

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: MARTIN D. KOCZANOWICZ, CITY ATTORNEY

SUBJECT: INTRODUCTION AND FIRST READING OF AN ORDINANCE AMENDING ARTICLE X CHAPTER 3 OF THE GROVER BEACH MUNICIPAL CODE TO INCLUDE REGULATIONS FOR STATE-ISSUED CABLE TELEVISION FRANCHISES

BACKGROUND

In the past, the City of Grover Beach could issue and regulate franchise agreements with cable television providers. In 2006, the State of California adopted new law known as the "Digital Infrastructure and Video Competition Act" (DIVCA), which transferred the authority for franchise cable television from local entities to the Public Utilities Commission. The City's franchise agreement with Charter Cable television expired and in order to maintain the revenue from the Public Educational Government Access (PEG) fees, the City needs to adopt a new Grover Beach Municipal Code (GBMC) section consistent with the DIVCA provisions.

DISCUSSION

Attached to this staff report is a draft Ordinance that would add section 10303 to the GBMC regulating the State franchise for Charter Cable and allowing for collection of PEG fees which are allocated for costs related to equipment for broadcasting of City Council meetings and displaying information regarding municipal services, City-sponsored events, and announcements on government cable access Channel 20.

ALTERNATIVES

The Council has the following alternatives to consider:

1. Introduce the Ordinance, conduct a public hearing and first reading of the Ordinance, by title only, and schedule the second reading and adoption for the next regular City Council meeting.
2. Provide staff with additional direction.

RECOMMENDED ACTION

It is recommended that the Council introduce the Ordinance, conduct a public hearing and first reading of the Ordinance, by title only, and schedule the second reading and adoption for the next regular City Council meeting.

APPROVED FOR FORWARDING



ROBERT PERRAULT
CITY MANAGER

Please Review for the Possibility of a Potential Conflict of Interest:

- | | |
|--|-----------------------------------|
| <input checked="" type="checkbox"/> None Identified by Staff | <input type="checkbox"/> Bright |
| <input type="checkbox"/> Peterson | <input type="checkbox"/> Marshall |
| <input type="checkbox"/> Lee | <input type="checkbox"/> Nicolls |

Meeting Date: March 17, 2014

Agenda Item No. 4

FISCAL IMPACT

Adoption of the Ordinance will have a positive fiscal impact as it will provide for receipt of PEG fees which are used for funding the broadcasting of City Council meetings and displaying information regarding municipal services, City-sponsored events, and announcements on government cable access Channel 20.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

A legal ad was published in The Tribune on Friday, February 21, 2014.

Notice of the continued Public Hearing of March 3, 2014 was posted on March 4, 2014.

Charter Communications was sent a copy of this agenda and staff report, as well as the staff report from the March 3, 2014 meeting recommending continuance.

Attachments

1. Draft Ordinance

ORDINANCE NO. 14-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH AMENDING ARTICLE X, CHAPTER 3 OF THE CITY OF GROVER BEACH MUNICIPAL CODE REGULATING STATE-ISSUED CABLE TELEVISION FRANCHISES

WHEREAS, the Legislature of the State of California has adopted the Digital Infrastructure and Video Competition Act of 2006 (DIVCA); and

WHEREAS, DIVCA establishes a regulatory structure for the State's Public Utilities Commission to issue franchises to video service providers; and

WHEREAS, DIVCA establishes that local entities are responsible for administration and implementation of certain provisions of DIVCA, but that they are preempted from regulating most other provisions governing state-issued cable television franchises; and

WHEREAS, DIVCA requires that the City establishes, by ordinance, financial support provisions for Public, Education and Government Access (PEG) channel facilities; and

WHEREAS, DIVCA requires that the City adopt a schedule of penalties for any material breach by a State video franchise holder for violation of customer service and protection standards that the City is permitted to enforce.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Grover Beach as follows:

PART 1.

The City of Grover Beach Municipal Code Article X, Chapter 3, here hereby amended to add a new section 10303, to read as follows:

**ARTICLE X
Chapter 3
FRANCHISES**

Section 10303. Special provisions applicable to holders of State Video Franchise.

(A) Franchise Fees. A state video franchise holder operating in the City shall pay to the City a franchise fee that is equal to five percent of the gross revenues of that state video franchise holder. The term "gross revenue" shall be defined as set forth in Public Utilities Code Section 5860. Each state video franchise holder shall remit the franchise fee to the City quarterly, within forty-five (45) days after the end of the quarter for that calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the franchise fee. If the state video franchise holder does not pay the franchise fee when due, the state video franchise 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 one (1%) percent. If the state video franchise holder has overpaid the franchise fee, it may deduct the overpayment from its next quarterly payment.

(B) Audit Authority. Not more than once annually, the City may examine and perform an audit of the business records of a holder of a state video franchise to the extent reasonably necessary to ensure compliance with all applicable statutes and regulations related to the computation and payment of franchise fees. A state video franchise holder shall keep all business records reflecting any gross revenues, even if there is a change in ownership, for at least four (4) years after those revenues are recognized by the state video franchise holder on its books and records. If the examination discloses that the state video franchise holder has underpaid franchise fees by more than five (5%) percent during the examination period, the state video franchise holder shall pay all of the reasonable and actual costs of the examination in addition to the underpaid franchise fees and interest imposed under subsection A above. If the examination discloses that the state video franchise holder has not underpaid franchise fees, the City shall pay all of the reasonable and actual costs of the examination. In every other instance, each party shall bear its own costs of the examination.

(C) 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 City shall monitor the compliance of state video franchise holders with respect to 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 thirty (30) days from receipt of the notice to remedy the specified material breach. A material breach for the purposes of assessing penalties shall be deemed to have occurred for each day within the City, following the expiration of the 30-day time period specified herein, that any material breach has not been remedied by the video service provider, irrespective of the number of customers or subscribers affected. 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 Five Hundred Dollars (\$500.00) shall be imposed for each day the violation remains in effect, not to exceed One Thousand Five Hundred Dollars (\$1,500.00) for each occurrence of a material breach of applicable customer service and protection standards.
 - b. For a second violation of the same nature within twelve (12) months, a monetary penalty of One Thousand Dollars (\$1,000.00) shall be imposed for each day the violation remains in effect, not to exceed Three Thousand Dollars (\$3,000.00) for each occurrence of a material breach of applicable customer service and protection standards.
 - c. For a third or further violation of the same nature within twelve (12) months, a monetary penalty of Two Thousand Five Hundred Dollars (\$2,500.00) shall be imposed for each day the violation remains in effect, not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) for each occurrence of a material breach of applicable customer service and protection standards.
- (3) A state video franchise holder may appeal a monetary penalty assessed by the City within sixty (60) days. 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. Except as otherwise provided in Public Utilities Code Section 5900, the City Council's decision on the imposition of a monetary penalty shall be final.

(D) City Response to State Video Franchise Applications.

- (1) Applicant 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 (1) complete copy must be provided to the City Clerk.
- (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.

(E) 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 three (3) public, educational, or governmental (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) The PEG access channels shall be used only for noncommercial purposes. Notwithstanding the foregoing sentence, 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. The PEG signal shall be receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than the equipment necessary to receive the lowest cost tier of service. The PEG access capacity provided 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 state cable franchise holder at a lower quality or with less functionality.
- (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 (NTSC) television signal.

(F) PEG Support Fee and Payments. In accordance with Public Utilities Code section 5870(n), state video franchise holders shall pay to City a PEG support fee in the amount of one and one half (1.5%) percent of gross revenues. State franchise holders shall remit PEG

support fees in the same manner as franchise fees as set forth in subsection A above. The PEG support fee may be shown as a separate line item on the regular bill of each subscriber.

(G) 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.

(H) Interconnection. Where technically feasible, a state video franchise holder and 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 state video franchise holder's network as identified by the state video franchise 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.

(I) Applicability of Article X Chapter 5. This Section superseded any inconsistent provisions of Chapter 5 Community Antenna Television Systems.

PART 2.

This Ordinance shall become effective thirty (30) days after the date of its adoption, and within fifteen (15) days after its adoption, it shall be published once, together with the names of the Council Members voting thereon, in a newspaper of general circulation within the City.

PART 3.

This Ordinance shall not be interpreted in any manner to conflict with controlling provisions of state law, including, without limitation, the Constitution of the State of California. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. If this Ordinance, or any section, subsection or clause of this ordinance shall be deemed unconstitutional or invalid as applied to in regards to other contracts, shall not be affected.

(Roll Call Vote on Following Page)

INTRODUCED at a regular meeting of the City Council held _____, 2014 and **PASSED, APPROVED, and ADOPTED** by the City Council on _____, 2014 on the following roll call, to wit:

AYES: Council Members –
NOES: Council Members –
ABSENT: Council Members –
ABSTAIN: Council Members –

DRAFT

DEBBIE PETERSON, MAYOR

ATTEST:

DONNA L. McMAHON, CITY CLERK

Approved as to form:

MARTIN D. KOCZANOWICZ, CITY ATTORNEY