

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