

# **City of Fargo**

# **Access 99 Policies**

Updated:  
January 2013



## Introduction

This updated version of access 99 policies was approved by the Fargo Access Channel Board on January 10, 2013.

The City of Fargo operates channel 99, the “public access channel” broadcast on Cable One in Fargo. The city uses the access channel to make available public, educational, and other programming.

These community access cable channel policies, procedures and rules have been made in accordance with the franchise agreement with Cable One as well as the Federal Cable Act, 47 USC §531.

In applicable part, §5.4 of the Franchise Agreement in subparagraph D. provides:

“The City will be responsible for developing and implementing reasonable rules and procedures relating to its equipment, facilities and programming for the Access Channels, including the scheduling of programming and the use of said Access Channels by the Grantee when not in use for PEG access purposes. ...”

In order to insure the availability of local programming and a mix of programming types, the following policies have been established for the access channel with the approval of the Fargo City Commission, with modifications to the original 2006 policies approved by the Fargo Access Channel Board.

## Mission Statement

The mission of Access 99 is to provide a community television station in which residents, nonprofit organizations, educational institutions and local government agencies may broadcast programming for the purposes of education, enhancement of culture and diversity, entertainment, and conveying of information.

## Section 1: Public Access Programming—content, length, quality and preparation

The access channel program director for the city will establish the programming schedule for the channel.

### A. Programs airing on the access channel may not contain:

- commercials
- gambling or lottery information
- copyrighted material the broadcaster has not obtained permission to air
- material or information that violates local, state or federal law
- solicitations for political donations
- obscenity, indecency or profanity (defined below)
- requests for donations to an individual, group or business
- content that encourages unlawful conduct or
- sexually explicit conduct

## **B. Underwriting acknowledgements**

Underwriting acknowledgments contained in a program may not exceed 10 seconds in length per sponsor; total time devoted to underwriter acknowledgment may not exceed 30 seconds per program.

## **C. Obscene Program Content**

Obscene material is not protected by the First Amendment to the Federal Constitution or the laws and constitution of the state of North Dakota or the ordinances of the City of Fargo and will not be broadcast at any time. To be obscene, material must meet a three-pronged test:

1. An average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest;
2. The material must depict or describe, in a patently offensive way, sexual conduct specifically defined by NDCC 12.1-27.1; and
3. The material, taken as a whole, must lack serious literary, artistic, political, or scientific value.

According to the rules of the Federal Communications Commission, the City of Fargo, as the operator of the access channel, may refuse to transmit any public access program or portion of a public access program that it reasonably believes contains obscenity. See Code of Federal Regulations, Title 47, Volume 4, Section 76.702 for more information.

If the program director is not sure whether a program fits the definition of obscene, indecent or profane, or violates other access policies, he/she will delay its broadcast until the program can be reviewed by the Fargo Access Channel Board. The board will view the program and make a determination about whether it is acceptable for airing. This board will consist of five Fargo residents appointed by the mayor and confirmed by the City Commission.

## **D. Indecent or profane content**

The City of Fargo may refuse to broadcast material that it reasonably believes contains indecent or profane content.

The Federal Communications Commission has defined broadcast indecency as “language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities.” Indecent programming contains patently offensive sexual or excretory material that does not rise to the level of obscenity.

The FCC has defined profanity as “including language so grossly offensive to members of the public who actually hear it as to amount to a nuisance.”

Further, public access users are advised that Section 10-0201 and 10-0202 of the Fargo Municipal Code prohibit indecency in a public place. Playback of such programming in violation of the Fargo Ordinance may subject a producer to a violation of the Fargo Municipal Code.

## **E. Adult Programming Schedule**

Adult programming will be aired between 11 p.m. and 6 a.m. The city reserves the right to determine whether a given program will be defined as adult programming.

## **F. Audio Visual Standards**

Audio levels in programs must be consistent and free from hums, crackling or distortion. Video must be free of tracking problems and graininess. The city's programming director has the authority to determine whether programs meet these audiovisual standards.

## **G. Program submission**

- Programs may be submitted on a DVD.
- DVDs may not contain more than one "menu" screen. DVDs that automatically begin playing are preferred for minimum playback errors.
- Each DVD should only contain one program.
- The **exact** running time of the program in **minutes and seconds** must be marked on the label of the DVD. This **running time** should be from the first to the last frame of video and should not include black or color bars. If the program is on DVD, the label should also include a "**cue time**". This is the time between the moment the DVD begins playing until it reaches the first frame of video (this may be 0 seconds on some DVDs).
- Programs not containing this information or those which repeatedly contain inaccurate information may be rejected for broadcast.

## **H. Rejecting programs**

The City of Fargo reserves the right to reject:

- any program that violates any standard set forth in this document;
- any program that is less than 10 minutes or greater than 120 minutes in length

## **I. Programming Responsibility**

The producer of a public access program shall be responsible and liable for the content of the programming he/she submits and will be responsible for completing a programming access form setting forth the program description and statements that it is not in violation of the above program content restrictions. The producer agrees to defend and hold harmless the city and its personnel and Cable One from any liability relating to the programming.

## **Section 2: Recurring Public Access programs**

### **A. To be guaranteed a weekly time slot on the access channel, a program must:**

1. have a Fargo sponsor (defined in section 6);
2. consist of at least 8 distinct episodes of at least 10 minutes in length; and
3. meet the program content standards outlined in section two.

**B. Time slot limitations:** Each sponsor is entitled to one recurring time slot per week of up to 60 minutes. A second time slot of up to 60 minutes will be provided upon request on a space-available basis. This slot is subject to cancellation at any time.

**C. Bi-monthly broadcasts:** Sponsors whose program inventory consists of 4 to 7 total episodes may receive a time slot of up to 60 minutes every other week.

Programs with less than four total episodes are not eligible for recurring time slots.

**D. Time slot retention:** To retain their recurring time slot, broadcasters must submit at least four new programs every 12 months ("new" refers to programs that have never been broadcast on the access channel), meet drop-off

deadlines and comply with all the policies outlined in this document. Failure to comply with any of these policies may result in the loss of the recurring time slot.

A producer whose recurring program loses its slot due to lack of new programs cannot request a new recurring time slot for the program for a period of six months.

**E. DVD drop-off:** The deadline for DVD drop off depends on the day of the week the show will air; deadlines are as follows:

**F. Show airs on: DVD drop-off deadline is:**

Sunday: Thursday at 4:30 p.m.

Monday: Friday at 10 a.m.

Tuesday: Monday at 10 a.m.

Wednesday: Monday at 4:30 p.m.

Thursday: Monday at 4:30 p.m.

Friday: Tuesday at 4:30 p.m.

Saturday: Wednesday at 4:30 p.m.

Failure to meet the deadline may result in a program's pre-emption.

**G. Repeated failure to meet deadlines:** A broadcaster who receives a recurring time slot is responsible for meeting deadlines for DVD drop-off. If a deadline is missed:

The programming manager for the city will notify the sponsor by phone, postal mail or e-mail of the first missed deadline.

The second missed deadline will result in a notification by mail that the sponsor's time slot is in jeopardy.

After the third missed deadline, the sponsor will be notified by mail that his/her recurring time slot has been cancelled. In order to regain a recurring time slot, the program must be submitted 8 consecutive times in advance of a deadline set by the program director; this deadline will be weekly or bi-monthly, depending on the nature of the time slot lost. If the 8 deadlines are met, the sponsor will be re-assigned a recurring time slot, although it may not be the same as the time slot the program held previously.

**H. Failure to pick up DVDs:** It is the sponsor's responsibility to ensure that previously aired programs are picked up in a timely manner, unless arrangements have been made for the city to retain the programs for future broadcast. After 30 days, the City of Fargo will discard the programs at its discretion, without any advance notification to the sponsor.

**I. Addition of recurring programs to schedule:** Recurring programs will be added to the schedule at the beginning of each month. Broadcasters wishing to secure a time slot should submit their paperwork and episodes by the 20<sup>th</sup> day of the previous month in order to be added to the following month's rotation. (Example: someone wanting to start airing a recurring show in September should submit his/her items by August 20.)

### **Section 3: Public Access Programs aired on a space-available basis**

Sponsors wishing to air a single program can receive up to five broadcast times for their program over a two-month period, on a space-available basis. Programs must be no more than 120 minutes in length.

Programs submitted without a Fargo sponsor will be aired on a space-available basis, at the discretion of the City of Fargo. They cannot be guaranteed a recurring time slot. The city is under no obligation to air these programs at any time.

## **Section 4: Broadcast schedule**

The programming schedule on the access channel is subject to change without notice for a variety of reasons, including equipment malfunction, operator error, failure of broadcasters to deliver their programs and discontinuation of programs.

## **Section 5: Public Access Program Sponsors**

A sponsor is a person who makes a formal request that a program be aired on the access channel and assumes responsibility for the program complying with the access channel policies. A sponsor must:

- live in the Fargo city limits;
- have been a resident for at least 60 days;
- provide his/her contact information;
- complete a sponsorship application form; and
- submit proof of Fargo residency annually upon request.

The programming director will review the sponsor's application and notify the sponsor in writing whether the application has been accepted or rejected.

Program sponsors must provide their name, mailing address and phone number on their access channel application. By submitting a program to be aired on the access channel, the sponsor agrees to have his/her contact information provided to viewers who wish to contact the sponsor directly with questions or comments.

By submitting a program to be aired on the access channel, the sponsor acknowledges the following:

1. The sponsor has obtained all appropriate clearances for broadcast over the public access channel. This includes but is not limited to clearances from broadcast stations, networks, sponsors, music licensing organizations, performers' representatives, authors, composers, people shown in the program, and any persons whose material is used in whole or part.
2. The sponsor understands that any program he/she submits that violates any access channel policy is not authorized by the City of Fargo and the sponsor may be subject to a civil lawsuit or criminal prosecution.
3. The sponsor accepts full responsibility for the content of the program and the consequences of its presentation.
4. The sponsor indemnifies and holds harmless the City of Fargo and its employees and agents from all liability, damage, injury, and judgments arising from or in connection with any claim relating to the broadcast of the program submitted for broadcast.

## **Section 6: Community Billboard**

The City of Fargo maintains the content on the access channel's community billboard and retains sole discretion on whether or not to post an event. We accept announcements from citizens and nonprofit organizations for

events and programs in Cass and Clay counties. Events held by for profit businesses in which attendees must pay to attend or participate are prohibited. Sales events by for profit entities are prohibited. Announcements from groups and citizens outside Cass and Clay counties may also be posted at the city's discretion.

Announcements should be submitted at least 10 business days in advance of the event being promoted to be guaranteed timely posting. The city is under no obligation to post announcements received less than 10 business days in advance of the event being promoted.

Announcements should be 15 words or less and include desired start and end dates, along with the contact information for the person submitting the announcement. The city reserves the right to edit announcements to fit the space available.

No classified ads or business, political or commercial announcements will be accepted. No messages attempting to influence public opinion will be permitted, nor will messages containing obscenity, indecency, profanity or sexual content.

Announcements can be submitted to Karena Carlson as follows:

**E-mail:** [kcarlson@cityoffargo.com](mailto:kcarlson@cityoffargo.com)

**Fax:** 701-476-4136

**Postal mail:** Fargo City Hall, 200 3<sup>rd</sup> St. N., Fargo, ND 58102

## **Section 7: Public Access Grievance Procedure**

The programming director has the authority to:

- approve or deny program sponsorship applications;
- develop a programming schedule for the access channel;
- approve, deny or edit community billboard content; and
- enforce access channel policies.

A citizen who disagrees with a decision made the program director should first contact the director to outline his/her concerns. If the citizen is unsatisfied with the outcome of this discussion, he/she may complete a grievance form that can be obtained from the programming director. This form must be completed and delivered to the programming director within 30 days of the discussion with the program director.

The access channel board will review the completed grievance form at its next regularly scheduled meeting. The board may gather more information as necessary, and then determine whether the actions or decision of the program director should be upheld. The citizen who filed the grievance will be notified in writing of the board's decision.

Citizens who are unsatisfied with decisions of the board may present their concerns to the Fargo City Commission, which has the authority to review, uphold, overturn, modify or place conditions upon the board's decision.