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**VILLAGE OF MELROSE PARK
COOK COUNTY, ILLINOIS**

ORDINANCE NO. 1154

**AN ORDINANCE ADDING CHAPTER 12.64 TO THE VILLAGE OF
MELROSE PARK MUNICIPAL CODE REGARDING MODEL
CABLE/VIDEO SERVICE PROVIDER FEES AND PEG ACCESS
SUPPORT FEES, FOR THE VILLAGE OF MELROSE PARK,
COUNTY OF COOK, STATE OF ILLINOIS.**

**ADOPTED BY THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE
VILLAGE OF MELROSE PARK**

THIS 25TH DAY OF FEBRUARY 2008

**RONALD M. SERPICO, Village President
MARY ANN PAOLANTONIO SALEMI, Village Clerk**

Board Of Trustees

**JOHN S. CONTEDEUCA
CATHLEEN COSSIDENT ITALIA
ARTURO J. MOTA
ANTHONY J. PRIGNANO
MARY RAMIREZ TACONI**

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**Published by authority of the
President and Board of Trustees
Of the Village of Melrose Park,
Cook County, Illinois on
This 26TH day of FEBRUARY 2008**

ORDINANCE NO. 1154

AN ORDINANCE ADDING CHAPTER 12.64 TO THE VILLAGE OF MELROSE PARK MUNICIPAL CODE REGARDING MODEL CABLE/VIDEO SERVICE PROVIDER FEES AND PEG ACCESS SUPPORT FEES, FOR THE VILLAGE OF MELROSE PARK, COUNTY OF COOK, STATE OF ILLINOIS.

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WHEREAS, the Village of Melrose Park, County of Cook, State of Illinois (the "Village") is a duly organized and existing municipality and unit of local government created under the provisions of the laws of the State of Illinois, and is operating under the provisions of the Illinois Municipal Code, and all laws amendatory thereof and supplementary thereto, with full powers to enact ordinances and adopt resolutions for the benefit of the residents of the Village; and

WHEREAS, the Village President (the "President"), the Honorable Ronald M. Serpico, the Village Clerk, the Honorable Mary Ann Paolantonio Salemi, having taken office on May 2, 2005 and the Board of Trustees of the Village (the "Village Board"), the Honorable John S. Conteduca, Cathleen Cossident Italia, Arturo J. Mota, Anthony J. Prignano and Mary Ramirez Taconi having taken office on May 14, 2007, constitute the duly elected, qualified and acting officials of the Village; and

WHEREAS, the Village 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

WHEREAS, this Ordinance is intended to establish the service provider fee and the public, education and governmental (“PEG”) access support fee that the Act authorizes municipalities to impose on a holder under 220 ILCS 5/21-801; and

NOW, THEREFORE, BE IT ORDAINED by the Village President and the Board of Trustees of the Village of Melrose Park, County of Cook, State of Illinois, as follows:

**ARTICLE I.
IN GENERAL**

Section 01. Incorporation Clause.

All of the recitals hereinbefore stated as contained in the preambles to this Ordinance are full, true and correct, and the Village Board does hereby, by reference, incorporate and make them part of this Ordinance as legislative findings.

Section 02. Purpose.

The purpose of this Ordinance is to add Chapter 12.64 of the Village Code to establish the service provider fee and the PEG access support fee that the Act authorizes municipalities to impose on a holder under 220 ILCS 5/21-801.

Section 03. Invocation of Authority.

This Ordinance is adopted pursuant to the authority granted to the Village by the Constitution of the State of Illinois and the Illinois Compiled Statutes.

Section 04. State Law Adopted.

All applicable provisions of the Illinois Compiled Statutes, including the Illinois Municipal Code, as may be amended from time to time, relating to the purposes of this Ordinance are hereby incorporated herein by reference.

Sections 05 - 09. Reserved.

ARTICLE II.
ADDITION OF CHAPTER 12.64 TO THE
VILLAGE OF MELROSE PARK MUNICIPAL CODE

Section 10.00 Addition of Chapter 12.64, CABLE / VIDEO SERVICE PROVIDER FEE AND PEG ACCESS SUPPORT FEE.

That Chapter 12.64 is hereby added to Title 12 of the Village Code, notwithstanding anything to the contrary, and shall be entitled as follows:

"CABLE / VIDEO SERVICE PROVIDER FEE AND PEG ACCESS SUPPORT FEE".

Section 10.01 Addition of Section 12.64.010, Definitions.

That Section 12.64.010 is hereby added to Chapter 12.64 of the Village Code, notwithstanding anything to the contrary, and shall read as follows:

As used in this Chapter, 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 Village.
 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 Village. The allocation shall be based on the number of subscribers in the Village 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 Village 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 municipality, 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. 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 Chapter and 220 ILCS 5/21-801(d) by the holder to the Village 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 Village 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.

Section 10.02 Addition of Section 12.64.020, Cable/Video Service Provider Fee Imposed.

That Section 12.64.020 is hereby added to Chapter 12.64 of the Village Code, notwithstanding anything to the contrary, and shall read as follows:

- A. **Fee Imposed.** A fee is hereby imposed on any holder providing cable service or video service in the Village.
- B. **Amount of Fee.** The amount of the fee imposed hereby shall be three percent (3%) of the holder's gross revenues and in no event greater than the fee paid to the Village by an incumbent cable operator providing cable service.
- C. **Notice to the Village.** The holder shall notify the Village at least ten (10) days prior to the date on which the holder begins to offer cable service or video service in the Village.
- D. **Holder's Liability.** The holder shall be liable for and pay the service provider fee to the Village. 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 Village.
- 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 Village 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 12.64.020.B.

Section 10.03 Addition of Section 12.64.030, PEG Access Support Fee Imposed.

That Section 12.64.030 is hereby added to Chapter 12.64 of the Village Code, notwithstanding anything to the contrary, and shall read as follows:

- A. PEG Fee Imposed. A PEG access support fee is hereby imposed on any holder providing cable service or video service in the Village in addition to the fee imposed pursuant to Section 12.64.020.
- 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 Village or its designee for PEG access support in the Village.
- C. Payment. The holder shall pay the PEG access support fee to the Village or to the entity designated by the Village to manage PEG access. The holder's liability for the PEG access support fee shall commence on the date set forth in Section 12.64.020.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 12.64.030.B.

Section 10.04 Addition of Section 12.64.040, Applicable Principles.

That Section 12.64.040 is hereby added to Chapter 12.64 of the Village Code, notwithstanding anything to the contrary, and shall read as follows:

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

Section 10.05 Addition of Section 12.64.050, No Impact on Other Taxes Due from Holder.

That Section 12.64.050 is hereby added to Chapter 12.64 of the Village Code, notwithstanding anything to the contrary, and shall read as follows:

Nothing contained in this Chapter shall be construed to exempt a holder from any tax that is or may later be imposed by the Village, 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 Village'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 E-911 fees, taxes or charges.

Section 10.06 Addition of Section 12.64.060, Audits of Cable/Video Service Provider.

That Section 12.64.060 is hereby added to Chapter 12.64 of the Village Code, notwithstanding anything to the contrary, and shall read as follows:

- A. Audit Requirement. The Village 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 Village imposes on other cable service or video service providers in its jurisdiction to audit the holder's books and records and to re-compute any amounts determined to be payable under the requirements of the Village. If all local franchises between the Village and cable operator terminate, the audit requirements shall be those adopted by the Village 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 Village's submission of an invoice for the sum.

Section 10.07 Addition of Section 12.64.070, Late Fees / Payments.

That Section 12.64.070 is hereby added to Chapter 12.64 of the Village Code, notwithstanding anything to the contrary, and shall read as follows:

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

Section 11.00 Other Actions Authorized.

The officers, employees and/or agents of the Village shall take all action necessary or reasonably required to carry out, give effect to and consummate the amendments contemplated by this Ordinance and shall take all action necessary in conformity therewith including, without limitation, the execution and delivery of any and all documents required to be delivered in connection with this Ordinance.

Sections 12.00 – 15.00. Reserved.

**ARTICLE III.
HEADINGS, SAVINGS CLAUSES,
PUBLICATION, EFFECTIVE DATE**

Section 16.00 Headings.

The headings for the articles, sections, paragraphs and sub-paragraphs of this Ordinance are inserted solely for the convenience of reference and form no substantive part of this Ordinance nor should they be used in any interpretation or construction of any substantive provisions of this Ordinance.

Section 17.00 Severability.

The provisions of this Ordinance are hereby declared to be severable and should any provision, clause, sentence, paragraph, sub-paragraph, section, or part of this Ordinance be determined to be in conflict with any law, statute or regulation by a court of competent jurisdiction, said provision, clause, sentence, paragraph, sub-paragraph, section, or part shall be excluded and deemed inoperative, unenforceable, and as though not provided for herein, and all other provisions shall remain unaffected, unimpaired, valid and in full force and effect. It is

hereby declared to be the legislative intent of the Village Board that this Ordinance would have been adopted had not such unconstitutional or invalid provision, clause, sentence, paragraph, sub-paragraph, section, or part thereof been included.

Section 18.00 Superseder.

All code provisions, ordinances, resolutions and orders, or parts thereof, in conflict herewith are, to the extent of such conflict, hereby superseded.

Section 19.00 Publication.

A full, true and complete copy of this Ordinance shall be published in pamphlet form or in a newspaper published and of general circulation within the Village as provided by the Illinois Municipal Code, as amended.

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Section 20.00 Effective Date.

This Ordinance shall be in full force and effect ten (10) days following its passage, approval and publication, as provided by law.

On The Individual Poll And Voice Vote Of The Board of Trustees:

AYE VOTES: Trustee Conteduca, Trustee Italia, Trustee Mota,
Trustee Prignano, Trustee Taconi

NAY VOTES:

ABSTAIN:

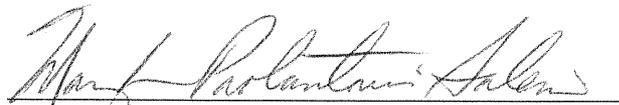
ABSENT:

SO PASSED, ADOPTED, APPROVED AND ENACTED IN AND AT THE VILLAGE
OF MELROSE PARK, COUNTY OF COOK, STATE OF ILLINOIS, THIS TWENTY-FIFTH
DAY OF FEBRUARY, 2008, A.D.

APPROVED:


RONALD M. SERPICO
VILLAGE PRESIDENT

ATTEST:


Mary Ann Paolantonio Salemi
Village Clerk

(SEAL)

Recorded in the Municipal Records: February 25, 2008
Published in Pamphlet Form: February 26, 2008