

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal

From: Kim Huy

Dept.: City Manager

Dept.: Community Services

Subject: TERMINATION AND REALIGNMENT OF
THE TIME WARNER CABLE TELEVISION
(CATV) FRANCHISE AGREEMENT

Date: June 26, 2012

OBJECTIVE

To recommend that the City Council terminate the City's CATV franchise with Time Warner Cable, and require Time Warner Cable to operate as a state franchisee pursuant to California's Digital Infrastructure and Video Competition Act (DIVCA).

BACKGROUND

In 2002, The City Council adopted Ordinance No. 2577 renewing the City's CATV Franchise with KBL Cable Systems of the Southwest, Inc., doing business as Time Warner Cable (Time Warner) for a period of 20 years. Provisions included franchise payments to the City of 5% of gross annual revenues billed directly to cable subscribers within city limits. As part of the franchise, Time Warner is required to pay monthly Public, Education and Governmental ("PEG") support fees in the amount of 50 cents (\$0.50) per subscriber. After the first 10 years of the franchise term, the fee would decrease in five-cent increments each year thereafter. This process begins in July 2012.

PEG support also includes use of Time Warner's studio and channel playback facilities at 7441 Chapman Avenue, Garden Grove. These provisions help fund and operate cable television access and programming on topics of interest to the local community. This includes televised City Council/Successor Agency coverage. The City's Cable TV Division is the designated Community Access Center managing and operating PEG Channel 3.

On January 1, 2007, the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") went into effect, taking away cable television franchise authority from local municipalities and giving it exclusively to the California Public Utilities Commission. The stated purpose of this legislation was to enable greater competition in the cable television market by allowing local companies to expand their services to provide video programming. Currently, both AT&T and Verizon have expanded their telephone services to operate CATV Franchises in the City.

In August 2008, the City Council adopted Ordinance No. 2731 amending Chapter 25 of Title 5 of the Garden Grove Municipal Code implementing DIVCA. DIVCA requires

state franchisees to pay a franchise fee of 5% of its gross receipts and a local jurisdiction may also require the payment of PEG support fees of 1% of gross receipts. Pursuant to DIVCA, Section 5.25.060 establishes "a fee that is equal to one percent (1%) of the gross revenues of the state video franchise holder generated within City's jurisdictional boundaries, which fee will be used to support PEG channel facilities." The revenue generated under the state franchise is higher than the amount provided by the original franchise. However, Public Utilities Code Section 5870 holds that the "existing franchise agreement shall otherwise apply to the incumbent franchisee until such expiration or termination." Therefore, the City's current franchise remains in force unless the agreement is terminated by City Council ordinance.

DISCUSSION/FISCAL IMPACT

The proposed termination of the incumbent CATV Franchise with Time Warner and its operation under a state franchise provides for the continued payment of franchise and PEG support fees. At present, in addition to receiving a 5% Franchise Fee, the City receives PEG fees of \$100,000 annually. By terminating the Agreement, the new 1% formula permitted under the State Franchise Agreement would result in annual PEG fee revenues of approximately \$141,000 annually.

Impact on City Resources and Policy

Five Percent Franchise Fee - In addition to PEG support fees, all franchise holders will continue to pay franchise fees to compensate the City for the use of public streets and rights-of-way. There are no material impacts on these revenues as a result of terminating the existing Time Warner CATV Franchise because DIVCA and Ordinance 2731 requires video service providers pay a 5% franchise fee.

PEG Operations/In-kind Services - Although the City will continue to collect franchise fees under a state franchise, support for in-kind services such as free cable service to schools and other public buildings and use of the Time Warner studio and playback facility will most likely be discontinued upon termination of the existing CATV Franchise. The existing franchise also calls for 20 cable TV "drops" at City facilities. The City currently has playback capacity and can adapt to a non-studio environment. The potential loss of free cable service could have an undetermined fiscal impact on schools located in the Garden Grove service area.

Policy Implications - Termination of the existing Time Warner CATV Franchise will achieve consistency among all franchise holders with respect to operations under DIVCA. In addition, the City will be on equal footing with all other municipalities served by Time Warner with respect to PEG support fees. Should no action be taken, PEG revenue will follow the contractually mandated annual decline until no fees are collected.

TERMINATION AND REALIGNMENT OF THE TIME WARNER CABLE TELEVISION (CATV)
FRANCHISE AGREEMENT

June 26, 2012

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Cable TV Rate Increase - Time Warner pays a flat \$0.50 PEG fee. This will increase to 1% of the basic cable TV rate per subscriber. Staff estimates an average increase of \$0.21 per month using the first quarter FY 2010-2011 numbers as a base. Time Warner Cable serves an estimated 16,500 households in Garden Grove.

Authority to act - DIVCA authorizes the City to terminate the existing franchise agreement with Time Warner once a competitor notifies the City that it intends to provide video services in the City pursuant to a state franchise. California Public Utilities Code Section 5930(c) provides:

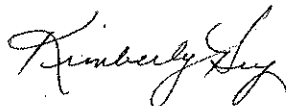
(c) When a video service provider that holds a state franchise provides the notice required pursuant to subdivision (n) of Section 5840 to a local entity, the local franchising entity may require all incumbent cable operators to seek a state franchise and shall terminate the franchise issued by the local franchising entity when the commission issues a state franchise for the video service provider that includes the entire service area served by the video service provider and the video service provider notifies the local entity that it will begin providing video service in that area under a state franchise.

Verizon and AT&T provided their notice to the City on March 8, 2007, and March 30, 2007, respectively, (see Attachment 1). Additionally, Time Warner received a state franchise to provide video services under DIVCA in its Orange County cities, including the Garden Grove, as of July 7, 2008 (see attached Public Utilities Commission Video franchise Certificate No. 0018). Thus, the requirements of Section 5930(c) have been satisfied.

RECOMMENDATION

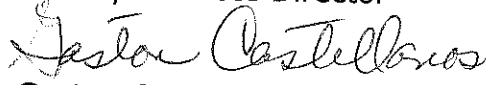
Staff recommends that the City Council:

- Introduce and conduct the first reading of the attached Ordinance terminating the incumbent CATV Franchise with Time Warner Cable in accordance with Ordinance 2731 and the California Public Utilities Code.



KIMBERLY HUY

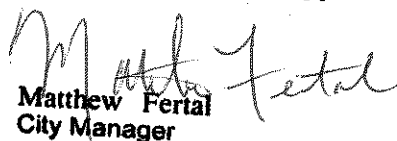
Community Services Director



By: Gaston Castellanos

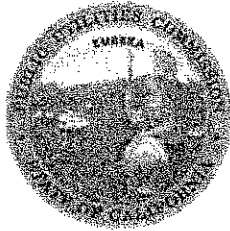
Cable TV Manager

Recommended for Approval



Matthew Ferial
City Manager

Attachment 1: Verizon and AT&T Notices to the City of Garden Grove
Attachment 2: Ordinance



STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION
505 Van Ness Avenue San Francisco, CA 94102
www.cpuc.ca.gov

March 8, 2007

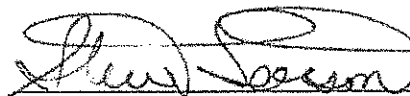
Andres F. Irlando, Vice President
Verizon California, Inc.
112 Lakeview Canyon Road
Thousand Oaks, CA 91362

Dear Mr. Irlando,

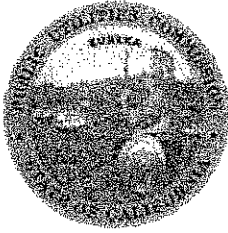
The Commission has determined that the application for a state video franchise submitted by Verizon California, Inc. on March 2, 2007, is complete, and accordingly issues the enclosed state franchise.

Please do not hesitate to contact me if you have any questions.

Yours truly,



Steve Larson, Executive Director



STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION
505 Van Ness Avenue San Francisco, CA 94102
www.cpuc.ca.gov

CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0001

1) Franchise Holder:

Name: Verizon California, Inc.

Address: 112 Lakeview Canyon Road

Thousand Oaks, CA 91362

2) Application Date: March 2, 2007

3) Application Number: 0703001

4) Franchise Effective Date: March 8, 2007

5) Franchise Expiration Date: March 8, 2017

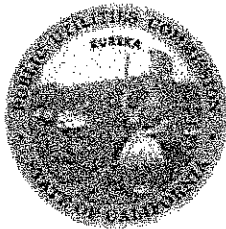
6) Affected Local Entities¹ Attached
(attach additional sheets if necessary)

Issued at San Francisco this 8th Day of March, 2007.

A handwritten signature of Steve Larson is written over a horizontal line.

Steve Larson, Executive Director

¹ The state video franchise granted herein may include all or part of the affected local entities' territory. For more information on the video service area covered by this franchise, contact the California Public Utilities Commission.

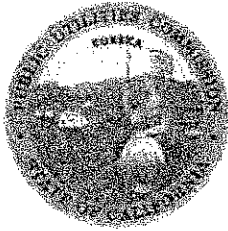


STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION
505 Van Ness Avenue San Francisco, CA 94102
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CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0001

Affected Local Entities for Franchise No. 0001, issued to Verizon California on March 8, 2007:

Adelanto
Artesia
Barstow
Bellflower
City of Calimesa
Cathedral City
Cerritos
Chino
Claremont
City of Coachella
Cypress
City of Desert Hot Springs
Diamond Bar
Downey
Fontana
Fountain Valley
Garden Grove
Glendora
Hawaiian Gardens
Hesperia
Huntington Beach
City of Indian Wells
City of Indio
Industry
La Mirada
La Palma
City of La Quinta
La Verne
Lakewood
Lawndale
Long Beach

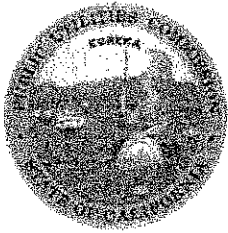


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505 Van Ness Avenue San Francisco, CA 94102
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CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0001

Affected Local Entities, continued:

City of Los Angeles
Los Angeles County
Montclair
Moreno Valley
Norwalk
Oxnard
City of Palm Desert
City of Palm Springs
Palos Verdes Estates
Paramount
Pomona
Rancho Cucamonga
City of Rancho Mirage
Rancho Palos Verdes
Riverside
City of Rolling Hills
City of Rolling Hills Estates
San Bernardino County
San Dimas
San Jacinto
Orange County
Santa Fe Springs
City of Santa Monica
Seal Beach
Signal Hill
Stanton
Torrance
Upland
Ventura County
Victorville
Walnut

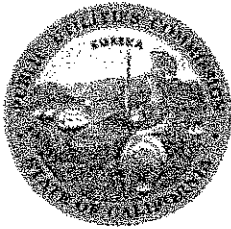


STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION
505 Van Ness Avenue San Francisco, CA 94102
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CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0001

Affected Local Entities, continued:

West Covina
Westlake Village
Westminster
Whittier
City of Yucaipa



STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION
505 Van Ness Avenue San Francisco, CA 94102
www.cpuc.ca.gov

December 2, 2011

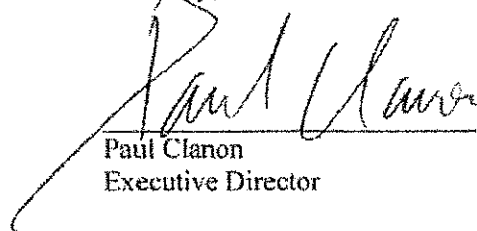
Ms. Rhonda Johnson
Vice President – Regulatory Affairs
AT&T California
525 Market Street, 19th floor
San Francisco, CA 94105

Dear Ms. Johnson:

The Commission has determined that your fourth application for an amended state video franchise, submitted by AT&T California on November 2, 2011, is complete. Accordingly the Commission hereby issues the enclosed amended state video franchise, effective on the date indicated.

Should you have any questions, please contact Michael Morris, at 415.703.2112.

Sincerely,


Paul Clanton
Executive Director



STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION
505 Van Ness Avenue San Francisco, CA 94102
www.cpuc.ca.gov

CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0002

1) Franchise Holder:

Name: Pacific Bell Telephone Company d/b/a/SBC Pacific Bell Telephone Company d/b/a AT&T California

Address: 525 Market Street, Rm 1944
San Francisco, CA 94105

2) Application Date: March 7, 2007

3) Application Number: 0703002

4) Franchise Effective Date: March 30, 2007

5) Franchise Expiration Date: March 30, 2017

6) Affected Local Entities¹ Attached
(attach additional sheets if necessary)

Issued at San Francisco this 30th Day of March, 2007.



Steve Larson, Executive Director

¹ The state video franchise granted herein may include all or part of the affected local entities' territory. For more information on the video service area covered by this franchise, contact the California Public Utilities Commission.



STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION
505 Van Ness Avenue San Francisco, CA 94102
www.cpuc.ca.gov

CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0002

Affected Local Entities for Franchise No. 0002, issued to Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company d/b/a AT&T California on March 30, 2007:

Agoura Hills
Alameda
Alameda County
Albany
Alhambra
Aliso Viejo
Alpine County
Amador
Amador County
American Canyon
Anderson
Angels Camp
Antioch
Arcadia
Arcata
Arroyo Grande
Arvin
Atascadero
Atherton
Atwater
Auburn
Avenal
Bakersfield
Baldwin Park
Bell
Bell Gardens
Bellflower
Belmont
Belvedere
Benicia
Berkeley

CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0002

Affected Local Entities, continued:

Beverly Hills
Big Bear Lake
Biggs
Blue Lake
Brawley
Brea
Brentwood
Brisbane
Buena Park
Burlingame
Butte County
Calabasas
Calaveras County
Calexico
California City
Calipatria
Calistoga
Campbell
Capitola
Carlsbad
Carmel-by-the-Sea
Carson
Ceres
Cerritos
Chico
Chino
Chino Hills
Chowchilla
Chula Vista
Citrus Heights
Clayton
Clearlake
Cloverdale
Clovis
Coalinga
Colma
Colton
Colusa County
Commerce
Compton
Concord
Contra Costa County
Coming
Corona

CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0002

Affected Local Entities, continued:

Coronado
Corte Madera
Costa Mesa
Cotati
Cudahy
Culver City
Cupertino
Cypress
Daly City
Dana Point
Davis
Del Mar
Del Norte County
Del Rey Oaks
Delano
Dinuba
Dixon
Dos Palos
Downey
Dublin
Dunsmuir
East Palo Alto
El Cajon
El Centro
El Cerrito
El Dorado County
El Monte
El Segundo
Emeryville
Encinitas
Escalon
Escondido
Eureka
Fairfax
Fairfield
Farmersville
Fillmore
Firebaugh
Folsom
Fontana
Fort Bragg
Fortuna
Foster City
Fountain Valley

CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0002

Affected Local Entities, continued:

Fremont
Fresno
Fresno County
Fullerton
Galt
Garden Grove
Gardena
Glenn County
Gonzales
Grand Terrace
Grass Valley
Greenfield
Gridley
Grover Beach
Gustine
Half Moon Bay
Hanford
Hawaiian Gardens
Hawthorne
Hayward
Healdsburg
Hercules
Hidden Hills
Hillsborough
Hollister
Holtville
Hughson
Humboldt County
Huntington Park
Huron
Imperial
Imperial Beach
Imperial County
Industry
Inglewood
Inyo County
Ione
Irvine
Irwindale
Jackson
Kern County
King City
Kings County
Kingsburg

CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0002

Affected Local Entities, continued:

La Canada Flintridge
La Habra
La Mesa
La Mirada
La Palma
Lafayette
Laguna Beach
Laguna Hills
Laguna Niguel
Laguna Woods
Lake County
Lake Forest
Lakeport
Lakewood
Lancaster
Larkspur
Lassen County
Lathrop
Lawndale
Lemon Grove
Lemoore
Lincoln
Live Oak
Livermore
Lodi
Loma Linda
Lomita
Long Beach
Loomis
Los Alamitos
Los Altos
Los Altos Hills
Los Angeles
Los Angeles County
Los Banos
Los Gatos
Loyalton
Lynwood
Madera
Madera County
Manhattan Beach
Marin County
Marin Telecommunications Agency
Marina

CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0002

Affected Local Entities, continued:

Mariposa County
Martinez
Marysville
Maywood
Mendocino County
Mendota
Menlo Park
Merced
Merced County
Mill Valley
Millbrae
Milpitas
Mission Viejo
Modesto
Modoc County
Mono County
Monrovia
Montague
Montebello
Monterey
Monterey County
Monterey Park
Moorpark
Moraga
Moreno Valley
Morgan Hill
Morro Bay
Mountain View
Mt. Shasta
Napa
Napa County
National City
Nevada City
Nevada County
Newark
Newman
Newport Beach
Norco
Novato
Oakdale
Oakland
Oakley
Oceanside
Ojai

CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0002

Affected Local Entities, continued:

Ontario
Orange
Orange County
Orange Cove
Orinda
Orland
Oroville
Pacific Grove
Pacifica
Palmdale
Palo Alto
Palos Verdes Estates
Paradise
Paramount
Parker
Pasadena
Paso Robles
Petaluma
Pico Rivera
Piedmont
Pinole
Pismo Beach
Pittsburg
Placentia
Placer County
Placerville
Pleasant Hill
Pleasanton
Plumas County
Plymouth
Point Arena
Porterville
Portola
Portola Valley
Poway
Rancho Cordova
Rancho Cucamonga
Rancho Palos Verdes
Rancho Santa Margarita
Red Bluff
Redding
Redlands
Redondo Beach
Redwood City

CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0002

Affected Local Entities, continued:

Rialto
Richmond
Rio Dell
Ripon
Riverbank
Riverside
Riverside County
Rocklin
Rohnert Park
Rolling Hills
Rolling Hills Estates
Rosemead
Roseville
Rosa
Sacramento
Sacramento County
Sacramento Metropolitan Cable Television Commission
Salinas
San Anselmo
San Benito County
San Bernardino
San Bernardino County
San Bruno
San Carlos
San Clemente
San Diego
San Diego County
San Francisco
San Gabriel
San Joaquin County
San Jose
San Juan Bautista
San Juan Capistrano
San Leandro
San Luis Obispo
San Luis Obispo County
San Marcos
San Marino
San Mateo
San Mateo County
San Pablo
San Rafael
Sand City
Santa Ana

CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0002

Affected Local Entities, continued:

Santa Barbara County
Santa Clara
Santa Clara County
Santa Cruz
Santa Cruz County
Santa Rosa
Santee
Saratoga
Sausalito
Scotts Valley
Seaside
Sebastopol
Selma
Shafter
Shasta County
Shasta Lake
Sierra County

Simi Valley
Siskiyou County
Solana Beach
Solano County
Soledad
Sonoma
Sonoma County
Sonora

South El Monte
South Gate
South Lake Tahoe
South Pasadena
South San Francisco
St. Helena
Stanislaus County
Stanton
Stockton
Suisun City
Sunnyvale
Sutter County
Sutter Creek
Tehachapi
Tehama
Tehama County
Temple City
Thousand Oaks
Tiburon

CALIFORNIA VIDEO FRANCHISE CERTIFICATE
FRANCHISE NUMBER: 0002

Affected Local Entities, continued:

Torrance
Tracy
Trinity County
Truckee
Tulare
Tulare County
Tuolumne County
Turlock
Tustin
Ukiah
Union City
Vacaville
Vallejo
Ventura
Ventura County
Vernon
Villa Park
Visalia
Vista
Walnut Creek
Wasco
Waterford
Watsonville
Weed
West Hollywood
West Sacramento
Westlake Village
Westminster
Westmorland
Wheatland
Willits
Willows
Windsor
Winters
Woodlake
Woodland
Woodside
Yolo County
Yorba Linda
Yountville
Yreka
Yuba City
Yuba County

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE REPEALING ORDINANCE NO. 2577 AND TERMINATING THE CABLE TELEVISION FRANCHISE GRANTED TO KBL CABLE SYSTEMS OF THE SOUTHWEST, INC., DOING BUSINESS AS TIME WARNER, PURSUANT TO THE CALIFORNIA DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006

City Attorney's Summary

This Ordinance terminates Time Warner's local cable television franchise and requires it to operate under the State-issued franchise pursuant to the California Digital Infrastructure and Video Competition Act of 2006.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY FINDS AND DETERMINES AS FOLLOWS:

WHEREAS, the State of California adopted the California Digital Infrastructure and Video Competition Act of 2006 (DIVCA), providing for the issuance of state-wide video services franchises;

WHEREAS, the City of Garden Grove amended its cable television franchise regulations in August 2008 to comply with DIVCA;

WHEREAS, DIVCA authorizes incumbent cable franchise operators and local jurisdictions that had issued local cable franchises to unilaterally terminate the local franchises once a new video services provider enters the market to compete with the incumbent cable franchise operator;

WHEREAS, Verizon and AT&T have entered the video services market in the City of Garden Grove and compete with Time Warner, the incumbent cable franchise operator; and

WHEREAS, Time Warner Cable, LLC, has obtained a state franchise to provide video services in the City of Garden Grove.

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

Section 1. Ordinance No. 2577 is hereby repealed.

Section 2. The cable television franchise granted to KBL Cable Systems of the Southwest, Inc., doing business as Time Warner, is hereby terminated pursuant to Section 5930(c) of the California Public Utilities Code. Furthermore, all obligations to pay franchise fees and PEG support fees under the franchise shall terminate and shall

instead be subject to Chapter 25 of Title 5 of the Garden Grove Municipal Code and State law.

Section 3. To the extent asset transfers or additional applications are required to formalize the transfer of video services to Time Warner Cable, LLC or another legal entity for the continuation of Time Warner's cable television services in the City, KBL Cable Systems of the Southwest, Inc., or any of its successor entities are hereby directed to seek a state franchise pursuant to Sections 5930(c) and 5840 of the California Public Utilities Code and shall operate pursuant to a state franchise and comply with Chapter 25 of Title 5 of the Garden Grove Municipal Code, including the payment of franchise and PEG support fees as required thereunder.

Section 4. 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 5. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.