABLE AND VIDEO REGULATIONS**

*[SEE ATTACHED]*

## CHAPTER 10 CABLE AND VIDEO REGULATIONS

### ARTICLE A. Cable/Video Service Provider Fee.

**3-10-1: DEFINITIONS:**

**3-10-2: CABLE/VIDEO SERVICE PROVIDER FEE IMPOSED:**

**3-10-3: PEG ACCESS CARRIAGE REQUIREMENTS:**

**3-10-4: APPLICABLE PRINCIPLES:**

**3-10-5: NO IMPACT ON OTHER TAXES DUE FROM HOLDER:**

**3-10-6: AUDIT OF CABLE/VIDEO SERVICE PROVIDER:**

**3-10-7: LATE FEES/PAYMENTS:**

**3-10-1: DEFINITIONS:**

As used in this Article, the following terms shall have the following meanings:

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

COMMISSION means the Illinois Commerce Commission.

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.

a. 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).

b. 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 non-cable 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.
- (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.
- 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 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.

INCUMBENT CABLE OPERATOR means a person or entity that provided cable services or video services in the City of LeRoy under a franchise agreement with the City pursuant to Section 11-42-11 of the Illinois Municipal Code (65 ILCS 5/11-42-11) on January 1, 2007.

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.

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

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.

### **3-10-2: CABLE/VIDEO SERVICE PROVIDER FEE IMPOSED:**

- a. Fee Imposed. A service provider fee is hereby imposed on any holder providing cable service or video service in the City.
- b. Amount of Fee. The amount of the service provider fee imposed hereby shall be five percent (5%) of the holder’s gross revenues.
- c. Notice to the City. Unless the holder has earlier sent notice to the City pursuant to 220 ILCS 5/21-801(a), 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 by the holder.
- 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 cable service or video service providers that have an existing franchise agreement with the City, under 65 ILCS 5/11-42-11, 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 3-10-2(b).

### **3-10-3: PEG ACCESS CARRIAGE REQUIREMENTS:**

On the date set forth in Section 3-10-2(d), but not earlier than 90 days after the holder sends notice to the City under 220 ILCS 5/21-801(a), the holder shall (i) designate the same amount of capacity on its network to provide for public, education, and government access use, as the incumbent cable operator is required to designate under its franchise terms in effect with the City on January 1, 2007; and (ii) retransmit to its subscribers the same number of public, education, and government access channels as the incumbent cable operator was retransmitting to subscribers on January 1, 2007. For the purpose of this Section 3-10-3, the number of public, education, and government access channels the incumbent cable operator was retransmitting to subscribers on January 1, 2007, was one.

### **3-10-4: APPLICABLE PRINCIPLES:**

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

### **3-10-5: NO IMPACT ON OTHER TAXES DUE FROM HOLDER:**

Nothing contained in this Article 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 telecommunications 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.



**3-10-6: AUDITS OF CABLE/VIDEO SERVICE PROVIDER:**

- a. Audit Requirement. The audit requirements shall be those described in Section 11-42-11.05 of the Illinois Municipal Code. 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.

**3-10-7: LATE FEES / PAYMENTS:**

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

**ARTICLE B. CABLE AND VIDEO CUSTOMER PROTECTION LAW.**

**3-10-8: CUSTOMER SERVICE AND PRIVACY PROTECTION LAW:**

**3-10-9: ENFORCEMENT:**

**3-10-10: PENALTIES:**

**3-10-11: CUSTOMER CREDITS:**

**3-10-8: CUSTOMER SERVICE AND PRIVACY PROTECTION LAW:**

- a. Adoption. The regulations of 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 mandatory 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.

**3-10-9: 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 Protection Law.

**3-10-10: PENALTIES:**

The City, pursuant to 220 ILCS 5/22-501(r)(1), does hereby declare that for any material breach of the standards and requirements of the Cable and Video Customer Protection Law, as incorporated by reference in this ordinance, a cable or video provider shall be subject to monetary penalties which 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. Such penalties shall be in addition to the penalties provided in the Law and shall not represent the City's exclusive remedy for any material breach. All monetary penalties shall apply on a competitively neutral basis.

- 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 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. The City Council hereby delegates authority to levy penalties to the City Administrator.
- e. Any decision of the City Administrator to levy penalties may be appealed to the City Council, which shall conduct a hearing on the alleged material breach and penalties levied therefore within twenty-one (21) days following receipt of the cable or video providers request for an appeal.

### **3-10-11: CUSTOMER CREDITS:**

The City hereby adopts and incorporates by reference the schedule of customer credits for violations of the Law provided for in the provisions of 220 ILCS 5/22-501(s). Those credits shall be 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 proactively providing the credits and the customer is under no obligation to request the credit.

PASSED by the City Council of the City of Le Roy, Illinois, upon the motion  
Made by Glenn Reinhart, and seconded by Greg Steffen by roll call vote on the 1st Day  
of May 2017, as follows

Aldermen elected 8

Aldermen Present 6

Voting Aye: Dawn Hanafin, Rick Kline, Kyle Merkle, , Brad Poindexter, Glenn Reinhart,  
Greg Steffen.

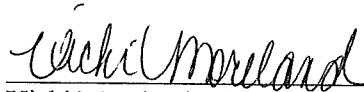
Voting Nay: None

Absent: Ron Legner, Hilary Neal

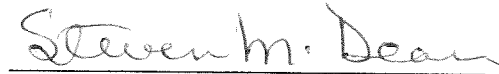
Abstain: None

Other: None

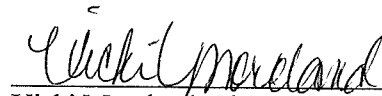
and deposited and filed in the office of the City Clerk in said municipality on the 1<sup>st</sup>  
Day of May 2017

  
\_\_\_\_\_  
Vicki Moreland, City Clerk of the City of LeRoy  
Mc Lean County, Illinois

APPROVED BY the Mayor of the City of Le Roy, Illinois, this 1st Day of May 2017

  
\_\_\_\_\_  
Steven M. Dean, Mayor of the City of Le Roy,  
Mc Lean County, Illinois

ATTEST: (SEAL)

  
\_\_\_\_\_  
Vicki Moreland, City Clerk of the City of  
Le Roy, Mc Lean County, Illinois

CERTIFICATE

I, Vicki Moreland, certify that I am the duly appointed and acting municipal clerk of the City of Le Roy, of McLean County, Illinois.

I further certify that on **May 1, 2017** the Corporate Authorities of such municipality passed and approved **Ordinance No. 17-05-01-50** entitled:

**AN ORDINANCE ADOPTING CABLE & VIDEO REGULATIONS**

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. **17-05-01-50**, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted at the municipal building, commencing on **May 1, 2017** and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

Dated at Le Roy, Illinois this 1st Day of May 2017

(SEAL)



Vicki Moreland  
Vicki Moreland, City Clerk of the City of  
Le Roy, McLean County, Illinois

STATE OF ILLINOIS        )  
  ) SS:  
COUNTY OF MCLEAN        )

I, Vicki Moreland, do hereby certify that I am the duly qualified and acting City Clerk of the City of Le Roy, McLean County, Illinois, and as such City Clerk that I am the keeper of the records and files of the Mayor and the City Council of said City.

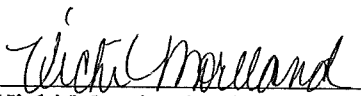
I do further certify that the foregoing is a true, correct and complete copy of an ordinance entitled:

**AN ORDINANCE ADOPTING CABLE & VIDEO REGULATIONS**

I do further certify said *ordinance* was adopted by the City Council of the City of Le Roy at a regular meeting on the 1st Day of May 2017, and prior to the making of this certificate the said ordinance was on file with the permanent records of said City where it now appears and remains as a permanent record of said ordinance in the record books.

**Dated this 1st Day of May 2017**

(SEAL)

  
Vicki Moreland, City Clerk of the  
City of Le Roy, McLean County, Illinois

