BILL NO. 2648 ORDINANCE NO. 2467

AN ORDINANCE EXERCISING CERTAIN LIMITED AUTHORITY RELATING TO OPERATION OF VIDEO SERVICES PROVIDERS AND PROVIDING SUPPLEMENTARY REGULATION OF THE PLACEMENT OF FACILITIES OF VIDEO SERVICE PROVIDERS AND OTHER UTILITIES MAINTAINING FACILITIES WITHIN THE CITY

Whereas, the 94th General Assembly enacted Senate Bill 284, codified as Sections 67.2675 through 67.2714 RSMo., inclusive, ("2007 Video Services Providers Act") establishing a state-wide franchise scheme for cable television and video service providers; and

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

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

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

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

SECTION ONE: 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:

Video Services Providers

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

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

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

d. Rights-of-Way regulation; indemnification; permits and compliance with other laws. Video service providers shall comply with the requirements of Sections 67.2707, 67.2709 and 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.

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

f. Continued Obligations. The obligations of a cable service provider or video service provider as

set forth in any existing cable services or video services franchise or ordinance shall also continue to apply to the full extent permitted by applicable law.

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

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

SECTION TWO: 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 law:

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 faciliity 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 loss 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 utility 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 two (2) 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 THREE: The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION FOUR: This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed and approved this 21st day of July, 2008.

MAYOR

ATTEST:

CITY CLERK

First Reading Held: 6/16/08