

Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: December 17, 2007

FROM: CITY ATTORNEY

SUBJECT: AN ORDINANCE OF THE CITY OF PASADENA AMENDING TITLE 18 OF THE PASADENA MUNICIPAL CODE RELATING TO VIDEO SERVICE PROVIDERS

TITLE OF PROPOSED ORDINANCE:

AN ORDINANCE OF THE CITY OF PASADENA AMENDING TITLE 18 OF THE PASADENA MUNICIPAL CODE RELATING TO VIDEO SERVICE PROVIDERS.

PURPOSES OF ORDINANCE:

The City Council directed the preparation of this ordinance on March 19, 2007. The purpose of the ordinance is to conform Title 18 to recently enacted state video franchising laws (AB 2987). On June 4, 2007, a proposed ordinance was submitted to the City Council for consideration. At that time, the Council directed that the Pasadena Community Access Corporation (PCAC) review and comment on the ordinance. PCAC has now reviewed the proposed ordinance and their suggestions have been incorporated, as discussed below.

As described in the agenda report submitted March 19, 2007, the new state law gives the California Public Utilities Commission responsibility for granting a statewide franchise to companies providing video service, both for new entrants to the video market as well as incumbent cable television operators.

These Title 18 amendments implement authority granted to cities under the new state law in relation to franchise fees; funding for public, educational and governmental access (PEG); PEG access channels and interconnection; the authority to examine records of state video franchisees; violation of customer service standards; activation of the emergency alert system; and notice to the city of state franchise applications and amendments to existing state franchises.

MEETING OF 12/17/2007

AGENDA ITEM NO. 9.A.1.

At the March 19 meeting, City Council also requested staff to address whether these Title 18 amendments should also include: i) a requirement of an environmental impact report (EIR) for every cabinet installed by a video service provider in the right of way (ROW); and ii) a requirement that the video service provider restore and maintain the parkway in which any cabinet is installed. Staff recommends that such additional requirements not be included for the reasons which follow.

AB 2987 makes it clear that the California Environmental Quality Act (CEQA) applies to the local projects of a statewide video franchise holder and that the City is the lead agency for the purposes of environmental review and preparation of CEQA documents. CEQA requires an evaluation, on a case by case basis, of a project's impact upon the environment. The city's practice is to conduct CEQA review and compliance in conjunction with a video provider's application for a permit to install a cabinet or cabinets in the ROW. An Initial Environmental Study is then conducted and mitigation measures may be imposed, depending upon the impacts of the project. It follows that a requirement of an EIR for any and all cabinets, in advance of any project application, would not be consistent with the case by case impact analysis mandated by CEQA.

AB 2987 preserves the City's right to manage its local right-of-way consistent with the provisions of state law (particularly, Public Utilities Code sections 7901 and 7901.1) and to require permits for any construction activities in the parkway. These statutes allow the City to apply reasonable regulations to statewide video service providers' use of the parkway. The City's current permitting policies require any entity placing facilities in or adjacent to the parkway to restore the area and take steps to mitigate visual impacts. Permit conditions may include restoration of irrigation systems and installation of sod and other plants to match the existing landscaping. Imposing a permanent parkway maintenance duty under all circumstances may well exceed the scope of regulation permitted by state law, especially to the extent the area in question is not in close proximity to a cabinet. We also believe it would be legally problematic to impose a parkway maintenance duty on video service providers which is not shared by other users of the parkway (including city departments such as Water and Power and Public Works).

REASONS WHY LEGISLATION IS NEEDED:

Title 18 provides the legal basis for the city's regulation of cable television and other telecommunications systems. It is appropriate to amend Title 18 to enact the new requirements authorized by state law for city regulation of video providers franchised by the state.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED:

The City of Pasadena has one incumbent cable television operator (Charter Communications) which is expected to obtain a statewide video franchise in January 2008. A new video service provider (AT&T) is also expected to offer service in Pasadena by means of a statewide franchise. Both companies will be subject to the amendments to Title 18 set forth in this ordinance.

The Board of Directors of the PCAC has reviewed the proposed Title 18 amendments. A number of the Board's comments have been incorporated in the proposed ordinance, as follows:

- Section C. Authority to Examin Records: changed the wording from "City" to "appropriate City department"
- Section D. Customer Service Penalties Under State Video Franchises: changed the wording from "City" to "appropriate City department"
- Section F. Public, Educational or Governmental (PEG) Channel Capacity, regarding carriage of PEG channels on the basic service tier: changed the wording from "cable system" to "video service provider's system"
- Section E.6 Public, Educational or Governmental (PEG) Channel Capacity, regarding the technical standard for carriage of PEG channels: added "as provided in Public Utilities Code section 5870b" to the end of the provision.

PCAC is comfortable with the proposed ordinance in the form presented herewith.

FISCAL IMPACT:

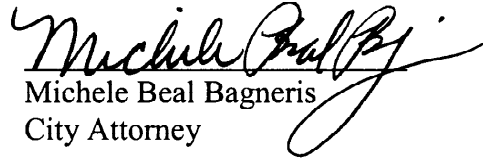
The proposed amendments to Title 18 will provide the mechanism for the collection of franchise fees from video service providers franchised by the State. It is unclear at this time whether there will be revenue impacts to the City from the State's new legislation or what the magnitude of such impacts may be if they do occur.

POLICY CHANGES:


The proposed amendments to Title 18 are consistent with present policy by ensuring a

city role in regulating video service providers under the new statewide video franchise regimen.

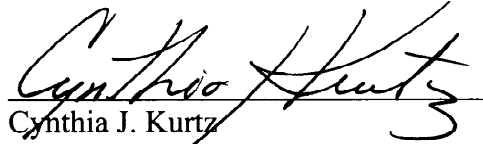
Respectfully submitted,


Michele Beal Bagneris
City Attorney

Prepared by:


Scott D. Rasmussen
Assistant City Attorney

Concurrence:


Cynthia J. Kurtz
City Manager

ORDINANCE NO. __

**AN ORDINANCE OF THE CITY OF PASADENA
AMENDING CHAPTER 18.04 OF TITLE 18 OF THE
PASADENA MUNICIPAL CODE BY ADDING NEW
SECTION 18.04.060 RELATING TO VIDEO SERVICE
PROVIDERS**

The People of the City of Pasadena ordain as follows::

Section 1. This ordinance, due to its length and the corresponding costs for publication, will be published by title and summary as permitted by Section 508 of the Charter. The approved summary of this ordinance read as follows:

“SUMMARY

The purpose of Ordinance No. _____ is to conform the Municipal Code to recently enacted state video franchising laws (AB 2987). The ordinance implements authority granted to cities under the new state law in relation to franchise fees; funding for public, educational and governmental access (PEG); PEG access channels and interconnection; the authority to examine records of state video franchisees; violation of customer service standards; activation of the emergency alert system; and notice to the city of state franchise applications and amendments to existing state franchises.”

Section 2. Title 18, Chapter 18.04 (“Cable, Video, and Telecommunications Service Providers”) of the Pasadena Municipal Code is amended by adding a new Section 18.04.060 to read as follows:

“18.04.070 Special Provisions Applicable to Holders of State Video Franchises.

A. Fee for Support of Local Cable Usage. A fee paid to the City is hereby established for the support of public, educational, and governmental access facilities and activities within the City. Unless a higher percentage is authorized by applicable state or federal law, this fee shall be one percent (1%) of a state video holder’s gross revenues, as defined in California Public Utilities Code section 5860. This fee shall be remitted quarterly to the City Treasurer and must be received not later than 45 days after the end of the preceding quarter. The fee payment shall be accompanied by a summary that explains the basis for the calculation of the support fee for local cable usage.

B. Franchise Fee. A state video franchise holder operating in the City shall pay to the City a franchise fee that is equal to five percent (5%) of the gross revenues of that state video franchise holder. The term “gross revenues” shall be defined as set forth in Public Utilities Code section 5860. This fee shall be remitted quarterly to the City Treasurer and must be received not later than 45 days after the end of the preceding calendar quarter. The fee payment shall be accompanied by a summary that explains the basis for the calculation of the franchise fee. Unless construed otherwise by applicable law, the phrase “summary that explains the basis for the calculations,” as used herein and above in paragraph (A), means the identification of the sources of revenue upon which the fee is based.

C. Authority to Examine Records. Not more than once annually, the appropriate City department may examine the business records of a holder of a state video franchise to ensure compliance with all applicable statutes and regulations related to the computation and payment of franchise fees.

D. Customer Service Penalties Under State Video Franchises.

1. The holder of a state video franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.

2. The appropriate City department shall monitor a state video franchise holder's compliance with state and federal customer service and protection standards. The City will provide to the state video franchise holder written notice of any material breaches of applicable customer service and protection standards, and will allow the state video franchise holder 30 days from receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following monetary penalties to be imposed by the City in accordance with state law:

a. For the first occurrence of a violation, a monetary penalty of \$500 shall be imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation.

b. For a second violation of the same nature within twelve months, a monetary penalty of \$1,000 shall be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.

c. For a third or further violation of the same nature within twelve months, a monetary penalty of \$2,500 shall be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.

3. A state video franchise holder may appeal a monetary penalty assessed by the City. Such appeal must be filed no later than 60 days after the date of mailing of notification of the penalty or the right to appeal shall be deemed waived. After relevant evidence and testimony is received, and staff reports are submitted, the City Council will vote to either uphold or vacate the monetary penalty. The City Council's decision on the imposition of a monetary penalty shall be final.

E. City Response to State Video Franchise Applications.

1. Applicants for state video franchises within the boundaries of the City must concurrently provide to the City complete copies of any application or amendments to applications filed with the California Public Utilities Commission. One complete copy must be provided to the City Manager.

2. The City will provide any appropriate comments to the California Public Utilities Commission regarding an application or an amendment to an application for a state video franchise.

F. Public, Educational or Governmental (PEG) Channel Capacity. A state video franchise holder that uses the public rights-of-way shall designate sufficient capacity on its network to enable the carriage of at least four PEG access channels.

1. PEG access channels shall be for the exclusive use of the City or its designees to provide public, educational, or governmental programming.

2. Advertising, underwriting, or sponsorship recognition may be carried on the PEG access channels for the purpose of funding PEG-related activities.
3. The PEG access channels shall be carried on the basic service tier and shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the video service provider at a lower quality or with less functionality, as provided in subsection (g)(3) of section 5870 of the California Public Utilities Code.
4. To the extent feasible, the PEG access channels shall not be separated numerically from other channels carried on the basic service tier, and the channel numbers for the PEG access channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law.
5. After the initial designation of PEG access channel numbers, the channel numbers shall not be changed without the prior written consent of the City, unless the change is required by federal law.
6. Each PEG access channel shall be capable of carrying a National Television System Committee television signal, as provided in Public Utilities Code section 5870b.

G. Interconnection. Where technically feasible, a state video franchise holder and an incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG access channel programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. State video franchise holders and incumbent cable operators shall provide interconnection of the PEG access channels on reasonable terms and conditions and may not withhold the interconnection. If a state video franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the City may require the incumbent cable operator to allow the state video franchise holder to interconnect its network with the incumbent's network at a technically feasible point on the holder's network as identified by the holder. If no technically-feasible point for interconnection is available, the state video franchise holder shall make an interconnection available to the channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state video franchise holder requesting the interconnection unless otherwise agreed to by the parties.

H. Emergency Alert System And Emergency Overrides. A state video franchise holder must comply with the Emergency Alert System requirements of the Federal Communications Commission in order that emergency messages may be distributed over the holder's network. Provisions in City-issued franchises authorizing the City to provide local emergency notifications shall remain in effect, and shall apply to all state video franchise holders in the City for the duration of the City-issued franchise, or until the term of the franchise would have expired had it not been terminated pursuant to

subdivision (m) of section 5840 of the California Public Utilities Code, or until January 1, 2009, whichever is later.”

Section 3. The City Clerk is directed to certify the adoption of this ordinance and to cause this ordinance to be published.

Section 4. This ordinance shall become effective upon its publication.

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Signed and approved _____ day of
_____, 2007.

William Bogaard
Mayor

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of
the City of Pasadena at its meeting held _____
by the following vote:

AYES:


NOES:

ABSENT:

ABSTAIN:

Jane L. Rodriguez, CMC
City Clerk

APPROVED AS TO FORM:



Scott D. Rasmussen
Assistant City Attorney