



## AGENDA REPORT

**Meeting Date:** October 16, 2007  
**Item Number:** F-4  
**To:** Honorable Mayor & City Council  
**From:** Mark Geddes, Multimedia Manager  
**Subject:** **AN ORDINANCE OF THE CITY OF BEVERLY HILLS REGARDING STATE-FRANCHISED VIDEO SERVICE PROVIDERS AND ADDING ARTICLE 5 TO CHAPTER 2 OF TITLE 6 OF THE BEVERLY HILLS MUNICIPAL CODE**

**Attachments:** 1. Ordinance including CEQA Exemption

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### **RECOMMENDATION**

Staff recommends that the City Council waive full reading of the ordinance entitled: "An Ordinance of the City of Beverly Hills Regarding State-Franchised Video Service Providers and Adding Article 5 to Chapter 2 of Title 6 of the Beverly Hills Municipal Code" and be introduced and read by title only.

### **INTRODUCTION**

AB 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which authorizes the California Public Utilities Commission (CPUC) to issue statewide video service franchises, became effective January 1, 2007. DIVCA shifts cable TV service franchise authority from cities to the state, changing the ability of cities to set the terms under which video providers operate in a community.

To implement provisions of DIVCA and preserve the City's interests, staff recommends that the City Council adopt an Ordinance allowing the City to: 1) obtain funds and retain revenue for public, educational, and government television purposes in an amount equal to 1% of a State franchise holder's gross revenues; 2) establish a schedule of penalties for material breaches of customer service standards. The City will continue to collect franchise fees from State franchise holders.

The ordinance establishes the maximum fees and penalties permitted under DIVCA. Additionally, DIVCA allows the City to continue collection of impose time, place and manner restrictions on the use of City public rights-of-way.

## **DISCUSSION**

The CPUC approved an AT&T state video service franchise on March 30, 2007, which included the City of Beverly Hills. Time Warner Cable's franchise with the City was extended on a month-to-month basis and is targeted for expiration on January 2, 2008. It is likely that Time Warner will apply for a state franchise effective January 2008.

Thus, staff recommends that the City add Article 5 to Chapter 2 of Title 6 of the Municipal Code, specifically addressing state-franchised video service providers. The Ordinance has the following components.

### **Definition expanded to include "Video Service Provider"**

This Ordinance amends the definition of "video provider" in the Municipal Code to include "video service provider" as defined in DIVCA. A video service provider is broadly defined as an entity that provides video services comparable to programming provided by a television broadcast station, regardless of the technology used.

### **PEG Channel Fee**

DIVCA also allows the City of Beverly Hills to impose a fee on state-issued franchise video service providers for PEG channel purposes in an amount not to exceed 1% of the video service provider's gross revenues.

Accordingly, Section 6-2-502 of this Ordinance requires "video service providers" that have been issued a state franchise pursuant to California Public Utilities Code Section 5840, to provide the same number of PEG channels as are provided by the City's existing cable operator. The Ordinance also requires video service providers to provide an additional PEG channel when the nonduplicated locally produced video programming exceeds 56 hours per week, measured on a quarterly basis.

In addition, this Section establishes a PEG Access Fee. Video service providers that have been issued a state franchise must pay a fee of one percent (1%) of their gross revenue to support PEG channels. The PEG Access Fee shall be remitted to the City of Beverly Hills quarterly, at the same time as the video service provider remits its franchise fee pursuant to California Public Utilities Code Section 5860(h). If the video service provider does not pay the fee on time, an interest charge will apply.

Under this Section, each video service provider is required to keep records of its gross revenues for at least four years after those revenues are recognized in its books. The City may review the business records of the video service provider to ensure that the PEG Access Fee is being paid properly. Where a video service provider has significantly underreported its gross revenues, the video service provider must pay the cost of the audit as well as delinquent fees and late charges.

### **Customer Service Standards and Penalties for Material Breach**

DIVCA requires the City of Beverly Hills to enforce the customer service standards established by state and federal law, and allows the City to establish a schedule of penalties for material breach of customer service standards. DIVCA prohibits local entities from imposing any local customer service standards on video providers with a state franchise.

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Section 6-2-501 of this Ordinance reiterates that, pursuant to California Public Utilities Code Section 5900, video service providers that have been issued a state franchise pursuant to California Public Utilities Code Section 5840 must comply with the customer service standards in Sections 53055, 53055.1, 53055.2, and 53088.2 of the Government Code, Penal Code Section 637.5, and the privacy standards contained in the Federal Cable Act. Under DIVCA, the City of Beverly Hills is required to enforce these customer service standards with respect to complaints received from residents within the City's jurisdiction. The City is not allowed to enforce other customer service standards.

Under this Section, the City shall notify state franchise holders in writing of any material breach of these customer service standards. The video service provider shall then have 30 days from the receipt of the notice to remedy the specified material breach. In addition, this Section establishes penalties authorized by DIVCA.

**FISCAL IMPACT**

There will be no cost to the City. Adoption of an ordinance will provide the City with the ability to obtain additional revenue from State video franchise holders for PEG support in the amount of 1% of gross revenues (PUC Section 5870). The City will receive 5% franchise fees from the new State franchise holders' gross revenues (PUC Section 5840).

Mark Geddes 

**ORDINANCE NO. 07-O-**

AN ORDINANCE OF THE CITY OF BEVERLY HILLS  
REGARDING STATE-FRANCHISED VIDEO SERVICE  
PROVIDERS AND ADDING ARTICLE 5 TO CHAPTER  
2 OF TITLE 6 OF THE BEVERLY HILLS MUNICIPAL  
CODE

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES  
ORDAIN AS FOLLOWS:

Section 1. Article 5 (State Franchised Video Service Providers) is hereby  
added to Chapter 2 (Cable, Video, and Telecommunications Service Providers) of Title 6  
(Utilities and Franchises) of the Beverly Hills Municipal Code to read as follows:

“ARTICLE 5. STATE-FRANCHISED VIDEO SERVICE PROVIDERS

6-2-500: AUTHORITY AND FINDINGS:

- A. Assembly Bill 2987 (Nunez), formally called the Digital Infrastructure and Video Competition Act of 2006 (the “Act”), became effective on January 1, 2007.
- B. The Act establishes a state franchising system administered by the Public Utilities Commission for video service providers.
- C. The intent of this article is to exercise the City’s regulatory authority pursuant to the Act and other state and federal law.

6-2-501: Customer Service Standards and Penalties for Material Breach:

- A. Pursuant to California Public Utilities Code Section 5900, video service providers that have been issued a state franchise pursuant to California Public Utilities Code Section 5840 must comply with the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2 of the California Government Code, and any other customer service standards pertaining to the provision of video service established by federal law or regulation and any laws subsequently enacted by the California Legislature (the “customer service standards”).
- B. The Customer Service Standards also include California Penal Code Section 637.5 and the privacy standards contained in the Federal Cable Act, at 47 U.S.C. § 551, et seq.

C. The City shall enforce the customer service standards within the City's jurisdiction, pursuant to California Public Utilities Code Section 5900(c).

D. Prior to imposing the penalties provided by this section, the City shall notify video service providers in writing of any material breach of these customer service standards. The video service provider shall have 30 days from the receipt of the notice to remedy the specified material breach.

E. A material breach of the customer service standards is punishable by a penalty of five hundred dollars (\$500) for each day of each material breach, not to exceed fifteen hundred dollars (\$1500) for each occurrence of a material breach.

F. If a subsequent material breach of the same standard occurs within twelve (12) months, the repeat material breach is punishable by a penalty of one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach.

G. If a third or further material breach of the same standard occurs within twelve (12) months of the first breach, the repeat material breach or breaches are punishable by a penalty of twenty-five hundred dollars (\$2,500) for each day of each material breach, not to exceed seventy-five hundred dollars (\$7,500) for each occurrence of the material breach.

H. Acts or omissions of a video service provider that result in breaches of two or more different customer service standards will be treated and penalized as separate material breaches of each violated standard.

I. This section shall not apply to any video service provider providing video services pursuant to a franchise agreement with the City.

6-2-502: PUBLIC, EDUCATIONAL, AND GOVERNMENTAL (PEG) ACCESS FEE:

A. Pursuant to California Public Utilities Code Section 5870(n), the City of Beverly Hills hereby establishes a Public, Educational, and Governmental (PEG) Access Fee.

B. Video service providers that have been issued a state franchise pursuant to California Public Utilities Code Section 5840, shall designate a sufficient amount of capacity on their networks to allow the provision of the same number of PEG channels as are provided by the incumbent cable operator, as defined in California Public Utilities Code Section 5830(j). Notwithstanding the foregoing, such video service providers shall provide an additional PEG channel when the nonduplicated locally produced video programming televised on a given channel exceeds 56 hours per week as measured on a quarterly basis.

C. Video service providers that have been issued a state franchise must pay to the City of Beverly Hills a PEG Access Fee of one percent (1%) of the video service provider's gross revenues to support PEG channels consistent with federal law. The fee

shall be remitted to the City quarterly, within 45 days after the close of each quarter, at the same time as the video service provider remits its franchise fee pursuant to California Public Utilities Code Section 5860(h).

D. If the video service provider does not pay the PEG Access Fee when due, the video service provider shall pay interest at a rate per year equal to the prime interest rate published from time to time in the Wall Street Journal, plus one (1) percentage point, from the date such amount was due, to and including the date of payment.

E. Pursuant to California Public Utilities Code Section 5860(i), the video service provider must keep records of its gross revenues for at least four years after those revenues are recognized in its books. The City may review the business records of the video service provider to ensure that the PEG Access Fee is being paid properly. If an audit of the video service provider indicates that the PEG Access Fee has been underpaid by more than five percent (5%), the video service provider must pay the reasonable and actual costs of the audit, plus the interest as set forth in subsection D.

F. This Section shall not apply to any video service provider providing video services pursuant to a franchise agreement with the City.”

Section 2. The definition of “Video Provider,” as provided in Section 6-2-601 (Defined Terms and Phrases) of Article 6 (Definitions) of Chapter 2 (Cable, Video, and Telecommunications Service Providers) of Title 6 (Utilities and Franchises) of the Beverly Hills Municipal Code, is hereby amended to read as follows:

“VIDEO PROVIDER OR VIDEO SERVICE PROVIDER: Any person, company, or entity that provides video programming to a residence, including, without limitation, a home, multi-family dwelling complex, congregate living complex, condominium, apartment, or mobile home, where some fee is paid for that service, whether directly or as included in dues or rental charges, and whether or not public rights of way are used in the delivery of that video programming. A “video provider” or “video service provider” includes, without limitation, providers of video programming service, cable television service, open video system service, master antenna television, satellite master antenna television, direct broadcast satellite, multipoint distribution services, and other providers of video programming, whatever the technology, including, without limitation, internet protocol and other technologies defined as video service provider or video provider in state and federal law.”

Section 3. Pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) (“CEQA”) and the State CEQA Guidelines

(California Code of Regulations, Title 14, Section 15000 et seq.), the City Council finds that it can be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. Therefore, the adoption of this ordinance is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3).

Section 4. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council of the City of Fairfield hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 5. The City Clerk shall cause this ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code, shall certify to the adoption of this ordinance, and shall cause this ordinance and her certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 6. This Ordinance shall go into effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:  
Effective:

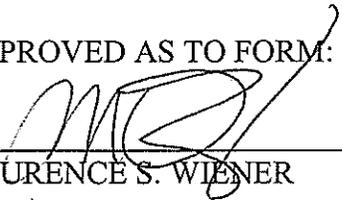
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JIMMY DELSHAD  
Mayor of the City of Beverly Hills,  
California

ATTEST:

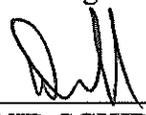
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(SEAL)  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:  
  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

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RODERICK J. WOOD  
City Manager  
  
DAVID SCHIRMER  
Chief Information Officer