

REGULAR CITY COUNCIL MEETING
NOVEMBER 6, 2023

The regular Sikeston City Council meeting of November 6, 2023 was called to order at 5:00 p.m. at City Hall located at 105 E. Center St., Sikeston. Present at the meeting were: Mayor Greg Turnbow, Onethia Williams, John Leible, Tom Robison, Ryan Lindsey, and David Teachout. Councilman Vest Baker was absent. Staff in attendance were: City Manager Jonathan Douglass, City Counselor Tabatha Graham, Finance Director Amanda Groves, Communications Manager David Jenkins, Public Works Director Jay Lancaster, Street Superintendent Brian Dial, Street Supervisor Darren Martin, Community Development Director Barry Blevins and Public Safety Director James McMillen. City Clerk Rhonda Council was absent.

APPROVAL OF CITY COUNCIL MINUTES

City Council minutes of the regular meeting of September 25 and October 2, 2023 were presented for approval. Councilman Teachout moved to approve the minutes as presented. Councilman Leible seconded the motion and the following vote was recorded:

Baker Absent, Leible Aye, Robison Aye, Lindsey Aye, Teachout Aye,
Williams Aye, and Turnbow Aye, thereby being passed.

ITEMS OF BUSINESS

2nd Reading & Consideration, Bill #6324, Replat Tract 1 and Tract 2 of South Main Montgomery Plaza Subdivision from Two Parcels to One Parcel

Councilman Lindsey moved for the second reading of Bill Number 6324. The motion was seconded by Councilman Teachout and the following vote recorded:

Baker Absent, Leible Aye, Robison Aye, Lindsey Aye, Teachout Aye,
Williams Aye, and Turnbow Aye, thereby being passed.

City Counselor Graham presented the bill for reading.

Bill Number 6324

Ordinance Number 6324

THIS BILL AS APPROVED SHALL BECOME ORDINANCE NUMBER 6324 PROVIDING FOR THE APPROVAL TO REPLAT TRACT 1, CONTAINING .09 ACRES AND TRACT 2, CONTAINING 1.00 ACRES OF SOUTH MAIN MONTGOMERY PLAZA SUBDIVISION, FROM TWO (2) PARCLES INTO ONE (1) PARCEL, IN THE CITY OF SIKESTON, NEW MADRID COUNTY MISSOURI. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIKESTON, MISSOURI AS FOLLOWS:

SECTION I: This Ordinance shall not be codified in the City Municipal Code.

SECTION II: The Planning and Zoning Commission met on October 10, 2023 and voted to approve the replat of the tracts of land, the plat of which is attached hereto, marked Exhibit "A", and incorporated by reference and legally described as follows and known as South Main Montgomery Plaza Subdivision:

THAT PART OF U.S.P.S. 1127, TOWNSHIP 26 NORTH, RANGE 14 EAST, NEW MADRID COUNTY, STATE OF MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE NORTH LINE OF U.S.P.S. 1127 AND THE EAST RIGHT-OF-WAY LINE OF HIGHWAY 61, THENCE NORTH 80°37'49" EAST, 285.47 FEET; THENCE SOUTH 09°54'01" EAST, 169.07 FEET; THENCE SOUTH 79°27'20" WEST, 172.20 FEET; THENCE NORTH 36°03'23" WEST, 15.12 FEET; THENCE SOUTH 79°06'36" WEST, 107.41 FEET TO A POINT ON SAID RIGHT-OF-WAY LINE; THENCE WITH SAID RIGHT-OF-WAY LINE, NORTH 09°37'17" WEST, 161.94 FEET TO THE POINT OF BEGINNING, CONTAINING 1.09 ACRES, MORE OR LESS, AND BEING SUBJECT TO ANY EASEMENTS OF RECORD.

SECTION III: Said replat is accepted and approved subject to full compliance with all applicable building and other codes and the stormwater management plan.

SECTION IV: General Repealer Section: Any other ordinance or parts thereof inconsistent herewith, are hereby repealed.

SECTION V: Severability: Should any part or parts of this ordinance be found or held to be invalid by any court of competent jurisdiction, the remaining part or parts shall be severable and shall continue in full force and effect.

SECTION VI: Record of Passage

- A. Bill Number 6324 was introduced and read the first time this 30th day of October 2023.
- B. Bill Number 6324 was read the second time and discussed on this 6th day of November 2023. Following discussion, Councilman Leible moved to approve Bill Number 6324. The motion was seconded by Councilman Robison, discussed and the following roll call vote was recorded:

Baker Absent, Leible Aye, Robison Aye, Lindsey Aye, Teachout Aye,
Williams Aye, and Turnbow Aye, thereby being passed.

- C. Ordinance Number 6324 shall be in full force and effect from and after December 6, 2023.

2nd Reading & Consideration, Bill #6325, Request to Vacate Utility Easements on Lot 1 of South Main Montgomery Plaza Subdivision

Councilman Lindsey moved for the second reading of Bill Number 6325. The motion was seconded by Councilman Teachout and the following vote recorded:

Baker Absent, Leible Aye, Robison Aye, Lindsey Aye, Teachout Aye,
Williams Aye, and Turnbow Aye, thereby being passed.

City Counselor Graham presented the bill for reading.

Bill Number 6325

Ordinance Number 6325

THIS BILL AS APPROVED SHALL BECOME ORDINANCE NUMBER 6325 PROVIDING FOR THE APPROVAL TO VACATE TWO (2) UTILITY EASEMENTS LOCATED ON TRACT 1 OF SOUTH MAIN MONTGOMERY PLAZA SUBDIVISION IN THE CITY OF SIKESTON, SCOTT COUNTY, MISSOURI.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIKESTON, MISSOURI AS FOLLOWS:

SECTION I: This Ordinance shall not be codified in the City Municipal Code.

SECTION II: The Planning and Zoning Commission met on October 10, 2023 and did pass a favorable recommendation to approve the request to vacate the two (2) utility easements, being more fully described by metes and bounds as follows and which is attached hereto, marked Exhibit "A" and incorporated by reference:

"Easement vacation: All of the ten (10) foot wide utility easement and all of the twenty (20) foot wide utility easement located on Lot 1 of South Main Montgomery Plaza Subdivision as recorded in plat book 7 on page 101"

SECTION III: Said utility easements abandonment is accepted and approved subject to full compliance with all applicable building and other codes and the stormwater management plan.

SECTION IV: General Repealer Section: Any other ordinance or parts thereof inconsistent herewith, are hereby repealed.

SECTION V: Severability: Should any part or parts of this ordinance be found or held to be invalid by any court of competent jurisdiction, the remaining part or parts shall be severable and shall continue in full force and effect.

SECTION VI: Record of Passage

- A. Bill Number 6325 was introduced and read the first time this 30th day of October 2023.
- B. Bill Number 6325 was read the second time and discussed on this 6th day of November 2023. Following discussion, Councilman Teachout moved to approve Bill Number 6325. The motion was seconded by Councilman Williams, discussed and the following roll call vote was recorded:

Baker Absent, Leible Aye, Robison Aye, Lindsey Aye, Teachout Aye,
Williams Aye, and Turnbow Aye, thereby being passed.

- C. Ordinance Number 6325 shall be in full force and effect from and after December 6, 2023.

2nd Reading & Consideration, Bill #6326, Request to Remove South Boundary Line of Tract 3 of South Main Montgomery Plaza Subdivision Combining Two Parcels into One Parcel

Councilman Teachout moved for the second reading of Bill Number 6326. The motion was seconded by Councilman Lindsey and the following vote recorded:

Baker Absent, Leible Aye, Robison Aye, Lindsey Aye, Teachout Aye,
Williams Aye, and Turnbow Aye, thereby being passed.

City Counselor Graham presented the bill for reading.

Bill Number 6326

Ordinance Number 6326

THIS BILL AS APPROVED SHALL BECOME ORDINANCE NUMBER 6326 PROVIDING FOR THE APPROVAL TO REMOVE THE SOUTH BOUNDARY LINE OF TRACT 3 OF SOUTH MAIN MONTGOMERY PLAZA SUBDIVISION CONTAINING .80 ACRES, THUS COMBINING TWO (2) PARCLES INTO ONE (1) PARCEL, IN THE CITY OF SIKESTON,

NEW MADRID COUNTY MISSOURI. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIKESTON, MISSOURI AS FOLLOWS:

SECTION I: This Ordinance shall not be codified in the City Municipal Code.

SECTION II: The Planning and Zoning Commission met on October 10, 2023 and voted to approve the replat of the tracts of land, the plat of which is attached hereto, marked Exhibit "A", and incorporated by reference and legally described as follows and known as South Main Montgomery Plaza Subdivision:

"THAT PART OF U.S.P.S. 1127, TOWNSHIP 26 NORTH, RANGE 14 EAST, NEW MADRID COUNTY, STATE OF MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE NORTH LINE OF U.S.P.S. 1127 AND THE EAST RIGHT-OF-WAY LINE OF HIGHWAY 61, THENCE WITH SAID RIGHT-OF-WAY LINE, SOUTH 09°37'17" EAST, 161.94 FEET TO THE POINT OF BEGINNING;

THENCE LEAVING SAID RIGHT-OF-WAY LINE, 79°06'36" WEST, 107.41 FEET; THENCE SOUTH 36°03'23" EAST, 15.12 FEET; THENCE NORTH 79°27'20" EAST, 172.20 FEET; THENCE NORTH 09°54'01" WEST, 169.07 FEET; THENCE NORTH 80°37'49" EAST, 209.71 FEET; THENCE SOUTH 09°54'01" EAST, 515.99 FEET; THENCE SOUTH 18°58'38" WEST, 32.46 FEET; THENCE SOUTH 74°12'53" WEST, 343.32 FEET; THENCE NORTH 56°07'47" WEST, 150.19 FEET; THENCE NORTH 15°46'28" WEST, 297.27 FEET; THENCE NORTH 79°30'36" EAST 238.16 FEET; THENCE NORTH 10°29'24" WEST, 128.00 FEET; THENCE SOUTH 79°30'36" WEST, 250.00 FEET; THENCE NORTH 15°46'28" WEST, 31.01 FEET; THENCE NORTH 09°37'17" WEST, 22.66 FEET TO THE POINT OF BEGINNING, CONTAINING 4.35 ACRES, MORE OR LESS, AND BEING SUBJECT TO ANY EASEMENTS OF RECORD."

SECTION III: Said replat is accepted and approved subject to full compliance with all applicable building and other codes and the stormwater management plan.

SECTION IV: General Repealer Section: Any other ordinance or parts thereof inconsistent herewith, are hereby repealed.

SECTION V: Severability: Should any part or parts of this ordinance be found or held to be invalid by any court of competent jurisdiction, the remaining part or parts shall be severable and shall continue in full force and effect.

SECTION VI: Record of Passage

- A. Bill Number 6326 was introduced and read the first time this 30th day of October 2023.
- B. Bill Number 6326 was read the second time and discussed on this 6th day of November 2023. Following discussion, Councilman Robison moved to approve Bill Number 6326 with an amendment to the header to match the legal description (header has .09 acres and 1.00 acres and should read "containing 4.35 acres"). The motion was seconded by Councilman Williams, discussed and the following roll call vote was recorded:

Baker Absent, Leible Aye, Robison Aye, Lindsey Aye, Teachout Aye,
Williams Aye, and Turnbow Aye, thereby being passed.

- C. Ordinance Number 6326 shall be in full force and effect from and after December 6, 2023.

2nd Reading & Consideration, Bill #6328, Creating Chapter 800 – Video Service Provider

Councilman Lindsey moved for the second reading of Bill Number 6328. The motion was seconded by Councilman Teachout and the following vote recorded:

Baker Absent, Leible Aye, Robison Aye, Lindsey Aye, Teachout Aye, Williams Aye, and Turnbow Aye, thereby being passed.

City Counselor Graham presented the bill for reading.

Bill Number 6328

Ordinance Number 6328

THIS BILL AS APPROVED SHALL BECOME ORDINANCE NUMBER 6328, REPEALING ORDINANCE NUMBER 5542 (CABLE FRANCHISE), AND CREATING TITLE VII, CHAPTER 800 – VIDEO SERVICE PROVIDER – AN ORDINANCE EXERCISING CERTAIN LIMITED AUTHORITY RELATING TO OPERATION OF VIDEO SERVICES PROVIDERS AND PROVIDING SUPPLEMENTARY REGULATIONS OF THE PLACEMENT OF FACILITIES OF VIDEO SERVICES PROVIDERS AND OTHER UTILITIES MAINTAINING FACILITIES WITHIN THE CITY OF SIKESTON, MISSOURI.

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-o f-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;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIKESTON, MISSOURI AS FOLLOWS:

SECTION I: This ordinance shall be codified in the City Municipal Code.

SECTION II: Title VII, Utilities, Chapter 800 – Video Service Provider shall be created as follows:

Section 800.010. Code Inclusion

This ordinance shall be codified in the Sikeston Municipal Code and hereby repeals the Appendix Section of the Sikeston Municipal Code entitled "Cable Franchise Regulation" in its entirety and establishes Chapter 800 "Video Service Provider"; provided that if any portion of the Sections 67.2675 through 67.2714 RSMo., inclusive, are determined to be invalid, this Section One shall be of no force and effect and the repealed City Code sections shall continue in effect until or unless subsequently modified or repealed; and further provided that nothing in herein shall be deemed to alter the continuing obligations set forth in Section III(L) of this ordinance.

Section 800.020. Title and Purpose

Title.

This ordinance shall be known and may be cited as the "2007 Video Services Providers Act".

Purpose Statement – preemption of regulation of video services – state-issued video services authorization required, procedure.

1. The general assembly finds and declares it to be the policy of the state of Missouri that consumers deserve the benefit of competition among all providers of video programming. Creating a process for securing a state-issued video service authorization best promotes the substantial interest of the state of Missouri in facilitating a competitive marketplace that will, in turn, encourage investment and the deployment of new and innovative services in political subdivisions and provide benefits to the citizens of this state. The general assembly further finds and declares that franchise entities will benefit from immediate availability of the state-issued video service authorization to all video service providers, including new entrants and incumbent cable operators. In addition to the benefits to franchise entities found in sections [67.2675 to 67.2714](#), this immediate availability of state-issued video service authorization will promote fair competition among all video service providers in a local market and thereby provide new revenues to political subdivisions derived from additional video service customers, and the purchase of additional video services by such customers, and the sale of additional advertising by video service providers. This policy will provide a more predictable source of funding for franchise entities which will continue beyond the natural terms of all existing franchise agreements. The franchise entities will also experience cost savings associated with the administrative convenience of the enactment of the state-issued video service authorization. These benefits are full and adequate consideration to franchise entities, as the term "consideration" is used in Article III, Section 39(5) of the Missouri Constitution.
2. Except to the extent expressly set forth herein, upon issuance of a video service authorization, any existing or future franchise or ordinance adopted by a franchise entity that purports to regulate video service or video service networks or the franchising of video service providers shall be preempted as applied to such video service provider.
3. No person shall commence providing video service or commence construction of a video service network in any area until such person has obtained a state-issued video service authorization, under the provisions of sections [67.2675 to 67.2714](#).
4. The public service commission shall have the exclusive authority to authorize any person to construct or operate a video service network or offer video service in any area of this state. Notwithstanding provisions of this section to the contrary, a

person with an existing and valid authorization to occupy the public rights-of-way may construct a video service network without first obtaining a video service authorization, but such person must obtain a video service authorization prior to commencing the provision of video service and otherwise comply with the provisions of sections [67.2675 to 67.2714](#). For purposes of the federal Cable Act, 47 U.S.C. 521, et seq., the rules and regulations of the Federal Communications Commission, and all applicable state laws and regulations, the public service commission shall be considered the sole franchising authority for the state, except with respect to a person that continues to provide video service under a franchise, franchise extension, or expired franchise or ordinance previously granted by a franchise entity. The public service commission shall have no authority to regulate the rates, terms, and conditions of video service, except to the extent explicitly provided under sections [67.2675 to 67.2714](#).

5. Any person seeking to commence providing video service in this state shall file an application for a video service authorization covering a franchise area or franchise areas with the public service commission and provide written notice to the affected political subdivisions of its intent to provide video service. The public service commission shall make such application public by posting a copy of the application on its website within three days of filing.
6. A holder of a video service authorization who seeks to include additional political subdivisions to be served must file with the public service commission a notice of change to its video service authorization that reflects the additional political subdivisions to be served.
7. The public service commission shall issue a video service authorization allowing the video service provider to offer video service in the franchise area of each political subdivision set forth in the application within thirty days of receipt of an affidavit submitted by the applicant and signed by an officer or general partner of the applicant affirming the following:
 - (1) That the video service authorization holder agrees to comply with all applicable federal and state laws and regulations;
 - (2) A list of political subdivisions to be served by the applicant;
 - (3) The location of the principal place of business and the names of the principal executive officers of the applicant;
 - (4) That the video service provider has filed or will timely file with the Federal Communications Commission all forms required by that agency prior to offering video service;
 - (5) That the video service provider agrees to comply with all applicable regulations concerning use of the public rights-of-way as provided in sections [67.1830 to 67.1846](#); and
 - (6) That the video service provider is legally, financially, and technically qualified to provide video service.
8. The video service authorization issued by the public service commission shall contain the following:

- (1) A grant of authority to provide video service in the franchise area of each political subdivision set forth in the application; and
 - (2) A grant of authority to construct a video service network along, across, or on public rights-of-way for the delivery of video service to the extent the video service provider or an affiliate did not otherwise possess a valid authorization to occupy the public rights-of-way.
9. (1) No existing franchise or ordinance issued by a franchising entity shall be renewed or extended beyond the expiration date of such franchise. Any person providing video service under a franchise, franchise extension or expired franchise or ordinance previously granted by a franchise entity may, at its option:
- (a) Continue to provide service under the terms and conditions of such franchise, franchise extension, or ordinance; or
 - (b) Apply for a video service authorization as provided under this section in lieu of any or all such franchises, franchise extensions, or expired franchises; or
 - (c) Automatically convert the franchise, franchise extension, or expired franchise in a political subdivision into a state-issued video service authorization, any time after a video service provider other than an incumbent cable operator obtains a video service authorization for such political subdivision, provided that notice of the automatic conversion to the public service commission and the affected political subdivision is made and upon compliance with the provisions of sections [67.2675 to 67.2714](#).
- (2) The franchise, franchise extension, or expired franchise previously granted by the franchise entity will terminate upon issuance of a video service authorization to the video service provider. The terms of such video service authorization shall be as provided under the provisions of sections [67.2675 to 67.2714](#) and shall supersede the terms and conditions of the franchise, franchise extension, or expired franchise previously granted by the franchise entity.
10. At the time that any video service authorization is issued by the public service commission, the public service commission shall immediately make such issuance public by posting information on its website relating to the video service authorization, including specifically all political subdivisions covered by that authorization and the video service provider fee imposed.

Existing Franchise and Agreements

To the extent permitted by law and unless expressly agreed to otherwise, this Ordinance shall apply to Franchises and other Agreements in effect at the time of adoption of this Ordinance.

Section 800.030. Video Services Providers

The following provisions relating to video service providers are hereby adopted as ordinance provisions of a general and permanent nature, and if codified, included in the City Code of ordinances with such code section numbers and headings as deemed appropriate by the codifier:

A. *Definitions.*

The words and phrases used in 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 authorized, amount – exception – adjustment of fee, when.*

1. 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.
2. Beginning August 28, 2023, the video service provider fee shall be four and one-half percent (4.5%) of gross revenues. Beginning August 28, 2024, the video service provider fee shall be four percent (4%) of gross revenues. Beginning August 28, 2025, the video service provider fee shall be three and one-half percent (3.5%) of gross revenues. Beginning August 28, 2026, the video service provider fee shall be three percent (3%) of gross revenues. Beginning August 28, 2027, the video service provider fee shall be two and one-half percent (2.5%) of gross revenues.
3. Except as otherwise expressly provided in sections [67.2675 to 67.2714](#), neither a franchise entity nor any other political subdivision shall demand any additional fees, licenses, gross receipt taxes, or charges on the provision of video services by a video service provider and shall not demand the use of any other calculation method.
4. Not more than once per calendar year after the date that the incumbent cable operator's franchise existing on August 28, 2007, expires or would have expired if it had not been terminated pursuant to sections [67.2675 to 67.2714](#), or in any political subdivision where no franchise applied on the date of enactment of sections [67.2675 to 67.2714](#), no more than once per calendar year after the video service provider fee was initially imposed, a franchise entity may, upon ninety days notice to all video service providers, elect to adjust the amount of the video service provider fee subject to state and federal law, but in no event shall such fee exceed the calculation defined in subsections 1 and 2 of this section.
5. The video service provider fee shall be paid to each franchise entity requiring such fee on or before the last day of the month following the end of each calendar quarter. Any payment made pursuant to subsection 8 of section [67.2703](#) shall be made at the same time as the payment of the video service provider fee.
6. Any video service provider shall identify and collect the amount of the video service provider fee and collect any support under subsection 8 of section [67.2703](#) as separate line items on subscriber bills.

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. *Report to be Issued by the Public Service Commission, contents.*

The public service commission shall, no later than August 28, 2008, and annually thereafter for the next three years, issue a report regarding developments resulting from the implementation of sections 67.2675 to 67.2714 and shall make such recommendations to the general assembly as it deems appropriate to benefit consumers. The commission shall conduct proceedings as it deems appropriate to prepare its report, including receiving comments from members of the public.

E. *Confidentiality of Subscriber Information.*

Video service providers shall not disclose the name or address of a subscriber for commercial gain to be used in mailing lists or for other commercial purposes not reasonably related to the conduct of the businesses of the video service provider or its affiliates, as required under 47 U.S.C. Section 551, including all notice requirements. Video service providers shall provide an address and telephone number for a local subscriber to use without toll charge to prevent disclosure of the subscriber's name or address.

F. *Immunity of Political Subdivisions, when – indemnification, when – exceptions.*

1. An entity holding a video service authorization shall, at its sole cost and expense, indemnify, hold harmless, and defend a political subdivision, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of:

(1) The construction, maintenance, or operation of its video service network;

(2) Copyright infringements or a failure by an entity holding a video service authorization to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the video service network.

2. Any indemnification provided in subsection 1 of this section shall include, but not be limited to, the political subdivision's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding prior to the entity holding the video service authorization assuming such defense. The political subdivision shall notify the entity holding the video service authorization of claims and suits within seven business days of its actual knowledge of the existence of such claim, suit, or proceeding. Failure to provide such notice shall relieve the entity holding the video service authorization of its obligations under this section. Once the entity holding the video service authorization assumes the defense of any such action, the political subdivision may, at its option, continue to participate in the defense at its own expense.

3. The obligation to indemnify, hold harmless, and defend contained in subsections 1 and 2 of this section shall not apply to any claim, suit, or cause of action related to the provision of public, educational, and governmental channels or programming or to emergency interrupt service announcements.

G. *Transferability of Authorizations, procedure.*

A video service authorization is fully transferable, with respect to one or more political subdivisions covered by such authorization, to any successor-in-interest to the holder whether such successor-in-interest arises through merger, sale, assignment, restructuring, change of control, or any other type of transaction. A notice of transfer shall be promptly filed with the public service commission and the affected political subdivisions upon completion of such transfer, but neither the public service commission nor any political subdivision shall have any authority to review or require approval of any transfer of a video service authorization, regardless of whether the transfer arises through merger, sale, assignment, restructuring, change of control, or any other type of transaction.

H. *Designation of Noncommercial Channels, authorized, when – PEG Channels, Requirements.*

1. A franchise entity may require a video service provider providing video service in such franchise entity to designate up to three channels for noncommercial public, educational, or governmental "PEG" use if such franchise entity has a population of at least fifty thousand, and up to two PEG channels if such franchise entity has a population of less than fifty thousand; provided, however, that a PEG channel that is shared among multiple political subdivisions served by a common headend on the effective date may continue to be shared among those political subdivisions served by that headend. Such limits shall constitute the total number of PEG channels that may be designated on all video service networks that share a common headend, regardless of the number of franchise entities or other political subdivisions served by such headend. The video service provider may provide such channels on any service tier that is purchased by more than fifty percent of its customers. All video service providers serving a political subdivision shall be required to provide the same number of PEG access channels as the incumbent video service provider existing on the date of enactment of sections 67.2675 to 67.2714.
2. Notwithstanding any franchise or ordinance granted by a franchise entity prior to the date of enactment of sections 67.2675 to 67.2714, this section, rather than the franchise or ordinance, shall apply to the designation of PEG access channels by an incumbent cable operator operating under such franchise or ordinance; provided, however, that if such franchise or ordinance requires more PEG access channels than the applicable limit specified in subsection 1 of this section, the requirement in the franchise or ordinance shall apply in lieu of such limit; provided further, that the incumbent cable operator may nonetheless be required to activate additional PEG channel or channels, up to such limit, to the extent the political subdivision certifies that such additional channel or channels will be substantially utilized, as defined in subsection 4 of this section.
3. Any PEG channel designated pursuant to this section that is not substantially utilized, as defined in subsection 4 of this section, by the franchise entity shall no longer be made available to the franchise entity, but may be programmed at the video service provider's discretion. At such time as the governing body of a franchising entity makes a finding and certifies that a channel that has been reclaimed by a video service provider under this subsection will be substantially utilized, the video service provider shall restore the reclaimed channel within one hundred * twenty days, but shall be under no obligation to carry that channel on any specific tier.

4. For purposes of this section, a PEG channel shall be considered "substantially utilized" when forty hours per week are locally programmed on that channel for at least three consecutive months. In determining whether a PEG channel is substantially utilized, a program may be counted not more than four times during a calendar week.
5. Except as provided in this section, a franchise entity or political subdivision may not require a video service provider to provide any funds, services, programming, facilities, or equipment related to public, educational, or governmental use of channel capacity. The operation of any PEG access channel provided pursuant to this section and the production of any programming that appears on each such channel shall be the sole responsibility of the franchise entity or its duly appointed agent receiving the benefit of such channel, and the video service provider shall bear only the responsibility for the transmission of the programming on each such channel to subscribers.
6. The franchise entity must ensure that all transmissions of content and programming provided by or arranged by it to be transmitted over a PEG channel by a video service provider are delivered and submitted to the video service provider in a manner or form that is capable of being accepted and transmitted by such video service provider holder over its network without further alteration or change in the content or transmission signal, and which is compatible with the technology or protocol utilized by the video service provider to deliver its video services.
7. The franchise entity shall make the programming of any PEG access channel available to all video service providers in such franchise entity in a nondiscriminatory manner. Each video service provider shall be responsible for providing the connectivity to the franchise entity's or its duly appointed agent's PEG access channel distribution points existing as of effective date of enactment of sections 67.2675 to 67.2714. Where technically necessary and feasible, video service providers in the same franchise entity shall use reasonable efforts and shall negotiate in good faith to interconnect their video service networks on mutually acceptable rates, terms, and conditions for the purpose of transmitting PEG programming within such franchise entity. A video service provider shall have no obligation to provide such interconnection to a new video service provider at more than one point per headend, regardless of the number of franchise entities or other political subdivisions served by such headend. The video service provider requesting interconnection shall be responsible for any costs associated with such interconnection, including signal transmission from the origination point to the point of interconnection. Interconnection may be accomplished by direct cable microwave link, satellite, or other reasonable method of connection acceptable to the person providing the interconnect.
8. (1) The obligation of an incumbent cable operator to provide monetary and other support for PEG access facilities contained in a franchise existing on August 28, 2007, shall continue until the term of the franchise would have expired if it had not been terminated pursuant to sections 67.2675 to 67.2714 or until January 1, 2012, whichever is earlier.

(2) Each video service provider providing video service in a political subdivision shall have the same obligation to support PEG access facilities as the incumbent cable operator with the most subscribers in such political subdivision as of the date of enactment of sections 67.2675 to 67.2714. To

the extent such incumbent cable operator provides such support in the form of a percentage of gross revenue or a per-subscriber fee, any other video service provider shall pay the same percentage of gross revenue or per-subscriber fee as the incumbent cable operator. To the extent the incumbent cable operator provides such support in the form of a lump sum payment without an offset to its gross receipts fee, any other video service provider shall be responsible for a pro rata share of such payment made by the incumbent cable operator after the date on which the other video service provider commences service in a particular political subdivision, based on its proportion of video service customers in such political subdivision. To the extent the incumbent cable operator provides such support on an in-kind basis after the date on which the other video service provider commences service in a particular political subdivision, any other video service provider shall pay the political subdivision a sum equal to the pro rata amount of the fair market value of such support based on its proportion of video service customers in such political subdivision.

- (3) For purposes of this section, the proportion of video service customers of a video service provider shall be determined based on the relative number of subscribers as of the end of the prior calendar year as reported by all incumbent cable operators and holders of video service authorizations. A franchising entity acting under this subsection shall notify a video service provider of the amount of such fee on an annual basis, beginning one year after issuance of the video service authorization.
9. Neither the public service commission nor any political subdivision may require a video service provider to provide any institutional network or equivalent capacity on its video service network. The obligation of an incumbent cable operator to provide such network or capacity contained in a franchise existing on August 28, 2007, shall continue until the term of the franchise would have expired had it not been terminated pursuant to sections 67.2676** to 67.2714, or until January 1, 2009, whichever is earlier, and shall be limited to providing the network as is on August 28, 2007.
 1. *Discrimination Prohibited – defense to alleged violation – annual report required – waiver permitted, when.*
 1. A video service provider shall not deny access to service to any group of potential residential subscribers because of the race or income of the residents in the local area in which the group resides.
 2. It is a defense to an alleged violation of subsection 1 of this section if the video service provider has met either of the following conditions:
 - (1) Within three years of the date it began providing video service under the provisions of sections 67.2675 to 67.2714, at least twenty-five percent of the households with access to the provider's video service are low-income households; or
 - (2) Within five years of the date it began providing video service under the provisions of sections 67.2675 to 67.2714 at least thirty percent of the households with access to the provider's video service are low-income households.

3. If a video service provider is using telecommunication facilities to provide video service and has more than one million telecommunication access lines in this state, the provider shall provide access to its video service to a number of households equal to at least twenty-five percent of the households in the provider's telecommunications service area in the state within three years of the date it began providing video service pursuant to authorization under sections 67.2675 to 67.2714 and to not less than fifty percent of such households within six years. A video service provider is not required to meet the fifty percent requirement provided in this subsection until two years after at least thirty percent of the households with access to the provider's video service subscribe to the service for six consecutive months.
4. Each provider described in subsection 3 of this section shall file an annual report with the franchising entities in which each provider provides service and the public service commission regarding the progress that has been made toward compliance with the provisions of subsection 3 of this section.
5. Except for satellite service, a video service provider may satisfy the requirements of this section through the use of alternate technology that offers service, functionality, and content which is demonstrably similar to that provided through the provider's video service network and may include a technology that does not require the use of any public right-of-way. The technology utilized to comply with the requirements of this section shall include local public, education, and government channels as required under section 67.2703 and messages over the emergency alert system as required under section 67.2683.
6. A video service provider may apply to the public service commission for a waiver of or an extension of time to meet the requirements of this section if one or more of the following apply:
 - (1) The inability to obtain access to public and private rights-of-way under reasonable terms and conditions;
 - (2) Developments or buildings not being subject to competition because of existing exclusive service arrangements;
 - (3) Developments or buildings being inaccessible using reasonable technical solutions under commercially reasonable terms and conditions;
 - (4) Natural disasters; or
 - (5) Factors beyond the control of the video service provider.
7. The public service commission may grant the waiver or extension only if the provider has made substantial and continuous effort to meet the requirements of this section. If an extension is granted, the public service commission shall establish a new compliance deadline. If a waiver is granted, the public service commission shall specify the requirement or requirements waived.
8. Notwithstanding any other provision of sections 67.2675 to 67.2714, a video service provider using telephone facilities to provide video service shall not be obligated to provide such service outside the provider's existing telephone exchange boundaries.

9. Except as otherwise provided in sections 67.2675 to 67.2714, a video service provider shall not be required to comply with, and a franchising entity may not impose or enforce, any mandatory build-out or deployment provisions, schedules, or requirements except as required by this section.

10. Any franchising entity in which a video service provider operates may file a complaint in a court of competent jurisdiction alleging a violation of subsection 1 or 3 of this section. The court shall act on such complaint in accordance with section 67.2711.

J. *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 all applicable ordinances and regulations consistent with Sections 67.1830 to 67.1846 RSMo. 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 Section Three of this Ordinance, 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.

K. *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.

L. *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.

M. *Full Service to Municipal Buildings.*

A cable service provider or video service provider shall, on request of the City, install, at no charge, if economically feasible, at least one service outlet at all City buildings and all primary and secondary education public, private and parochial schools within the Franchise Area, and shall install and charge only its reasonable costs for any additional service outlets requested for such locations, so long as such additional installations will not interfere with the quality and operation of the Franchisees Cable System or signal thereon, and the quality and manner of installation of such additional outlets shall have been approved by the Franchisee

(which approval shall not be unreasonably withheld) and shall comply with all City, state and federal laws and regulations. The Franchisee shall provide Basic Cable Service and Expanded Basic Cable Service to all outlets in such buildings free of charge. A Franchisee may specify other requirements regarding the availability of facilities for municipal use.

N. *Public Emergency.*

In the event of a public emergency or disaster as determined by the City, a Franchisee immediately shall make the Cable System, employees, and property, as may be reasonably necessary, available for use by the City or other civil defense or governmental agency designated by the City for the term of such emergency or disaster for emergency purposes. In the event of such use, a Franchisee shall waive any claim that such use by the City constitutes a use of eminent domain, provided that the City shall return use of the System, employees, and property to the Franchisee promptly after the emergency or disaster has ended. The parties agree nothing herein shall create or expand the right of the City to exercise its power of eminent domain to acquire, purchase, or own the Cable System.

O. *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.

P. *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 800.040. Supplementary Regulations.

The following supplementary regulations are adopted as part of the general ordinances of the City; provided that nothing herein shall be deemed to apply in circumstances where such requirements are preempted or would be inconsistent with applicable laws:

Accessory Utility Facilities; Supplementary Regulations.

Every public utility, cable company, video service provider and other users of the City rights-of-way or adjacent easements to provide services shall comply with the supplemental regulations in this section regarding the placement of accessory utility facilities on public or private property. For purposes of this section, "accessory utility facilities" shall mean such facilities, including pedestals, boxes, vaults, cabinets, or other ground-mounted or below-ground facilities that directly serve the property or local area in which the facility is placed, are not primarily for transmission or distribution to other locations, do not materially alter the character of the neighborhood or area, and otherwise are customarily found in such areas.

Except where limited by other provisions of City ordinance, accessory utility facilities shall be subject to the following supplementary regulations:

- a. Approval; design; location; application. The design, location, and nature of all accessory utility facilities on private or public property shall require approval of the City, which approval shall be considered in a nondiscriminatory manner, in conformance with this Ordinance, and subject to reasonable permit conditions as may be necessary to meet the requirements of this Ordinance. In considering

applications individual or multiple location applications, the City shall review the request to ensure the proposed facilities do not impair public safety, harm property values or significant sight-lines, or degrade the aesthetics of the adjoining properties or neighborhood, and taking into consideration reasonable alternatives.

Any material changes or extensions to such facilities or the construction of any additional structures shall be subject to the requirements and approvals as set forth herein. Unless otherwise prohibited, utility facilities subject to this subsection may be located in minimum setback areas provided that all other requirements are met. To the extent permitted by Section 67.2707.3 RSMo., the time, method, manner or location of facilities to be located in the rights-of-way may be established or conditioned by the City to protect the rights-of-way or to ensure public safety. An inspection fee shall be required as may be established by the City to reimburse the City for the costs of review and inspection of accessory utility facilities as may be permitted by applicable law.

- b. General regulations. The following general regulations apply to all accessory utility facilities:
- i. All such facilities shall be placed underground, except as otherwise provided in subsections (c) and (d) herein or as approved by special use permit.
 - ii. All such facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise.
 - iii. All facilities and utility boxes shall be deemed abandoned after six (6) continuous months of non-use, and shall therefore be removed within thirty (30) days thereafter at the cost of the utility.
 - iv. Unless otherwise restricted, utility poles for authorized above ground lines or facilities shall be permitted **up to forty-five (45) feet** in height where utilities are not otherwise required to be placed underground; provided that such poles shall be no higher than necessary, maintained so as to avoid leaning from upright position, and without use of guy wires crossing rights-of-way or pedestrian routes except where approved by the City as necessary due to the lack of feasible alternatives.
 - v. Utility facilities placed in designated historic areas may be subject to additional requirements regarding the placement and appearance of facilities as may be necessary to reasonably avoid or reduce any negative impact of such placement.
 - vi. Any damage to landscaping or vegetation on private or public property during installation or maintenance of facilities shall be promptly remedied by the facility owner.
 - vii. At least 48 hours prior to any installation, replacement or expansion of any facility located on private property, the facility owner shall provide notice to all property owners within one hundred and eighty-five (185) feet from the site. Notice shall include detailed description of work to be done, the exact location of work and the time and duration when it will be undertaken.
 - viii. No facilities may be located so as to interfere, or be likely to interfere, with any public facilities or use of public property.

- ix. All utility facilities not authorized by this subsection or specifically addressed elsewhere in this Code shall be authorized only as a special use permit.

- c. Residential districts. In residential districts, accessory utility facilities **less than three and one-half (3.5) feet in height** and covering **less than eight (8) square feet** in area may be installed above ground with the prior approval of the City. Except as otherwise may be authorized herein, any larger utility facility shall be installed underground or authorized to be installed above ground only by special use permit. All above ground facilities, where authorized, shall be placed in the rear yard wherever practical. If locating these facilities in the rear yard is not practical, then such facilities may be located in the side yard. Such facilities shall not be located in the front yard or within the public right-of-way unless otherwise approved by the City upon a determination that all other alternatives are not feasible.

- d. Non-residential districts. In non-residential districts, accessory utility facilities with a **height of less than five (5) feet** and covering **less than sixteen (16) square feet in area** may be installed aboveground with the prior approval of the City. Except as otherwise may be authorized herein, any larger facility shall be installed underground or authorized to be installed above ground only by special use permit. All aboveground facilities, where authorized, shall be placed in the rear yard wherever practical. If locating these facilities in the rear yard is not practical, then such facilities may be located in the side yard. Such facilities shall not be located in the front yard or within the public right-of-way unless otherwise approved by the City upon a determination that all other alternatives are not feasible.

- e. Landscape screening. A sight-proof landscape screen shall be provided for all authorized aboveground facilities taller than **three (3) feet in height** or covering in excess of **four (4) square feet in size**. Such screen shall be required to sufficiently conceal the facility. A landscape plan identifying the size and species of landscaping materials shall be submitted by the utility and approved by the City prior to installation of any facility requiring landscape screening. The utility shall be responsible for the installation, repair, or replacement of screening materials. Alternative screening or concealment may be approved by the City to the extent it meets or exceeds the purposes of these requirements. Facilities located in rear yards may be exempted from screening where located so as not to be visible from (1) any public property and (2) more than two residential dwelling units.

- f. Compliance with other laws. All accessory utility facilities shall be subject to all other applicable regulations and standards as established as part of the City Code, including but not limited to building codes, zoning requirements and rights-of-way management regulations in addition to the supplementary regulations herein. The provisions of this Section Three shall not apply to any circumstance or entity in which application under such circumstances is preempted or otherwise precluded by superseding law.

Section 800.050. National Electric Safety Code, compliance with required.

Every holder of a video service authorization shall, with respect to its construction practices and installation of equipment, comply with all applicable sections of the National Electric Safety Code.

Section 800.060. Noncompliance, effect of.

In the event a video service provider is found by a court of competent jurisdiction to be in noncompliance with the requirements of sections 67.2675 to 67.2714, the court shall issue an order to the video service provider directing a cure for such noncompliance within a specified reasonable period of time. If the video service provider meets the requirements of the provisions of sections 67.2675 to 67.2714 within the court-ordered period of time, the court shall dismiss the claim of noncompliance.

Section 800.070. Effective Date.

Sections 67.2675 to 67.2714 shall apply to any franchise in effect on August 28, 2007, to the extent specifically provided in sections 67.2675 to 67.2714.

SECTION III: General Repealer Section. Any other ordinance or parts thereof inconsistent herewith, are hereby repealed.

SECTION IV: Severability. Should any part or parts of this ordinance be found or held to be invalid by any court of competent jurisdiction, the remaining part or parts shall be severable and shall continue in full force and effect.

SECTION V: Record of Passage.

- A. Bill Number 6328 was introduced and read the first time this 30th day of October 2023.
- B. Bill Number 6328 was read the second time and discussed on this 6th day of November 2023. Following discussion, Councilman Robison moved to approve Bill Number 6328. The motion was seconded by Councilman Lindsey, discussed and the following roll call vote was recorded:

Baker Absent, Leible Aye, Robison Aye, Lindsey Aye, Teachout Aye,
Williams Aye, and Turnbow Aye, thereby being passed.

- C. Ordinance Number 6328 shall be in full force and effect from and after December 6, 2023.

1st Reading, Bill #6322, Floodplain Regulations Amendments

Councilman Teachout moved for the first reading of Bill Number 6322. The motion was seconded by Councilman Leible and the following roll call vote recorded:

Baker Absent, Leible Aye, Robison Aye, Lindsey Aye, Teachout Aye,
Williams Aye, and Turnbow Absent, thereby being passed.

City Counselor Graham presented the bill for reading. This bill as approved shall become Ordinance Number 6322 and shall amend Title IV – Land Use, Chapter 410 Floodplain Regulations in the Municipal Code of the City of Sikeston, Missouri.

ADJOURNMENT

There being no further business before the City Council, Councilman Leible moved to adjourn. The motion was seconded by Councilman Teachout and the following roll call vote was recorded:

Baker Absent, Leible Aye, Robison Aye, Lindsey Aye, Teachout Aye,
Williams Aye, and Turnbow Absent, thereby being passed.

APPROVED:

GREG TURNBOW, MAYOR

ATTEST:

RHONDA COUNCIL, CITY CLERK

SEAL: