

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to public accommodations; requiring persons owning or managing a place of public accommodations to activate closed captioning on television receivers; and adding a new Chapter 14.05 to the Seattle Municipal Code.

..body

WHEREAS, the purpose of the Commission for People with disAbilities is to: (1) Promote equal opportunities for individuals with disabilities; (2) Strive to enable full participation in all aspects of community life for persons with disabilities; and (3) Provide disability-related technical assistance, information, referral and advocacy to City Council personnel, the community, individuals and groups; and

WHEREAS, The Commission for People with disAbilities is authorized to coordinate and provide recommendations to City personnel, citizens commissions, authorities, and committees; and community individuals and groups serving on annually designated programs to respond to identified service needs; and

WHEREAS, The Commission for People with disAbilities agrees with the findings of the City Council of Portland, Oregon in adopting Ordinance 187454 (which added Portland City Code Section 23.01.075), which requires activating closed captioning, where available, on televisions used in places of public accommodation, namely that:

“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

¹ https://www.hopkinsmedicine.org/news/media/releases/one_in_five_americans_has_hearing_loss

1 2. In 1993, the Federal Communications Commission (“FCC”) adopted
2 regulations requiring all analog television receivers manufactured and sold in the United
3 States with screens larger than 13 inches contain built-in decoder circuitry to display
4 closed captioning.

5 3. Closed captioning consists of a transcript of the audio portions of television
6 programming displayed on the television receiver screen when the user activates the
7 caption feature.

8 4. In 1996, Congress amended the Communications Act to require that all video
9 program distributors (including broadcasters, cable operators, etc.) add closed captioning
10 to certain video programming and authorized the Federal Communications Commission
11 (the FCC) to establish a transition schedule for complying with this requirement.

12 5. Following Congress's legislative directive, the FCC adopted administrative
13 rules to ensure that video programming be accessible by closed captioning to the
14 maximum extent possible. 47 CFR Part 79 sets forth the FCC's standards for accessibility
15 of video programming.

16 6. In 2002, the FCC adopted closed captioning requirements for digital television
17 receivers.

18 7. Under the FCC’s rules, video program distributors are required to add closed
19 captioning to all new English language programming. Starting in 2010, a similar
20 requirement has applied to Spanish language programming. The FCC also requires video
21 program distributors to add closed captioning to a certain percentage of previously
22 broadcast programs.

1 8. In 2010, Congress enacted the Communications and Video Accessibility Act
2 (“CVAA”), extending the scope of closed captioning requirements to all devices that can
3 play back video. Since September 30, 2012, new TV programming shown online is
4 required to have closed captioning rendered as well.

5 9. Television receivers are increasingly used in facilities open to the general
6 public, including hospital waiting rooms, bars and restaurants, health clubs, bus stations,
7 airport lounges, and appliance stores. These and other public facilities represent the kinds
8 of locations where the general public has access to television programming.

9 10. Television receivers in these locations enable members of the general public
10 to obtain the latest news reports in an emergency, watch local sports teams, or simply
11 pass the time while waiting for an appointment or service to be completed. People with
12 hearing disabilities should not be excluded from being able to meaningfully participate in
13 these activities while in public areas.

14 11. In order to avoid screening out those members of the general public who are
15 deaf or hard of hearing in places of public accommodation, there should be a requirement
16 closed captioning be activated so as to not exclude, deny service, segregate or otherwise
17 treat those with hearing disabilities differently from being able to fully participate in or
18 experience the full benefits of the television programming offered to the public in those
19 settings...”; and

20 WHEREAS, in addition to benefitting members of the public who are deaf or hard of hearing,
21 closed captioning also benefits people with learning disabilities, sensory disabilities,
22 attention deficits, and autism, as well as the elderly and persons learning English as a
23 second language; and

1 WHEREAS, closed captioning can help the general public with learning names and terminology,
2 comprehension of dialogue, and better understanding in sound-sensitive environments;

3 NOW, THEREFORE,

4 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

5 Section 1. A new Chapter 14.05 is added to the Seattle Municipal Code as follows:

6 **CHAPTER 14.05 CLOSED CAPTIONING IN PLACES OF PUBLIC**

7 **ACCOMMODATION**

8 **14.05.010 Definitions**

9 For purposes of this Chapter 14.05:

10 “Agency” means the Seattle Office for Civil Rights.

11 “City” means The City of Seattle.

12 “Closed captioning” means a transcript or dialog of the audio portion of a television
13 program that is displayed on the bottom portion of a television receiver screen when the user
14 activates the feature.

15 “Closed-captioned television receiver” means a receiver of television programming that
16 has the ability to display closed captioning, including but not limited to a television, digital set
17 top box, and other technology capable of displaying closed captioning for television
18 programming.

19 “Covered entity” means any place of public accommodation in Seattle.

20 “Director” means the Director of the Seattle Office for Civil Rights.

21 “Place of public accommodation” means any place, licensed or unlicensed, where the
22 public gathers, congregates, or assembles for amusement, recreation or public purposes, or any
23 place, store, or other establishment that supplies goods or services with or without charge to the

1 general public. “Place of public accommodation” includes, but is not limited to, the following
2 types of services or facilities: hotels, or other establishments which provide lodging to transient
3 guests; restaurants, cafeterias, lunchrooms, lunch counters, soda fountains or other facilities
4 principally engaged in selling or offering for sale food for consumption upon or off the premises;
5 public restrooms; public elevators; motion picture houses, theatres, concert halls, sport arenas,
6 stadiums, or other places of exhibition or entertainment; bowling alleys, pool halls, arcades, and
7 amusement parks; retail establishments; transportation carriers; barber shops and beauty shops;
8 bars or taverns or other facilities engaged in selling or offering for sale alcoholic beverages for
9 consumption upon the premises; and public burial facilities.

10 “Public area” means any part of a place of public accommodation that is open to the
11 general public.

12 “Regular hours” means the hours of any day in which a place of public accommodation is
13 generally open to members of the general public.

14 “Respondent” means any person who is alleged or found to have committed a violation of
15 regulations established in this Chapter 14.05.

16 **14.05.020 Requirements for closed captioning in places of public accommodation**

17 A. Any person owning or managing a place of public accommodation must activate
18 closed captioning, in accordance with the technical standards in subsection 14.05.020.C, on all
19 closed-captioned television receivers in use in any public area during regular hours.

20 B. A person owning or managing a place of public accommodation is not required to
21 make a closed-captioned television receiver available for viewing in a public area if:

22 1. No receiver of television programming of any kind is available in a public area
23 of the place of public accommodations; or

1 2. The only receiver of television programming available in a public area of the
2 place of public accommodations is technically incapable of displaying closed captioning.

3 C. Closed-captioning on digital televisions must meet the following technical standards
4 for display:

- 5 1. Background color: Black
- 6 2. Text font: Arial, Calibri, Helvetica, Tahoma or Verdana
- 7 3. Text size: 24
- 8 4. Text color: white

9 **14.05.030 Enforcement**

10 A. Powers and duties

11 1. The Agency shall investigate alleged violations of this Chapter 14.05 and shall
12 have such powers and duties in the performance of these functions as are defined in this Chapter
13 14.05 and otherwise necessary and proper in the performance of the same and provided for by
14 law.

15 2. The Director is authorized and directed to promulgate rules to enforce this
16 Chapter 14.05.

17 B. Reporting and investigation of violations. The Agency may investigate any violations
18 of this Chapter 14.05. Individual reporting of a violation of this Chapter 14.05 should include a
19 statement of the date, location, and entity or entities responsible for such violation.

20 C. Advisory letter and notice of violation

21 1. If, after 180 days from the effective date of the ordinance introduced as Council
22 Bill [], it is determined that a covered entity is not in compliance with the requirements set out
23 in this Chapter 14.05, the Director shall, by service of an advisory letter by first-class mail or

1 electronic mail, notify the respondent of the violation and request that the respondent provide a
2 written response to the Director within 30 business days from the date of the advisory letter
3 either disputing the occurrence of the violation or describing how the violation has been abated
4 and how such violations will be prevented from reoccurring.

5 2. If the respondent fails to provide a written response within ten business days, or
6 the written response fails to reasonably satisfy the Director, the Director may issue a notice of
7 violation. This notice of violation will include a requirement to pay a civil penalty of up to \$125.
8 Subsequent violations shall result in a civil penalty of up to \$300.

9 D. A respondent may appeal the violation by requesting a contested hearing before the
10 Hearing Examiner in writing within 15 days of the date of the notice of violation. If the
11 respondent fails to timely appeal the violation, the violation and accompanying civil penalty shall
12 be final and enforceable. When the last day of the appeal period so computed is a Saturday,
13 Sunday, or federal or City holiday, the period shall run until 5 p.m. on the next business day.

14 E. Appeal procedure and failure to appear

15 1. Contested hearings shall be conducted pursuant to the procedures for hearing
16 contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for
17 hearing contested cases. The Director shall have the burden of proof by a preponderance of the
18 evidence before the Hearing Examiner. Failure to appear for a requested hearing will result in an
19 order being entered finding that the cited respondent committed the violation stated in the
20 Director's notice of violation. For good cause shown and upon terms the Hearing Examiner
21 deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

22 2. In all contested cases, the Hearing Examiner shall enter an order affirming,
23 modifying, or reversing the violation. In determining the amount of the civil penalty to be

1 imposed for violations of the provisions of this Chapter 14.05, the Hearing Examiner may
2 consider:

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

13 3. If a respondent fails to comply with any final order issued by the Director or
14 the Hearing Examiner, the Director may refer the matter to the City Attorney for the filing of a
15 civil action a court of competent jurisdiction to enforce such order.

16 **14.05.040 Exclusions**

17 This Chapter 14.05 shall not be interpreted or applied to diminish or conflict with any
18 requirements of state or federal law. In the event of any conflict, state and federal requirements
19 shall supersede the requirements of this Chapter 14.05.

20

1 Section 2. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the _____ day of _____, 2019,
5 and signed by me in open session in authentication of its passage this _____ day of
6 _____, 2019.

7 _____
8 President _____ of the City Council

9 Approved by me this _____ day of _____, 2019.

10 _____
11 Jenny A. Durkan, Mayor

12 Filed by me this _____ day of _____, 2019.

13 _____
14 Monica Martinez Simmons, City Clerk

15 (Seal)