

# CITY COUNCIL AGENDA STATEMENT



May 22 , 2012, Item 15

**ITEM TITLE:** PUBLIC HEARING TO CONSIDER AMENDING MUNICIPAL CODE CHAPTER 5.52 AND ADDING CHAPTER 5.53

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE CHAPTER 5.52 "PAY TELEVISION," AND ADDING CHAPTER 5.53 "STATE VIDEO FRANCHISES," IN ACCORDANCE WITH THE CALIFORNIA DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006

**SUBMITTED BY:** DIRECTOR OF ECONOMIC DEVELOPMENT

**REVIEWED BY:** CITY MANAGER *Best*

**4/5THS VOTE:**

YES

NO

### SUMMARY

In September 2006 the Governor signed into law the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) that allows video service providers to obtain a state-issued franchise to provide video services in a local community. Chula Vista's Municipal Code Chapter 5.52, which governs the provision of cable and video services in the City, was modified last in 1999, prior to DIVCA's adoption. Adoption of the proposed ordinance will bring Chula Vista's municipal code into compliance with the minimum components of State law as adopted under DIVCA. These amendments include:

- Recognize that cable, video, and such services are entitled "cable services" and "video services" for purposes of the ordinance
- Reflect the fact that video service providers may now obtain a video franchise from the State of California
- Reflect how franchise state franchise holders function under DIVCA and City's ordinance provisions including but not limited to use of the right-of-way under Chapter 5.30.020.
- Allow the framework within the code governing existing or past local franchise agreements to remain intact as originally enacted in 1987 for Ultronics/Chula Vista Cable and 1999 for Cox Communications
- Re-assert that Franchise Fees remain at 5% of gross revenues,

- Establish State consumer protection standards and enforcement provisions,
- Establish the standard Public, Education and Government (PEG) Fee minimum of 1% of gross revenues
- Establish that PEG origination and channels are required at a quality equal to regular program broadcasting with a minimum of 1 and up to 3 channels,
- Recognize that cable and video services are components of a rapidly emerging communications technology and regulatory environment that uses the same infrastructure in the City's rights-of-way as telecommunications, video and broadband services, and
- Establish the City's authority to audit State video and cable service Franchisee and PEG Records

Staff will return to Council as needed to update additional components of the Municipal Code to accurately reflect the changes in technology, State and Federal law as the law evolves and resources allow.

#### **ENVIRONMENTAL REVIEW**

The Environmental Review Coordinator has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change to the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the actions proposed are not subject to CEQA.

#### **RECOMMENDATION**

Staff recommends that the City Council introduce and pass to second reading, an ordinance amending Chapter 5.52, and adding 5.53 Governing the Provision of Cable /Video Services in the City of Chula Vista City Municipal Code.

#### **BOARDS/COMMISSION RECOMMENDATION**

A public workshop was held on February 27, 2012 to take comment from the public and industry. Most if not all of those comments have been incorporated herein. Staff will be available at the Council meeting to provide context and elaborate on the intent of those comments upon request.

#### **DISCUSSION**

On September 29, 2006, the Governor signed AB 2987 to become effective January 1, 2007. The statute, Digital Infrastructure and Video Competition Act of 2006 (DIVCA), established a new framework for the regulation of cable television. The fundamental change is that beginning January 2, 2008 cities no longer have the authority to issue new franchises to video providers; instead, that authority is now held solely by the California Public Utilities Commission (PUC.)

The DIVCA goals, as stated and implemented by the Communications Division of the PUC deal not only with video franchises, but with increasing the deployment of broadband infrastructure within California, particularly to un-served and underserved areas as follows:

1. Create a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another;
2. Promote the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner regardless of socio-economic status;
3. Protect local government revenues and their control of public rights-of-way;
4. Require market participants to comply with all applicable consumer protection laws; and
5. Complement efforts to increase investment in broadband infrastructure and close the digital divide.

On March 1, 2007 the CPUC began accepting applications for a State franchise from entities that wish to provide video service in California. A city is supposed to receive simultaneous notice regarding State franchise applications and prior to commencing video service in a city. AT&T applied for a State franchise for its service territory including Chula Vista in 2007 and Cox Communications applied for a State franchise including the Chula Vista area in October 2010. The City terminated the NexHorizon Franchise in November 2009. M3 Communications applied for and received a State franchise to operate in Chula Vista in July 2011, and Access Cable Corporation applied for and received a State franchise in April 2012.

The proposed ordinance makes minor modifications to Municipal Code Section 5.52, Pay Television, and adds Section 5.53, Video Service Providers, to bring the current code into compliance and adopt the consumer protections stated under DIVCA without discouragement of the existing sections of the code or the agreements that have historically provided complimentary consumer, right-of-way, revenue and related local stakeholder protections.

#### Franchise and Public, Education and Government (PEG) Program Fees

One component of the new State law, Public Utilities code 5870(n), requires that video franchisees remit at least 1% and up to 3% of "gross revenue" to Cities as a Fee to support PEG programming. Chula Vista has received PEG grants of approximately \$65,000 for equipment and \$100,000 for program and consulting services from Cox Communications in 1999, but not a monthly PEG Fee. Staff has attempted to survey the county jurisdictions and estimates that an estimated 14 of 18 jurisdictions are currently receiving a PEG Fee from one or more video service providers (**Attachment 1**). Video providers are authorized, but are not obligated to pass the Fee through to their customers. If video providers pass the PEG Fee on to customers, it will appear on monthly residential and commercial communication invoices as an additional charge. Staff estimates that the typical cost to residents for a 1% PEG Fee will be between 45 cents and 80 cents for the average customer per month and customers with the low income or senior rate

are expected to pay 20 cents per month or less. The projected PEG Fee revenue for a full fiscal year is estimated at up to \$600,000. The State regulation defers to Federal statute to establish the range of eligible PEG Fee expenditures. Federal regulation currently limits those expenditures to capital costs for PEG programming, however HR 3745 (**Attachment 2**), the Community Access Preservation Act recognizes the importance of PEG programming and proposes to loosen those restrictions to include reasonable operating costs associated with providing PEG programming. The PEG Fee is in addition to the franchise fee, which continues to be 5% of gross revenue, where it has been since it was established with Cox Communications and Chula Vista Cable in 1999 (**Attachment 3**). Cable/Video Industry representatives have stated that they believe the State's definition of gross revenues has captured more revenue components than the City's former definition. DIVCA refers to federal regulation, which caps franchise fees at 5%. The Ordinance would establish the authority to implement a PEG Fee of 1% consistent with State regulation. The 1% Fee would be effective July 1, 2012.

Even with the limitations of capital expenditure on current PEG Fees, these potential additional revenues will be important in the future as it becomes more and more necessary to repair or replace the aging equipment used by IT and Communications to provide PEG programming such as Council meeting broadcasts and to maintaining adequate emergency alert and override systems. These revenues also play a critical role in leveraging any potential for future expansion of the City's video/cable communication with residents and businesses as we transition into a more digital environment where, visual and virtual communication become the minimum standard in public service and communication. Some jurisdictions use locally developed PEG programming to market Pet adoption opportunities from the local animal shelter, provide public safety, educational and special event programming. Southwestern College has provided courses in the past to obtain a "producer's" certificate that provides citizens with a background in State and local regulations regarding the content and broadcasting requirements, and opportunities for local PEG channel programming. At one time cities or cable video providers also provided equipment to qualified local citizens to produce PEG content. The proposed 1% PEG fee can provide the revenue to fund the capital costs for up to 3 PEG channels. Each channel must consistently provide a minimum of 56 hours of "locally produced programming," including items like the broadcast of Council meetings. Section 5870 (b) does provide that "advertising, underwriting, or sponsorship recognition may be carried on the channels for the purpose of funding PEG-related activities."

#### Customer Service Penalties Under State Video Franchise

DIVCA also provides that 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. State regulation provides the local jurisdiction with responsibility for monitoring and enforcing those customer service standards. The City Manager's designee, currently the Director of Economic Development shall monitor a State video franchise holder's compliance with State and Federal customer service and protection standards. Per State regulation, 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. Under the proposed Ordinance, material breaches not remedied within the 30-day time period would be subject to the following monetary penalties to be imposed by the City. The range of the fines are established by the California Public Utilities Code Section 5900.(d). The “up to” provision at each incremental level of fine was added by staff to provide a broader range of tools to create an incentive for compliance and place the emphasis on customer service, not the monetary limits of the fines. The proposal is to adopt the fines established by the State with that addition as follows:

1. For the first occurrence of a material breach, a monetary penalty of up to \$500 shall be imposed for each day of each material breach, not to exceed \$1,500 for each violation.
2. For a second material breach of the same nature within twelve months, a monetary penalty of up to \$1,000 shall be imposed for each day of each material breach, not to exceed \$3,000 for each violation.
3. For a third or further material breach of the same nature within twelve months, a monetary penalty of up to \$2,500 shall be imposed for each day of each material breach, not to exceed \$7,500 for each violation.
  - A State video franchise holder may appeal a monetary penalty assessed by the City. Such appeal must be filed no later than 30 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 is subject to *de novo* judicial review. De Novo means, “anew,” or “afresh” meaning the court considers the case without consideration of the previous finding.

The proposed penalties and cure process reflect those referenced by the California Public Utilities Commission in DIVCA.

#### City Response to State Video Franchise Applications

Applicants for State video franchises within the boundaries of the City must by State regulation 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 Clerk and City Manager. 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.

#### **DECISION MAKER CONFLICT**

Staff has reviewed the decisions contemplated by this item and have determined that the actions contemplated are not site-specific and, consequently, the 500-foot rule found in California Code of Regulations section 18704.2(a) is not applicable.

### **CURRENT YEAR FISCAL IMPACT**

Residents and businesses would likely see a 1% increase on the cable/video portion of their communications bills when the PEG Fee is established, as service providers have the option, but not the obligation to pass the PEG Fee on to consumers. The use of these PEG fee revenues are currently limited to capital associated with the development and broadcasting of PEG programming and not available for related personnel or general fund expenses. If the PEG Fee were triggered and implemented 60 day after the ordinance becomes effective, staff estimates that the PEG Fee generated for the upcoming fiscal year 2012/13 would be approximately \$600,000.

### **ONGOING FISCAL IMPACT**

The equipment used by the City for broadcasting public meetings will need repair or replacement as it reaches the end of its useful life. Staff expects that to be within the next calendar year. These funds can be used for costs of purchasing and installing equipment associated with current or future PEG programming and without these funds general fund revenue or reserves would have to be appropriated to maintain or expand the capital components of these programs. If the PEG Fee were established at the beginning of the next fiscal year, staff estimates that the PEG Fee would generate up to \$600,000. If HR 3745 or similar Congressional legislation authorizes the use of these funds for operational purposes associated with PEG programming the City would be able to fund the staff, contract and or consulting costs associated with developing and broadcasting current public, education and government programming and any future enhancements the City may choose to pursue.

### **Attachments:**

1. Jurisdictional PEG Fee Survey
2. HR 3745
3. Ordinance No. 2797

*Prepared by: Michael T. Meacham, Director of Economic Development*

ATTACHMENT 1

Survey of Local Jurisdictions Adopting DIVCA and COLLECTION OF PEG (Public, Education and Government) Fees			
<u>Jurisdiction</u>	AT&T	COX	Time Warner
Carlsbad	Yes	N/A	Yes
Coronado	Yes	N/A	Receives in-kind PEG fees
Del Mar	Yes	N/A	Yes
El Cajon	No	No	N/A
Encinitas	Yes	Yes	N/A
Escondido	Yes	Yes	N/A
Imperial Beach	Yes	Yes	N/A
La Mesa	Yes	Yes	N/A
Lemon Grove	Yes	Yes	N/A
National City	No	No	N/A
Oceanside	Yes	Yes	N/A
Poway	Yes	Yes	N/A
San Diego	Yes	Yes	N/A
San Marcos	Yes	Yes	No
Santee	No	No	N/A
Solana Beach	Yes	Yes	Yes
Vista	Yes	Yes	N/A

**CAP Act (Introduced in House)**

HR 3745 IH

111th CONGRESS  
1st Session  
**H. R. 3745**

To amend the Communications Act of 1934 to provide for carriage and display of public, educational, and government channels in a manner consistent with commercial channels, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES**

**October 7, 2009**

Ms BALDWIN introduced the following bill; which was referred to the Committee on Energy and Commerce

**A BILL**

To amend the Communications Act of 1934 to provide for carriage and display of public, educational, and government channels in a manner consistent with commercial channels, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Community Access Preservation Act' or the 'CAP Act'

**SEC. 2. AMENDMENTS.**

(a) In General- Section 611 of the Communications Act of 1934 (47 U S C 531) is amended--

- (1) by redesignating subsection (f) as subsection (h); and
- (2) by inserting after subsection (e) the following new subsections:

(f) Equivalence-

(1) IN GENERAL- In the case of any franchise under which channel capacity is designated under subsection (b), such channel capacity shall be--

(A) at least equivalent in quality, accessibility, functionality, and placement to--



(A) pay to any political subdivision in which the operator provides service the greater of--

(i) the historical support that the operator, or its predecessor, provided for public, educational, or governmental use of the cable system in such subdivision in accordance with this subsection; or

(ii) the amount of any cash payment that the operator is required to pay to such subdivision under such State legislation affecting cable system franchising requirements;

(B) carry signals for public, educational, or governmental use from the point of origin of such signals to subscribers and provide facilities adequate to fulfill such requirements in accordance with subsection (f)(2); and

(C) provide at least the number of channels for public, educational, or governmental use that it was providing as of May 31, 2005.

(3) CALCULATION OF HISTORICAL SUPPORT- Historical support includes the value of all support provided for public, educational, or governmental use, including in-kind support and free services. The cable operator shall pay support equal to the greater of--

(A) the value of the support provided in the most recent calendar year prior to the effective date of such State legislation affecting cable system franchising requirements; or

(B) the value of the annual average support provided over the term of the franchise pursuant to which it operated prior to such effective date, taking into account the time value of money

(4) PAYMENTS- The amounts owed to the political subdivision under paragraph (2)(A) shall be paid annually, in quarterly installments, with the first payment being due 30 days after the date of enactment of the Community Access Preservation Act

(5) USES; DISPUTES-

(A) USES- Support provided to any State or local political subdivision under this subsection shall be dedicated to public, educational, or governmental use of channel capacity

(B) DISPUTES- If there is a dispute as to amounts owed under this subsection, undisputed amounts shall be paid, and the Commission shall determine on an expedited basis what, if any, additional amounts are owed.

(b) Franchise Fee Definition- Section 622(g)(2) of such Act (47 U S C 542(g)(2)) is amended--

(1) in subparagraph (B), by striking 'in the case of any franchise in effect on the date of the enactment of this title,';

(2) by striking subparagraph (C); and

(3) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively.

(c) Cable Service Definition- Section 602(6) of such Act (47 U S C 522(6)) is amended by striking 'means' and inserting 'means, regardless of the technology or transmission protocol used in the provision of service'

ORDINANCE NO. 2797

AN ORDINANCE OF THE CITY OF CHULA VISTA AMENDING SECTION 5.52.010 OF THE CHULA VISTA MUNICIPAL CODE TO CONFORM THE FEES ASSESSABLE TO CABLE FRANCHISEES AND OTHER VIDEO PROGRAMMING PROVIDERS TO THOSE ALLOWED BY STATE AND FEDERAL LAW

The City Council of the City of Chula Vista does hereby ordain as follows:

SECTION I: That Section 5.52.010 of the Chula Vista Municipal Code is hereby amended to read as follows:

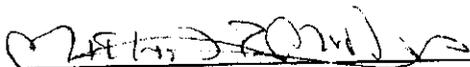
**5.52.010 Annual payments to city required.**

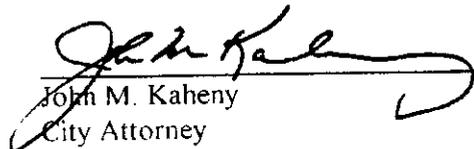
All persons engaged in the business of transmitting, by means of the lease of a frequency or frequencies from the grantee or grantees of community antenna television systems, or by use of a cable systems, a signal or transmission providing a television picture or other video, audio or data services to subscribers thereof in the City of Chula Vista for the payment of a fee shall pay the city annually, in lawful money of the United States, a franchise/right-of-way access fee equal to a percentage of its gross receipts in an amount determined by the City Council through a negotiated franchise agreement or by independent City Council action. The current fee shall be set at five percent of the service provider's gross receipts but may be modified in a negotiated agreement. In no event shall a fee charged hereunder exceed the maximum fee allowable by applicable federal or state law. Such fees shall apply regardless of whether a party providing such services(s) has a fixed place of business within the city. In any case in which a person transmitting a signal providing a television picture or other service to subscribers thereof is not subject to a local franchise but is, per applicable laws, subject to in-lieu or other fees payable to the local franchising authority for use of right-of-way or for other lawful consideration or purpose, said person shall pay to the City annually, in lawful money of the United States, an in-lieu fee equivalent to the franchise fee in effect under this section.

SECTION II: This ordinance shall take effect and be in full force on the thirtieth day from and after its second reading and adoption.

Presented by

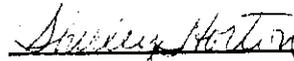
Approved as to form by

  
Michael Meacham  
Special Projects Manager

  
John M. Kaheny  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 21<sup>st</sup> day of September, 1999, by the following vote:

AYES:	Councilmembers:	Davis, Moot, Padilla, Salas and Horton
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None

  
\_\_\_\_\_  
Shirley Horton, Mayor

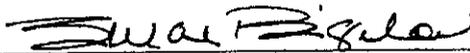
ATTEST:

  
\_\_\_\_\_  
Susan Bigelow, City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF SAN DIEGO    )  
CITY OF CHULA VISTA     )

I, Susan Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2797 had its first reading at a regular meeting held on the 14<sup>th</sup> day of September, 1999, and its second reading and adoption at a regular meeting of said City Council held on the 21<sup>st</sup> day of September, 1999.

Executed this 21<sup>st</sup> day of September, 1999.

  
\_\_\_\_\_  
Susan Bigelow, City Clerk

ORDINANCE NO. \_\_\_\_\_

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE CHAPTER 5.52, "PAY TELEVISION," AND ADDING CHAPTER 5.53, "STATE VIDEO FRANCHISES" IN ACCORDANCE WITH THE CALIFORNIA DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006

WHEREAS, the State of California enacted the Digital Infrastructure and Video Competition Act ("DIVCA") in 2006 (California Public Utilities Code sections 5800, *et seq.*); and

WHEREAS, DIVCA establishes a regulatory structure for the State to issue franchises to video service providers who seek to provide video service in a local jurisdiction, whether they already hold local franchises, or are new providers; and

WHEREAS, DIVCA requires a provider who holds a state-issued franchise to remit 5% of gross revenues to the local entity; and

WHEREAS, DIVCA requires a state franchise holder to designate a sufficient amount of capacity on its network to allow the provision of at least three Public, Educational and Governmental ("PEG") access channels and requires the franchise holder to pay a fee, if established by ordinance of the local entity, to support PEG channel facilities; and

WHEREAS, DIVCA requires the City to: (i) either approve or deny an application for a permit relating to construction or operation of DIVCA facilities within 60 days; (ii) furnish a detailed explanation to the applicant of a decision to deny a permit; and (iii) adopt regulations prescribing procedures for an applicant to appeal the denial to the City Council; and

WHEREAS, DIVCA requires the City to enforce the DIVCA customer service and protection standards with respect to complaints received from City residents and adopt a schedule of penalties for material breach by a state franchise holder of the customer service standards specified in DIVCA; and

WHEREAS, the proposed ordinance would amend Title 5 of the Chula Vista Municipal Code, "Cable, Video and Telecommunications Service," consistent with the provisions of DIVCA.

NOW THEREFORE BE IT ORDAINED THAT THE City of Chula Vista does hereby find and determine that:

Section 1. Chapter 5.52 of the Chula Vista Municipal Code is hereby amended as follows:

1. Replace the Chapter title in its entirety with the following: "Cable, Video, and Telecommunications Service Providers."

2. Add Section 5.52.050, entitled "State Franchises," at the end of the Chapter to read as follows:  
"The Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"), codified in California Public Utilities Code Sections 5800, *et seq.*, took effect on January 1, 2007. Chula Vista Municipal Code Chapter 5.53 was adopted in accordance with DIVCA. To the extent that a service provider obtains a state franchise in accordance with DIVCA, the terms of DIVCA and Chapter 5.53 shall govern and shall be the controlling authority over this Chapter."

Section 2. Chapter 5.53 is added to the Chula Vista Municipal Code to implement the provisions of the Digital Infrastructure and Video Competition Act of 2006 (California Public Utilities Code Sections 5800, *et seq.*), to read as follows:

"STATE VIDEO FRANCHISES

Sections:

- 5.53.010 Purpose.
- 5.53.020 Public Interest.
- 5.53.030 Franchise Requirement.
- 5.53.040 PEG Channels and Fee.
- 5.53.050 Franchise Fee.
- 5.53.060 Late Fee.
- 5.53.070 Authority to Examine Records.
- 5.53.080 Customer Service Penalties Under State Video Franchises.
- 5.53.090 City Response to State Video Franchise Applications.
- 5.53.100 Interconnection.
- 5.53.110 Emergency Alert System and Emergency Overrides.
- 5.53.120 Encroachment Permits.
  
- 5.53.010 Purpose.

This Chapter is adopted to regulate video service providers holding state video franchises and operating within the City of Chula Vista pursuant to the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"), codified at California Public Utilities Code Sections 5800, *et seq.* This Chapter shall be construed in a manner consistent with DIVCA and the rules promulgated under DIVCA by the California Public Utilities Commission.

- 5.53.020 Public Interest.

The full deployment of a robust wired and wireless digital infrastructure, and public, educational and governmental access serves a vital and compelling public interest of the City and promotes the public health, safety and welfare of the City. The encouragement of the development of wired and wireless digital infrastructure with public access within the City serves a vital and compelling public interest of the City. That public interest includes but is not limited to being a critical component of the future

prosperity and communication demands for a vibrant local business, educational and healthcare system, as well as access to an open and transparent government in the digital age. In addition, the City's participation in ensuring the development and maintenance of state of the art infrastructure, public access, customer service standards and an emergency broadcast system serves the public interest by ensuring that such development will reflect the needs and objectives of the community more so than if such development and maintenance were undertaken without City participation.

5.53.030 Franchise Requirement

A. Any person or corporation who seeks to provide video service in the City, who is not already providing service pursuant to Chapter 5.52, must first obtain a state-issued franchise.

B. This Chapter shall apply to all video service providers holding state-issued franchises to operate within the City, including those who previously held local franchises and subsequently obtained state-issued franchises.

C. A video service operator who obtains a state-issued franchise must notify the City that it will be providing service pursuant to that franchise, at least ten days prior to beginning to offer service in the City.

5.53.040 PEG Channels and Fee.

A. Capacity Designation. 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 three public, educational, and governmental ("PEG") access channels. These channels shall comply with all DIVCA requirements, including but not limited to the following:

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 5870(b).

B. Fee for Support of Local Cable Usage. A fee paid to the City is hereby established for the support of PEG channel facilities consistent with state and federal law. This fee shall be the maximum amount allowed by law, which is currently one percent (1%) of a state video franchise holder's gross revenues, as defined in California Public Utilities Code Section 5860 (the "PEG Fee"). The PEG 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 PEG Fee payment shall be accompanied by a summary that explains the basis for the calculation of the PEG Fee for local cable usage. This PEG Fee shall commence on July 1, 2012. The City Council may decrease or increase the amount of the PEG Fee, up to the maximum amount allowed by law, by resolution.

5.53.050. Franchise Fee.

In addition to the PEG Fee in section 5.53.040.B., above, 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 section 5.53.040.B., means the identification of the sources of revenue upon which the fee is based.

5.53.060 Late Fee.

In the event a state video franchise holder does not pay the fees required by this chapter when due, the holder shall pay a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus 1 percent.

5.53.070 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 Sections 5.53.040 and 5.53.050.

5.53.080 Customer Service Penalties Under State Video Franchises.

A. The holder of a state video franchise shall comply with the provisions of California Government Code sections 53055, 53055.1, 53055.2 and 53088.2; the FCC customer service and notice standards set forth in sections 76.309, 76.1602, 76.1603 and 76.1619 of Title 47 of the Code of Federal Regulations; Section California Penal Code

section 637.5; the privacy standards of United States Code, Title 47, section 551; and all other applicable State and Federal customer service and protection standards pertaining to the provision of video service.

B. The City shall enforce, in the manner set forth in DIVCA, all customer service and protection standards contained in DIVCA section 5900, as may be amended from time to time.

C. The City Manager, or designee, will provide to the State video franchise holder written notice of any material breaches of applicable customer service and protection standards, pursuant to DIVCA section 5900. The City 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 monetary penalties to be imposed by the City and assessed by the City Manager, or designee, up to the amounts set forth below:

1. For the first occurrence of a material breach, a monetary penalty up to \$500 shall be imposed for each day of each material breach, not to exceed \$1,500 for each material breach.
2. For a second material breach of the same nature within twelve months for which the City previously provided notice, a monetary penalty up to \$1,000 shall be imposed for each day of each material breach, not to exceed \$3,000 for each material breach.
3. For a third or further material breach of the same nature within twelve months, a monetary penalty up to \$2,500 shall be imposed for each day of each material breach, not to exceed \$7,500 for each material breach.

D. A State video franchise holder may appeal a penalty assessed by the City Manager to the City Council. An appeal must be submitted in writing to the City Clerk within 60 days after notice of the penalty is sent to the assessed franchise holder, or the right to appeal shall be deemed waived. An appeal must detail the reasons why the appellant believes the imposition of penalties is inconsistent with DIVCA. The City Council shall hear all evidence and relevant testimony and may uphold, modify or vacate the penalty. The City Council's decision on the imposition of a penalty shall be final.

5.53.90 City Response to State Video Franchise Applications.

A. 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 Clerk for distribution to the City Manager and City Attorney.

B. 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.

5.53.100 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.

5.53.110 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.

5.53.120 Encroachment Permits.

A. As provided in DIVCA section 5885, the City shall either approve or deny an application from a state video service franchise holder for an encroachment permit within sixty days of receiving a completed permit application. An application will not be considered complete until the applicant has complied with all statutory requirements, including California Public Utilities Code sections 21000, *et seq.* (the California Environmental Quality Act), the Chula Vista Municipal Code, and other applicable City ordinances.

B. For purposes of this section, "encroachment permit" means any permit issued by the City for construction or operation of facilities pursuant to DIVCA.

C. If the City denies an application for an encroachment permit, it will provide the applicant a detailed explanation of the reason for the denial. The applicant may appeal the denial in the manner established in section 15.04.260 of this Municipal Code.

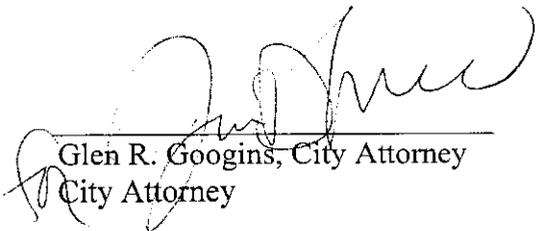
Section 3. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance.

Section 4. Effective Date This ordinance will take effect and be in force thirty days after its final passage.

Presented by

Approved as to form by

\_\_\_\_\_  
Michael T. Meacham, Director  
Economic Development Director

  
\_\_\_\_\_  
Glen R. Googins, City Attorney  
City Attorney