

ORDINANCE NO. 2731

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
ADOPTING CHAPTER 25 OF TITLE 5 OF THE GARDEN GROVE MUNICIPAL CODE
PERTAINING TO STATE VIDEO FRANCHISE HOLDERS

City Attorney's Summary

This Ordinance adopts Chapter 25 of Title 5 of the Garden Grove Municipal Code to implement the Digital Infrastructure and Video Competition Act of 2006 pertaining to State Video Franchise Holder.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES HEREBY ORDAIN
AS FOLLOWS:

SECTION 1. Chapter 25 of Title 5 of the Garden Grove Municipal Code is hereby adopted to read as follows:

Chapter 25: STATE VIDEO FRANCHISE HOLDERS

5.25.010 Purpose.

- A. This Chapter is designed to regulate video service providers holding state video franchises and operating within the City. As of January 1, 2007, the State of California has the sole authority to grant state video franchises pursuant to the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). Pursuant to DIVCA, the City of Garden Grove may receive a franchise fee and may receive a fee for public, educational and governmental access (defined in this Chapter as "PEG" or "PEG access channels") from all state video franchise holders operating within the City. Additionally, although DIVCA reserves to the state authority to adopt customer service standards, the City has the responsibility to establish penalties, consistent with state law, for violations of such customer service standards.
- B. It is the purpose of this Chapter to implement within the City the provisions of DIVCA and the rules the California Public Utilities Commission promulgated thereunder that are applicable to a "local franchising entity" or a "local entity" as defined in DIVCA. Consistent with that purpose, the provisions of this Chapter are to be construed in a manner that is consistent with DIVCA and the applicable rules of the Commission promulgated thereunder.

5.25.020 Applicable Definitions.

Terms used in this Chapter shall have the same meaning as established in (1) DIVCA, and, if not defined therein, (2) Commission rules implementing DIVCA, and, if not defined therein, (3) Subchapter V-A of Chapter 5 of Title 47 of the United States Code, and, if not defined therein,

(4) their common and ordinary meaning. References to governmental entities (whether persons or entities) shall refer to those entities or their successors in authority. If a specific provision of law referred to in this Chapter should be renumbered, then the reference shall be read to refer to the renumbered provision. References to any law shall be interpreted broadly to cover government actions, however nominated, including any law now in force or subsequently enacted or amended.

5.25.030 State Franchise Required.

- A. Except as the City Council may authorize by resolution, and except for franchisees with a valid franchise issued under Chapter 24 of this Title 5 of this Code, no person may construct, operate, maintain or repair a cable system or video service provider's network in the City without first obtaining a state franchise therefor.
- B. A state franchise shall not convey rights other than as specified in this Chapter or in DIVCA or other applicable law; no rights shall pass by implication.
- C. Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:
 - 1. Compliance with generally applicable requirements for the privilege of transacting and carrying on a business within the City, including, but not limited to, compliance with the conditions that the City may establish before facilities may be constructed, or for providing non-video services;
 - 2. Any permit or authorization, other than a state franchise, required in connection with operations on or in public rights-of-way or public property; and
 - 3. Any permit, agreement or authorization for occupying any other property of the City or private persons to which access is not specifically granted by the state franchise.
- D. Except as otherwise provided in DIVCA, a state franchise shall not relieve a franchisee of its duty to comply with all laws, including laws of the City, and every state franchisee shall comply with the same. The City reserves its rights to the lawful exercise of police and other powers the City now has or may later obtain.
- E. The City reserves the right to construct, operate, maintain or repair its own cable system or video service provider network.

5.25.040 Administration and Regulations.

- A. The City may from time to time adopt rules and regulations to implement the provisions of this Chapter consistent with DIVCA.
- B. The City Manager, or his/her designee, is hereby authorized to administer this Chapter and to provide or cause to be provided any notices (including noncompliance notices) and to take any action on behalf of the City that may be required under this Chapter, DIVCA, or under applicable law.
- C. The failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this Chapter or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing or its exercise by the City is not permitted by DIVCA.
- D. The City may designate one or more entities, including itself, to control and manage the use of PEG access channels, and any PEG facilities and equipment owned, controlled or used by the City or the designated entity or entities.

5.25.050 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 generated within City's jurisdictional boundaries. The term "gross revenues" shall be defined as set forth in Public Utilities Code Section 5860.

5.25.060 PEG Fee.

In addition to the franchise fee required pursuant to section 5.25.050, a state video franchise holder operating in the City shall pay to the City a fee that is equal to one percent (1%) of the gross revenues of that state video franchise holder generated within City's jurisdictional boundaries, which fee shall be used to support PEG channel facilities. The term "gross revenues" shall be defined as set forth in Public Utilities Code Section 5860. Further, pursuant to Public Utilities Code Section 5870, this Section shall become applicable upon the expiration or termination of the incumbent operator's franchise agreement; the terms of Public Utilities Code Section 5870 and the existing franchise agreement shall otherwise apply to the incumbent franchisee until such expiration or termination.

5.25.070 Payment of Fees; Examination of Business Records.

- A. The franchise fee and PEG fee shall be remitted to the City on a quarterly basis within 45 days after the end of each quarter for that calendar year. Each payment shall be accompanied by a detailed summary explaining the basis for the calculation of the franchise fee and PEG fee.
- B. If a state video franchise holder fails to pay the fees when due, or underpays the proper amounts due, the state video franchise holder shall pay a late payment charge at the annual interest rate equal to the highest prime lending rate during the period of delinquency, plus one percent (1%). If the state video franchise holder has overpaid the fees, it may deduct the overpayment from its next quarterly payment.
- C. Not more than once annually, the City may examine the business records of a state video franchise holder to ensure compliance with all applicable statutes and regulations related to the computation and payment of franchise fees.

5.25.080 Customer Service Penalties Under State Video Franchises.

- A. The holder of a state video franchise shall comply with California Government Code §§ 53055, 53055.1, 53055.2 and 53088.2; the Federal Communications Commission customer service and notice standards set forth in 47 C.F.R. §§ 76.309, 76.1602, 76.1603 and 76.1619; California Penal Code § 637.5; the privacy standards of 47 U.S.C. § 551; and all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video service, including any such standards hereafter enacted or adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this section shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.
- B. For material breaches of applicable federal and state customer service and protection standards, any state video franchise holder operating in the City shall be subject to monetary penalties which may be imposed by the City in accordance with California Public Utilities Code Section 5900 as follows:
 - 1. 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 \$1500 for each violation.

2. For a second violation of the same nature within a 12-month period, a monetary penalty of \$1000 shall be imposed for each day the violation remains in effect, not to exceed \$3000 for each such violation.
3. For a third or further violation of the same nature within a 12-month period, a monetary penalty of \$2500 shall be imposed for each day the violation remains in effect, not to exceed \$7,500 for each such violation.
4. A state video franchise holder may appeal to the City Council, or a hearing officer as the City Council may appoint, a monetary penalty assessed by the City within 60 days after notice of the assessment. After relevant evidence and testimony as may be received, and staff reports as may be submitted, the City Council, or hearing officer, may uphold, vacate, or modify the monetary penalty consistent with the evidence presented. The decision of the City Council, or hearing officer, on the imposition of a monetary penalty shall be final.

5.25.090 City Response to State Video Franchise Applications.

- A. Applicants for state video franchises within the boundaries of the City shall concurrently file with the City Clerk one complete copy of any such franchise application or amendment to any such application filed with the California Public Utilities Commission.
- B. The City may provide comments to the California Public Utilities Commission regarding an application or an amendment to an application for a state video franchise.

5.25.100 PEG Channel Capacity.

- A. A state video franchise holder shall designate sufficient capacity on its network to enable the carriage of at least three PEG access channels. PEG access channels shall be for the exclusive use of the City or its designees to provide public, educational, or governmental programming.
- B. A state video franchise holder shall provide additional PEG channels when the standards set forth in Public Utilities Code Section 5870 are satisfied by the City or any entity designated by the City to be responsible for PEG access.

5.25.110 Emergency Alert System and Emergency Overrides.

A state video franchise holder shall comply with the Emergency Alert System requirements of the Federal Communications Commission so that emergency messages may be distributed over its network.

SECTION 2. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 3. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the ____ day of _____.

ATTEST:

MAYOR

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced and presented on August 12, 2008, with a vote as follows:

AYES: COUNCIL MEMBERS: (5) BROADWATER, JONES, NGUYEN, ROSEN, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE