

Chapter 23  
**MARSHFIELD CABLE TELEVISION FRANCHISE ORDINANCE**

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### **Sec. 23-01. General Provisions**

GENERAL PROVISIONS. The provisions of Sec. 66.0420 Wis. Stats. are hereby incorporated as though fully set forth herein. The additional provisions of this Chapter are intended to supplement those provisions of the state statutes as allowed therein. Any person, partnership, or entity who owns, leases, operates, controls, constructs, or maintains a video service or cable television service shall comply at all times with the provisions herein when constructing, operating, or maintaining a video service or cable television service in the City of Marshfield.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

### **Sec. 23-02. Definitions.**

DEFINITIONS. The terms used in this Chapter shall have the same meaning as those terms are defined in Sec. 66.0420(2) Wis. Stats. which is incorporated by reference as though fully set forth herein.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

### **Sec. 23-03. Video Service Provider Fee and PEG Channel Monetary Support**

- (1) Video Service Provider Fee. Video Service Providers and Cable Operators shall pay a Video Service Provider Fee to the City of Marshfield in an amount equal to five percent (5%) of the providers gross receipts.
- (2) Supporting Documentation. Payment of the fee set forth in Sub. (1), above, shall be accompanied by documentation verified by an agent or officer with the authority to legally bind the provider that is sufficient for the City to verify the accuracy of the fees being paid by the provider. The failure to provide such documentation shall subject the provider to a forfeiture of not less than \$100.00 nor more than \$1,000.00 per day until such time as the documentation is provided to the City.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

### **Sec. 23-04. PEG Channel Requirements**

- (1) Number of PEG Channels. Video Service Providers and Cable Operators shall provide capacity for three PEG channels. These channels shall be allocated as follows; one channel dedicated for use by local educational authorities; and two channels designated for local public access programming and local governmental uses.
- (2) Location of PEG Channels. PEG channels must be carried on any service tier that is viewed by more than fifty percent (50%) of the Video Service Provider's or Cable Operator's customers. Video Service Providers or Cable Operators may not charge an extra fee nor require the rental of special equipment in order for their customers to view such PEG Channels if such fees or equipment are not required to view any of the non-PEG channels on such service tiers.
- (3) Quality of PEG Channels. Video Service Providers and Cable Operators shall not carry a PEG television signal in a lesser format or lower resolution than that afforded to a non-broadcast digital programmer carried on the video or cable system. The signal quality of PEG channels shall be indistinguishable or better than the signal of other non-PEG channels carried by the Video Service Provider or Cable Operator.
- (4) Drops/Origination Points. Video Service Providers and Cable Operators shall supply and maintain upstream capacity from all current origination points, (a/k/a "live drops") and shall provide sufficient

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capacity for carriage of a television signal from each of these origination points at all times. These origination points are all located in the City of Marshfield, as follows:

- (a) Marshfield Community Television, 101 W. McMillan, Suite A;
  - (b) City Hall Plaza, 630 S. Central Avenue; and
  - (c) Marshfield High School, 1401 Becker Road.
- (5) Substantial Utilization of PEG Channels and PEG Programming.
- (a) Procedures for Disconnection Due to Failure to Substantially Utilize PEG Channel.
    1. Written Notice of Objection to Program as Not Locally Produced. A Video Service Provider or Cable Operator must provide written notice to the PEG Public Access Coordinator within ten days of the first original airing of any program that the Video Service Provider or Cable Operator is objecting to the program as having not been locally produced. Such notice shall describe with particularity the program being objected to, the date and time the program was first aired and the factual basis supporting the objection. Failure to timely provide this notice waives the objection, in which case such program will be counted towards the determination of whether said PEG channel is being substantially utilized.
    2. Written Notification of Failure to Substantially Utilize Channel. A Video Service Provider or Cable Operator must provide written notification to the PEG Public Access Coordinator within ten days following any week in which the Video Service Provider or Cable Operator objects that the PEG Channel has not been substantially utilized. Such notice shall describe with particularity the time period being objected to, the dates and times during the week in which qualifying programming was not aired and the factual basis supporting the objection. Failure to timely provide this notice waives this objection, in which case such programming period will be counted towards the determination of whether said PEG channel is being substantially utilized.
    3. Written Notification of Intention to Disconnect, Reprogram or Drop PEG Channel. A Video Service Provider or Cable Operator must provide 120 days advance written notification to the PEG Public Access Coordinator that the Video Service Provider or Cable Operator intends to disconnect, reprogram or drop a PEG channel. A Video Service Provider or Cable Operator may not disconnect, reprogram or drop any PEG channel that it has not timely provided such written notice to. Furthermore, should the PEG Public Access Coordinator provide the Video Service Provider or Cable Operator with a written response that the PEG channel was substantially utilized during the time period in question or will be substantially utilized by the municipality, the Video Service Provider or Cable Operator shall not disconnect, reprogram or drop the PEG channel or channels.
    4. Penalty for Failing to Provide Notice(s). If any Video Service Provider or Cable Operator disconnects, reprograms or drops any PEG channels without providing the notice(s) as required in subs.1. through 3., above, the Video Service Provider or Cable Operator shall be subject to the following:
      - a. Immediate reinstatement of the PEG channel to its location in the channel line-up prior to the disconnection, reprogramming or dropping of the channel;
      - b. A forfeiture of not less than \$1,000.00 nor more than \$10,000.00 for each day that the PEG channel is disconnected, reprogrammed or dropped.
- (6) Locally Produced Programming. Locally produced programming shall include all programming produced by any PEG channel and shall include all programming that has not been commercially aired. "Locally produced programming" includes any program that was in part produced for original airing in the broadcast

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market in which it was produced either in part or in whole. The term "locally produced" shall not require that the programming was created, filmed or produced in the Marshfield area. PEG stations may share and exchange programming content in order to meet the substantial utilization requirements of Sec. 66.0420(5)(b), Wis. Stats.

- (7) Underwriting of Programming. PEG channels may transmit non-commercial programming to subscribers generally or to specific recipients of Video Service Providers or Cable Operators. Nothing herein shall in any way prohibit or prevent PEG channels from accepting grants or sponsorships in support of such programming nor shall PEG channels be prohibited from acknowledging such grants or sponsorships before, during or immediately after such PEG programming has been broadcast in such a manner that is similar to the manner in which the Public Broadcasting System (PBS) acknowledges the substantially similar support of its programming content. Such acknowledgments shall comply with the requirements of 47 USC §399b as though the PEG channel were a public broadcast station. (8) Notice of Intention to Move PEG Channel Locations/Designations. Any Video Service Provider or Cable Operator, who intends to move any PEG channel from the channel designations in effect at the time that this ordinance is enacted, may only make such a change after providing 60 days advance written notice to the affected PEG channel(s). Additionally, such Video Service Provider or Cable Operator shall engage in a public education program of such intensity and duration as to reasonably inform the general public of the proposed PEG channel designations.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

### **Sec. 23-05. Police Powers, Design/Construction Standards & Rights of Ways**

- (1) Subject to Police Powers. Video Service Providers and Cable Operators are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety, health and welfare of the public. The grant of a statewide video or cable franchise does not render or to any extent lose, waive, impair or lessen the lawful powers and rights, now or hereafter vested in the City under the Constitution and statutes of the State of Wisconsin to regulate the use of streets and public ways or to regulate any matter affecting the safety, health, and welfare of the public. The City shall make the Video Service Provider's and Cable Operator's history of compliance with such codes and ordinances available to the Department of Financial Institutions so that the Department may determine the provider's or operator's legal, financial, and technical qualifications to provide video services.
- (2) Design, Permits, Construction, and Excavation. Video Service Providers and Cable Operators shall comply with all applicable City codes and ordinances including any zoning ordinance regarding height and use restrictions and shall pay such permit fees, encroachment fees and/or degradation fees for the use of any municipal right of way in the future by the City, and shall be subject to any forfeitures so specified for any violations thereof. The City shall make the history of compliance with such codes and ordinances available to the Department of Financial Institutions so that the Department may determine the Video Service Provider's or Cable Operator's legal, financial, and technical qualifications to provide video services.
- (3) Use of Cable Facilities. The City shall have the right to install and maintain upon the poles of the Video Service Provider or the Cable Operator at a charge equal to the Video Service Provider's or Cable Operator's costs any wire or pole fixtures that do not unreasonably interfere with the cable television system operations, including future plans, of the Video Service Provider or the Cable Operator. The City shall indemnify and hold harmless the Video Service Provider or Cable Operator from any claim that might arise due to or as a result of the City's use.
- (4) Construction and Technical Standards.
  - (a) Compliance with Construction and Technical Standards. The Video Service Provider or Cable Operator shall construct, install, operate, and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards.

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(b) Additional Specifications. Additional specifications shall be as follows:

1. Construction, installation, and maintenance of the cable television system shall be performed in an orderly and workmanlike manner. All construction must also conform to all City of Marshfield policies and permit requirements. The Video Service Provider or Cable Operator must provide erosion control, backfilling and compaction, and restoration to meet City of Marshfield specifications. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel, and bundled with due respect for engineering considerations.
2. The Video Service Provider or Cable Operator shall at all times comply with the applicable:
  - a. National Electrical Safety Code (National Bureau of Standards);
  - b. National Electrical Code (National Bureau of Underwriters);
  - c. Applicable FCC or other federal, state, and local regulations.
3. The cable television system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the Video Service Provider or Cable Operator may have equipment located.
4. Any antenna structure used in the cable television system shall comply with construction, marking, and lighting of antenna structures, required by the United States Department of Transportation.
5. All working facilities and conditions used during construction, installation and maintenance of the cable television system shall comply with the standards of the Occupational Safety and Health Administration.
6. In all areas of the City where all cables, wires, and other like facilities of public utilities are placed underground, the Video Service Provider or Cable Operator shall place its cables, wires, and other like facilities underground. When all public utilities relocate their facilities from pole to underground, the Video Service Provider or Cable Operator must concurrently do so.

(5) Use of Streets.

1. Interference with Persons and Improvements. The Video Service Provider's or Cable Operator's system, poles, wires, and appurtenances shall be located, erected, and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable health, safety, or welfare of property owners who adjoin any of the streets and public ways, or interfere with any improvements the City may make, or hinder or obstruct the free use of the streets, alleys, bridges, easements, or public property. The Video Service Provider or Cable Operator shall secure a permit from the City Engineer for any improvements constructed in the public right-of-way in accordance with ss. 13-33 and 14-03 of this Code.
2. Restoration to Prior Condition. In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing, the Video Service Provider or Cable Operator shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore all paving, sidewalk, driveway, landscaping, and streets or alleys, including any subbase which was disturbed, in as good condition as before the work was commenced and in accordance with standards for such work set by the City Engineer. After 30 days, if restoration measures are not performed to the reasonable satisfaction of the City Engineer, the City may undertake remedial restoration activities, such activities to be performed at the Video Service Provider's or Cable Operator's cost.

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3. **Erection, Removal and Common Uses of Poles.** Erection, removal and common uses of poles shall be in accordance with the following:
  - a. No poles or other wire-holding structures shall be erected by the Video Service Provider or Cable Operator without prior written approval of the City with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Video Service Provider or Cable Operator shall be a vested interest and such poles or structures shall be removed or modified by the Video Service Provider or Cable Operator at its own expense whenever the City determines that the public health, safety, or welfare would be enhanced thereby.
  - b. Each Video Service Provider or Cable Operator shall use existing poles whenever possible and shall not construct or install any new, different or additional poles in the streets until the Video Service Provider or Cable Operator obtains the City's written approval.
  - c. Where the City desires to make use of the poles or other wire-holding structures of the Video Service Provider or Cable Operator and the use will not unduly interfere with the Video Service Provider's or Cable Operator's operations, the City may require the Video Service Provider or Cable Operator to permit such use for reasonable consideration and terms.
4. **Relocation of Facilities.** If at anytime during the period of the franchise the City shall lawfully elect to alter, or change the grade of any street, alley or other public ways or alter or change the location or width of any street and/or any municipal underground facilities, the Video Service Provider or Cable Operator, upon reasonable notice by the City, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
5. **Cooperation with Building Movers.** The Video Service Provider or Cable Operator shall, at the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. Expenses of such temporary removal, raising or lowering of wires shall be paid by the person making the request, and the Video Service Provider or Cable Operator shall have the authority to require such payment in advance. The Video Service Provider or Cable Operator shall be given at least ten days advance notice to arrange for such temporary wire changes.
6. **Tree Trimming.** The Video Service Provider or Cable Operator shall not remove any tree or trim any portion of any tree within any public street, as defined below, without the prior consent of the City, except in an emergency situation. The Video Service Provider or Cable Operator shall provide notice to any affected residents at the same time that the Video Service Provider or Cable Operator applies to the City for consent to perform tree trimming. The City shall have the right to do the trimming requested by the Video Service Provider or Cable Operator at the cost of the Video Service Provider or Cable Operator. Regardless of who performs the work requested by the Video Service Provider or Cable Operator, the Video Service Provider or Cable Operator shall be responsible, shall defend and hold the City harmless from any and all damages to any tree as a result of the Video Service Provider's or Cable Operator's trimming, or to the property surrounding any tree, whether such tree is trimmed or removed.
  - a. **Definition of "Street" for Purposes of Section 23-05:** Street means the surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the City for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the City which shall, within their proper use and meaning entitle the Video Service Provider or Cable Operator to the use thereof for the purposes of installing, repairing, or maintaining poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.
7. **Road Cuts.** The Video Service Provider or Cable Operator shall not use road cuts, trenchless or subsurface methods for laying of cables or wires without the prior written approval of the City. Said

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written approval shall be in the form of a permit issued by the City Engineer as referenced in Subsection 23.05(5)1.

8. One-Call System. The Video Service Provider or Cable Operator or its designee shall contact the one-call system, in accordance with §182.0175 Wis. Stats. before commencing any construction. The Video Service Provider or Cable Operator acknowledges that private sanitary sewer, water and stormwater laterals are not part of the one-call system and will take necessary measures to have these located by the owner. The Video Service Provider or Cable Operator shall be responsible for all damaged laterals and shall repair the laterals at its own expense.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

### **Sec. 23-06. Consumer Protection Regulations**

- (1) Pursuant to the authority granted to the City under §66.0420(9)(b) Wis. Stats. and in addition to those rights provided in §100.209 Wis. Stats., and until such time as there is more than one Video Service Provider or Cable Operator, the City shall require the Video Service Provider or Cable Operator to comply with all customer service standards specified in 47 CFR 76.309(c).
- (2) The Marshfield Cable T.V. Committee shall serve as the advocate for consumers of video broadcast services. Consumers may submit complaints or other concerns to that Committee. The Committee shall keep a file of all complaints and other correspondence and submit the file or a summary thereof to the Wisconsin Department of Trade and Consumer Protection for enforcement purposes under §100.209 Wis. Stats. and to the Department of Financial Institutions for its consideration for franchise revocation hearings or other considerations.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

### **Sec. 23-07. Enforcement and Penalties**

- (1) Except where otherwise provided, violation of any provisions of this Chapter shall result in a forfeiture of \$250.00 per day per violation for each day that such violation occurs or continues to occur.
- (2) The imposition of a penalty in this Chapter shall not be deemed, nor shall it constitute any waiver on the part of the City, of its right to prosecute any claim for damage which might be or might have been caused to any public property by a violator.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

### **Sec. 23-08. Procedures**

- (1) Whenever the City has cause to believe that the Video Service Provider or Cable Operator has violated one or more provisions of this Chapter, a written notice shall be given to said Video Service Provider or Cable Operator informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the Video Service Provider or Cable Operator an opportunity to remedy the violation. The Video Service Provider or Cable Operator shall have ten days subsequent to the receipt of the notice in which to correct the violation before the City may impose penalties unless the violation is of such a nature so as to require more than ten days and the Video Service Provider or Cable Operator proceeds diligently within the ten days to correct the violation. In any case where the violation is not cured within ten days of notice from the City, or such other time limit as the Video Service Provider or Cable Operator and the City may mutually agree to, the City may then proceed with a forfeiture action for the uncured violation or violations.

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- (2) The rights reserved to the City under this section are in addition to all other rights of the City whether reserved by this Chapter or authorized by law or equity, and no action, proceeding or exercise of a right with respect to penalties shall affect any other right the City may have.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

### **Sec. 23-09. Force Majeure**

The Video Service Provider or Cable Operator shall not be held in violation under, or in noncompliance with, the provisions of the Chapter, nor suffer any enforcement or penalty where such violation or noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, severe weather conditions or other catastrophic act of nature, labor disputes, inability to obtain necessary contract labor or materials, governmental, administrative or judicial order or regulation, or any other event that is reasonably beyond the Video Service Provider's or Cable Operator's ability to anticipate and control and that makes performance impossible.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)