CITY of ALBUQUERQUE
TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-19-86 ENACTMENT NO. _____

SPONSORED BY: Cynthia D. Borrego and Klarissa J. Peña

ORDINANCE

Amending Chapter 13 Of The Revised Ordinances Of Albuquerque To Add A New Section Requiring Persons Owning Or Managing A Place Of Public Accommodations To Activate Closed Captioning On Television Receivers (Borrego, Peña)

WHEREAS, The Committee for Communication Access supports requiring the activation of closed captioning, where available, on television receivers used in places of public accommodation in order to:

a. Promote equal opportunities for individuals with disabilities;

b. Strive to enable full participation in all aspects of community life for persons with disabilities;

c. Provide disability-related technical assistance, information, referral and advocacy to the community; and

WHEREAS, Hearing loss is a significant problem in the United States. 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; and

WHEREAS, 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 outside the home where the general public has access to television programming; and

WHEREAS, 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, and

WHEREAS, The activation of closed captioning will provide an inclusion of those members of the general public who are deaf or hard of hearing in places of public accommodation and would prevent the effect of excluding, denying service, segregating or otherwise treating 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; and

WHEREAS, the activation of closed captioning will also provide a benefit to all consumers of televised or streamed media in places of public accommodation in situations where it may be difficult to hear because of background noise or otherwise; and

WHEREAS, in the event of a national or local emergency, closed captioning is imperative to the notification and survival of the disabled community - particularly the deaf.

BE IT ORDAINED, BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. A new Article, Article 18 “Closed Captioning,” is hereby added to Chapter 13 of the Revised Ordinances of Albuquerque, as follows:

“13-18-1-1 SHORT TITLE. Sections 13-7-1-1 et. seq. shall be known and may be cited as the ‘Albuquerque Closed Captioning Ordinance.”

13-18-1-2 DEFINITIONS.

DEPARTMENT. The City of Albuquerque Office of Civil Rights.

CLOSED CAPTIONING. A transcript or dialog of the audio portion of a television program that is displayed on a television receiver screen when the user activates the feature.

CLOSED-CAPTIONED TELEVISION RECEIVER. A receiver of television or streamed programming that has the ability to display closed captioning, including but not limited to a television, display screen, digital set top box, and other technology capable of displaying closed captioning for television or streamed programming.

PLACE OF PUBLIC ACCOMMODATION. The following are considered places of public accommodations for purposes of this Article:

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a

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building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a department store, laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or any other retail or service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

PUBLIC AREA. Any part of a place of public accommodation that is open to the general public.

REGULAR HOURS. The hours of any day in which a place of public accommodation is generally open to members of the general public.

RESPONDENT. Any person who is alleged or found to have committed a violation of regulations established in Section.

13-18-1-3. CLOSED CAPTIONING IN PLACES OF PUBLIC ACCOMMODATION.

(A) Any person owning or managing a place of public accommodation must activate closed captioning, with a yellow text color, or if yellow is not available white text on a black background, or black text in the largest font style available, on all closed-captioned television receivers that are turned on and operating in any public area during regular hours, except in the following

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circumstances:

1. No receiver of televised or streamed programming of any kind is available in a public area of the place of public accommodations;

2. The only source or receiver of the televised or streamed programming available in a public area of the place of public accommodation is technically incapable of displaying closed captioning; or

3. If multiple television models are in use and displayed together for sale in a public area, at least one closed-captioned television must be available for viewing.

(B) Powers and Duties of the Department:

1. The Department shall investigate alleged violations of this Section and shall have such powers and duties as are necessary and proper for the administration and enforcement of this ordinance.

2. The Department shall promulgate rules to enforce this Section.

3. Any person having been found to have violated any provision of this Section who fails to demonstrate compliance within 30 days of a notice of such violation shall be assessed a civil penalty of up to $250 for the initial offense, and $500 for each subsequent offense.

(C) Exclusions

A. This Section shall not be interpreted or applied to diminish or conflict with any requirements of state or federal law. In the event of any conflict, state and federal requirements shall supersede the requirements of this Section.

B. This Section does not apply to programming that is exempt from closed captioning requirements under state or federal law."

SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 3. COMPILATION. Section 1 of this ordinance shall amend, be incorporated in and compiled as part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five (5) days after

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publication by title and general summary.