

ORDINANCE No.

187454

Require activation of closed captioning on televisions in public areas (Ordinance; add Code Section 23.01.075)

The City of Portland ordains:

Section 1. The Council finds:

1. Hearing loss is a significant problem in the United States. A study released in 2011 by researchers at Johns Hopkins estimated that approximately one in five Americans have some type of hearing loss in one or both ears that affect their ability to communicate and receive information.¹
2. In 1993, the Federal Communications Commission (“FCC”) adopted regulations requiring all analog television receivers manufactured and sold in the United States with screens larger than 13 inches contain built-in decoder circuitry to display closed captioning.
3. Closed captioning consists of a transcript of the audio portions of television programming displayed on the television receiver screen when the user activates the caption feature.
4. In 1996, Congress amended the Communications Act to require that all video program distributors (including broadcasters, cable operators, etc.) add closed captioning to certain video programming and authorized the Federal Communications Commission (the FCC) to establish a transition schedule for complying with this requirement.
5. Following Congress’s legislative directive, the FCC adopted administrative rules to ensure that video programming be accessible by closed captioning to the maximum extent possible. 47 CFR Part 79 sets forth the FCC’s standards for accessibility of video programming.
6. In 2002, the FCC adopted closed captioning requirements for digital television receivers.
7. Under the FCC’s rules, video program distributors are required to add closed captioning to all new English language programming. Starting in 2010, a similar requirement has applied to Spanish language programming. The FCC also requires video program distributors to add closed captioning to a certain percentage of previously broadcast programs.
8. In 2010, Congress enacted the Communications and Video Accessibility Act (“CVAA”), extending the scope of closed captioning requirements to all devices that

¹ http://www.hopkinsmedicine.org/news/media/releases/one_in_five_americans_has_hearing_loss (site visited May 6, 2015)

can play back video. Since September 30, 2012, new TV programming shown online is required to have closed captioning rendered as well.

9. Television receivers are increasingly used in facilities open to the general public, including hospital waiting rooms, bars and restaurants, health clubs, bus stations, airport lounges, and appliance stores. These and other public facilities represent the kinds of locations where the general public has access to television programming.
10. Television receivers in these locations enable members of the general public to obtain the latest news reports in an emergency, watch local sports teams, or simply pass the time while waiting for an appointment or service to be completed. People with hearing disabilities should not be excluded from being able to meaningfully participate in these activities while in public areas.
11. In order to avoid screening out those members of the general public who are deaf or hard of hearing in places of public accommodation, there should be a requirement closed captioning be activated so as to not exclude, deny service, segregate or otherwise treat those with hearing disabilities differently from being able to fully participate in or experience the full benefits of the television programming offered to the public in those settings.
12. This ordinance requires that television receivers located in any part of a facility open to the general public have closed captioning activated at all times when the facility is open and the television receiver is in use.

NOW, THEREFORE, the Council directs:

- a. Chapter 23.01 of the City Code is amended by adding a new section as follows:

23.01.075 Closed Caption Activation Requirement.

A. Definitions. As used in this Section 23.01.075, the following words and phrases shall be construed as defined in this subsection:

1. **“Closed Captioning”** means a transcript or dialog of the audio portion of a television program that is displayed on the bottom portion of a television receiver screen when the user activates the feature.
2. **“Closed-Captioned Television Receiver”** means a receiver of television programming that has the ability to display closed captioning, including but not limited to a television, digital set top box, and other technology capable of displaying closed captioning for television programming.
3. **“Public Area”** means any part of a public facility that is open to the general public.
4. **“Public Facility”** shall have the same meaning as place of public accommodation, as defined in ORS 659A.400 (2013).

5. "Regular Hours" means the hours of any day in which a Public Facility is generally open to members of the general public.

B. Any person owning or managing a public facility must activate closed captioning on any closed captioned television receiver in use in any public area during regular hours.

C. A person owning or managing a public facility is not required to make a closed captioned television receiver available for viewing in a public area if:

1. No receiver of television programming of any kind is available in a public area of the public facility; or,
2. The only receiver of television programming available in a public area of the public facility is incapable of displaying close captioning.

D. Civil Penalties. A violation of this Section may result in the assessment of civil penalties, as provided below:

1. If the City Attorney reasonably believes a violation has occurred, the City Attorney may issue a written determination addressing the following:

- a. A reference to this Section, describing the violations that have occurred or are occurring;
- b. The date and the time of the occurrence, and the street address or location of the public facility;
- c. A concise statement of the matters asserted or charged; and,
- d. A request that the addressee provide a written response to the City Attorney within 10 business days either disputing the occurrence of the violation or describing how the violation has been abated and how such violations will be prevented from reoccurring.

The determination may be personally delivered to the person, or may be served by Registered or Certified Mail. For purposes of this Subsection, service by registered or certified mail is complete and effective when a correctly addressed notice is deposited with the postal service after being either certified or registered by the postal service.

2. If the person fails to provide a written response, or the written response fails to reasonably satisfy the City Attorney regarding the identified violations, the City Attorney may file a complaint with the Code Hearings Officer, as provided under Section 22.03.020, for violations of this Section 23.01.075, asking the Code Hearings Officer to impose civil penalties not to exceed \$500 for each day such violation is committed or permitted to continue as provided in this Section. Having made a determination to ask that the Code Hearings Officer to impose civil penalties as provided by this Section, the City Attorney shall give the person written notice of the determination by causing notice to be served upon the person at their business or residence address. Service of the notice shall be accomplished by

mailing the notice by regular mail, or at the option of the City Attorney, by personal service in the same manner as a summons served in an action at law. Mailing of the notice by regular mail shall be prima facie evidence of receipt of the notice. Service of notice upon the person apparently in charge of a business during its hours of operation shall constitute prima facie evidence of notice to the business owner.

3. In determining the amount of the civil penalty to be imposed for violations of the provisions of this Chapter, the Code Hearings Officer shall consider:

- a. The extent and nature of the person's involvement in the violation;
- b. The harms, whether economic, financial or otherwise, which occurred or were suffered as a result of the violation;
- c. Whether the violations were isolated or temporary, or repeated or continuous;
- d. The magnitude and seriousness of the violation;
- e. The City's costs of investigating the violations and correcting or attempting to correct the violation; and,
- f. Any other applicable facts bearing on the nature and seriousness of the violation.

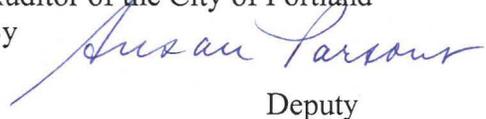
Passed by the Council:

NOV 18 2015

Commissioner Amanda Fritz
Prepared by: Jasmine Wadsworth
Date Prepared: June 17, 2015

Mary Hull Caballero
Auditor of the City of Portland

By


Deputy

~~733 - 741 - 1187~~

Agenda No.
ORDINANCE NO. 187454
 Title

Require activation of closed captioning on televisions in public areas (Ordinance; add Code Section 23.01.075)

<p style="text-align: center;">INTRODUCED BY Commissioner/Auditor: Amanda Fritz</p>	<p>CLERK USE: DATE FILED <u>JUN 26 2015</u></p>
<p style="text-align: center;">COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Hales</p> <p>Position 1/Utilities - Fritz <i>Amanda Fritz</i></p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p>	<p style="text-align: center;">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u><i>[Signature]</i></u> Deputy</p>
<p style="text-align: center;">BUREAU APPROVAL</p> <p>Bureau: Bureau Head:</p>	<p>ACTION TAKEN:</p> <p>JUL 02 2015 PASSED TO SECOND READING JUL 08 2015 10:30 AM TIME CERTAIN</p> <p>JUL 08 2015 REFERRED TO COMMISSIONER OF PUBLIC UTILITIES</p> <p><i>CLERK NOTE: PLACED ON 11-18-15 AGENDA</i></p>
<p>Prepared by: Tim Crail Date Prepared: June 17, 2015</p> <p>Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>City Auditor Office Approval: required for Code Ordinances <i>John</i></p> <p>City Attorney Approval: required for contract, code, easement, franchise, bond plan, charter <i>[Signature]</i></p> <p>Council Meeting Date July 2, 2015</p>	

AGENDA

TIME CERTAIN
Start time: 2:00 PM

Total amount of time needed: 1 Hour
 (for presentation, testimony and discussion)

CONSENT

REGULAR

Total amount of time needed: _____
 (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Novick	→ 4. Novick	✓	
Hales	Hales	✓	